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

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**FORM 6-K**

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

**DATED: August 26, 2021**

**Commission File No. 001-33811**

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**NAVIOS MARITIME PARTNERS L.P.**

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

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Indicate by check mark whether the registrant files or will file annual reports under cover of 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

If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): N/A

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# NAVIOS MARITIME PARTNERS L.P.

## FORM 6-K

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This Report on Form 6-K is hereby incorporated by reference into the Navios Maritime Partners L.P. Registration Statement on Form F-3, File No. 333-237934.

#### **Operating and Financial Review and Prospects**

The following is a discussion of the financial condition and results of operations for the three and six month periods ended June 30, 2021 and 2020 of Navios Maritime Partners L.P. (referred to herein as “we”, “us”, “Company” or “Navios Partners”). All of the financial statements have been stated in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”). You should read this section together with the consolidated financial statements and the accompanying notes included in Navios Partners’ 2020 Annual Report filed on Form 20-F with the U.S. Securities and Exchange Commission (the “SEC”) on March 31, 2021.

This Report contains forward-looking statements (as defined in Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended) concerning future events including Navios Partners’ 2021 cash flow generation, future contracted revenues, future distributions and its ability to have any distributions going forward, opportunities to reinvest cash accretively in a fleet renewal program or otherwise, potential capital gains, our ability to take advantage of dislocation in the market and Navios Partners’ growth strategy and measures to implement such strategy; including expected vessel acquisitions and entering into further time charters. Words such as “may,” “expects,” “intends,” “plans,” “believes,” “anticipates,” “hopes,” “estimates,” and variations of such words and similar expressions are intended to identify forward-looking statements. Such statements include comments regarding expected revenue and time charters. These forward-looking statements are based on the information available to, and the expectations and assumptions deemed reasonable by Navios Partners at the time these statements were made. Although Navios Partners believes that the expectations reflected in such forward-looking statements are reasonable, no assurance can be given that such expectations will prove to have been correct. These statements involve risks and are based upon a number of assumptions and estimates that are inherently subject to significant uncertainties and contingencies, many of which are beyond the control of Navios Partners. Actual results may differ materially from those expressed or implied by such forward-looking statements. Factors that could cause actual results to differ materially include, but are not limited to, global and regional economic and political conditions including the impact of the COVID-19 pandemic and efforts throughout the world to contain its spread, including effects on global economic activity, demand for seaborne transportation of the products we ship, the ability and willingness of charterers to fulfill their obligations to us and prevailing charter rates, shipyards performing scrubber installations, drydocking and repairs, changing vessel crews and availability of financing, potential disruption of shipping routes due to accidents, diseases, pandemics, political events, piracy or acts by terrorists, including the impact of the COVID-19 pandemic and the ongoing efforts throughout the world to contain it, the creditworthiness of our charterers and the ability of our contract counterparties to fulfill their obligations to us, tanker industry trends, including charter rates and vessel values and factors affecting vessel supply and demand, the aging of our vessels and resultant increases in operation and dry docking costs, the loss of any customer or charter or vessel, our ability to repay outstanding indebtedness, to obtain additional financing and to obtain replacement charters for our vessels, in each case, at commercially acceptable rates or at all, increases in costs and expenses, including but not limited to: crew wages, insurance, provisions, port expenses, lube oil, bunkers, repairs, maintenance and general and administrative expenses, the expected cost of, and our ability to comply with, governmental regulations and maritime self-regulatory organization standards, as well as standard regulations imposed by our charterers applicable to our business, potential liability from litigation and our vessel operations, including discharge of pollutants, general domestic and international political conditions, competitive factors in the market in which Navios Partners operates; risks associated with operations outside the United States; and other factors listed from time to time in Navios Partners’ filings with the U.S. Securities and Exchange Commission, including its reports on Form 20-F and reports on Form 6-K. Navios Partners expressly disclaims any obligations or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in Navios Partners’ expectations with respect thereto or any change in events, conditions or circumstances on which any statement is based. Navios Partners makes no prediction or statement about the performance of its common units.

## Recent Developments

### Merger

On August 25, 2021, Navios Partners and its direct wholly-owned subsidiary, Navios Acquisition Merger Sub. Inc. (“Merger Sub”) entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Navios Maritime Acquisition Corporation (“Navios Acquisition”). Pursuant to the Merger Agreement, Merger Sub will be merged with and into Navios Acquisition, with Navios Acquisition being the surviving entity (the “Merger”). Upon consummation of the Merger, Navios Acquisition will become wholly owned by Navios Partners. The Merger Agreement was unanimously approved by a special committee of the board of directors of Navios Acquisition and its board of directors and by Navios Partners’ conflict committee and its board of directors.

Under the terms of the Merger Agreement, upon consummation of the Merger, each outstanding share of common stock of Navios Acquisition (“Navios Acquisition Common Stock”) that is held by a holder other than Navios Partners, Navios Acquisition and their respective subsidiaries will be converted into the right to receive 0.1275 of a common unit of Navios Partners.

Pursuant to the Merger Agreement, Navios Partners will file with the Securities and Exchange Commission (“SEC”) a registration statement on Form F-4, which will include a proxy statement/prospectus describing the Merger and Navios Partners’ common units to be issued in the Merger. After the registration statement is declared effective by the SEC, the proxy statement/prospectus will be mailed to holders of Navios Acquisition Common Stock and Navios Acquisition will hold a special meeting of the holders of Navios Acquisition Common Stock (the “Navios Acquisition Stockholders’ Meeting”) to vote on the Merger Agreement and the Merger. Under the terms of the Merger Agreement, Navios Partners, which, subsequent to the Equity Issuance, described below, beneficially owns 44,117,647 shares of Navios Acquisition Common Stock or approximately 62.4% of the outstanding shares of Navios Acquisition Common Stock, has agreed to vote those shares of Navios Acquisition Common Stock in favor of the Merger and the Merger Agreement at the Navios Acquisition Stockholders’ Meeting. The closing of the Merger is conditioned upon, customary terms and conditions.

### NMM Loan Agreement

In connection with the execution of the Merger Agreement, on August 24, 2021, Navios Acquisition and Navios Partners entered into a loan agreement (the “Navios Partners Loan Agreement”) under which Navios Partners agreed to make available to Navios Acquisition a working capital facility of up to \$45.0 million. As of the date hereof, the full amount of the facility has been drawn by Navios Acquisition. The full amounts borrowed, including accrued and unpaid interest are due and payable on the date that is one year following the date of the draw. The facility bears interest at the rate of 11.50% per annum.

### Redemption and Discharge of Ship Mortgage Notes

Pursuant to the Merger Agreement, on August 26, 2021, Navios Acquisition called for redemption of all of its outstanding 8.125% First Priority Ship Mortgage Notes due November 15, 2021 (the “Ship Mortgage Notes”) and remitted to the indenture trustee the aggregate redemption price payable to the holders of the Ship Mortgage Notes to satisfy and discharge Navios Acquisition’s obligations under the indenture relating to the Ship Mortgage Notes. The redemption date for the Ship Mortgage Notes will be September 25, 2021.

Navios Acquisition funded the approximately \$397.5 million aggregate redemption price with net proceeds from (i) the purchase by Navios Partners pursuant to the Merger Agreement of 44,117,647 newly issued shares of Navios Acquisition Common Stock for an aggregate purchase price of \$150.0 million, or \$3.40 per share (the “Equity Issuance”), and (ii) new secured borrowings by Navios Acquisition and its subsidiaries. The shares of Navios Acquisition Common Stock purchased by Navios Partners pursuant to the Equity Issuance will be cancelled in the Merger for no consideration.

### Fleet Developments

#### · Acquisition of Six 5,300 TEU Newbuilding Containerships (four plus two on Navios Partners’ option)

In July 2021, Navios Partners agreed to purchase six 5,300 TEU newbuilding containerships (four plus two optional) from an unrelated third party, for a purchase price of \$61.6 million each. The vessels are expected to be delivered in Navios Partners’ fleet during the second half of 2023 and 2024.

#### · Acquisition of Five Newbuilding Capesize Vessels

In January and March 2021, Navios Partners entered into bareboat charter-in agreements for four newbuilding Capesize vessels from unrelated third parties. Each vessel has approximately 180,000 dwt and is being bareboat chartered-in for 15 years. Navios Partners has the option to acquire the vessels starting at the end of year four until the end of the charter period. The total implied acquisition price for the three vessels is approximately \$154.5 million and for the fourth is approximately \$51.5 million and the implied effective interest rate is 4.4% and 5.0%, respectively. Three vessels are expected to be delivered in Navios Partners’ fleet during the second half of 2022 and the fourth vessel is expected to be delivered by the first half of 2023.

In June 2021, Navios Partners entered into a bareboat charter-in for one newbuilding Capesize vessel from an unrelated third party. The vessel has approximately 180,000 dwt and is being bareboat chartered-in for 10 years. Navios Partners has the option to acquire the vessel starting at the end of year four until the end of the tenth year. The implied acquisition price is approximately \$60.0 million and the annual effective interest rate is approximately 4.3%. The vessel is expected to be delivered in Navios Partners’ fleet during the second half of 2022.

#### · Acquisition of One Newbuilding Kamsarmax Vessel

In June 2021, Navios Partners agreed to acquire from an unrelated third party a newbuilding Kamsarmax vessel for a purchase price of \$34.3 million. The vessel has approximately 81,000 dwt and is expected to be delivered in Navios Partners’ fleet during the first half of 2023.

#### · Acquisition of Three Capesize Vessels

In June 2021, Navios Partners agreed to acquire from Navios Maritime Holdings Inc. (“Navios Holdings”) the Navios Azimuth, a 2011-built Capesize vessel of 179,169 dwt, the Navios Ray, a 2012-built Capesize vessel of 179,515 dwt, and the Navios Bonavis, a 2009-built Capesize vessel of 180,022 dwt for an aggregate purchase price of \$88.0 million. The Navios Bonavis and the Navios Ray were delivered in Navios Partners’ fleet in June 2021 and the

Navios Azimuth was delivered in July 2021. The acquisition of these vessels was approved by the Conflicts Committee of the Board of Directors of Navios Partners.

#### **Sale of Four Vessels**

On August 25, 2021, Navios Partners agreed to sell the Navios Altair I, a 2006-built Panamax vessel of 74,475 dwt to an unrelated third party for a net sale price of \$13.5 million. The sale is expected to be completed during the third quarter of 2021.

On August 16, 2021, Navios Partners completed the sale of the Harmony N, a 2006-built Containership of 2,824 TEU, to an unrelated third party for a net sale price of \$28.7 million.

On August 13, 2021, Navios Partners completed the sale of the Navios Azalea, a 2005-built Panamax vessel of 74,759 dwt, to an unrelated third party for a net sale price of \$12.7 million.

On July 31, 2021, Navios Partners completed the sale of the Navios Dedication, a 2008-built Containership of 4,250 TEU to an unrelated third party for a net sale price of \$33.9 million.

#### **Financing Arrangements**

On June 17, 2021, Navios Partners entered into a new credit facility with a commercial bank for a total amount of up to \$43.0 million, in order to refinance the existing credit facilities of six dry bulk vessels. The credit facility matures in the second quarter of 2026 and bears interest at LIBOR plus 300 bps per annum.

On June 28, 2021, Navios Partners completed a \$18.5 million sale and leaseback transaction with an unrelated third party, for a 2012-built Capesize vessel. The sale and leaseback transaction has a duration of nine years and an implied fixed interest rate of approximately 5.8%. Navios Partners has the option to buy the vessel at the end of year nine for a \$5.0 million obligation at maturity.

On June 28, 2021, Navios Partners completed a \$15.0 million sale and leaseback transaction with an unrelated third party, for a 2009-built Capesize vessel. The sale and leaseback transaction has a duration of six years and an implied fixed interest rate of approximately 6.1%. Navios Partners has the option to buy the vessel at the end of year six for a \$5.0 million obligation at maturity.

On August 25, 2021, Navios Partners completed a \$15.0 million sale and leaseback transaction with an unrelated third party, for a 2009-built Capesize vessel. The sale and leaseback transaction has a duration of six years and an implied fixed interest rate of approximately 6.1%. Navios Partners has the option to buy the vessel starting at the end of year three which de-escalates until maturity to \$5.0 million obligation.

On August 19, 2021, Navios Partners entered into a new credit facility with a commercial bank for a total amount of up to \$18.0 million in order to finance the acquisition of a 2011-built Capesize vessel. The credit facility matures in the third quarter of 2026 and bears interest at LIBOR plus 2.85% per annum.

### **Cash Distribution**

In July 2021, the Board of Directors of Navios Partners authorized its quarterly cash distribution for the second quarter of 2021 of \$0.05 per unit. The cash distribution was paid on August 12, 2021 to all unitholders of record as of August 9, 2021. The declaration and payment of any further dividends remain subject to the discretion of the Board of Directors and will depend on, among other things, Navios Partners' cash requirements as measured by market opportunities and restrictions under its credit agreements and other debt obligations and such other factors as the Board of Directors may deem advisable.

### **Overview**

We are an international owner and operator of dry cargo vessels, formed in August 2007 under the laws of the Republic of the Marshall Islands. We have been a public company since November 2007. Navios GP L.L.C., a wholly owned subsidiary of Navios Holdings, was also formed on that date to act as the general partner of Navios Partners. Currently, our general partner is Olympos Maritime Ltd. (the "General Partner") and holds a 2.0% general partner interest in Navios Partners.

As of August 25, 2021, there were 26,808,861 outstanding common units and 553,408 general partnership units. Navios Holdings currently owns an approximately 9.6% ownership interest in Navios Partners and the General Partner currently owns 2.0% general partner interest in Navios Partners.

### **Fleet**

As of August 23, 2021, our fleet consists of 27 Panamax vessels, 24 Capesize vessels, four Ultra Handymax vessels and 43 Containerships, including four Capesize bareboat charter-in vessels expected to be delivered by the second half of 2022, one Capesize bareboat charter-in vessel expected to be delivered by the first half of 2023, two Panamax vessels expected to be delivered by the second half of 2022 and first half of 2023 and six Containerships (four plus two optional) expected to be delivered by the second half of 2023 and 2024.

We generate revenues by charging our customers for the use of our vessels to transport their dry cargo commodities. In general, the vessels in our fleet are chartered-out under time charters, which range in length from one to twelve years at inception. From time to time, we operate vessels in the spot market until the vessels have been chartered under long-term charters.

As of August 23, 2021, the Company has 15,702 and 31,390 available days for the second half of 2021 and for the 2022 and has currently contracted out (excluding index-linked charters) 10,958 and 11,598, respectively, expecting to generate revenues (excluding index-linked charters) of approximately \$256.5 million and \$349.0 million, respectively. The average contracted daily charter-out rate for the fleet is \$23,407 for the second half of 2021 and \$30,095 for 2022. As of August 23, 2021, the Company has total contracted revenue of \$1,137.3 million.

The following table provides summary information about our combined fleet as of August 23, 2021:

<b>Owned Drybulk Vessels</b>	<b>Type</b>	<b>Built</b>	<b>Capacity (DWT)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Index<sup>(2)</sup></b>	<b>Expiration Date<sup>(3)</sup></b>
Navios La Paix	Ultra-Handymax	2014	61,485	—	111% average BSI 58 10TC	February 2022
Navios Christine B	Ultra-Handymax	2009	58,058	\$9,548	No	January 2022
Navios Amaryllis	Ultra-Handymax	2008	58,735	\$8,835	No	October 2021
Serenitas N	Ultra-Handymax	2011	56,644	—	99.0% average BSI 58 10TC	June 2022
Navios Hyperion	Panamax	2004	75,707	\$29,450	No	September 2021
Navios Alegria	Panamax	2004	76,466	—	99.5% average BPI 4TC	March 2022
Navios Orbiter	Panamax	2004	76,602	—	100% average BPI 4TC	December 2021
Navios Helios	Panamax	2005	77,075	—	100% average BPI 4TC	September 2021
Navios Sun	Panamax	2005	76,619	—	100% average BPI 4TC	December 2021
Navios Hope	Panamax	2005	75,397	\$9,625	No	December 2021
				—	100% average BPI 4TC	January 2022
Navios Sagittarius <sup>(5)</sup>	Panamax	2006	75,756	\$10,783	No	November 2021
Navios Harmony	Panamax	2006	82,790	—	No	Spot
Navios Prosperity I	Panamax	2007	75,527	\$27,550	No	September 2021
Navios Libertas	Panamax	2007	75,511	\$26,600	No	September 2021
Navios Altair I	Panamax	2006	74,475	\$28,643	No	September 2021
Navios Symmetry	Panamax	2006	74,381	\$11,804	No	March 2022
Navios Apollon I	Panamax	2005	87,052	—	109% average BPI 4TC	February 2022
Navios Sphera	Panamax	2016	84,872	—	120% average BPI 4TC	May 2022
Navios Camelia	Panamax	2009	75,162	\$9,975	No	September 2021
Navios Anthos	Panamax	2004	75,798	\$9,595	No	January 2022
Copernicus N	Panamax	2010	93,062	\$28,500	No	August 2021
Unity N	Panamax	2011	79,642	\$27,075	No	October 2021
Odysseus N	Panamax	2011	79,642	—	No	Spot
Navios Victory	Panamax	2014	77,095	\$12,513	No	April 2022
Navios Avior	Panamax	2012	81,355	\$14,131	No	February 2022
Navios Centaurus	Panamax	2012	81,472	\$26,125	No	September 2021
Navios Beaufiks <sup>(6)</sup>	Capesize	2004	180,310	Freight Voyage	No	September 2021
Navios Symphony	Capesize	2010	178,132	—	100.5% average BCI 5TC	October 2021
Navios Fantastiks <sup>(7)</sup>	Capesize	2005	180,265	\$21,650	No	March 2023
Navios Aurora II	Capesize	2009	169,031	—	95.25% average BCI 5TC	April 2022
Navios Pollux	Capesize	2009	180,727	—	100% of pool earnings	November 2021
Navios Sol <sup>(8)</sup>	Capesize	2009	180,274	—	110% average BCI 5TC	March 2022
Navios Fulvia	Capesize	2010	179,263	—	100% average BCI 5TC	December 2021
Navios Buena Ventura	Capesize	2010	179,259	—	100.5% average BCI 5TC	December 2021
Navios Melodia	Capesize	2010	179,132	\$29,356	Profit sharing 50% above \$37,500/day based on Baltic Exchange Capesize TC Average	September 2022
Navios Luz	Capesize	2010	179,144	—	101% average BCI 5TC	March 2022
Navios Ace <sup>(9)</sup>	Capesize	2011	179,016	—	105.5% average BCI 5TC	March 2022
Navios Aster	Capesize	2010	179,314	\$31,350	No	November 2021
Navios Joy	Capesize	2013	181,389	Freight Voyage	No	April 2022
Navios Gem	Capesize	2014	181,336	\$17,623	No	February 2022
Navios Mars	Capesize	2016	181,259	\$22,610	No	February 2022
Navios Koyo	Capesize	2011	181,415	—	100% average BCI 5TC plus \$2,000/day	January 2022
Navios Ray	Capesize	2012	179,515	—	102% average BCI 5TC	January 2022
Navios Bonavis	Capesize	2009	180,022	—	102.5% average BCI 5TC	January 2022
Navios Azimuth	Capesize	2011	179,169	—	102% average BCI 5TC	February 2022
<b>Owned Vessels to be Delivered</b>	<b>Type</b>	<b>Delivery Date</b>	<b>Capacity (DWT)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Index<sup>(2)</sup></b>	<b>Expiration Date<sup>(3)</sup></b>
TBN 4 <sup>(10)</sup>	Panamax	2022	81,000	—	—	—
TBN 6 <sup>(14)</sup>	Panamax	2023	81,000	—	—	—
<b>Bareboat Chartered-in Vessels</b>	<b>Type</b>	<b>Built</b>	<b>Capacity (DWT)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Index<sup>(2)</sup></b>	<b>Expiration Date<sup>(3)</sup></b>
Navios Libra	Panamax	2019	82,011	—	109.75% average BPI 82	July 2024
Navios Amitie	Panamax	2021	82,002	—	110% average BPI 82	May 2024
Navios Star	Panamax	2021	81,994	—	110% average BPI 82	June 2024



<b>Bareboat Chartered-in Vessels to be Delivered</b>	<b>Type</b>	<b>Delivery Date</b>	<b>Capacity (DWT)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Index<sup>(2)</sup></b>	<b>Expiration Date<sup>(3)</sup></b>
TBN 1 <sup>(10)</sup>	Capesize	2022	180,000	—	—	—
TBN 2 <sup>(10)</sup>	Capesize	2022	180,000	—	—	—
TBN 3 <sup>(10)</sup>	Capesize	2022	180,000	—	—	—
TBN 5 <sup>(14)</sup>	Capesize	2023	180,000	—	—	—
TBN 7 <sup>(10)</sup>	Capesize	2022	180,000	—	—	—
<b>Owned Containerships</b>	<b>Type</b>	<b>Built</b>	<b>Capacity (TEU)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Index<sup>(2)</sup></b>	<b>Expiration Date<sup>(3)</sup></b>
Spectrum N	Containership	2009	2,546	\$15,800	No	April 2022
Protostar N	Containership	2007	2,741	\$17,775	No	July 2022
Fleur N	Containership	2012	2,782	\$19,750	No	March 2024
Ete N	Containership	2012	2,782	\$19,750	No	February 2024
Navios Summer <sup>(11)</sup>	Containership	2006	3,450	\$16,960	No	May 2022
Navios Verano <sup>(11)</sup>	Containership	2006	3,450	\$22,713	No	May 2023
Navios Spring <sup>(11)(15)</sup>	Containership	2007	3,450	\$10,326	No	March 2022
Navios Vermilion <sup>(11)</sup>	Containership	2007	4,250	\$21,330	No	December 2021
				\$54,313	No	December 2022
				\$45,425	No	December 2023
				\$23,972	No	November 2024
				\$41,722	No	December 2024
Navios Indigo <sup>(11)</sup>	Containership	2007	4,250	\$22,713	No	February 2022
Navios Amaranth <sup>(11)</sup>	Containership	2007	4,250	\$18,121	No	December 2021
Navios Amarillo <sup>(11)</sup>	Containership	2007	4,250	\$20,845	No	November 2022
Navios Verde <sup>(11)</sup>	Containership	2007	4,250	\$20,845	No	June 2023
Navios Azure <sup>(11)</sup>	Containership	2007	4,250	\$22,678	No	September 2022
Navios Domino <sup>(11)</sup>	Containership	2008	4,250	\$24,934	No	June 2023
Navios Delight <sup>(11)</sup>	Containership	2008	4,250	\$45,425	No	December 2023
Navios Destiny <sup>(11)</sup>	Containership	2009	4,250	\$18,022	No	November 2021
				\$54,313	No	November 2022
				\$45,425	No	November 2023
				\$23,972	No	October 2024
				\$41,722	No	November 2024
Navios Devotion <sup>(11)</sup>	Containership	2009	4,250	\$23,700	No	February 2022
Navios Lapis	Containership	2009	4,250	\$31,353	No	May 2023
Navios Tempo	Containership	2009	4,250	\$13,000	No	December 2021
				\$44,438	No	July 2025
Navios Dorado	Containership	2010	4,250	\$21,676	No	April 2023
Navios Felicitas	Containership	2010	4,360	\$18,121	No	December 2021
Bahamas	Containership	2010	4,360	\$22,219	No	November 2022
Bermuda	Containership	2010	4,360	\$11,580	No	March 2022
Navios Miami	Containership	2009	4,563	\$18,022	No	November 2021
				\$54,313	No	November 2022
				\$45,425	No	November 2023
				\$23,972	No	October 2024
				\$41,722	No	November 2024
Navios Magnolia	Containership	2008	4,730	\$18,022	No	November 2021
				\$54,313	No	November 2022
				\$45,425	No	November 2023
				\$23,972	No	October 2024
				\$41,722	No	November 2024
Navios Jasmine	Containership	2008	4,730	\$21,825	No	December 2022
Navios Chrysalis	Containership	2008	4,730	\$30,083	No	July 2023



Navios Nerine	Containership	2008	4,730	\$24,125	No	August 2021
				\$54,313	No	August 2022
				\$45,425	No	August 2023
				\$23,972	No	July 2024
				\$41,722	No	August 2024
Hyundai Hongkong <sup>(4)</sup>	Containership	2006	6,800	\$30,119	No	December 2023

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<b>Owned Containerships</b>	<b>Type</b>	<b>Built</b>	<b>Capacity (TEU)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Index<sup>(2)</sup></b>	<b>Expiration Date<sup>(3)</sup></b>
				\$21,083	No	December 2028
Hyundai Singapore <sup>(4)</sup>	Containership	2006	6,800	\$30,119	No	December 2023
				\$21,083	No	December 2028
Hyundai Tokyo <sup>(4)</sup>	Containership	2006	6,800	\$30,119	No	December 2023
				\$21,083	No	December 2028
Hyundai Shanghai <sup>(4)</sup>	Containership	2006	6,800	\$30,119	No	December 2023
				\$21,083	No	December 2028
Hyundai Busan <sup>(4)</sup>	Containership	2006	6,800	\$30,119	No	December 2023
				\$21,083	No	December 2028
Navios Utmost <sup>(12)</sup>	Containership	2006	8,204	\$21,656	No	September 2022
Navios Unite <sup>(12)</sup>	Containership	2006	8,204	\$27,840	No	February 2024
Navios Unison <sup>(13)</sup>	Containership	2010	10,000	\$26,276	No	May 2026
Navios Constellation <sup>(13)</sup>	Containership	2011	10,000	\$26,276	No	May 2026

<b>Owned Containerships to be Delivered</b>	<b>Type</b>	<b>Delivery Date</b>	<b>Capacity (TEU)</b>	<b>Charter-Out Rate<sup>(1)</sup></b>	<b>Index<sup>(2)</sup></b>	<b>Expiration Date<sup>(3)</sup></b>
TBN 8 <sup>(11)</sup>	Containership	2023	5,300	—	—	—
TBN 9 <sup>(11)</sup>	Containership	2023	5,300	—	—	—
TBN 10 <sup>(11)</sup>	Containership	2024	5,300	—	—	—
TBN 11 <sup>(16)</sup>	Containership	2024	5,300	—	—	—
TBN 12 <sup>(16)</sup> (optional vessel)	Containership	2024	5,300	—	—	—
TBN 13 <sup>(16)</sup> (optional vessel)	Containership	2024	5,300	—	—	—

- (1) Daily charter-out rate per day, net of commissions.
- (2) Index rates exclude commissions.
- (3) Expected redelivery basis midpoint or the Company's best estimate.
- (4) Includes five optional years (owners' option) starting 2023.
- (5) The vessel is subject to a sale and leaseback transaction for a period of up to three years, at which time we have an obligation to purchase the vessel.
- (6) The vessel is subject to a sale and leaseback transaction for a period of up to five years, at which time we have an obligation to purchase the vessel.
- (7) The vessel is subject to a sale and leaseback transaction for a period of up to six years, at which time we have an obligation to purchase the vessel.
- (8) The vessel is subject to a sale and leaseback transaction for a period of up to ten years, at which time we have an obligation to purchase the vessel.
- (9) The vessel is subject to a sale and leaseback transaction for a period of up to 11 years, at which time we have an obligation to purchase the vessel.
- (10) Expected to be delivered by the second half of 2022.
- (11) The vessel is subject to a sale and leaseback transaction with Minsheng Financial Leasing Co. Ltd. for a period of up to five years, at which time we have an obligation to purchase the vessel.
- (12) The vessel is subject to a sale and leaseback transaction with Bank of Communications Financial Leasing Co. Ltd. for a period of up to five years, at which time we have an obligation to purchase the vessel.
- (13) The vessel is subject to a sale and leaseback transaction with Bank of Communications Financial Leasing Co. Ltd. for a period of up to seven years, at which time we have an obligation to purchase the vessel.
- (14) Expected to be delivered in the first half of 2023.
- (15) Charterer's option to extend the charter for 8 months +/-30 days at \$10,326 net per day.

## **Our Charters**

We provide or will provide seaborne shipping services under long-term time charters with customers that we believe are creditworthy. For the six month period ended June 30, 2021, Singapore Marine Pte Ltd. (“Singapore Marine”) and Hyundai Merchant Marine Co., Ltd. (“HMM”) represented approximately 13.8% and 12.8%, respectively, of total revenues. For the six month period ended June 30, 2020, HMM represented approximately 29.0% of total revenues. No other customers accounted for 10% or more of total revenues for any of the periods presented.

Our revenues are driven by the number of vessels in the fleet, the number of days during which vessels operate and our charter hire rates, which, in turn, are affected by a number of factors, including:

- the duration of the charters;
- the level of spot and long-term market rates at the time of charters;
- decisions relating to vessel acquisitions and disposals;
- the amount of time spent positioning vessels;
- the amount of time that vessels spend in dry dock undergoing repairs and upgrades;
- the age, condition and specifications of the vessels; and
- the aggregate level of supply and demand in the dry cargo shipping industry.

Time charters are available for varying periods, ranging from a single trip (spot charter) to long-term which may be many years. In general, a long-term time charter assures the vessel owner of a consistent stream of revenue. Operating the vessel in the spot market affords the owner greater spot market opportunity, which may result in high rates when vessels are in high demand or low rates when vessel availability exceeds demand. We intend to operate our vessels in the long-term charter market. Vessel charter rates are affected by world economics, international events, weather conditions, strikes, governmental policies, supply and demand and many other factors that might be beyond our control. Please read “Risk Factors” in our 2020 Annual Report on Form 20-F for a discussion of certain risks inherent in our business.

We could lose a customer or the benefits of a charter if:

- the customer fails to make charter payments because of its financial inability, disagreements with us or otherwise;
- the customer exercises certain rights to terminate the charter of the vessel;
- the customer terminates the charter because we fail to deliver the vessel within a fixed period of time, the vessel is lost or damaged beyond repair, there are serious deficiencies in the vessel or prolonged periods of off-hire, or we default under the charter; or
- a prolonged force majeure event affecting the customer, including damage to or destruction of relevant production facilities, war or political unrest prevents us from performing services for that customer.

Under some of our time charters, either party may terminate the charter contract in the event of war in specified countries or in locations that would significantly disrupt the free trade of the vessel. Some of the time charters covering our vessels require us to return to the charterer, upon the loss of the vessel, all advances paid by the charterer but not earned by us.

## **Trends and Factors Affecting Our Future Results of Operations**

We believe the principal factors that will affect our future results of operations are the economic, regulatory, political and governmental conditions that affect the shipping industry generally and that affect conditions in countries and markets in which our vessels engage in business. Please read “Risk Factors” in our 2020 Annual Report on Form 20-F for a discussion of certain risks inherent in our business.

## **Results of Operations**

### **Overview**

The financial condition and the results of operations presented for the three and six month periods ended June 30, 2021 and 2020 of Navios Partners presented and discussed below include the following entities:

Company name	Vessel name	Country of incorporation	2021	2020
Libra Shipping Enterprises Corporation <sup>(1)</sup>	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Alegria Shipping Corporation	Navios Alegria	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Felicity Shipping Corporation <sup>(2)</sup>	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Gemini Shipping Corporation <sup>(3)</sup>	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Galaxy Shipping Corporation <sup>(4)</sup>	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Aurora Shipping Enterprises Ltd.	Navios Hope	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Palermo Shipping S.A. <sup>(5)</sup>	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Fantastiks Shipping Corporation <sup>(12)</sup>	Navios Fantastiks	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Sagittarius Shipping Corporation <sup>(12)</sup>	Navios Sagittarius	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Hyperion Enterprises Inc.	Navios Hyperion	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Chilali Corp.	Navios Aurora II	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Surf Maritime Co.	Navios Pollux	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Pandora Marine Inc.	Navios Melodia	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Customized Development S.A.	Navios Fulvia	Liberia	01/01 – 06/30	01/01 – 06/30
Kohylia Shipmanagement S.A.	Navios Luz	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Orbiter Shipping Corp.	Navios Orbiter	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Floral Marine Ltd.	Navios Buena Ventura	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Golem Navigation Limited <sup>(13)</sup>	Navios Soleil	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Kymata Shipping Co.	Navios Helios	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Joy Shipping Corporation	Navios Joy	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Micaela Shipping Corporation	Navios Harmony	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Pearl Shipping Corporation	Navios Sun	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Velvet Shipping Corporation	Navios La Paix	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Perigiali Navigation Limited <sup>(12)</sup>	Navios Beaufiks	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Finian Navigation Co. <sup>(12)</sup>	Navios Ace	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Ammos Shipping Corp.	Navios Prosperity I	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Wave Shipping Corp.	Navios Libertas	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Casual Shipholding Co. <sup>(12)</sup>	Navios Sol	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Avery Shipping Company	Navios Symphony	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Coasters Ventures Ltd.	Navios Christine B	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Ianthe Maritime S.A.	Navios Aster	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Rubina Shipping Corporation	Hyundai Hongkong	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Topaz Shipping Corporation	Hyundai Singapore	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Beryl Shipping Corporation	Hyundai Tokyo	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Cheryl Shipping Corporation	Hyundai Shanghai	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Christal Shipping Corporation	Hyundai Busan	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Dune Shipping Corp. <sup>(6)</sup>	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Citrine Shipping Corporation	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Cavalli Navigation Inc.	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Seymour Trading Limited <sup>(32)</sup>	Navios Altair I	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Goldie Services Company	Navios Symmetry	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Andromeda Shiptrade Limited	Navios Apollon I	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Esmeralda Shipping Corporation	Navios Sphera	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Triangle Shipping Corporation	Navios Mars	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Oceanus Shipping Corporation <sup>(7)(19)</sup>	Castor N	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Cronus Shipping Corporation <sup>(7)</sup>	Protostar N	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Leto Shipping Corporation <sup>(7)(17)</sup>	Esperanza N	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Dionysus Shipping Corporation <sup>(7)(30)</sup>	Harmony N	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Prometheus Shipping Corporation <sup>(7)(18)</sup>	Solar N	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Camelia Shipping Inc. <sup>(8)</sup>	Navios Camelia	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Anthos Shipping Inc. <sup>(8)</sup>	Navios Anthos	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Azalea Shipping Inc. <sup>(8)(31)</sup>	Navios Azalea	Marshall Is.	01/01 – 06/30	01/01 – 06/30

Company name	Vessel name	Country of incorporation	2021	2020
Amaryllis Shipping Inc. <sup>(8)</sup>	Navios Amaryllis	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Zaffre Shipping Corporation <sup>(14)</sup>	Serenitas N	Marshall Is.	01/01 – 06/30	06/29 – 06/30
Wenge Shipping Corporation <sup>(14)(20)</sup>	Joie N	Marshall Is.	01/01 – 06/30	06/29 – 06/30
Sunstone Shipping Corporation <sup>(14)</sup>	Copernicus N	Marshall Is.	01/01 – 06/30	06/29 – 06/30
Fandango Shipping Corporation <sup>(14)</sup>	Unity N	Marshall Is.	01/01 – 06/30	06/29 – 06/30
Flavescent Shipping Corporation <sup>(14)</sup>	Odysseus N	Marshall Is.	01/01 – 06/30	06/29 – 06/30
Emery Shipping Corporation <sup>(15)</sup>	Navios Gem	Marshall Is.	01/01 – 06/30	—
Rondine Management Corp. <sup>(15)</sup>	Navios Victory	Marshall Is.	01/01 – 06/30	—
Solange Shipping Ltd. <sup>(16)</sup>	Navios Avior	Marshall Is.	03/30 – 06/30	—
Mandora Shipping Ltd. <sup>(16)</sup>	Navios Centaurus	Marshall Is.	03/30 – 06/30	—
Olympia II Navigation Limited	Navios Domino	Marshall Is.	03/31 – 06/30	—
Pingel Navigation Limited	Navios Delight	Marshall Is.	03/31 – 06/30	—
Ebba Navigation Limited	Navios Destiny	Marshall Is.	03/31 – 06/30	—
Clan Navigation Limited	Navios Devotion	Marshall Is.	03/31 – 06/30	—
Sui An Navigation Limited <sup>(23)</sup>	Navios Dedication	Marshall Is.	03/31 – 06/30	—
Bertyl Ventures Co.	Navios Azure	Marshall Is.	03/31 – 06/30	—
Silvanus Marine Company	Navios Summer	Marshall Is.	03/31 – 06/30	—
Anthimar Marine Inc.	Navios Amarillo	Marshall Is.	03/31 – 06/30	—
Enplo Shipping Limited	Navios Verde	Marshall Is.	03/31 – 06/30	—
Morven Chartering Inc.	Navios Verano	Marshall Is.	03/31 – 06/30	—
Rodman Maritime Corp.	Navios Spring	Marshall Is.	03/31 – 06/30	—
Isolde Shipping Inc.	Navios Indigo	Marshall Is.	03/31 – 06/30	—
Velour Management Corp.	Navios Vermilion	Marshall Is.	03/31 – 06/30	—
Evian Shiptrade Ltd.	Navios Amaranth	Marshall Is.	03/31 – 06/30	—
Theros Ventures Limited	Navios Lapis	Marshall Is.	03/31 – 06/30	—
Legato Shipholding Inc.	Navios Tempo	Marshall Is.	03/31 – 06/30	—
Inastros Maritime Corp.	Navios Chrysalis	Marshall Is.	03/31 – 06/30	—
Zoner Shiptrade S.A.	Navios Dorado	Marshall Is.	03/31 – 06/30	—
Jasmer Shipholding Ltd.	Navios Nerine	Marshall Is.	03/31 – 06/30	—
Thetida Marine Co.	Navios Magnolia	Marshall Is.	03/31 – 06/30	—
Jaspero Shiptrade S.A.	Navios Jasmine	Marshall Is.	03/31 – 06/30	—
Peran Maritime Inc.	Navios Felicitas	Marshall Is.	03/31 – 06/30	—
Nefeli Navigation S.A.	Navios Unison	Marshall Is.	03/31 – 06/30	—
Fairy Shipping Corporation	Navios Utmost	Marshall Is.	03/31 – 06/30	—
Limestone Shipping Corporation	Navios Unite	Marshall Is.	03/31 – 06/30	—
Crayon Shipping Ltd	Navios Miami	Marshall Is.	03/31 – 06/30	—
Chernava Marine Corp.	Bahamas	Marshall Is.	03/31 – 06/30	—
Proteus Shiptrade S.A	Bermuda	Marshall Is.	03/31 – 06/30	—
Vythos Marine Corp.	Navios Constellation	Marshall Is.	03/31 – 06/30	—
Prosperity Shipping Corporation	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Aldebaran Shipping Corporation	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
JTC Shipping and Trading Ltd. <sup>(11)</sup>	Holding Company	Malta	01/01 – 06/30	01/01 – 06/30
Navios Maritime Partners L.P.	N/A	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Navios Maritime Operating LLC.	N/A	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Navios Partners Finance (US) Inc.	Co-Borrower	Delaware	01/01 – 06/30	01/01 – 06/30
Navios Partners Europe Finance Inc.	Sub-Holding Company	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Navios Maritime Containers Sub L.P.	Sub-Holding Company	Marshall Is.	03/31 – 06/30	—
Navios Partners Containers Finance Inc.	Sub-Holding Company	Marshall Is.	03/31 – 06/30	—
Boheme Navigation Company	Sub-Holding Company	Marshall Is.	03/31 – 06/30	—
Navios Partners Containers Inc.	Sub-Holding	Marshall Is.	03/31 – 06/30	—

Iliada Shipping S.A.	Company Operating Company	Marshall Is.	03/31 – 06/30	—
Vinetre Marine Company	Operating Company	Marshall Is.	03/31 – 06/30	—
Afros Maritime Inc.	Operating Company	Marshall Is.	03/31 – 06/30	—
Cavos Navigation Co. <sup>(9)</sup>	Navios Libra	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Perivoia Shipmanagement Co. <sup>(10)</sup>	Navios Amitie	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Pleione Management Limited <sup>(10)</sup>	Navios Star	Marshall Is.	01/01 – 06/30	01/01 – 06/30

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Company name	Vessel name	Country of incorporation	2021	2020
Bato Marine Corp. <sup>(21)</sup>	TBN 1	Marshall Is.	03/05 – 06/30	—
Agron Navigation Company <sup>(21)</sup>	TBN 2	Marshall Is.	03/05 – 06/30	—
Teuta Maritime S.A. <sup>(21)</sup>	TBN 3	Marshall Is.	03/05 – 06/30	—
Ambracia Navigation Company <sup>(21)</sup>	TBN 4	Marshall Is.	03/05 – 06/30	—
Artala Shipping Co. <sup>(22)</sup>	TBN 5	Marshall Is.	03/05 – 06/30	—
Migen Shipmanagement Ltd.	Sub-Holding Company	Marshall Is.	03/05 – 06/30	—
Bole Shipping Corporation <sup>(24)</sup>	Spectrum N	Marshall Is.	04/28 – 06/30	—
Brandeis Shipping Corporation <sup>(24)</sup>	Ete N	Marshall Is.	05/10 – 06/30	—
Buff Shipping Corporation <sup>(24)</sup>	Fleur N	Marshall Is.	05/10 – 06/30	—
Morganite Shipping Corporation <sup>(25)</sup>	TBN 6	Marshall Is.	06/01 – 06/30	—
Balder Maritime Ltd. <sup>(26)</sup>	Navios Koyo	Marshall Is.	06/04 – 06/30	—
Melpomene Shipping Corporation <sup>(27)</sup>	TBN 8	Marshall Is.	06/23 – 06/30	—
Urania Shipping Corporation <sup>(27)</sup>	TBN 9	Marshall Is.	06/23 – 06/30	—
Terpsichore Shipping Corporation <sup>(28)</sup>	TBN 10	Marshall Is.	06/23 – 06/30	—
Erato Shipping Corporation <sup>(28)</sup>	TBN 11	Marshall Is.	06/23 – 06/30	—
Lavender Shipping Corporation <sup>(12)(29)</sup>	Navios Ray	Marshall Is.	06/30 – 06/30	—
Nostos Shipmanagement Corp. <sup>(12)(29)</sup>	Navios Bonavis	Marshall Is.	06/30 – 06/30	—

- (1) The vessel was sold on December 14, 2018.
- (2) The vessel was sold on December 4, 2018.
- (3) The vessel was sold on December 21, 2017.
- (4) The vessel was sold on April 23, 2019.
- (5) The vessel was sold on April 21, 2017.
- (6) The vessel was sold on January 12, 2017.
- (7) The vessels were acquired on December 13, 2019, following the liquidation of Navios Europe I.
- (8) The vessels were acquired on December 16, 2019.
- (9) The vessel was delivered on July 24, 2019 (see Note 17 – Leases).
- (10) The vessels were delivered on May 28, 2021 and June 10, 2021 (see Note 17 – Leases).
- (11) Not a vessel-owning subsidiary and only holds right to charter-in contracts.
- (12) Vessels under the sale and leaseback transaction (see Note 17 – Leases).
- (13) The vessel was sold on December 10, 2020 (see Note 5 – Vessels, net).
- (14) The vessels were acquired on June 29, 2020, following the liquidation of Navios Europe II (see Note 5 – Vessels, net).
- (15) The vessels were acquired on September 30, 2020, from Navios Holdings (see Note 5 – Vessels, net).
- (16) The vessels were acquired on March 30, 2021, from Navios Holdings (see Note 5 – Vessels, net).
- (17) The vessel was sold on January 13, 2021 (see Note 5 – Vessels, net).
- (18) The vessel was sold on January 28, 2021 (see Note 5 – Vessels, net).
- (19) The vessel was sold on February 10, 2021 (see Note 5 – Vessels, net).
- (20) The vessel was sold on March 25, 2021 (see Note 5 – Vessels, net).
- (21) Expected to be delivered by the second half of 2022.
- (22) Expected to be delivered in the second quarter of 2023.
- (23) The vessel was sold on July 31, 2021.
- (24) The vessels were acquired on May 10, 2021 (see Note 5 – Vessels, net).
- (25) Expected to be delivered in the first quarter of 2023.
- (26) The vessel was acquired on June 4, 2021, from Navios Holdings (see Note 5 – Vessels, net).
- (27) Expected to be delivered by the second half of 2023.
- (28) Expected to be delivered by the first half of 2024.
- (29) The vessel was acquired on June 30, 2021 from Navios Holdings (see Note 5 – Vessels, net).
- (30) The vessel was sold on August 16, 2021.
- (31) The vessel was sold on August 13, 2021.
- (32) The vessel was agreed to be sold and the sale is expected to be completed during the third quarter of 2021.

The following table reflects certain key indicators of Navios Partners' core fleet performance for the three and six month periods ended June 30, 2021 and 2020.

	Three Month Period Ended June 30, 2021 (unaudited)	Three Month Period Ended June 30, 2020 (unaudited)	Six Month Period Ended June 30, 2021 (unaudited)	Six Month Period Ended June 30, 2020 (unaudited)
Available Days <sup>(1)</sup>	7,242	4,029	11,494	8,126
Operating Days <sup>(2)</sup>	7,190	3,998	11,391	7,993
Fleet Utilization <sup>(3)</sup>	99.3%	99.3 %	99,1%	98,4 %
Time Charter Equivalent Combined (per day) <sup>(4)</sup>	\$ 20,296	\$ 11,202	\$ 18,276	\$ 10,957
Time Charter Equivalent Drybulk (per day) <sup>(4)</sup>	\$ 19,736	\$ 9,421	\$ 16,516	\$ 8,826
Time Charter Equivalent Containers (per day) <sup>(4)</sup>	\$ 20,921	\$ 17,306	\$ 21,412	\$ 18,342
Vessels operating at end of periods	87	51	87	51

- (1) Available days for the fleet represent total calendar days the vessels were in Navios Partners' possession for the relevant period after subtracting off-hire days associated with scheduled repairs, dry dockings or special surveys and ballast days relating to voyages. The shipping industry uses available days to measure the number of days in a relevant period during which a vessel is capable of generating revenues.
- (2) Operating days are the number of available days in the relevant period less the aggregate number of days that the vessels are off-hire due to any reason, including unforeseen circumstances. The shipping industry uses operating days to measure the aggregate number of days in a relevant period during which vessels actually generate revenues.
- (3) Fleet utilization is the percentage of time that Navios Partners' vessels were available for generating revenue, and is determined by dividing the number of operating days during a relevant period by the number of available days during that period. The shipping industry uses fleet utilization to measure efficiency in finding employment for vessels and minimizing the amount of days that its vessels are off-hire for reasons other than scheduled repairs, dry dockings or special surveys.
- (4) Time Charter Equivalent rate per day ("TCE") is defined as voyage and time charter revenues less voyage expenses during a period divided by the number of available days during the period. The TCE rate per day is a standard shipping industry performance measure used primarily to present the actual daily earnings generated by vessels on various types of charter contracts for the number of available days of the fleet.

## FINANCIAL HIGHLIGHTS

The following table presents consolidated revenue and expense information for the three and six month periods ended June 30, 2021 and 2020.

	Three Month Period Ended June 30, 2021 (unaudited)	Three Month Period Ended June 30, 2020 (unaudited)	Six Month Period Ended June 30, 2021 (unaudited)	Six Month Period Ended June 30, 2020 (unaudited)
Time charter and voyage revenues	\$ 152,009	\$ 46,549	\$ 217,072	\$ 93,039
Time charter and voyage expenses	(5,869)	(1,940)	(8,364)	(5,038)
Direct vessel expenses	(3,989)	(2,385)	(7,143)	(4,934)
Vessel operating expenses (management fees entirely through related parties transactions)	(41,771)	(21,930)	(64,733)	(44,135)
General and administrative expenses	(10,319)	(6,983)	(15,226)	(11,128)
Depreciation and amortization of intangible assets	(22,120)	(13,663)	(35,207)	(27,300)
Amortization of unfavorable lease terms	42,026	—	42,026	—
Loss on sale of vessels	—	—	(511)	—
Vessels impairment loss	—	(6,800)	—	(6,800)
Interest expense and finance cost, net	(7,334)	(6,275)	(13,178)	(13,219)
Interest income	744	176	859	371
Impairment of receivable in affiliated company	—	—	—	(6,900)
Other expense, net	(3,464)	(680)	(3,895)	(289)
Equity in net earnings/ (loss) of affiliated companies	—	(710)	80,839	968
Bargain purchase gain	—	—	44,053	—
<b>Net income/ (loss)</b>	<b>\$ 99,913</b>	<b>\$ (14,641)</b>	<b>\$ 236,592</b>	<b>\$ (25,365)</b>
<b>EBITDA<sup>(1)</sup></b>	<b>\$ 90,424</b>	<b>\$ 7,490</b>	<b>\$ 248,975</b>	<b>\$ 19,671</b>
<b>Adjusted EBITDA<sup>(1)</sup></b>	<b>\$ 90,424</b>	<b>\$ 14,290</b>	<b>\$ 124,083</b>	<b>\$ 33,371</b>
<b>Operating Surplus/ (Deficit) <sup>(1)</sup></b>	<b>\$ 65,857</b>	<b>\$ (1,128)</b>	<b>\$ 77,855</b>	<b>\$ 3,303</b>



(1) EBITDA, Adjusted EBITDA and Operating Surplus/ (Deficit) are non-GAAP financial measures. See “Reconciliation of EBITDA and Adjusted EBITDA to Net Cash from Operating Activities, EBITDA and Operating Surplus/ (Deficit)” for a description of EBITDA, Adjusted EBITDA and Operating Surplus and a reconciliation of EBITDA, Adjusted EBITDA and Operating Surplus to the most comparable measure under U.S. GAAP.

## Period over Period Comparisons

### For the Three Month Period ended June 30, 2021 compared to the Three Month Period ended June 30, 2020

**Time charter and voyage revenues:** Time charter and voyage revenues of Navios Partners for the three month period ended June 30, 2021 increased by approximately \$105.5 million, or 226.6%, to \$152.0 million, as compared to \$46.5 million for the same period in 2020. The increase in revenue was mainly attributable to the increase in the size of our fleet and to the increase in TCE rate. For the three month period ended June 30, 2021, TCE rate increased by 81.2% to \$20,296 per day, as compared to \$11,202 per day in the same period in 2020. The available days of the fleet increased by 79.7% to 7,242 days for the three month period ended June 30, 2021, as compared to 4,029 in the same period in 2020.

**Time charter and voyage expenses:** Time charter and voyage expenses for the three month period ended June 30, 2021 increased by approximately \$3.9 million to \$5.9 million, as compared to \$1.9 million for the three month period ended June 30, 2020. The increase was mainly attributable to a: (i) \$1.1 million increase in brokers’ commissions; (ii) \$0.5 million increase in bunkers expenses; (iii) \$0.5 million increase in port expenses related to the freight voyages; (iv) \$0.3 million increase in bareboat charter-in hire expense; and (v) \$1.5 million net increase in other voyage expenses.

**Direct vessel expenses:** Direct vessel expenses, for the three month period ended June 30, 2021 increased by \$1.6 million, to \$4.0 million, as compared to \$2.4 million for the three month period ended June 30, 2020. The increase of \$1.6 million was mainly attributable to the increase in amortization of drydock and special survey costs of certain vessels in our fleet.

**Vessel operating expenses (management fees):** Vessel operating expenses for the three month period ended June 30, 2021, increased by approximately \$19.8 million, or 90.5%, to \$41.8 million, as compared to \$21.9 million for the same period in 2020. The increase was due to the increase in the size of our fleet.

**General and administrative expenses:** General and administrative expenses increased by \$3.3 million to \$10.3 million for the three month period ended June 30, 2021, as compared to \$7.0 million for the three month period ended June 30, 2020. The increase was mainly due to a: (i) \$2.9 million increase in administrative fees paid to the Navios Shipmanagement Inc., (the “Manager”) due to the increased number of owned and chartered-in vessels in Navios Partners’ fleet; and (ii) \$0.5 million increase in legal and professional fees, as well as audit fees and other administrative expenses. The above increase was partially mitigated by a \$0.1 million decrease in stock based compensation expenses.

**Depreciation and amortization of intangible assets:** Depreciation and amortization amounted to \$22.1 million for the three month period ended June 30, 2021, as compared to \$13.7 million for the three month period ended June 30, 2020. The increase of approximately \$8.5 million was mainly attributable to: (i) an \$8.3 million increase in depreciation expense due to the delivery of the 29-vessel fleet of Navios Maritime Containers L.P. (“Navios Containers”) in Navios Partners owned fleet; (ii) a \$0.9 million increase in depreciation expense due to the delivery of six vessels in 2021; and (iii) a \$1.0 million increase in depreciation expense due to the delivery of seven vessels in 2020. The above increase was partially mitigated by a: (i) \$1.2 million decrease in depreciation expense of four of our vessels as a result of the impairment charge in the fourth quarter of the fiscal year 2020; and (ii) \$0.5 million decrease due to the sale of one vessel in December 2020 and four vessels during the three month period ended March 31, 2021.

**Amortization of unfavorable lease terms:** Amortization of unfavorable lease terms amounted to \$42.0 million for the three month period ended June 30, 2021, related to the fair value of the time charters with unfavorable lease terms as determined at the acquisition date of Navios Containers. There was no amortization of unfavorable lease terms for the corresponding interim period of the previous year.

**Vessels impairment loss:** As of June 30, 2021, we concluded that events and circumstances did not trigger the existence of potential impairment of our vessels, mainly due to the market improvement. As a result, there was no impairment for the three month period ended June 30, 2021. As of June 30, 2020, we concluded that events and circumstances triggered the existence of potential impairment of our vessels. As a result, Navios Partners recognized an impairment loss of \$6.8 million related to three containerships, as the undiscounted projected net operating cash flows were lower than the vessels’ carrying value.

**Interest expense and finance cost, net:** Interest expense and finance cost, net, for the three month period ended June 30, 2021 increased by approximately \$1.1 million or 16.9% to \$7.3 million, as compared to \$6.3 million for the three month period ended June 30, 2020. The increase was mainly due to an increase in interest expense and finance costs related to the Navios Partners’ credit facilities entered into during the three month period ended June 30, 2021 and the interest and finance costs of Navios Containers’ credit facilities and financial liabilities recognized following the completion of the merger on March 31, 2021. The above increase was partially mitigated by a decrease of the weighted average interest rate for the three month period ended June 30, 2021 to 3.90% from 4.80% for the same period in 2020.

**Interest income:** Interest income increased by approximately \$0.6 million to \$0.7 million for the three month period ended June 30, 2021, as compared to \$0.2 million for the three month period ended June 30, 2020.

**Other expense, net:** Other expense, net for the three month period ended June 30, 2021 amounted to \$3.5 million, as compared to \$0.7 million for the three month period ended June 30, 2020.

**Equity in net earnings/ (loss) of affiliated companies:** There was no equity in net earnings of affiliated companies for the three month period ended June 30, 2021 as compared to a \$0.7 million loss for the three month period ended June 30, 2020. The amount consisted of the loss related to the investment in Navios Containers.

**Net income/ (loss):** Net income for the three month period ended June 30, 2021 amounted to \$99.9 million as compared to \$14.6 million net loss for the three month period ended June 30, 2020. The increase in net income of \$114.6 million was due to the factors discussed above.

**Operating surplus/ (deficit):** Navios Partners generated Operating Surplus for the three month period ended June 30, 2021 of \$65.9 million, as compared to Operating Deficit \$1.1 million for the three month period ended June 30, 2020. Operating Surplus/ (Deficit) is a non-GAAP financial measure used by certain investors to assist in evaluating a partnership's ability to make quarterly cash distributions (See "Reconciliation of EBITDA and Adjusted EBITDA to Net Cash from Operating Activities, EBITDA and Operating Surplus/ (Deficit)" contained herein).

#### **For the Six Month Period ended June 30, 2021 compared to the Six Month Period ended June 30, 2020**

**Time charter and voyage revenues:** Time charter and voyage revenues of Navios Partners for the six month period ended June 30, 2021 increased by approximately \$124.0 million, or 133.3%, to \$217.1 million, as compared to \$93.0 million for the same period in 2020. The increase in revenue was mainly attributable to the increase in the size of our fleet and to the increase in TCE rate. For the six month period ended June 30, 2021, TCE rate increased by 66.8% to \$18,276 per day, as compared to \$10,957 per day in the same period in 2020. The available days of the fleet increased by 41.4% to 11,494 days for the six month period ended June 30, 2021, as compared to 8,126 in the same period in 2020.

**Time charter and voyage expenses:** Time charter and voyage expenses for the six month period ended June 30, 2021 amounted to \$8.4 million, as compared to \$5.0 million for the six month period ended June 30, 2020. The increase was mainly attributable to a: (i) \$1.3 million increase in brokers' commissions; (ii) \$0.6 million increase in bunkers expenses; (iii) \$0.3 million increase in port expenses related to the freight voyages; (iv) \$0.3 million increase in bareboat charter-in hire expense; and (v) \$0.8 million net increase in other voyage expenses.

**Direct vessel expenses:** Direct vessel expenses for the six month period ended June 30, 2021 increased by \$2.2 million, to \$7.1 million, as compared to \$4.9 million for the three month period ended June 30, 2020. The increase of \$2.2 million was mainly attributable to the increase in amortization of drydock and special survey costs of certain vessels in our fleet.

**Vessel operating expenses (management fees):** Vessel operating expenses for the six month period ended June 30, 2021, increased by \$20.6 million, or 46.7%, to \$64.7 million, as compared to \$44.1 million for the same period in 2020. The increase was due to the increase in the size of our fleet.

**General and administrative expenses:** General and administrative expenses increased by \$4.1 million to \$15.2 million for the six month period ended June 30, 2021, as compared to \$11.1 million for the six month period ended June 30, 2020. The increase was mainly due to a: (i) \$3.4 million increase in administrative fees paid to the Manager due to the increased number of owned and chartered-in vessels in Navios Partners' fleet; and (ii) \$1.0 million increase in legal and professional fees, as well as audit fees and other administrative expenses. The above increase was partially mitigated by an approximately \$0.3 million decrease in stock based compensation expenses.

**Depreciation and amortization of intangible assets:** Depreciation and amortization amounted to \$35.2 million for the six month period ended June 30, 2021, as compared to \$27.3 million for the six month period ended June 30, 2020. The increase of \$7.9 million was mainly attributable to: (i) an \$8.3 million increase in depreciation expense due to the delivery of the 29-vessel fleet of Navios Containers in Navios Partners owned fleet; (ii) a \$0.9 million increase in depreciation expense due to the delivery of six vessels in 2021; and (iii) a \$2.0 million increase in depreciation expense due to the delivery of seven vessels in 2020. The above increase was partially mitigated by a: (i) approximately \$2.4 million decrease in depreciation expense of four of our vessels as a result of the impairment charge in the fourth quarter of the fiscal year 2020; and (ii) \$0.9 million decrease due to the sale of one vessel in December 2020 and four vessels during the three month period ended March 31, 2021.

**Amortization of unfavorable lease terms:** Amortization of unfavorable lease terms amounted to \$42.0 million for the six month period ended June 30, 2021, related to the fair value of the time charters with unfavorable lease terms as determined at the acquisition date of Navios Containers. There was no amortization of unfavorable lease terms for the corresponding interim period of the previous year.

**Loss on sale of vessels:** Loss on sale of vessels amounted to \$0.5 million for the six month period ended June 30, 2021, relating to the sale of the Esperanza N, the Solar N and the Joie N during the first quarter of 2021. There was no loss on sale of vessels for the corresponding interim period of the previous year.

**Vessels impairment loss:** As of June 30, 2021, we concluded that events and circumstances did not trigger the existence of potential impairment of our vessels, mainly due to the market improvement. As a result, there was no impairment for the six month period ended June 30, 2021. As of June 30, 2020, we concluded that events and circumstances triggered the existence of potential impairment of our vessels. As a result, Navios Partners recognized an impairment loss of \$6.8 million related to three containerships, as the undiscounted projected net operating cash flows were lower than the vessels' carrying value.

**Impairment of receivable in affiliated company:** Impairment of receivable in affiliated company for the six month period ended June 30, 2020 amounted to \$6.9 million, related to the other-than-temporary impairment recognized in the Navios Partners' receivable from Navios Europe II. There was no impairment for the corresponding interim period as of June 30, 2021.

**Interest expense and finance cost, net:** Interest expense and finance cost, net remained approximately the same for both six month periods ended June 30, 2021 and 2020.

**Interest income:** Interest income increased by \$0.5 million to \$0.9 million for the six month period ended June 30, 2021, as compared to \$0.4 million for the six month period ended June 30, 2020.

**Other expense, net:** Other expense, net for the six month period ended June 30, 2021 amounted to \$3.9 million, as compared to \$0.3 million for the six month period ended June 30, 2020. The increase of \$3.6 million was mainly attributable to a: (i) \$2.8 million increase in claims related expenses; and (ii) \$0.9 million increase in tonnage tax expenses mainly attributable to the acquisition of Navios Containers' fleet.

**Equity in net earnings/ (loss) of affiliated companies:** Equity in net earnings of affiliated companies for the six month period ended June 30, 2021 amounted to \$80.8 million as compared to \$1.0 million for the six month period ended June 30, 2020. The amount of \$80.8 million is the gain from equity in net earnings resulting from remeasurement of existing interest held in Navios Containers. As of March 31, 2021, Navios Partners previously held interest of 35.7% in Navios Containers was remeasured to a fair value of \$107.0 million, resulting in revaluation gain of \$75.4 million which along with the equity gain of approximately \$5.4 million from the operations of Navios Containers upon the closing date aggregate to a gain on acquisition of control in the amount of \$80.8 million.

**Bargain purchase gain:** Bargain purchase gain amounted to \$44.1 million for the six month period ended June 30, 2021, resulting from the excess Navios Containers' fair value of the identifiable assets acquired of \$342.7 million over the total purchase price consideration of \$298.6 million.

**Net income/ (loss):** Net income for the six month period ended June 30, 2021 amounted to \$236.6 million as compared to \$25.4 million net loss for the six month period ended June 30, 2020. The increase in net income of \$262.0 million was due to the factors discussed above.

**Operating (deficit)/surplus:** Navios Partners generated Operating Surplus for the six month period ended June 30, 2021 of \$77.9 million, as compared to \$3.3 million for the six month period ended June 30, 2020. Operating Surplus is a non-GAAP financial measure used by certain investors to assist in evaluating a partnership's ability to make quarterly cash distributions (See "Reconciliation of EBITDA and Adjusted EBITDA to Net Cash from Operating Activities, EBITDA and Operating Surplus/ (Deficit)" contained herein).

## Liquidity and Capital Resources

In addition to distributions on our units, our primary short-term liquidity needs are to fund general working capital requirements, cash reserve requirements including those under our credit facilities and debt service, while our long-term liquidity needs primarily relate to expansion and investment capital expenditures and other maintenance capital expenditures and debt repayment. Expansion capital expenditures are primarily for the purchase or construction of vessels to the extent the expenditures increase the operating capacity of or revenue generated by our fleet, while maintenance capital expenditures primarily consist of drydocking expenditures and expenditures to replace vessels in order to maintain the operating capacity of or revenue generated by our fleet. Investment capital expenditures are those capital expenditures that are neither maintenance capital expenditures nor expansion capital expenditures. We anticipate that our primary sources of funds for our short-term liquidity needs will be cash flows from our equity offerings, operations, proceeds from asset sales, long-term bank borrowings and other debt raisings. Based on internal forecasts and projections that take into account reasonably possible changes in our trading performance, we believe that the Company has adequate financial resources to continue in operation and meet its financial commitments, including but not limited to capital expenditures and debt service obligations, for a period of at least twelve months from the date of issuance of these consolidated financial statements. Generally, our long-term sources of funds derive from cash from operations, long-term bank borrowings and other debt or equity financings to fund acquisitions and expansion and investment capital expenditures, including opportunities we may pursue under the Omnibus Agreement, as defined herein. We cannot assure you that we will be able to secure adequate financing or to obtain additional funds on favorable terms, to meet our liquidity needs.

Cash deposits and cash equivalents in excess of amounts covered by government provided insurance are exposed to loss in the event of non-performance by financial institutions. Navios Partners does maintain cash deposits and equivalents in excess of government provided insurance limits. Navios Partners also minimizes exposure to credit risk by dealing with a diversified group of major financial institutions.

Navios Partners may use funds to repurchase its outstanding common units and/or indebtedness from time to time. Repurchases may be made in the open market, or through privately negotiated transactions or otherwise, in compliance with applicable laws, rules and regulations, at prices and on terms Navios Partners deems appropriate and subject to its cash requirements for other purposes, compliance with the covenants under Navios Partners' credit facilities, and other factors management deems relevant.

In January 2019, the Board of Directors of Navios Partners authorized a common unit repurchase program for up to \$50.0 million of the Company's common units over a two year period. The program did not require any minimum repurchase or any specific number of common units and could be suspended or reinstated at any time in Navios Partners' discretion and without notice. Repurchases were subject to restrictions under Navios Partners' credit facilities. As of June 30, 2021, Navios Partners had repurchased and cancelled 312,952 common units, on a split adjusted basis, for a total cost of approximately \$4.5 million. There were no repurchases during the six month period ended June 30 2021, and the program expired in January 2021.

On November 18, 2016, Navios Partners entered into a Continuous Offering Program Sales Agreement (the "\$25.0m Sales Agreement") for the issuance and sale from time to time through its agent common units having an aggregate offering price of up to \$25.0 million. The \$25.0m Sales Agreement was amended on August 3, 2020 to address the updated shelf registration statement pursuant to which sales are made. As of August 25, 2021, since the commencement of the amended \$25.0m Sales Agreement, Navios Partners has issued 1,286,857 units and received net proceeds of \$23.9 million. Pursuant to the issuance of the common units, Navios Partners issued 26,265 general partnership units to its General Partner in order to maintain its 2.0% general partner interest. The net proceeds from the issuance of the general partnership units were approximately \$0.5 million. No amounts remained available for sale under the \$25.0m Sales Agreement.

On April 9, 2021, Navios Partners entered into a Continuous Offering Program Sales Agreement ("75m Sales Agreement") for the issuance and sale from time to time through its agent common units having an aggregate offering price of up to \$75.0 million. As of August 25, 2021, since the commencement of the \$75.0m Sales Agreement, Navios Partners has issued 2,437,624 units and received net proceeds of \$73.1 million. Pursuant to the issuance of the common units, Navios Partners issued 49,747 general partnership units to its General Partner in order to maintain its 2.0% general partner interest. The net proceeds from the issuance of the general partnership units were approximately \$1.5 million. No amounts remained available for sale under the \$75.0m Sales Agreement.

On May 21, 2021, Navios Partners entered into a new Continuous Offering Program Sales Agreement ("110m Sales Agreement") for the issuance and sale from time to time through its agent common units having an aggregate offering price of up to \$110.0 million. As of August 25, 2021, since the commencement of the \$110.0m Sales Agreement, Navios Partners has issued 3,963,249 units and received net proceeds of \$103.7 million. Pursuant to the issuance of the common units, Navios Partners issued 80,883 general partnership units to its General Partner in order to maintain its 2.0% general partner interest. The net proceeds from the issuance of the general partnership units were approximately \$2.2 million.

### **Long-Term Debt Obligations**

Navios Partners' long-term borrowings are presented under the captions "Long-term financial liabilities, net", "Long-term debt, net", "Current portion of financial liabilities, net" and "Current portion of long-term debt, net". As of June 30, 2021 and December 31, 2020, total borrowings, net of deferred finance costs amounted to \$795.5 million and \$486.9 million, respectively. The current portion of long-term borrowings, net amounted to \$115.4 million at June 30, 2021 and \$201.8 million at December 31, 2020.

### **Credit Facilities**

As of June 30, 2021, the Company had secured credit facilities with various banks with a total outstanding balance of \$539.7 million. The purpose of the facilities was to finance the acquisition of vessels or refinance existing indebtedness. All of the facilities are denominated in U.S. dollars and bear interest based on LIBOR plus spread ranging from 260 bps to 350 bps per annum. The facilities are repayable in either semi-annually or quarterly installments, followed by balloon payments with maturities, ranging from December 2022 to June 2026.

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**Hellenic Bank Credit Facility:** On April 23, 2021, Navios Partners entered into the Hellenic Bank Credit facility for an amount of \$8.9 million in order to partially finance the acquisition of one containership from Navios Acquisition. On April 28, 2021, the amount of \$8.9 million was drawn. The new credit facility is repayable in four consecutive quarterly instalments of approximately \$0.75 million each, two consecutive quarterly installments of \$0.3 million each and nine consecutive quarterly installments of approximately \$0.15 million each with a final balloon payment of \$3.9 million to be repaid on the last repayment date. The facility matures in the fourth quarter of 2024 and bears interest at LIBOR plus 300 bps per annum. As of June 30, 2021, the total outstanding balance was \$8.9 million.

**BNP Credit Facility:** On April 28, 2021, Navios Partners entered into new credit facility with BNP PARIBAS (the “BNP Credit Facility”) for a total amount of \$40.0 million to refinance the existing BNP Credit Facility dated June 26, 2017, as amended on April 9, 2019 and to finance the acquisition of two 2012 built 2,782 TEU containerships. On May 10, 2021, the full amount of the BNP Credit Facility was drawn. The new credit facility is repayable in 16 consecutive quarterly installments of \$1.4 million each, with a final balloon payment of \$17.1 million to be repaid on the last repayment date. The facility matures in the second quarter of 2025 and bears interest at LIBOR plus 285 bps per annum. As of June 30, 2021, the total outstanding balance was \$40.0 million.

**HCOB Credit Facility:** On May 11, 2021, Navios Partners entered into a new credit facility with Hamburg Commercial Bank for a total amount of up to \$160.0 million, in order to: (i) refinance its existing HCOB Credit Facility dated September 26, 2019; (ii) refinance the existing facility of one dry bulk vessel; and (iii) to partially finance the acquisition of one dry bulk vessel. On June 8, 2021, the full amount of the HCOB Credit Facility was drawn. The credit facility is repayable in eight consecutive quarterly installments of \$6.25 million each and eight consecutive quarterly installments in the amount of \$3.75 million each, with a final balloon payment of \$80.0 million to be repaid on the last repayment date. The facility matures in the second quarter of 2025, bears interest at LIBOR plus 310 bps per annum. As of June 30, 2021, the total outstanding balance was \$160.0 million.

**NBG Credit Facility:** On June 17, 2021, Navios Partners entered into a new credit facility with National Bank of Greece (the “NBG Credit Facility”) for a total amount of up to \$43.0 million, in order to refinance the existing credit facilities of six dry bulk vessels. On June 18, 2021, the full amount was drawn. The credit facility is repayable in four consecutive quarterly installments of \$1.5 million each followed by 16 consecutive quarterly installments of \$1.25 million each, together with a final balloon payment of \$17.0 million to be paid on the last repayment date. The facility matures in the second quarter of 2026 and bears interest at LIBOR plus 300 bps per annum up to maturity date. As of June 30, 2021, the total outstanding balance was \$43.0 million.

**CACIB Credit Facility:** On March 23, 2021, Navios Partners entered into a new credit facility with Credit Agricole Corporate and Investment Bank (“CACIB”), (the “CACIB \$58.0m Credit Facility”) of \$58.0 million in order to refinance the CACIB \$33.0m Credit Facility and to partially finance the acquisition of the Navios Centaurus and the Navios Avior. On March 30, 2021, the full amount was drawn. The facility matures in the first quarter of 2026 and bears interest at LIBOR plus 300 bps per annum. As of June 30, 2021, the total outstanding balance was \$56.0 million, is repayable in one quarterly installment of \$2.0 million, followed by 18 consecutive quarterly installments of \$1.6 million each, together with a final balloon payment of \$25.2 million to be repaid on the last repayment date.

On August 25, 2021, Navios Partners prepaid \$11.4 million of the CACIB \$52.8m Credit Facility and released one vessel from the collateral package of the credit facility. The Company entered into a new sale and leaseback agreement of \$15.0 million for the released vessel (see also Financial Liabilities below).

**DNB Credit Facility:** On August 19, 2021, Navios Partners entered into a new credit facility with DNB BANK ASA, (the “DNB Credit Facility”) for a total amount of up to \$18.0 million, in order to finance the acquisition of a 2011-built Capesize vessel. The new credit facility is repayable in 20 consecutive quarterly installments of \$0.64 million each, together with a final balloon payment of \$5.2 million to be paid on the last repayment date. The facility matures in the third quarter of 2026 and bears interest at LIBOR plus 285 bps per annum up to maturity date.

Amounts drawn are secured by first preferred mortgages on certain Navios Partners’ vessels and other collateral and are guaranteed by the respective vessel-owning subsidiaries. The credit facilities and certain financial liabilities contain a number of restrictive covenants that prohibit or limit Navios Partners from, among other things: incurring or guaranteeing indebtedness; entering into affiliate transactions; charging, pledging or encumbering the vessels; changing the flag, class, management or ownership of Navios Partners’ vessels; changing the commercial and technical management of Navios Partners’ vessels; selling or changing the beneficial ownership or control of Navios Partners’ vessels; not maintaining Navios Holdings’ (or its affiliates) ownership in Navios Partners of at least 5.0%; and subordinating the obligations under the credit facilities to any general and administrative costs relating to the vessels, including the fixed daily fee payable under the management agreement.

Navios Partners' credit facilities and certain financial liabilities also require compliance with a number of financial covenants, including: (i) maintain a required security ranging over 111% to 140%; (ii) minimum free consolidated liquidity in an amount equal to at least \$0.5 million and a number of vessels as defined in Navios Partners' credit facilities and financial liabilities; (iii) maintain a ratio of EBITDA to interest expense of at least 2.00:1.00; (iv) maintain a ratio of total liabilities or total debt to total assets (as defined in the Company's credit facilities) ranging of less than 0.75; and (v) maintain a minimum net worth to \$135.0 million.

It is an event of default under the credit facilities if such covenants are not complied with in accordance with the terms and subject to the prepayments or cure provisions of the facilities.

As of June 30, 2021, Navios Partners was in compliance with the financial covenants and/or the prepayments and/or the cure provisions, as applicable, in each of its credit facilities.

### **Financial Liabilities**

On August 16, 2021, the Company entered into a new sale and leaseback agreement of \$15.0 million, with an unrelated third party for the Navios Pollux, a 2009-built Capesize vessel of 180,727 dwt. Navios Partners has a purchase obligation to acquire the vessel at the end of the lease term and under ASC 842-40, the transfer of the vessel was determined to be a failed sale. In accordance with ASC 842-40, the Company did not derecognize the respective vessel from its balance sheet and accounted for the amount received under the sale and leaseback agreement as a financial liability. On August 25, 2021, the amount of \$15.0 million was drawn. Navios Partners is obligated to make 72 consecutive monthly payments of approximately \$0.19 million each, commencing as of August 2021. The agreement matures in the third quarter of 2027, with a purchase obligation of \$5.0 million on the last repayment date.

On June 18, 2021, the Company entered into a new sale and leaseback agreement of \$15.0 million, with unrelated third parties for the Navios Bonavis, a 2009-built Capesize vessel of 180,022 dwt. Navios Partners has a purchase obligation to acquire the vessel at the end of the lease term and under ASC 842-40, the transfer of the vessel was determined to be a failed sale. In accordance with ASC 842-40, the Company did not derecognize the respective vessel from its balance sheet and accounted for the amount received under the sale and leaseback agreement as a financial liability. On June 28, 2021, the amount of \$15.0 million was drawn. Navios Partners is obligated to make 72 consecutive monthly payments of approximately \$0.19 million each, commencing as of June 2021. The agreement matures in the second quarter of 2027, with a purchase obligation of \$5.0 million on the last repayment date. As of June 30, 2021, the outstanding balance under the sale and leaseback agreement of the Navios Bonavis was \$14.9 million.

On June 18, 2021, the Company entered into a new sale and leaseback agreement of \$18.5 million, with unrelated third parties for the Navios Ray, a 2012-built Capesize vessel of 179,515 dwt. Navios Partners has a purchase obligation to acquire the vessel at the end of the lease term and under ASC 842-40, the transfer of the vessel was determined to be a failed sale. In accordance with ASC 842-40, the Company did not derecognize the respective vessel from its balance sheet and accounted for the amount received under the sale and leaseback agreement as a financial liability. On June 28, 2021, the amount of \$18.5 million was drawn. Navios Partners is obligated to make 108 consecutive monthly payments of approximately \$0.19 million each, commencing as of June 2021. The agreement matures in the second quarter of 2030, with a purchase obligation of \$5.0 million on the last repayment date. As of June 30, 2021, the outstanding balance under the sale and leaseback agreement of the Navios Ray was \$18.4 million.

The above financial liabilities have no financial covenants.

The following table presents cash flow information derived from the unaudited condensed Consolidated Statements of Cash Flows of Navios Partners for the six month periods ended June 30, 2021 and 2020.

	Six Month Period Ended June 30, 2021 (\$ '000) (unaudited)	Six Month Period Ended June 30, 2020 (\$ '000) (unaudited)
Net cash provided by operating activities	\$ 77,249	\$ 47,675
Net cash used in investing activities	(133,538)	(39,664)
Net cash provided by/ (used in) financing activities	258,414	(8,598)
<b>Increase/ (decrease) in cash, cash equivalents and restricted cash</b>	<b>\$ 202,125</b>	<b>\$ (587)</b>

### **Cash provided by operating activities for the six month period ended June 30, 2021 as compared to the cash provided by operating activities for the six month period ended June 30, 2020**

Net cash provided by operating activities increased by \$29.6 million to \$77.2 million for the six month period ended June 30, 2021, as compared to \$47.7 million for the same period in 2020. In determining net cash provided by operating activities, net loss is adjusted for the effects of certain non-cash items as discussed below.

The aggregate adjustments to reconcile net income to net cash provided by operating activities was a \$124.0 million loss for the six month period ended June 30, 2021, which consisted mainly of the following adjustments: (i) \$42.0 million amortization of unfavorable lease terms, (ii) \$1.4 million non-cash accrued interest income and amortization of deferred revenue, (iii) \$0.1 million amortization of operating lease right-of-use asset, (iv) \$44.1 million bargain purchase gain from merger with Navios Containers and (v) \$80.8 million equity in net earnings of affiliated companies. These adjustments were partially mitigated by: (i) \$35.2 million depreciation and amortization of intangible assets, (ii) \$1.6 million amortization and write-off of deferred finance costs and discount, (iii) \$6.9 million amortization of deferred dry dock and special survey costs, (iv) \$0.5 million loss on sale of vessels and (v) \$0.2 million stock based compensation.

The net cash outflow resulting from the change in operating assets and liabilities of \$35.3 million for the six month period ended June 30, 2021 resulted from a \$1.4 million increase in accounts receivable, a \$12.5 million increase in prepaid expenses and other current assets, a \$17.3 million decrease in amounts due to related parties and a \$21.1 million in payments for dry dock and special survey costs. This was partially mitigated by a \$0.7 million increase in accounts payable, a \$5.5 million increase in accrued expenses, a \$5.9 million increase in deferred revenue and a \$5.0 million decrease in amounts due from related parties.

The aggregate adjustments to reconcile net loss to net cash provided by operating activities was a \$46.1 million non-cash gain for the six month period ended June 30, 2020, which consisted mainly of the following adjustments: \$27.3 million depreciation and amortization of intangible assets, \$6.9 million loss related to the other-than-temporary impairment recognized in the Navios Partners' receivable from Navios Europe II, \$6.8 million impairment loss

related to three containerships, \$0.8 million non-cash accrued interest income and amortization of deferred revenue, \$0.5 million amortization of operating lease right-of-use asset, \$1.0 million amortization and write-off of deferred finance costs and discount, \$4.9 million amortization of deferred dry dock and special survey costs, \$1.0 million equity in net earnings of affiliated companies and \$0.5 million equity compensation expense.

The net cash inflow resulting from the change in operating assets and liabilities of \$26.9 million for the six month period ended June 30, 2020 resulted from a \$2.0 million increase in accrued expenses, a \$1.6 million increase in deferred revenue, a \$14.9 million decrease in amounts due from related parties and a \$22.1 million increase in amounts due to related parties. These were partially mitigated by a \$2.6 million decrease in accounts payable, a \$0.5 million decrease in operating lease liabilities short and long term, a \$1.2 million increase in prepaid expenses and other current assets and a \$9.3 million in payments for dry dock and special survey costs.

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## Cash used in investing activities for the six month period ended June 30, 2021 as compared to the cash used in investing activities for the six month period ended June 30, 2020

Net cash used in investing activities increased by \$93.9 million to \$133.5 million for the six month period ended June 30, 2021, as compared to \$39.7 million for the same period in 2020.

Cash used in investing activities of approximately \$133.5 million for the six month period ended June 30, 2021 was mainly due to a: (i) \$180.4 million relating to vessels acquisitions and additions; and (ii) \$5.0 million relating to deposits for the option to acquire two bareboat charter-in vessels, one newbuilding Panamax vessel and capitalized expenses. This was partially mitigated by a: (i) \$32.7 million of proceeds related to the sale of four vessels; (ii) \$10.3 million cash acquired from Navios Containers following the merger; and (iii) \$8.9 million of proceeds from the senior unsecured notes of HMM.

Cash used in investing activities of \$39.7 million for the six month period ended June 30, 2020 was mainly due to a: (i) \$37.6 million relating to vessels acquisitions and additions; and (ii) \$4.4 million relating to deposits for the option to acquire two bareboat charter-in vessels and capitalized expenses. This was partially mitigated by a \$2.3 million of proceeds from the note receivable related to the sale of the MSC Cristina.

## Cash provided by financing activities for the six month period ended June 30, 2021 as compared to cash used in financing activities for the six month period ended June 30, 2020

Net cash provided by financing activities increased by \$267.0 million to \$258.4 million for the six month period ended June 30, 2021, as compared to \$8.6 million cash used in financing activities for the same period in 2020.

Cash provided by financing activities of \$267.0 million for the six month period ended June 30, 2021 was mainly due to: (i) a \$180.5 million of proceeds from the issuance of 6,280,995 common units and 294,173 additional general partner units related to the Continuous Offering Program Sales Agreements and the acquisition of Navios Containers; and (ii) \$343.4 million of proceeds from the new credit facilities and sale and leaseback agreements. This was partially mitigated by: (i) a payment of a total cash distribution of \$1.7 million; (ii) loans and financial liabilities repayments of \$260.4 million; and (iii) a payment of \$3.3 million of deferred finance fees relating to the new credit facilities and sale and leaseback agreements.

Cash used in financing activities of \$8.6 million for the six month period ended June 30, 2020 was mainly due to: (i) a payment of a total cash distribution of \$6.7 million; (ii) loans and financial liabilities repayments of \$47.9 million; and (iii) a payment of \$0.4 million of deferred finance fees relating to the new credit facilities. This was partially offset by \$46.5 million of proceeds from the new credit facilities.

## Reconciliation of EBITDA and Adjusted EBITDA to Net Cash from Operating Activities, EBITDA, and Operating Surplus

	Three Month Period Ended June 30, 2021 (\$ '000) (unaudited)	Three Month Period Ended June 30, 2020 (\$ '000) (unaudited)	Six Month Period Ended June 30, 2021 (\$ '000) (unaudited)	Six Month Period Ended June 30, 2020 (\$ '000) (unaudited)
Net cash provided by operating activities	\$ 61,072	\$ 26,738	\$ 77,249	\$ 47,675
Net increase/ (decrease) in operating assets	13,125	4,479	30,100	(3,767)
Net decrease/ (increase) in operating liabilities	8,967	(21,739)	5,249	(23,181)
Net interest cost	6,590	6,099	12,319	12,848
Amortization and write-off of deferred finance cost	(278)	(499)	(1,568)	(1,018)
Amortization of operating lease right-of-use asset	39	(234)	61	(459)
Non cash accrued interest income and amortization of deferred revenue	1,025	394	1,418	788
Stock-based compensation expense	(116)	(238)	(234)	(483)
Loss on sale of vessels	—	—	(511)	—
Vessels impairment loss	—	(6,800)	—	(6,800)
Bargain purchase gain	—	—	44,053	—
Impairment of receivable in affiliate company	—	—	—	(6,900)
Equity in net earnings of affiliate companies	—	(710)	80,839	968
<b>EBITDA<sup>(1)</sup></b>	<b>\$ 90,424</b>	<b>\$ 7,490</b>	<b>\$ 248,975</b>	<b>\$ 19,671</b>
Equity in net earnings of affiliated companies	—	—	(80,839)	—
Bargain purchase gain	—	—	(44,053)	—
Impairment of receivable in affiliated company	—	—	—	6,900
Vessels impairment loss	—	6,800	—	6,800
<b>Adjusted EBITDA<sup>(1)</sup></b>	<b>\$ 90,424</b>	<b>\$ 14,290</b>	<b>\$ 124,083</b>	<b>\$ 33,371</b>
Cash interest income	744	71	745	164
Cash interest paid	(7,600)	(6,900)	(12,275)	(13,053)
Maintenance and replacement capital expenditures	(17,711)	(8,589)	(34,698)	(17,179)
<b>Operating (Deficit)/Surplus<sup>(2)</sup></b>	<b>\$ 65,857</b>	<b>\$ (1,128)</b>	<b>\$ 77,855</b>	<b>\$ 3,303</b>



	Three Month Period Ended June 30, 2021 (\$ '000) (unaudited)	Three Month Period Ended June 30, 2020 (\$ '000) (unaudited)	Six Month Period Ended June 30, 2021 (\$ '000) (unaudited)	Six Month Period Ended June 30, 2020 (\$ '000) (unaudited)
Net cash provided by operating activities	\$ 61,072	\$ 26,738	\$ 77,249	\$ 47,675
Net cash used in investing activities	\$ (139,176)	\$ (36,327)	\$ (133,538)	\$ (39,664)
Net cash provided by/ (used in) financing activities	\$ 259,577	\$ 8,257	\$ 258,414	\$ (8,598)

## (1) EBITDA and Adjusted EBITDA

EBITDA represents net income/ (loss) attributable to Navios Partners' unitholders before interest and finance costs, before depreciation and amortization (including intangible accelerated amortization) and income taxes. Adjusted EBITDA represents EBITDA before impairment losses, equity in net earnings of affiliated companies and bargain purchase gain. Navios Partners uses Adjusted EBITDA as a liquidity measure and reconciles EBITDA and Adjusted EBITDA to net cash provided by operating activities, the most comparable U.S. GAAP liquidity measure. EBITDA in this document is calculated as follows: net cash provided by operating activities adding back, when applicable and as the case may be, the effect of: (i) net increase/ (decrease) in operating assets; (ii) net (increase)/ decrease in operating liabilities; (iii) net interest cost; (iv) amortization and write-off of deferred finance cost; (v) equity in net earnings of affiliated companies; (vi) impairment charges; (vii) non-cash accrued interest income and amortization of deferred revenue; (viii) stock-based compensation expense; (ix) non-cash accrued interest income from receivable from affiliated companies; and (x) amortization of operating lease right-of-use asset; and (xi) gain/ (loss) on sale of assets and bargain purchase gain. Navios Partners believes that EBITDA and Adjusted EBITDA are each the basis upon which liquidity can be assessed and presents useful information to investors regarding Navios Partners' ability to service and/or incur indebtedness, pay capital expenditures, meet working capital requirements and make cash distributions. Navios Partners also believes that EBITDA and Adjusted EBITDA are used: (i) by potential lenders to evaluate potential transactions; (ii) to evaluate and price potential acquisition candidates; and (iii) by securities analysts, investors and other interested parties in the evaluation of companies in our industry.

EBITDA and Adjusted EBITDA have limitations as an analytical tool, and should not be considered in isolation or as a substitute for the analysis of Navios Partners' results as reported under U.S. GAAP. Some of these limitations are: (i) EBITDA and Adjusted EBITDA do not reflect changes in, or cash requirements for, working capital needs; and (ii) although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future. EBITDA and Adjusted EBITDA do not reflect any cash requirements for such capital expenditures. Because of these limitations, EBITDA and Adjusted EBITDA should not be considered as a principal indicator of Navios Partners' performance. Furthermore, our calculation of EBITDA and Adjusted EBITDA may not be comparable to that reported by other companies due to differences in methods of calculation.

EBITDA of Navios Partners for the three month period ended June 30, 2020 was affected by the accounting effect of a \$6.8 million impairment loss related to three containerships. Excluding this item, Adjusted EBITDA increased by approximately \$76.1 million to \$90.4 million for the three month period ended June 30, 2021, as compared to \$14.3 million for the same period in 2020. The increase in Adjusted EBITDA was primarily due to a: (i) \$105.5 million increase in time charter and voyage revenues; and (ii) \$0.7 million decrease in equity in net loss of affiliated companies recorded in the second quarter of 2020. The above increase was partially mitigated by a: (i) \$19.8 million increase in vessel operating expenses, mainly due to the increased fleet; (ii) \$3.9 million increase in time charter voyage expenses; (iii) \$3.3 million increase in general and administrative expenses, mainly due to the increased fleet; (iv) \$2.8 million increase in other expense, net; and (v) \$0.3 million increase in direct vessel expenses (excluding the amortization of deferred drydock, special survey costs and other capitalized items).

EBITDA of Navios Partners for the six month period ended June 30, 2021 was affected by the accounting effect of an \$80.8 million gain from equity in net earnings of affiliated companies resulting from remeasurement of existing interest held in Navios Containers and a \$44.1 million bargain purchase gain. EBITDA for the six month period ended June 30, 2020 was negatively affected by the accounting effect of a \$6.9 million loss related to the other-than-temporary impairment recognized in the Navios Partners' receivable from Navios Europe II and a \$6.8 million impairment loss related to three containerships. Excluding these items, Adjusted EBITDA increased by \$90.7 million to \$124.1 million for the six month period ended June 30, 2021, as compared to \$33.4 million for the same period in 2020. The increase in Adjusted EBITDA was primarily due to a \$124.0 million increase in time charter and voyage revenues. The above increase was partially mitigated by a: (i) \$20.6 million increase in vessel operating expenses, mainly due to the increased fleet; (ii) \$4.1 million increase in general and administrative expenses, mainly due to the increased fleet; (iii) \$3.6 million increase in other expense, net; (iv) \$3.3 million increase in time charter voyage expenses; (v) \$1.0 million equity in net earnings of affiliate companies, recorded in the first half of 2020; (vi) \$0.5 million net loss on sale of vessels; and (vii) \$0.2 million increase in direct vessel expenses (excluding the amortization of deferred drydock, special survey costs and other capitalized items).

## **(2) Operating Surplus**

Operating Surplus represents net income adjusted for depreciation and amortization expense, non-cash interest expense, non-cash interest income, equity compensation expense, estimated maintenance and replacement capital expenditures and one-off items. Maintenance and replacement capital expenditures are those capital expenditures required to maintain over the long term the operating capacity of, or the revenue generated by, Navios Partners' capital assets.

Operating Surplus is a quantitative measure used in the publicly-traded partnership investment community to assist in evaluating a partnership's ability to make quarterly cash distributions and is a non-GAAP measure. Operating Surplus is not required by accounting principles generally accepted in the United States and should not be considered a substitute for net income, cash flow from operating activities and other operations or cash flow statement data prepared in accordance with accounting principles generally accepted in the United States or as a measure of profitability or liquidity.

## **Capital Expenditures**

Navios Partners finances its capital expenditures with cash flow from operations, equity raisings, long-term bank borrowings and other debt raisings. Capital expenditures for each of the six month periods ended June 30, 2021 and 2020 amounted to \$185.4 million and \$42.0 million, respectively. The reserves for estimated maintenance and replacement capital expenditures for the three and six month periods ended June 30, 2021 were \$17.7 million and \$34.7 million, respectively. The reserves for estimated maintenance and replacement capital expenditures for the three and six month periods ended June 30, 2020 were \$8.6 million and \$17.2 million, respectively.

Maintenance for our vessels and expenses related to drydocking expenses are reimbursed at cost by Navios Partners to our Manager under the Management Agreement. In each of October 2013, August 2014, February 2015, February 2016 and November 2017, Navios Partners amended its existing Management Agreement with the Manager to fix the fees for ship management services of its owned fleet, excluding drydocking expenses, which are reimbursed at cost by Navios Partners at: (a) \$4,225 daily rate per Ultra-Handymax vessel; (b) \$4,325 daily rate per Panamax vessel; (c) \$5,250 daily rate per Capesize vessel; (d) \$6,700 daily rate per Container vessel of TEU 6,800; (e) \$7,400 daily rate per Container vessel of more than TEU 8,000; and (f) \$8,750 daily rate per very large Containers vessel of more than TEU 13,000 through December 31, 2019.

In August 2019, Navios Partners extended the duration of its existing Management Agreement with the Manager until January 1, 2025. Management fees are fixed for two years commencing from January 1, 2020 at: (a) \$4,350 daily rate per Ultra-Handymax Vessel; (b) \$4,450 daily rate per Panamax Vessel; (c) \$5,410 daily rate per Capesize Vessel; and (d) \$6,900 daily rate per 6,800 TEU Containership. The agreement also provides for a technical and commercial management fee of \$50 per day per vessel and an annual increase of 3% commencing January 1, 2022 unless agreed otherwise.

Following the liquidation of Navios Europe I, Navios Partners acquired three Sub-Panamax and two Panamax containerships and following the liquidation of Navios Europe II, Navios Partners acquired five drybulk vessels, three Panamax and two Ultra-Handymax vessels. As per the Management Agreement, as amended in December 2019, management fees are fixed for two years commencing from January 1, 2020 at \$6,100 daily rate per Sub-Panamax/Panamax Containership. The agreement also provides for a technical and commercial management fee of \$50 per day per vessel and an annual increase of 3% commencing January 1, 2022 for the remaining period unless agreed otherwise. Drydocking expenses are reimbursed at cost for all vessels.

Following the completion of the merger with Navios Containers on March 31, 2021, the 29-vessel fleet of Navios Containers is included in Navios Partners owned fleet. As per the Management Agreement, management fees are fixed for two years commencing from January 1, 2020 at: (a) \$6,100 and \$6,215 daily rate per Containership of TEU 3,000 up to 4,999, respectively; (b) \$7,400 and \$7,780 daily rate per Containership of TEU 8,000 up to 9,999, respectively; (c) \$7,400 and \$8,270 daily rate per Containership of TEU 10,000 up to 11,999, respectively. The agreement also provides for a technical and commercial management fee of \$50 per day per vessel and an annual increase of 3% after January 1, 2022 unless agreed otherwise.

### Maintenance and Replacement Capital Expenditures Reserve

We estimate that our annual replacement reserve for the year ending December 31, 2021 will be approximately \$70.7 million, for replacing our vessels at the end of their useful lives.

The amount for estimated replacement capital expenditures attributable to future vessel replacement was based on the following assumptions: (i) current market price to purchase a five year old vessel of similar size and specifications; (ii) a 25-year useful life for drybulk vessels and a 30-year useful life for containerships; and (iii) a relative net investment rate.

The amount for estimated maintenance capital expenditures attributable to future vessel drydocking and special survey was based on certain assumptions including the remaining useful life of the owned vessels of our fleet, market costs of drydocking and special survey and a relative net investment rate.

Our Board of Directors, with the approval of the Conflicts Committee, may determine that one or more of our assumptions should be revised, which could cause our Board of Directors to increase or decrease the amount of estimated maintenance and replacement capital expenditures. The actual cost of replacing the vessels in our fleet will depend on a number of factors, including prevailing market conditions, charter hire rates and the availability and cost of financing at the time of replacement. We may elect to finance some or all of our maintenance and replacement capital expenditures through the issuance of additional common units, which could be dilutive to existing unitholders.

### Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements that have or are reasonably likely to have, a current or future material effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

On March 13, 2020, two purported holders of the Navios Containers' common units commenced a lawsuit in the United States District Court for the Southern District of New York captioned The Mangrove Partners Master Fund, Ltd. et al v. Navios Containers, Case No. 1:20-cv-02290-LJL. In the suit, the plaintiffs allege that Navios Containers breached its limited partnership agreement and the Marshall Islands Limited Partnership Act, in each case based on an alleged refusal by Navios Containers to provide to the plaintiffs certain non-public books and records of Navios Containers. On July 20, 2020, the plaintiffs amended their complaint to add Navios Containers' CEO as a named defendant, and added two additional causes of actions; one for alleged violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and one for common law fraud, and the plaintiffs sought, among other things, damages, fees, expenses, rescission, and an order requiring Navios Containers to furnish the requested records to the plaintiffs. On September 25, 2020, the named defendants moved to dismiss the amended complaint, which resulted in plaintiffs filing a second amended complaint that further added two additional causes of actions (one for fraudulent inducement and one for negligent misrepresentation) and sought the same relief as requested in the first amended complaint. The named defendants moved to dismiss the second amended complaint on January 15, 2021, and briefing was completed on March 2, 2021. On July 13, 2021, prior to any ruling on the motion to dismiss, the parties filed with the court a stipulation of dismissal with prejudice pursuant to a confidential settlement, thereby concluding the matter.

### Contractual Obligations and Contingencies

The following table summarizes our long-term contractual obligations as of June 30 2021.

	Payments due by period (Unaudited)				Total
	Less than 1 year	1-3 years	3-5 years	More than 5 years	
	(In thousands of U.S. dollars)				
Loan obligations <sup>(1)</sup>	\$ 83,762	\$ 245,492	\$ 210,442	\$ —	\$ 539,696
Financial liabilities <sup>(2)</sup>	\$ 33,841	\$ 99,877	\$ 54,684	\$ 73,483	\$ 261,885
Operating lease obligations (Time Charters) for bareboat charter-in vessels <sup>(3)(4)</sup>	\$ 6,668	\$ 13,175	\$ 12,776	\$ 26,784	\$ 59,403
Vessel deposits <sup>(5)(6)(7)</sup>	\$ 46,334	\$ 46,388	\$ —	\$ —	\$ 92,722
<b>Total contractual obligations</b>	<b>\$ 170,605</b>	<b>\$ 404,932</b>	<b>\$ 277,902</b>	<b>\$ 100,267</b>	<b>\$ 953,706</b>

- (1) Represents principal payments and repayments on amounts drawn on our credit facilities that bear interest at applicable fixed interest rates ranging from 260 bps to 350 bps plus LIBOR per annum. The amounts in the table exclude expected interest payments of \$15.9 million (less than 1 year), \$21.1 million (1-3 years) and \$7.2 million (3-5 years). Expected interest payments are based on outstanding principal amounts, applicable currently effective interest rates and margins as of June 30, 2021, timing of scheduled payments and the term of the debt obligations.
- (2) Represents principal payments and repayments on amounts drawn under the financial liabilities and exclude interest payments of \$12.8 million (less than 1 year), \$18.5 million (1-3 years), \$9.3 million (3-5 years) and \$13.6 million (more than 5 years).
- (3) In November 2017, Navios Partners agreed to bareboat charter-in, under a ten-year bareboat contract, from an unrelated third party, a newbuilding Panamax vessel of 82,011 dwt, delivered on July 24, 2019. Navios Partners has agreed to pay in total \$5.54 million, representing a deposit for the option to acquire the vessel after the end of the fourth year, of which the first half of \$2.77 million was paid during the year ended December 31, 2017 and the second half of \$2.77 million was paid during the year ended December 31, 2018, both presented under the caption "Other long-term assets" in the condensed Consolidated Balance Sheets as of June 30, 2021.
- (4) On October 18, 2019, Navios Partners agreed to bareboat charter-in, under a ten-year bareboat contract, from an unrelated third party, the Navios Amitie and the Navios Star, two newbuilding Panamax vessels of 82,002 dwt and 81,994 dwt, respectively. The vessels were delivered in Navios Partner's fleet on May 28, 2021 and June 10, 2021, respectively. Navios Partners had agreed to pay in total \$12.3 million, representing a deposit for the option to acquire the vessels after the end of the fourth year, of which \$1.4 million was paid during the year ended December 31, 2019, \$10.0 million was paid during the year ended December 31, 2020 and the remaining amount of \$0.9 million was paid upon the delivery of the vessels, all presented under the caption "Other long-term assets" in the condensed Consolidated Balance Sheets as of June 30, 2021.
- (5) In June 2021, Navios Partners agreed to acquire from Navios Holdings the Navios Azimuth, a 2011-built Capesize vessel of 179,169 dwt, for a purchase price of \$30.0 million. The vessel was delivered in Navios Partners' fleet on July 9, 2021.
- (6) On March 23, 2021, Navios Partners agreed to acquire a newbuilding Panamax vessel, from an unrelated third party, for a purchase price of \$31.6 million. The vessel has approximately 81,000 dwt and is expected to be delivered in Navios Partners' fleet during the second half of 2022. Navios Partners has agreed to pay in total \$12.6 million in four installments and the remaining amount of \$18.9 million will be paid upon the delivery of the vessel. On April 1, 2021, the first installment of \$3.2 million was paid. As of June 30, 2021, the total amount of \$3.2 million is presented under the caption "Deposits for vessels acquisitions" in the condensed Consolidated Balance Sheets.
- (7) On June 30, 2021, Navios Partners agreed to acquire a newbuilding Panamax vessel, from an unrelated third party, for a purchase price of \$34.3 million. The vessel has approximately 81,000 dwt and is expected to be delivered in Navios Partners' fleet during the first half of 2023. Navios Partners has agreed to pay in total \$13.7 million in four installments and the remaining amount of \$20.6 million will be paid upon the delivery of the vessel. As of June 30, 2021, no amount was deposited.

Navios Partners leases office space in Monaco pursuant to a five year lease agreement dated July 1, 2018 that expires in June 2023, for a monthly rent of approximately \$0.01 million.

#### **Limitations on Cash Distributions and Our Ability to Change Our Cash Distribution Policy**

There is no guarantee that unitholders will receive quarterly distributions from us and beginning with the quarter ending December 31, 2015, our Board of Directors elected to suspend distributions on our common units in order to preserve cash and improve our liquidity. In March 2018, the Company's Board of Directors announced a new distribution policy under which it paid quarterly cash distributions in the amount of \$0.30 per unit, or \$1.20 annually. In July 2020, the Company amended its distribution policy under which it intends to pay quarterly cash distributions in the amount of \$0.05 per unit, or \$0.20 per unit annually.

Our distribution policy is subject to certain restrictions and may be changed at any time, including:

- Our unitholders have no contractual or other legal right to receive distributions other than the obligation under our partnership agreement to distribute available cash on a quarterly basis, which is subject to the broad discretion of our board of directors to establish reserves and other limitations.
- While our partnership agreement requires us to distribute all of our available cash, our partnership agreement, including provisions requiring us to make cash distributions contained therein, may be amended. Although during the subordination period, with certain exceptions, our partnership agreement could not be amended without the approval of non-affiliated common unitholders, our partnership agreement can be amended with the approval of a majority of the outstanding common units after the subordination period has ended. Upon the closing of the IPO, Navios Holdings did not own any of our outstanding common units and owned 100.0% of our outstanding subordinated units.

- Even if our cash distribution policy is not modified or revoked, the amount of distributions we pay under our cash distribution policy and the decision to make any distribution is determined by our board of directors, taking into consideration the terms of our partnership agreement.
- Under Section 51 of the Marshall Islands Limited Partnership Act, we may not make a distribution to our unitholders if the distribution would cause our liabilities to exceed the fair value of our assets.
- We may lack sufficient cash to pay distributions to our unitholders due to decreases in net revenues or increases in operating expenses, principal and interest payments on outstanding debt, tax expenses, working capital requirements, maintenance and replacement capital expenditures or anticipated cash needs.
- Our distribution policy is affected by restrictions on distributions under our credit facilities or other debt instruments. Specifically, our credit facilities contain material financial tests that must be satisfied and we will not pay any distributions that will cause us to violate our credit facilities or other debt instruments. Should we be unable to satisfy these restrictions included in our credit facilities or if we are otherwise in default under our credit facilities, our ability to make cash distributions to unitholders, notwithstanding our cash distribution policy, would be materially adversely affected.
- If we make distributions out of capital surplus, as opposed to operating surplus, such distributions will constitute a return of capital and will result in a reduction in the minimum quarterly distribution and the target distribution levels. We do not anticipate that we will make any distributions from capital surplus.

Our ability to make distributions to our unitholders depends on the performance of our subsidiaries and their ability to distribute funds to us. The ability of our subsidiaries to make distributions to us may be restricted by, among other things, the provisions of existing and future indebtedness, applicable partnership and limited liability company laws and other laws and regulations.

### **Quarterly Distribution**

There is no guarantee that we will pay the quarterly distribution on the common units in any quarter. The amount of distributions paid under our policy and the decision to make any distribution is determined by our board of directors, taking into consideration the terms of our partnership agreement. We are prohibited from making any distributions to unitholders if it would cause an event of default, or an event of default exists, under our existing credit facilities.

Quarterly distributions were paid by the Company through September 2015. For the quarter ended December 31, 2015, the Company's board of directors determined to suspend payment of the Company's quarterly distributions in order to preserve cash and improve our liquidity. In March 2018, the Company's board of directors announced a new distribution policy under which it paid quarterly cash distributions in the amount of \$0.30 per unit, or \$1.20 per unit annually. In July 2020, the Company amended its distribution policy under which it intends to pay quarterly cash distributions in the amount of \$0.05 per unit, or \$0.20 per unit annually.

In July 2021, the Board of Directors of Navios Partners authorized its quarterly cash distribution for the three month period ended June 30, 2021 of \$0.05 per unit. The cash distribution was paid on August 12, 2021 to all unitholders of record as of August 9, 2021. The declaration and payment of any further dividends remain subject to the discretion of the Board of Directors and will depend on, among other things, Navios Partners' cash requirements as measured by market opportunities and restrictions under its credit agreements and other debt obligations and such other factors as the Board of Directors may deem advisable.

### **Incentive Distribution Rights**

The following description of our incentive distribution rights reflects such rights and the indicated levels are achieved, of which there can be no assurance. Incentive distribution rights represent the right to receive an increasing percentage of quarterly distributions of available cash from Operating Surplus after the minimum quarterly distribution and the target distribution levels have been achieved. Navios GP L.L.C. currently holds the incentive distribution rights, but may transfer these rights, provided the transferee agrees to be bound by the terms of the partnership agreement. As of December 31, 2017, the holder of incentive distribution rights may transfer any or all of its Incentive Distribution Rights without unitholder approval.

The following table illustrates the percentage allocations of the additional available cash from Operating Surplus among the unitholders, our general partner and the holder of our incentive distribution rights up to the various target distribution levels. The amounts set forth under “Marginal Percentage Interest in Distributions” are the percentage interests of the unitholders in any available cash from Operating Surplus we distribute up to and including the corresponding amount in the column “Total Quarterly Distribution Target Amount”, until available cash from Operating Surplus we distribute reaches the next target distribution level, if any. The percentage interests shown for the unitholders for the minimum quarterly distribution are also applicable to quarterly distribution amounts that are less than the minimum quarterly distribution. The percentage interests shown for our general partner assume that our general partner maintains its 2.0% general partner interest.

	Total Quarterly Distribution Target Amount	Marginal Percentage Interest in Distributions		
		Common Unitholders	Incentive Distribution Right Holder	General Partner
Minimum Quarterly Distribution	up to \$5.25 per unit	98 %	—	2 %
First Target Distribution	up to \$6.0375 per unit	98 %	—	2 %
Second Target Distribution	above \$ 6.0375 up to \$6.5625 per unit	85 %	13 %	2 %
Third Target Distribution	above \$6.5625 up to \$7.875 per unit	75 %	23 %	2 %
Thereafter	above \$7.875 per unit	50 %	48 %	2 %

## Related Party Transactions

**Vessel operating expenses (management fees):** Pursuant to the amended Management Agreement in each of October 2013, August 2014, February 2015, February 2016 and November 2017, the Manager provided commercial and technical management services to Navios Partners’ vessels for a daily fee (excluding drydocking expenses, which were reimbursed at cost by Navios Partners) of: (a) \$4,225 daily rate per Ultra-Handymax vessel; (b) \$4,325 daily rate per Panamax vessel; (c) \$5,250 daily rate per Capesize vessel; (d) \$6,700 daily rate per Containership of TEU 6,800; (e) \$7,400 daily rate per Containership of more than TEU 8,000; and (f) \$8,750 daily rate per very large Containership of more than TEU 13,000 through December 2019. These fixed daily fees cover our vessels’ operating expenses, other than certain extraordinary fees and costs.

In August 2019, Navios Partners extended the duration of its Management Agreement with the Manager until January 1, 2025. In addition, management fees are fixed for two years commencing from January 1, 2020 at: (a) \$4,450 daily rate per Panamax Vessel; (b) \$4,350 daily rate per Ultra-Handymax Vessel; (c) \$5,410 daily rate per Capesize Vessel; and (d) \$6,900 daily rate per 6,800 TEU Containership. The agreement also provides for a technical and commercial management fee of \$50 per day per vessel and an annual increase of 3% after January 1, 2022 unless agreed otherwise.

Following the liquidation of Navios Europe I, Navios Partners acquired three Sub-Panamax and two Panamax containerships and following the liquidation of Navios Europe II, Navios Partners acquired five drybulk vessels, three Panamax and two Ultra-Handymax vessels. As per the Management Agreement, as amended in December 2019, management fees are fixed for two years commencing from January 1, 2020 at \$6,100 daily rate per Sub-Panamax/Panamax Containership. The agreement also provides for a technical and commercial management fee of \$50 per day per vessel and an annual increase of 3% after January 1, 2022 for the remaining period unless agreed otherwise.

Following the completion of the merger with Navios Containers on March 31, 2021, the 29-vessel fleet of Navios Containers is included in Navios Partners owned fleet. As per the Management Agreement, management fees are fixed for two years commencing from January 1, 2020 at: (a) \$6,100 and \$6,215 daily rate per Containership of TEU 3,000 up to 4,999, respectively; (b) \$7,400 and \$7,780 daily rate per Containership of TEU 8,000 up to 9,999, respectively; (c) \$7,400 and \$8,270 daily rate per Containership of TEU 10,000 up to 11,999, respectively. The agreement also provides for a technical and commercial management fee of \$50 per day per vessel and an annual increase of 3% after January 1, 2022 unless agreed otherwise.

Drydocking expenses are reimbursed at cost for all vessels.

During the three and six month periods ended June 30, 2021, certain extraordinary fees and costs related to vessels’ regulatory requirements including ballast water treatment system installation and exhaust gas cleaning system installation, under the Company’s Management Agreement amounted to \$1.4 million and \$4.9 million, respectively, and are presented under the caption “Acquisition of/ additions to vessels, net of cash acquired” in the condensed Consolidated Statements of Cash Flows. During the three and six month periods ended June 30, 2020, certain extraordinary fees and costs related to vessels’ regulatory requirements including ballast water treatment system installation and exhaust gas cleaning system installation, under the Company’s management agreement amounted to \$1.3 million and \$1.5 million, respectively, and are presented under “Acquisition of/ additions to vessels, net of cash acquired” in the condensed Consolidated Statements of Cash Flow.

Total vessel operating expenses for each of the three and six month periods ended June 30, 2021 amounted to \$41.8 million and \$64.7 million, respectively. Total vessel operating expenses for each of the three and six month periods ended June 30, 2020 amounted to \$21.9 million and \$44.1 million, respectively.

**General and administrative expenses:** Pursuant to the Administrative Services Agreement, the Manager also provides administrative services to Navios Partners, which include bookkeeping, audit and accounting services, legal and insurance services, administrative and clerical services, banking and financial services, advisory services, client and investor relations and other. The Manager is reimbursed for reasonable costs and expenses incurred in connection with the provision of these services. Navios Partners extended the duration of its existing Administrative Services Agreement with the Manager, until December 31, 2022. In August 2019, Navios Partners extended the duration of its existing administrative services agreement with the Manager until January 1, 2025, which provide for allocable general and administrative costs.

Total general and administrative expenses charged by the Manager for each of the three and six month periods ended June 30, 2021 amounted to \$6.1 million and \$9.8 million, respectively. Total general and administrative expenses charged by the Manager for each of the three and six month periods ended June 30, 2020 amounted to \$3.2 million and \$6.4 million, respectively.

**Balance due from related parties:** Balance due from related parties as of each of June 30, 2021 and December 31, 2020 amounted to \$0 and \$5.0 million, respectively, that consisted of the receivable from the Navios Holdings Guarantee, as defined below, which was fully repaid in April 2021.

**Balance due to related parties:** Amounts due to related parties, short-term as of June 30, 2021 and December 31, 2020 were \$17.2 million and \$36.0 million, respectively, and mainly consisted of payables to the Manager.

**Impairment of receivable in affiliated company:** Navios Holdings, Navios Maritime Acquisition Corporation (“Navios Acquisition”) and Navios Partners have made available to Navios Europe II revolving loans of up to \$43.5 million to fund working capital requirements (collectively, the “Navios Revolving Loans II”). In March 2017, the availability under the Navios Revolving Loans II was increased by \$14.0 million

On April 21, 2020, Navios Europe II agreed with the lender to fully release the liabilities under the junior participating loan facility for \$5.0 million. Navios Europe II owned seven container vessels and seven dry bulk vessels. Navios Partners had a net receivable of approximately \$17.3 million from Navios Europe II.

As of March 31, 2020, the decline in the fair value of the investment was considered as other-than-temporary and, therefore, an aggregate loss of \$6.9 million was recognized and included in the accompanying condensed Consolidated Statements of Operations for the six month period ended June 30, 2020, as “Impairment of receivable in affiliated company”. The fair value of the Company’s investment was determined based on the liquidation value of Navios Europe II, including the individual fair values assigned to the assets and liabilities of Navios Europe II.

On May 14, 2020, an agreement was reached to liquidate Navios Europe II before its original expiration date. The transaction was completed on June 29, 2020.

As a result of the Navios Europe II Liquidation, Navios Partners acquired 100% of the stock of the five vessels owning Companies owning the dry bulk vessels of Navios Europe II with a fair value of \$56.1 million and working capital balances of \$(2.7) million. The acquisition was funded through a credit facility and cash on hand for total of \$36.1 million and the satisfaction of its receivable balances in the amount of approximately \$17.3 million representing the Revolving Loan, Term Loan and accrued interest thereof directly owned to Navios Partners, previously presented under the captions “Amounts due from related parties” and “Loans receivable from affiliates”.

Following the Liquidation of Navios Europe II, there was no balance due from Navios Europe II as of June 30, 2021 and December 31, 2020.

**Others:** Navios Partners has entered into an omnibus agreement with Navios Holdings (the “Partners Omnibus Agreement”) in connection with the closing of Navios Partners’ IPO governing, among other things, when Navios Holdings and Navios Partners may compete against each other as well as rights of first offer on certain drybulk carriers. Pursuant to the Partners Omnibus Agreement, Navios Partners generally agreed not to acquire or own Panamax or Capesize drybulk carriers under time charters of three or more years without the consent of an independent committee of Navios Partners. In addition, Navios Holdings has agreed to offer to Navios Partners the opportunity to purchase vessels from Navios Holdings when such vessels are fixed under time charters of three or more years.

Navios Partners entered into an omnibus agreement with Navios Acquisition and Navios Holdings (the “Acquisition Omnibus Agreement”) in connection with the closing of Navios Acquisition’s initial vessel acquisition, pursuant to which, among other things, Navios Holdings and Navios Partners agreed not to acquire, charter-in or own liquid shipment vessels, except for containerships and vessels that are primarily employed in operations in South America, without the consent of an independent committee of Navios Acquisition. In addition, Navios Acquisition, under the Acquisition Omnibus Agreement, agreed to cause its subsidiaries not to acquire, own, operate or charter drybulk carriers subject to specific exceptions. Under the Acquisition Omnibus Agreement, Navios Acquisition and its subsidiaries granted to Navios Holdings and Navios Partners, a right of first offer on any proposed sale, transfer or other disposition of any of its drybulk carriers and related charters owned or acquired by Navios Acquisition. Likewise, Navios Holdings and Navios Partners agreed to grant a similar right of first offer to Navios Acquisition for any liquid shipment vessels it might own. These rights of first offer will not apply to a (i) sale, transfer or other disposition of vessels between any affiliated subsidiaries, or pursuant to the terms of any charter or other agreement with a counterparty, or (ii) merger with or into, or sale of substantially all of the assets to, an unaffiliated third party.

In connection with the Navios Maritime Midstream Partners L.P. (“Navios Midstream”) initial public offering effective November 18, 2014, Navios Partners entered into an omnibus agreement with Navios Midstream, Navios Acquisition and Navios Holdings pursuant to which Navios Acquisition, Navios Holdings and Navios Partners have agreed not to acquire or own any VLCCs, crude oil tankers, refined petroleum product tankers, LPG tankers or chemical tankers under time charters of five or more years and also providing rights of first offer on certain tanker vessels.

**Navios Holdings Guarantee:** On November 15, 2012 (as amended and supplemented in March 2014, December 2017 and July 2019), Navios Holdings and Navios Partners entered into an agreement the “Navios Holdings Guarantee” by which Navios Holdings would provide supplemental credit default insurance with a maximum cash payment of \$20.0 million. In October 2020, Navios Holdings paid an amount of \$5.0 million to Navios Partners. As of December 31, 2020, the outstanding claim receivable amounted to \$5.0 million, presented under the caption “Amounts due from related parties-short term” in the condensed Consolidated Balance Sheets. In April 2021, Navios Holdings paid the amount of \$5.0 million to Navios Partners as the final settlement of the outstanding balance of the claim. As of June 30, 2021, the outstanding claim receivable amounted to \$0.

**General partner:** In August 2019, Navios Holdings announced that it sold certain assets, including its ship management division and the general partnership interest in Navios Partners to N Shipmanagement Acquisition Corp. and related entities, affiliated with Navios Holdings’ Chairman and Chief Executive Officer, Angeliki Frangou.

**Acquisition of vessels:** On March 30, 2021, Navios Partners acquired the Navios Avior, a 2012-built Panamax vessel of 81,355 dwt, and the Navios Centaurus, a 2012-built Panamax vessel of 81,472 dwt, from Navios Holdings, for a purchase price of \$39.3 million, including working capital balances of \$(5.8) million.

Following the completion of the merger with Navios Containers on March 31, 2021, the 29-vessel fleet of Navios Containers was included in Navios Partners owned fleet.

On May 10, 2021, Navios Partners acquired the Ete N, a 2012-built Containership of 2,782 TEU, the Fleur N, a 2012-built Containership of 2,782 TEU and the Spectrum N, a 2009-built Containership of 2,546 TEU from Navios Acquisition, for an aggregate purchase price of \$55.5 million.

On June 4, 2021, Navios Partners acquired the Navios Koyo, a 2011-built Capesize vessel of 181,415 dwt, from its affiliate, Navios Holdings, for a purchase price of \$28.5 million.

On June 30, 2021, Navios Partners acquired the Navios Ray, a 2012-built Capesize vessel of 179,515 dwt and the Navios Bonavis, a 2009-built Capesize vessel of 180,022 dwt, from its affiliate, Navios Holdings, for an aggregate purchase price of \$58.0 million.

On July 9, 2021, Navios Partners acquired the Navios Azimuth, a 2011-built Capesize vessel of 179,169 dwt, from its affiliate, Navios Holdings, for a purchase price of \$30.0 million.

As of June 30, 2021, Navios Holdings held 9.9% common unit interest in Navios Partners, represented by 2,562,893 common units. Olympos Maritime Ltd. held a general partner interest of 2.0% represented by 531,995 general partner units.



## Quantitative and Qualitative Disclosures about Market Risks

### Foreign Exchange Risk

Our functional and reporting currency is the U.S. dollar. We engage in worldwide commerce with a variety of entities. Although our operations may expose us to certain levels of foreign currency risk, our transactions are predominantly U.S. dollar denominated. Transactions in currencies other than U.S. dollars are translated at the exchange rate in effect at the date of each transaction. Differences in exchange rates during the period between the date a transaction denominated in a foreign currency is consummated and the date on which it is either settled or translated, are recognized.

### Interest Rate Risk

Borrowings under our credit facilities bear interest at rate based on a premium over U.S. \$ LIBOR. Therefore, we are exposed to the risk that our interest expense may increase if interest rates rise. For the six month period ended June 30, 2021 and 2020, we paid interest on our outstanding debt at a weighted average interest rate of 3.90% and 5.04%, respectively. A 1% increase in LIBOR would have increased our interest expense for each of the six month periods ended June 30, 2021 and 2020 by \$2.5 million and \$2.1 million, respectively.

### Concentration of Credit Risk

Financial instruments, which potentially subject us to significant concentrations of credit risk, consist principally of trade accounts receivable. We closely monitor our exposure to customers for credit risk. We have policies in place to ensure that we trade with customers with an appropriate credit history.

For the six month period ended June 30, 2021, Swissmarine and HMM represented approximately 13.8% and 12.8% of total revenues. For the six month period ended June 30, 2020, HMM represented approximately 29.0% of total revenues. No other customers accounted for 10% or more of total revenues for any of the periods presented.

On November 15, 2012 (as amended and supplemented in March 2014, December 2017 and July 2019), Navios Holdings and Navios Partners entered into an agreement the “Navios Holdings Guarantee” by which Navios Holdings would provide supplemental credit default insurance with a maximum cash payment of \$20.0 million. In October 2020, Navios Holdings paid an amount of \$5.0 million to Navios Partners. As of December 31, 2020, the outstanding claim receivable amounted to \$5.0 million, presented under the caption “Amounts due from related parties-short term” in the condensed Consolidated Balance Sheets. In April 2021, Navios Holdings paid the amount of \$5.0 million to Navios Partners as the final settlement of the outstanding balance of the claim. As of June 30, 2021, the outstanding claim receivable amounted to \$0.

If we lose a charter, we may be unable to re-deploy the related vessel on terms as favorable to us due to the long-term nature of most charters and the cyclical nature of the industry or we may be forced to charter the vessel on the spot market at then market rates which may be less favorable than the charter that has been terminated. If we are unable to re-deploy a vessel for which the charter has been terminated, we will not receive any revenues from that vessel, but we may be required to pay expenses necessary to maintain the vessel in proper operating condition. If we lose a vessel, any replacement or newbuilding would not generate revenues during its construction acquisition period, and we may be unable to charter any replacement vessel on terms as favorable to us as those of the terminated charter.

Even if we successfully charter our vessels in the future, our charterers may go bankrupt or fail to perform their obligations under the charter agreements, they may delay payments or suspend payments altogether, they may terminate the charter agreements prior to the agreed-upon expiration date or they may attempt to renegotiate the terms of the charters. The permanent loss of a customer, time charter or vessel, or a decline in payments under our charters, could have a material adverse effect on our business, results of operations and financial condition and our ability to make cash distributions in the event we are unable to replace such customer, time charter or vessel. For further details, please read “Risk Factors” in our 2020 Annual Report on Form 20-F.

### Inflation

Inflation has had a minimal impact on vessel operating expenses, drydocking expenses and general and administrative expenses. Our management does not consider inflation to be a significant risk to direct expenses in the current and foreseeable economic environment.

### Recent Accounting Pronouncements

These financial statements should be read in conjunction with the consolidated financial statements and related notes included in Navios Partners’ Annual Report on Form 20-F for the year ended December 31, 2020.

## **Critical Accounting Policies**

Our financial statements have been prepared in accordance with U.S. GAAP. The preparation of these financial statements requires us to make estimates in the application of our accounting policies based on the best assumptions, judgments and opinions of management. Following is a discussion of the accounting policies that involve a higher degree of judgment and the methods of their application that affect the reported amount of assets and liabilities, revenues and expenses and related disclosure of contingent assets and liabilities at the date of our financial statements. Actual results may differ from these estimates under different assumptions or conditions.

Critical accounting policies are those that reflect significant judgments or uncertainties, and potentially result in materially different results under different assumptions and conditions. Other than as described below, all significant accounting policies are as described in Note 2 to the Notes to the consolidated financial statements included in the Company's Annual Report on Form 20-F for the year ended December 31, 2020 filed with the SEC on March 31, 2021.

## Exhibit List

Exhibit  
No.

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- 4.1 [Agreement and Plan of Merger, dated August 25, 2021, by and among Navios Maritime Acquisition Corporation, Navios Maritime Partners L.P. and Navios Acquisition Merger Sub, Inc.](#)
- 4.2 [Loan Agreement, dated August 24, 2021, by and between Navios Maritime Acquisition Corporation and Navios Maritime Partners, L.P.](#)
- 4.3 [Bareboat Charter and Memorandum of Agreement, dated August 16, 2021, between Batanagar Shipping Corporation and Surf Maritime Co., being a wholly owned subsidiary of Navios Maritime Partners L.P., providing for the sale and leaseback of the Navios Pollux.](#)
- 4.4 [Term Loan Facility Agreement, dated August 19, 2021, by and among Aramis Navigation Inc., Navios Maritime Partners, L.P., DNB Bank ASA, London Branch, DNB \(UK\) Limited and certain banks and financial institutions named therein.](#)
- 4.5 [Facility Agreement, dated June 17, 2021, by and among, Anthos Shipping Inc., Azalea Shipping Inc., Fandango Shipping Corporation, Flavescent Shipping Corporation, Sunstone Shipping Corporation, Zaffre Shipping Corporation and the National Bank of Greece S.A.](#)
- 4.6 [Loan Agreement, dated May 11, 2021, by and among Alegria Shipping Corporation, Andromeda Shiptrade Limited, Aurora Shipping Enterprises Ltd., Beryl Shipping Corporation, Cheryl Shipping Corporation, Christal Shipping Corporation, Hyperion Enterprises Inc., Kymata Shipping Co., Orbiter Shipping Corp., Pearl Shipping Corporation, Rubina Shipping Corporation, Seymour Trading Limited, Topaz Shipping Corporation, Camelia Shipping Inc., Balder Maritime Ltd, Hamburg Commercial Bank AG and certain banks and financial institutions named therein.](#)
- 4.7 [Loan Agreement, dated April 28, 2021, by and among Ammos Shipping Corp., Wave Shipping Corp., Brandeis Shipping Corporation, Buff Shipping Corporation, BNP Paribas and certain banks and financial institutions named therein.](#)
- 4.8 [Second Supplemental Agreement in relation to a Facility Agreement dated June 25, 2020 \(as amended\), dated April 23, 2021, by and among, Cronus Shipping Corporation, Dionysus Shipping Corporation, Bole Shipping Corporation and Hellenic Bank Public Company Limited.](#)

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**NAVIOS MARITIME PARTNERS L.P.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(Expressed in thousands of U.S. Dollars except unit data)

	Notes	June 30, 2021 (unaudited)	December 31, 2020 (unaudited)
<b>ASSETS</b>			
<b>Current assets</b>			
Cash and cash equivalents	4	\$ 227,117	\$ 19,303
Restricted cash	4	5,736	11,425
Accounts receivable, net		20,896	16,969
Amounts due from related parties	13	—	5,000
Prepaid expenses and other current assets		28,214	8,083
<b>Total current assets</b>		<b>281,963</b>	<b>60,780</b>
Vessels, net	5	1,930,477	1,041,138
Deposits for vessels acquisitions	12	3,599	—
Other long-term assets	3,12	21,315	18,850
Deferred dry dock and special survey costs, net		51,310	37,045
Investment in affiliates	15	—	26,158
Intangible assets	6	1,417	2,000
Notes receivable, net of current portion	14	—	8,013
Operating lease assets	17	45,862	13,285
<b>Total non-current assets</b>		<b>2,053,980</b>	<b>1,146,489</b>
<b>Total assets</b>		<b>\$ 2,335,943</b>	<b>\$ 1,207,269</b>
<b>LIABILITIES AND PARTNERS' CAPITAL</b>			
<b>Current liabilities</b>			
Accounts payable		\$ 9,335	\$ 6,299
Accrued expenses		11,928	4,781
Deferred revenue	2,14	10,187	3,185
Operating lease liabilities, current portion	17	4,065	1,173
Amounts due to related parties	13	17,181	35,979
Current portion of financial liabilities, net	7	33,476	6,277
Current portion of long-term debt, net	7	81,967	195,558
<b>Total current liabilities</b>		<b>168,139</b>	<b>253,252</b>
Operating lease liabilities, net	17	41,604	11,980
Unfavorable lease terms	3,6	182,464	—
Long-term financial liabilities, net	7	227,108	56,481
Long-term debt, net	7	452,959	228,541
Deferred revenue	14	1,626	2,185
<b>Total non-current liabilities</b>		<b>905,761</b>	<b>299,187</b>
<b>Total liabilities</b>		<b>\$ 1,073,900</b>	<b>\$ 552,439</b>
<b>Commitments and contingencies</b>	12	—	—
<b>Partners' capital:</b>			
Common Unitholders (25,759,634 and 11,345,187 units issued and outstanding at June 30, 2021 and December 31, 2020, respectively)	9	1,246,997	652,013
General Partner (531,995 and 237,822 units issued and outstanding at June 30, 2021 and December 31, 2020, respectively)	9	15,046	2,817
<b>Total partners' capital</b>		<b>1,262,043</b>	<b>654,830</b>
<b>Total liabilities and partners' capital</b>		<b>\$ 2,335,943</b>	<b>\$ 1,207,269</b>

See unaudited notes to the condensed consolidated financial statements

**NAVIOS MARITIME PARTNERS L.P.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Expressed in thousands of U.S. Dollars except unit and per unit data)

	Notes	Three Month Period Ended June 30, 2021 (unaudited)	Three Month Period Ended June 30, 2020 (unaudited)	Six Month Period Ended June 30, 2021 (unaudited)	Six Month Period Ended June 30, 2020 (unaudited)
Time charter and voyage revenues	10,14	\$ 152,009	\$ 46,549	\$ 217,072	\$ 93,039
Time charter and voyage expenses	17	(5,869)	(1,940)	(8,364)	(5,038)
Direct vessel expenses		(3,989)	(2,385)	(7,143)	(4,934)
Vessel operating expenses (management fees entirely through related parties transactions)	13	(41,771)	(21,930)	(64,733)	(44,135)
General and administrative expenses	13	(10,319)	(6,983)	(15,226)	(11,128)
Depreciation and amortization of intangible assets	5,6	(22,120)	(13,663)	(35,207)	(27,300)
Amortization of unfavorable lease terms	6	42,026	—	42,026	—
Loss on sale of vessels	5	—	—	(511)	—
Vessels impairment loss	5	—	(6,800)	—	(6,800)
Interest expense and finance cost, net		(7,334)	(6,275)	(13,178)	(13,219)
Interest income		744	176	859	371
Impairment of receivable in affiliated company	13	—	—	—	(6,900)
Other expense, net		(3,464)	(680)	(3,895)	(289)
Equity in net earnings/ (loss) of affiliated companies	3,15	—	(710)	80,839	968
Bargain purchase gain	3	—	—	44,053	—
<b>Net income/ (loss)</b>		<b>\$ 99,913</b>	<b>\$ (14,641)</b>	<b>\$ 236,592</b>	<b>\$ (25,365)</b>

**Earnings/ (loss) per unit (see note 16):**

	Three Month Period Ended June 30, 2021 (unaudited)	Three Month Period Ended June 30, 2020 (unaudited)	Six Month Period Ended June 30, 2021 (unaudited)	Six Month Period Ended June 30, 2020 (unaudited)
Earnings/ (loss) per unit:				
Earnings/ (loss) per common unit, basic	\$ 4.32	\$ (1.32)	\$ 13.61	\$ (2.29)
Earnings/ (loss) per common unit, diluted	\$ 4.31	\$ (1.32)	\$ 13.54	\$ (2.29)

See unaudited notes to the condensed consolidated financial statements

**NAVIOS MARITIME PARTNERS L.P.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Expressed in thousands of U.S. Dollars)

	Notes	Six Month Period Ended June 30, 2021 (unaudited)	Six Month Period Ended June 30, 2020 (unaudited)
<b>OPERATING ACTIVITIES:</b>			
Net income/ ( loss)		\$ 236,592	\$ (25,365)
<b>Adjustments to reconcile net loss to net cash provided by operating activities:</b>			
Depreciation and amortization of intangible assets	5,6	35,207	27,300
Amortization of unfavorable lease terms	6	(42,026)	—
Vessels impairment loss		—	6,800
Impairment of receivable in affiliated company	13	—	6,900
Non cash accrued interest income and amortization of deferred revenue	14	(1,418)	(788)
Amortization of operating lease right-of-use asset	17	(61)	459
Amortization and write-off of deferred finance costs and discount		1,568	1,018
Amortization of deferred dry dock and special survey costs		6,883	4,888
Loss on sale of vessels	5	511	—
Bargain purchase gain	3	(44,053)	—
Equity in net earnings of affiliated companies	3,15	(80,839)	(968)
Stock based compensation	9	234	483
<b>Changes in operating assets and liabilities:</b>			
Net increase in accounts receivable		(1,430)	(18)
Net increase in prepaid expenses and other current assets		(12,521)	(1,230)
Increase/ (decrease) in accounts payable		688	(2,567)
Net increase in accrued expenses		5,487	2,035
Net increase in deferred revenue		5,900	1,564
Net decrease in amounts due from related parties	13	5,000	14,860
(Decrease)/ increase in amounts due to related parties	13	(17,324)	22,149
Payments for dry dock and special survey costs		(21,149)	(9,341)
Operating lease liabilities short and long-term	17	—	(504)
<b>Net cash provided by operating activities</b>		<b>77,249</b>	<b>47,675</b>
<b>INVESTING ACTIVITIES:</b>			
Net cash proceeds from sale of vessels	5	32,692	—
Deposit for option to acquire vessel		(4,965)	(4,435)
Cash acquired from merger with Navios Containers	3, 4	10,282	—
Acquisition of/ additions to vessels, net of cash acquired	5	(180,419)	(37,573)
Repayments of notes receivable	14	8,872	2,344
<b>Net cash used in investing activities</b>		<b>(133,538)</b>	<b>(39,664)</b>
<b>FINANCING ACTIVITIES:</b>			
Cash distributions paid	16	(1,706)	(6,731)
Net proceeds from issuance of general partner units	9	7,531	—
Net proceeds from issuance of common units	9	172,938	—
Repayment of long-term debt and financial liabilities	7	(260,372)	(47,927)
Payments of deferred finance costs		(3,327)	(415)
Proceeds from long-term debt and financial liabilities	7,9	343,350	46,475
<b>Net cash provided by/ (used in) financing activities</b>		<b>258,414</b>	<b>(8,598)</b>
<b>Increase/ (decrease) in cash, cash equivalents and restricted cash</b>		<b>202,125</b>	<b>(587)</b>
<b>Cash, cash equivalents and restricted cash, beginning of period</b>		<b>30,728</b>	<b>30,402</b>
<b>Cash, cash equivalents and restricted cash, end of period</b>		<b>\$ 232,853</b>	<b>\$ 29,815</b>

**NAVIOS MARITIME PARTNERS L.P.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Expressed in thousands of U.S. Dollars)

	Six Month Period Ended June 30, 2021 (unaudited)	Six Month Period Ended June 30, 2020 (unaudited)
<b>Supplemental disclosures of cash flow information</b>		
Cash interest paid	\$ 12,275	\$ 13,053
<b>Non cash financing activities</b>		
Stock based compensation	\$ 234	\$ 483
<b>Non cash investing activities</b>		
Loans receivable from affiliates	\$ —	\$ (9,992)
Acquisition of vessels	\$ (5,766)	\$ 19,997

See unaudited condensed notes to the condensed consolidated financial statements

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**NAVIOS MARITIME PARTNERS L.P.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN PARTNERS' CAPITAL**  
(Expressed in thousands of U.S. Dollars except unit data)

	Limited Partners				Total Partners' Capital
	General Partner		Common Unitholders		
	Units	Amount	Units	Amount	
<b>Balance, December 31, 2020</b>	<b>237,822</b>	<b>\$ 2,817</b>	<b>11,345,187</b>	<b>\$ 652,013</b>	<b>\$ 654,830</b>
Cash distribution paid (\$0.05 per unit—see Note 16)	—	(12)	—	(567)	(579)
Proceeds from public offering and issuance of units, net of offering costs (see Note 9)	8,142	203	398,934	9,705	9,908
Units issued for the acquisition of Navios Containers, net of expenses (see Note 9)	165,989	3,911	8,133,452	191,624	195,535
Stock based compensation (see Note 9)	—	—	—	118	118
Net income	—	2,733	—	133,946	136,679
<b>Balance, March 31, 2021</b>	<b>411,953</b>	<b>9,652</b>	<b>19,877,573</b>	<b>\$ 986,839</b>	<b>\$ 996,491</b>
Cash distribution paid (\$0.05 per unit—see Note 16)	—	(22)	—	(1,105)	(1,127)
Proceeds from public offering and issuance of units, net of offering costs (see Note 9)	120,042	3,417	5,882,061	163,233	166,650
Stock based compensation (see Note 9)	—	—	—	116	116
Net income	—	1,999	—	97,914	99,913
<b>Balance June 30, 2021</b>	<b>531,995</b>	<b>15,046</b>	<b>25,759,634</b>	<b>\$ 1,246,997</b>	<b>\$ 1,262,043</b>

	Limited Partners				Total Partners' Capital
	General Partner		Common Unitholders		
	Units	Amount	Units	Amount	
<b>Balance December 31, 2019</b>	<b>230,524</b>	<b>\$ 4,299</b>	<b>10,987,679</b>	<b>\$ 723,720</b>	<b>\$ 728,019</b>
Cash distribution paid (\$0.30 per unit—see Note 16)	—	(69)	—	(3,296)	(3,365)
Stock based compensation (see Note 9)	—	—	—	245	245
Net loss	—	(213)	—	(10,511)	(10,724)
<b>Balance March 31, 2020</b>	<b>230,524</b>	<b>\$ 4,017</b>	<b>10,987,679</b>	<b>\$ 710,158</b>	<b>\$ 714,175</b>
Cash distribution paid (\$0.30 per unit—see Note 16)	—	(69)	—	(3,297)	(3,366)
Stock based compensation (see Note 9)	—	—	—	238	238
Net loss	—	(293)	—	(14,348)	(14,641)
<b>Balance June 30, 2020</b>	<b>230,524</b>	<b>\$ 3,655</b>	<b>10,987,679</b>	<b>\$ 692,751</b>	<b>\$ 696,406</b>

See unaudited notes to the condensed consolidated financial statements

**NAVIOS MARITIME PARTNERS L.P.**  
**UNAUDITED NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Expressed in thousands of U.S. Dollars except unit and per unit data)**

**NOTE 1 – DESCRIPTION OF BUSINESS**

Navios Maritime Partners L.P. (“Navios Partners” or the “Company”), is an international owner and operator of dry cargo vessels, formed on August 7, 2007 under the laws of the Republic of the Marshall Islands. Navios GP L.L.C., a wholly owned subsidiary of Navios Maritime Holdings Inc. (“Navios Holdings”), was also formed on that date to act as the general partner of Navios Partners. Currently, the Company’s general partner is Olympos Maritime Ltd. (the “General Partner”) and holds a 2.0% general partner interest in Navios Partners.

Navios Partners is engaged in the seaborne transportation services of a wide range of dry cargo commodities including iron ore, coal, grain, fertilizer and also containers, chartering its vessels under medium to longer-term charters. The operations of Navios Partners are managed by Navios Shipmanagement Inc., (the “Manager”), from its offices in Piraeus, Greece, Singapore and Monaco.

Pursuant to the initial public offering (“IPO”) on November 16, 2007, Navios Partners entered into the following agreements:

- (a) a management agreement with the Manager (the “Management Agreement”), pursuant to which the Manager provides Navios Partners commercial and technical management services;
- (b) an administrative services agreement with the Manager (the “Administrative Services Agreement”), pursuant to which the Manager provides Navios Partners administrative services; and
- (c) an omnibus agreement with Navios Holdings (the “Omnibus Agreement”), governing, among other things, when Navios Partners and Navios Holdings may compete against each other as well as rights of first offer on certain drybulk carriers.

In August 2019, Navios Holdings announced that it sold certain assets, including its ship management division and the general partnership interest in Navios Partners to N Shipmanagement Acquisition Corp. and related entities, affiliated with the Company’s Chairman and Chief Executive Officer.

As of June 30, 2021, there were 25,759,634 outstanding common units and 531,995 general partnership units. Navios Holdings currently owns a 9.9% common unit interest in Navios Partners and the General Partner holds the general partner interest of 2.0%.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**(a) Basis of presentation:** The accompanying interim condensed consolidated financial statements are unaudited, but, in the opinion of management, reflect all adjustments for a fair statement of Navios Partners’ consolidated balance sheets, statement of partner’s capital, statements of operations and cash flows for the periods presented. The results of operations for the interim periods are not necessarily indicative of results for the full year. The footnotes are condensed as permitted by the requirements for interim financial statements and accordingly, do not include information and disclosures required under United States generally accepted accounting principles (“U.S. GAAP”) for complete financial statements. All such adjustments are deemed to be of a normal recurring nature. These interim financial statements should be read in conjunction with the Company’s consolidated financial statements and notes included in Navios Partners’ Annual Report for the year ended December 31, 2020 filed on Form 20-F with the U.S. Securities and Exchange Commission (“SEC”). Based on internal forecasts and projections that take into account reasonably possible changes in the Company’s trading performance, management believes that the Company has adequate financial resources to continue in operation and meet its financial commitments, including but not limited to capital expenditures and debt service obligations, for a period of at least twelve months from the date of issuance of these condensed consolidated financial statements. Accordingly, the Company continues to adopt the going concern basis in preparing its financial statements.

**(b) Principles of consolidation:** The accompanying condensed consolidated financial statements include Navios Partners’ wholly owned subsidiaries incorporated under the laws of Marshall Islands, Malta, and Liberia from their dates of incorporation or, for chartered-in vessels, from the dates charter-in agreements were in effect. All significant inter-company balances and transactions have been eliminated in Navios Partners’ consolidated financial statements.

Navios Partners also consolidates entities that are determined to be variable interest entities (“VIE”) as defined in the accounting guidance, if it determines that it is the primary beneficiary. A VIE is defined as a legal entity where either (i) equity interest holders as a group lack the characteristics of a controlling financial interest, including decision making ability and an interest in the entity’s residual risks and rewards, (ii) the equity holders have not provided sufficient equity investment to permit the entity to finance its activities without additional subordinated financial support, or (iii) the voting rights of some investors are not proportional to their obligations to absorb the expected losses of the entity, their rights to receive the expected residual returns of the entity, or both and substantially all of the entity’s activities either involve or are conducted on behalf of an investor that has disproportionately few voting rights.

**NAVIOS MARITIME PARTNERS L.P.**  
**UNAUDITED NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Expressed in thousands of U.S. Dollars except unit and per unit data)**

**Subsidiaries:** Subsidiaries are those entities in which Navios Partners has an interest of more than one half of the voting rights or otherwise has power to govern the financial and operating policies of the entity.

**The accompanying interim condensed consolidated financial statements include the following entities:**

Company name	Vessel name	Country of incorporation	2021	2020
Libra Shipping Enterprises Corporation <sup>(1)</sup>	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Alegria Shipping Corporation	Navios Alegria	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Felicity Shipping Corporation <sup>(2)</sup>	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Gemini Shipping Corporation <sup>(3)</sup>	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Galaxy Shipping Corporation <sup>(4)</sup>	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Aurora Shipping Enterprises Ltd.	Navios Hope	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Palermo Shipping S.A. <sup>(5)</sup>	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Fantastiks Shipping Corporation <sup>(12)</sup>	Navios Fantastiks	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Sagittarius Shipping Corporation <sup>(12)</sup>	Navios Sagittarius	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Hyperion Enterprises Inc.	Navios Hyperion	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Chilali Corp.	Navios Aurora II	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Surf Maritime Co.	Navios Pollux	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Pandora Marine Inc.	Navios Melodia	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Customized Development S.A.	Navios Fulvia	Liberia	01/01 – 06/30	01/01 – 06/30
Kohylia Shipmanagement S.A.	Navios Luz	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Orbiter Shipping Corp.	Navios Orbiter	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Floral Marine Ltd.	Navios Buena Ventura	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Golem Navigation Limited <sup>(13)</sup>	Navios Soleil	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Kymata Shipping Co.	Navios Helios	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Joy Shipping Corporation	Navios Joy	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Micaela Shipping Corporation	Navios Harmony	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Pearl Shipping Corporation	Navios Sun	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Velvet Shipping Corporation	Navios La Paix	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Perigiali Navigation Limited <sup>(12)</sup>	Navios Beaufiks	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Finian Navigation Co. <sup>(12)</sup>	Navios Ace	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Ammos Shipping Corp.	Navios Prosperity I	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Wave Shipping Corp.	Navios Libertas	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Casual Shipholding Co. <sup>(12)</sup>	Navios Sol	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Avery Shipping Company	Navios Symphony	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Coasters Ventures Ltd.	Navios Christine B	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Ianthe Maritime S.A.	Navios Aster	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Rubina Shipping Corporation	Hyundai Hongkong	Marshall Is.	01/01 –	01/01 –

Topaz Shipping Corporation	Hyundai Singapore	Marshall Is.	06/30 01/01 – 06/30	06/30 01/01 – 06/30
Beryl Shipping Corporation	Hyundai Tokyo	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Cheryl Shipping Corporation	Hyundai Shanghai	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Christal Shipping Corporation	Hyundai Busan	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Dune Shipping Corp. <sup>(6)</sup>	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Citrine Shipping Corporation	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Cavalli Navigation Inc.	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Seymour Trading Limited <sup>(32)</sup>	Navios Altair I	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Goldie Services Company	Navios Symmetry	Marshall Is.	01/01 – 06/30	01/01 – 06/30

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Andromeda Shiptrade Limited			01/01 – 01/01 –	01/01 – 01/01 –
	Navios Apollon I	Marshall Is.	06/30	06/30
Esmeralda Shipping Corporation	Navios Sphera	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Triangle Shipping Corporation	Navios Mars	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Oceanus Shipping Corporation <sup>(7)(19)</sup>	Castor N	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Cronus Shipping Corporation <sup>(7)</sup>	Protostar N	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Leto Shipping Corporation <sup>(7)(17)</sup>	Esperanza N	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Dionysus Shipping Corporation <sup>(7)(30)</sup>	Harmony N	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Prometheus Shipping Corporation <sup>(7)(18)</sup>	Solar N	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Camelia Shipping Inc. <sup>(8)</sup>	Navios Camelia	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Anthos Shipping Inc. <sup>(8)</sup>	Navios Anthos	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Azalea Shipping Inc. <sup>(8)(31)</sup>	Navios Azalea	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Amaryllis Shipping Inc. <sup>(8)</sup>	Navios Amaryllis	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Zaffre Shipping Corporation <sup>(14)</sup>	Serenitas N	Marshall Is.	01/01 – 06/30	06/29 – 06/30
Wenge Shipping Corporation <sup>(14)(20)</sup>	Joie N	Marshall Is.	01/01 – 06/30	06/29 – 06/30
Sunstone Shipping Corporation <sup>(14)</sup>	Copernicus N	Marshall Is.	01/01 – 06/30	06/29 – 06/30
Fandango Shipping Corporation <sup>(14)</sup>	Unity N	Marshall Is.	01/01 – 06/30	06/29 – 06/30
Flavescent Shipping Corporation <sup>(14)</sup>	Odysseus N	Marshall Is.	01/01 – 06/30	06/29 – 06/30
Emery Shipping Corporation <sup>(15)</sup>	Navios Gem	Marshall Is.	01/01 – 06/30	—
Rondine Management Corp. <sup>(15)</sup>	Navios Victory	Marshall Is.	01/01 – 06/30	—
Solange Shipping Ltd. <sup>(16)</sup>	Navios Avior	Marshall Is.	03/30 – 06/30	—
Mandora Shipping Ltd. <sup>(16)</sup>	Navios Centaurus	Marshall Is.	03/30 – 06/30	—
Olympia II Navigation Limited	Navios Domino	Marshall Is.	03/31 – 06/30	—
Pingel Navigation Limited	Navios Delight	Marshall Is.	03/31 – 06/30	—
Ebba Navigation Limited	Navios Destiny	Marshall Is.	03/31 – 06/30	—
Clan Navigation Limited	Navios Devotion	Marshall Is.	03/31 – 06/30	—
Sui An Navigation Limited <sup>(23)</sup>	Navios Dedication	Marshall Is.	03/31 – 06/30	—
Bertyl Ventures Co.	Navios Azure	Marshall Is.	03/31 – 06/30	—
Silvanus Marine Company	Navios Summer	Marshall Is.	03/31 – 06/30	—
Anthimar Marine Inc.	Navios Amarillo	Marshall Is.	03/31 – 06/30	—
Enplo Shipping Limited	Navios Verde	Marshall Is.	03/31 – 06/30	—
Morven Chartering Inc.	Navios Verano	Marshall Is.	03/31 – 06/30	—
Rodman Maritime Corp.	Navios Spring	Marshall Is.	03/31 – 06/30	—
Isolde Shipping Inc.	Navios Indigo	Marshall Is.	03/31 – 06/30	—
Velour Management Corp.	Navios Vermilion	Marshall Is.	03/31 – 06/30	—
Evian Shiptrade Ltd.	Navios	Marshall Is.	03/31 –	—

	Amaranth		06/30	
Theros Ventures Limited	Navios Lapis	Marshall Is.	03/31 – 06/30	—
Legato Shipholding Inc.	Navios Tempo	Marshall Is.	03/31 – 06/30	—
Inastros Maritime Corp.	Navios Chrysalis	Marshall Is.	03/31 – 06/30	—
Zoner Shiptrade S.A.	Navios Dorado	Marshall Is.	03/31 – 06/30	—
Jasmer Shipholding Ltd.	Navios Nerine	Marshall Is.	03/31 – 06/30	—
Thetida Marine Co.	Navios Magnolia	Marshall Is.	03/31 – 06/30	—
Jaspero Shiptrade S.A.	Navios Jasmine	Marshall Is.	03/31 – 06/30	—
Peran Maritime Inc.	Navios Felicitas	Marshall Is.	03/31 – 06/30	—
Nefeli Navigation S.A.	Navios Unison	Marshall Is.	03/31 – 06/30	—
Fairy Shipping Corporation	Navios Utmost	Marshall Is.	03/31 – 06/30	—
Limestone Shipping Corporation	Navios Unite	Marshall Is.	03/31 – 06/30	—
Crayon Shipping Ltd	Navios Miami	Marshall Is.	03/31 – 06/30	—
Chernava Marine Corp.	Bahamas	Marshall Is.	03/31 – 06/30	—
Proteus Shiptrade S.A	Bermuda	Marshall Is.	03/31 – 06/30	—
Vythos Marine Corp.	Navios Constellation	Marshall Is.	03/31 – 06/30	—

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Prosperity Shipping Corporation	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Aldebaran Shipping Corporation	—	Marshall Is.	01/01 – 06/30	01/01 – 06/30
JTC Shipping and Trading Ltd. <sup>(11)</sup>	Holding Company	Malta	01/01 – 06/30	01/01 – 06/30
Navios Maritime Partners L.P.	N/A	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Navios Maritime Operating LLC.	N/A	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Navios Partners Finance (US) Inc.	Co- Borrower	Delaware	01/01 – 06/30	01/01 – 06/30
Navios Partners Europe Finance Inc.	Sub- Holding Company	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Navios Maritime Containers Sub L.P.	Sub- Holding Company	Marshall Is.	03/31 – 06/30	—
Navios Partners Containers Finance Inc.	Sub- Holding Company	Marshall Is.	03/31 – 06/30	—
Boheme Navigation Company	Sub- Holding Company	Marshall Is.	03/31 – 06/30	—
Navios Partners Containers Inc.	Sub- Holding Company	Marshall Is.	03/31 – 06/30	—
Iliada Shipping S.A.	Operating Company	Marshall Is.	03/31 – 06/30	—
Vinetree Marine Company	Operating Company	Marshall Is.	03/31 – 06/30	—
Afros Maritime Inc.	Operating Company	Marshall Is.	03/31 – 06/30	—
Cavos Navigation Co. <sup>(9)</sup>	Navios Libra	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Perivoia Shipmanagement Co. <sup>(10)</sup>	Navios Amitie	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Pleione Management Limited <sup>(10)</sup>	Navios Star	Marshall Is.	01/01 – 06/30	01/01 – 06/30
Bato Marine Corp. <sup>(21)</sup>	TBN 1	Marshall Is.	03/05 – 06/30	—
Agron Navigation Company <sup>(21)</sup>	TBN 2	Marshall Is.	03/05 – 06/30	—
Teuta Maritime S.A. <sup>(21)</sup>	TBN 3	Marshall Is.	03/05 – 06/30	—
Ambracia Navigation Company <sup>(21)</sup>	TBN 4	Marshall Is.	03/05 – 06/30	—
Artala Shipping Co. <sup>(22)</sup>	TBN 5	Marshall Is.	03/05 – 06/30	—
Migen Shipmanagement Ltd.	Sub- Holding Company	Marshall Is.	03/05 – 06/30	—
Bole Shipping Corporation <sup>(24)</sup>	Spectrum N	Marshall Is.	04/28 – 06/30	—
Brandeis Shipping Corporation <sup>(24)</sup>	Ete N	Marshall Is.	05/10 – 06/30	—
Buff Shipping Corporation <sup>(24)</sup>	Fleur N	Marshall Is.	05/10 – 06/30	—
Morganite Shipping Corporation <sup>(25)</sup>	TBN 6	Marshall Is.	06/01 – 06/30	—
Balder Maritime Ltd. <sup>(26)</sup>	Navios Koyo	Marshall Is.	06/04 – 06/30	—
Melpomene Shipping Corporation <sup>(27)</sup>	TBN 8	Marshall Is.	06/23 – 06/30	—
Urania Shipping Corporation <sup>(27)</sup>	TBN 9	Marshall Is.	06/23 – 06/30	—
Terpsichore Shipping Corporation <sup>(28)</sup>	TBN 10	Marshall Is.	06/23 – 06/30	—
Erato Shipping Corporation <sup>(28)</sup>	TBN 11	Marshall Is.	06/23 – 06/30	—

- (1) The vessel was sold on December 14, 2018.
- (2) The vessel was sold on December 4, 2018.
- (3) The vessel was sold on December 21, 2017.
- (4) The vessel was sold on April 23, 2019.
- (5) The vessel was sold on April 21, 2017.
- (6) The vessel was sold on January 12, 2017.
- (7) The vessels were acquired on December 13, 2019, following the liquidation of Navios Europe I.
- (8) The vessels were acquired on December 16, 2019.
- (9) The vessel was delivered on July 24, 2019 (see Note 17 - Leases).
- (10) The vessels were delivered on May 28, 2021 and June 10, 2021 (see Note 17 - Leases).
- (11) Not a vessel-owning subsidiary and only holds right to charter-in contracts.
- (12) Vessels under the sale and leaseback transaction (see Note 17 - Leases).
- (13) The vessel was sold on December 10, 2020 (see Note 5 – Vessels, net).
- (14) The vessels were acquired on June 29, 2020, following the liquidation of Navios Europe II (see Note 5 - Vessels, net).
- (15) The vessels were acquired on September 30, 2020, from Navios Holdings (see Note 5 - Vessels, net).
- (16) The vessels were acquired on March 30, 2021, from Navios Holdings (see Note 5 – Vessels, net).
- (17) The vessel was sold on January 13, 2021(see Note 5 – Vessels, net).



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- (18) The vessel was sold on January 28, 2021 (see Note 5 – Vessels, net).
- (19) The vessel was sold on February 10, 2021 (see Note 5 – Vessels, net).
- (20) The vessel was sold on March 25, 2021 (see Note 5 – Vessels, net).
- (21) Expected to be delivered by the second half of 2022.
- (22) Expected to be delivered in the second quarter of 2023.
- (23) The vessel was sold on July 31, 2021.
- (24) The vessels were acquired on May 10, 2021 (see Note 5 – Vessels, net).
- (25) Expected to be delivered in the first quarter of 2023.
- (26) The vessel was acquired on June 4, 2021, from Navios Holdings (see Note 5 - Vessels, net).
- (27) Expected to be delivered by the second half of 2023.
- (28) Expected to be delivered by the first half of 2024.
- (29) The vessel was acquired on June 30, 2021, from Navios Holdings (see Note 5 - Vessels, net).
- (30) The vessel was sold on August 16, 2021.
- (31) The vessel was sold on August 13, 2021.
- (32) The vessel was agreed to be sold and the sale is expected to be completed during the third quarter of 2021.

**Investments in Affiliates:** Affiliates are entities over which the Company generally has between 20% and 50% of the voting rights, or over which the Company has significant influence, but it does not exercise control. Investments in these entities are accounted for under the equity method of accounting. Under this method, the Company records an investment in the stock of an affiliate at cost, and adjusts the carrying amount for its share of the earnings or losses of the affiliate subsequent to the date of investment and reports the recognized earnings or losses in income. Dividends received from an affiliate reduce the carrying amount of the investment. The Company recognizes gains and losses in earnings for the issuance of shares by its affiliates, provided that the issuance of such shares qualifies as a sale of such shares. When the Company's share of losses in an affiliate equals or exceeds its interest in the affiliate, the Company does not recognize further losses, unless the Company has incurred obligations or made payments on behalf of the affiliate. For the six month period ended June 30, 2020, the amount of \$6,900 was recognized as impairment of receivable in affiliated company, related to the other-than-temporary impairment recognized in the Navios Partners' receivable from Navios Europe II.

**Affiliates included in the financial statements accounted for under the equity method:** In the consolidated financial statements of Navios Partners, the following entities are included as affiliates and are accounted for under the equity method for such periods: (i) Navios Containers and its subsidiaries (ownership interest as of June 30, 2020 was 33.5%), following the completion of the merger, as of March 31, 2021, Navios Containers was acquired by Navios Partners and ownership was 100%; and (ii) Navios Europe II and its subsidiaries (ownership interest through the date of its liquidation on June 29, 2020 was 5.0%) (see Note 3 – Acquisition of Navios Containers).

**Revenue and Expense Recognition:** On January 1, 2018, the Company adopted the provisions of ASC 606 "Revenue from Contracts with Customers" using the modified retrospective approach. In doing so, the Company makes judgments including identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price, and allocating the transaction price to each performance obligation. Revenue is recognized when (or as) the Company transfers promised goods or services to its customers in amounts that reflect the consideration to which the company expects to be entitled to in exchange for those goods or services, which occurs when (or as) the Company satisfies its contractual obligations and transfers control of the promised goods or services to its customers. Revenues are recognized to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In determining the appropriate amount of revenue to be recognized as it fulfills its obligations under its agreements, the Company performs the following steps: (i) identification of the promised goods or services in the contract; (ii) determination of whether the promised goods or services are performance obligations, including whether they are distinct in the context of the contract; (iii) measurement of the transaction price, including the constraint on variable consideration; (iv) allocation of the transaction price to the performance obligations based on estimated selling prices; and (v) recognition of revenue when (or as) the Company satisfies each performance obligation.

The Company's contract revenues from time chartering and pooling arrangements are governed by ASU 2016-02 (ASC 842) "Leases". Upon adoption of ASC 606 and ASC 842, the timing and recognition of earnings from the pool arrangements and time charter contracts to which the Company is party did not change from previous practice. The Company has determined to recognize lease revenue as a combined single lease component for all time charters (operating leases) as the related lease component and non-lease components will have the same timing and pattern of the revenue recognition of the combined single lease component. The performance obligations in a time charter contract are satisfied over term of the contract beginning when the vessel is delivered to the charterer until it is redelivered back to the Company.

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*Revenue from time chartering*

Revenues from time chartering of vessels are accounted for as operating leases and are thus recognized on a straight line basis as the average lease revenue over the rental periods of such charter agreements, as service is performed. A time charter involves placing a vessel at the charterers' disposal for a period of time during which the charterer uses the vessel in return for the payment of a specified daily hire rate. Short period charters for less than three months are referred to as spot-charters. Charters extending three months to a year are generally referred to as medium-term charters. All other charters are considered long-term. Under time charters, operating costs such as for crews, maintenance and insurance are typically paid by the owner of the vessel. Revenue from time chartering of vessels amounted to \$145,241 and \$45,679 for the three month periods ended June 30, 2021 and 2020, respectively. Revenue from time chartering of vessels amounted to \$207,740 and \$91,328 for the six month periods ended June 30, 2021 and 2020, respectively.

*Revenue from voyage contracts*

Under a voyage charter, a vessel is provided for the transportation of specific goods between specific ports in return for payment of an agreed upon freight per ton of cargo. Upon adoption of ASC 606, the Company recognizes revenue ratably from port of loading to when the charterer's cargo is discharged as well as defer costs that meet the definition of "costs to fulfill a contract" and relate directly to the contract. Revenue from voyage contracts amounted to \$4,389 and \$306 for the three month periods ended June 30, 2021 and 2020, respectively. Revenue from voyage contracts amounted to \$5,609 and \$306 for the six month periods ended June 30, 2021 and 2020, respectively.

*Pooling arrangements*

For vessels operating in pooling arrangements, the Company earns a portion of total revenues generated by the pool, net of expenses incurred by the pool. The amount allocated to each pool participant vessel, including the Company's vessels, is determined in accordance with an agreed-upon formula, which is determined by points awarded to each vessel in the pool based on the vessel's age, design and other performance characteristics. Revenue under pooling arrangements is accounted for as variable rate operating leases on the accrual basis and is recognized when an agreement with the pool exists, price is fixed, service is provided and the collectability is reasonably assured. The allocation of such net revenue may be subject to future adjustments by the pool however, such changes are not expected to be material. The Company recognizes net pool revenue on a monthly and quarterly basis, when the vessel has participated in a pool during the period and the amount of pool revenue can be estimated reliably based on the pool report. Revenue from vessels operating in pooling arrangements amounted to \$2,379 and \$564 for the three month periods ended June 30, 2021 and 2020, respectively. Revenue from vessels operating in pooling arrangements amounted to \$3,723 and \$1,405 for the six month periods ended June 30, 2021 and 2020, respectively.

*Revenue from profit-sharing*

Profit-sharing revenues are calculated at an agreed percentage of the excess of the charterer's average daily income (calculated on a quarterly or semi-annual basis) over an agreed amount and accounted for on an accrual basis based on provisional amounts and for those contracts that provisional accruals cannot be made due to the nature of the profit sharing elements, these are accounted for on the actual cash settlement or when such revenue becomes determinable. There was no profit sharing revenue for each of three and six month periods ended June 30, 2021 and June 30, 2020.

Revenues are recorded net of address commissions. Address commissions represent a discount provided directly to the charterers based on a fixed percentage of the agreed upon charter or freight rate. Since address commissions represent a discount (sales incentive) on services rendered by the Company and no identifiable benefit is received in exchange for the consideration provided to the charterer, these commissions are presented as a reduction of revenue.

***Recent Accounting Pronouncements:***

These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and related notes included in Navios Partners' Annual Report on Form 20-F for the year ended December 31, 2020.

**NOTE 3– ACQUISITION OF NAVIOS CONTAINERS**

On March 31, 2021, Navios Partners completed the merger contemplated by the Agreement and Plan of Merger (the "Merger Agreement"), dated as of December 31, 2020, by and among Navios Partners, its direct wholly-owned subsidiary NMM Merger Sub LLC ("Merger Sub"), Navios Maritime Containers L.P. ("Navios Containers") and Navios Maritime Containers GP LLC, Navios Containers' general partner. Pursuant to the Merger Agreement, Merger Sub merged with and into Navios Containers, with Navios Containers continuing as the surviving partnership. As a result of the merger, Navios Containers became a wholly-owned subsidiary of Navios Partners. Pursuant to the terms of the Merger Agreement, each outstanding common unit of Navios Containers that was held by a unitholder other than Navios Partners, Navios Containers and their respective subsidiaries was converted into the right to receive 0.39 of a common unit of Navios Partners.

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Navios Partners accounted for the merger “as a business combination achieved in stages”, which results in the application of the “acquisition method,” as defined under ASC 805, Business Combinations. Navios Partners’ previously held equity interest in Navios Containers was remeasured to its fair value at March 31, 2021, the date the controlling interest was acquired and the resulting gain was recognized in earnings. Under the acquisition method, the fair value of the consideration paid by Navios Partners in connection with the transaction was allocated to Navios Containers’ net assets based on their estimated fair values at the date of the completion of the merger. The purchase price allocation is subject to finalization of Navios Partners valuation of the assets acquired and liabilities assumed. The excess of the fair value of the identifiable net assets acquired of \$342,674 over the total purchase price consideration of \$298,621, resulted in a bargain purchase gain of \$44,053. The transaction resulted in a bargain purchase gain as a result of the share price of Navios Containers trading at a discount to their net asset value (“NAV”).

As of March 31, 2021, Navios Partners previously held interest of 35.7% in Navios Containers was remeasured to a fair value of \$106,997, resulting in revaluation gain of \$75,387 which along with the equity gain of \$5,452 from the operations of Navios Containers upon the closing date aggregate to a gain on acquisition of control in the amount of \$80,839 and is presented in, “Equity in net earnings of affiliated companies”, in the accompanying condensed Consolidated Statement of Operations. The acquisition of the remaining non-controlling interest of 64.3% through the issuance of newly issued common units in Navios Partners was recorded at a fair value of \$191,624 on the basis of 8,133,452 common units issued at a closing price per common unit of \$23.56 as of the closing date of the merger.

Since the completion of the merger on March 31, 2021, beginning from April 1, 2021, the results of operations of Navios Containers are included in Navios Partners’ condensed Consolidated Statements of Operations.

Transaction costs amounted to \$188 and have been expensed in the condensed consolidated statement of operations under the caption “General and administrative expenses” in the accompanying condensed Consolidated Statement of Operations.

If the acquisition had been consummated as of January 1, 2020, Navios Partners’ pro-forma revenues and net income for the six months period ended June 30, 2021 would have been \$260,725 and \$113,795, respectively, and for the six months period ended June 30, 2020 would have been \$162,090 and \$53,393, respectively. These pro-forma results do not include non-recurring items directly related to the business acquisition as follows: (a) the gain on remeasurement of the previously held interest on Navios Containers and the equity gain from the operations of Navios Containers upon the closing date in the amount of \$80,839; and (b) the bargain purchase gain in the amount of \$44,053. The unaudited pro forma results are for comparative purposes only and do not purport to be indicative of the results that would have actually been obtained if the acquisition had occurred at the beginning of the period presented. In addition, these results are not intended to be a projection of future results and do not reflect any synergies that might be achieved from the combined operations.

The following table summarizes the consideration exchanged and the fair value of assets acquired and liabilities assumed on March 31, 2021:

<b>Purchase price:</b>	
Fair value of previously held interest (35.7%)	\$ 106,997
Equity issuance (8,133,452 Navios Partners units * \$23.56)	191,624
<b>Total purchase price</b>	<b>298,621</b>
<b>Fair value of assets and liabilities acquired:</b>	
Vessels	770,981
Current assets (including cash of \$10,282)	29,033
Unfavourable lease terms	(224,490)
Long term debt assumed (including current portion)	(227,434)
Current liabilities	(5,416)
<b>Fair value of net assets acquired</b>	<b>342,674</b>
<b>Bargain purchase gain</b>	<b>\$ 44,053</b>

The acquired intangible, listed below, as determined at the acquisition date and are amortized under the straight line method over the period indicated below:

	<u>Within One</u> <u>Year</u>	<u>Year Two</u>	<u>Year Three</u>	<u>Year Four</u>	<u>Year Five</u>	<u>Year Six</u>	<u>Total</u>
<b>Time charters with unfavorable lease terms</b>	\$ 126,710	52,501	20,431	12,462	11,445	941	<b>\$ 224,490</b>

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Intangible liabilities subject to amortization are amortized using straight line method over their estimated useful lives to their estimated residual value of zero.

The following is a summary of the acquired identifiable intangible liability:

Description	Amount
Unfavorable lease terms	\$ (224,490)

**NOTE 4 – CASH AND CASH EQUIVALENTS**

Cash and cash equivalents consist of the following:

	June 30, 2021	December 31, 2020
Cash and cash equivalents	\$ 227,117	\$ 19,303
Restricted cash	5,736	11,425
<b>Total cash and cash equivalents and restricted cash</b>	<b>\$ 232,853</b>	<b>\$ 30,728</b>

Restricted cash amounted to \$5,736 and relates to amounts held in retention accounts in order to service debt and interest payments, as required by certain of Navios Partners' credit facilities.

Cash deposits and cash equivalents in excess of amounts covered by government-provided insurance are exposed to loss in the event of non-performance by financial institutions. Navios Partners does maintain cash deposits and equivalents in excess of government-provided insurance limits. Navios Partners also minimizes exposure to credit risk by dealing with a diversified group of major financial institutions.

**NOTE 5 – VESSELS, NET**

Vessels	Cost	Accumulated Depreciation	Net Book Value
<b>Balance December 31, 2019</b>	<b>\$ 1,370,756</b>	<b>\$ (308,498)</b>	<b>\$ 1,062,258</b>
Additions/ (Depreciation)	110,416	(54,884)	55,532
Disposals	(5,233)	158	(5,075)
Vessels impairment loss	(161,199)	89,622	(71,577)
<b>Balance December 31, 2020</b>	<b>\$ 1,314,740</b>	<b>\$ (273,602)</b>	<b>\$ 1,041,138</b>
Additions/ (Depreciation)	957,166	(34,624)	922,542
Disposals	(33,979)	776	(33,203)
<b>Balance June 30, 2021</b>	<b>\$ 2,237,927</b>	<b>\$ (307,450)</b>	<b>\$ 1,930,477</b>

During the six month periods ended June 30, 2021 and 2020, the Company capitalized certain extraordinary fees and costs related to vessels' regulatory requirements, including ballast water treatment system installation and exhaust gas cleaning system installation, amounted to \$4,865 and \$1,519, respectively (see Note 13 – Transactions with related parties and affiliates).

**Acquisition of Vessels**

**2021**

On June 30, 2021, Navios Partners acquired the Navios Ray, a 2012-built Capesize vessel of 179,515 dwt and the Navios Bonavis, a 2009-built Capesize vessel of 180,022 dwt, from its affiliate, Navios Holdings, for an aggregate purchase price of \$58,000 (see Note 13 — Transactions with related parties and affiliates).

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On May 10, 2021, Navios Partners acquired the Ete N, a 2012-built Containership of 2,782 TEU, the Fleur N, a 2012-built Containership of 2,782 TEU and the Spectrum N, a 2009-built Containership of 2,546 TEU from Navios Acquisition, for an aggregate purchase price of \$55,500 (see Note 13 — Transactions with related parties and affiliates).

On June 4, 2021, Navios Partners acquired the Navios Koyo, a 2011-built Capesize vessel of 181,415 dwt, from its affiliate, Navios Holdings, for a purchase price of \$28,500 (see Note 13 – Transactions with Related Parties).

Following the completion of the merger with Navios Containers on March 31, 2021, the 29-vessel fleet of Navios Containers was included in Navios Partners owned fleet (see Note 3 — Acquisition of Navios Containers).

On March 30, 2021, Navios Partners acquired the Navios Avior, a 2012 built Panamax vessel of 81,355 dwt, and the Navios Centaurus, a 2012 built Panamax vessel of 81,472 dwt, from its affiliate, Navios Holdings, for a purchase price of \$39,250 (see Note 13 — Transactions with related parties and affiliates).

The acquisition of the vessels from Navios Holdings (except from the Navios Koyo) and Navios Acquisition was effected through the acquisition of all of the capital stock of the respective vessel-owning companies, which held the ownership and other contractual rights and obligations related to each of the acquired vessels. Management accounted for each acquisition as an asset acquisition under ASC 805.

## **2020**

On September 30, 2020, Navios Partners acquired the Navios Gem, a 2014-built Capesize vessel of 181,336 dwt and the Navios Victory, a 2014-built Panamax vessel of 77,095 dwt, from its affiliate, Navios Holdings, for a purchase price of \$51,000 (see Note 13 — Transactions with related parties and affiliates).

On June 29, 2020, Navios Partners acquired five drybulk vessels, three Panamax and two Ultra-Handymax, for a fair value of \$56,050 in total, following the liquidation of Navios Europe II (see Note 13 — Transactions with related parties and affiliates).

### ***Sale of Vessels***

## **2021**

On March 25, 2021, the Company sold the Joie N, a 2011-built Ultra-Handymax vessel of 56,557 dwt, to an unrelated third party, for a net sale price of \$8,190.

On February 10, 2021, the Company sold the Castor N, a 2007-built Containership of 3,091 TEU to an unrelated third party for a net sale price of \$8,869.

On January 28, 2021, the Company sold the Solar N a 2006-built Containership of 3,398 TEU to an unrelated third party for a net sale price of \$11,074.

On January 13, 2021, the Company sold the Esperanza N, a 2008-built Containership of 2,007 TEU to an unrelated third party for a net sale price of \$4,559.

Following the sale of the vessels during the period ended June 30, 2021, the aggregate amount of \$511, was presented under the caption “Loss on sale of vessels” in the condensed Consolidated Statements of Operations.

## **2020**

On December 10, 2020, Navios Partners sold the Navios Soleil to an unrelated third party for a net sale price of \$8,183. Following the impairment loss of \$9,980, recognized as of December 31, 2020, no loss on sale occurred upon the sale of the vessel.

### ***Vessels impairment loss***

## **2021**

As of June 30, 2021, we concluded that events and circumstances did not trigger the existence of potential impairment of our vessels, mainly due to the market improvement. As a result, there was no impairment for the three and six month period ended June 30, 2021.

## **2020**

As of June 30, 2020, we concluded that events and circumstances triggered the existence of potential impairment of our vessels. These indicators included volatility in the charter market as well as the potential impact the current marketplace may have on our future operations.

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As a result, we performed step one of the impairment assessment of our vessels by comparing the undiscounted projected net operating cash flows for each vessel to its carrying value. As of June 30, 2020, our assessment concluded that step two of the impairment analysis was required for three containerhips held and used, as the undiscounted projected net operating cash flows did not exceed the carrying value. As a result, we recorded an impairment loss of \$6,800 for these vessels, being the difference between the fair value and the vessel's carrying value together with the carrying value of deferred drydock and special survey costs related to the vessel presented under the caption "Vessels impairment loss" in the Condensed Consolidated Statements of Operations.

**NOTE 6 – INTANGIBLE ASSETS AND LIABILITIES**

Intangible assets as of June 30, 2021 and December 31, 2020 consisted of the following:

	Cost	Accumulated Amortization	Net Book Value
<b>Favorable lease terms December 31, 2020</b>	<b>\$ 83,716</b>	<b>\$ (81,716)</b>	<b>\$ 2,000</b>
Additions/ (Amortization)	—	(583)	(583)
<b>Favorable lease terms June 30, 2021</b>	<b>\$ 83,716</b>	<b>\$ (82,299)</b>	<b>\$ 1,417</b>

Amortization expense of favorable lease terms for each of the periods ended June 30, 2021 and 2020 is presented in the following table:

	Three Month Period Ended		Six Month Period Ended	
	June 30, 2021	June 30, 2020	June 30, 2021	June 30, 2020
Favorable lease terms	\$ (292)	\$ (292)	\$ (583)	\$ (583)
<b>Total</b>	<b>\$ (292)</b>	<b>\$ (292)</b>	<b>\$ (583)</b>	<b>\$ (583)</b>

The aggregate amortization of the intangibles for the 12-month periods ended June 30 is estimated to be as follows:

Year	Amount
2022	1,166
2023	251
<b>Total</b>	<b>\$ 1,417</b>

Intangible assets subject to amortization are amortized using straight line method over their estimated useful lives to their estimated residual value of zero.

Intangible liabilities as of June 30, 2021 and December 31, 2020 consisted of the following:

	Cost	Accumulated Amortization	Net Book Value
<b>Unfavorable lease terms December 31, 2020</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>
Additions/ (Amortization)	224,490	(42,026)	182,464
<b>Unfavorable lease terms June 30, 2021</b>	<b>\$ 224,490</b>	<b>\$ (42,026)</b>	<b>\$ 182,464</b>

Amortization income of unfavorable lease terms for each of the periods ended June 30, 2021 and 2020 is presented in the following table:

	Three Month Period Ended		Six Month Period Ended	
	June 30, 2021	June 30, 2020	June 30, 2021	June 30, 2020
Unfavorable lease terms	\$ 42,026	—	\$ 42,026	—
<b>Total</b>	<b>\$ 42,026</b>	<b>—</b>	<b>\$ 42,026</b>	<b>—</b>

The aggregate amortization of the intangibles for the 12-month periods ended June 30 is estimated to be as follows:

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Year	Amount
2022	101,266
2023	42,729
2024	16,792
2025	12,204
2026	9,473
<b>Total</b>	<b>\$ 182,464</b>

Intangible liabilities subject to amortization are amortized using straight line method over their estimated useful lives to their estimated residual value of zero. The weighted average useful lives are 2.7 years for the remaining unfavorable lease terms.

**NOTE 7– BORROWINGS**

Borrowings as of June 30, 2021 and December 31, 2020 consisted of the following:

	June 30, 2021	December 31, 2020
Credit facilities	\$ 539,696	\$ 427,287
Financial liabilities	261,885	63,882
<b>Total borrowings</b>	<b>\$ 801,581</b>	<b>\$ 491,169</b>
Less: Current portion of long-term borrowings, net	(115,443)	(201,835)
Less: Deferred finance costs, net	(6,071)	(4,312)
<b>Long-term borrowings, net</b>	<b>\$ 680,067</b>	<b>\$ 285,022</b>

As of June 30, 2021, the total borrowings, net of deferred finance fees under the Navios Partners' credit facilities were \$795,510.

**Credit Facilities**

As of June 30, 2021, the Company had secured credit facilities with various banks with a total outstanding balance of \$539,696. The purpose of the facilities was to finance the acquisition of vessels or refinance existing indebtedness. All of the facilities are denominated in U.S. dollars and bear interest based on LIBOR plus spread ranging from 260 bps to 350 bps per annum. The facilities are repayable in either semi-annually or quarterly installments, followed by balloon payments with maturities, ranging from December 2022 to June 2026. See also the maturity table included below.

**Hellenic Bank Credit Facility:** On April 23, 2021, Navios Partners extended the Hellenic Bank Credit facility dated June 25, 2020 for an amount of \$8,900 in order to partially finance the acquisition of one containership from Navios Acquisition. On April 28, 2021, the amount of \$8,850 was drawn. The new credit facility is repayable in four consecutive quarterly instalments of approximately \$750 each, two consecutive quarterly installments of \$300 each and nine consecutive quarterly installments of approximately \$150 each with a final balloon payment of \$3,900 to be repaid on the last repayment date. The facility matures in the fourth quarter of 2024 and bears interest at LIBOR plus 300 bps per annum. As of June 30, 2021, the total outstanding balance was \$8,850.

**BNP Credit Facility:** On April 28, 2021, Navios Partners entered into new credit facility with BNP PARIBAS (the "BNP Credit Facility") for a total amount of \$40,000 to refinance the existing BNP Credit Facility dated June 26, 2017, as amended on April 9, 2019 and to finance the acquisition of two 2012 built 2,782 TEU containerships. On May 10, 2021, the full amount of the BNP Credit Facility was drawn. The new credit facility is repayable in 16 consecutive quarterly installments of \$1,429 each, with a final balloon payment of \$17,140 to be repaid on the last repayment date. The facility matures in the second quarter of 2025 and bears interest at LIBOR plus 285 bps per annum. As of June 30, 2021, the total outstanding balance was \$40,000.

**HCOB Credit Facility:** On May 11, 2021, Navios Partners entered into a new credit facility with Hamburg Commercial Bank for a total amount of up to \$160,000, in order to: (i) refinance its existing HCOB Credit Facility dated September 26, 2019; (ii) refinance the existing facility of one dry bulk vessel; and (iii) to partially finance the acquisition of one dry bulk vessel. On June 8, 2021, the full amount of the HCOB Credit Facility was drawn. The facility is repayable in eight consecutive quarterly installments of \$6,250 each and eight consecutive quarterly installments in the amount of \$3,750 each, with a final balloon payment of \$80,000 to be repaid on the last repayment date. The facility matures in the second quarter of 2025, bears interest at LIBOR plus 310 bps per annum. As of June 30, 2021, the total outstanding balance was \$160,000.

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**NBG Credit Facility:** On June 17, 2021, Navios Partners entered into a new credit facility with National Bank of Greece (the “NBG Credit Facility”) for a total amount of up to \$43,000, in order to refinance the existing credit facilities of six dry bulk vessels. On June 18, 2021, the full amount was drawn. The new credit facility is repayable in four consecutive quarterly installments of \$1,500 each followed by 16 consecutive quarterly installments of \$1,250 each, together with a final balloon payment of \$17,000 to be paid on the last repayment date. The facility matures in the second quarter of 2026 and bears interest at LIBOR plus 300 bps per annum up to maturity date. As of June 30, 2021, the total outstanding balance was \$43,000.

**CACIB Credit Facility:** On March 23, 2021, Navios Partners entered into a new credit facility with Credit Agricole Corporate and Investment Bank (“CACIB”), (the “CACIB \$58.0m Credit Facility”) of \$58,000 in order to refinance the CACIB \$33.0m Credit Facility and to partially finance the acquisition of the Navios Centaurus and the Navios Avior. On March 30, 2021, the full amount was drawn. The facility matures in the first quarter of 2026 and bears interest at LIBOR plus 300 bps per annum. As of June 30, 2021, the total outstanding balance was \$56,000 is repayable in one quarterly installment of \$2,000, followed by 18 consecutive quarterly installments of \$1,600 each, together with a final balloon payment of \$25,200 to be repaid on the last repayment date.

Amounts drawn are secured by first preferred mortgages on certain Navios Partners’ vessels and other collateral and are guaranteed by the respective vessel-owning subsidiaries. The credit facilities and certain financial liabilities contain a number of restrictive covenants that prohibit or limit Navios Partners from, among other things: incurring or guaranteeing indebtedness; entering into affiliate transactions; charging, pledging or encumbering the vessels; changing the flag, class, management or ownership of Navios Partners’ vessels; changing the commercial and technical management of Navios Partners’ vessels; selling or changing the beneficial ownership or control of Navios Partners’ vessels; not maintaining Navios Holdings’ (or its affiliates) ownership in Navios Partners of at least 5.0%; and subordinating the obligations under the credit facilities to any general and administrative costs relating to the vessels, including the fixed daily fee payable under the management agreement.

Navios Partners’ credit facilities and certain financial liabilities also require compliance with a number of financial covenants, including: (i) maintain a required security ranging over 111% to 140%; (ii) minimum free consolidated liquidity in an amount equal to at least \$500 per owned vessel and a number of vessels as defined in Navios Partners’ credit facilities and financial liabilities; (iii) maintain a ratio of EBITDA to interest expense of at least 2.00:1.00; (iv) maintain a ratio of total liabilities or total debt to total assets (as defined in the Company’s credit facilities) ranging of less than 0.75; and (v) maintain a minimum net worth to \$135,000.

It is an event of default under the credit facilities if such covenants are not complied with in accordance with the terms and subject to the prepayments or cure provisions of the facilities.

As of June 30, 2021, Navios Partners was in compliance with the financial covenants and/or the prepayments and/or the cure provisions, as applicable, in each of its credit facilities.

#### **Financial Liabilities**

On June 18, 2021, the Company entered into a new sale and leaseback agreement of \$15,000, with unrelated third parties for the Navios Bonavis, a 2009-built Capesize vessel of 180,022 dwt. Navios Partners has a purchase obligation to acquire the vessel at the end of the lease term and under ASC 842-40, the transfer of the vessel was determined to be a failed sale. In accordance with ASC 842-40, the Company did not derecognize the respective vessel from its balance sheet and accounted for the amount received under the sale and leaseback agreement as a financial liability. On June 28, 2021, the amount of \$15,000 was drawn. Navios Partners is obligated to make 72 consecutive monthly payments of approximately \$192, commencing as of June 2021. The agreement matures in the second quarter of 2027, with a purchase obligation of \$5,000 on the last repayment date. As of June 30, 2021, the outstanding balance under the sale and leaseback agreement of the Navios Bonavis was \$14,882.

On June 18, 2021, the Company entered into a new sale and leaseback agreement of \$18,500, with unrelated third parties for the Navios Ray, a 2012-built Capesize vessel of 179,515 dwt. Navios Partners has a purchase obligation to acquire the vessel at the end of the lease term and under ASC 842-40, the transfer of the vessel was determined to be a failed sale. In accordance with ASC 842-40, the Company did not derecognize the respective vessel from its balance sheet and accounted for the amount received under the sale and leaseback agreement as a financial liability. On June 28, 2021, the amount of \$18,500 was drawn. Navios Partners is obligated to make 108 consecutive monthly payments of approximately \$186 each, commencing as of June 2021. The agreement matures in the second quarter of 2030, with a purchase obligation of \$5,000 on the last repayment date. As of June 30, 2021, the outstanding balance under the sale and leaseback agreement of the Navios Ray was \$18,401.

The above financial liabilities have no financial covenants.

The maturity table below reflects the principal payments for the next five years and thereafter of all borrowings of Navios Partners outstanding as of June 30, 2021, based on the repayment schedules of the respective credit facilities and financial liabilities (as described above).

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Year	Amount
2022	117,603
2023	196,841
2024	148,528
2025	198,829
2026 and thereafter	139,780
<b>Total</b>	<b>\$ 801,581</b>

**NOTE 8 – FAIR VALUE OF FINANCIAL INSTRUMENTS**

The carrying value amounts of many of Navios Partners' financial instruments, including cash and cash equivalents, restricted cash, accounts receivable and accounts payable and amounts due to related parties approximate their fair value due primarily to the short-term maturity of the related instruments.

The following methods and assumptions were used to estimate the fair value of each class of financial instrument:

**Cash and cash equivalents:** The carrying amounts reported in the condensed Consolidated Balance Sheets for interest bearing deposits approximate their fair value because of the short maturity of these investments.

**Restricted Cash:** The carrying amounts reported in the condensed Consolidated Balance Sheets for interest bearing deposits approximate their fair value because of the short maturity of these investments.

**Amounts due from related parties, short-term:** The carrying amount of due from related parties, short-term reported in the balance sheet approximates its fair value due to the short-term nature of these receivables.

**Notes receivable, net of current portion:** The carrying amount of the fixed rate notes receivable approximate its fair value.

**Amounts due to related parties, short-term:** The carrying amount of due to related parties, short-term reported in the balance sheet approximates its fair value due to the short-term nature of these payables.

**Long-term borrowings, net:** The book value has been adjusted to reflect the net presentation of deferred finance fees. The outstanding balance of the floating rate loans continues to approximate its fair value, excluding the effect of any deferred finance fees.

The estimated fair values of the Navios Partners' financial instruments are as follows:

	June 30, 2021		December 31, 2020	
	Book Value	Fair Value	Book Value	Fair Value
Cash and cash equivalents	\$ 227,117	\$ 227,117	\$ 19,303	\$ 19,303
Restricted cash	\$ 5,736	\$ 5,736	\$ 11,425	\$ 11,425
Amounts due from related parties, short-term	—	—	\$ 5,000	\$ 5,000
Notes receivable, net of current portion	—	—	\$ 8,013	\$ 8,013
Amounts due to related parties, short-term	\$ (17,181)	\$ (17,181)	\$ (35,979)	\$ (35,979)
Long-term borrowings, net	\$ (795,510)	\$ (801,581)	\$ (486,857)	\$ (491,169)

**Fair Value Measurements**

The estimated fair value of our financial instruments that are not measured at fair value on a recurring basis, categorized based upon the fair value hierarchy, are as follows:

Level I: Inputs are unadjusted, quoted prices for identical assets or liabilities in active markets that we have the ability to access. Valuation of these items does not entail a significant amount of judgment.

Level II: Inputs other than quoted prices included in Level I that are observable for the asset or liability through corroboration with market data at the measurement date.

Level III: Inputs that are unobservable. The Company did not use any Level III inputs as of June 30, 2021 and December 31, 2020.

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Fair Value Measurements at June 30, 2021				
	Total	Level I	Level II	Level III
Cash and cash equivalents	\$ 227,117	\$ 227,117	\$ —	—
Restricted cash	\$ 5,736	\$ 5,736	\$ —	—
Amounts due to related parties, short-term <sup>(2)</sup>	\$ (17,181)	—	\$ (17,181)	—
Long-term borrowings, net <sup>(1)</sup>	\$ (801,581)	—	\$ (801,581)	—

Fair Value Measurements at December 31, 2020				
	Total	Level I	Level II	Level III
Cash and cash equivalents	\$ 19,303	\$ 19,303	—	—
Restricted cash	\$ 11,425	\$ 11,425	—	—
Amounts due from related parties, short-term <sup>(2)</sup>	\$ 5,000	—	\$ 5,000	—
Notes receivable, net of current portion <sup>(3)</sup>	\$ 8,013	—	\$ 8,013	—
Amounts due to related parties, short-term	\$ (35,979)	—	\$ (35,979)	—
Long-term borrowings, net <sup>(1)</sup>	\$ (491,169)	—	\$ (491,169)	—

- (1) The fair value of the Company's debt is estimated based on currently available debt with similar contract terms, interest rate and remaining maturities as well as taking into account the Company's creditworthiness.
- (2) The fair value of the Company's short-term amounts due from/ to related parties is estimated based on currently available debt with similar contract terms, interest rate and remaining maturities as well as taking into account the counterparty's creditworthiness.
- (3) The fair value is estimated based on currently available information on the Company's counterparty with similar contract terms, interest rate and remaining maturities.

The following table sets forth the Company's assets that are measured at fair value on a non - recurring basis categorized by fair value hierarchy level. The fair value of the vessels was determined based on valuations from independent third party brokers. As required by the fair value guidance, assets are categorized in their entirety based on the lowest level of input that is significant to the fair value measurement.

As of June 30, 2021, there were no assets measured at fair value on a non-recurring basis.

As of December 31, 2020, the Company's assets measured at fair value on a non-recurring basis were:

Fair Value Measurements at December 31, 2020				
	Total	Level I	Level II	Level III
Vessels, net	\$ 62,789	\$ 13,428	\$ 49,361	—

#### NOTE 9 – ISSUANCE OF UNITS

On May 21, 2021, Navios Partners entered into a new Continuous Offering Program Sales Agreement (“\$110.0m Sales Agreement”) for the issuance and sale from time to time through its agent common units having an aggregate offering price of up to \$110,000. As of June 30, 2021, since the commencement of the \$110.0m Sales Agreement, Navios Partners has issued 2,914,022 units and received net proceeds of \$78,134. Pursuant to the issuance of the common units, Navios Partners issued 59,470 general partnership units to its General Partner in order to maintain its 2.0% general partner interest. The net proceeds from the issuance of the general partnership units were approximately \$1,636.

On April 9, 2021, Navios Partners entered into a Continuous Offering Program Sales Agreement (“\$75.0m Sales Agreement”) for the issuance and sale from time to time through its agent common units having an aggregate offering price of up to \$75,000. As of June 30, 2021, since the commencement of the \$75.0m Sales Agreement, Navios Partners has issued 2,437,624 units and received net proceeds of \$73,117. Pursuant to the issuance of the common units, Navios Partners issued 49,747 general partnership units to its General Partner in order to maintain its 2.0% general partner interest. The net proceeds from the issuance of the general partnership units were approximately \$1,530. No amounts remained available for sale under the \$75.0m Sales Agreement.

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On November 18, 2016, Navios Partners entered into a Continuous Offering Program Sales Agreement (the "\$25.0m Sales Agreement") for the issuance and sale from time to time through its agent common units having an aggregate offering price of up to \$25,000. The \$25.0m Sales Agreement was amended on August 3, 2020 to address the updated shelf registration statement pursuant to which sales are made. As of June 30, 2021 and December 31, 2020, since the date of the amended \$25.0m Sales Agreement, Navios Partners has issued 1,286,857 and 357,508 units, respectively, and received net proceeds of \$23,918 and \$2,231, respectively. Pursuant to the issuance of the common units, Navios Partners issued 26,265 and 7,298 general partnership units to its general partner as of June 30, 2021 and December 31, 2020, respectively, in order to maintain its 2.0% general partner interest. The net proceeds from the issuances of the general partnership units were \$501 and \$47 as of June 30, 2021 and December 31, 2020, respectively. No amounts remained available for sale under the \$25.0m Sales Agreement.

Pursuant to the terms of the Merger Agreement, each outstanding common unit of Navios Containers that was held by a unitholder other than Navios Partners, Navios Containers and their respective subsidiaries was converted into the right to receive 0.39 of a common unit of Navios Partners. As a result of the merger, 8,133,452 common units of Navios Partners were issued to former public unitholders of Navios Containers. Pursuant to the issuance of the common units, Navios Partners issued 165,989 general partner units, resulting in net proceeds of \$3,911.

In January 2019, the Board of Directors of Navios Partners authorized a common unit repurchase program for up to \$50,000 of the Company's common units over a two year period. The program did not require any minimum repurchase or any specific number of common units and could be suspended or reinstated at any time in Navios Partners' discretion and without notice. Repurchases were subject to restrictions under Navios Partners' credit facilities. As of June 30, 2021 and 2020, Navios Partners had repurchased and cancelled 312,952 common units on a split adjusted basis, for a total cost of approximately \$4,499. There were no repurchases during the six month period ended June 30, 2021, and the program expired in January 2021.

On April 25, 2019, Navios Partners announced that its Board of Directors had approved 1-for-15 reverse stock split of its issued and outstanding shares of common units and general partner units. The reverse stock split was effective on May 21, 2019 and the common units commenced trading on such date on a split adjusted basis.

The effect of compensation expense arising from the restricted common units granted in December 2019, 2018 and 2017 and February 2019, amounted to \$116 and \$234 for the three and six month periods ended June 30, 2021 and was presented under the caption "General and administrative expenses" in the condensed Consolidated Statements of Operations.

The effect of compensation expense arising from the restricted common units granted in December 2019, 2018 and 2017 and February 2019, amounted to \$238 and \$483 for the three and six month periods ended June 30, 2020 and was presented under the caption "General and administrative expenses" in the condensed Consolidated Statements of Operations.

As of June 30, 2021, the estimated compensation cost relating to service conditions of non-vested restricted common units granted in 2017, 2018 and 2019 not yet recognized was \$345.

Restricted common units outstanding and not vested were 86,350 units, on a split adjusted basis, as of June 30, 2021.

As of June 30, 2021, Navios Holdings held 9.9% common unit interest in Navios Partners and the General Partner owned 2.0% general partner interest in Navios Partners.

#### **NOTE 10 – SEGMENT INFORMATION**

Navios Partners reports financial information and evaluates its operations by charter revenues. Navios Partners does not use discrete financial information to evaluate operating results for each type of charter or by sector. As a result, management reviews operating results solely by revenue per day and operating results of the fleet and thus Navios Partners has determined that it operates under one reportable segment.

The following table sets out operating revenue by geographic region for Navios Partners' reportable segment. Revenue is allocated on the basis of the geographic region in which the customer is located. Drybulk and Containerships operate worldwide. Revenues from specific geographic region, which contribute over 10% of total revenue, are disclosed separately.

##### **Revenue by Geographic Region**

Vessels operate on a worldwide basis and are not restricted to specific locations. Accordingly, it is not possible to allocate the assets of these operations to specific countries.

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	Three Month Period ended June 30, 2021	Three Month Period ended June 30, 2020	Six Month Period ended June 30, 2021	Six Month Period ended June 30, 2020
Asia	\$ 86,858	\$ 29,495	\$ 124,940	\$ 58,022
Europe	51,803	12,801	72,465	27,351
North America	13,348	4,123	19,667	7,536
Australia	—	130	—	130
<b>Total</b>	<b>\$ 152,009</b>	<b>\$ 46,549</b>	<b>\$ 217,072</b>	<b>\$ 93,039</b>

**NOTE 11 – INCOME TAXES**

Marshall Islands, Malta and Liberia do not impose a tax on international shipping income. Under the laws of Marshall Islands, Malta and Liberia, the countries of the vessel-owning subsidiaries' incorporation and vessels' registration, the vessel-owning subsidiaries are subject to registration and tonnage taxes, which have been included in vessel operating expenses in the accompanying condensed Consolidated Statements of Operations.

In accordance with the currently applicable Greek law, foreign flagged vessels that are managed by Greek or foreign ship management companies having established an office in Greece are subject to duties towards the Greek state, which are calculated on the basis of the relevant vessel's tonnage. The payment of said duties exhausts the tax liability of the foreign ship owning company and the relevant manager against any tax, duty, charge or contribution payable on income from the exploitation of the foreign flagged vessel.

Pursuant to Section 883 of the Internal Revenue Code of the United States, U.S. source income from the international operation of ships is generally exempt from U.S. income tax if the company operating the ships meets certain incorporation and ownership requirements. Among other things, in order to qualify for this exemption, the company operating the ships must be incorporated in a country, which grants an equivalent exemption from income taxes to U.S. corporations. All the vessel-owning subsidiaries satisfy these initial criterias.

In addition, these companies must meet an ownership test. The management of Navios Partners believes that this ownership test was satisfied prior to the IPO by virtue of a special rule applicable to situations where the ship operating companies are beneficially owned by a publicly traded company. Although not free from doubt, management also believes that the ownership test will be satisfied based on the trading volume and ownership of Navios Partners' units, but no assurance can be given that this will remain so in the future.

**NOTE 12 – COMMITMENTS AND CONTINGENCIES**

Navios Partners is involved in various disputes and arbitration proceedings arising in the ordinary course of business. Provisions have been recognized in the financial statements for all such proceedings where Navios Partners believes that a liability may be probable, and for which the amounts are reasonably estimable, based upon facts known at the date the financial statements were prepared. Management believes the ultimate disposition of these matters will be immaterial individually and in the aggregate to Navios Partners' financial position, results of operations or liquidity.

In June 2021, Navios Partners agreed to acquire from Navios Holdings the Navios Azimuth, a 2011-built Capesize vessel of 179,169 dwt, for a purchase price of \$30,000. The vessel was delivered in Navios Partners' fleet on July 9, 2021.

In November 2017, Navios Partners agreed to bareboat charter-in, under a ten-year bareboat contract, from an unrelated third party, the Navios Libra, a newbuilding Panamax vessel of 82,011 dwt, delivered on July 24, 2019. Navios Partners had agreed to pay in total \$5,540, representing a deposit for the option to acquire the vessel after the end of the fourth year, of which the first half amounted to \$2,770 was paid during the year ended December 31, 2017 and the second half amounted to \$2,770 was paid during the year ended December 31, 2018. As of June 30, 2021, the total amount of \$6,650, including refundable upon vessel's redelivery expenses, is presented under the caption "Other long-term assets" in the condensed Consolidated Balance Sheets.

On October 18, 2019, Navios Partners agreed to bareboat charter-in, under a ten-year bareboat contract each, from an unrelated third party, the Navios Amitie and the Navios Star, two newbuilding Panamax vessels of 82,002 dwt and 81,994 dwt, respectively. The vessels were delivered in Navios Partner's fleet on May 28, 2021 and June 10, 2021, respectively. Navios Partners has the option to acquire the vessels after the end of the fourth year for the remaining period of the bareboat charters. Navios Partners had agreed to pay in total \$12,328, representing a deposit for the option to acquire the vessels after the end of the fourth year, of which \$1,434 was paid during the year ended December 31, 2019, \$10,034 was paid during the year ended December 31, 2020, and the remaining amount of \$860 was paid upon the delivery of the vessels. As of June 30, 2021, the total amount of \$13,564, including expenses, is presented under the caption "Other long-term assets" in the condensed Consolidated Balance Sheets.

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On January 25, 2021, Navios Partners agreed to bareboat charter-in, under a fifteen-year bareboat contract each, from an unrelated third party, three newbuilding Capesize vessels of approximately 180,000 dwt each. Navios Partners has the option to acquire the vessels after the end of year four for the remaining period of the bareboat charters. Navios Partners has agreed to pay in total \$10,500, representing a deposit for the option to acquire the vessels after the end of the fourth year. The vessels are expected to be delivered into Navios Partners' fleet during the second half of 2022. The transaction is expected to close in the third quarter of 2021.

On March 23, 2021, Navios Partners agreed to acquire a newbuilding Panamax vessel, from an unrelated third party, for a purchase price of \$31,580. The vessel has approximately 81,000 dwt and is expected to be delivered in Navios Partners' fleet during the second half of 2022. Navios Partners has agreed to pay in total \$12,632 in four installments and the remaining amount of \$18,948 will be paid upon the delivery of the vessel. On April 1, 2021, the first installment of \$3,158 was paid. As of June 30, 2021, the total amount of \$3,158 is presented under the caption "Deposits for vessels acquisitions" in the condensed Consolidated Balance Sheets.

On March 25, 2021, Navios Partners agreed to bareboat charter-in, under a fifteen-year bareboat contract, from an unrelated third party, one newbuilding Capesize vessel, of approximately 180,000 dwt. Navios Partners has the option to acquire the vessel after the end of year four for the remaining period of the bareboat charter. Navios Partners has agreed to pay in total \$3,500, representing a deposit for the option to acquire the vessels after the end of the fourth year. As of June 30, 2021, no amount was deposited. The vessel is expected to be delivered by the first half of 2023.

In June 2021, Navios Partners agreed to bareboat charter-in, under a ten-year bareboat contract, from an unrelated third party, one newbuilding Capesize vessel, of approximately 180,000 dwt. Navios Partners has the option to acquire the vessel after the end of year four for the remaining period of the bareboat charter. Navios Partners has agreed to pay in total \$12,000, representing a deposit for the option to acquire the vessels after the end of the fourth year. The vessel is expected to be delivered by the second half of 2022. The transaction is expected to close in the third quarter of 2021.

On June 30, 2021, Navios Partners agreed to acquire a newbuilding Panamax vessel, from an unrelated third party, for a purchase price of \$34,300. The vessel has approximately 81,000 dwt and is expected to be delivered in Navios Partners' fleet during the first half of 2023. Navios Partners has agreed to pay in total \$13,720 in four installments and the remaining amount of \$20,580 will be paid upon the delivery of the vessel. As of June 30, 2021, no amount was deposited.

As of June 30, 2021, the Company's future minimum lease commitments under the Company's charter-in vessels for which a definitive agreement was in place are as follows:

Period ending June 30,	Amount
2022	6,668
2023	6,583
2024	6,592
2025	6,388
2026	6,388
2027 and thereafter	26,784
<b>Total</b>	<b>\$ 59,403</b>

**NOTE 13 – TRANSACTIONS WITH RELATED PARTIES AND AFFILIATES**

**Vessel operating expenses (management fees):** Pursuant to the amended management agreement, in each of October 2013, August 2014, February 2015, February 2016 and November 2017 (the "Management Agreement"), the Manager, provided commercial and technical management services to Navios Partners' vessels for a daily fee (excluding drydocking expenses, which were reimbursed at cost by Navios Partners) of: (a) \$4.23 daily rate per Ultra-Handymax vessel; (b) \$4.33 daily rate per Panamax vessel; (c) \$5.25 daily rate per Capesize vessel; (d) \$6.70 daily rate per Containership of TEU 6,800; (e) \$7.40 daily rate per Containership of more than TEU 8,000 and (f) \$8.75 daily rate per very large Containership of more than TEU 13,000 through December 2019. These fixed daily fees cover our vessels' operating expenses, other than certain extraordinary fees and costs.

In August 2019, Navios Partners extended the duration of its Management Agreement with the Manager until January 1, 2025. In addition, management fees are fixed for two years commencing from January 1, 2020 at: (a) \$4.35 daily rate per Ultra-Handymax Vessel; (b) \$4.45 daily rate per Panamax Vessel; (c) \$5.41 daily rate per Capesize Vessel; and (d) \$6.90 daily rate per 6,800 TEU Containership. The agreement also provides for a technical and commercial management fee of \$0.05 per day per vessel and an annual increase of 3% after January 1, 2022 unless agreed otherwise.

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Following the liquidation of Navios Europe I, Navios Partners acquired three Sub-Panamax and two Panamax containerships and following the liquidation of Navios Europe II, Navios Partners acquired five drybulk vessels, three Panamax and two Ultra-Handymax vessels. As per the Management Agreement, as amended in December 2019, management fees are fixed for two years commencing from January 1, 2020 at \$6.1 daily rate per Sub-Panamax/Panamax Containership. The agreement also provides for a technical and commercial management fee of \$0.05 per day per vessel and an annual increase of 3% after January 1, 2022 for the remaining period unless agreed otherwise.

Following the completion of the merger with Navios Containers on March 31, 2021, the 29-vessel fleet of Navios Containers is included in Navios Partners' owned fleet. As per the Management Agreement, management fees are fixed for two years commencing from January 1, 2020 at: (a) \$6.10 and \$6.22 daily rate per Containership of TEU 3,000 up to 4,999, respectively; (b) \$7.40 and \$7.78 daily rate per Containership of TEU 8,000 up to 9,999, respectively; (c) \$7.40 and \$8.27 daily rate per Containership of TEU 10,000 up to 11,999, respectively. The agreement also provides for a technical and commercial management fee of \$0.05 per day per vessel and an annual increase of 3% after January 1, 2022 unless agreed otherwise.

Drydocking expenses are reimbursed at cost for all vessels.

During the three and six month periods ended June 30, 2021, certain extraordinary fees and costs related to vessels' regulatory requirements, including ballast water treatment system installation and exhaust gas cleaning system installation under the Company's Management Agreement, amounted to \$1,398 and \$4,865, respectively, and are presented under the caption "Acquisition of/ additions to vessels, net of cash acquired" in the condensed Consolidated Statements of Cash Flows. For the three and six month periods ended June 30, 2020 certain extraordinary fees and costs related to vessels' regulatory requirements including ballast water treatment system installation and exhaust gas cleaning system installation, under the Company's management agreement amounted to \$1,296 and \$1,519, respectively,

Total vessel operating expenses for each of the three and six month periods ended June 30, 2021, amounted to \$41,771 and \$64,733, respectively. Total vessel operating expenses for each of the three and six month periods ended June 30, 2020, amounted to \$21,930 and \$44,135, respectively.

**General and administrative expenses:** Pursuant to the Administrative Services Agreement, the Manager also provides administrative services to Navios Partners, which include bookkeeping, audit and accounting services, legal and insurance services, administrative and clerical services, banking and financial services, advisory services, client and investor relations and other. The Manager is reimbursed for reasonable costs and expenses incurred in connection with the provision of these services. Navios Partners extended the duration of its existing Administrative Services Agreement with the Manager, until December 31, 2022. In August 2019, Navios Partners extended the duration of its existing administrative services agreement with the Manager until January 1, 2025, which provide for allocable general and administrative costs.

Total general and administrative expenses charged by the Manager for each of the three and six month periods ended June 30, 2021, amounted to \$6,113 and \$9,798, respectively. Total general and administrative expenses charged by the Manager for each of the three and six month periods ended June 30, 2020, amounted to \$3,203 and \$6,405, respectively.

**Balance due from related parties, short term:** Balance due from related parties as of June 30, 2021 and December 31, 2020 amounted to \$0 and \$5,000, respectively, that consisted of the receivable from the Navios Holdings Guarantee, which was fully repaid in April 2021.

**Balance due to related parties:** Amounts due to related parties, short-term as of June 30, 2021 and December 31, 2020 were \$17,181 and \$35,979, respectively, and mainly consisted of payables to the Manager.

**Impairment of receivable in affiliated company:** Navios Holdings, Navios Maritime Acquisition Corporation ("Navios Acquisition") and Navios Partners have made available to Navios Europe II revolving loans of up to \$43,500 to fund working capital requirements (collectively, the "Navios Revolving Loans II"). In March 2017, the availability under the Navios Revolving Loans II was increased by \$14,000 (see Note 15 - Investment in Affiliates).

On April 21, 2020, Navios Europe II agreed with the lender to fully release the liabilities under the junior participating loan facility for \$5,000. Navios Europe II owned seven container vessels and seven dry bulk vessels. Navios Partners had a net receivable of approximately \$17,276 from Navios Europe II.

As of March 31, 2020, the decline in the fair value of the investment was considered as other-than-temporary and, therefore, an aggregate loss of \$6,900 was recognized and included in the accompanying condensed Consolidated Statements of Operations for the six month period ended June 30, 2020, as "Impairment of receivable in affiliated company". The fair value of the Company's investment was determined based on the liquidation value of Navios Europe II, including the individual fair values assigned to the assets and liabilities of Navios Europe II.

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On May 14, 2020, an agreement was reached to liquidate Navios Europe II before its original expiring date. The transaction was completed on June 29, 2020.

As a result of the Europe II liquidation Navios Partners acquired 100% of the stock of the five vessels owning Companies owning the dry bulk vessels of Navios Europe II with a fair value of \$56,050 and working capital balances of \$(2,718). The purchase was funded through a credit facility (Note 7 – Borrowings) and cash on hand for total of \$36,056 and the satisfaction of its receivable balances in the amount of approximately \$17,276 representing the Revolving Loan, Term Loan and accrued interest thereof directly owned to Navios Partners, previously presented under the captions “Amounts due/to from related parties” and “Loans receivable from affiliates”.

Following the Liquidation of Navios Europe II, there was no balance due from Navios Europe II as of June 30, 2021 and December 31, 2020.

**Others:** Navios Partners has entered into an omnibus agreement with Navios Holdings (the “Partners Omnibus Agreement”) in connection with the closing of Navios Partners’ IPO governing, among other things, when Navios Holdings and Navios Partners may compete against each other as well as rights of first offer on certain drybulk carriers. Pursuant to the Partners Omnibus Agreement, Navios Partners generally agreed not to acquire or own Panamax or Capesize drybulk carriers under time charters of three or more years without the consent of an independent committee of Navios Partners. In addition, Navios Holdings has agreed to offer to Navios Partners the opportunity to purchase vessels from Navios Holdings when such vessels are fixed under time charters of three or more years.

Navios Partners entered into an omnibus agreement with Navios Acquisition and Navios Holdings (the “Acquisition Omnibus Agreement”) in connection with the closing of Navios Acquisition’s initial vessel acquisition, pursuant to which, among other things, Navios Holdings and Navios Partners agreed not to acquire, charter-in or own liquid shipment vessels, except for containerships and vessels that are primarily employed in operations in South America, without the consent of an independent committee of Navios Acquisition. In addition, Navios Acquisition, under the Acquisition Omnibus Agreement, agreed to cause its subsidiaries not to acquire, own, operate or charter drybulk carriers subject to specific exceptions. Under the Acquisition Omnibus Agreement, Navios Acquisition and its subsidiaries granted to Navios Holdings and Navios Partners, a right of first offer on any proposed sale, transfer or other disposition of any of its drybulk carriers and related charters owned or acquired by Navios Acquisition. Likewise, Navios Holdings and Navios Partners agreed to grant a similar right of first offer to Navios Acquisition for any liquid shipment vessels it might own. These rights of first offer will not apply to a (i) sale, transfer or other disposition of vessels between any affiliated subsidiaries, or pursuant to the terms of any charter or other agreement with a counterparty, or (ii) merger with or into, or sale of substantially all of the assets to, an unaffiliated third party.

In connection with the Navios Maritime Midstream Partners L.P. (“Navios Midstream”) initial public offering effective November 18, 2014, Navios Partners entered into an omnibus agreement with Navios Midstream, Navios Acquisition and Navios Holdings pursuant to which Navios Acquisition, Navios Holdings and Navios Partners have agreed not to acquire or own any VLCCs, crude oil tankers, refined petroleum product tankers, LPG tankers or chemical tankers under time charters of five or more years and also providing rights of first offer on certain tanker vessels.

**Navios Holdings Guarantee:** On November 15, 2012 (as amended and supplemented in March 2014, December 2017 and July 2019), Navios Holdings and Navios Partners entered into the Navios Holdings Guarantee by which Navios Holdings would provide supplemental credit default insurance with a maximum cash payment of \$20,000. In October 2020, Navios Holdings paid an amount of \$5,000 to Navios Partners. As of December 31, 2020, the outstanding claim receivable amounted to \$5,000, presented under the caption “Amounts due from related parties-short term” in the condensed Consolidated Balance Sheets. In April 2021, Navios Holdings paid the amount of \$5,000 to Navios Partners as the final settlement of the outstanding balance of the claim. As of June 30, 2021, the outstanding claim receivable amounted to \$0.

**General partner:** In August 2019, Navios Holdings announced that it sold certain assets, including its ship management division and the general partnership interest in Navios Partners to N Shipmanagement Acquisition Corp. and related entities, affiliated with Navios Holdings’ Chairman and Chief Executive Officer, Angeliki Frangou.

**Acquisition of vessels:** On March 30, 2021, Navios Partners acquired the Navios Avior, a 2012-built Panamax vessel of 81,355 dwt, and the Navios Centaurus, a 2012-built Panamax vessel of 81,472 dwt, from Navios Holdings, for a purchase price of \$39,250, including working capital balances of \$(5,766).

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On May 10, 2021, Navios Partners acquired the Ete N, a 2012-built Containership of 2,782 TEU, the Fleur N, a 2012-built Containership of 2,782 TEU and the Spectrum N, a 2009-built Containership of 2,546 TEU from Navios Acquisition, for an aggregate purchase price of \$55,500.

On June 4, 2021, Navios Partners acquired the Navios Koyo, a 2011-built Capesize vessel of 181,415 dwt, from its affiliate, Navios Holdings, for a purchase price of \$28,500.

On June 30, 2021, Navios Partners acquired the Navios Ray, a 2012-built Capesize vessel of 179,515 dwt and the Navios Bonavis, a 2009-built Capesize vessel of 180,022 dwt, from its affiliate, Navios Holdings, for an aggregate purchase price of \$58,000.

As of June 30, 2021, Navios Holdings held 9.9% common unit interest in Navios Partners, represented by 2,562,893 common units. Olympos Maritime Ltd. held a general partner interest of 2.0% represented by 531,995 general partner units.

#### **NOTE 14 – NOTES RECEIVABLE**

On July 15, 2016, the Company entered into a charter restructuring agreement for the reduction of the hire rate for five containerships chartered out to HMM which resulted in a decrease in cash charter hire to be received of approximately \$38,461. More specifically, the reduction of the hire rate will be applied as follows:

- With effect from (and including) July 18, 2016 until (and including) December 31, 2019, hire rate shall be reduced to \$24,400 per day pro rata.
- With effect from (and including) January 1, 2020, hire rate shall be restored to the rate of \$30,500 per day pro rata until redelivery.

In exchange for the reduction of the hire rate, the Company received (i) \$7,692 on principal amount of senior, unsecured notes, amortizing subject to available cash flows, accruing interest at 3% per annum payable on maturity in July 2024 and (ii) 3,657 freely tradable securities of HMM (publicly traded at the Stock Market Division of the Korean Exchange).

On July 18, 2016, the Company recognized the fair value of the HMM securities totaling \$40,277 and also recognized the fair value of the senior unsecured notes totaling \$6,074. The total fair value of the non-cash compensation received was recognized as deferred revenue, which will be amortized over the remaining duration of each time charter. The Company recognized non-cash interest income and discount unwinding totaling to \$859 and \$226, respectively, for these instruments under the caption “Interest income” in the condensed Consolidated Statements of Operations for each of the six month periods ended June 30, 2021 and 2020, respectively. On May 14, 2021, the outstanding balance of the notes receivable was settled. As of June 30, 2021 and December 31, 2020, the outstanding balance of the notes receivable, including accrued interest and discount unwinding, amounted to \$0 and \$8,013, respectively, presented under the caption “Notes Receivable, net of current portion” in the condensed Consolidated Balance Sheets.

For the six month periods ended June 30, 2021 and 2020, the Company recorded an amount of \$559 and \$562, respectively, of deferred revenue amortization in the condensed Consolidated Statements of Operations under the caption “Time charter and voyage revenues”.

As of June 30, 2021, the outstanding balances of the current and non-current portion of deferred revenue in relation to HMM amounted to \$1,127 and \$1,626, respectively. As of December 31, 2020, the outstanding balances of the current and non-current portion of deferred revenue in relation to HMM amounted to \$1,127 and \$2,185, respectively.

On January 12, 2017, the Company sold the vessel the MSC Cristina for a gross sale price of \$126,000 and received a cash payment of \$107,250 and a note receivable of \$18,750 accruing interest at 6% per annum payable in 16 consecutive quarterly installments. As of June 30, 2021 and December 31, 2020, the outstanding balances of the current and non-current note receivable amounted to \$0. For each of the six month periods ended June 30, 2021 and 2020, the Company recorded interest income of \$0 and \$105, respectively, including accrued interest income of \$0 and \$19, respectively under the caption “Interest income” in the condensed Consolidated Statements of Operations.

#### **NOTE 15 – INVESTMENT IN AFFILIATES**

**Navios Europe II:** On February 18, 2015, Navios Holdings, Navios Acquisition and Navios Partners established Navios Europe II and have ownership interests of 47.5%, 47.5% and 5.0%, respectively. From June 8, 2015 through December 31, 2015, Navios Europe II acquired fourteen vessels for aggregate consideration consisting of: (i) cash consideration of \$145,550 (which was funded with the proceeds of a \$131,550 senior loan facilities net of loan discount amounting to \$3,375 (the “Senior Loans II”) and loans aggregating \$14,000 from Navios Holdings, Navios Acquisition and Navios Partners (collectively, the “Navios Term Loans II”); and (ii) the assumption of a junior participating loan facility (the “Junior Loan II”) with a face amount of \$182,150 and fair value of \$99,147, at the acquisition date. In addition to the Navios Term Loans II, Navios Holdings, Navios Acquisition and Navios Partners have also made available to Navios Europe II revolving loans up to \$43,500 to fund working capital requirements (collectively, the “Navios Revolving Loans II”). In March 2017, the amount of funds available under the Navios Revolving Loans II was increased by \$14,000. Following the liquidation of Navios Europe II on June 29, 2020, Navios Partners acquired five vessel owning companies for a fair value of \$56,050 in total. As of June 30, 2021 and subsequent to the liquidation of Navios Europe II, the Company had no exposure.



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**Navios Containers:** On January 4, 2021, Navios Containers and the Company announced that they entered into a definitive merger agreement under which the Company would acquire all of the publicly held common units of Navios Containers in exchange for common units of the Company (the “Transaction”). The Transaction was approved by the necessary common unit holders of Navios Containers at a special meeting held on March 24, 2021. The General Partner of Navios Containers had consented to the merger, and the Company voted the Navios Containers’ common units it holds in favor of the Transaction. The Transaction was completed on March 31, 2021. Under the terms of the Transaction, Navios Partners acquired all of the publicly held common units of Navios Containers through the issuance of 8,133,452 newly issued common units of Navios Partners in exchange for the publicly held common units of Navios Containers at an exchange ratio of 0.39 units of Navios Partners for each Navios Containers common unit.

The fair value of Navios Partners’ equity investment in Navios Containers was based on unadjusted quoted prices in active markets for Navios Containers’ common units. The fair value of Navios Partners’ equity investment in Navios Containers as at December 31, 2020 was \$47,528 compared with its carrying value of \$26,158. Following the acquisition of Navios Containers, there was no equity investment and the balance was \$0 as of June 30, 2021.

As of June 30, 2020, Navios Partners held 11,592,276 common units, representing a 33.5% ownership interest in Navios Containers. Investment income of \$968 was recognized in the Statements of Operations under the caption of “Equity in net earnings of affiliated companies” for the six month periods ended June 30, 2020. Following the completion of the merger, Navios Partners recognized equity gain from acquisition of control of Navios Containers upon the closing date of \$80,839 in the condensed Consolidated Statements of Operations under the caption of “Equity in net earnings of affiliated companies”, as of June 30 2021 (see Note 3 – Acquisition of Navios Containers).

**NOTE 16 – CASH DISTRIBUTIONS AND EARNINGS PER UNIT**

On February 3, 2016, Navios Partners announced that its Board of Directors decided to suspend the quarterly cash distributions to its unitholders, including the distribution for the quarter ended December 31, 2015. In March 2018, the Board determined to reinstate a distribution and any continued distribution will be at the discretion of the Company’s Board of Directors, taking into consideration the terms of its partnership agreement. There is no guarantee that the Company will pay the quarterly distribution on the common units in any quarter. The amount of distributions paid under its policy and the decision to make any distribution is determined by the Company’s board of directors, taking into consideration the terms of its partnership agreement. The Company is prohibited from making any distributions to unitholders if it would cause an event of default, or an event of default exists, under its existing credit facilities.

There is incentive distribution rights held by Navios GP L.L.C., which are analyzed as follows:

	<b>Total Quarterly Distribution Target Amount</b>	<b>Marginal Percentage Interest in Distributions</b>		
		<b>Common Unitholders</b>	<b>Incentive Distribution Right Holder</b>	<b>General Partner</b>
Minimum Quarterly Distribution	up to \$5.25 per unit	98%	—	2%
First Target Distribution	up to \$6.0375 per unit	98%	—	2%
Second Target Distribution	above \$ 6.0375 up to \$6.5625 per unit	85%	13%	2%
Third Target Distribution	above \$6.5625 up to \$7.875 per unit	75%	23%	2%
Thereafter	above \$7.875 per unit	50%	48%	2%

The first 98% of the quarterly distribution is paid to all common unitholders. The incentive distributions rights (held by the Navios GP L.L.C.) apply only after a minimum quarterly distribution of \$6.0375 per unit.

In January 2020, the Board of Directors of Navios Partners authorized its quarterly cash distribution for the three month period ended December 31, 2019 of \$0.30 per unit. The distribution was paid on February 13, 2020 to all unitholders of common units and general partner units of record as of February 11, 2020. The aggregate amount of the declared distribution was \$3,365.

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In April 2020, the Board of Directors of Navios Partners authorized its quarterly cash distribution for the three month period ended March 31, 2020 of \$0.30 per unit. The distribution was paid on May 14, 2020 to all unitholders of common units and general partner units of record as of May 11, 2020. The aggregate amount of the declared distribution was \$3,366.

In July 2020, the Board of Directors of Navios Partners authorized its quarterly cash distribution for the three month period ended June 30, 2020 of \$0.05 per unit. The distribution was paid on August 13, 2020 to all unitholders of common units and general partner units of record as of August 10, 2020. The aggregate amount of the declared distribution was \$562.

In January 2021, the Board of Directors of Navios Partners authorized its quarterly cash distribution for the three month period ended December 31, 2020 of \$0.05 per unit. The distribution was paid on February 12, 2021 to all unitholders of common units and general partner units of record as of February 9, 2021. The aggregate amount of the declared distribution was \$579.

In April 2021, the Board of Directors of Navios Partners authorized its quarterly cash distribution for the three month period ended March 31, 2021 of \$0.05 per unit. The distribution was paid on May 14, 2021 to all unitholders of common units and general partner units of record as of May 11, 2021. The aggregate amount of the declared distribution was \$1,127.

In July 2021, the Board of Directors of Navios Partners authorized its quarterly cash distribution for the three month period ended June 30, 2021 of \$0.05 per unit. The distribution was paid on August 12, 2021 to all unitholders of common units and general partner units of record as of August 9, 2021. The aggregate amount of the declared distribution was \$1,384.

Navios Partners calculates earnings per unit by allocating reported net income for each period to each class of units based on the distribution waterfall for available cash specified in Navios Partners' partnership agreement, net of the unallocated earnings (or losses). Basic earnings/(losses) per unit is determined by dividing net income/(loss) attributable to Navios Partners common unitholders by the weighted average number of common units outstanding during the period. Diluted earnings per unit is calculated in the same manner as basic earnings per unit, except that the weighted average number of outstanding units increased to include the dilutive effect of outstanding unit options or phantom units. Net loss per unit undistributed is determined by taking the distributions in excess of net income and allocating between common units and general partner units on a 98%-2% basis. There were no options or phantom units outstanding during each of the six month periods ended June 30, 2021 and 2020.

The calculations of the basic and diluted earnings per unit are presented below.

	Three Month Period Ended		Six Month Period Ended	
	June 30, 2021	June 30, 2020	June 30, 2021	June 30, 2020
Net income / (loss)	\$ 99,913	\$ (14,641)	\$ 236,592	\$ (25,365)
Income / (loss) attributable to:				
Common unitholders	\$ 97,914	\$ (14,348)	\$ 231,860	\$ (24,859)
Weighted average units outstanding basic				
Common unitholders	22,653,219	10,847,487	17,041,426	10,846,405
Earnings / (loss) per unit basic:				
Common unitholders	\$ 4.32	\$ (1.32)	\$ 13.61	\$ (2.29)
Weighted average units outstanding diluted				
Common unitholders	22,739,569	10,847,487	17,127,776	10,846,405
Earnings / (loss) per unit diluted:				
Common unitholders	\$ 4.31	\$ (1.32)	\$ 13.54	\$ (2.29)
Earnings / (loss) per unit distributed basic:				
Common unit holders	\$ 0.05	\$ 0.05	\$ 0.10	\$ 0.35
Earnings / (loss) per unit distributed diluted:				
Common unitholders	\$ 0.05	\$ 0.05	\$ 0.10	\$ 0.35
Earnings/ (loss) per unit undistributed basic:				
Common unitholders	\$ 4.27	\$ (1.37)	\$ 13.51	\$ (2.64)
Earnings/ (loss) per unit undistributed diluted:				
Common unit holders	\$ 4.26	\$ (1.37)	\$ 13.44	\$ (2.64)

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Potential common units of 86,350 for the six month periods ended June 30, 2021 are included in the calculation of diluted earnings per unit and 140,191 relating to unvested restricted common units for the six month periods ended June 30, 2020, have an anti-dilutive effect (i.e. those that increase income per unit or decrease loss per unit) and are therefore excluded from the calculation of diluted earnings per unit.

**NOTE 17 – LEASES**

**Time charter out contracts and pooling arrangements**

The Company's contract revenues from time chartering and pooling arrangements are governed by ASC 842. Upon adoption of ASC 842, the timing and recognition of earnings from the time charter contracts and pool arrangements to which the Company is party did not change from previous practice. For further analysis, (see Note 2— Summary of Significant Accounting Policies).

**Bareboat charter-in contract**

On July 24, 2019, Navios Partners took delivery of the Navios Libra, a 2019-built Panamax vessel of 82,011 dwt, for a ten year bareboat charter-in agreement. The bareboat charter-in provides for purchase options with de-escalating purchase prices starting on the end of the fourth year and an average daily rate of \$6. The Company has performed an assessment considering the lease classification criteria under ASC 842 and concluded that the arrangement is an operating lease. Consequently, the Company has recognized an Operating Lease Liability based on the net present value of the remaining charter-in payments and a right-of-use asset at an amount equal to the operating liability adjusted for the carrying amount of the straight-line liability.

On May 28, 2021 and June 10, 2021, Navios Partners took delivery of the Navios Amitie and the Navios Star, two 2021-built Panamax vessels of 82,002 dwt and 81,994 dwt, respectively. The bareboat charter-in provides for purchase options with de-escalating purchase prices starting on the end of the fourth year and an average daily rate of \$5.9. The Company has performed an assessment considering the lease classification criteria under ASC 842 and concluded that the arrangement is an Operating Lease. Consequently, the Company has recognized an Operating Lease Liability based on the net present value of the remaining charter-in payments and a right-of-use asset at an amount equal to the operating liability adjusted for the carrying amount of the straight-line liability.

Based on management estimates and market conditions, the lease term of the leases is being assessed at each balance sheet date. At lease commencement, the Company determines a discount rate to calculate the present value of the lease payments so that it can determine lease classification and measure the lease liability. In determining the discount rate to be used at lease commencement, the Company used its incremental borrowing rate as there was no implicit rate included in charter-in contracts that can be readily determinable. The incremental borrowing rate is the rate that reflects the interest a lessee would have to pay to borrow funds on a collateralized basis over a similar term and in a similar economic environment. The Company then applied the respective incremental borrowing rate based on the remaining lease term of the specific lease. Navios Partners' incremental borrowing rates were approximately 7% for Navios Libra and 5% for Navios Amite and Navios Star.

As of June 30, 2021 and December 31, 2020 the balance of the lease liability amounted \$45,669 and \$13,153, respectively, and is presented under the captions "Operating Lease Liabilities, current and non-current portion" in the condensed Consolidated Balance Sheets. Right of use asset amounted \$45,862 and \$13,285 as at June 30, 2021 and December 31, 2020, respectively, and is presented under the caption "Operating lease assets" in the condensed Consolidated Balance Sheets.

The Company recognizes the lease payments for its operating leases as charter hire on a straight-line basis over the lease term. Lease expense for the three and six month periods ended June 30, 2021 amounted to \$841 and \$1,354, respectively. Lease expense for each of the three and six month periods ended June 30, 2020 amounted to \$519 and \$1,037, respectively and is included under the caption "Time charter and voyage expenses" in the condensed Consolidated Statements of Operations.

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The table below provides the total amount of lease payments on an undiscounted basis on the Company's chartered-in contracts as of June 30, 2021:

	<u>Amount</u>
2022	6,668
2023	6,583
2024	6,592
2025	6,388
2026 and thereafter	33,172
<b>Total</b>	<b>\$ 59,403</b>
<b>Operating lease liabilities, including current portion</b>	<b>\$ 45,669</b>
<b>Discount based on incremental borrowing rate</b>	<b>\$ 13,734</b>

#### **Sale and Lease Back Agreements**

During the years from 2018 to 2021, the Company has entered into sale and leaseback agreements with unrelated third parties for various vessels of the Company's fleet. Navios Partners has purchase obligations to acquire the vessels at the end of the lease terms, consequently under ASC 842-40 the transfers of the vessels were determined to be failed sales and were treated as financing transactions. The vessels were not derecognized and continue to be depreciated over their respective useful lives, and tested for impairment as per Company's policy (see Note 7- Borrowings).

#### **NOTE 18 – SUBSEQUENT EVENTS**

##### **Merger**

On August 25, 2021, Navios Partners and its direct wholly-owned subsidiary, Navios Acquisition Merger Sub. Inc. ("Merger Sub") entered into an Agreement and Plan of Merger (the "Merger Agreement") with Navios Maritime Acquisition Corporation ("Navios Acquisition"). Pursuant to the Merger Agreement, Merger Sub will be merged with and into Navios Acquisition, with Navios Acquisition being the surviving entity (the "Merger"). Upon consummation of the Merger, Navios Acquisition will become wholly owned by Navios Partners. The Merger Agreement was unanimously approved by a special committee of the board of directors of Navios Acquisition and its board of directors and by Navios Partners' conflict committee and its board of directors.

Under the terms of the Merger Agreement, upon consummation of the Merger, each outstanding share of common stock of Navios Acquisition ("Navios Acquisition Common Stock") that is held by a holder other than Navios Partners, Navios Acquisition and their respective subsidiaries will be converted into the right to receive 0.1275 of a common unit of Navios Partners.

Pursuant to the Merger Agreement, Navios Partners will file with the Securities and Exchange Commission ("SEC") a registration statement on Form F-4, which will include a proxy statement/prospectus describing the Merger and Navios Partners' common units to be issued in the Merger. After the registration statement is declared effective by the SEC, the proxy statement/prospectus will be mailed to holders of Navios Acquisition Common Stock and Navios Acquisition will hold a special meeting of the holders of Navios Acquisition Common Stock (the "Navios Acquisition Stockholders' Meeting") to vote on the Merger Agreement and the Merger. Under the terms of the Merger Agreement, Navios Partners, which, subsequent to the Equity Issuance, described below, beneficially owns 44,117,647 shares of Navios Acquisition Common Stock or approximately 62.4% of the outstanding shares of Navios Acquisition Common Stock, has agreed to vote those shares of Navios Acquisition Common Stock in favor of the Merger and the Merger Agreement at the Navios Acquisition Stockholders' Meeting. The closing of the Merger is conditioned upon, customary terms and conditions.

##### **NMM Loan Agreement**

In connection with the execution of the Merger Agreement, on August 24, 2021, Navios Acquisition and Navios Partners entered into a loan agreement (the "Navios Partners Loan Agreement") under which Navios Partners agreed to make available to Navios Acquisition a working capital facility of up to \$45,000. As of the date hereof, the full amount of the facility has been drawn by Navios Acquisition. The full amounts borrowed, including accrued and unpaid interest are due and payable on the date that is one year following the date of the draw. The facility bears interest at the rate of 11.50% per annum.

##### **Redemption and Discharge of Ship Mortgage Notes**

Pursuant to the Merger Agreement, on August 26, 2021, Navios Acquisition called for redemption of all of its outstanding 8.125% First Priority Ship Mortgage Notes due November 15, 2021 (the "Ship Mortgage Notes") and remitted to the indenture trustee the aggregate redemption price payable to the holders of the Ship Mortgage Notes to satisfy and discharge Navios Acquisition's obligations under the indenture relating to the Ship Mortgage Notes. The redemption date for the Ship Mortgage Notes will be September 25, 2021.

Navios Acquisition funded the approximately \$397,478 aggregate redemption price with net proceeds from (i) the purchase by Navios Partners pursuant to the Merger Agreement of 44,117,647 newly issued shares of Navios Acquisition Common Stock for an aggregate purchase price of \$150,000, or \$3.40 per share (the "Equity Issuance"), and (ii) new secured borrowings by Navios Acquisition and its subsidiaries. The shares of Navios Acquisition Common Stock purchased by Navios Partners pursuant to the Equity Issuance will be cancelled in the Merger for no consideration.

On August 25, 2021, Navios Partners completed a \$15,000 sale and leaseback transaction with an unrelated third party, for a 2009-built Capesize vessel. The sale and leaseback transaction has a duration of six years and an implied fixed interest rate of approximately 6.1%. Navios Partners has the option to buy the vessel starting at the end of year three which de-escalates until maturity to \$5,000 obligation.

On August 25, 2021, Navios Partners agreed to sell the Navios Altair I, a 2006-built Panamax vessel of 74,475 dwt to an unrelated third party for a net sale price of \$13,532. The sale is expected to be completed during the third quarter of 2021.

On August 19, 2021, Navios Partners entered into a new credit facility with a commercial bank for a total amount of up to \$18,000 in order to finance the acquisition of a 2011-built Capesize vessel. The credit facility matures in the third quarter of 2026 and bears interest at LIBOR plus 2.85% per annum. On August 20, 2021, the full amount was drawn, net of the loan's discount of \$180.

On August 16, 2021, Navios Partners completed the sale of the Harmony N, a 2006-built Containership of 2,824 TEU, to an unrelated third party for a net sale price of \$28,710.

On August 13, 2021, Navios Partners completed the sale of the Navios Azalea, a 2005-built Panamax vessel of 74,759 dwt, to an unrelated third party for a net sale price of \$12,740.

In July 2021, Navios Partners agreed to purchase six 5,300 TEU newbuilding containerships (four plus two optional) for a purchase price of \$61,600 each. The vessels are expected to be delivered in Navios Partners' fleet during the second half of 2023 and 2024.

On July 31, 2021, Navios Partners completed the sale of the Navios Dedication, a 2008-built Containership of 4,250 TEU to an unrelated third party for a net sale price of \$33,893.

On July 9, 2021, Navios Partners acquired the Navios Azimuth, a 2011-built Capesize vessel of 179,169 dwt, from its affiliate, Navios Holdings, for a purchase price of \$30,000.

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**SIGNATURES**

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

NAVIOS MARITIME PARTNERS L.P.

By:           /s/ Angeliki Frangou            
Angeliki Frangou  
Chief Executive Officer

Date: August 26, 2021

AGREEMENT AND PLAN OF MERGER

dated as of

August 25, 2021

by and among

NAVIOS MARITIME PARTNERS L.P.,  
NAVIOS ACQUISITION MERGER SUB. INC.

and

NAVIOS MARITIME ACQUISITION CORP.

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## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of August 25, 2021 (the "Execution Date"), is entered into by and among Navios Maritime Partners L.P., a Republic of the Marshall Islands limited partnership ("Parent"), Navios Acquisition Merger Sub. Inc., a Republic of the Marshall Islands corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and Navios Maritime Acquisition Corp., a Republic of the Marshall Islands corporation ("NNA").

### WITNESSETH:

WHEREAS, Parent desires to purchase from NNA, and NNA desires to issue and sell to Parent, simultaneously, or substantially simultaneously, herewith, 44,117,647 newly issued shares of NNA Common Stock at a price of \$3.40 per share in cash and \$150,000,000 in the aggregate in a private transaction exempt from registration under Section 4(a)(2) of the Securities Act (the "NNA Equity Issuance");

WHEREAS, simultaneously, or substantially simultaneously, herewith, NNA and/or certain of its Subsidiaries are entering into Loan Agreements with certain lenders (together, the "Loan Agreement") pursuant to which NNA and its Subsidiaries are borrowing from such lenders up to \$291,385,000, in the aggregate (the "NNA Debt Financing");

WHEREAS, simultaneously, or substantially simultaneously, herewith, NNA is canceling all of the NNA Notes owned by NNA and is using net proceeds of the NNA Equity Issuance and the NNA Debt Financing to satisfy and discharge in full the NNA Notes Indenture;

WHEREAS, at a meeting duly called and held, the NNA Special Committee, by unanimous vote, in good faith (a) determined that this Agreement and the transactions contemplated hereby are in the best interests of NNA and the Holders of NNA Public Stock, (b) approved this Agreement and the Transactions, (c) resolved to recommend to the NNA Board the approval of this Agreement and the consummation of the Transactions (such recommendation, the "NNA Special Committee Recommendation"), and (d) resolved to recommend, and to direct the NNA Board to recommend, the approval of this Agreement and the Merger, by the Holders of shares of NNA Common Stock;

WHEREAS, at a meeting duly called and held, upon the receipt of the recommendation of the NNA Special Committee, the NNA Board, by unanimous vote, (a) determined that this Agreement and the Transactions are in the best interests of NNA and the Holders of NNA Public Stock, (b) approved this Agreement and the Transactions and (c) directed that this Agreement be submitted to a vote of the Holders of shares of NNA Common Stock at the NNA Stockholders Meeting and recommended the approval of this Agreement and the Merger by the Holders of shares of NNA Common Stock (such recommendation, the "NNA Board Recommendation");

WHEREAS, at a meeting duly called and held, the Parent Conflicts Committee, by unanimous vote, (a) determined that this Agreement and the Transactions are in the best interests of Parent and the Holders of common units of Parent ("Parent Common Units") (excluding the general partner of Parent and its Affiliates), and (b) granted a Special Approval (as defined in the Parent Partnership Agreement) of this Agreement and the Transactions;

WHEREAS, at a meeting duly called and held, the Board of Directors of Parent, by unanimous vote, (a) determined that this Agreement and the Transactions are in the best interests of Parent and the Holders of the Parent Common Units, and (b) approved and declared advisable this Agreement and the Transactions to which the Parent Parties are party, including issuance of Parent Common Units in connection with the Merger (the “Parent Equity Issuance”);

WHEREAS, Parent, as the sole stockholder of Merger Sub, has approved this Agreement and approved the execution, delivery and performance of this Agreement and the Merger on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, for U.S. federal income Tax purposes, the parties intend that the Merger (either alone or together with Second Merger, if applicable) qualify as a “reorganization” within the meaning of Section 368(a) of the Code and that Section 367(a) of the Code not cause Parent to be treated as other than a corporation with respect to any transfer of property thereto in connection with the Merger (other than, in certain circumstances, a transfer by a holder of NNA Common Stock that is a United States person and that holds 5% or more by vote or by value (within the meaning of Treasury Regulations Section 1.367(a)-3(b)(1)(i)) of Parent immediately following the Merger) (the “Intended Tax Treatment”).

NOW, THEREFORE, in consideration of the premises and the respective representations, warranties, covenants, agreements and conditions contained herein, the parties hereto agree as follows:

## ARTICLE I. DEFINITIONS

SECTION 1.1 *Definitions*. In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings respectively:

“Affiliate” has the meaning set forth in Rule 405 of the rules and regulations under the Securities Act, unless otherwise expressly stated herein; *provided, however*, that prior to the Closing (i) with respect to the Parent Group Entities, the term “Affiliate” shall exclude each of the NNA Group Entities, and (ii) with respect to the NNA Group Entities, the term “Affiliate” shall exclude each of the Parent Group Entities.

“Agreement” has the meaning set forth in the Preamble.

“Amended NNA Articles of Incorporation” means the Amended and Restated Articles of Incorporation of NNA, as amended, supplemented or restated from time to time.

“Book-Entry NNA Common Stock” has the meaning set forth in Section 2.2(c)(ii).

“Business Day” means any day on which commercial banks are generally open for business in New York, New York other than a Saturday, a Sunday or a day observed as a holiday in New York, New York under the Laws of the State of New York or the federal Laws of the United States of America.

“Certificate of Merger” has the meaning set forth in Section 2.2(b).

“Closing” has the meaning set forth in [Section 2.2\(a\)](#).

“Closing Date” has the meaning set forth in [Section 2.2\(a\)](#).

“Code” means the Internal Revenue Code of 1986, as amended.

“COVID-19” means SARS-CoV-2 or COVID-19, and any evolutions, variants or mutations thereof or related or associated epidemics, pandemic or disease outbreaks.

“D&O Insurance” has the meaning set forth in [Section 5.9\(b\)](#).

“Effective Time” has the meaning set forth in [Section 2.2\(b\)](#).

“Equity Issuance Shares” has the meaning set forth in [Section 2.1\(a\)](#).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Exchange Agent” has the meaning set forth in [Section 2.3\(a\)](#).

“Exchange Fund” has the meaning set forth in [Section 2.3\(a\)](#).

“Exchange Ratio” has the meaning set forth in [Section 2.2\(c\)\(i\)](#).

“Execution Date” has the meaning set forth in the Preamble.

“GAAP” has the meaning set forth in [Section 1.2](#).

“Governing Documents” means, with respect to any Person, the certificate or articles of incorporation or formation, bylaws, articles of organization, limited liability company agreement, partnership agreement, formation agreement, joint venture agreement, operating agreement, unanimous equityholder agreement or declaration or other similar governing documents of such Person.

“Governmental Entity” means any federal, state, tribal, provincial, municipal, foreign or other government, governmental court, department, commission, board, bureau, regulatory or administrative agency or instrumentality.

“Holders” means, when used with reference to the Parent Common Units or the NNA Common Stock, the holders of such units of stock, as applicable, shown from time to time in the registers maintained by or on behalf of Parent or NNA, respectively.

“Indenture Co-Issuers” has the meaning set forth in the definition of “[NNA Notes Indenture](#).”

“Intended Tax Treatment” has the meaning set forth in the Preamble.

“Latest NNA Quarter 6-K” has the meaning set forth in [Section 3.6\(a\)](#).

“Latest Parent Quarter 6-K” has the meaning set forth in Section 4.6(a).

“Laws” means all statutes, regulations, codes, tariffs, ordinances, decisions, administrative interpretations, writs, injunctions, stipulations, statutory rules, orders, judgments, decrees and terms and conditions of any grant of approval, permission, authority, permit or license of any court, Governmental Entity, statutory body or self-regulatory authority (including the NYSE).

“Letter of Transmittal” has the meaning set forth in Section 2.3(b).

“Liens” means any mortgage, restriction (including restrictions on transfer), deed of trust, lien, security interest, preemptive right, option, right of first offer or refusal, lease or sublease, claim, pledge, conditional sales contract, charge, encroachment or encumbrance.

“Marshall Islands Business Corporations Act” means the Business Corporation Act of the Associations Law of The Republic of the Marshall Islands, as amended, supplemented or restated from time to time, and any successor to such statute.

“Merger” means the merger of Merger Sub with and into NNA, with NNA as the sole surviving entity.

“Merger Consideration” has the meaning set forth in Section 2.2(c)(i).

“Merger Sub” has the meaning set forth in the Preamble.

“Merger Tax Opinion” has the meaning set forth in Section 5.8.

“Newco” has the meaning set forth in Section 5.8(b).

“NNA” has the meaning set forth in the Preamble.

“NNA 20-F” has the meaning set forth in Section 3.6(a).

“NNA Adverse Recommendation Change” has the meaning set forth in Section 5.3(a).

“NNA Alternative Proposal” means any inquiry, proposal or offer from any Person or “group” (as defined in Section 13(d) of the Exchange Act), relating to any (i) direct or indirect acquisition (whether in a single transaction or a series of related transactions), outside of the ordinary course of business, of assets of NNA and its Subsidiaries (including securities of Subsidiaries) equal to 20% or more of NNA’s consolidated assets or to which 20% or more of NNA’s revenues or earnings on a consolidated basis are attributable, (ii) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of beneficial ownership (within the meaning of Section 13 of the Exchange Act) of 20% or more of the outstanding equity securities of NNA, (iii) tender offer or exchange offer that if consummated would result in any Person or “group” (as defined in Section 13(d) of the Exchange Act) beneficially owning 20% or more of the outstanding equity securities of NNA or (iv) merger, consolidation, unit exchange, share exchange, business combination, recapitalization, liquidation, dissolution or similar transaction (whether in a single transaction or a series of related transactions) involving NNA which is structured to permit such Person or group to acquire beneficial ownership of 20% or more of the corporation’s consolidated assets or outstanding equity interests; in each case, other than the transactions contemplated by this Agreement.

“NNA Board” means the Board of Directors of NNA.

“NNA Board Recommendation” has the meaning set forth in the Preamble.

“NNA Certificate” has the meaning set forth in Section 2.2(c)(ii).

“NNA Changed Circumstance” means a material event, circumstance, effect, condition, change or development, in each case that arises or occurs after the date of this Agreement and was not, prior to the date of this Agreement, known to or reasonably foreseeable by the NNA Special Committee and did not result from or arise out of the announcement or pendency of, or any actions required to be taken by (or to be refrained from being taken by) NNA pursuant to this Agreement; *provided, however*, that in no event shall the following events, circumstances, or changes in circumstances constitute an NNA Changed Circumstance: (i) any event, fact, development or occurrence that involves or relates to an NNA Alternative Proposal or any inquiry or communications or matters relating thereto, (ii) any change in the price, or change in trading volume, of the shares of NNA Common Stock, (iii) the fact that NNA meets or exceeds internal or published projections, budgets, forecasts or estimates of revenues, earnings or other financial results for any period (*provided, however*, that the exception in this clause (iii) shall not apply to the underlying causes giving rise to or contributing to such change or prevent any of such underlying causes from being taken into account in determining whether an NNA Changed Circumstance has occurred), (iv) the NNA Equity Issuance, the NNA Debt Financing, the Working Capital Revolving Loan Facility, the NNA Notes Cancellation and Discharge or the NSH Loan Amendment, or (v) any change in the price, or change in trading volume, of the Parent Common Units.

“NNA Common Stock” means the Common Stock, par value \$0.0001 per share, of NNA.

“NNA D&O Indemnified Parties” means (a) any Person (together with such Person’s heirs, executors and administrators) who is or was, or at any time prior to the Effective Time becomes, an officer or director of any NNA Group Entity and (b) any Person (together with such Person’s heirs, executors and administrators) who is or was serving, or at any time prior to the Effective Time serves, at the request of any NNA Group Entity as an officer, director, member, partner, agent, fiduciary or trustee of another Person; *provided* that a Person shall not be an NNA D&O Indemnified Party by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services.

“NNA Debt Financing” has the meaning set forth in the Preamble.

“NNA Equity Issuance” has the meaning set forth in the Preamble.

“NNA Expenses” means an amount in cash equal to the reasonably documented out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment bankers, experts and consultants) incurred by the NNA Group Entities in connection with this Agreement and the transactions contemplated hereby up to a maximum amount of \$1,000,000.

“NNA Fairness Opinion” has the meaning set forth in Section 3.16.

“NNA Financial Statements” has the meaning set forth in Section 3.6(a).

“NNA Group Entities” means NNA and the NNA Subsidiaries.

“NNA Material Adverse Effect” means any change, effect, event or occurrence that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on or a material adverse change in (i) the business, assets, liabilities, properties, condition (financial or otherwise) or results of operations of the NNA Group Entities, taken as a whole; *provided, however*, that any adverse changes, effects, events or occurrences resulting from or due to any of the following shall be disregarded in determining whether there has been an NNA Material Adverse Effect: (a) changes, effects, events or occurrences affecting the markets or geographic locations in which the NNA Group Entities operate, (b) changes, effects, events or occurrences affecting the United States or global economic conditions or financial, credit, debit, securities or other capital markets in general, (c) any outbreak of, acts of or escalation of hostilities, terrorism, war or other similar national emergency, including any event, fact, condition or circumstance resulting from COVID-19 or the worsening thereof, (d) the announcement or pendency of this Agreement or the transactions contemplated hereby, (e) changes in any Laws applicable to NNA or any of the NNA Subsidiaries or in accounting regulations or principles or the interpretation thereof that materially affects this Agreement or the transactions contemplated hereby, (f) NNA taking any action required or contemplated by this Agreement, (g) any change in the market price or trading volume of the shares of NNA Common Stock (it being understood and agreed that the foregoing shall not preclude any other party to this Agreement from asserting that any facts or occurrences giving rise to or contributing to such change that are not otherwise excluded from the definition of NNA Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, an NNA Material Adverse Effect) (h) changes, effects, events or occurrences generally affecting the prices of oil, natural gas, natural gas liquids and other similar commodities, or (i) any failure of NNA to meet any internal or external projections, forecasts or estimates of revenues, earnings or other financial or operating metrics for any period (it being understood and agreed that the foregoing shall not preclude any other party to this Agreement from asserting that any facts or occurrences giving rise to or contributing to such change that are not otherwise excluded from the definition of NNA Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, an NNA Material Adverse Effect); *provided* that, in the case of clauses (a), (b), (c), (e) and (h) the adverse impact on the NNA Group Entities, taken as a whole, is not materially disproportionate to the adverse impact on similarly situated parties, or (ii) the ability of NNA to perform its obligations under this Agreement or to consummate the transactions contemplated by this Agreement.

“NNA Material Contract” has the meaning set forth in Section 3.11(a).

“NNA Notes” means the 8.125% First Priority Ship Mortgage Notes due 2021 issued by Indenture Co-Issuers pursuant to the NNA Notes Indenture.



“NNA Notes Cancellation and Discharge” means (i) the delivery by NNA and its Subsidiaries of all of the NNA Notes held by the foregoing for cancellation as provided for in Section 2.11 of the NNA Notes Indenture and (ii) the satisfaction and discharge by the Indenture Co-Issuers of their obligations under the NNA Notes and the NNA Notes Indenture and the obligations of the Guarantors under the Note Guarantees (each as defined in the NNA Notes Indenture) and the NNA Notes Indenture pursuant to Article Eight of the NNA Notes Indenture and the termination and release of the Security Interests (as defined in the NNA Notes Indenture) pursuant to Section 11.11 of the NNA Notes Indenture by NNA irrevocably depositing with the trustee under the NNA Notes Indenture as trust funds in trust for the benefit of the holders of such NNA Notes an amount of cash sufficient to pay and discharge the entire indebtedness on the NNA Notes not delivered to the trustee for cancellation for principal, premium and accrued interest, if any, thereunder to the Redemption Date (as defined in the NNA Notes Indenture) in respect of a redemption of the outstanding NNA Notes and the Indenture Co-Issuers delivering, or causing to be delivered, to the trustee under the NNA Notes Indenture all necessary Officer’s Certificates and Opinion of Counsel (both as defined in the NNA Notes Indenture) to effect the foregoing.

“NNA Notes Indenture” means the Indenture, dated as of November 13, 2013, among NNA and Navios Acquisition Finance (US) Inc., a wholly owned Subsidiary of NNA (together, the “Indenture Co-Issuers”), each of the guarantors thereunder and the trustee and collateral trustee thereunder, as such indenture shall have been supplemented from time to time.

“NNA Proxy Statement” has the meaning set forth in Section 5.1(a).

“NNA Public Stock” means the outstanding shares of NNA Common Stock, other than the shares of NNA Common Stock held directly or indirectly by the Parent Group Entities (including the shares of NNA Common Stock issued to Parent in connection with the NNA Equity Issuance), by the NNA Group Entities or by NSH or any of its Affiliates (including the shares of NNA Common Stock issued to NSH in connection with the NSH Equity Issuance).

“NNA Recommendation Change Notice” has the meaning set forth in Section 5.3(d)(ii)(A).

“NNA Recommendation Change Notice Period” has the meaning set forth in Section 5.3(d)(ii)(B).

“NNA SEC Reports” has the meaning set forth in Section 3.5(a).

“NNA Special Committee” means the special committee consisting of independent directors of the NNA Board.

“NNA Special Committee Recommendation” has the meaning set forth in the Preamble.

“NNA Subsidiaries” means the entities that are partially or wholly owned, directly or indirectly, by NNA.

“NNA Superior Proposal” means a bona fide unsolicited written NNA Alternative Proposal (except that references to “20%” within the definition of “NNA Alternative Proposal” shall be replaced by “50%”), obtained after the date of this Agreement and not in breach of Section 5.3 (other than an immaterial breach), which is on terms and conditions which the NNA Special Committee determines in good faith to be (i) reasonably capable of being consummated in accordance with its terms, taking into account legal, regulatory, financial, financing and timing

aspects of the proposal, and (ii) if consummated, more favorable to the Holders of shares of NNA Common Stock (in their capacity as Holders of shares of NNA Common Stock) from a financial point of view than the transactions contemplated hereby, taking into account at the time of determination any changes to the terms of this Agreement that as of that time had been committed to by Parent in writing.

“NNA Superior Proposal Notice” has the meaning set forth in Section 5.3(d)(i)(C).

“NNA Superior Proposal Notice Period” has the meaning set forth in Section 5.3(d)(i)(D).

“NNA Stockholders Approval” has the meaning set forth in Section 3.3(c).

“NNA Stockholders Meeting” has the meaning set forth in Section 5.1(c).

“Notice” has the meaning set forth in Section 8.1.

“NSH” means Navios Shipmanagement Holdings Corporation.

“NSH Equity Issuance” means the issuance of 8,823,529 shares of NNA Common Stock to NSH pursuant to the NSH Loan Amendment.

“NSH Loan Amendment” means the Amendment No. 1 to the Loan Agreement, dated March 19, 2021, between NNA and NSH being entered into simultaneously herewith.

“NYSE” means the New York Stock Exchange.

“Orders” has the meaning set forth in Section 3.7(a).

“Outside Date” has the meaning set forth in Section 7.2(a).

“Parent” has the meaning set forth in the Preamble.

“Parent 20-F” has the meaning set forth in Section 4.6(a).

“Parent Board” means the Board of Directors of Parent.

“Parent Common Units” has the meaning set forth in the Recitals.

“Parent Conflicts Committee” means the Conflicts Committee (as defined in the Parent Limited Partnership Agreement) of the Parent Board.

“Parent Equity Issuance” has the meaning set forth in the Recitals.

“Parent Expenses” means an amount in cash equal to the reasonably documented out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment bankers, experts and consultants) incurred by any Parent Group Entities or the general partner of Parent in connection with this Agreement and the transactions contemplated hereby up to a maximum amount of \$1,000,000.

“Parent Financial Statements” has the meaning set forth in Section 4.6(a).

“Parent Group Entities” means the Parent and the Parent Subsidiaries (excluding the NNA Group Entities).

“Parent Common Units” has the meaning set forth in the Recitals.

“Parent Incentive Distribution Rights” means the “Incentive Distribution Rights,” as defined in the Parent Partnership Agreement.

“Parent Material Adverse Effect” means any change, effect, event or occurrence that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on or a material adverse change in (i) the business, assets, liabilities, properties, condition (financial or otherwise) or results of operations of the Parent Group Entities (including their ownership of shares of NNA Common Stock), taken as a whole; *provided, however*, that any adverse changes, effects, events or occurrences resulting from or due to any of the following shall be disregarded in determining whether there has been a Parent Material Adverse Effect: (a) changes, effects, events or occurrences affecting the markets or geographic locations in which the Parent Group Entities operate, (b) changes, effects, events or occurrences affecting the United States or global economic conditions or financial, credit, debt, securities or other capital markets in general, (c) any outbreak of, acts of or escalation of hostilities, terrorism, war or other similar national emergency, including any event, fact, condition or circumstance resulting from COVID-19 or the worsening thereof, (d) the announcement or pendency of this Agreement or the transactions contemplated hereby, (e) changes in any Laws applicable to Parent or any of the Parent Subsidiaries or in accounting regulations or principles or the interpretation thereof that materially affects this Agreement or the transactions contemplated hereby, (f) the Parent Parties taking any action required or contemplated by this Agreement, (g) changes, effects, events or occurrences at any NNA Group Entity, (h) any change in the market price or trading volume of the Parent Common Units (it being understood and agreed that the foregoing shall not preclude any other party to this Agreement from asserting that any facts or occurrences giving rise to or contributing to such change that are not otherwise excluded from the definition of Parent Material Adverse Effect should be deemed to constitute, or be taken into account in determining, whether there has been, or would reasonably be expected to be, a Parent Material Adverse Effect), (i) changes, effects, events or occurrences generally affecting the prices of oil, natural gas, natural gas liquids and other similar commodities, or (j) any failure of Parent to meet any internal or external projections, forecasts or estimates of revenues, earnings or other financial or operating metrics for any period (it being understood and agreed that the foregoing shall not preclude any other party to this Agreement from asserting that any facts or occurrences giving rise to or contributing to such change that are not otherwise excluded from the definition of Parent Material Adverse Effect should be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Parent Material Adverse Effect); *provided* that, in the case of clauses (a), (b), (c), (e) and (i) the adverse impact on the Parent Group Entities, taken as a whole, is not materially disproportionate to the adverse impact on similarly situated parties, or (ii) the ability of any of the Parent Parties to perform their obligations under this Agreement or to consummate the transactions contemplated by this Agreement.

“Parent Material Contract” has the meaning set forth in Section 4.11(a).

“Parent Partnership Agreement” means the Fourth Amended and Restated Agreement of Limited Partnership of Parent, dated as of March 19, 2018, as amended, supplemented or restated from time to time.

“Parent Parties” means Parent and Merger Sub.

“Parent SEC Reports” has the meaning set forth in Section 4.5(a).

“Parent Subsidiaries” means the entities that are partially or wholly owned, directly or indirectly, by Parent, excluding any NNA Group Entity.

“Parent Tax Counsel” has the meaning set forth in Section 5.8.

“Permits” has the meaning set forth in Section 3.10(a).

“Permitted Indebtedness” means (i) in the case of Parent, (a) Refinancing Indebtedness, (b) additional indebtedness with a principal amount of up to 20% of the aggregate principal amount of the existing indebtedness of the Parent Group Entities in effect as of the date hereof and (c) any intercompany indebtedness between the Parent Group Entities, and (ii) in the case of NNA, (a) the NNA Debt Financing and the Working Capital Revolving Loan Facility and (b) any intercompany indebtedness between the NNA Group Entities.

“Permitted Lien” means all: (i) mechanics’, materialmen’s, carriers’, workmen’s, repairmen’s, vendors’, operators’ or other like Liens, if any, that do not materially detract from the value of or materially interfere with the use of any of the assets of the Parent Group Entities or NNA Group Entities, as applicable, subject thereto; (ii) Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business; (iii) title defects or Liens (other than those constituting Liens for the payment of indebtedness), if any, that do not or would not, individually or in the aggregate, impair in any material respect the use or occupancy of the assets of the Parent Group Entities or NNA Group Entities, as applicable, taken as a whole; (iv) Liens for Taxes that are not due and payable or that may thereafter be paid without penalty, or the validity or amount of which is being contested in good faith by appropriate Proceedings and for which adequate reserves have been established in accordance with GAAP; and (v) Liens supporting surety bonds, performance bonds and similar obligations issued in connection with the businesses of the Parent Group Entities or NNA Group Entities, as applicable.

“Person” means an individual, partnership, corporation, association, trust, limited liability company, joint venture, unincorporated organization or other entity or Governmental Entity.

“Proceedings” has the meaning set forth in Section 3.7(a).

“Refinancing Indebtedness” means any indebtedness of any Parent Group Entity issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease, or refund, other indebtedness of any Parent Group Entity outstanding as of the date hereof; *provided* that the principal amount (or accreted value, if applicable) of such indebtedness does not exceed the principal amount (or accreted value, if applicable) of the indebtedness so extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest thereon and the amount of any reasonably determined premium necessary to accomplish such refinancing and such reasonable fees and expenses incurred in connection therewith).

“Registration Statement” has the meaning set forth in Section 3.17.

“Representatives” shall mean, with respect to any Person, such Person’s directors, officers, employees, investment bankers, financial advisors, attorneys, accountants, agents and other representatives.

“Rights” shall mean, with respect to any Person, subscriptions, options, restricted units, equity appreciation rights, profits interests or other equity-based interests, warrants, calls, convertible or exchangeable securities, rights, preemptive rights, preferential purchase rights, rights of first refusal or any similar rights, commitments or agreements of any character providing for the issuance of any partnership interests, voting securities or equity interests of such Person, including any representing the right to purchase or otherwise receive any of the foregoing or any securities convertible into or exchangeable or exercisable for such partnership interests, voting securities or equity interests.

“Sarbanes-Oxley Act” has the meaning set forth in Section 3.5(a).

“SEC” means the United States Securities and Exchange Commission.

“Second Merger” has the meaning set forth in Section 5.8(b).

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Subsidiaries” means, when used with reference to Parent or NNA, the Parent Subsidiaries or the NNA Subsidiaries, respectively.

“Surrender” means, when used with reference to an NNA Common Stock, the proper delivery of an NNA Certificate (or lost certificate affidavit as contemplated by Section 2.3(b)) or the proper completion, with respect to a Book-Entry NNA Common Stock, of all procedures necessary, in either case, to effect the transfer of such NNA Common Stock in accordance with the terms of the Letter of Transmittal and such other procedures as may be reasonably established by the Exchange Agent.

“Surviving Entity” has the meaning set forth in Section 2.2(b).

“Tax Return” means all reports, estimates, declarations of estimated Tax, claims for refund, information statements, forms and returns relating to, or required to be filed in connection with, any Taxes, including any schedule or attachment thereto, and including any amendment thereof, supplied to, or required to be supplied to, a Governmental Entity.

“Tax” or “Taxes” means (i) all taxes, however denominated, including any interest, penalties or other additions to tax that may become payable in respect thereof, imposed by any Governmental Entity, which taxes shall include, without limiting the generality of the foregoing, all income or profits taxes (including, but not limited to, federal income taxes and state income taxes), gross receipts taxes, net proceeds taxes, alternative or add-on minimum taxes, sales taxes, use taxes, real property gains or transfer taxes, ad valorem taxes, property taxes, value-added taxes, franchise taxes, production taxes, severance taxes, windfall profit taxes, withholding taxes, payroll taxes, employment taxes, excise taxes and other obligations of the same or similar nature to any of the foregoing and (ii) any liability in respect of any items described in clause (i) payable by reason of contract, assumption, transferee or successor liability, operation of law, Treasury Regulations Section 1.1502-6 (or any similar provision of law) or otherwise.

“Transactions” means the Merger, the Parent Equity Issuance, the NNA Equity Issuance, NNA Debt Financing, the NNA Notes Cancellation and Discharge, the NSH Loan Amendment, the NSH Equity Issuance, the Working Capital Revolving Loan Facility and the other transactions contemplated hereby.

“Working Capital Revolving Loan Facility” means the Loan Agreement being entered into between NNA and Parent simultaneously herewith pursuant to which Parent is agreeing to provide to NNA a revolving credit facility in an amount up to \$45 million.

SECTION 1.2 *Rules of Construction*. The division of this Agreement into articles, sections and other portions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof. Unless otherwise indicated, all references to an “Article” or “Section” followed by a number or a letter refer to the specified Article or Section of this Agreement. The terms “this Agreement,” “hereof,” “herein” and “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless otherwise specifically indicated or the context otherwise requires, (a) all references to “dollars” or “\$” mean United States dollars, (b) words importing the singular shall include the plural and vice versa and words importing any gender shall include all genders, (c) “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation,” and (d) all words used as accounting terms shall have the meanings assigned to them under United States generally accepted accounting principles applied on a consistent basis during the periods involved (“GAAP”). In the event that any date on which any action is required to be taken hereunder by any of the parties hereto is not a Business Day, such action shall be required to be taken on the next succeeding day that is a Business Day. Reference to any party hereto is also a reference to such party’s permitted successors and assigns. The Exhibits attached to this Agreement are hereby incorporated by reference into this Agreement and form part hereof. Unless otherwise indicated, all references to an “Exhibit” followed by a number or a letter refer to the specified Exhibit to this Agreement. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, it is the intention of the parties hereto that this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Person by virtue of the authorship of any of the provisions of this Agreement. Further, prior drafts of this Agreement or the fact that any clauses have been added, deleted or otherwise modified from any prior drafts of this Agreement shall not be used as an aid of construction or otherwise constitute evidence of the intent of the parties; and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of such prior drafts.

ARTICLE II.  
TRANSACTIONS

SECTION 2.1 *Initial Transactions.*

(a) *NNA Equity Issuance.* Simultaneously herewith, NNA and Parent are consummating the NNA Equity Issuance, and in furtherance thereof, NNA hereby issues, sells and delivers to Parent, and Parent hereby subscribes for and purchases from NNA, effective as of the date hereof, 44,117,647 newly issued shares of NNA Common Stock (the "Equity Issuance Shares"), free and clear of any and all Liens (other than restrictions under applicable securities laws), for a price of \$3.40 per share in cash and \$150,000,000 in the aggregate (the "Aggregate Purchase Price"). Simultaneously herewith, Parent is remitting the Aggregate Purchase Price to NNA by wire transfer to an account of NNA. As promptly as practicable after the date hereof, NNA shall deliver to Parent a copy of the records of NNA's transfer agent showing Parent as the registered owner of the Equity Issuance Shares.

(b) *NNA Debt Financing.* Simultaneously, or substantially simultaneously, herewith, NNA shall enter into the Loan Agreement and consummate the NNA Debt Financing pursuant to the Loan Agreement.

(c) *NNA Notes Cancellation and Discharge.* Simultaneously, or substantially simultaneously, herewith, NNA shall consummate the NNA Notes Cancellation and Discharge.

(d) *NSH Loan Amendment.* Simultaneously, or substantially simultaneously herewith, NNA shall enter into the NSH Loan Amendment and consummate the transactions contemplated thereby.

(e) *Working Capital Revolving Loan Facility.* Simultaneously herewith, NNA and Parent shall enter into the Loan Agreement providing for the Working Capital Revolving Loan Facility.

SECTION 2.2 *Closing of the Merger.*

(a) *Closing Date.* Subject to the satisfaction or waiver of the conditions (other than those conditions that are not legally permitted to be waived) to closing set forth in Article VI, the closing (the "Closing") of the Merger and the transactions contemplated by this Section 2.2 shall be held at the principal executive offices of Parent, located at 7 Avenue de Grande Bretagne, Office 11B2 Monte Carlo, MC 98000 Monaco, on the third Business Day following the satisfaction or waiver (other than those conditions that are not legally permitted to be waived) of all of the conditions set forth in Article VI (other than conditions that would normally be satisfied on the Closing Date, but subject to satisfaction or waiver (other than those conditions that are not legally permitted to be waived) of those conditions) commencing at 9:00 a.m., local time, or such other place, date and time as may be mutually agreed upon in writing by Parent and NNA. The "Closing Date," as referred to herein, shall mean the date on which the Closing actually occurs.

(b) *Effective Time*. On the Closing Date, concurrently with or as soon as practicable following the Closing, Parent and NNA shall cause a certificate of merger effecting the Merger (the “Certificate of Merger”) to be filed with the Office of the Registrar of Corporations of the Republic of the Marshall Islands, duly executed in accordance with the relevant provisions of the Marshall Islands Business Corporation Act (the date and time of such filing (or, if agreed by the parties hereto, such later time and date as may be expressed therein as the effective date and time of the Merger) being the “Effective Time”). Upon the terms and subject to the conditions of this Agreement, at the Effective Time, Merger Sub shall merge with and into NNA, the separate existence of Merger Sub shall cease, and NNA shall continue as the surviving corporation in the Merger (the “Surviving Entity”).

(c) *Effect of the Merger on Equity Securities*. Subject in each case to Sections 2.2(d) and 2.2(e), at the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, NNA, any Holder of shares of NNA Common Stock, any Holder of Parent Common Units, or any other Person:

(i) Conversion of NNA Common Stock. Each share of NNA Common Stock outstanding immediately prior to the Effective Time (other than the shares of NNA Common Stock referenced in Section 2.2(c)(iii) below and other than any share of NNA Common Stock outstanding immediately prior to the Effective Time that is subject to vesting or other forfeiture conditions (such shares, the “NNA Restricted Shares”)) shall be converted into the right to receive 0.1275 of a validly issued Parent Common Unit (the “Merger Consideration” and such ratio, the “Exchange Ratio”). Each NNA Restricted Share award outstanding immediately prior to the Effective Time shall be converted into an award with respect to a number of Parent Common Units (rounded up or down to the nearest whole unit) equal to the product of (x) the number of shares of NNA Common Stock subject to such NNA Restricted Share award and (y) the Exchange Ratio, and such award of Parent Common Units will be subject to the same terms and conditions (including, without limitation, the same vesting conditions) as were applicable to such NNA Restricted Share award immediately prior to the Effective Time.

(ii) Each share of NNA Common Stock, upon being converted into the right to receive the Merger Consideration pursuant to Section 2.2(c)(i), shall cease to be outstanding and shall be canceled and retired and shall cease to exist, and each Holder of a share of NNA Common Stock immediately prior to the Effective Time shall thereafter cease to be a shareholder of NNA or have any rights with respect to such share of NNA Common Stock, except the right to receive the Merger Consideration and any dividends or distributions to which former Holders of NNA Common Stock become entitled all in accordance with this Article II upon the Surrender of (A) a certificate that immediately prior to the Effective Time represented NNA Common Stock (a “NNA Certificate”) or (B) uncertificated NNA Common Stock represented by book-entry (“Book-Entry NNA Common Stock”), together with such properly completed and duly executed Letter of Transmittal and such other documents in accordance with Section 2.3.

(iii) Treatment of NNA-Owned NNA Common Stock and Parent-Owned NNA Common Stock. Any shares of NNA Common Stock that are owned immediately prior to the Effective Time by any NNA Group Entity or Parent Group Entity (including the Equity Issuance Shares) shall be automatically canceled and shall cease to exist and no consideration shall be delivered in exchange for such canceled NNA Common Stock.



(iv) Common Stock of Merger Sub. Each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock of the Surviving Entity. At the Effective Time, the books and records of NNA shall be revised to reflect the cancellation and retirement of all shares of NNA Common Stock and the conversion of the shares of common stock of Merger Sub into common stock of the Surviving Entity, and the existence of NNA (as the Surviving Entity) shall continue without dissolution.

(d) *Other Effects of the Merger*. The Merger shall be conducted in accordance with and shall have the effects set forth in this Agreement and the applicable provisions of Marshall Islands Limited Business Corporation Act. At the Effective Time, by virtue of the Merger, the Amended NNA Articles of Incorporation as in effect immediately prior to the Effective Time to read in its entirety as set forth on Exhibit A and from and after the Effective Time, the Amended NNA Articles of Incorporation as so amended shall continue as the articles of incorporation of the Surviving Entity until duly amended in accordance with applicable Law. From and after the Effective Time, the bylaws of NNA as in effect immediately prior to the Effective Time shall continue as the bylaws of the Surviving Entity until duly amended in accordance with applicable Law.

(e) *No Fractional Units*. Notwithstanding any other provision of this Agreement, (i) no certificates or scrip representing fractional Parent Common Units shall be issued in the Merger, (ii) each Holder of shares of NNA Common Stock exchanged pursuant to the Merger who would otherwise have been entitled to receive a fractional Parent Common Unit (after taking into account all shares of NNA Common Stock held by such Holder immediately prior to the Effective Time) of 0.5 or above shall receive from Parent, in lieu of such fractional unit, a full Parent Common Unit, and (iii) any Holder of shares of NNA Common Stock exchanged pursuant to the Merger who would otherwise have been entitled to receive a fractional Parent Common Unit (after taking into account all shares of NNA Common Stock held by such Holder immediately prior to the Effective Time) of less than 0.5 shall receive no consideration for such fractional unit, which shall be forfeited.

(f) *Certain Adjustments*. If between the Execution Date and the Effective Time, whether or not permitted pursuant to the terms of this Agreement, the number of outstanding shares of NNA Common Stock or Parent Common Units shall be changed into a different number of units, shares or other securities (including any different class or series of securities) by reason of any dividend or distribution payable in shares or partnership interests, equity interests or Rights, subdivision, reclassification, split, split-up, combination, merger, consolidation, or other similar transaction, or any such transaction shall be authorized, declared or agreed upon with a record date at or prior to the Effective Time, then the Merger Consideration and any other similarly dependent items shall be appropriately adjusted to reflect fully the effect of such transaction and to provide to Parent, NNA, Merger Sub and the Holders of shares of NNA Common Stock the same economic effect as contemplated by this Agreement prior to such event, and thereafter, all references in this Agreement to the Merger Consideration, and any other similarly dependent items shall be references to the Merger Consideration and any other similarly dependent items, as so adjusted; *provided, however*, that nothing in this Section 2.2(f) shall be deemed to permit or authorize any party hereto to effect any such dividend or distribution payable in shares, partnership interests, equity interests or Rights, subdivision, reclassification, split, split up, combination, merger, consolidation or other similar transaction, or the authorization, declaration or agreement to do such transaction that is not otherwise authorized or permitted to be undertaken pursuant to this Agreement.

SECTION 2.3 *Exchange of NNA Common Stock.*

(a) *Exchange Agent.* Prior to the mailing of the NNA Proxy Statement, Parent shall appoint a bank, trust company or similar Person to act as exchange agent (the “Exchange Agent”) and establish an exchange fund (the “Exchange Fund”) for the payment of the Merger Consideration and any dividends or distributions payable pursuant to Section 2.3(c). At or prior to the Closing, Parent shall (i) reserve with the Exchange Agent the Parent Common Units to be issued pursuant to Section 2.2(c)(i), and (ii) authorize the Exchange Agent to exchange Parent Common Units in accordance with this Section 2.3. Parent shall deposit with the Exchange Agent any additional cash as and when necessary to pay any dividends or distributions payable pursuant to Section 2.3(c) and 2.3(d), and other amounts required to be paid under this Agreement. Parent shall pay all costs and fees of the Exchange Agent and all expenses associated with the exchange process. Any Parent Common Units, and any other funds deposited with the Exchange Agent, shall be returned to Parent after the earlier to occur of (x) payment in full of all amounts due to the Holders of shares of NNA Common Stock and (y) the expiration of the period specified in Section 2.3(e).

(b) *Exchange Procedures.* Promptly after the Effective Time, Parent shall, or shall cause the Exchange Agent to, mail to each Holder of NNA Common Stock as of the Effective Time whose shares of NNA Common Stock were converted into the right to receive the Merger Consideration a form of letter of transmittal (the “Letter of Transmittal”) (which shall specify that delivery shall be effected, and risk of loss and title to the NNA Certificates shall pass, only upon proper delivery of the NNA Certificates (or lost certificate affidavit as contemplated by this Section 2.3(b)) to the Exchange Agent or, in the case of Book-Entry NNA Common Stock, upon adherence to the procedures set forth in the Letter of Transmittal, and which shall be in such customary form and have such other provisions as Parent and NNA may reasonably agree prior to the Effective Time) and instructions for effecting the Surrender of such NNA Certificates (or lost certificate affidavit as contemplated by this Section 2.3(b)) or Book-Entry NNA Common Stock in exchange for, as applicable, whole Parent Common Units and any dividends or distributions payable pursuant to Section 2.3(c) or Section 2.3(d). Subject to Section 2.3(c), upon Surrender to the Exchange Agent of such NNA Certificates (or lost certificate affidavit as contemplated by this Section 2.3(b)) or Book-Entry NNA Common Stock, together with such properly completed and duly executed Letter of Transmittal and such other documents as may reasonably be required by the Exchange Agent, the Holder of an NNA Certificate (or lost certificate affidavit as contemplated by this Section 2.3(b)) or Book-Entry NNA Common Stock shall be entitled to receive in exchange therefor, as applicable, (i) that number and type of whole Parent Common Units (which shall be in uncertificated book-entry form unless a physical certificate is requested) to which such Holder is entitled pursuant to Sections 2.2(c)(i) and 2.2(e), and (ii) any dividends or distributions payable pursuant to Section 2.3(c) or Section 2.3(d) to which such Holder is entitled. The instructions for effecting the Surrender of NNA Certificates shall set forth procedures that must be taken by the Holder of any NNA Certificate that has been lost, destroyed or stolen; it shall be a condition to the right of such Holder to receive the Merger Consideration and any dividends or distributions payable pursuant to Section 2.3(c) or Section 2.3(d) that the Exchange Agent shall have received,

along with the Letter of Transmittal, a duly executed lost certificate affidavit, including an agreement to indemnify Parent, signed exactly as the name or names of the registered Holder or Holders of shares of NNA Common Stock appeared on the books of NNA immediately prior to the Effective Time, together with a customary bond and such other documents, in each case, as Parent may reasonably require in connection therewith. After the Effective Time, there shall be no further transfer on the records of NNA or its transfer agent of NNA Certificates or Book-Entry NNA Common Stock; and if such NNA Certificates or Book-Entry NNA Common Stock are presented to NNA or its transfer agent for transfer, they shall be canceled against delivery of the Merger Consideration and any dividends or distributions payable pursuant to Section 2.3(c) or Section 2.3(d) as hereinabove provided. Until Surrendered as contemplated by this Section 2.3(b), each NNA Certificate or Book-Entry NNA Common Stock shall be deemed at any time after the Effective Time to represent only the right to receive upon such Surrender the Merger Consideration. No interest will be paid or will accrue on any dividends or distributions payable pursuant to Section 2.3(c) or Section 2.3(d).

(c) *Dividends and Distributions with Respect to Unexchanged NNA Common Stock.* No dividends or other distributions with respect to Parent Common Units issued in the Merger with a record date after the Effective Time shall be paid to the Holder of any NNA Certificate or Book-Entry NNA Common Stock not Surrendered with respect to such Parent Common Units issuable in respect thereof until the Surrender of such NNA Certificate or Book-Entry NNA Common Stock in accordance with this Section 2.3. Subject to the effect of applicable Law, Parent shall pay, or cause the Exchange Agent to pay, to the Holder of each NNA Certificate or Book-Entry NNA Common Stock, without interest, (i) at the time of Surrender of such NNA Certificate or Book-Entry NNA Common Stock, the amount of dividends or other distributions previously paid with respect to the whole Parent Common Units issuable with respect to such NNA Certificate or Book-Entry NNA Common Stock that have a record date after the Effective Time and a payment date on or prior to the time of Surrender and (ii) at the appropriate payment date, the amount of dividends and distributions payable with respect to such whole Parent Common Units with a record date after the Effective Time and prior to such Surrender and a payment date subsequent to such Surrender.

(d) *No Further Ownership Rights in NNA Common Stock.* All Merger Consideration issued upon the Surrender for exchange of NNA Certificates or Book-Entry NNA Common Stock in accordance with the terms of this Article II shall be deemed to have been issued (and paid) in full satisfaction of all rights pertaining to the shares of NNA Common Stock theretofore represented by such NNA Certificates or Book-Entry NNA Common Stock, subject, however, to Parent's obligation, notwithstanding the conversion of shares of NNA Common Stock pursuant to this Agreement, with respect to shares of NNA Common Stock outstanding immediately prior to the Effective Time, to pay (or cause NNA to pay) to the Holder of shares NNA Common Stock as of the applicable record date any distributions with a record date at or prior to the Effective Time that may have been declared or made by NNA with respect to such shares of NNA Common Stock on or prior to the Effective Time and that remain unpaid at the Effective Time.

(e) *Termination of Exchange Fund.* Any portion of the Exchange Fund that remains undistributed to the Holders of the NNA Certificates or Book-Entry NNA Common Stock for six (6) months after the Closing Date shall be delivered to Parent, upon demand, and any Holders of the NNA Certificates or Book-Entry NNA Common Stock who have not theretofore complied with this Section 2.3 shall thereafter look only to Parent and only as general creditors thereof for payment of their claim for the Merger Consideration and any dividends and distributions with respect to NNA Common Stock or Parent Common Units to which such holders may be entitled.

(f) *No Liability.* To the extent permitted by applicable Law, none of Parent, Merger Sub, NNA or the Exchange Agent shall be liable to any Person in respect of any Merger Consideration or distribution properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. If any NNA Certificates or Book-Entry NNA Common Stock shall not have been Surrendered immediately prior to such date on which any Merger Consideration, or any dividends or distributions with respect to the NNA Common Stock or Parent Common Units in respect of such NNA Certificate or Book-Entry NNA Common Stock would escheat to or become the property of any Governmental Entity, any such units, cash or distributions in respect of such NNA Certificates or Book-Entry NNA Common Stock shall, to the extent permitted by applicable Law, become the property of Parent, free and clear of all claims or interest of any Person previously entitled thereto.

(g) *Withholding Rights.* Parent, Merger Sub, NNA, the Surviving Entity and the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement, without duplication, such amounts, which may include Parent Common Units, as Parent, Merger Sub, NNA, the Surviving Entity or the Exchange Agent reasonably deem to be required to deduct and withhold with respect to the making of payments under the Code and the rules and regulations promulgated thereunder, or any provision of state, local or non-U.S. Tax Law. To the extent that amounts are so withheld or paid over to or deposited with the relevant Governmental Entity, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding or payment was made.

SECTION 2.4 *Plan of Reorganization.* For purposes of the Intended Tax Treatment, this Agreement constitutes, and is adopted as, a “plan of reorganization” for purposes of Sections 354 and 361 of the Code.

### ARTICLE III. REPRESENTATIONS AND WARRANTIES OF NNA

Except as disclosed in the NNA SEC Reports (excluding any disclosures set forth in such NNA SEC Report under the heading “Risk Factors” or in any section related to forward-looking statements (other than any factual information contained within such headings, disclosures or statements)) filed or publicly furnished on or after January 1, 2020 and prior to the Execution Date (without giving effect to any NNA SEC Report or any amendment to any NNA SEC Report in each case filed or publicly furnished on or after the Execution Date), NNA hereby represents and warrants to Parent that:

SECTION 3.1 *Organization and Existence.*

(a) NNA is a corporation duly formed, validly existing and in good standing under the Laws of the Republic of the Marshall Islands and has all requisite power and authority to own, operate and lease its properties and assets and to carry on its business as now conducted.

(b) Each of the NNA Subsidiaries is an entity duly organized or formed, as applicable, validly existing and in good standing (with respect to jurisdictions that recognize such concept) under the Laws of its respective jurisdiction of organization or formation and has all requisite power and authority to own, operate and lease its properties and assets and to carry on its business as now conducted.

(c) Each of the NNA Group Entities is duly licensed or qualified to do business and is in good standing in the states in which the character of the properties and assets owned or held by it or the nature of the business conducted by it requires it to be so licensed or qualified, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, have an NNA Material Adverse Effect.

SECTION 3.2 *Authority and Approval.* NNA has all requisite power and authority to execute and deliver this Agreement, to consummate the Transactions and to perform all of the terms and conditions hereof to be performed by it, except that the consummation of the Merger is subject to receipt of the NNA Stockholders Approval. The execution and delivery of this Agreement by NNA, the consummation of the Transactions and the performance of all of the terms and conditions hereof to be performed by NNA have been duly authorized and approved by all requisite action on the part of NNA, except that the consummation of the Merger is subject to receipt of the NNA Stockholders Approval. At a meeting duly called and held, the NNA Special Committee, by unanimous vote, in good faith (a) determined that this Agreement and the Transactions are in the best interests of NNA and the Holders of NNA Public Stock, (b) approved this Agreement and the Transactions, including the Merger, (c) resolved to make the NNA Special Committee Recommendation and (d) resolved to recommend, and to direct the NNA Board to recommend, the approval of this Agreement and the Merger, by the Holders of shares of NNA Common Stock. At a meeting duly called and held and upon the receipt of the recommendation of the NNA Special Committee, the NNA Board, by unanimous vote, (i) determined that this Agreement and the Transactions are in the best interests of NNA and the Holders of NNA Public Stock, (ii) approved this Agreement and the Transactions, including the Merger, and (iii) directed that this Agreement be submitted to a vote of Holders of shares of NNA Common Stock and made the NNA Board Recommendation. This Agreement has been duly executed and delivered by NNA and constitutes the valid and legally binding obligation of NNA, enforceable against NNA in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar Laws affecting the enforcement of creditors' rights and remedies generally and by general principles of equity (whether applied in a Proceeding at law or in equity).

SECTION 3.3 *No Conflict; Consents; Voting Requirements.*

(a) Subject to the consent, approval, license, permit, order, authorization, filings and notices referred to in Section 3.3(b) and the NNA Stockholders Approval, the execution, delivery and performance of this Agreement by NNA does not, and the fulfillment and compliance with the terms and conditions hereof and the consummation of the Transactions will not, (i)

contravene, violate, conflict with any of, result in any breach of, or require the consent of any Person under, the terms, conditions or provisions of the Governing Documents of NNA; (ii) contravene, conflict with or violate any provision of applicable Law; (iii) conflict with, result in a breach of, constitute a default under (whether with notice or the lapse of time or both), or accelerate or permit the acceleration of the performance required by, or require any consent, authorization or approval under, or result in the suspension, termination or cancellation of, or in a right of suspension, termination or cancellation of, any indenture, deed of trust, mortgage, debenture, note, agreement, contract, commitment, license, concession, permit, lease, joint venture, obligation or other instrument to which any of the NNA Group Entities is a party or by which any of the NNA Group Entities or any of their assets are bound; or (iv) result in the creation of any Lien (other than Permitted Liens) on any of the assets or businesses of any of the NNA Group Entities under any such indenture, deed of trust, mortgage, debenture, note, agreement, contract, commitment, license, concession, permit lease, joint venture, obligation or other instrument, except in the case of clauses (ii), (iii) and (iv), for those items that would not, individually or in the aggregate, have an NNA Material Adverse Effect.

(b) No consent, approval, license, permit, order or authorization of, or any filing with or notice to, any Governmental Entity is required to be obtained or made by any of the NNA Group Entities in connection with the execution, delivery, and performance of this Agreement or the consummation of the Transactions, except (i) as have been waived or obtained or with respect to which the time for asserting such right has expired, (ii) for (A) such filings and reports as may be required pursuant to the applicable requirements of the Securities Act, the Exchange Act, and any other applicable U.S. state or federal or non-U.S. securities, takeover and “blue sky” Laws, (B) any filings and approvals required under the rules and regulations of the NYSE, or (C) the filing of the Certificate of Merger with the Office of the Registrar of Corporations of the Republic of the Marshall Islands, or (iii) for those which would not, individually or in the aggregate, have an NNA Material Adverse Effect (including such consents, approvals, licenses, permits, orders or authorizations that are not customarily obtained prior to the Closing and are reasonably expected to be obtained in the ordinary course of business following the Closing).

(c) The affirmative vote of the Holders of a majority of the outstanding shares of NNA Common Stock at the NNA Stockholders Meeting or any adjournment or postponement thereof in favor of the adoption of this Agreement and the transactions contemplated hereby (the “NNA Stockholders Approval”) is the only vote or approval of the limited partners of NNA that is necessary to adopt this Agreement and the transactions contemplated hereby in accordance with the Amended NNA Articles of Incorporation and applicable Law.

**SECTION 3.4 Capitalization.** As of the Execution Date, the authorized capital stock of NNA consists of 250,000,000 shares of NNA Common Stock and 10,000,000 shares of preferred stock, par value \$0.0001 per share (the “NNA Preferred Stock” and, together with the NNA Common Stock, the “NNA Capital Stock”). As of the Execution Date, there are outstanding 17,735,966 shares of NNA Common Stock (including NNA Restricted Shares), excluding the shares of NNA Common Stock being issued pursuant to the NNA Equity Issuance and the NSH Equity Issuance and there are no shares of NNA Preferred Stock outstanding. All of the outstanding shares of NNA Common Stock have been duly authorized and validly issued in accordance with the Amended NNA Articles of Incorporation. Upon issuance pursuant to this Agreement and/or the NSH Loan Amendment, as applicable, all of the shares of NNA Common Stock being issued

pursuant to the NNA Equity Issuance and the NSH Equity Issuance will be duly authorized and validly issued in accordance with the Amended NNA Articles of Incorporation and listed on the NYSE. Except as set forth above in this [Section 3.4\(a\)](#), as of the Execution Date, no shares of NNA Capital Stock were subject to outstanding options, share appreciation rights, restricted shares, or equity awards of any kind. Except as set forth above in this [Section 3.4\(a\)](#), as of the Execution Date there are not any shares of NNA Capital Stock, interests, voting securities or equity interests of NNA issued and outstanding or any Rights with respect to shares of NNA Capital Stock, interests, voting securities or equity interests of NNA issued or granted by, or binding upon, any of the NNA Group Entities. As of the Execution Date, there are no outstanding obligations of NNA or any NNA Group Entity to repurchase, redeem or otherwise acquire any shares of NNA Capital Stock or other interests, voting securities or equity interests or any Rights with respect to shares of NNA Capital Stock, interests, voting securities or equity interests of NNA. There are no outstanding bonds, debentures, notes or other indebtedness, the holders of which have the right to vote (or which are convertible or exchangeable into or exercisable for securities having the right to vote) with the shareholders of NNA on any matter.

#### SECTION 3.5 *SEC Documents; Internal Controls.*

(a) Since January 1, 2020, all reports, including but not limited to the Annual Reports on Form 20-F and the Reports on Form 6-K (whether filed on a voluntary basis or otherwise), forms, schedules, certifications, prospectuses, registration statements and other documents required to be filed or furnished by NNA or any NNA Subsidiary with or to the SEC have been or will be timely filed or furnished (the “[NNA SEC Reports](#)”). Each of the NNA SEC Reports (i) complied in all material respects with the requirements of applicable Law (including the Exchange Act, the Securities Act and the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated thereunder (the “[Sarbanes-Oxley Act](#)”)), and (ii) as of its effective date (in the case of NNA SEC Reports that are registration statements filed pursuant to the requirements of the Securities Act) and as of its filing date did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except for any statements in any NNA SEC Report that may have been modified by an amendment to such report or a subsequent report filed with the SEC prior to the Execution Date.

(b) NNA makes and keeps books, records, and accounts and has devised and maintains a system of internal controls, in each case, as required pursuant to Section 13(b)(2) under the Exchange Act. NNA has established and maintains disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act and the applicable listing standards of the NYSE. Such disclosure controls and procedures are reasonably designed to ensure that all material information required to be disclosed by NNA in the reports that it files under the Exchange Act are recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such material information is accumulated and communicated to its management as appropriate to allow timely decisions regarding required disclosure. NNA’s principal executive officer and its principal financial officer have disclosed, based on their most recent evaluation, to NNA’s auditors and the audit committee of the NNA Board (x) all significant deficiencies in the designation or operation of internal controls which could adversely affect NNA’s ability to record, process, summarize and report financial data and have identified for NNA’s auditors any material weakness in internal controls and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in NNA’s internal controls.

SECTION 3.6 *Financial Statements; Undisclosed Liabilities.*

(a) NNA's Annual Report on Form 20-F for the year ended December 31, 2020 filed with the SEC on April 28, 2021 (the "NNA 20-F") sets forth a true and complete copy of the consolidated audited statements of operations, cash flows and changes in partners' capital for each of years ended December 31, 2020, December 31, 2019 and December 31, 2018 and consolidated audited balance sheets as of December 31, 2020 and as of December 31, 2019 for NNA, including the notes thereto, and NNA's Report on Form 6-K ("Latest NNA Quarter 6-K") filed with the SEC on June 14, 2021 sets forth a true and correct copy of the consolidated unaudited statements of operations, cash flows and changes in partners' capital for the three month periods ended March 31, 2021 and March 31, 2020 and consolidated unaudited balance sheet as of March 31, 2021 for NNA, including the notes thereto (the referenced financial statements set forth in the NNA 20-F and the Latest NNA Quarter 6-K are collectively referred to as the "NNA Financial Statements"). The NNA Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby (except as may be indicated in the notes thereto) and present fairly in all material respects the consolidated financial position of NNA as of the dates indicated therein and the consolidated results of operations and cash flows of NNA for the periods indicated therein, except as otherwise noted therein. Except as set forth in the NNA Financial Statements, there are no off-balance sheet arrangements that would, individually or in the aggregate, have an NNA Material Adverse Effect. NNA has not had any disagreement with its independent public accounting firm that required disclosure in the NNA SEC Reports.

(b) There are no liabilities or obligations of NNA or the NNA Subsidiaries (whether known or unknown and whether accrued, absolute, contingent or otherwise) of a type that are required by GAAP to be reflected or reserved against in a consolidated balance sheet of NNA, other than (i) liabilities or obligations reflected or reserved against in the consolidated balance sheet as of March 31, 2021 included in the NNA Financial Statements, (ii) current liabilities incurred in the ordinary course of business since March 31, 2021, (iii) liabilities and obligations incurred under or in accordance with this Agreement or in connection with the transactions contemplated by this Agreement, and (iv) liabilities or obligations (whether known or unknown and whether accrued, absolute, contingent or otherwise) that would not, individually or in the aggregate, have an NNA Material Adverse Effect.

SECTION 3.7 *Litigation; Laws and Regulations.* Except as would not, individually or in the aggregate, have an NNA Material Adverse Effect:

(a) There are no (i) civil, criminal, regulatory or administrative actions, suits, claims, hearings, demands, arbitrations, inquiries, subpoenas, investigations or proceedings ("Proceedings") pending or, to the knowledge of NNA, threatened against or affecting the NNA Group Entities, their assets, or any of the operations of the NNA Group Entities related thereto or (ii) judgments, orders, decrees or injunctions of any Governmental Entity, whether at law or in equity ("Orders"), against or affecting the NNA Group Entities, their assets, or any of the operations of the NNA Group Entities related thereto.



(b) None of the NNA Group Entities (i) is in violation of or in default under its Governing Documents or (ii) is in violation of any applicable Law, except in the case of each of clause (i) and (ii) for such violations or defaults that would not, individually or in the aggregate, have an NNA Material Adverse Effect.

(c) Without limiting the generality of Section 3.7(b), none of the NNA Group Entities or, to the knowledge of NNA, any Representative of any of the foregoing (in their respective capacities as such), (i) has violated the U.S. Foreign Corrupt Practices Act, and any other U.S. and foreign anti-corruption Laws that are applicable to any NNA Group Entity; (ii) has, to the knowledge of NNA, been given written notice by any Governmental Entity of any facts which, if true, would constitute a violation of the U.S. Foreign Corrupt Practices Act or any other U.S. or foreign anti-corruption Laws by any such person; and (iii) to the knowledge of NNA, is being (or has been) investigated by any Governmental Entity except, in each case of the foregoing clauses (i) through (iii), as would not have, individually or in the aggregate, an NNA Material Adverse Effect.

SECTION 3.8 *No Adverse Changes*. (a) Since March 31, 2021, there has not been an NNA Material Adverse Effect; and (b) since March 31, 2021, (i) except for this Agreement and the Transactions, NNA and its consolidated Subsidiaries have carried on and operated their respective businesses in all material respects in the ordinary course of business consistent with past practice and (ii) neither NNA nor any of its Subsidiaries has taken any action described in Section 5.2(b) that, if taken after the date of this Agreement and prior to the Effective Time without the prior written consent of Parent, would violate such provisions.

#### SECTION 3.9 *Taxes*.

(a) Except as would not, individually or in the aggregate, have an NNA Material Adverse Effect: (i) all Tax Returns required to be filed by or with respect to NNA or any of the NNA Subsidiaries or their assets have been filed on a timely basis (taking into account all extensions of due dates) and all such Tax Returns are true, complete and accurate; (ii) all Taxes owed by NNA or any of the NNA Subsidiaries, which are or have become due, have been timely paid in full; (iii) there are no Liens on any of the assets of NNA or any of the NNA Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax, other than Liens for Taxes that are not due and payable or that may thereafter be paid without penalty; (iv) there is no pending Proceeding for assessment or collection of Taxes and no Tax assessment, deficiency or adjustment has been asserted or proposed with respect to NNA or any of the NNA Subsidiaries or their assets; (v) NNA and the NNA Subsidiaries have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, equityholder or other third party; and (vi) no claim has ever been made in writing by a Governmental Entity of a jurisdiction where NNA or an NNA Subsidiary has not filed Tax Returns that NNA or an NNA Subsidiary is or may be subject to taxation by that jurisdiction.

(b) Neither NNA nor any of the NNA Subsidiaries is a party to or bound by or has any obligation under any Tax indemnification, separation, sharing or similar agreement or arrangement (other than such an agreement or arrangement entered into in the ordinary course of business which does not relate primarily to Taxes).

(c) Neither NNA nor any of the NNA Subsidiaries has entered into any “listed transaction” within the meaning of Section 6707A(c)(2) of the Code and U.S. Treasury Regulation Section 1.6011-4(b)(2) (or any similar provision of state, local or non-U.S. Law).

(d) During the last five (5) years, neither NNA nor any of the NNA Subsidiaries has been a “distributing corporation” or a “controlled corporation” in a transaction intended to qualify under Section 355 of the Code.

(e) Neither NNA nor any of the NNA Subsidiaries (i) has filed any extension of time within which to file any Tax Returns that have not been filed, except in the ordinary course of business nor (ii) will be required to include any item of income or gain in, nor be required to exclude any item of deduction of loss from, any period ending after the Closing Date as a result of any “closing agreement,” change in method of accounting, installment sale or open transaction made on or prior to the Closing Date or prepaid amount received prior to the Closing Date.

(f) Neither NNA nor any of the NNA Subsidiaries is a “passive foreign investment company” within the meaning of Section 1297 of the Code.

(g) Neither NNA nor any of the NNA Subsidiaries is or has been a resident for Tax purposes of any jurisdiction other than its jurisdiction of organization.

(h) NNA is currently (and has been since its formation) properly classified as a corporation for U.S. federal income tax purposes.

(i) Neither NNA nor any of the NNA Subsidiaries has taken or agreed to take any action, and NNA is not aware of any fact or circumstance, that would prevent or impede the Intended Tax Treatment.

#### SECTION 3.10 *Licenses; Permits.*

(a) The NNA Group Entities have all licenses, franchises, tariffs, grants, easements, variances, exceptions, permits and authorizations (other than environmental permits) issued or granted by Governmental Entities that are necessary for the conduct of their respective businesses as now being conducted or have obtained valid waivers therefrom (collectively, “Permits”), except where the failure to obtain such Permit would not, individually or in the aggregate, have an NNA Material Adverse Effect.

(b) All Permits are validly held by the NNA Group Entities and are in full force and effect, except as would not, individually or in the aggregate, have an NNA Material Adverse Effect.

(c) The NNA Group Entities have complied with all terms and conditions of the Permits, except as would not, individually or in the aggregate, have an NNA Material Adverse Effect. No suspension or cancellation of any Permit is pending or, to the knowledge of NNA, threatened, except as would not, individually or in the aggregate, have an NNA Material Adverse Effect.

(d) The Permits will not be subject to suspension, modification, revocation or non-renewal as a result of the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except, in each case, as would not, individually or in the aggregate, have an NNA Material Adverse Effect.

(e) No Proceeding is pending or, to the knowledge of NNA, threatened with respect to any alleged failure by NNA Group Entities to have any material Permit necessary for the operation of any asset or the conduct of their businesses or to be in compliance therewith.

#### SECTION 3.11 *Contracts.*

(a) Except for this Agreement or as filed or publicly furnished with the SEC prior to the Execution Date, none of the NNA Group Entities is a party to or bound by, as of the Execution Date, any contract or other agreement (whether written or oral) of the type required to be filed as an Exhibit to an Annual Report on Form 20-F filed by NNA (each contract that is described in this Section 3.11(a) being an “NNA Material Contract”).

(b) Except as would not, individually or in the aggregate, have an NNA Material Adverse Effect, with respect to each of the NNA Group Entities: (i) each NNA Material Contract to which such entity is a party is legal, valid and binding on and enforceable against such entity, and in full force and effect; (ii) each NNA Material Contract to which such entity is a party will continue to be legal, valid and binding on and enforceable against such entity, and in full force and effect on identical terms following the consummation of the Transactions; (iii) such entity that is a party to each NNA Material Contract is not in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default by any such party, or permit termination, modification, or acceleration, under the NNA Material Contract; and (iv) to the knowledge of NNA, no other party to any NNA Material Contract is in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default by such other party, or permit termination, modification or acceleration under any NNA Material Contract other than in accordance with its terms nor has any other party repudiated any provision of the NNA Material Contract.

SECTION 3.12 *Insurance.* Except as would not, individually or in the aggregate, have an NNA Material Adverse Effect, (a) the businesses and assets of the NNA Group Entities are covered by, and insured under, insurance policies underwritten by reputable insurers that include coverages and related limits and deductibles that are customary in the crude oil tanking industry, (b) all such insurance policies are in full force and effect and all premiums due and payable on such policies have been paid, and (c) no notice of cancellation of, material premium increase of, or indication of an intention not to renew, any such insurance policy has been received by the Parent Parties other than in the ordinary course of business.

SECTION 3.13 *Condition of Assets.* Except as would not, individually or in the aggregate, have an NNA Material Adverse Effect, the assets of the NNA Group Entities have been maintained and repaired in the same manner as would a prudent operator of such assets, and are adequate for the purposes for which they are currently used.

SECTION 3.14 *Investment Company Act*. NNA is not, nor immediately after the Closing will be, subject to regulation under the Investment Company Act of 1940, as amended.

SECTION 3.15 *Brokerage Arrangements*. Except for NNA's obligations to Pareto Securities AS, the fees and expenses of which will be paid by NNA, none of the NNA Group Entities has entered (directly or indirectly) into any agreement with any Person that would obligate any of them to pay any commission, brokerage or "finder's fee" or other similar fee in connection with this Agreement or the transactions contemplated hereby.

SECTION 3.16 *Opinion of Financial Advisor*. The NNA Special Committee has received the opinion of Pareto Securities AS, dated as of the Execution Date, to the effect that, as of the date thereof and subject to the assumptions, limitations, qualifications and other matters considered in the preparation thereof, the Exchange Ratio is fair, from a financial point of view, to the Holders of NNA Public Stock (the "NNA Fairness Opinion"). NNA has been authorized by Pareto Securities AS to permit the inclusion of the NNA Fairness Opinion in the Registration Statement and the NNA Proxy Statement.

SECTION 3.17 *Information Supplied*. None of the information supplied (or to be supplied) in writing by or on behalf of NNA specifically for inclusion or incorporation by reference in (a) the registration statement on Form F-4 to be filed with the SEC by Parent with respect to the issuance of Parent Common Units in connection with the Merger (as amended or supplemented from time to time, the "Registration Statement") will, at the time the Registration Statement, or any amendment or supplement thereto, is filed with the SEC or at the time it becomes effective under the Securities Act, and (b) in the NNA Proxy Statement will, on the date it is first mailed to the Holders of shares of NNA Common Stock, and at the time of the NNA Stockholders Meeting, in each case, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of circumstances under which they are made, not misleading. Notwithstanding the foregoing, NNA makes no representation or warranty with respect to information supplied by or on behalf of Parent or Merger Sub for inclusion or incorporation by reference in the Registration Statement and the NNA Proxy Statement.

SECTION 3.18 *Waivers and Disclaimers*. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE BY NNA IN THIS ARTICLE III, NNA HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, ORAL OR WRITTEN, PAST OR PRESENT REGARDING (A) THE VALUE, NATURE, QUALITY OR CONDITION OF ITS ASSETS, (B) THE INCOME TO BE DERIVED FROM ITS ASSETS, (C) THE SUITABILITY OF ITS ASSETS FOR ANY AND ALL ACTIVITIES AND USES THAT MAY BE CONDUCTED THEREON, (D) THE COMPLIANCE OF OR BY ITS ASSETS OR ITS OPERATION WITH ANY LAWS, OR (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ITS ASSETS.

ARTICLE IV.  
REPRESENTATIONS AND WARRANTIES OF PARENT

Except as disclosed in the Parent SEC Reports (excluding any disclosures set forth in such Parent SEC Report under the heading "Risk Factors" or in any section related to forward-looking statements (other than any factual information contained within such headings, disclosures or statements)) filed or publicly furnished on or after January 1, 2019 and prior to the Execution Date (without giving effect to any Parent SEC Report or any amendment to any Parent SEC Report in each case filed or publicly furnished on or after the Execution Date), Parent hereby represents and warrants to NNA that:

SECTION 4.1 *Organization and Existence.*

(a) Each of the Parent Parties is a limited partnership or corporation duly formed, validly existing and in good standing under the Laws of the Republic of the Marshall Islands and has all requisite power and authority to own, operate and lease its properties and assets and to carry on its business as now conducted.

(b) Each of the Parent Subsidiaries (other than Merger Sub) is an entity duly organized or formed, as applicable, validly existing and in good standing (with respect to jurisdictions that recognize such concept) under the Laws of its respective jurisdiction of organization or formation and has all requisite power and authority to own, operate and lease its properties and assets and to carry on its business as now conducted.

(c) Each of the Parent Group Entities is duly licensed or qualified to do business and is in good standing in the states in which the character of the properties and assets owned or held by it or the nature of the business conducted by it requires it to be so licensed or qualified, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(d) All of the issued and outstanding shares of common stock of Merger Sub are owned, beneficially and of record, by Parent. Merger Sub was formed solely for the purpose of engaging in the Merger and the other transactions contemplated by this Agreement. Merger Sub has not incurred, directly or indirectly, any obligations or conducted any business other than incident to its formation and pursuant to this Agreement, the Merger, and the other Transactions.

SECTION 4.2 *Authority and Approval.* Each of the Parent Parties has all requisite power and authority to execute and deliver this Agreement, to consummate the Transactions to which it is a party and to perform all of the terms and conditions hereof to be performed by it. The execution and delivery of this Agreement by each of the Parent Parties, the consummation of the Transactions to which either of the Parent Parties is a party and the performance of all of the terms and conditions hereof to be performed by the Parent Parties have been duly authorized and approved by all requisite action on the part of each of the Parent Parties. At a meeting duly called and held, the Parent Conflicts Committee, by unanimous vote, (a) determined that this Agreement and the Transactions are in the best interests of Parent and the holders of Parent Common Units (excluding the general partner of Parent and its Affiliates), and (b) granted a Special Approval (as defined in the Parent Partnership Agreement) of this Agreement and each of the Transactions. At

a meeting duly called and held, the Parent Board (a) determined that this Agreement, and the Transactions, including the Merger and the Parent Equity Issuance, are in the best interests of Parent and its unitholders, and (b) approved and declared advisable this Agreement and the Transactions to which a Parent Party is party, including the Merger and the Parent Equity Issuance. Parent, in its capacity as sole member of Merger Sub, has approved this Agreement and the transactions contemplated hereby. This Agreement has been duly executed and delivered by each of the Parent Parties and constitutes the valid and legally binding obligation of each of the Parent Parties, enforceable against each of the Parent Parties in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar Laws affecting the enforcement of creditors' rights and remedies generally and by general principles of equity (whether applied in a Proceeding at law or in equity).

**SECTION 4.3 No Conflict; Consents.**

(a) Subject to the consent, approval, license, permit, order, authorization, filings and notices referred to in Section 4.3(b), the execution, delivery and performance of this Agreement by each of the Parent Parties does not, and the fulfillment and compliance with the terms and conditions hereof and the consummation of the Transactions hereby will not, (i) contravene, violate, conflict with any of, result in any breach of, or require the consent of any Person under, the terms, conditions or provisions of the Governing Documents of any of the Parent Parties; (ii) contravene, conflict with or violate any provision of applicable Law; (iii) conflict with, result in a breach of, constitute a default under (whether with notice or the lapse of time or both), or accelerate or permit the acceleration of the performance required by, or require any consent, authorization or approval under, or result in the suspension, termination or cancellation of, or in a right of suspension, termination or cancellation of, any indenture, deed of trust, mortgage, debenture, note, agreement, contract, commitment, license, concession, permit, lease, joint venture, obligation or other instrument to which any of the Parent Group Entities is a party or by which any of the Parent Group Entities or any of their assets are bound; or (iv) result in the creation of any Lien (other than Permitted Liens) on any of the assets or businesses of any of the Parent Group Entities under any such indenture, deed of trust, mortgage, debenture, note, agreement, contract, commitment, license, concession, permit lease, joint venture, obligation or other instrument, except in the case of clauses (ii), (iii) and (iv), for those items that would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(b) No consent, approval, license, permit, order or authorization of, or any filing with or notice to, any Governmental Entity is required to be obtained or made by any of the Parent Group Entities in connection with the execution, delivery, and performance of this Agreement or the consummation of the Transactions, except (i) as have been waived or obtained or with respect to which the time for asserting such right has expired, (ii) for (A) such filings and reports as may be required pursuant to the applicable requirements of the Securities Act, the Exchange Act, and any other applicable U.S. state or federal or non-U.S. securities, takeover and "blue sky" Laws, (B) any filings and approvals required under the rules and regulations of the NYSE, or (C) the filing of the Certificate of Merger with the Office of the Registrar of Corporations of the Republic of the Marshall Islands, or (iii) for those which would not, individually or in the aggregate, have a Parent Material Adverse Effect (including such consents, approvals, licenses, permits, orders or authorizations that are not customarily obtained prior to the Closing and are reasonably expected to be obtained in the ordinary course of business following the Closing).

#### SECTION 4.4 Capitalization.

(a) As of the Execution Date, the outstanding capitalization of Parent consists of 553,408 General Partner Units (as defined in the Parent Partnership Agreement) of Parent, 26,808,861 Parent Common Units and Parent Incentive Distribution Rights. All of such Parent Common Units and the Parent Incentive Distribution Rights and the limited partnership interest represented thereby, have been duly authorized and validly issued in accordance with the Parent Partnership Agreement. As of the Execution Date, no Parent Common Units were subject to outstanding options, unit appreciation rights, restricted units, or equity awards of any kind. Except as set forth above in this Section 4.4(a), as of the Execution Date there are not any Parent Common Units, partnership interests, voting securities or equity interests of Parent issued and outstanding or any Rights with respect to Parent Common Units, partnership interests, voting securities or equity interests of Parent issued or granted by, or binding upon, any of the Parent Group Entities, except as set forth in the Parent Partnership Agreement as in effect on the Execution Date. Except as set forth in the Parent Partnership Agreement as in effect on the Execution Date, there are no outstanding obligations of Parent or any Parent Group Entity to repurchase, redeem or otherwise acquire any Parent Common Units or other partnership interests, voting securities or equity interests or any Rights with respect to Parent Common Units, partnership interests, voting securities or equity interests of Parent. There are no outstanding bonds, debentures, notes or other indebtedness, the holders of which have the right to vote (or which are convertible or exchangeable into or exercisable for securities having the right to vote) with the limited partners of Parent on any matter.

(b) The Parent Common Units issued and outstanding as of the date hereof were, and the Parent Common Units to be issued pursuant to the Merger will, upon issuance, be, duly authorized and validly issued.

#### SECTION 4.5 SEC Documents; Internal Controls; Investment Representations.

(a) Since January 1, 2020, all reports, including but not limited to the Annual Reports on Form 20-F, and the Reports on Form 6-K (whether filed on a voluntary basis or otherwise), forms, schedules, certifications, prospectuses, registration statements and other documents required to be filed or furnished by Parent or any Parent Subsidiary with or to the SEC have been or will be timely filed or furnished (the "Parent SEC Reports"). Each of the Parent SEC Reports (i) complied in all material respects with the requirements of applicable Law (including the Exchange Act, the Securities Act and the Sarbanes-Oxley Act), and (ii) as of its effective date (in the case of Parent SEC Reports that are registration statements filed pursuant to the Securities Act) and as of its filing date did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except for any statements in any Parent SEC Report that may have been modified by an amendment to such report or a subsequent report filed with the SEC prior to the Execution Date.

(b) Parent makes and keeps books, records, and accounts and has devised and maintains a system of internal controls, in each case, as required pursuant to Section 13(b)(2) under the Exchange Act. Parent has established and maintains disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act and the applicable listing standards of the NYSE. Such disclosure controls and procedures are reasonably designed to ensure that all material information required to be disclosed by Parent in the reports that it files under the Exchange Act are recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such material information is accumulated and communicated to its management as appropriate to allow timely decisions regarding required disclosure. Parent's principal executive officer and its principal financial officer have disclosed, based on their most recent evaluation, to Parent's auditors and the audit committee of the Parent Board (x) all significant deficiencies in the designation or operation of internal controls which could adversely affect Parent's ability to record, process, summarize and report financial data and have identified for Parent's auditors any material weakness in internal controls and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in Parent's internal controls.

(c) Since January 1, 2020, the principal executive officer and principal financial officer of Parent have made all certifications (without qualification or exceptions to the matters certified, except as to knowledge) required by the Sarbanes-Oxley Act, and the statements contained in any such certifications are complete and correct, and none of such entities or its officers have received notice from any Governmental Entity questioning or challenging the accuracy, completeness, form or manner of filing or submission of such certification. As of the Execution Date, and except as disclosed in a Parent SEC Report filed with the SEC prior to the Execution Date, none of such entities has any knowledge of any material weakness in the design or operation of such internal controls over financial reporting.

(d) Parent is an "accredited investor" (within the meaning of Rule 501(a) under the Securities Act) and is acquiring the Equity Issuance Shares pursuant to the NNA Equity Issuance only for its own account and not for the account of others and is not acquiring Equity Issuance Shares with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act. Parent acknowledges that the Equity Issuance Shares are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the such shares have not been registered under the Securities Act. Parent acknowledges and agrees that the Equity Issuance Shares may not be offered, resold, transferred or otherwise disposed of by Parent absent an effective registration statement under the Securities Act, except pursuant to an applicable exemption from the registration requirements of the Securities Act.

#### SECTION 4.6 *Financial Statements; Undisclosed Liabilities.*

(a) Parent's Annual Report on Form 20-F for the year ended December 31, 2020 filed with the SEC on March 31, 2021 (the "Parent 20-F") sets forth a true and complete copy of the consolidated audited statements of operations, cash flows and changes in equity for each of years ended December 31, 2020, December 31, 2019 and December 31, 2018 and consolidated audited balance sheets as of December 31, 2020 and as of December 31, 2019 for Parent, including the notes thereto, and Parent's Report on Form 6-K ("Latest Parent Quarter 6-K") filed with the



SEC on May 18, 2021 sets forth a true and correct copy of the consolidated unaudited statements of operations, cash flows and changes in equity for the three month periods ended March 31, 2021 and March 31, 2021 and consolidated unaudited balance sheet as of March 31, 2021 for Parent, including the notes thereto (the referenced financial statements set forth in the Parent 20-F and the Latest Parent Quarter 6-K are collectively referred to as the “Parent Financial Statements”). The Parent Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby (except as may be indicated in the notes thereto) and present fairly in all material respects the consolidated financial position of Parent as of dates indicated therein and the consolidated results of operations and cash flows of Parent for the periods indicated therein, except as otherwise noted therein. Except as set forth in the Parent Financial Statements, there are no off-balance sheet arrangements that would, individually or in the aggregate, have a Parent Material Adverse Effect. Parent has not had any disagreement with its independent public accounting firm that required disclosure in the NNA SEC Reports.

(b) There are no liabilities or obligations of Parent or the Parent Subsidiaries (whether known or unknown and whether accrued, absolute, contingent or otherwise) of a type that are required by GAAP to be reflected or reserved against in a consolidated balance sheet of Parent, other than (i) liabilities or obligations reflected or reserved against in the consolidated balance sheet as of March 31, 2021 included in the Parent Financial Statements, (ii) current liabilities incurred in the ordinary course of business since March 31, 2021, (iii) liabilities and obligations incurred under or in accordance with this Agreement or in connection with the transactions contemplated by this Agreement, and (iv) liabilities or obligations (whether known or unknown and whether accrued, absolute, contingent or otherwise) that would not, individually or in the aggregate, have a Parent Material Adverse Effect.

SECTION 4.7 *Litigation; Laws and Regulations.* Except as would not, individually or in the aggregate, have a Parent Material Adverse Effect:

(a) There are no (i) Proceedings pending or, to the knowledge of Parent, against or affecting the Parent Group Entities, their assets, or any of the operations of the Parent Group Entities related thereto or (ii) Orders, against or affecting the Parent Group Entities, their assets, or any of the operations of the Parent Group Entities related thereto.

(b) None of the Parent Group Entities (i) is in violation of or in default under its Governing Documents or (ii) is in violation of any applicable Law, except in the case of each of clause (i) and (ii) for such violations or defaults that would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(c) Without limiting the generality of Section 4.7(b), none of the Parent Group Entities or, to the knowledge of Parent, any Representative of any of the foregoing (in their respective capacities as such), (i) has violated the U.S. Foreign Corrupt Practices Act, and any other U.S. and foreign anti-corruption Laws that are applicable to any Parent Group Entity; (ii) has, to the knowledge of Parent, been given written notice by any Governmental Entity of any facts which, if true, would constitute a violation of the U.S. Foreign Corrupt Practices Act or any other U.S. or foreign anti-corruption Laws by any such person; and (iii) to the knowledge of Parent, is being (or has been) investigated by any Governmental Entity except, in each case of the foregoing clauses (i) through (iii), as would not have, individually or in the aggregate, a Parent Material Adverse Effect.

SECTION 4.8 *No Adverse Changes*. (a) Since March 31, 2021, there has not been a Parent Material Adverse Effect; and (b) since March 31, 2021, (i) except for this Agreement and the Transactions, Parent and its consolidated Subsidiaries have carried on and operated their respective businesses in all material respects in the ordinary course of business consistent with past practice and (ii) neither Parent nor any of its Subsidiaries has taken any action described in Section 5.2(b) that, if taken after the date of this Agreement and prior to the Effective Time without the prior written consent of NNA, would violate such provisions.

SECTION 4.9 *Taxes*.

(a) Except as would not, individually or in the aggregate, have a Parent Material Adverse Effect; (i) all Tax Returns required to be filed by or with respect to Parent or any of the Parent Subsidiaries or their assets have been filed on a timely basis (taking into account all extensions of due dates) and all such Tax Returns are true, complete and accurate; (ii) all Taxes owed by Parent or any of the Parent Subsidiaries, which are or have become due, have been timely paid in full; (iii) there are no Liens on any of the assets of Parent or any of the Parent Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax, other than Liens for Taxes that are not due and payable or that may thereafter be paid without penalty; (iv) there is no pending Proceeding for assessment or collection of Taxes and no Tax assessment, deficiency or adjustment has been asserted or proposed with respect to Parent or any of the Parent Subsidiaries or their assets; (v) Parent and the Parent Subsidiaries have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, equityholder or other third party; and (vi) no claim has ever been made in writing by a Governmental Entity of a jurisdiction where Parent or a Parent Subsidiary has not filed Tax Returns that Parent or a Parent Subsidiary is or may be subject to taxation by that jurisdiction.

(b) Neither Parent nor any of the Parent Subsidiaries is a party to or bound by or has any obligation under any Tax indemnification, separation, sharing or similar agreement or arrangement (other than such an agreement or arrangement entered into in the ordinary course of business which does not relate primarily to Taxes).

(c) Neither Parent nor any of the Parent Subsidiaries has entered into any “listed transaction” within the meaning of Section 6707A(c)(2) of the Code and U.S. Treasury Regulation Section 1.6011-4(b)(2) (or any similar provision of state, local or non-U.S. Law).

(d) During the last five (5) years, neither Parent nor any of the Parent Subsidiaries has been a “distributing corporation” or a “controlled corporation” in a transaction intended to qualify under Section 355 of the Code.

(e) Neither Parent nor any of the Parent Subsidiaries (i) has filed any extension of time within which to file any Tax Returns that have not been filed, except in the ordinary course of business nor (ii) will be required to include any item of income or gain in, nor be required to exclude any item of deduction or loss from, any period ending after the Closing Date as a result of any “closing agreement,” change in method of accounting, installment sale or open transaction made on or prior to the Closing Date or prepaid amount received prior to the Closing Date.

(f) Neither Parent nor any of the Parent Subsidiaries is a “passive foreign investment company” within the meaning of Section 1297 of the Code.

(g) Neither Parent nor any of the Parent Subsidiaries is or has been a resident for Tax purposes of any jurisdiction other than its jurisdiction of organization.

(h) Parent is currently (and has been since its formation) properly classified as a corporation for U.S. federal income tax purposes.

(i) Other than in acquisitions by Navios Maritime Holdings Inc. occurring more than five years ago, the NNA Equity Issuance and the NSH Equity Issuance, neither Parent nor any person “related” to Parent (within the meaning of Treasury Regulation Section 1.368-1(e)(4)) has, directly or indirectly, acquired any NNA Common Stock since the formation of NNA.

(j) Neither Parent nor any of the Parent Subsidiaries has taken or agreed to take any action, and Parent is not aware of any fact or circumstance, that would prevent or impede the Intended Tax Treatment.

#### SECTION 4.10 *Licenses; Permits.*

(a) The Parent Group Entities have all Permits that are necessary for the conduct of their respective businesses as now being conducted or have obtained valid waivers therefrom, except where the failure to obtain such Permit would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(b) All Permits are validly held by the Parent Group Entities and are in full force and effect, except as would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(c) The Parent Group Entities have complied with all terms and conditions of the Permits, except as would not, individually or in the aggregate, have a Parent Material Adverse Effect. No suspension or cancellation of any Permit is pending or, to the knowledge of Parent, threatened, except as would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(d) The Permits will not be subject to suspension, modification, revocation or non-renewal as a result of the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except, in each case, as would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(e) No Proceeding is pending or, to the knowledge of Parent, threatened with respect to any alleged failure by Parent Group Entities to have any material Permit necessary for the operation of any asset or the conduct of their businesses or to be in compliance therewith.

#### SECTION 4.11 *Contracts.*

(a) Except for this Agreement or as filed or publicly furnished with the SEC prior to the Execution Date, none of the Parent Group Entities is a party to or bound by, as of the Execution Date, any contract or other agreement (whether written or oral) of the type required to be filed as an Exhibit to an Annual Report on Form 20-F filed by Parent (each contract that is described in this [Section 4.11\(a\)](#) being a “Parent Material Contract”).

(b) Except as would not, individually or in the aggregate, have a Parent Material Adverse Effect, with respect to each of the Parent Group Entities: (i) each Parent Material Contract to which such entity is a party is legal, valid and binding on and enforceable against such entity, and in full force and effect; (ii) each Parent Material Contract to which such entity is a party will continue to be legal, valid and binding on and enforceable against such entity, and in full force and effect on identical terms following the consummation of the Transactions; (iii) such entity that is a party to each Parent Material Contract is not in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default by any such party, or permit termination, modification, or acceleration, under the Parent Material Contract; and (iv) to the knowledge of Parent, no other party to any Parent Material Contract is in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default by such other party, or permit termination, modification or acceleration under any Parent Material Contract other than in accordance with its terms nor has any other party repudiated any provision of the Parent Material Contract.

SECTION 4.12 *Insurance*. Except as would not, individually or in the aggregate, have a Parent Material Adverse Effect, (a) the businesses and assets of the Parent Group Entities are covered by, and insured under, insurance policies underwritten by reputable insurers that include coverages and related limits and deductibles that are customary in the crude oil tanking industry, (b) all such insurance policies are in full force and effect and all premiums due and payable on such policies have been paid, and (c) no notice of cancellation of, material premium increase of, or indication of an intention not to renew, any such insurance policy has been received by the Parent Parties other than in the ordinary course of business.

SECTION 4.13 *Condition of Assets*. Except as would not, individually or in the aggregate, have a Parent Material Adverse Effect, the assets of the Parent Group Entities have been maintained and repaired in the same manner as would a prudent operator of such assets, and are adequate for the purposes for which they are currently used.

SECTION 4.14 *Investment Company Act*. Parent is not, nor immediately after the Closing will be, subject to regulation under the Investment Company Act of 1940, as amended.

SECTION 4.15 *Brokerage Arrangements*. Except for Parent’s obligations to Jefferies LLC and S. Goldman Advisors LLC, the fees and expenses of which will be paid by Parent, none of the Parent Group Entities has entered (directly or indirectly) into any agreement with any Person that would obligate any of them to pay any commission, brokerage or “finder’s fee” or other similar fee in connection with this Agreement or the transactions contemplated hereby.

SECTION 4.16 *Opinion of Financial Advisor*. The Parent Conflicts Committee and the Parent Board have received the opinion of Jefferies LLC, dated as of the Execution Date, to the effect that, as of the date thereof and subject to the assumptions, limitations, qualifications and other matters considered in the preparation thereof, the Aggregate Purchase Price and the and the aggregate Merger Consideration to be paid by Parent pursuant to this Agreement, taking into account the NNA Debt Financing, the NNA Notes Cancellation and Discharge, and the NSH Loan Amendment, is fair, from a financial point of view, to Parent.

SECTION 4.17 *Information Supplied*. None of the information supplied (or to be supplied) in writing by or on behalf of Parent specifically for inclusion or incorporation by reference in (a) the Registration Statement will, at the time the Registration Statement, or any amendment or supplement thereto, is filed with the SEC or at the time it becomes effective under the Securities Act, and (b) the NNA Proxy Statement will, on the date it is first mailed to Holders of shares of NNA Common Stock, and at the time of the NNA Stockholders Meeting, in each case, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading. The Registration Statement will comply as to form in all material respects with the applicable requirements of the Securities Act. Notwithstanding the foregoing, Parent makes no representation or warranty with respect to information supplied by or on behalf of NNA for inclusion or incorporation by reference in the Registration Statement and the NNA Proxy Statement.

SECTION 4.18 *Waivers and Disclaimers*. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE BY PARENT IN THIS ARTICLE IV, PARENT HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, ORAL OR WRITTEN, PAST OR PRESENT REGARDING (A) THE VALUE, NATURE, QUALITY OR CONDITION OF ITS ASSETS, (B) THE INCOME TO BE DERIVED FROM ITS ASSETS, (C) THE SUITABILITY OF ITS ASSETS FOR ANY AND ALL ACTIVITIES AND USES THAT MAY BE CONDUCTED THEREON, (D) THE COMPLIANCE OF OR BY ITS ASSETS OR ITS OPERATION WITH ANY LAWS, OR (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ITS ASSETS.

ARTICLE V.  
ADDITIONAL AGREEMENTS, COVENANTS, RIGHTS AND OBLIGATIONS

SECTION 5.1 *Preparation of Certain Filings; Meeting of Holders of NNA Common Stock; Commitment to Vote*.

(a) As promptly as practicable following the Execution Date (i) Parent and NNA shall jointly prepare the Registration Statement, which shall include a prospectus with respect to the Parent Common Units to be issued in the Parent Equity Issuance and a proxy statement to be provided to the Holders of shares of NNA Common Stock (the "NNA Proxy Statement"), (ii) Parent shall file the Registration Statement with the SEC, (iii) Parent shall use its reasonable best efforts to cause the Parent Common Units to be issued in the Merger to be approved for listing on the NYSE (subject, if applicable, to notice of issuance) prior to the Effective Time,

and (iv) the parties hereto shall make all required filings under applicable state securities and “blue sky” Laws; *provided, however*, that no such filings shall be required in any jurisdiction where, as a result thereof, Parent would become subject to general service of process or to taxation or qualification to do business as a foreign corporation doing business in such jurisdiction solely as a result of such filing. No filing of, or amendment or supplement to, the Registration Statement or the NNA Proxy Statement will be made by Parent without providing NNA a reasonable opportunity to review and comment thereon. Each of Parent and NNA agrees to use its reasonable best efforts to cause the Registration Statement to be declared effective under the Securities Act as promptly as practicable after filing thereof and keep the Registration Statement effective until the earlier of the consummation of the Transactions and the termination of this Agreement in accordance with its terms and NNA shall promptly thereafter mail the NNA Proxy Statement to the Holders of shares of NNA Common Stock. Each of Parent and NNA agrees to furnish to the other party all information concerning the Parent Group Entities or the NNA Group Entities, as applicable, and to take such other action as may be reasonably requested in connection with the foregoing.

(b) Each of Parent and NNA agrees, as to itself and its Subsidiaries, that (i) none of the information supplied or to be supplied by it for inclusion or incorporation by reference in the Registration Statement will, at the time the Registration Statement and each amendment or supplement thereto, if any, becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and (ii) none of the information supplied or to be supplied by it for inclusion or incorporation by reference in the NNA Proxy Statement and any amendment or supplement thereto will, on the date the NNA Proxy Statement is first mailed to the Holders of shares of NNA Common Stock, and at the time of the NNA Stockholders Meeting, in each case, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of Parent and NNA further agrees that, if it shall become aware prior to the Closing Date of any information that would cause any of the statements in the Registration Statement or the NNA Proxy Statement to be false or misleading with respect to any material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not false or misleading, it will promptly inform the other party thereof and take the necessary steps to correct such information in an amendment or supplement to the Registration Statement or the NNA Proxy Statement.

(c) Each of NNA and Parent shall (i) promptly notify the other of receipt of any comments from the SEC or its staff or any other applicable government official and of any requests by the SEC or its staff or any other applicable government official for amendments or supplements to any of the filings with the SEC in connection with the Merger and other transactions contemplated hereby or for additional information and (ii) promptly supply the other with copies of all correspondence between NNA or any of its representatives, or Parent or any of its representatives, as the case may be, on the one hand, and the SEC or its staff or any other applicable government official, on the other hand, with respect thereto. Parent and NNA shall use their respective reasonable best efforts to respond to any comments of the SEC or its staff with respect to the Registration Statement as promptly as practicable.

(d) NNA shall distribute to the Holders of shares of NNA Common Stock the NNA Proxy Statement as promptly as practicable after the Registration Statement is declared effective under the Securities Act.

(e) NNA shall, as promptly as practicable following the date of this Agreement, establish a record date for, duly call, give notice of, convene and hold a special meeting of the Holders of shares of NNA Common Stock (the “NNA Stockholders Meeting”) for the purpose of obtaining the NNA Stockholders Approval. Subject to Section 5.3, NNA shall, through the NNA Board and the NNA Special Committee, recommend to the Holders of shares of NNA Common Stock adoption of this Agreement pursuant to the NNA Board Recommendation. NNA shall use its reasonable best efforts to solicit from the Holders of shares of NNA Common Stock proxies in favor of the Merger and to take all other action necessary or advisable to secure the NNA Stockholders Approval. The NNA Proxy Statement shall include a copy of the NNA Fairness Opinion and (subject to Section 5.3), the NNA Special Committee Recommendation and the NNA Board Recommendation. Notwithstanding anything in this Agreement to the contrary, unless this Agreement is terminated in accordance with Sections 7.1, 7.2, 7.3 or 7.4, NNA shall submit this Agreement for approval by the Holders of shares of NNA Common Stock at such NNA Stockholders Meeting. Notwithstanding anything in this Agreement to the contrary, NNA may, and at the request of Parent shall, postpone or adjourn the NNA Stockholders Meeting (i) to solicit additional proxies for the purpose of obtaining the NNA Stockholders Approval, (ii) for the absence of a quorum, and (iii) to allow reasonable additional time for the filing and/or mailing of any supplemental or amended disclosure that after consultation with outside legal counsel is determined to be necessary under applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by the Holders of shares of NNA Common Stock prior to the NNA Stockholders Meeting.

(f) Parent covenants and agrees that, until the Effective Time or the earlier of a termination of this Agreement, (i) at the NNA Stockholders Meeting or any other meeting of Holders of shares of NNA Common Stock or any vote of shares of NNA Common Stock in connection with a vote of the Holders of shares of NNA Common Stock, however called, Parent will vote, or cause to be voted, all shares of NNA Common Stock then owned beneficially or of record by it or any other Parent Group Entity as of the record date for such meeting, (A) in favor of the approval of this Agreement (as it may be amended or otherwise modified from time to time) and the Transactions, including the Merger, and the approval of any actions required in furtherance thereof and (B) against any other matter presented at such meeting or otherwise presented for approval by written consent that would reasonably be expected to (x) result in the breach of any covenant, representation or warranty of NNA under this Agreement, (y) result in, or contribute to, any of the conditions to the consummation of the Merger under this Agreement not being fulfilled, or (y) impede, frustrate, interfere with, delay, postpone or adversely affect the Transactions, and (ii) that Parent will not, and will cause each other Parent Group Entity not to, directly or indirectly, transfer, assign or otherwise dispose of any shares of NNA Common Stock owned by Parent or such other Parent Group Entity. Parent consents to, and has caused or shall cause, to the extent necessary and to the extent permitted by the Governing Documents thereof, each other Parent Group Entity to consent to, this Agreement and the transactions contemplated by this Agreement.

#### SECTION 5.2 *Conduct of Parties.*

(a) After the date of this Agreement and prior to the earlier of the termination of this Agreement in accordance with its terms and the Effective Time, except (i) as required by applicable Law or as may be reasonably necessary to respond to the COVID-19 or other pandemic, (ii) as otherwise expressly required by this Agreement or (iii) as consented to by Parent (in the case of NNA) or NNA (in the case of Parent) in writing (in each case, which written consent will not be unreasonably withheld, delayed or conditioned), each of NNA and Parent will, and each agrees that it will cause each of the NNA Group Entities (in the case of NNA) or each of the Parent Group Entities (in the case of Parent) to (A) conduct its business, in all material respects, in the ordinary course of business consistent with past practice, (B) use commercially reasonable efforts to maintain and preserve intact its business organization and the goodwill of those having business relationship with it and retain the services of its present officers and key employees, and (C) use commercially reasonable efforts to keep in full force and effect all material permits all material insurance policies maintained by such party and its Subsidiaries, other than changes to such policies made in the ordinary course of business.

(b) Without limiting the generality of the foregoing, after the date of this Agreement and prior to the earlier of the termination of this Agreement in accordance with its terms and the Effective Time, except (A) as required by applicable Law or as may be reasonably necessary to respond to the COVID-19 or other pandemic (B) as otherwise expressly required by this Agreement or (C) as consented to by Parent (in the case of NNA) or NNA (in the case of Parent) in writing (in each case, which written consent will not be unreasonably withheld, delayed or conditioned), each of NNA and Parent will not, and each agrees that it will cause each of the NNA Group Entities (in the case of NNA) or each of the Parent Group Entities (in the case of Parent) not to:

(i) make any material change to the nature of its business and operations;

(ii) make any change to its Governing Documents as in effect on the Execution Date in any manner that would reasonably be expected to (A) prohibit or materially impede or delay the Merger or the consummation of the other Transactions or (B) adversely affect in a material way the rights of holders of its securities or the securities of any other party hereto;

(iii) recommend, propose, announce, adopt or vote to adopt a plan or agreement of complete or partial dissolution or liquidation, dissolution, restructuring, recapitalization, merger, consolidation or other reorganization or business combination transaction or agreement, in each case, that would reasonably be expected to (A) prevent or materially impede or delay the ability of the parties to satisfy any of the conditions to, or the consummation of, the Transactions, or (B) adversely affect in a material way the rights of holders of the securities of any party hereto;

(iv) declare, authorize, set aside or pay any dividend or distribution payable in cash or property in respect of the shares of NNA Common Stock (in the case of NNA) or in respect of the Parent Common Units (in the case of Parent), other than in the case of Parent, regular quarterly cash dividends or distributions in the ordinary course, consistent with past practice (including with declaration dates, record dates, payment dates and amounts consistent with past practice), in respect of the Parent Common Units, which shall be no greater than \$0.05 per Parent Common Unit;



(v) waive, release, assign, settle or compromise any claims, demands, lawsuits or Proceedings seeking damages or an injunction or other equitable relief where such waivers, releases, assignments, settlements or compromises would, in the aggregate, have a Parent Material Adverse Effect, in the case of Parent, or an NNA Material Adverse Effect, in the case of NNA;

(vi) issue, deliver or sell equity securities, or Rights to acquire equity securities, (x) of NNA, in the case of NNA other than the shares of NNA Common Stock issued in in the NNA Equity Issuance and the NSH Equity Issuance, or (y) of Parent, in the case of Parent, other than Parent Common Units or rights to acquire Parent Common Units having a fair market value (as reasonably determined by the Parent Board) not to exceed \$75 million in the aggregate;

(vii) make any changes in financial accounting methods, principles or practices (or change an annual financial accounting period), except insofar as may be required by a change in GAAP or applicable Law;

(viii) incur any indebtedness or issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of any NNA Group Entity (in the case of NNA) or any Parent Group Entity (in the case of Parent), in each case, other than the incurrence of any Permitted Indebtedness (including, without limitation, through the issuance or sale of any debt securities or options, warrants, calls or other rights to acquire any debt securities);

(ix) (A) make (other than consistent with past practice), change or revoke any material Tax election, (B) file any amended Tax Return with respect to any material Tax, (C) adopt (other than consistent with past practice) or change any method of Tax accounting or Tax accounting period, or (D) enter into any closing agreement relating to any material Tax; or

(x) agree, authorize or commit to do any of the foregoing.

(c) From the Execution Date until the Closing Date, each of Parent and NNA shall, and shall cause the NNA Group Entities (in the case of NNA) or Parent Group Entities (in the case of Parent) to, promptly notify the other party in writing of (i) any event, condition or circumstance that could reasonably be expected to result in any of the conditions set forth in Article VI not being satisfied at the Effective Time, and (ii) any material breach by the notifying party of any covenant, obligation, or agreement contained in this Agreement; *provided, however*, that the delivery of any notice pursuant to this Section 5.2(c) shall not limit or otherwise affect the remedies available hereunder to the notified party.

#### SECTION 5.3 *No Solicitation; Recommendation of Merger.*

(a) Except as permitted by this Section 5.3, without the prior written consent of Parent, (i) NNA shall not, and shall cause its Subsidiaries not to, and shall use its reasonable best efforts to cause its Representatives not to, directly or indirectly (x) solicit, initiate, knowingly facilitate, knowingly encourage (including by way of furnishing confidential information) or knowingly induce or take any other action intended to lead to any inquiries or any proposals that

constitute or could reasonably be expected to lead to an NNA Alternative Proposal, (y) grant any waiver or release of any standstill or similar agreement with respect to any shares or units of NNA or of any of its Subsidiaries, or (z) enter into any merger agreement, letter of intent, agreement in principle, share or unit purchase agreement, asset purchase agreement or share or unit exchange agreement, option agreement or other similar agreement relating to an NNA Alternative Proposal, and (ii) the NNA Board and the NNA Special Committee shall not withdraw, modify or qualify, or propose publicly to withdraw, modify or qualify, in a manner adverse to Parent, the NNA Special Committee Recommendation or the NNA Board Recommendation or publicly recommend the approval or adoption of, or publicly approve or adopt, or propose to publicly recommend, approve or adopt, any NNA Alternative Proposal, (the taking of any action described in clause (i)(z) or clause (ii) being referred to as an “NNA Adverse Recommendation Change”);

(b) Notwithstanding anything to the contrary contained in Section 5.3(a), if at any time following the date of this Agreement and prior to obtaining the NNA Stockholders Approval, (i) NNA has received a written NNA Alternative Proposal that the NNA Special Committee believes is bona fide, (ii) the NNA Special Committee, after consultation with the NNA Special Committee’s outside legal counsel and financial advisors, determines in good faith that (A) such NNA Alternative Proposal constitutes or could reasonably be expected to lead to or result in an NNA Superior Proposal and (B) failure to take such action would be inconsistent with its duties under applicable Law, and (iii) such NNA Alternative Proposal did not result from a material breach of Section 5.3(a), then at the direction of the NNA Special Committee, NNA may, subject to clauses (x) and (y) below, (A) furnish information, including confidential information, with respect to NNA and its Subsidiaries to the Person making such NNA Alternative Proposal and (B) participate in discussions or negotiations regarding such NNA Alternative Proposal; *provided* that (x) NNA will not, and will cause its Representatives not to, disclose any non-public information to such Person unless NNA has, or first enters into, a customary confidentiality agreement with such Person and (y) NNA will provide to Parent non-public information about NNA or its Subsidiaries that was not previously provided or made available to Parent prior to or substantially concurrently with providing or making available such non-public information to such other Person.

(c) In addition to the other obligations of NNA set forth in this Section 5.3, NNA shall promptly advise Parent, orally and in writing, and in no event later than 36 hours after receipt, if any proposal, offer, inquiry or other contact is received by, any information is requested from, or any discussions or negotiations are sought to be initiated or continued with, NNA in respect of any NNA Alternative Proposal, and shall, in any such notice to Parent, indicate the identity of the Person making such proposal, offer, inquiry or other contact and the terms and conditions of any proposals or offers or the nature of any inquiries or contacts (and shall include with such notice copies of any written materials received from or on behalf of such Person relating to such proposal, offer, inquiry or request), and thereafter shall promptly keep Parent reasonably informed of all material developments affecting the status and terms of any such proposals, offers, inquiries or requests (and NNA shall promptly provide Parent with copies of any additional material written materials received by NNA or that NNA has delivered to any third party making an NNA Alternative Proposal that relate to such proposals, offers, inquiries or requests) and of the status of any such discussions or negotiations.

(d) Notwithstanding any other provision of this Agreement, at any time prior to obtaining the NNA Stockholders Approval, the NNA Board (at the direction of the NNA Special Committee) and the NNA Special Committee may effect an NNA Adverse Recommendation Change in response to an NNA Alternative Proposal or an NNA Changed Circumstance if the NNA Board (upon the recommendation of the NNA Special Committee) or the NNA Special Committee, after consultation by the NNA Special Committee with the NNA Special Committee's outside legal counsel and financial advisors, determines in good faith that the failure to take such action would be reasonably likely to be inconsistent with its duties under applicable Law, and:

(i) if the NNA Board (upon the recommendation of the NNA Special Committee) or the NNA Special Committee intends to effect an NNA Adverse Recommendation Change in response to an NNA Alternative Proposal:

(A) such NNA Alternative Proposal is bona fide, in writing and has not been withdrawn or abandoned;

(B) the NNA Board (upon the recommendation of the NNA Special Committee) or the NNA Special Committee has determined, after consultation with the NNA Special Committee's outside legal counsel and financial advisors, that such NNA Alternative Proposal constitutes an NNA Superior Proposal after giving effect to all of the adjustments offered by Parent pursuant to clause (E) below;

(C) NNA has provided prior written notice to Parent in accordance with Section 8.1 (the "NNA Superior Proposal Notice") of the NNA Board's or the NNA Special Committee's intention to effect an NNA Adverse Recommendation Change with respect to such NNA Superior Proposal, and such NNA Superior Proposal Notice has specified the identity of the Person making such NNA Alternative Proposal and the material terms and conditions of such NNA Alternative Proposal, and included complete copies of any written proposal or offers (including proposed agreements) received by NNA in connection with such NNA Alternative Proposal;

(D) during the period that commences on the date of delivery of the NNA Superior Proposal Notice as determined in accordance with Section 8.1 and ends at 11:59 p.m. Eastern European Standard time on the date that is the fifth calendar day following the date of such delivery (the "NNA Superior Proposal Notice Period"), NNA shall, at the direction of the NNA Special Committee, (1) negotiate with Parent in good faith (to the extent Parent seeks to negotiate) to make such adjustments to the terms and conditions of this Agreement as would permit the NNA Board (upon the recommendation of the NNA Special Committee) or the NNA Special Committee not to effect an NNA Adverse Recommendation Change; and (2) keep Parent reasonably informed with respect to the status and changes in the material terms and conditions of such NNA Alternative Proposal or other change in circumstances related thereto; provided, however, that any material revisions to such NNA Alternative Proposal (it being agreed that any change in the purchase price in such NNA Alternative Proposal shall be deemed a material revision) shall require delivery of a subsequent NNA Superior Proposal Notice and a subsequent NNA Superior Proposal Notice Period in respect of such revised NNA Alternative Proposal, except that such subsequent NNA Superior Proposal Notice Period shall expire upon the later of (x) the end of the initial NNA Superior Proposal Notice Period and (y) 11:59 p.m. Eastern European Standard time on the date that is the third calendar day following the date of the delivery of such subsequent NNA Superior Proposal Notice; and

(E) the NNA Special Committee shall have considered all revisions to the terms of this Agreement irrevocably offered in writing by Parent and, at the end of the NNA Superior Proposal Notice Period, and the NNA Board (upon the recommendation of the NNA Special Committee) or the NNA Special Committee, as applicable, shall have determined in good faith that (i) such NNA Alternative Proposal continues to constitute an NNA Superior Proposal even if such revisions were to be given effect and (ii) failure to effect an NNA Adverse Recommendation Change would reasonably be likely to be inconsistent with the NNA Board's or the NNA Special Committee's duties under applicable Law, even if such revisions were to be given effect.

(ii) if the NNA Board (upon the recommendation of the NNA Special Committee) or the NNA Special Committee intends to effect such NNA Adverse Recommendation Change in response to an NNA Changed Circumstance:

(A) NNA shall provide prior written notice to Parent in accordance with Section 8.1 (the "NNA Recommendation Change Notice") of the NNA Board's or the NNA Special Committee's intention to effect an NNA Adverse Recommendation Change, and such NNA Recommendation Change Notice shall specify the details of such NNA Changed Circumstance and the reasons for the NNA Adverse Recommendation Change;

(B) during the period that commences on the date of delivery of the NNA Recommendation Change Notice as determined in accordance with Section 8.1 and ends at 11:59 p.m. Eastern European Standard time on the date that is the fifth calendar day following the date of such delivery (the "NNA Recommendation Change Notice Period"), at the direction of the NNA Special Committee, NNA shall (i) negotiate with Parent in good faith to make such adjustments to the terms and conditions of this Agreement as would permit the NNA Board (upon the recommendation of the NNA Special Committee) or the NNA Special Committee, as applicable, not to effect an NNA Adverse Recommendation Change; and (ii) keep Parent reasonably informed of any change in circumstances related thereto; and

(C) the NNA Special Committee shall have considered all revisions to the terms of this Agreement irrevocably offered in writing by Parent and, at the end of the NNA Recommendation Change Notice Period, the NNA Board (upon the recommendation of the NNA Special Committee) or the NNA Special Committee, as applicable, shall have determined in good faith that the failure to effect an NNA Adverse Recommendation Change would be inconsistent with its duties under applicable Law, even if such revisions were to be given effect.

SECTION 5.4 *Commercially Reasonable Efforts; Further Assurances*. From and after the Execution Date, upon the terms and subject to the conditions hereof, each of the parties hereto shall use its commercially reasonable efforts to (i) take, or cause to be taken, all appropriate action, and to do or cause to be done, all things necessary, proper or advisable under applicable Law to consummate and make effective the transactions contemplated by this Agreement as

promptly as practicable and (ii) defend any lawsuits or other Proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated by this Agreement or seek to have lifted or rescinded any injunction or restraining order or other order adversely affecting the ability of the parties to consummate the transactions contemplated hereby, including the Merger. Without limiting the foregoing but subject to the other terms of this Agreement, the parties hereto agree that, from time to time, whether before, at or after the Closing Date, each of them will execute and deliver, or cause to be executed and delivered, such instruments of assignment, transfer, conveyance, endorsement, direction or authorization as may be necessary to consummate and make effective the transactions contemplated by this Agreement. Notwithstanding the foregoing, nothing in this Agreement will require any party hereto to hold separate or make any divestiture not expressly contemplated herein of any asset or otherwise agree to any restriction on its operations or other condition in order to obtain any consent or approval or other clearance required by this Agreement.

SECTION 5.5 *Public Announcement.* On the Execution Date, Parent and NNA shall issue a joint press release with respect to the execution of this Agreement and the Merger, which press release shall be reasonably satisfactory to Parent, NNA and the NNA Special Committee. From and after the Execution Date, neither NNA nor Parent shall issue any other press release or make any other public announcement concerning this Agreement or the transactions contemplated by this Agreement (to the extent not previously issued or made in accordance with this Agreement) (other than public announcements at industry road shows and conferences or as may be required by applicable Law or by obligations pursuant to any listing agreement with the NYSE in which event the party making the public announcement or press release shall, to the extent practicable, notify Parent and NNA in advance of such public announcement or press release) without the prior approval of the other, which approval shall not be unreasonably withheld, delayed or conditioned.

SECTION 5.6 *Expenses.* Whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement, including legal fees, accounting fees, financial advisory fees and other professional and non-professional fees and expenses, shall be paid by the party hereto incurring such expenses, (i) except as otherwise set forth in [Section 7.5](#) and (ii) except that Parent and NNA shall each pay for one-half of (a) any filing fees with respect to the Registration Statement and (b) the costs of filing, printing and mailing of the NNA Proxy Statement.

SECTION 5.7 *Regulatory Issues.* NNA and Parent shall cooperate fully with respect to any filing, submission or communication with a Governmental Entity having jurisdiction over the Merger. Such cooperation shall include each of the parties hereto: (i) providing, in the case of oral communications with a Governmental Entity, advance notice of any such communication and, to the extent permitted by applicable Law, an opportunity for the other party to participate; (ii) providing, in the case of written communications, an opportunity for the other party to comment on any such communication and provide the other with a final copy of all such communications; and (iii) complying promptly with any request for information from a Governmental Entity (including an additional request for information and documentary material). All cooperation shall be conducted in such a manner so as to preserve all applicable privileges.

#### SECTION 5.8 *Tax Opinion.*

(a) Parent and NNA shall cooperate with each other in obtaining, and shall use their respective reasonable efforts to obtain, a tax opinion from Fried, Frank, Harris, Shriver & Jacobson LLP (“Parent Tax Counsel”) to NNA, dated as of the Closing Date, in form and substance reasonably satisfactory to NNA (and any similar opinion to be attached as an exhibit to the Registration Statement), substantially to the effect that for U.S. federal income tax purposes the Merger (either alone or together with the Second Merger, if applicable) should be treated as a “reorganization” within the meaning of Section 368(a) of the Code and that Section 367(a) of the Code should not cause Parent to be treated as other than a corporation with respect to any transfer of property thereto in connection with the Merger (other than, in certain circumstances, a transfer by a holder of NNA Common Stock that is a United States person and that holds 5% or more by vote or by value (within the meaning of Treasury Regulations Section 1.367(a)-3(b)(1)(i)) of Parent immediately following the Merger) (the “Merger Tax Opinion”). For the avoidance of doubt, the Merger Tax Opinion shall not be a condition to closing. Each of Parent and NNA shall use its reasonable efforts to deliver to Parent Tax Counsel for purposes of the Merger Tax Opinion a “Tax Representation Letter,” dated as of the Closing Date (and, if requested, dated as of the date the Registration Statement shall have been declared effective by the SEC), signed by an officer of Parent or NNA, as applicable, and containing representations of Parent or NNA, as applicable, in each case, as shall be reasonably necessary or appropriate to enable Parent Tax Counsel to render the Merger Tax Opinion and any opinion required to be issued in connection with the filing of the Registration Statement.

(b) Parent and NNA shall cooperate, including by making structural changes that are not reasonably expected to impede or materially delay consummation of the Merger, with each other and shall use their reasonable efforts to obtain the Intended Tax Treatment. Each of Parent and NNA shall not, and shall cause each of its Subsidiaries not to, take any action that is reasonably likely to, or fail to take any action which failure is reasonably likely to, prevent or impede the Intended Tax Treatment. Without limiting the generality of the foregoing, Parent and NNA agree that at the request of NNA, or if Parent so elects, Parent shall, as part of the plan of reorganization, cause the Surviving Entity to merge with and into a newly organized entity that is treated as an entity disregarded as separate from Parent for U.S. federal income tax purposes (“Newco”), with Newco as the surviving entity (the “Second Merger”); provided, that the Second Merger shall occur as promptly as practicable after both (i) the Effective Time shall have occurred and (ii) all third party consents necessary to consummate the Second Merger shall have been obtained; provided, further that, from the time NNA makes the request or Parent makes the election, as applicable, for the Second Merger, each of the parties hereto shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to do or cause to be done, all things necessary, proper or advisable under applicable Law to consummate and make effective the Second Merger as promptly as practicable after the Effective Time.

#### SECTION 5.9 *D&O Insurance.*

(a) For a period of six years after the Effective Time, to the fullest extent permitted under applicable Law, the Surviving Entity shall, and Parent shall cause the Surviving Entity to, (i) indemnify and hold harmless against any reasonable costs or expenses (including reasonable attorneys’ fees and all other reasonable costs, expenses and obligations (including experts’ fees, travel expenses, court costs, retainers, transcript fees, duplicating, printing and binding costs, as well as telecommunications, postage and courier charges) paid or incurred in

connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to investigate, defend, be a witness in or participate in, any Proceeding arising from acts or omissions occurring at or prior to the Effective Time (including the transactions contemplated by this Agreement), including any Proceeding relating to a claim for indemnification or advancement brought by an NNA D&O Indemnified Party), judgments, fines, losses, claims, damages or liabilities, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of any thereof) in connection with any actual or threatened Proceeding arising from acts or omissions occurring at or prior to the Effective Time (including the transactions contemplated by this Agreement), and, upon receipt by the Surviving Entity of an undertaking by or on behalf of the NNA D&O Indemnified Party to repay such amount if it shall be determined in a final and non-appealable judgment entered by a court of competent jurisdiction that the NNA D&O Indemnified Party is not entitled to be indemnified, provide advancement of expenses with respect to each of the foregoing to, all NNA D&O Indemnified Parties and (ii) honor all rights to indemnification, advancement of expenses, elimination of liability and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time (including the transactions contemplated by this Agreement) now existing in favor of the NNA D&O Indemnified Parties as provided in the Governing Documents of any NNA Group Entity, under applicable the Law of the Republic of the Marshall Islands or otherwise, and shall ensure that the Governing Documents of NNA (or their successor entities) shall, for a period of six years following the Effective Time, contain provisions substantially no less advantageous with respect to indemnification, advancement of expenses, elimination of liability and exculpation of their present and former directors and officers, than are set forth in the Governing Documents of NNA as of the Execution Date. Any right of an NNA D&O Indemnified Party pursuant to this Section 5.9(a) shall not be amended, repealed, terminated or otherwise modified at any time in a manner that would adversely affect the rights of such NNA D&O Indemnified Party as provided herein, and shall be enforceable by such NNA D&O Indemnified Party and their respective heirs and Representatives against Parent, the Surviving Entity and their respective successors and assigns.

(b) For a period of six years after the Effective Time, the Surviving Entity shall, Parent shall cause the Surviving Entity to, maintain officers' and directors' liability insurance with a nationally reputable carrier covering each NNA D&O Indemnified Party who is or at any time prior to the Second Effective Time was covered by the existing officers' and directors' liability insurance applicable to the NNA Group Entities ("D&O Insurance"), on terms substantially no less advantageous to the NNA D&O Indemnified Parties, as applicable, than such existing insurance with respect to acts or omissions, or alleged acts or omissions, at or prior to the Effective Time (whether claims, actions or other Proceedings relating thereto are commenced, asserted or claimed before or after the Effective Time); *provided, however*, that the Surviving Entity shall not be required to pay an annual premium for the D&O Insurance for the NNA D&O Indemnified Parties in excess of 300% of the current annual premium currently paid by the NNA Group Entities for such insurance, but shall purchase as much of such coverage as possible for such applicable amount. Parent shall have the right to cause such coverage to be extended under the applicable D&O Insurance by obtaining a six-year "tail" policy on terms and conditions no less advantageous to the NNA D&O Indemnified Parties than the existing D&O Insurance, and such "tail" policy shall satisfy the provisions of this Section 5.9.

(c) The provisions of this Section 5.9 shall survive the consummation of the Merger for a period of six years and expressly are intended to benefit each of the NNA D&O Indemnified Parties; *provided, however*, that in the event that any claim or claims for indemnification or advancement set forth in this Section 5.9 are asserted or made within such six-year period, all rights to indemnification and advancement in respect of any such claim or claims shall continue until disposition of all such claims. The rights of any NNA D&O Indemnified Party under this Section 5.9 shall be in addition to any other rights such NNA D&O Indemnified Party may have under the Governing Documents of any NNA Group Entity or applicable Law.

(d) In the event Parent or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then and in either such case, Parent shall cause proper provision to be made so that its successors and assigns, as the case may be, shall assume the obligations set forth in this Section 5.9.

SECTION 5.10 *Litigation*. NNA shall give Parent the opportunity to participate in the defense or settlement of any securityholder litigation against NNA and/or the members of the NNA Board, in each case, relating to the Merger, this Agreement or any of the Transactions, *provided* that NNA shall not be required to provide information if doing so would be reasonably expected to threaten the loss of any attorney-client privilege or other applicable legal privilege or protective doctrine; *provided, further*, that NNA shall not settle any such litigation without the written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed).

SECTION 5.11 *Special Committee*. Prior to the Effective Time, none of the NNA Group Entities shall, without the consent of the NNA Special Committee, eliminate the NNA Special Committee, or revoke or diminish the authority of the NNA Special Committee, or remove or cause the removal of any director of the NNA Board that is a member of the NNA Special Committee either as a member of such board or such committee without the affirmative vote of the members of the NNA Board, including the affirmative vote of each of the other members of the NNA Special Committee. For the avoidance of doubt, this Section 5.11 shall not apply to the filling in accordance with the provisions of the applicable Governing Documents of any vacancies caused by the death, incapacity or resignation of any director.

SECTION 5.12 *Stock Exchange Listing; Delisting and Deregistration*. Parent shall use its reasonable best efforts to cause the Parent Common Units to be issued in the Merger to be approved for listing on the NYSE (subject, if applicable, to notice of issuance), and NNA shall use its reasonable best efforts to cause the shares of NNA Common Stock issued in the NNA Equity Issuance to be and remain listed on the NYSE until the Closing. NNA will cooperate and use its reasonable best efforts to cause the delisting of shares NNA Common Stock from the NYSE and the deregistration of such securities under the Exchange Act as promptly as practicable following the Closing in compliance with applicable Law.



ARTICLE VI.  
CONDITIONS TO CLOSING

SECTION 6.1 *Conditions to Each Party's Obligations.* The obligation of the parties hereto to proceed with the Closing is subject to the satisfaction on or prior to the Closing Date of all of the following conditions, any one or more of which may be waived (to the extent legally permissible) in writing, in whole or in part, as to a party by such other parties:

(a) *NNA Stockholders Approval.* The NNA Stockholders Approval shall have been obtained in accordance with applicable Law.

(b) *Registration Statement.* The Registration Statement shall have become effective under the Securities Act, no stop order suspending the effectiveness of the Registration Statement shall have been issued and no Proceedings for that purpose shall have been initiated or threatened by the SEC.

(c) *NYSE Listing.* The Parent Common Units to be issued in the Merger shall have been approved for listing on the NYSE subject to official notice of issuance.

(d) *No Governmental Restraint.* No order, decree or injunction of any Governmental Entity shall be in effect, and no Laws shall have been enacted or adopted, that enjoin, prohibit or make illegal the consummation of any of the transactions contemplated by this Agreement.

SECTION 6.2 *Conditions to the Parent Parties' Obligations.* The obligation of the Parent Parties to proceed with the Closing is subject to the satisfaction on or prior to the Closing Date of all of the following conditions, any one or more of which may be waived in writing, in whole or in part, by the Parent Parties (in their sole discretion):

(a) *Representations and Warranties; Performance.* (i) The representations and warranties of NNA set forth in (x) Section 3.1(a), Section 3.2, and Section 3.4(a) shall be true and correct in all material respects as of the Closing Date as if made as of the Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date), and (y) Article III (other than Section 3.1(a), Section 3.2, Section 3.4(a) and Section 3.8) shall be true and correct (without regard to any materiality, "NNA Material Adverse Effect" and similar qualifiers therein) as of the Closing, as if remade on the date thereof (except for representations and warranties made as of a specific date, which shall be true and correct as of such specific date), except where the failure of such representations and warranties to be true and correct would not, individually or in the aggregate, result in an NNA Material Adverse Effect, (ii) the representation and warranty set forth in Section 3.8 shall be true and correct as of the Closing Date as if made on the date thereof, and (iii) NNA shall have performed or complied with all agreements and covenants required to be performed by it hereunder prior to the Closing Date that have materiality, "NNA Material Adverse Effect" or similar qualifiers, and shall have performed or complied in all material respects with all other agreements and covenants required to be performed by it hereunder prior to the Closing Date that are not so qualified.

(b) Parent shall have received a certificate, dated as of the Closing Date, of an executive officer of NNA certifying to the matters set forth in Section 6.2(a).

SECTION 6.3 *Conditions to NNA's Obligations*. The obligation of NNA to proceed with the Closing is subject to the satisfaction on or prior to the Closing Date of all of the following conditions, any one or more of which may be waived in writing, in whole or in part, by NNA (in its sole discretion):

(a) *Representations and Warranties; Performance*. (i) The representations and warranties of the Parent Parties set forth in (x) Section 4.1(a), Section 4.2 (other than the third sentence thereof), and Section 4.4(a) shall be true and correct in all material respects as of the Closing Date as if made as of the Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date), (y) the third sentence of Section 4.2 shall be true and correct in all material respects as of the Closing Date as if made as of the Closing Date and (z) Article IV (other than Section 4.1(a), Section 4.2, Section 4.4(a) and Section 4.8) shall be true and correct (without regard to any materiality, "Parent Material Adverse Effect" and similar qualifiers therein) as of the Closing, as if remade on the date thereof (except for representations and warranties made as of a specific date, which shall be true and correct as of such specific date), except where the failure of such representations and warranties to be true and correct would not, individually or in the aggregate, result in a Parent Material Adverse Effect, (ii) the representation and warranty set forth in Section 4.8 shall be true and correct as of the Closing Date as if made on the date thereof, and (iii) each of the Parent Parties shall have performed or complied with all agreements and covenants required to be performed by it hereunder prior to the Closing Date that have materiality, "Parent Material Adverse Effect" or similar qualifiers, and shall have performed or complied in all material respects with all other agreements and covenants required to be performed by it hereunder prior to the Closing Date that are not so qualified.

(b) NNA shall have received a certificate, dated as of the Closing Date, of an executive officer of Parent certifying to the matters set forth in Section 6.3(a).

SECTION 6.4 *Frustration of Conditions*. None of parties to this Agreement may rely on the failure of any condition set forth in this Article VI to be satisfied if such failure was caused by such party's failure to act in good faith or such party's failure to observe in any material respect any of its obligations under this Agreement.

## ARTICLE VII. TERMINATION

SECTION 7.1 *Termination by Mutual Consent*. This Agreement may be terminated at any time prior to the Effective Time by the mutual written agreement of the parties hereto duly authorized by Parent Board, on behalf of Parent, and by the NNA Special Committee, on behalf of NNA.

SECTION 7.2 *Termination by NNA or Parent*. At any time prior to the Effective Time, this Agreement may be terminated by NNA or Parent if:

(a) the Effective Time shall not have occurred on or before August 31, 2022 (the "Outside Date"); *provided* that the right to terminate this Agreement pursuant to this Section 7.2(a) shall not be available to Parent if the Parent Parties fail to perform or observe in any material respect or to NNA if it fails to perform or observe in any material respect any of their respective obligations under this Agreement in any manner that shall have been the principal cause of, or resulted in, the failure of the Effective Time to occur on or before such date; or

(b) a Governmental Entity shall have issued an order, decree or ruling or taken any other action (including the enactment of any statute, rule, regulation, decree or executive order) permanently restraining, enjoining or otherwise prohibiting the Merger and such order, decree, ruling or other action (including the enactment of any statute, rule, regulation, decree or executive order) shall have become final and non-appealable; *provided, however,* that the Person seeking to terminate this Agreement pursuant to this Section 7.2(b) shall have complied with Section 5.3, Section 5.4 and Section 5.7.

**SECTION 7.3 Termination by NNA.** This Agreement may be terminated by NNA (which termination may be effected by the NNA Special Committee without the consent, authorization or approval of the NNA Board) at any time prior to the Effective Time if the Parent Parties shall have breached or failed to perform any of their respective representations, warranties, covenants or agreements set forth in this Agreement (or if any of the representations or warranties of the Parent Parties set forth in this Agreement shall fail to be true), which breach or failure (i) would (if it occurred or was continuing as of the Closing Date) give rise to the failure of a condition set forth in Section 6.3(a) (with or without the passage of time) and (ii) is incapable of being cured, or is not cured, by the Parent Parties prior to the Outside Date; *provided* that the right to terminate this Agreement pursuant to this Section 7.3 shall not be available to NNA if, at such time, the condition set forth in Section 6.2(a) cannot be satisfied (with or without the passage of time).

**SECTION 7.4 Termination by Parent.** This Agreement may be terminated by Parent at any time prior to the Effective Time (a) if NNA shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement (or if any of the representations or warranties of NNA set forth in this Agreement shall fail to be true), which breach or failure (i) would (if it occurred or was continuing as of the Closing Date) give rise to the failure of a condition set forth in Section 6.2(a) (with or without the passage of time) and (ii) is incapable of being cured, or is not cured, by NNA prior to the Outside Date; *provided* that the right to terminate this Agreement pursuant to this Section 7.4(a) shall not be available to Parent if, at such time, the condition set forth in Section 6.3(a) cannot be satisfied (with or without the passage of time); or (b) prior to the receipt of the NNA Stockholders Approval, if an NNA Adverse Recommendation Change shall have occurred.

**SECTION 7.5 Expenses.**

(a) If this Agreement is validly terminated by Parent pursuant to Section 7.4(a), then NNA shall pay to Parent (or its designated Affiliate) by wire transfer of immediately available funds to an account designated by Parent an amount equal to the Parent Expenses, and such payment shall be made within five Business Days after such termination.

(b) If this Agreement is validly terminated by NNA pursuant to Section 7.3, then Parent shall pay to NNA (or its designated Affiliate) by wire transfer of immediately available funds to an account designated by NNA an amount equal to the NNA Expenses, and such payment shall be made within five Business Days after such termination.

(c) Each party acknowledges that the agreements contained in this Section 7.5 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Parent and Merger Sub, on the one hand, and NNA, on the other hand, would not enter into this Agreement. The parties acknowledge that payment of the Parent Expenses or the NNA Expenses, as applicable, if, as and when requires pursuant to this Section 7.5 shall constitute the sole and exclusive remedy with respect thereto, except as expressly set forth in Section 7.6.

SECTION 7.6 Effect of Certain Terminations. In the event of termination of this Agreement pursuant to this Article VII, written notice thereof shall be given to the other party or parties, specifying the provision of this Agreement pursuant to which such termination is made, and this Agreement, except for the provisions of Section 2.1(a), Section 4.5(d), Section 5.5, Section 5.6, this Article VII and Article VIII, shall forthwith become null and void and there shall be no liability on the part of any party to this Agreement and all rights and obligations of the parties hereto under this Agreement shall terminate, except for the provisions of Section 2.1(a), Section 4.5(d), Section 5.5, Section 5.6, this Article VII and Article VIII shall survive such termination; except that nothing herein shall relieve any party hereto from any liability for any intentional or willful and material breach by such party of any of its representations, warranties, covenants or agreements set forth in this Agreement and all rights and remedies of a non-breaching party under this Agreement in the case of such intentional or willful and material breach, at law or in equity, shall be preserved. For the avoidance of doubt, no termination of this Agreement pursuant to this Article VII shall affect the transactions contemplated by Section 2.1, including the consummation of the NNA Equity Issuance.

SECTION 7.7 Survival. None of the representations, warranties, agreements, covenants or obligations in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the consummation of the Merger, except for those covenants and agreements contained herein that by their terms apply or are to be performed in whole or in part after the Effective Time.

SECTION 7.8 Enforcement of this Agreement. The parties hereto acknowledge and agree that an award of money damages would be inadequate for any breach of this Agreement by any party and any such breach would cause the non-breaching parties irreparable harm. Accordingly, the parties hereto agree that prior to the termination of this Agreement, in the event of any breach or threatened breach of this Agreement by one of the parties, the parties will also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance, *provided* such party is not in material default hereunder. Subject to Section 7.5(e), such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to each of the parties.

SECTION 7.9 No Waiver Relating to Claims for Fraud/Willful Misconduct. The liability of any party under this Article VII shall be in addition to, and not exclusive of, any other liability that such party may have at law or in equity based on such party's (a) fraudulent acts or omissions or (b) willful misconduct. None of the provisions set forth in this Agreement shall be deemed to be a waiver by or release of any party of any right or remedy that such party may have at law or equity based on any other party's fraudulent acts or omissions or willful misconduct nor shall any such provisions limit, or be deemed to limit, (i) the amounts of recovery sought or awarded in any such claim for fraud or willful misconduct, (ii) the time period during which a claim for fraud or willful misconduct may be brought, or (iii) the recourse that any such party may seek against another party with respect to a claim for fraud or willful misconduct.

ARTICLE VIII.  
MISCELLANEOUS

SECTION 8.1 *Notices*. Any notice, request, instruction, correspondence or other document to be given hereunder by any party to another party (each, a "Notice") shall be in writing and delivered in person or by courier service requiring acknowledgment of receipt of delivery or mailed by U.S. registered or certified mail, postage prepaid and return receipt requested, or by facsimile or e-mail, as follows; *provided* that copies to be delivered below shall not be required for effective notice and shall not constitute notice:

If to NNA, addressed to:

Strathvale House, 90 N Church Street,  
PO Box 309, Grand Cayman  
KY1-1104 Cayman Islands  
Attention: Vasiliki Papaefthymiou  
Facsimile: +30 210 417 2070  
E-mail: vpapaefthymiou@navios.com

with a copy to (which shall not constitute notice):

Latham & Watkins LLP  
811 Main Street, Suite 3700  
Houston, Texas 77002  
Attention: Ryan J. Maierson  
Nick S. Dhesi  
E-mail: ryan.maierson@lw.com  
nick.dhesi@lw.com

If to any of the Parent Parties, addressed to:

7 Avenue de Grande Bretagne, Office 11B2  
Monte Carlo, MC 98000 Monaco  
Attention: Vasiliki Papaefthymiou  
Facsimile: +30 210 417 2070  
E-mail: vpapaefthymiou@navios.com

with a copy to (which shall not constitute notice):

Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, NY 10004  
Attention: Philip Richter  
E-mail: philip.richter@friedfrank.com

Notice given by personal delivery, courier service or mail shall be effective upon actual receipt. Notice given by facsimile or e-mail shall be effective upon written confirmation of receipt by facsimile, e-mail or otherwise. Any party may change any address to which Notice is to be given to it by giving Notice as provided above of such change of address.

**SECTION 8.2 *Governing Law; Jurisdiction; Waiver of Jury Trial.*** To the maximum extent permitted by applicable Law, this Agreement and all claims or causes of action (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement shall be governed and construed in accordance the Laws of the Marshall Islands, without regard to principles of conflicts of law. The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought exclusively in a court of competent jurisdiction of the Marshall Islands, and each of the parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING (WHETHER IN CONTRACT OR TORT OR OTHERWISE) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

**SECTION 8.3 *Entire Agreement; Amendments, Consents and Waivers.*** This Agreement and the exhibits and schedules hereto and thereto constitute the entire agreement between and among the parties hereto pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations or other agreements between or among the parties in connection with the subject matter hereof except as set forth specifically herein or contemplated hereby. Except as expressly set forth in this Agreement (including the representations and warranties set forth in Articles III and IV), (a) the parties acknowledge and agree that neither the NNA Group Entities nor any other Person has made, and the Parent Group Entities are not relying upon, any covenant, representation or warranty, expressed or implied, as to the NNA Group Entities or as to the accuracy or completeness of any information regarding any NNA Group Entity furnished or made available to any Parent Group Entity, (b) the parties hereto acknowledge and agree that, except as set forth in this Agreement, neither the Parent Group Entities nor any other Person has made, and the NNA Group Entities are not relying upon, any covenant, representation or warranty, expressed or implied, as to the Parent Group Entities or as to the accuracy or completeness of any information regarding any Parent Group Entity furnished or made available to any NNA Group Entity, and (c) NNA and the Parent Parties shall not have or be subject to any liability to any Parent Group Entity or any other Person or any NNA Group Entity

or any other Person, as applicable, or any other remedy in connection herewith, based upon the distribution to any Parent Group Entity or any NNA Group Entity of, or any Parent Group Entity's or any NNA Group Entity's use of or reliance on, any such information or any information, documents or material made available to the Parent Group Entities or NNA Group Entities, as applicable, in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the transactions contemplated hereby. Subject to compliance with applicable Law, prior to the Closing, any provision of this Agreement may be (a) consented to or waived in writing by the party benefited by the provision or (b) amended or modified at any time by an agreement in writing by the parties hereto; *provided, however*, that, in addition to any other approvals required by NNA's constituent documents or under this Agreement, the foregoing consents, waivers, amendments or modifications in clauses (a) and (b), and any decision or determination by NNA under this Agreement (including, for the avoidance of doubt, any decision or determination by NNA to (x) terminate this Agreement pursuant to Section 7.2 or Section 7.3 or (y) enforce this Agreement (including pursuant to Section 7.8)), must be approved by, in the case of consents, waivers, amendments or modifications, or such decisions or determinations, by the NNA Special Committee. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the parties hereto. The failure of a party to exercise any right or remedy shall not be deemed or constitute a waiver of such right or remedy in the future. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (regardless of whether similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. Notwithstanding anything in this Agreement to the contrary, following receipt of the NNA Stockholders Approval, there shall be no amendment or change to the provisions of this Agreement which by applicable Laws or stock exchange rule would require further approval by the Holders of NNA Public Stock, as applicable, without such approval.

**SECTION 8.4 *Binding Effect; No Third-Party Beneficiaries; and Assignment.*** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than the parties hereto and their respective permitted successors and assigns, any rights, benefits or obligations hereunder, except (i) as provided in Section 5.9 and (ii) for the right of the Holders of NNA Common Stock to receive the Merger Consideration. No party hereto may assign, transfer, dispose of or otherwise alienate this Agreement or any of its rights, interests or obligations under this Agreement (whether by operation of law or otherwise). Any attempted assignment, transfer, disposition or alienation in violation of this Agreement shall be null, void and ineffective.

**SECTION 8.5 *Severability.*** If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of applicable Law, or public policy, all other conditions or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement are not affected in any matter materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement are consummated as originally contemplated to the fullest extent possible.

SECTION 8.6 *Counterparts*. This Agreement may be executed in multiple counterparts each of which shall be deemed an original and all of which shall constitute one instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers or agents hereunto duly authorized, all as of the date first written above.

**NAVIOS MARITIME PARTNERS L.P.**

/s/ Efstratios Desypris

Name: Efstratios Desypris  
Title: Chief Financial Officer

**NAVIOS ACQUISITION MERGER SUB. INC.**

/s/ Efstratios Desypris

Name: Efstratios Desypris  
Title: Director

**NAVIOS MARITIME ACQUISITION CORP.**

/s/ Leonidas Korres

Name: Leonidas Korres  
Title: Chief Financial Officer

[Signature Page to Agreement and Plan of Merger]

**DATED 24<sup>th</sup> August 2021**

**NAVIOS MARITIME ACQUISITION CORPORATION (1)**

**as borrower**

**and**

**NAVIOS MARITIME PARTNERS L.P. (2)**

**as lender**

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**LOAN AGREEMENT**

**in respect of**

**a loan of up to USD45,000,000**

---

**Ince**  
PIRAEUS

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**THIS AGREEMENT** is dated 24<sup>th</sup> August 2021 and made **BETWEEN**:

- (1) **NAVIOS MARITIME ACQUISITION CORPORATION** as Borrower; and
- (2) **NAVIOS MARITIME PARTNERS L.P.** as Lender.

**IT IS AGREED** as follows:

1 **PURPOSE AND DEFINITIONS**

1.1 **Purpose**

This Agreement sets out the terms and conditions upon which the Lender agrees to make available to the Borrower a loan facility of up to USD45,000,000 for the purpose of funding working capital requirements of ongoing operations.

1.2 **Definitions**

In this Agreement, unless the context otherwise requires:

“**Advance**” means the principal amount of each drawing to be made in respect of the Loan pursuant to Clause 2.2;

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

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

“**Borrower**” means Navios Maritime Acquisition Corporation a company incorporated in the Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960;

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

“**Closing Date**” means the date on which the conditions precedent set out in Clause 8 have been satisfied or waived by the Lender;

“**Commitment**” means, in relation to the Loan, the maximum amount which the Lender has agreed to lend to the Borrower under clause 2.1 as reduced by any relevant term of this Agreement;

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

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

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

“**Drawdown Notice**” means a notice substantially in the form of schedule 1;

“**Drawdown Period**” means the period commencing on the Closing Date and ending on the earlier of (i) the date falling ninety (90) days after the Closing Date or such other date as the Lender and the Borrower may agree and (ii) any date on which the Commitment is finally cancelled or fully drawn under the terms of this Agreement;

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

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

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

**“Facility Period”** means the period starting on the first Drawdown Date and ending on such date as the Lender determines that all payment obligations whatsoever of the Borrower under or pursuant to this Agreement whensoever arising, actual or contingent, have been irrevocably paid;

**“FATCA”** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other associated official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

**“FATCA Application Date”** means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA;

**“FATCA Deduction”** means a deduction or withholding from a payment under this Agreement required by FATCA;

**“FATCA Exempt Party”** means a party that is entitled to receive payments free from any FATCA Deduction;

**“Group”** means at any relevant time the Borrower and its subsidiaries ;

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

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

**“Interest Payment Date”** has the meaning given thereto in Clause 3.1.1;

**“Latest Accounts”** means, in respect of any financial year of the Group, the latest financial statements required to be prepared pursuant to clause 8.1.6;

**“Legal Reservations”** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court, the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under applicable limitation laws, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) any general principles, reservations or qualifications, in each case as to matters of law as set out in any legal opinion;
- (d) the principle that any additional interest imposed under any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;
- (e) the principle that, in certain circumstances, security granted by way of fixed charge may be characterised as a floating charge or that security purported to be constituted by way of an assignment may be recharacterised as a charge;
- (f) the principle that the courts of England may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant; and
- (g) similar principles, rights and defences under the laws of any Pertinent Jurisdiction

“**Lender**” means Navios Maritime Partners L.P., a limited partnership formed in the Marshall Islands and having its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960;

“**Loan**” means the principal amount borrowed by the Borrower under this Agreement or (as the context may require) the principal amount owing to the Lender under this Agreement at any relevant time (as the same shall be increased from time to time by the capitalisation of interest in accordance with clause 3.1);

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

- (a) the business, assets or financial condition of the Borrower or any other Group Member; or
- (b) the ability of the Borrower to perform its obligations under this Agreement;

“**Permitted Encumbrance**” means any Encumbrance created pursuant to or expressly permitted by this Agreement and permitted liens or otherwise permitted by the Lender and any lien arising by the operation of law;

“**Perfection Requirements**” means the making or procuring of appropriate registrations, filings, endorsements, notarisations, stampings and/or notifications of this Agreement determined by the legal advisers to the Lender to be necessary in any Pertinent Jurisdiction for the enforceability or production in evidence of this Agreement to the extent such matters are complied with within any timeframe specified by law or this Agreement;

“**Pertinent Jurisdiction**” means any jurisdiction in which or where the Borrower is incorporated, resident, domiciled or has a permanent establishment or assets;

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

“**Prohibited Person**” means a person that is:

- (a) listed on, or owned or controlled by a person listed on any Sanctions List;



- (b) permanently located, organised or resident in, a country or territory that is the target of country-wide Sanctions (in each case other than to the extent dealings with such person are licensed, approved, exempted or permitted pursuant to Sanctions); or
- (c) otherwise a target of Sanctions (other than to the extent dealings with such person are licenced, approved, exempted or permitted pursuant to Sanctions).

“**Register**” has the meaning specified in clause 15.3

“**Repayment Date**” means the date which falls on the first anniversary of the first Drawdown Date;

“**Required Authorisation**” means any authorisation, consent, declaration, licence, permit, exemption, approval or other document, whether imposed by or arising in connection with any law, regulation, custom, contract, security or otherwise howsoever which must be obtained at any time from any person, government entity or central bank or other self-regulating or supra-national authority in order to enable the Borrower lawfully to draw the Loan and/or to enable the Borrower lawfully and continuously to continue its corporate existence and/or perform all its obligations whatsoever whensoever arising under this Agreement;

“**Sanctions**” means any economic or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by:

- (a) the United States government;
- (b) the United Nations;
- (c) the European Union or any of its Member States;
- (d) the United Kingdom;
- (e) any country to which the Borrower is bound; or
- (f) the respective governmental institutions and agencies of any of the foregoing, including without limitation, the Office of Foreign Assets Control of the US Department of Treasury (“**OFAC**”), the United States Department of State, and Her Majesty’s Treasury (“**HMT**”) (together “**Sanctions Authorities**”).

“**Sanctions List**” means the “Specially Designated Nationals and Blocked Persons” list issued by OFAC, the “Consolidated List of Financial Sanctions Targets and Investment Ban List” issued by HMT, or any similar list issued or maintained or made public by any of the Sanctions Authorities;

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

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

### 1.3 **Construction**

In this Agreement, unless the context otherwise requires:

- 1.3.1 clause headings and the index are inserted for convenience of reference only and shall be ignored in the construction of this Agreement;
- 1.3.2 references to clauses and schedules are to be construed as references to clauses of, and schedules to, this Agreement and references to this Agreement include its schedules;
- 1.3.3 references to (or to any specified provision of) this Agreement or any other document shall be construed as references to this Agreement, that provision or that document as in force for the time being and as duly amended and/or supplemented and/or novated;
- 1.3.4 references to a “regulation” include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any Government Entity, central bank or any self-regulatory or other supra-national authority (including, without limitation, any regulation implementing or complying with (1) the “*International Convergence of Capital Measurement and Capital Standards, a Revised Framework*” published by the Basel Committee on Banking Supervision in June 2004, in the form existing on the date of this Agreement (“**Basel II**”) and/or (2) Basel III and/or (3) Basel IV and (4) any other law or regulation which, at any time and from time to time, implements and/or amends and/or supplements and/or re-enacts and/or supersedes, whether in whole or in part, Basel II and/or Basel III and/or Basel IV (including CRD IV and CRR), and whether such implementation, application or compliance is by a Government Entity, a lender or any company affiliated to it);

- 1.3.5 references to any person in or party to this Agreement shall include reference to such person's lawful successors and assigns and references to the Lender shall also include a Transferee;
- 1.3.6 words importing the plural shall include the singular and vice versa;
- 1.3.7 references to a time of day are, unless otherwise stated, to London time;
- 1.3.8 references to a person shall be construed as references to an individual, firm, company, corporation or unincorporated body of persons or any Government Entity;
- 1.3.9 references to a "guarantee" include references to an indemnity or any other kind of assurance whatsoever (including, without limitation, any kind of negotiable instrument, bill or note) against financial loss or other liability including, without limitation, an obligation to purchase assets or services as a consequence of a default by any other person to pay any Indebtedness and "guaranteed" shall be construed accordingly;
- 1.3.10 references to any statute or other legislative provision are to be construed as references to any such statute or other legislative provision as the same may be re-enacted or modified or substituted by any subsequent statute or legislative provision (whether before or after the date hereof) and shall include any regulations, orders, instruments or other subordinate legislation issued or made under such statute or legislative provision;
- 1.3.11 a certificate by the Lender as to any amount due or calculation made or any matter whatsoever determined in connection with this Agreement shall be conclusive and binding on the Borrower except for manifest error;
- 1.3.12 if any document, term or other matter or thing is required to be approved, agreed or consented to by the Lender such approval, agreement or consent must be obtained in writing unless the contrary is stated; and
- 1.3.13 the words "other" and "otherwise" shall not be construed *eiusdem generis* with any foregoing words where a wider construction is possible.

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

Except for clause 17.6.4 no part of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

2 **THE LENDER'S COMMITMENT, LOAN AND USE OF PROCEEDS**

2.1 **The Commitment**

In reliance upon each of the representations and warranties in clause 7, the Lender agrees to make available by way of loan to the Borrower on the terms of this Agreement the principal sum of up to USD45,000,000 for the purpose of funding working capital requirements of ongoing operations.

2.2 **Drawdown**

On the terms and subject to the conditions of this Agreement, the Loan shall be advanced in as many Advances as required by the Borrower up to a maximum aggregate amount of USD45,000,000, each on a Drawdown Date following receipt by the Lender from the Borrower of a Drawdown Notice not later than 10 a.m. London time on the Banking Day before such proposed Drawdown Date. A Drawdown Notice shall be effective on actual receipt by the Lender and, once given, shall be irrevocable.

2.3 **Amount**

The principal amount specified in a Drawdown Notice for borrowing on a Drawdown Date shall, subject to the terms of this Agreement, (A) not exceed (i) USD45,000,000 less (ii) the aggregate of such amounts as may have been made available under this Agreement prior thereto and (B) be a whole multiple of USD1,000,000.

2.4 **Availability**

Upon receipt of a Drawdown Notice complying with the terms of this Agreement the Lender shall, subject to the provisions of clause 8, make an Advance available to the Borrower on the relevant Drawdown Date in payment to such account as the Borrower shall specify in the relevant Drawdown Notice. No Advance may be made after the expiry of the Drawdown Period.

2.5 **Cancellation**

If any part of the Loan is not drawn down by the end of the Drawdown Period, the Commitment shall thereupon be automatically cancelled and the Lender shall have no further obligation under this Agreement.

2.6 **Use of Proceeds**

The Lender shall have no responsibility for the Borrower's use of the proceeds of the Loan and is not bound to monitor or verify the application of any amount borrowed pursuant to the terms of this Agreement.

3 **INTEREST**

3.1 **Interest rate**

3.1.1 Subject to Clause 3.1.2, the Loan shall bear interest at the rate of 11.50% per annum, payable on the day falling three (3) months after the first Drawdown Date and at three-monthly intervals thereafter (each, an "**Interest Payment Date**").

3.1.2 Interest on the Loan shall be compounded on each Interest Payment Date and shall be payable by the Borrower on the Repayment Date. Notwithstanding the foregoing, the Borrower may, at its option, pay all or any part of such compounded interest in cash at any time.

3.2 **Default interest**

If the Lender fails to receive any sum whatsoever on its due date for payment under this Agreement, the Borrower must pay interest on such sum on demand from the due date up to the date of actual payment (as well after as before judgment) at a rate of two (2.0) per cent per annum over the interest rate referred to in Clause 3.1. Such interest shall be due and payable on demand, shall accrue daily and shall be compounded annually.

4 **REPAYMENT AND PREPAYMENT**

4.1 **Repayment**

Subject as otherwise provided in this Agreement, the Borrower must repay the Loan on the Repayment Date.

4.2 **Voluntary prepayment**

The Borrower may prepay the Loan in whole or in part (being USD1,000,000 or any larger sum which is a whole multiple of USD1,000,000) at any time.

4.3 **Amounts payable on prepayment**

Any prepayment of all or part of the Loan under this Agreement shall be made without any prepayment penalty but together with:

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

4.3.2 any additional amount payable under clause 6.6; and

4.3.3 if of the whole Loan, all other sums payable by the Borrower to the Lender under this Agreement.

4.4 **Notice of prepayment;**

4.4.1 No prepayment may be effected under clause 4.2 unless the Borrower shall have given the Lender at least three (3) Banking Day's prior written notice of its intention to make such prepayment. Every notice of prepayment shall be effective only on actual receipt by the Lender, shall be irrevocable, shall specify the amount to be prepaid and shall oblige the Borrower to make such prepayment on the date specified.

4.4.2 Amounts prepaid may not be re-borrowed.

5 **FEES AND EXPENSES**

5.1 **Fees**

The Borrower agrees to pay to the Lender on the first Drawdown Date a non-refundable upfront fee of USD450,000.

5.2 **Expenses**

The Borrower agrees to reimburse the Lender on a full indemnity basis on demand for all expenses and/or disbursements whatsoever:

5.2.1 in respect of, legal fees certified by the Lender as having been incurred by it from time to time and at any time and all other expenses and/or disbursements certified by the Lender as having been incurred by it in relation to the negotiation, consideration, approval and structuring of this Agreement and the arrangements contemplated hereby:

5.2.2 in connection howsoever with the negotiation, preparation, execution and, where relevant, registration of this Agreement and of any contemplated or actual amendment, indulgence or the granting of any waiver or consent howsoever in connection with this Agreement; and

5.2.3 in contemplation or furtherance of, or otherwise howsoever in connection with, the exercise or enforcement of, or preservation of any rights, powers, remedies or discretion under this Agreement or any amendment thereto or consideration of the Lender's rights thereunder or any action proposed or taken with interest at the rate referred to in clause 3.3 from the date on which such expenses and/or disbursements were demanded by the Lender to the date of payment (as well after as before judgment).

5.3 **Value Added Tax**

All fees and expenses payable under to this clause 5 must be paid with value added tax or any similar tax (if any) properly chargeable thereon. Any value added tax chargeable in respect of any services supplied by the Lender under this Agreement must, on delivery of the value added tax invoice, be paid in addition to any sum agreed to be paid hereunder.

5.4 **Stamp and other duties**

The Borrower must pay all stamp, documentary, registration or other like duties or taxes (including any duties or taxes payable by the Lender) imposed on or in connection with this Agreement or the Loan and agree to indemnify the Lender against any liability arising by reason of any delay or omission by the Borrower to pay such duties or taxes other than to the extent such duties or taxes arise as a result of the Lender transferring its Loan or Commitments under this Agreement.

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

6.1 **No set-off or counterclaim**

All payments to be made by the Borrower under this Agreement must be made in full, without any set-off or counterclaim whatsoever and, subject to clause 6.6, free and clear of any deductions or withholdings, in USD not later than 11 a.m. London time on the due date to such account of the Lender as the Lender may from time to time notify to the Borrower.

6.2 **Payment by the Lender**

The proceeds of the Loan to be advanced by the Lender to the Borrower under this Agreement must be remitted by in USD on the relevant Drawdown Date to the account or accounts specified in the relevant Drawdown Notice.

6.3 **Non-Banking Days**

When any payment under this Agreement would otherwise be due on a day which is not a Banking Day, the due date for payment shall be extended to the next following Banking Day.

6.4 **Calculations**

All interest and other payments of an annual nature under this Agreement shall accrue from day to day and be calculated on the basis of actual days elapsed and a 360 day year.

6.5 **Currency of account**

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

6.6 **Grossing-up for Taxes**

If at any time the Borrower must make any deduction or withholding in respect of Taxes from any payment due under this Agreement, the sum due from the Borrower in respect of such payment must then be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Lender receives on the due date for such payment (and retains, free from any liability in respect of such deduction or withholding), a net sum equal to the sum which it would have received had no such deduction or withholding been made



and the Borrower agrees to indemnify the Lender on demand against any losses or costs certified by the Lender to have been incurred by it by reason of any failure of the Borrower to make any such deduction or withholding or by reason of any increased payment not being made on the due date for such payment. The Borrower must promptly deliver to the Lender any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid. . The Lender shall use commercially reasonable efforts (including the delivery of properly completed and executed Tax forms or documentation prescribed by applicable law) to reduce or eliminate any deduction or withholding for Taxes from any payment due under this Agreement and to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to this clause 6.6.

6.7 **Loan account**

The Lender agrees to maintain a control account showing the Loan and other sums owing by the Borrower under this Agreement and all payments in respect thereof being made from time to time. The control account shall, in the absence of manifest error, absent prompt objection by the Borrower, be conclusive as to the amount from time to time owing by the Borrower under this Agreement.

6.8 **Partial payments**

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

6.8.1 first, in or towards payment, on a pro-rata basis, of any unpaid costs and expenses of the Lender under this Agreement;

6.8.2 secondly, in or towards payment of any fees payable to the Lender under, or in relation to, this Agreement which remain unpaid;

- 6.8.3 thirdly, in or towards payment to the Lender of any accrued interest owing in respect of the Loan which shall have become due under this Agreement but remains unpaid;
- 6.8.4 fourthly, in or towards payment to the Lender of any principal in respect of the Loan which shall have become due but remains unpaid;
- 6.8.5 fifthly, in or towards payment to the Lender of any other sum which shall have become due under this Agreement but remains unpaid (and, if more than one such sum so remains unpaid, on a pro rata basis).

The order of application set out in clauses 5.8.1 to 5.8.5 may be varied by the Lender without any reference to, or consent or approval from, the Borrower.

6.9 **FATCA**

6.9.1 Subject to Clause 5.9.3 below, each party shall, within ten (10) Banking Days of a reasonable request by another party:

- (a) confirm to that other party whether it is:
  - (i) a FATCA Exempt Party; or
  - (ii) not a FATCA Exempt Party; and
- (b) supply to that other party such forms, documentation and other information relating to its status under FATCA (including its applicable passthru percentage or other information required under the Treasury Regulations or other official guidance including intergovernmental agreements) as that other party reasonably requests for the purposes of that other party's compliance with FATCA.

6.9.2 If a party confirms to another party pursuant to Clause 5.9.1(a) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that party shall notify that other party reasonably promptly.

6.9.3 Clause 5.9.1(a) above shall not oblige the Lender to do anything which would or might in its reasonable opinion constitute a breach of:

- (a) any law or regulation;
- (b) any policy of the Lender;

(c) any fiduciary duty; or

(d) any duty of confidentiality.

6.9.4 If the Borrower is required to make a FATCA Deduction, the Borrower shall make that FATCA Deduction and any payment required in connection with that FATCA Deduction within the time allowed and in the minimum amount required by FATCA;

6.9.5 The Borrower shall promptly upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of a FATCA Deduction) notify the Lender accordingly; and

6.9.6 Within thirty days of making either a FATCA Deduction or any payment required in connection with that FATCA Deduction, the Borrower shall deliver to the Lender evidence satisfactory to the Lender that the FATCA Deduction has been made or (as applicable) any appropriate payment paid to the relevant governmental or taxation authority.

## 7 REPRESENTATIONS AND WARRANTIES

### 7.1 Continuing representations and warranties

The Borrower represents and warrants to the Lender that:

#### 7.1.1 Due incorporation

it is duly incorporated and validly existing in good standing, under the laws of the Marshall Islands as a corporation and has power to carry on its respective business as it is now being conducted and to own its property and other assets to which it has unencumbered legal and beneficial title except as disclosed to the Lender in writing;

#### 7.1.2 Corporate power

it has power to execute, deliver and perform its obligations and, as the case may be, to exercise its rights under this Agreement; all necessary corporate, shareholder or member and other action has been taken to authorise the execution, delivery and on the execution of this Agreement performance of the same and no limitation on the powers of the Borrower to borrow or to howsoever incur liability will be exceeded as a result of borrowing any part of the Loan;

- 7.1.3 Binding obligations  
subject to the Legal Reservations and the Perfection Requirements, this Agreement, when executed, will constitute valid and legally binding obligations of the Borrower enforceable in accordance with its terms and admissible in evidence;
- 7.1.4 No conflict with other obligations  
the execution and delivery of, the performance of its obligations under, and compliance with the provisions of, this Agreement by the Borrower will not (i) contravene in any material respect any existing applicable law, statute, rule or regulation or any judgment, decree or permit of any Pertinent Jurisdiction to which the Borrower or other member of the Group is subject, (ii) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which the Borrower or any other member of the Group is a party or is subject or by which it or any of its property is bound which is likely to have a Material Adverse Effect or (iii) contravene or conflict with any provision of the constitutional documents of the Borrower;
- 7.1.5 No default  
no Default has occurred which is continuing;
- 7.1.6 No litigation or judgments  
no Proceedings are current, pending or threatened against the Borrower or any other Group Members or their assets which could have a Material Adverse Effect and there exist no judgments, orders, injunctions which would materially affect the obligations of the Borrower under this Agreement other than have been publicly disclosed by the Borrower prior to the Execution Date;
- 7.1.7 No filings required  
it is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of this Agreement that they or any other instrument be notarised, filed, recorded, registered or enrolled in any court, public office or elsewhere in any Pertinent Jurisdiction or that any stamp, registration or similar tax or charge be paid in any Pertinent Jurisdiction on or in relation to this Agreement is in proper form for its enforcement in the courts of each Pertinent Jurisdiction;

- 7.1.8 Required Authorisations and legal compliance  
all Required Authorisations have been obtained or effected and are in full force and effect and the Borrower has not in any way contravened any applicable law, statute, rule or regulation (including all such as relate to money laundering);
- 7.1.9 Choice of law  
the choice of English law to govern this Agreement and the submissions by the Borrower to the jurisdiction of the English courts and the obligations of the Borrower associated therewith, are valid and binding;
- 7.1.10 No immunity  
neither the Borrower or any of its assets is entitled to immunity on the grounds of sovereignty or otherwise from any Proceedings whatsoever;
- 7.1.11 Financial statements correct and complete  
the Latest Accounts of the Borrower in respect of the relevant financial year as delivered to the Lender present fairly and accurately the financial position of the Borrower for the financial year, ended on such date and, as at such date, the Borrower had no material liabilities (contingent or otherwise) or any unrealised or anticipated losses which are not disclosed by, or reserved against or provided for in, such financial statements or notes thereto;
- 7.1.12 Pari passu  
the obligations of the Borrower under this Agreement are direct, general and unconditional obligations of the Borrower and rank at least pari passu with all present and future unsubordinated Indebtedness of the Borrower except for obligations which are mandatorily preferred by operation of law and not by contract;
- 7.1.13 Information/ Material Adverse Effect  
all written factual information, whatsoever provided by the Borrower to the Lender in connection with the negotiation and preparation of this Agreement or otherwise provided hereafter in relation to, or pursuant to this Agreement is true and accurate in all material respects and not misleading and the Borrower's public filings do or will not omit material facts and all reasonable enquiries have been made to verify the facts and statements contained therein as of such date and there has not occurred a Material Adverse Effect on the Borrower since such information was provided to the Lender;

- 7.1.14 Copies true and complete  
the copies of the constitutional documents of the Borrower delivered or to be delivered to the Lender pursuant to clause 8.1 are, or will when delivered be, true and complete copies; and there have been no amendments or variations thereof;
- 7.1.15 Indebtedness  
the Borrower has not incurred any Indebtedness other than as disclosed to the Lender in writing or as disclosed in the Group's public filings;
- 7.1.16 Use of proceeds  
the Borrower shall apply the Loan only for the purposes specified in clauses 1.1. and 2.1;
- 7.1.17 Filings  
subject to any permissible extensions, the Borrower has filed all material tax and other fiscal returns required to be filed with any tax authority to which it is subject;
- 7.1.18 Office  
the Borrower does not have an office in England or in the United States of America;
- 7.1.19 Prohibited Persons, unlawful activity  
none of the Group Members are a Prohibited Person; and
- 7.1.20 Insolvency  
the Borrower is not unable or has admitted inability to pay its debts as they fall due, has not suspended making payments on any of its debts nor it has announced an intention to do so nor has become insolvent; or, save as disclosed to the Lender prior to the Execution Date, the Borrower has not suffered the declaration of a moratorium in respect of any of its Indebtedness;
- 7.1.21 Sanctions  
neither the Borrower nor any director, officer, agent, employee of the Borrower or any person acting on behalf of the Borrower, is a Prohibited Person nor acts directly or indirectly on behalf of a Prohibited Person; and

7.2 **Repetition of representations and warranties**

On the Execution Date, each Drawdown Date and on each Interest Payment Date, the Borrower shall be deemed to repeat the representations and warranties in clause 7.1 updated mutatis mutandis as if made with reference to the facts and circumstances existing on such day.

8 **UNDERTAKINGS**

8.1 **General**

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

8.1.1 **Notice of Default and Proceedings**

promptly inform (and any public filing of the Borrower containing the relevant information about the matters hereafter described shall constitute compliance with this covenant to inform) the Lender, in writing, of the details of any Proceedings involving the Borrower or member of the Group which could have a Material Adverse Effect as soon as the same is instituted or formally threatened and will, from time to time, if so reasonably requested by the Lender, confirm to the Lender in writing that, save as otherwise stated in such confirmation, no Default has occurred and is continuing and no such Proceedings are on foot or have been formally threatened in writing;

8.1.2 **Authorisation**

obtain or cause to be obtained, maintain in full force and effect and comply fully with all Required Authorisations, provide the Lender, upon request, with Certified Copies of the same and do, or cause to be done, all other acts and things which may from time to time be necessary under any applicable law for the continued due performance of all the obligations of the Borrower under this Agreement;

8.1.3 **Corporate Existence/Ownership**

ensure that it maintains its corporate existence as a body corporate duly organised and validly existing and in good standing under the laws of the Pertinent Jurisdiction and ensure that the Borrower is owned and controlled, directly or through other companies, by the persons disclosed to the Lender prior to the date hereof;

8.1.4 Use of proceeds

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

8.1.5 Pari passu

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

8.1.6 Financial statements

provide the Lender (or procure that is provided):

- (a) as soon as possible, but in no event later than 120 days after the end of each of its financial years, annual audited (prepared in accordance with US GAAP by a firm of accountants acceptable to the Lender) consolidated balance sheet and profit and loss accounts of the Borrower (commencing with the financial year ending 31 December 2021) and public filing in respect of the Borrower shall constitute delivery;
- (b) as soon as possible, but in no event later than 90 days after the end of each of its first three financial quarters, commencing with the second financial quarter of 2021, the Borrower's unaudited consolidated balance sheet and profit and loss accounts for that 3 month period certified as to their correctness by its chief financial officer;
- (c) prior to the start of each of its financial years, an annual forecast in respect of the Borrower;
- (d) details of any litigation, arbitration, administrative proceedings, Default and any other events or circumstances which are likely to have a Material Adverse Effect on the Borrower;

8.1.7 Provision of further information

provide the Lender with such financial or other information concerning the Borrower, all vessels (including those under construction) owned, acquired, sold or managed by any Group Member, or any of its subsidiaries, including, commitments, financial standing, operations and in relation to Borrowed Moneys, repayment of Borrowed Money, as the Lender may from time to time reasonably require;



8.1.8 Compliance with Laws and payment of taxes

comply in all material respects with all relevant applicable laws, statutes, directives, decrees, rulings and analogous rules (including, but not limited to, those relating to Sanctions) and regulations (other than in the case of Sanctions) where failure to do so would be reasonably likely to have a Material Adverse Effect and pay all taxes for which it is liable as they fall due unless disputed in good faith;

8.1.9 Sanctions

will not and will use reasonable endeavours to ensure that no Group Member does, conduct or undertake any business:

(a) in breach of any Sanctions of:

- (i) the United Nations Security Council;
- (ii) the European Union;
- (iii) the United Kingdom;
- (iv) the United States of America
- (v) the Marshall Islands

as they apply to their members or nationals; or

(b) in any trade, carriage of goods or business which is forbidden by the laws of the United Kingdom or the United States of America as they apply to their members or nationals, or any law applicable to the Borrower; or

(c) in carrying illicit or prohibited goods; or

(d) in a way which may make it liable to be condemned by a prize court or destroyed, seized or confiscated; or

(e) to the knowledge of the Borrower, by or for the benefit of a Prohibited Person;

8.1.10 Delivery of reports

deliver to the Lender upon request a copy of each report, circular, notice or like document issued by the Borrower to its shareholders or creditors generally;

8.1.11 If, in the opinion of the Lender, any member of the Group agrees with any lender in the context of a financing made or to be made available to that member of the Group, financial covenants with respect to the Borrower (including without limitation any dividend restrictions on the Guarantor, the “**Covenants**”) which place such lender or lenders in a more favourable position than that applicable to the Lender pursuant to this Agreement, the Borrower shall give the Lender the benefit of such Covenants which, in the opinion of the Lender, would place them in an equivalent position as that applicable to the other lender or lenders at the relevant time. The Borrower shall also enter, if required by the Lender, into a supplemental agreement to this Agreement to amend the same accordingly (with such supplemental agreement or agreements being entered into on or immediately after the date on which the Covenants are granted).

8.2 **Negative undertakings**

The Borrower undertakes with the Lender that, from the Execution Date until the end of the Facility Period, it will not, without the prior written consent of the Lender:

8.2.1 Negative pledge

permit any Encumbrance (other than a Permitted Encumbrance or as otherwise disclosed in writing by the Borrower to the Lender on or prior to the date of this Agreement) to subsist, arise or be created or extended over any shares or equivalent rights of ownership owned by the Borrower to secure or prefer any present or future Indebtedness or other liability or obligation of any Group Member or any other person;

8.2.2 Transactions

enter into any transactions with or involving such a person or company on terms which are, in any respect, less favourable to the Borrower than those which it could obtain at arm’s length; or

8.2.3 Prohibited Persons

and shall use reasonable endeavours to procure that no Group Member will, have any course of dealings, directly or indirectly, with any Prohibited Person.

9 **CONDITIONS**

9.1 **Documents and evidence**

The Lender's obligation to make available the Loan and any Advance is subject to the following conditions precedent:

9.1.1 that on or before the relevant Drawdown Date, the Lender has received the documents described in Schedule 2 in form and substance satisfactory to the Lender;

9.1.2 the representations and warranties contained in clause 7.1 being then true and correct as if each was made with respect to the facts and circumstances existing at such time; and

9.1.3 no Default shall have occurred and be continuing and no Default would result from the making of the Loan.

9.2 **Waiver of conditions precedent**

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

9.3 **English language**

All documents required to be delivered under and/or supplied in connection with this Agreement must either be in the English language or accompanied by an English translation certified by a notary, lawyer or consulate acceptable to the Lender.

9.4 **Further conditions precedent**

Not later than two (2) Banking Days prior to the Drawdown Date of an Advance and not later than five (5) Banking Days prior to any Interest Payment Date, the Lender may request and the Borrower must, prior to such date, deliver to the Lender (at the Borrowers' expense) on such request further favorable certificates and/or opinions and/or other evidence satisfactory to the Lender (acting reasonably) as to any or all of the matters which are referred to in clauses 6, 7, 8, and 9.

10 **EVENTS OF DEFAULT**

10.1 **Events**

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

- 10.1.1 **Non-payment:** the Borrower fails to pay any sum payable by it under this Agreement at the time, in the currency and in the manner stipulated in this Agreement (and so that, for this purpose, sums payable (i) under clause 4.1 shall be treated as having been paid at the stipulated time if (a) received by the Lender within five (5) days of the dates therein referred to and (b) such delay in receipt is caused by administrative or other delays or errors within the banking system and (ii) on demand shall be treated as having been paid at the stipulated time if paid within five (5) Banking Days of demand); or
- 10.1.2 **Breach of other obligations:** the Borrower commits any breach of or omits to observe any of its obligations or undertakings expressed to be assumed by it under any this Agreement (other than those referred to in clause 9.1.1 above) unless such breach or omission, in the reasonable opinion of the Lender is capable of remedy, in which case the same shall constitute an Event of Default if it has not been remedied within thirty (30) Business Days of the Lender giving written notice to the Borrower of, or the Borrower becoming aware of the occurrence thereof; or
- 10.1.3 **Misrepresentation:** any representation or warranty made or deemed to be made or repeated by or in respect of the Borrower in or pursuant to this Agreement or in any notice, certificate or statement referred to in or delivered under this Agreement is or proves to have been incorrect or misleading in any material respect unless the circumstances giving rise to the misrepresentation are in the reasonable opinion of the Lender capable of remedy and are remedied within thirty 30 Business Day of the Lender giving written notice to the Borrower of, or the Borrower becoming aware of, the occurrence thereof; or
- 10.1.4 **Cross-default:** any Indebtedness of the Borrower or any other Group Member (which is not intra group or subordinated debt) in excess of USD25,000,000 is not paid when due (subject to applicable grace periods) or any Indebtedness of the Borrower or any other Group Member becomes (whether by declaration or automatically in accordance with the relevant agreement or instrument constituting the same) due and payable prior to the date when it would

otherwise have become due (unless as a result of the exercise by the Borrower or by the relevant Group Member of a voluntary right of prepayment), or any creditor of the Borrower or of any other Group Member becomes entitled to declare any such Indebtedness due and payable or any facility or commitment available to the Borrower or any other Group Member relating to Indebtedness is withdrawn, suspended or cancelled by reason of any default (however described) of the person concerned (unless the relevant creditor has granted to the Borrower a waiver in respect thereof) ; or

- 10.1.5 **Execution:** any uninsured judgment or order made against the Borrower or any other Group Member in an amount in excess of USD25,000,000 is not stayed, appealed against or complied with within twenty (20) days or a creditor attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced upon or sued out against, any of the undertakings, assets, rights or revenues of the Borrower or any other Group Member and is not discharged within thirty (30) days; or
- 10.1.6 **Insolvency:** the Borrower is unable or admits inability to pay its debts as they fall due; suspends making payments on all or substantially all of its debts or announces an intention to do so; becomes insolvent; or suffers the declaration of a moratorium in respect of all or substantially all of its Indebtedness; or
- 10.1.7 **Dissolution:** any corporate action, Proceedings or other steps are taken to dissolve or wind-up the Borrower or an order is made or resolution passed for the dissolution or winding up of the Borrower; or
- 10.1.8 **Administration:** any petition is presented, notice given or other steps are taken anywhere to appoint an administrator of the Borrower or an administration order is made in relation to the Borrower ; or
- 10.1.9 **Appointment of receivers and managers:** any administrative or other receiver is appointed anywhere of the Borrower or any part of its assets and/or undertaking or any other steps are taken to enforce any Encumbrance over all or any part of the assets of the Borrower; or
- 10.1.10 **Compositions:** any corporate action, legal proceedings or other procedures are taken, by the Borrower or by any of its creditors with a view to the general readjustment or rescheduling of all or substantially all of its Indebtedness, or to proposing any kind of composition, compromise or arrangement involving such company and all or substantially all of its creditors; or

- 10.1.11 **Analogous proceedings:** there occurs, in relation to the Borrower, in any country or territory in which it carries on business or to the jurisdiction of whose courts any part of its assets is subject, any event which, in the reasonable opinion of the Lender, appears in that country or territory to correspond with, or have an effect equivalent or similar to, any of those mentioned in clauses 9.1.6 to 9.1.10 (inclusive) or the Borrower otherwise becomes subject, in any such country or territory, to the operation of any law relating to insolvency, bankruptcy or liquidation; or
- 10.1.12 **Cessation of business:** the Borrower suspends or ceases to carry on its business; or
- 10.1.13 **Seizure:** all or a material part of the undertaking, assets, rights or revenues of, or shares or other ownership interests in, the Borrower are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any government entity; or
- 10.1.14 **Invalidity:** this Agreement or any of its provisions, other than as a result of any act or omission of the Lender, at any time and for any reason are or shall become invalid or unenforceable or otherwise cease to remain in full force and effect, or if the validity or enforceability of this Agreement or any of its provisions or the exercise of any right of the Lender hereunder, shall at any time and for any reason be contested by the Borrower or by any creditor of the Borrower (other than the Lender), or if the Borrower shall deny that it has any, or any further, liability thereunder; or
- 10.1.15 **Unlawfulness:** any Unlawfulness occurs or it becomes impossible or unlawful at any time for the Borrower, to fulfil any of the covenants and obligations expressed to be assumed by it in this Agreement or for the Lender to exercise the rights or any of them vested in it under this Agreement or otherwise; or
- 10.1.16 **Material events:** any other event occurs or circumstance arises which, in the reasonable opinion of the Lender, is likely to have a Material Adverse Effect or, if such event or circumstance is capable of remedy it is not remedied within 15 Business Days of the earlier of (i) the Lender notifying the Borrower of such event or (ii) the Borrower becoming aware of the same; or
- 10.1.17 **Litigation:** any Proceedings are current, pending or threatened against the Borrower or any other Group Member which are reasonably likely to have a Material Adverse Effect;

10.1.18 **Required Authorisations:** any Required Authorisation is revoked or withheld or modified or is otherwise not granted or fails to remain in full force and effect or if any exchange control or other law or regulation shall exist which would make any transaction under this Agreement or the continuation thereof, unlawful or would prevent the performance by the Borrower of any term of this Agreement;

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

## 10.2 **Acceleration**

The Lender may, without prejudice to any other rights of the Lender, at any time after the happening of an Event of Default so long as the same is continuing, by notice to the Borrower:

10.2.1 declare that the obligation of the Lender to make the Commitment available shall be terminated, whereupon the Commitment shall immediately be cancelled; and/or

10.2.2 declare that the Loan and all interest accrued and all other sums payable whensoever under this Agreement have become due and payable, whereupon the same shall, immediately or in otherwise accordance with the terms of such notice, become due and payable; and/or

10.2.3 exercise any or all of its rights, remedies, powers or discretions under this Agreement.

## 10.3 **Demand basis**

If, under clause 9.2.2, the Lender has declared the Loan to be due and payable on demand, at any time thereafter the Lender may by further notice to the Borrower demand repayment of the Loan on such date as may be specified whereupon the Loan shall become due and payable accordingly with all interest accrued and all other sums payable under this Agreement.

## 11 **INDEMNITIES**

### 11.1 **General indemnity**

The Borrower agrees to indemnify the Lender on demand, without prejudice to any of the Lender's other rights under this Agreement, against any loss (including loss of interest), cost or expense which the Lender shall certify as sustained at any time by it in connection with this Agreement, including (without limitation) any such loss, cost or expense arising from any action, claim, suit or proceeding directly or indirectly related to this Agreement or the Loan (excluding any default by the Lender determined by a court of competent jurisdiction to have resulted from (i) the gross negligence, bad faith or willful misconduct of the Lender or (ii) a material breach of this Agreement by the Lender).

12 **UNLAWFULNESS AND INCREASED COSTS MITIGATION**

12.1 **Unlawfulness**

Regardless of any other provision of this Agreement, in the event that the Lender notifies the Borrower that by reason of:

- (a) the introduction of or any change in any applicable law or regulation or any change in the interpretation or application thereof; or
- (b) compliance by the Lender with any directive, request or requirement (whether or not having the force of law) of any central bank or Government Entity

it becomes unlawful or it is prohibited by or contrary to such directive request or requirement for the Lender to maintain or give effect to any of its obligations in connection howsoever with this Agreement then (i) the Commitment shall be reduced to zero and (ii) the Borrower shall be obliged to prepay the Loan either immediately or on a future date (specified in the Lender's notice) not being earlier than the latest date permitted by the relevant law, regulation, directive, request or requirement with interest and commitment commission accrued to the date of prepayment and all other sums payable whensoever by the Borrower under this Agreement.

12.2 **Increased costs**

If the Lender certifies to the Borrower that at any time the effect of any applicable law, regulation or regulatory requirements or the interpretation or application thereof or any change therein is to:

- 12.2.1 subject the Lender to Taxes or change the basis of Taxation of the Lender relating to any payment under this Agreement (other than Taxes or Taxation on the overall net income of the Lender imposed in the jurisdiction in which its principal or lending office under this Agreement is located); and/or



- 12.2.2 increase the cost to, or impose an additional cost on, the Lender in making or keeping the Commitment available or maintaining or funding all or part of the Loan; and/or
  - 12.2.3 reduce the amount payable or the effective return to the Lender under this Agreement; and/or
  - 12.2.4 require the Lender to make a payment or forgo a return on or calculated by reference to any amount received or receivable by the Lender under this Agreement; and/or
- then and in each such case (subject to clause 11.3) the Borrower must on demand either:
- (a) pay to the Lender the amount which the Lender certifies (in a certificate setting forth the basis of the computation of such amount but not including any matters which the Lender or its holding company regards as confidential) is required to compensate the Lender for such liability to Taxes, cost, reduction, payment, forgone return or loss; or
  - (b) prepay the Loan, in respect of which prepayment the terms of clause 4.2 shall apply.

12.3 **Exception**

Nothing in clause 11.2 shall entitle the Lender to receive any amount relating to compensation for any such liability to Taxes, increased or additional cost, reduction, payment, foregone return or loss to the extent that the same is the subject of an additional payment under clause 5.3, 5.4 or 6.6.

13 **SECURITY AND MISCELLANEOUS**

13.1 **Application of moneys**

All moneys received by the Lender under or pursuant to this Agreement and expressed to be applicable in accordance with the provisions of this clause 13.1 shall be applied by the Lender as follows:

- 13.1.1 first in or toward payment of all unpaid fees, sums which have been demanded by way of indemnity and expenses which may be owing to the Lender under this Agreement;
- 13.1.2 secondly in or towards payment of any arrears of interest owing in respect of the Loan or any part thereof;
- 13.1.3 thirdly in or towards repayment of the Loan (whether the same is due and payable or not);

13.1.4 fourthly in or towards payment to the Lender of any other sums which the Lender certifies are owing to it under this Agreement; and

13.1.5 fifthly the surplus (if any) shall be paid to the Borrower.

13.2 **No implied waivers, remedies cumulative**

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

13.3 **Severability**

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

13.4 **Force Majeure**

Regardless of any other provision of this Agreement the Lender shall not be liable for any failure to perform the whole or any part of this Agreement resulting directly or indirectly from (i) the action or inaction or purported action of any governmental or local authority (ii) any strike, lockout, boycott or blockade (including any strike, lockout, boycott or blockade effected by or upon the Lender or any of its representatives or employees) (iii) any act of God (iv) any act of war (whether declared or not) or terrorism (v) any failure of any information technology or other operational systems or equipment affecting the Lender or (vi) any other circumstances whatsoever outside the Lender's control.

13.5 **Amendments**

This Agreement may be amended or varied only by an instrument in writing executed by both parties hereto who irrevocably agree that the provisions of this clause 13.8 may not be waived or modified except by an instrument in writing to that effect signed by both of them.

13.6 **Counterparts**

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

13.7 **English language**

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

14 **INTENTIONALLY LEFT BLANK**

15 **ASSIGNMENT, TRANSFER AND DISCLOSURE**

15.1 **Benefit and burden**

This Agreement shall be binding upon, and ensure for the benefit of, the Lender and the Borrower and their respective successors.

15.2 **No assignment by Borrower**

The Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Lender. Neither the Borrower nor any affiliate of the Borrower may become a Lender or a sub-participant.

15.3 **Assignment by Lender**

The Lender may not assign, sell, sub-participate all or any part of its rights under this Agreement to another branch, subsidiary or affiliate of the Lender, another bank or financial institution, a member of the European System of Central Banks, an insurance company, a trust corporation or a capital investment company (including any credit fund), without the prior written consent of the Borrower. The Lender, acting solely for this purpose as an agent of the Borrower, shall maintain a register for the recordation of the names and addresses of any such assignee or participant of the Lender, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each such assignee or participant pursuant to the terms

hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Lender, and any such assignee or participant of Lender shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower, the Lender and any such assignee or participant of the Lender, at any reasonable time and from time to time upon reasonable prior notice. It is the intention that this Loan Agreement be treated as a registered obligation and in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations thereunder.

15.4 **Disclosure of information**

The Lender may disclose to a prospective assignee, transferee or to any other person who may propose entering into contractual relations with the Lender in relation to this Agreement such information about or in connection with the Borrower and this Agreement as the Lender considers appropriate, provided that the Lender shall consult with the Borrower prior to disclosing (i) any such information which is not public or contained in this Agreement and/or (ii) any documentation other than a copy of this Agreement.

16 **NOTICES**

16.1 **General**

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

16.1.2 in this clause “notice” includes any demand, consent, authorisation, approval, instruction, certificate, request, waiver or other communication.

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

16.2.1 Subject to clause 15.2.2 notices to the Borrower shall be deemed to have been given and shall take effect when received in full legible form by the Borrower at the address and/or the email address appearing below (or at such other address or email address as the Borrower may hereafter specify for such purpose to the Lender by notice in writing);

Address: Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH 96960,

Marshall Islands

email:

notwithstanding the provisions of clause 16.2.1, a notice of Default and/or a notice given pursuant to clause 10.2 or clause 10.3 shall be deemed to have been given and shall take effect when delivered, sent or transmitted by the Lender to the Borrower to the address or fax number referred to in clause 16.2.1;

- 16.2.2 notices to the Lender shall be deemed to be given, and shall take effect, when received in full legible form by the Lender at the address and/or the email address appearing below (or at any such other address or email address as the Lender may hereafter specify for such purpose to the Borrower by notice in writing);

Address: Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH 96960, Marshall Islands

email: [legal\\_corp@navios.com](mailto:legal_corp@navios.com)

if under clause 16.2.1 or clause 16.2.2 a notice would be deemed to have been given and effective on a day which is not a working day in the place of receipt or is outside the normal business hours in the place of receipt, the notice shall be deemed to have been given and to have taken effect at the opening of business on the next working day in such place.

17 **GOVERNING LAW**

17.1 **Law**

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

18 **JURISDICTION**

18.1 **Exclusive jurisdiction**

Subject to clause 17.4 below, the Borrower and the Lender hereby irrevocably agree that the courts of England shall have exclusive jurisdiction:

- 18.1.1 to settle any disputes or other matters whatsoever arising under or in connection with this Agreement (or any non-contractual obligation arising out of or in connection with this Agreement) and any disputes or other such matters arising in connection with the negotiation, validity or enforceability of this Agreement or any part thereof, whether the alleged liability shall arise under the laws of England or under the laws of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts; and
- 18.1.2 to grant interim remedies or other provisional or protective relief.
- 18.2 **Submission and service of process**
- Subject to clause 17.4 below, the Borrower and the Lender accordingly irrevocably and unconditionally submit to the jurisdiction of the English courts. Without prejudice to any other mode of service the Borrower:
- 18.2.1 irrevocably empowers and appoints Messrs Hill Dickinson Services (London) Ltd at present of The Broadgate Tower, 20 Primrose Street, London, EC2A 2EW, England as its agent to receive and accept on its behalf any process or other document relating to any proceedings before the English courts in connection with this Agreement;
- 18.2.2 agrees to maintain such an agent for service of process in England from the date hereof until the end of the Facility Period;
- 18.2.3 agrees that failure by a process agent to notify the Borrower of service of process will not invalidate the proceedings concerned;
- 18.2.4 without prejudice to the effectiveness of service of process on its agent under clause 17.2.1 above but as an alternative method, consents to the service of process relating to any such proceedings by mailing or delivering a copy of the process to its address for the time being applying under clause 15.2;
- 18.2.5 agrees that if the appointment of any person mentioned in clause 17.2.1 ceases to be effective, the Borrower shall immediately appoint a further person in England to accept service of process on its behalf in England and, failing such appointment within seven (7) days the Lender shall thereupon be entitled and is hereby irrevocably authorised by the Borrower in those circumstances to appoint such person by notice to the Borrower.

18.3 **Forum non conveniens and enforcement abroad**

The Borrower and the Lender:

- 18.3.1 waive any right and agree not to apply to the English court or other court in any jurisdiction whatsoever to stay or strike out any proceedings commenced in England on the ground that England is an inappropriate forum and/or that proceedings have been or will be started in any other jurisdiction in connection with any dispute or related matter falling within clause 16.1; and
- 18.3.2 agree that a final non-appealable judgment or order of an English court in a dispute or other matter falling within clause 17.1 shall be conclusive and binding on the Borrower and the Lender and may be enforced against them in the courts of any other jurisdiction.
- 18.4 **Right of Lender, but not Borrower, to bring proceedings in any other jurisdiction**
- 18.4.1 nothing in this clause 18 limits the right of the Lender to bring proceedings in connection with the enforcement of its security, or the enforcement or recovery of any judgment debt or judicial award or order made (i) in each case, in the courts of England and (ii) under or in relation to this Agreement, including third party proceedings, against the Borrower, or to apply for interim remedies, in any other court and/or concurrently in more than one jurisdiction; and
- 18.4.2 the obtaining by the Lender of judgment in one jurisdiction shall not prevent the Lender from bringing or continuing proceedings in any other jurisdiction proceedings in connection with the enforcement of its security, or the enforcement or recovery of any judgment debt or judicial award or order made (i) in each case, in the courts of England and (ii) under or in relation to this Agreement, whether or not these shall be founded on the same cause of action.

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

**BORROWER**

SIGNED by Leonidas Korres )  
as attorney-in-fact )  
for and on behalf of ) /s/Leonidas Korres  
**NAVIOS MARITIME ACQUISITION** )  
**CORPORATION** )

**LENDER**

SIGNED by Efstratios Desypris )  
as attorney-in-fact )  
for and on behalf of ) /s/ Efstratios Desypris  
**NAVIOS MARITIME PARTNERS L.P.** )



## 'BARECON 2001' STANDARD BAREBOAT CHARTER

PART I

1. Shipbroker	<b>BIMCO STANDARD BAREBOAT CHARTER CODE NAME : "BARECON 2001"</b>		PART I
<b>ITOCHU CORPORATION TOKBR Section, 5-1, Kita-Aoyama 2-chome, Minato-ku, Tokyo, 107-8077, Japan</b>	2. Place and date <b>In New York, U.S. 16th August, 2021</b>		
3. Owners / Place of business (Cl. 1) <b>Batanagar Shipping Corporation Edif. Cemento Panama, Manuel Espinosa Panama 5, Republic of Panama</b>	4. Bareboat Charterers / Place of business (Cl. 1) <b>Surf Maritime Co. Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, MH96960, Marshall Islands</b>		
5. Vessel's name, call sign, flag and IMO number (Cl. 1 and 3) <b>M/V NAVIOS POLLUX, 3FPO2, Panama, 9460033</b>			
6. Type of Vessel <b>Bulk Carrier</b>	7. GT / NT <b>94,817/58,778</b>		
8. When / Where built <b>2009, STX Offshore &amp; Shipbuilding Co., Ltd.</b>	9. Total DWT (abt.) in metric tons on <del>summer</del> freeboard <b>180,727 MT</b>		
10. Classification Society (Cl. 3) <b>American Bureau of Shipping (ABS)</b>	11. Date of last special survey by the Vessel's classification society <b>August 7th, 2019</b>		
12. <del>Further particulars of Vessel (also indicate minimum number of months' validity of class certificates agreed acc. to Cl. 3)</del> <b>Cargoes to be carried; All lawful cargoes within the Vessel's capabilities/Class, IMO, flag, her insurance</b>			
13. Port or Place of delivery (Cl.3) <b>As per Clause 5 of the MOA (as defined in Clause 1 hereof)</b>	14. Time for delivery (Cl.4) <b>As per Clause 5 of the MOA See Also Clause 32.</b>	15. Cancelling date (Cl.5) <b>As per Clause 5 of the MOA</b>	
16. Port or Place of redelivery (Cl. 3) <b>At one safe berth or one safe port worldwide in the Charterers' option</b>	17. No. of months' validity of trading and class certificates upon redelivery (Cl. 15) <b>Minimum 3 months</b>		
18. Running days' notice if other than stated in Cl.4 <b>N/A</b>	19. Frequency of dry-docking Cl. 10(g) <b>As per Classification Society and flag state requirements</b>		
20. Trading Limits (Cl.6) <b>Trading Limits: always safely afloat world-wide within International Navigation Conditions with the Charterer's option to break same paying extra insurance, but always in accordance with Clause 13 and 40. Any other country designated pursuant to any international including U.N. / U.S. / EU or supranational law or regulation imposing trade and economic sanctions, prohibitions or restrictions (which may be amended from time to time during the Charter Period) to be excluded.</b>			
21. Charter Period (Cl. 2) <b>Six (6) years with up to [3 months] more or less in Charterers' option (See Clause 34)</b>	22. Charter hire (Cl. 11) <b>See Clause 35</b>		
23. New class and other statutory requirements (state percentage of Vessel's insurance value acc. to Box 29 (Cl. 10(a)(ii)) <b>N/A</b>			
24. Rate of interest payable acc. to Cl.11(f) and, if applicable, acc. to PART IV <b>N/A</b>	25. Currency and method of payment (Cl.11) <b>United States Dollars payable calendar monthly in advance</b>		
26. Place of payment; also state beneficiary and bank account (Cl. 11) <b>To be advised</b>	27. Bank guarantee / bond (sum and place) (Cl. 24 (optional)) <b>N/A</b>		
28. Mortgage(s), if any (state whether Cl. 12(a) or (b) applies; if 12(b) applies, state date of Financial Instrument and name of Mortgagee(s)/Place of business) (Cl. 12) <b>See Clause 44</b>	29. Insurance (hull and machinery and war risks) (state value acc. to Cl.13(f) or, if applicable, acc. to Cl. 14(k)) (also state if Cl.14 applies) <b>See Clause 40</b>		

30. Additional insurance cover, if any, for Owners' account limited to (Cl. 13(b) or, if applicable, Cl. 14(g))

N/A

32. Latent defects (only to be filled in if period other than stated in Cl.3)

N/A

34. Grace period (state number of clear banking days) (Cl. 28)

See Clause 41

36. War cancellation (indicate countries agreed) (Cl. 26(f))

N/A

37. Newbuilding Vessel (indicate with 'yes' or 'no' whether PART III applies) (optional)

No

39. Vessel's Yard Building No. (only to be filled in if PART III applies)

No

41. Liquidated damages and costs shall accrue to (state party acc. to Cl. 1)

- a) N/A
- b) N/A
- c) N/A

42. Hire/Purchase agreement (indicate with 'yes' or 'no' whether PART IV applies) (optional)

N/A

44. Flag and Country of the Bareboat Charter Registry (only to be filled in if PART V applies)

See Clause 37

46. Number of additional clauses covering special provisions, if agreed

Clause 32 to 56 inclusive

31. Additional insurance cover, if any, for Charterers' account limited to (Cl. 13(b) or, if applicable, Cl. 14(g))

See Clause 40 (c)

33. Brokerage commission and to whom payable (Cl.27)

N/A

35. Dispute Resolution (state 30(a), 30(b) or 30(c); if 30(c) agreed, Place of Arbitration must be stated (Cl. 30)

London

38. Name and place of Builders (only to be filled in if PART III applies)

N/A

40. Date of ~~Building~~ Shipbuilding Contract (only to be filled in if PART III applies)

N/A

43. Bareboat Charter Registry (indicate with 'yes' or 'no' whether PART IV applies) (optional)

Yes in Charterers' option

45. Country of the Underlying Registry (only to be filled in if PART V applies)

Republic of Panama

PREAMBLE - It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include PART I and PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict but no further. It is further mutually agreed that PART III and/or PART IV and/or PART V shall only apply and shall only form part of this Charter if expressly agreed and stated in Boxes 37, 42 and 43. If PART III and/or PART IV and/or PART V apply, it is further agreed that in the event of a conflict of conditions, the provisions of PART I and PART II shall prevail over those of PART III and/or PART IV and/or PART V to the extent of such conflict but no further.

Signature (Owners)  
Batnagar Shipping Corporation

/s/ Keisuke Okouchi  
By: Keisuke Okouchi  
Title: Attorney-in-fact

Signature (Charterers)  
Surf Maritime Co

/s/ Shunji Sasada  
By: Shunji Sasada  
Title: Attorney-in-fact

**PART II**  
**“BARECON 2001” Standard Bareboat Charter**

**1. Definitions**

In this Charter, the following terms shall have the meanings hereby assigned to them:

“The Owners” shall mean the party identified in Box 3;

“The Charterers” shall mean the party identified in Box 4;

“The Vessel” shall mean the vessel named in Box 5 and with particulars as stated in Boxes 6 to 12;

“Financial Instrument” means the mortgage, deed of covenant or other such financial security instrument as annexed to this Charter and stated in Box 28.

“MOA” means the Memorandum of Agreement entered into between the Owners as buyers and the Charterers as Sellers dated 16<sup>th</sup> August 2021 in respect of the Vessel.

“Banking Days” shall mean the days identified in Cl.36 (b)

“Total Loss” shall mean the situation identified in Cl.40 (a)

**2. Charter Period**

In consideration of the hire detailed in Box 22, the Owners have agreed to let and the Charterers have agreed to hire the Vessel for the period stated in Box 21 (the “Charter Period”).

**3. Delivery Also See Clause 32**

**The Vessel shall be delivered and taken over by the Charterers as per Clause 32.**

*(not applicable when PART III applies, as indicated in Box 37)*

~~(a) The Owners shall before and at the time of delivery exercise due diligence to make the Vessel seaworthy and in every respect ready in hull, machinery and equipment for service under this Charter.~~

The Vessel shall be delivered by the Owners and taken over by the Charterers at the port or place indicated in Box 13 ~~in such ready safe berth as the Charterers may direct.~~

~~(b) The Vessel shall be properly documented on delivery in accordance with the laws of the flag state indicated in Box 5 and the requirements of the classification society stated in Box 10. The Vessel upon delivery shall have her survey cycles up to date and trading and class certificates valid for at least the number of months agreed in Box 12.~~

~~(c) The delivery of the Vessel by the Owners and the taking over of the Vessel by the Charterers shall constitute a full performance by the Owners of all the Owners’ obligations under this Clause 3, and thereafter the Charterers shall not be entitled to make or assert any claim against the Owners on account of any conditions, representations or warranties expressed or implied with respect to the Vessel but the Owners shall be liable for the cost of but not the time for repairs or renewals occasioned by latent defects in the Vessel, her machinery or appurtenances, existing at the time of delivery under this Charter, provided such defects have manifested themselves within twelve (12) months after delivery unless otherwise provided in Box 32.~~

**4. Time for Delivery See Clause 32**

*(not applicable when PART III applies, as indicated in Box 37)*

The Vessel shall not be delivered before the date indicated in Box 14 without the Charterers’ consent and the Owners shall exercise due diligence to deliver the Vessel not later than the date indicated in Box 15.

Unless otherwise agreed in Box 18, the Owners shall give the Charterers not less than thirty (30) running days’ preliminary and not less than fourteen (14) running days’ definite notice of the date on which the Vessel is expected to be ready for delivery.

The Owners shall keep the Charterers closely advised of possible changes in the Vessel’s position.

hours after the cancelling date stated in Box 15, failing which this Charter shall remain in full force and effect.

~~(b) If it appears that the Vessel will be delayed beyond the cancelling date, the Owners may, as soon as they are in position to state with reasonable certainty the day on which the Vessel should be ready, give notice thereof to the Charterers asking whether they will exercise their option of cancelling, and the option must then be declared within one hundred and sixty-eight (168) running hours of the receipt by the Charterers of such notice or within thirty-six (36) running hours after the cancelling date, whichever is the earlier. If the Charterers do not then exercise their option of cancelling, the seventh day after the readiness date stated in the Owners’ notice shall be substituted for the cancelling date indicated in Box 15 for the purpose of this Clause 5.~~

~~(c) Cancellation under this Clause 5 shall be without prejudice to any claim the Charterers may otherwise have on the Owners under this Charter.~~

**6. Trading Restrictions**

The Vessel shall be employed in lawful trades for the carriage of suitable lawful merchandise within the trading limits indicated in Box 20.

The Charterers undertake not to employ the Vessel or suffer the Vessel to be employed otherwise than in conformity with the terms of the contracts of insurance (including any warranties expressed or implied therein) without first obtaining the consent of the insurers to such employment and complying with such requirements as to extra premium or otherwise as the insurers may prescribe.

The Charterers also undertake not to employ the Vessel or suffer her employment in any trade or business which is forbidden by the law of any country to which the Vessel may sail or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render her liable to condemnation, destruction, seizure or confiscation.

Notwithstanding any other provisions contained in this Charter it is agreed that nuclear fuels or radioactive products or waste are specifically excluded from the cargo permitted to be loaded or carried under this Charter. This exclusion does not apply to radio isotopes used or intended to be used for any industrial, commercial, agricultural, medical or scientific purposes provided the Owners’ prior approval has been obtained to loading thereof.

**7. Surveys on Delivery and Redelivery**

*(not applicable when PART III applies, as indicated in Box 37)*

The Owners and Charterers **have the right of** ~~shall each~~ appointing surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of **delivery** ~~redelivery hereunder~~. The Owners shall bear all expenses of the On-hire Survey including loss of time, if any, and the Charterers shall bear all expenses of the Off-hire Survey including loss of time, if any, at the daily equivalent to the rate of hire or pro rata thereof.

**8. Inspection**

The Owners shall have the right **maximum twice per year** ~~at any time~~ after giving reasonable notice to the Charterers to inspect or survey the Vessel or instruct a duly authorised surveyor to carry out such survey on their behalf: **provided it does not interfere with the operation of the Vessel and/or crew**

(a) to ascertain the condition of the Vessel and satisfy themselves that the Vessel is being properly repaired and maintained. The costs and fees for such inspection or survey shall be paid by the Owners. ~~unless the Vessel is found to require repairs or maintenance in order to achieve the condition so provided;~~

~~(b) in dry dock if the Charterers have not dry docked her in accordance with Clause 10(g). The costs and fees for such inspection or survey shall be paid by the Charterers; and~~

**5. Cancelling**

*(not applicable when PART III applies, as indicated in Box 37)*

(a) Should the Vessel not be delivered latest by the cancelling date indicated in Box 15, the Charterers shall have the option of cancelling this Charter by giving the Owners notice of cancellation within thirty-six (36) running

**PART II**  
**“BARECON 2001” Standard Bareboat Charter**

(c) for any other commercial reason they consider necessary (provided it does not unduly interfere with the commercial operation of the Vessel). The costs and fees for such inspection and survey shall be paid by the Owners.

All time used in respect of inspection, survey or repairs shall be for the Charterers' account and form part of the Charter Period.

The Charterers shall also permit the Owners to inspect the Vessel's log books **maximum twice per year** ~~whenever reasonably requested~~ and shall whenever required by the Owners furnish them with full information regarding any casualties or other accidents or damage to the Vessel.

**9. Inventories, Oil and Stores SEE CLAUSE 53**

~~A complete inventory of the Vessel's entire equipment, outfit including spare parts, appliances and of all consumable stores on board the Vessel shall be made by the Charterers in conjunction with the Owners on delivery and again on redelivery of the Vessel. The Charterers and the Owners, respectively, shall at the time of delivery and redelivery take over and pay for all bunkers, lubricating oil, unbroached provisions, paints, ropes and other consumable stores (excluding spare parts) in the said Vessel at the then current market prices at the ports of delivery and redelivery, respectively. The Charterers shall ensure that all spare parts listed in the inventory and used during the Charter Period are replaced at their expense prior to redelivery of the Vessel. SEE ALSO CLAUSE 32, AND CLAUSE 46~~

**10. Maintenance and Operation**

(a) (i) Maintenance and Repairs - During the Charter period the Vessel shall be in the full possession and at the absolute disposal for all purposes of the Charterers and under their complete control in every respect. The Charterers shall **exercise due diligence to** maintain the Vessel, her machinery, boilers, appurtenances and spare parts in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice and, ~~except as provided for in Clause 14(i)~~, if applicable, at their own expense, they shall at all times keep the Vessel's Class **unexpired fully up to date** with the Classification Society indicated in Box 10 maintain all other necessary certificates in force at all times.

(ii) New Class and Other Safety Requirements

~~In the event of any improvement, structural changes or new equipment becoming necessary for the continued operation of the Vessel by reason of new class requirements or by compulsory legislation costing (excluding the Charterers' loss of time) more than the percentage stated in Box 23, or if Box 23 is left blank, 5 per cent. of the Vessel's insurance value as stated in Box 29, then the extent, if any, to which the rate of hire shall be varied and the ratio in which the cost of compliance shall be shared between the parties concerned in order to achieve a reasonable distribution thereof as between the Owners and the Charterers having regard, inter alia, to the length of the period remaining under this Charter, shall in the absence of agreement, be referred to the dispute resolution method agreed in Clause 30. SEE CLAUSE 38~~

(iii) Financial Security - The Charterers shall maintain financial security or responsibility in respect of third party liabilities as required by any government, including federal, state or municipal or other division or authority thereof, to enable the Vessel, without penalty or charge, lawfully to enter, remain at, or leave any port, place, territorial or contiguous waters of any country, state or municipality in performance of this Charter without any delay. This obligation shall apply whether or not such requirements have been lawfully imposed by such government or division or authority thereof.

The Charterers shall make and maintain all arrangements by bond or otherwise as may be necessary to satisfy such requirements at the Charterers' sole expense and the Charterers shall indemnify the Owners against all consequences whatsoever (including loss of time) for any failure or inability to do so.

(b) Operation of the Vessel - The Charterers shall at their own expense and by their own procurement man, victual, navigate, operate, supply, fuel and, whenever required, repair the Vessel during the Charter Period and they shall pay all charges and expenses of every kind and nature whatsoever incidental to their use and operation of the Vessel under this Charter, including annual flag state fees and any foreign general municipality and/or state taxes. The Master, officers and crew of the Vessel shall be the servants of the Charterers for all purposes whatsoever, ~~even if for any reason appointed by the Owners.~~

Charterers shall comply with the regulations regarding officers and crew in force in the country of the Vessel's flag or any other applicable law.

(c) The Charterers shall keep the Owners ~~and the mortgagee(s)~~ advised of the intended employment, planned dry-docking and major repairs of the Vessel, as reasonably required.

(d) Flag and Name of Vessel

~~During the Charter Period, the Charterers shall have the liberty to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag. The Charterers shall also have the liberty, with the Owners' consent, which shall not be unreasonably withheld, to change the flag and/or the name of the Vessel during the Charter Period. Painting and re-painting, instalment and re-instalment, registration and de-registration, if required by the Owners, shall be at the Charterers' expense and time. SEE CLAUSE 37 & 43~~

(e) Changes to the Vessel—~~Subject to Clause 10(a)(ii), the Charterers shall make no structural changes in the Vessel or changes in the machinery, boilers, appurtenances or spare parts thereof without in each instance first securing the Owners' approval thereof. If the Owners so agree, the Charterers shall, if the Owners so require, restore the Vessel to its former condition before the termination of this Charter. SEE CLAUSE 38~~

(f) Use of the Vessel's Outfit, Equipment and Appliances - The Charterers shall have the use of all outfit, equipment, and appliances on board the Vessel at the time of delivery, provided the same or their substantial equivalent shall be returned to the Owners on redelivery in **substantially** the same ~~good order and~~ condition as when received, ordinary wear and tear excepted. The Charterers shall from time to time during the Charter period replace such items of equipment as shall be so damaged or worn as to be unfit for use. The Charterers are to procure that all repairs to or replacement of any damaged, worn or lost parts or equipment be effected in such manner (both as regards workmanship and quality of materials) as not to diminish the value of the Vessel. The Charterers have the right to fit additional equipment at their expense and risk but the Charterers shall remove such equipment at the end of the period **unless agreed otherwise by the Owners and the Charterers, if requested by the Owners.** Any equipment including radio equipment on hire on the Vessel at time of delivery shall be kept and maintained by the Charterers and the Charterers shall assume the obligations and liabilities of the Owners under any lease contracts in connection therewith and shall reimburse the Owners for all expenses incurred in connection therewith, also for any new equipment required in order to comply with radio regulations.

(g) Periodical Dry-Docking - The Charterers shall dry-dock the Vessel and clean and paint her underwater parts whenever the same may be necessary, but not

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less than once during the period stated in Box 19 or, if Box 19 has been left blank, every sixty (60) calendar months after delivery or such other period as may be required by the Classification Society or flag state.

**11. Hire SEE CLAUSE 35**

(a) ~~The Charterers shall pay hire due to the Owners punctually in accordance with the terms of this Charter in respect of which time shall be of the essence.~~

(b) ~~The Charterers shall pay to the Owners for the hire of the Vessel a lump sum in the amount indicated in Box 22 which shall be payable not later than every thirty running days in advance, the first lump sum being payable on the date and hour of the Vessel's delivery to the Charterers. Hire shall be paid continuously throughout the Charter Period.~~

(c) Payment of hire shall be made in cash without discount in the currency and in the manner indicated in Box 25 and at the place mentioned in Box 26.

(d) Final payment of hire, if for a period of less than thirty (30) running days, shall be calculated proportionally according to the number of days remaining before redelivery and advance payment to be effected accordingly.

(e) Should the Vessel be lost or missing, hire shall cease from the date and time when she was lost or last heard of. The date upon which the Vessel is to be treated as lost or missing shall be ten (10) days after the Vessel was last reported or when the Vessel is posted as missing by Lloyd's, whichever occurs first. Any hire paid in advance to be adjusted accordingly.

(f) Any delay in payment of hire shall entitle the Owners to interest at the rate per annum as agreed in Box 24. If Box 24 has not been filled in, the three months interbank offered rate in London (LIBOR or its successor) of the currency stated in Box 25, as quoted by the British Bankers' Association (BBA) on the date when the hire fell due, increased by 2 per cent, shall apply.

(g) Payment of interest due under sub-clause 11(f) shall be made within seven (7) running days of the date of the Owners' invoice specifying the amount payable or, in the absence of an invoice, at the time of the next hire payment date.

**12. Mortgage SEE CLAUSE 44**

*(only to apply if Box 28 has been appropriately filled in)*

\* (a) ~~The Owners warrant that they have not effected any mortgage(s) of the Vessel and that they shall not effect any mortgage(s) without the prior consent of the Charterers, which shall not be unreasonably withheld.~~

\* (b) ~~The Vessel chartered under this Charter is financed by a mortgage according to the Financial Instrument. The Charterers undertake to comply, and provide such information and documents to enable the Owners to comply, with all such instructions or directions in regard to the employment, insurances, operation, repairs and maintenance of the Vessel as laid down in the Financial Instrument or as may be directed from time to time during the currency of the Charter by the mortgagee(s) in conformity with the Financial Instrument. The Charterers confirm that, for this purpose, they have acquainted themselves with all relevant terms, conditions and provisions of the Financial Instrument and agree to acknowledge this in writing in any form that may be required by the mortgagee(s). The Owners warrant that they have not effected any mortgage(s) other than stated in Box 28 and that they shall not agree to any amendment of the mortgage(s) referred to in Box 28 or effect any other mortgage(s) without the prior consent of the Charterers, which shall not be unreasonably withheld.~~

\* (Optional, Clauses 12 (a) and 12 (b) are alternatives; indicate alternative agreed in Box 28).

**13. Insurance and Repairs SEE CLAUSE 40**

and machinery, war and Protection and Indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with sub-clause 10(a)(iii)) **in underwriter's standard form as the Owners have received, reviewed and shall in writing approve, which approval shall not be unreasonably withheld.** ~~in such form as the Owners shall in writing approve, which approval shall not be unreasonably withheld.~~ Such insurances shall be arranged by the Charterers to protect the interests of both the Owners and the Charterers and the mortgagees (if any), and the Charterers shall be at liberty to protect under such insurances the interests of any managers they may appoint. Insurance policies shall cover the Owners and the Charterers according to their respective interests. ~~Subject to the provisions of the Financial Instrument, if any, and the approval of the Owners and the insurers, the Charterers shall effect all insured repairs and shall undertake settlement and reimbursement from the insurers of all costs in connection with such repairs as well as insured charges, expenses and liabilities to the extent of coverage under the insurances herein provided for.~~

The Charterers also to remain responsible for and to effect repairs and settlement of costs and expenses incurred thereby in respect of all other repairs not covered by the insurances and/or not exceeding any possible franchise(s) or deductibles provided for in the insurances.

All time used for repairs under the provisions of sub-clause 13(a) and for repairs of latent defects according to Clause 3(c) above, including any deviation, shall be for the Charterers' account.

(b) ~~If the conditions of the above insurances permit additional insurance to be placed by the parties, such cover shall be limited to the amount for each party set out in Box 30 and Box 31, respectively. The Owners or the Charterers as the case may be shall immediately furnish the other party with particulars of any additional insurance effected, including copies of any cover notes or policies and the written consent of the insurers of any such required insurance in any case where the consent of such insurers is necessary.~~

(c) The Charterers shall upon the request of the Owners provide information and promptly execute such documents as may be **reasonably** required to enable the Owners to comply with the insurance provisions of the Financial Instrument.

(d) ~~Subject to the provisions of the Financial Instrument, if any, should the Vessel become an actual, constructive, compromised or agreed total loss under the insurances required under sub-clause 13(a), all insurance payments for such loss shall be paid to the Owners who shall distribute the moneys between the Owners and the Charterers according to their respective interests. The Charterers undertake to notify the Owners and the mortgagee(s), if any, of any occurrences in consequence of which the Vessel is likely to become a total loss as defined in this clause. SEE CLAUSE 40~~

(e) The Owners shall, upon the request of the Charterers, promptly execute such documents as may be required to enable the Charterers to abandon the Vessel to insurers and claim a constructive total loss.

(f) For the purpose of insurance coverage against hull and machinery and war risks under the provisions of sub-clause 13(a), the value of the Vessel is the sum indicated in Box 29. SEE CLAUSE 40

**14. Insurance, Repairs and Classification N/A**

*(Optional, only to apply if expressly agreed and stated in Box 29, in which event Clause 13 shall be considered deleted).*

(a) ~~During the Charter Period the Vessel shall be kept insured by the Owners at their expenses against hull and machinery and war risks under the form of policy or~~

(a) During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against hull

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policies attached hereto. The Owners and/or insurers shall not have any right of recovery or subrogation against the Charterers on account of loss of or any damage to the Vessel or her machinery or appurtenances covered by such insurance, or on account of payments made to discharge claims against or liabilities of the Vessel or the Owners covered by such insurance. Insurance policies shall cover the Owners and the Charterers according to their respective interests.

(b) During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against Protection and Indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with sub-clause 10(a)(iii)) in such form as the Owners shall in writing approve which approval shall not be unreasonably withheld.

(c) In the event that any act or negligence of the Charterers shall vitiate any of the insurance herein provided, the Charterers shall pay to the Owners all losses and indemnify the Owners against all claims and demands which would otherwise have been covered by such insurance.

(d) The Charterers shall, subject to the approval of the Owners or Owners' Underwriters, effect all insured repairs, and the Charterers shall undertake settlement of all miscellaneous expenses in connection with such repairs as well as all insured charges, expenses and liabilities, to the extent of coverage under the insurances provided for under the provisions of sub-clause 14(a).

The Charterers to be secured reimbursement through the Owners' Underwriters for such expenditures upon presentation of accounts.

(e) The Charterers to remain responsible for and to effect repairs and settlement of costs and expenses incurred thereby in respect of all other repairs not covered by the insurances and/or not exceeding any possible franchise(s) or deductibles provided for in the insurances.

(f) All time used for repairs under the provisions of sub-clause 14(d) and 14(e) and for repairs of latent defects according to Clause 3 above, including any deviation, shall be for the Charterers' account and shall form part of the Charter Period.

The Owners shall not be responsible for any expenses as are incident to the use and operation of the Vessel for such time as may be required to make such repairs.

(g) If the conditions of the above insurances permit additional insurance to be placed by the parties such cover shall be limited to the amount for each party set out in Box 30 and Box 31, respectively. The Owners or the Charterers as the case may be shall immediately furnish the other party with particulars of any additional insurance effected, including copies of any cover notes or policies and the written consent of the insurers of any such required insurance in any case where the consent of such insurers is necessary.

(h) Should the Vessel become an actual, constructive, compromised or agreed total loss under the insurances required under sub-clause 14(a), all insurance payments for such loss shall be paid to the Owners, who shall distribute the moneys between themselves and the Charterers according to their respective interests.

(i) If the Vessel becomes an actual, constructive, compromised or agreed total loss under the insurances arranged by the Owners in accordance with sub-clause 14(a), this Charter shall terminate as of the date of such loss.

(j) The Charterers shall upon the request of the Owners, promptly execute such documents as may be required to enable the Owners to abandon the Vessel to the insurers and claim a constructive total loss.

(k) For the purpose of insurance coverage against hull and machinery and war risks under the provisions of sub-clause 14(a), the value of the Vessel is the sum indicated in Box 29.

(l) Notwithstanding anything contained in sub-clause 10(a), it is agreed that under the provisions of Clause 14, if applicable, the Owners shall keep the Vessel's Class fully up to date with the Classification Society indicated in Box 10 and maintain all other necessary certificates in force at all times.

**15. Redelivery ALSO SEE CLAUSE 46**

At the expiration of the Charter Period the Vessel shall be redelivered by the Charterers to the Owners at a safe **berth or anchorage at a safe and ice-free port** or place as indicated in Box 16, ~~in such ready safe berth as the Owners may direct.~~ The Charterers shall give the Owners not less than thirty (30) running days' preliminary notice of expected date, range of ports of redelivery or port or place of redelivery and not less than fourteen (14) running days' definite notice of expected date and port or place of redelivery. Any changes thereafter in Vessel's position shall be notified immediately to the Owners.

The Charterers warrant that they will not permit the Vessel to commence a voyage (including any preceding ballast voyage) which cannot reasonably be expected to be completed in time to allow redelivery of the Vessel within the Charter Period. Notwithstanding the above, should the Charterers fail to redeliver the Vessel within the Charter Period, the Charterers shall pay the daily equivalent to the rate of hire stated in Box 22 plus 5 per cent or to the market rate, whichever is the higher, for the number of days by which the Charter Period is exceeded. All other terms, conditions and provisions of the Charter shall continue to apply.

Subject to the provisions of Clause 10, the Vessel shall be redelivered to the Owners in **substantially the same or as good structure, state, condition and class** as that in which she was delivered, fair wear and tear not affecting class excepted.

The Vessel upon redelivery shall have her survey cycles up to date and trading and class certificates valid for at least the number of months agreed in Box 17.

**16. Non-Lien ALSO SEE CLAUSE 47**

The Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the Owners in the Vessel. ~~The Charterers further agree to fasten to the Vessel in a conspicuous place and to keep so fastened during the Charter Period a notice reading as follows:~~

~~'This Vessel is the property of (name of Owners). It is under charter to (name of Charterers) and by the terms of the Charter Party neither the Charterers nor the Master have any right, power or authority to create, incur or permit to be imposed on the Vessel any lien whatsoever.'~~

**17. Indemnity ALSO SEE CLAUSE 54**

(a) The Charterers shall indemnify the Owners against any loss, damage or expense incurred by the Owners arising out of or in relation to the operation of the Vessel by the Charterers, and against any lien of whatsoever nature arising out of an event occurring during the Charter Period. If the Vessel be arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Charterers, the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail.

Without prejudice to the generality of the foregoing, the Charterers agree to indemnify the Owners against all consequences or liabilities arising from the Master, officers or agents signing Bills of Lading or other documents.



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(b) If the Vessel be arrested or otherwise detained by reason of a claims or claims against the Owners, the Owners shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail.

In such circumstances the Owners shall indemnify the Charterers against any loss, damage or expense incurred by the Charterers (including hire paid under this Charter) as a direct consequence of such arrest or detention.

**18. Lien**

The Owners to have a lien upon all cargoes, sub-hires and sub-freights belonging or due to the Charterers or any sub-charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.

**19. Salvage**

All salvage and towage performed by the Vessel shall be for the Charterers' benefit and the cost of repairing damage occasioned thereby shall be borne by the Charterers.

**20. Wreck Removal**

In the event of the Vessel becoming a wreck or obstruction to navigation the Charterers shall indemnify the Owners against any sums whatsoever which the Owners shall become liable to pay and shall pay in consequence of the Vessel becoming a wreck or obstruction to navigation.

**21. General Average**

The Owners shall not contribute to General Average.

**22. Assignment, Sub-Charter and Sale**

(a) The Charterers shall not assign this Charter nor sub-charter the Vessel on a bareboat basis except with the prior consent in writing of the Owners, which shall not be unreasonably withheld, and subject to such terms and conditions as the Owners shall approve.

~~(b) The Owners shall not sell the Vessel during the currency of this Charter except with the prior written consent of the Charterers, which shall not be unreasonably withheld, and subject to the buyer accepting an assignment of this Charter. SEE CLAUSE 48~~

**23. Contracts of Carriage**

\*) (a) The Charterers are to procure that all documents issued during the Charter Period evidencing the terms and conditions agreed in respect of carriage of goods shall contain a paramount clause incorporating any legislation relating to carrier's liability for cargo compulsorily applicable in the trade; if no such legislation exists, the documents shall incorporate the Hague-Visby Rules. The documents shall also contain the New Jason Clause and the Both-to-Blame Collision Clause.

\*) ~~(b) The Charterers are to procure that all passenger tickets issued during the Charter Period for the carriage of passengers and their luggage under this Charter shall contain a paramount clause incorporating any legislation relating to carrier's liability for passengers and their luggage compulsorily applicable in the trade; if no such legislation exists, the passenger tickets shall incorporate the Athens Convention Relating the Carriage of Passengers and their Luggage by Sea, 1974, and any protocol thereto.~~

\*) *Delete as applicable.*

**24. Bank Guarantee**

*(Optional, only to apply if Box 27 filled in)*

The Charterers undertake to furnish, before delivery of the Vessel, a first class bank guarantee or bond in the sum and at the place as

**25. Requisition/Acquisition ALSO SEE CLAUSE 40 (a)/(b)**

(a) In the event of the requisition for Hire of the Vessel by any governmental or other competent authority (hereinafter referred to a "Requisition for Hire") irrespective of the date during the Charter Period when "Requisition for Hire" may occur and irrespective of the length thereof and whether or not it be for an indefinite or a limited period of time, and irrespective of whether it may or will remain in force for the remainder of the Charter Period, this Charter shall not be deemed thereby or thereupon to be frustrated or otherwise terminated and the Charterers shall continue to pay the stipulated hire in the manner provided by this Charter until the time when the Charter would have terminated pursuant to any of the provisions hereof always provided however that in the event of "Requisition for Hire" any Requisition Hire or compensation received or receivable by the Owners shall be payable to the Charterers during the remainder of the Charter Period or the period of the 'Requisition for Hire' whichever be the shorter.

(b) Notwithstanding the provisions of clause 25 (a), in the event of the Owners being deprived of their ownership in the Vessel by any Compulsory Acquisition of the Vessel or requisition for title by any governmental or other competent authority, **which for the avoidance of any doubt, shall exclude requisition for use or hire not involving requisition of title** (hereinafter referred to as 'Compulsory Acquisition'), then, ~~irrespective of the date during the Charter Period when "Compulsory Acquisition" may occur,~~ this Charter shall be deemed terminated as of the date of such "Compulsory Acquisition". In such event charter hire to be considered as earned and to be paid up to the date and time of such "Compulsory Acquisition", **but not thereafter.**

**26. War**

(a) For the purpose of this Clause, the words 'War Risks' shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.

(b) The Vessel, unless the written consent of the Owners be first obtained, shall not continue to or go through any port, place, area or zone (whether of land or sea), or any waterway or canal, where it reasonably appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Owners, may be, or are likely to be, exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous or is likely to be or to become dangerous, after the entry into it, the Owners shall have the right to require the Vessel to leave such area.

(c) The Vessel shall not load contraband cargo, or to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent's right of search and/or confiscation.

~~(d) If the insurers of the war risk insurance, when Clause 14 is applicable, should require payment of premiums and/or calls because, pursuant to the Charterers' orders, the Vessel is within, or is due to enter and remain within, any area or areas which are specified by such insurers as being subject to additional premiums because of War Risks, then such premiums and/or calls~~

indicated in Box 27 as guarantee for full performance of their obligations under this Charter.

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shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due.

(e) The Charterers shall have the liberty:

- (i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever which are given by the government of the nation under whose flag the vessel sails, or any other government, body or group whatsoever acting with the power to compel compliance with their orders or directions'
- (ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;
- (iii) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.

~~(f) In the event of outbreak of war (whether there be a declaration of war or not) (i) between any two or more of the following countries: the United States of America; Russia; the United Kingdom; France; and the People's Republic of China, (ii) between any two or more of the countries stated in Box 36, both the Owners and the Charterers shall have the right to cancel this Charter, whereupon the Charterers shall redeliver the Vessel to the Owners in accordance with Clause 15, if the Vessel has cargo on board after discharge thereof at destination, or if debarred under this Clause from reaching and entering it at a near open and safe port as directed by the Owners, or if the Vessel has no cargo on board, at the port at which the Vessel then is or if at sea at a near, open and safe port as directed by the Owners. In all cases hire shall continue to be paid in accordance with Clause 11 and except as aforesaid all other provisions of this Charter shall apply until redelivery.~~

## 27. Commission

The Owners to pay a commission at the rate indicated in Box 33 to the Brokers named in Box 33 on any hire paid under the Charter. If no rate is indicated in Box 33, the commission to be paid by the Owners shall cover the actual expenses of the Brokers and a reasonable fee for their work.

If the full hire is not paid owing to breach of the Charter by either of the parties, the party liable therefore shall indemnify the Brokers against their loss of commission. Should the parties agree to cancel the Charter, the Owners shall indemnify the Brokers against any loss of commission but in such case the commission shall not exceed the brokerage on one year's hire.

## 28. Termination

### (a) Charterer's Default

The Owners shall be entitled to withdraw the Vessel from the service of the Charterers and terminate the Charter with immediate effect by written notice to the Charterers if:

- (i) ~~the Charterers fail to pay hire in accordance with Clause 11. However, where there is a failure to make punctual payment of hire due to oversight, negligence, errors or omissions on the part of the Charterers or their bankers, the Owners shall give the Charterers written notice of the number of clear banking days stated in Box 34 (as recognised at the agreed place of payment) in which to rectify the failure, and when so rectified within such~~

number of days following the Owners' notice, the payment shall stand as regular and punctual. Failure by the Charterers to pay hire within the number of days stated in Box 34 of their receiving the Owners' notice as provided herein, shall entitle the Owners to withdraw the Vessel from the service of the Charterers and terminate the Charter without further notice;

~~(ii) the Charterers fail to comply with the requirements of:~~

- ~~(1) Clause 6 (Trading Restrictions)~~
- ~~(2) Clause 13(a) (Insurance and Repairs) provided that the Owners shall have the option, by written notice to the Charterers, to give the Charterers a specified number of days grace within which to rectify the failure without prejudice to the Owners' right to withdraw and terminate under this Clause if the Charterers fail to comply with such notice;~~

~~(iii) the Charterers fail to rectify any failure to comply with the requirements of sub-clause 10(a)(i) (Maintenance and Repairs) as soon as practically possible after the Owners have requested them in writing so to do and in any event so that the Vessel's insurance cover is not prejudiced.~~

**SEE CLAUSE 41 & 42**

### (b) Owners' Default

If the Owners shall by any act or omission be in breach of their obligations under this Charter to the extent that the Charterers are deprived of the use of the Vessel and such breach continues for a period of fourteen (14) running days after written notice thereof has been given by the Charterers to the Owners, the Charterers shall be entitled to terminate this Charter with immediate effect by written notice to the Owners.

### (c) Loss of Vessel

~~This Charter shall be deemed to be terminated if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss. For the purpose of this sub-clause, the Vessel shall not be deemed to be lost unless she has either become an actual total loss or agreement has been reached with her underwriters in respect of her constructive, compromised or arranged total loss or if such agreement with her underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred. SEE CLAUSE 40 (d)/(e)~~

~~(d) Either party shall be entitled to terminate this Charter with immediate effect by written notice to the other party in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of the other party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangements or composition with its creditors.~~

~~(e) The termination of this Charter shall be without prejudice to all rights accrued due between the parties prior to the date of termination and to any claim that either party might have.~~

## 29. Repossession

In the event of the termination of this Charter in accordance with the applicable provisions of Clause 28, the Owners shall have the right to repossess the Vessel from the Charterers at her current or next port of call, or at a port or place convenient to them without hindrance or interference by the Charterers, courts or local authorities. Pending physical repossession of the Vessel in accordance with this Clause 29, the Charterers shall

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hold the Vessel as gratuitous bailee only to the Owners. The Owners shall arrange for an authorised representative to board the Vessel as soon as reasonably practicable following the termination of the Charter. The Vessel shall be deemed to be repossessed by the Owners from the Charterers upon the boarding of the Vessel by the Owners’ representative. All arrangements and expenses relating to the settling of wages, disembarkation and repatriation of the Charterers’ Master, officers and crew shall be the sole responsibility of the Charterers.

**30. Dispute Resolution**

\*) (a) This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

\*) ~~(b) This Contract shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.~~

~~In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.~~

\*) ~~(c) This Contract shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.~~

~~(d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract.~~

In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:-

(i) ~~Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the “Mediation Notice”) (calling on the other party to agree to mediation.~~

(ii) ~~The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal (the “Tribunal”) or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.~~

(iii) ~~If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.~~

(iv) ~~The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.~~

(v) ~~Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedures shall continue during the conduct of the mediation by the Tribunal may take the mediation timetable into account when settling the timetable for steps in the arbitration.~~

(vi) ~~Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator’s costs and expenses.~~

(vii) ~~The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.~~

~~(Note: the parties should be aware that the mediation process may not necessarily interrupt time limits.)~~

~~(e) If Box 35 in Part I is not appropriately filled in, sub-clause 30(a) of this Clause shall apply. Sub-clause 30(d) shall apply in all cases.~~

\*) ~~Sub-clauses 30(a), 30(b) and 30(c) are alternatives; indicate alternative agreed in Box 35.~~

**31. Notices SEE CLAUSE 51**

(a) Any notice to be given by either party to the other party shall be in writing and may be sent by fax, telex, registered or recorded mail or by personal service.

(b) The address of the Parties for service of such communication shall be as stated in Boxes 3 and 4 respectively.

**PART III**  
**PROVISIONS TO APPLY FOR NEWBUILDING VESSELS ONLY**  
*(Optional, only to apply if expressly agreed and stated in Box 37)*

**1. Specifications and Shipbuilding Contract**

(a) The Vessel shall be constructed in accordance with the Building Shipbuilding Contract (hereafter called “the Shipbuilding Building Contract”) as annexed to this Charter, made between the Builders and the Sellers Owners and in accordance with the specifications and plans annexed thereto, such Building Contract, specifications and plans having been countersigned as approved by the Charterers.

(b) No change shall be made in the Shipbuilding Building Contract or in the specifications or plans of the Vessel as approved by the Charterers as aforesaid without the Charterers’ consent.

(c) The Charterers shall have the right to send their representative to the Builders’ Yard to inspect the Vessel during the course of her construction to satisfy themselves that construction is in accordance with such approved specifications and plans as referred to under sub-clause (a) of this Clause.

(d) The Vessel shall be built in accordance with the Building Contract and shall be of the description set out therein. Subject to the provisions of sub-clause 2(c)(ii) hereunder, the Charterers shall be bound to accept the Vessel from the Owners, completed and constructed in accordance with the Building Contract, on the date of delivery by the Builders. The Charterers undertake that having accepted the Vessel they will not thereafter raise any claims against the Owners in respect of the Vessel’s performance or specification or defects, if any. Nevertheless, in respect of any repairs, replacements or defects which appear within the first 12 months from delivery by the Builders, the Owners shall endeavour to compel the Builders to repair, replace or remedy any defects or to recover from the Builders any expenditure incurred in carrying out such repairs, replacements or remedies. However, the Owners’ liability to the Charterers shall be limited to the extent the Owners have a valid claim against the Builders under the guarantee clause of the Building Contract (a copy whereof has been supplied to the Charterers). The Charterers shall be bound to accept such sums as the Owners are reasonably able to recover under this Clause and shall make no further claim on the Owners for the difference between the amount(s) so recovered and the actual expenditure on repairs, replacement or remedying defects or for any loss of time incurred.

Any liquidated damages for physical defects or deficiencies shall accrue to the account of the party stated in Box 41(a) or if not filled in shall be shared equally between the parties. The costs of pursuing a claim or claims against the Builders under this Clause (including any liability to the Builders) shall be borne by the party stated in Box 41(b) or if not filled in shall be shared equally between the parties.

**2. Time and Place of Delivery — SEE CLAUSE 33**

(a) Subject to the Vessel having completed her acceptance trials including trials of cargo equipment in accordance with the Building Contract and specifications to the satisfaction of the Charterers, the Owners shall give and the Charterers shall take delivery of the Vessel afloat when ready for delivery and properly documented at the Builders’ Yard or some other safe and readily accessible dock, wharf or place as may be agreed between the parties hereto and the Builders. Under the Building Contract, the Builders have estimated that the Vessel will be ready for delivery to the Owners as therein provided but the delivery date for the purpose of the Charter shall be the date when the Vessel is in fact ready for delivery by the Builders after completion of trials whether that be before or after as indicated in the Building Contract. The Charterers shall not be entitled to refuse acceptance of delivery of the Vessel

and upon and after such acceptance, subject to Clause 1(d), the Charterers shall not be entitled to make any claim against the Owners in respect of any conditions, representations or warranties, whether express or implied, as to the seaworthiness of the Vessel or in respect of delay in delivery.

(b) If for any reason other than a default by the Sellers Owners under the Shipbuilding Contract, the Builders become entitled under that Contract not to deliver the Vessel to the Sellers, the Owners shall upon giving to the Charterers written notice of Builders becoming so entitled, be excused from giving delivery of the Vessel to the Charterers and upon receipt of such notice by the Charterers this Charter shall cease to have effect.

(c) If for any reason the Owners become entitled under the Building Contract to reject the Vessel the Owners shall, before exercising such right of rejection, consult the Charterers and thereupon

(i) if the Charterers do not wish to take delivery of the Vessel they shall inform the Owners within seven (7) running days by notice in writing and upon receipt by the Owners of such notice this Charter shall cease to have effect; or

(ii) if the Charterers wish to take delivery of the Vessel they may by notice in writing within seven (7) running days require the Owners to negotiate with the Builders as to the terms on which delivery should be taken and/or refrain from exercising their right of rejection and upon receipt of such notice the Owners shall commence such negotiations and/or take delivery of the Vessel from the Builders and deliver her to the Charterers;

(iii) in no circumstances shall the Charterers be entitled to reject the Vessel unless the Owners are able to reject the Vessel from the Builders; **SEE CLAUSE 33**

(iv) if this Charter terminates under sub-clause (b) of this Clause, the Owners shall thereafter not be liable to the Charterers for any claim under or arising out of this Charter or its termination.

(d) Any liquidated damages for delay in delivery under the Building Contract and any costs incurred in pursuing a claim therefor shall accrue to the account of the party stated in Box 41(c) or if not filled in shall be shared equally between the parties.

**3. Guarantee Works — SEE CLAUSE 32**

If not otherwise agreed, the Owners authorise the Charterers to arrange for the guarantee works to be performed in accordance with the Shipbuilding building Contract terms, and hire to continue during the period of guarantee works. The Charterers have to advise the Owners about the performance to the extent the Owners may request.

**4. Name of Vessel — SEE CLAUSE 44**

The name of the Vessel shall be mutually agreed between the Owners and the Charterers and the Vessel shall be painted in the colours, display the funnel insignia and fly the house flag as required by the Charterers.

**5. Survey on Redelivery — SEE CLAUSE 46**

The Owners and the Charterers shall appoint surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of redelivery.

Without prejudice to Clause 15 (PART II), the Charterers shall bear all survey expenses and all other costs, if any, including the cost of docking and undocking, if required, as well as all repair costs incurred. The Charterers shall also bear all loss of time spent in connection with any docking and undocking as well as repairs, which shall be paid at the rate of hire per day or pro rata.

**PART IV  
HIRE/PURCHASE AGREEMENT**

*(Optional, only to apply if expressly agreed and stated in Box 42)*

On expiration of this Charter and provided the Charterers have fulfilled their obligations according to PART I and II as well as PART III, if applicable, it is agreed that on payment of the final payment of hire as per Clause 11 the Charterers have purchased the Vessel with everything belonging to her and the Vessel is fully paid for.

*In the following paragraphs the Owners are referred to as the Sellers and the Charterers as the Buyers.*

The Vessel shall be delivered by the Sellers and taken over by the Buyers on expiration of the Charter.

The Sellers guarantee that the Vessel, at the time of delivery, is free from all encumbrances and maritime liens or any debts whatsoever other than those arising from anything done or not done by the Buyers or any existing mortgage agreed not to be paid off by the time of delivery. Should any claims, which have been incurred prior to the time of delivery, be made against the Vessel, the Sellers hereby undertake to indemnify the Buyers against all consequences of such claims to the extent it can be proved that the Sellers are responsible for such claims. Any taxes, notarial, consular and other charges and expense connected with the purchase and registration under Buyers' flag shall be for Buyers' account. Any taxes, consular and other charges and expenses connected with closing of the Sellers' register shall be for Sellers' account.

In exchange for payment of the last month's hire instalment the Sellers shall furnish the Buyers with a Bill of Sale duly attested and legalised, together with a certificate setting out the registered encumbrances, if any. On delivery of the Vessel the Sellers shall provide for deletion of the Vessel from the Ship's Register and deliver a certificate of deletion to the Buyers.

The Sellers shall, at the time of delivery, hand to the Buyers all classification certificates (for hull, engines, anchors, chains, etc) as well as all plans which may be in Sellers' possession.

The wireless installation and nautical instruments, unless on hire, shall be included in the sale without any extra payment.

The Vessel with everything belonging to her shall be at Sellers' risk and expense until she is delivered to the Buyers, subject to the conditions of this Contract, and the Vessel with everything belonging to her shall be delivered and taken over as she is at the time of delivery, after which the Sellers shall have no responsibility for possible faults or deficiencies of any description.

The Buyers undertake to pay for the repatriation of the Master, officers, and other personnel if appointed by the Sellers to the port where the Vessel entered the Bareboat Charter as per Clause 3 (PART II) or to pay the equivalent cost of their journey to any other place.

PART V

PROVISIONS TO APPLY FOR VESSELS REGISTERED IN A BAREBOAT CHARTER REGISTRY

*(Optional, only to apply if expressly agreed and stated in Box 43)*

**1. Definitions**

For the purpose of this PART V, the following terms shall have the meanings hereby assigned to them:

~~“The Bareboat Charter Registry” shall mean the registry of the state whose flag the Vessel will fly and in which the Charterers are registered as the bareboat charterers during the period of the Bareboat Charter.~~

~~“The Underlying Registry” shall mean the registry of the state in which the Owners of the Vessel are registered as Owners and to which jurisdiction and control of the Vessel will revert upon termination of the Bareboat Charter Registration.~~

**2. Mortgage — See Clause 44**

The Vessel chartered under this Charter is financed by a mortgage and the provisions of ~~Clause 12(b)~~ (PART II) shall apply.

**3. Termination of Charter by Default**

~~If the Vessel chartered under this Charter is registered in a Bareboat Charter Registry as stated in Box 44, and if the Owners shall default in the payment of any amounts due under the mortgage(s) specified in Box 28, the Charterers shall, if so required by the mortgagee, direct the Owners to re-register the Vessel in the Underlying Registry as shown in Box 45.~~

~~In the event of the Vessel being deleted from the Bareboat Charter Registry as stated in ~~Box 44~~, due to a default by the Owners in the payment of any amounts due under the mortgage(s), the Charterers shall have the right to terminate this Charter forthwith and without prejudice to any other claim they may have against the Owners under this Charter.~~

Additional Clauses  
to  
the Bareboat Charter Party dated 16<sup>th</sup> August, 2021 (this “Charter”) by  
Batanagar Shipping Corporation as owner (the “Owners”) and  
Surf Maritime Co.as charterer (the “Charterers”)   
in respect of MV “Navios Pollux” (the “Vessel”)

**32. DELIVERY**

(a) The Charterers shall take delivery of the Vessel under this Charter simultaneously with delivery by Charterers as sellers to the Owners as buyers under the MOA, and the Owners shall be obliged to deliver the Vessel to the Charterers hereunder in the same moment as the Owners is taking delivery of the Vessel under the MOA.

(b) The Owners warrant that the Vessel, at time of delivery, is free from all charters, encumbrances, mortgages and maritime liens or any other debts whatsoever, other than (i) those incurred prior to the delivery of the Vessel hereunder, (ii) this Charter and (iii) the mortgage over the Vessel, assignment of insurance in respect of the Vessel and the assignment of the charter hires in respect hereof in favour of the Mortgagee.

(c) The Vessel shall be delivered under this Charter in the same condition and with the same equipment, inventory and spare parts as she is delivered to the Owners under the MOA. The Charterers know the Vessel’s condition at the time of delivery, and expressly agree that the Vessel’s condition as delivered under the MOA is acceptable and in accordance with the provisions of this Charter. The Vessel shall be delivered to the Charterers under this Charter strictly “as is/where is”, and the Charterers shall waive any and all claims against the Owners under this Charter on account of any conditions, seaworthiness, representations, warranties expressed or implied in respect of the Vessel (including but not limited to any bunkers, oils, spare parts and other items whatsoever) on delivery.



**33. ISM CODE**

During the currency of this Charter the Charterers shall procure at the costs and expenses and time of the Charterers that the Vessel and the “company” (as defined by the ISM code) shall comply with the requirements of the ISM code. Upon request the Charterers shall provide a copy of relevant documents of compliance (DOC) and safety management certificate (SMC) to the Owners. For the avoidance of any doubt any loss, damage, expense or delay caused by the failure on the part of the “Company” to comply with the ISM code shall be for the Charterers’ account.

**34. CHARTER PERIOD**

- (a) The Owners shall let to the Charterers and the Charterers shall take the Vessel on charter for the period and upon the terms and conditions contained herein.
- (b) Subject always to the provisions hereto, the period of the chartering of the Vessel hereunder (hereinafter referred to as the “**Charter Period**”) shall comprise (unless terminated at an earlier date in accordance with the terms hereof) a charter period of Six (6) years from the date of the delivery of the Vessel by the Owners to the Charterers under this Charter (the “**Delivery Date**”) with up to three (3) months more or less in the Charterers’ option, provided always that the chartering of the Vessel hereunder may be terminated by the Owners pursuant to Clause 41 or shall terminate in the event of the Total Loss or Compulsory Acquisition of the Vessel subject to, and in accordance with provisions of Clause 40.

**35. CHARTER HIRE**

The Charterers shall, throughout the Charter Period, pay charter hire (“**Charter Hire**”) to the Owners monthly in advance at the agreed following rate by telegraphic transfer for each successive period of a month commencing with the Delivery Date and with subsequent installments at monthly intervals after the date of payment of such first installment by and until the redelivery of the Vessel. Time is of the essence for payment of the Charter Hire under this Charter.

1st – 36th Month	USD 6,450 / day
37th – 72nd Month	USD 6,150 / day

No address commission.

**36. PAYMENTS**

- (a) Notwithstanding anything to the contrary contained in this Charter, all payments by the Charterers hereunder (whether by way of hire or otherwise) shall be made as follows:-

- (i) not later than 11:00 a.m. (New York time) on one Banking Day prior to the date on which the relevant payment is due under the terms of this Charter: and
  - (ii) in United States Dollars to THE SAN-IN GODO BANK, LTD. (or such other bank or banks as may from time to time be notified by the Owners to the Charterers by not less than fourteen (14) days' prior written notice) for the account of the Owners .
- (b) If any day for the making of any payment hereunder shall not be a Banking Day (being, for all purposes of this Charter, a day on which banks are open for transaction of business of the nature required by this Charter in Japan, Piraeus/Greece, London and New York) the due date for payment of the same shall be the next following Banking Day.
- (c) Subject to the terms of this Charter, the Charterers' obligation to pay hire in accordance with the requirements of Clause 35 and this Clause 36 and to pay certain amount of insurance benefit pursuant to Clause 40 (e) and to pay the Termination Compensation pursuant to Clause 42 shall be absolute irrespective of any contingency whatsoever, including (but not limited to) (i) any failure or delay on the part of any party hereto or thereto, whether with or without fault on its part, other than the Owners, in performing or complying with any of the terms or covenants hereunder, (ii) any insolvency, bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against the Owners or the Charterers or any change in the constitution of the Owners or the Charterers or any other person, (iii) any invalidity or unenforceability or lack of due authorization of or other defect in this Charter, or (iv) any other cause which would or might but for this provision have the effect of terminating or in any way affecting any obligation of the Charterers under this Charter.
- (d) In the event of failure by the Charterers to pay within ten (10) Banking Days after the due date for payment thereof, or in the case of a sum payable on demand, the date of demand therefor, any hire or other amount payable by them under this Charter, the Charterers will pay to the Owners on demand interest on such hire or other amount from the date of such failure to the date of actual payment (both before and after any relevant judgment or winding up of the Charterers) at the rate determined by the Owners and certified by them to the Charterers (such certification to be conclusive in the absence of manifest error) to be the aggregate of (i) two

& one-half per centum (2½ %) and (ii) the London Interbank Offered Rate for US Dollar deposits of not more than one month's duration (as selected by the Owners or their funders in the light of the likely duration of the default in question) (as such rate is from time to time quoted by leading banks in the London Interbank Market). Interest payable by the Charterers as aforesaid shall be compounded at such intervals as the Owners shall determine and shall be payable on demand.

- (e) Any interest payable under this Charter shall accrue from day to day and shall be calculated on the actual number of days elapsed and a three hundred and sixty (360) day year.
- (f) In this Charter, unless the context otherwise requires, "month" means a period beginning in one calendar month (and, in the case of the first month, on the date of delivery hereunder) and ending in the succeeding calendar month on the day numerically corresponding to the day of the calendar month in which such period started provided that if there is no such numerically corresponding day, such period shall end on the last day in the relevant calendar month and "monthly" shall be construed accordingly.

### **37. FLAG AND CLASS**

- (a) The Vessel shall upon the Delivery Date be registered in the name of the Owners under the Panamanian flag.
- (b) The Owners shall have no right either to transfer the flag of Vessel from Panama to any other registry or to require the Charterers to transfer the Vessel's classification society. The Charterers shall, at any time after the Delivery Date and at the Charterers' expense, have the right to transfer the Vessel's classification society from American Bureau of Shipping (ABS) to any other classification society at least equivalent to ABS.
- (c) Further, in the event that the Charterers need to change the flag of the Vessel, the Charterers can change the flag with the Owner's consent, which should not be unreasonably withheld, provided however that any expenses and time (including but not limited to legal charges for finance documents for the Mortgagee) shall be for the Charterers' account.
- (d) Subject to the Charterers' supplying the standard de-registration agreement reasonably satisfactory to the Mortgagee the Charterers are entitled to establish the standard bareboat registration on the Vessel at the costs, expense and time of the Charterers.

- (e) If during the Charter Period there are modifications made to the Vessel which are compulsory for the Vessel to comply with change to rules and regulations to which operation of the Vessel is required to conform, the cost relating to such modifications shall be for the account of the Charterers.
- (f) All operational cost including required cost in relation to Vessel's flag (such as tonnage tax, insurance and crew certs etc) would be for Charterers account. However, all other cost (such as financing cost /cost for registration and discharge of their mortgage etc) would be for Owners account, and Owners and Charterers shall equally bear initial registration cost to Vessel's flag under Buyers' name. For the bareboat charter and the sale of the vessel, each party should bear its own costs.

### **38. IMPROVEMENT AND ADDITIONS**

The Charterers shall have the right to fit additional equipment and to make severable improvements and additions at their expense and risk. Such additional equipment, improvements and additions shall be removed from the Vessel without causing any material damage to the Vessel (any such damage being made good by the Charterers at their time and expense) provided however that the Charterers shall redeliver the Vessel without removing such additional equipment, improvements and additions if the Owners consent to such non-removal before the redelivery.

The Charterers shall also have the right to make structural or non-severable improvements and additions to the Vessel at their own time, costs and expense and risk provided that such improvements and additions do not diminish the market value of the Vessel and are not likely to diminish the market value of the Vessel during or at the end of the Charter Period and do not in any way affect or prejudice the marketability or the useful life of the Vessel and are not likely to affect or prejudice the marketability or the useful life of the Vessel during or at the end of the Charter Period.

### **39. UNDERTAKING**

The Charterers undertake and agree that throughout the Charter period they will:-

- notify the Owners in writing of any Termination Event (or event of which they are aware which, with the giving of notice and/or lapse of time or other applicable condition, would constitute a Termination Event);

**40. INSURANCE, TOTAL LOSS AND COMPULSORY ACQUISITION**

- (a) For the purposes of this Charter, the term “Total Loss” shall include actual or constructive or compromised or agreed or arranged total loss of the Vessel including any such total loss as may arise during a requisition for hire. “Compulsory Acquisition” shall have the meaning assigned thereto in Clause 25(b) hereof.
- (b) The Charterers undertake with the Owners that throughout the Charter Period:-
  - (i) they will keep the Vessel insured in underwriter’s standard form as the Owners shall in writing approve, which approval shall not be unreasonably withheld, with such insurers (including P&I and war risks associations) as shall be reasonably acceptable to the Owners with deductibles reasonably acceptable to the Owners (it being agreed and understood by the Charterers that there shall be no element of self- insurance or insurance through captive insurance companies without the prior written consent of the Owners);
  - (ii) they will be properly entered in and keep entry of the Vessel with P&I Club that is a member of the International Group of Protection and Indemnity Association for the full commercial value and tonnage of the Vessel and against all prudent P&I Risks in accordance with the rules of such association or club including, in case of oil pollution liability risks equal to the highest level of cover from time to time available under the basic entry with such P&I (but always a minimum of USD1,000,000,000.);
  - (iii) The policies in respect of the insurances against fire and usual marine risks and policies or entries in respect of the insurances against war risks shall, in each case, include the following loss payable provisions:-
    - (a) For so long as the Vessel is mortgaged and in accordance with the Deed of Assignment of insurances entered or to be entered into between the Charterers and any mortgagee (the “Assignee”):

Until such time as the Assignee shall have notified the insurers to the contrary:

- (i) All recoveries hereunder in respect of an actual, constructive or compromised or arranged total loss shall be paid in full to the Assignee without any deduction or deductions whatsoever and applied in accordance with clause 40 (e);
  - (ii) All other recoveries not exceeding United States Dollars One million (US\$1,000,000.00) shall be paid in full to the Charterers or to their order without any deduction or deductions whatsoever; and
  - (iii) All other recoveries exceeding United States Dollars One million (US\$1,000,000.00) shall, subject to the prior written consent of the Assignee be paid in full to the Charterers or their order without any deduction whatsoever.
- (b) During any periods when the Vessel is not mortgaged:
- (i) All recoveries hereunder in respect of an actual, constructive or compromised or arranged total loss shall be paid in full to the Owners without any deduction or deductions whatsoever and applied in accordance with clause 40 (e);
  - (ii) All other recoveries not exceeding United States Dollars Two million (US\$2,000,000.00) shall be paid in full to the Charterers or to their order without any deduction or deductions whatsoever; and
  - (iii) All other recoveries exceeding United States Dollars Two million (US\$2,000,000.00) shall, subject to the prior written consent of the Owners be paid in full to the Charterers or their order without any deduction whatsoever, subject to the fulfillment of the provisions of Clause 44;

and the Owners and Charterers agree to be bound by the above provisions.

- (iv) the Charterers shall procure that duplicates of all cover notes, policies and certificates of entry shall be furnished to the Owners for their custody ;

- (v) the Charterers shall procure that the insurers and the war risk and protection and indemnity associations with which the Vessel is entered shall
- (A) furnish the Owners with a letter or letters of undertaking in relevant underwriter's standard form and in accordance with the underwriters' rules.
  - (B) supply to the Owners such information in relation to the insurances effected, or to be effected, with them as the Owners may from time to time reasonably require: and
- (vi) the Charterers shall use all reasonable efforts to procure that the policies, entries or other instruments evidencing the insurances are endorsed to the effect that the insurers shall give to the Owners prior written notification of any amendment, suspension, cancellation or termination of the insurances in accordance with the underwriters' guidance and rules.
- (c) Notwithstanding anything to the contrary contained in Clauses 13 and any other provisions hereof, the Vessel shall be kept insured during the Charter Period in respect of marine and war risks on hull and machinery basis (The Charterers shall have the option, to take out on a full hull and machinery basis increased value or total loss cover in an amount not exceeding thirty per centum (30%) of the total amount insured from time to time) for not less than the amounts specified in column (b) in the table set out below in respect of the one-yearly period during the Charter Period specified in column (a) (on the assumption that the first such period commences on the Delivery Date) against such amount (hereinafter referred to as the "**Minimum Insured Value**"):

(a) Year	(b) Minimum Insured Value
1	US\$ 16,500,000.-
2	US\$ 14,685,000.-
3	US\$ 12,870,000.-
4	US\$ 11,055,000.-
5	US\$ 9,240,000.-
6	US\$ 7,425,000.-

- (d) (i) If the Vessel shall become a Total Loss or be subject to Compulsory Acquisition the Chartering of the Vessel to the Charterers hereunder shall cease and the Charterers shall:-
- (A) immediately pay to the Owners all hire, and any other amounts, which have fallen due for payment under this Charter and have not been paid as at and up to the date on which the Total Loss or Compulsory Acquisition occurred (the "Date of Loss") together with interest thereon at a rate reflecting the Owners' reasonable cost of funds at such intervals, which amount to be agreed between the Owners and the Charterers and shall cease to be under any liability to pay any hire, but not any other amounts, thereafter becoming due and payable under this Charter, Provided that all hire and any other amounts prepaid by the Charterers subsequent to the Date of Loss shall be forthwith refunded by the Owners:
  - (B) for the purposes of this sub-clause, the expression "relevant Minimum Insured Value" shall mean the Minimum Insured Value applying to the one-year period in which the Date of Loss occurs.
- (ii) For the purpose of ascertaining the Date of Loss:-
- (A) an actual total loss of the Vessel shall be deemed to have occurred at noon (London time) on the actual date the Vessel was lost but in the event of the date of the loss being unknown the actual total loss shall be deemed to have occurred at noon (London time) on the date on which it is acknowledged by the insurers to have occurred:
  - (B) a constructive, compromised, agreed, or arranged total loss of the Vessel shall be deemed to have occurred at noon (London time) on the date that notice claiming such a total loss of the Vessel is given to the insurers, or, if the insurers do not admit such a claim, at the date and time at which a total loss is subsequently admitted by the insurers or adjudged by a competent court of law or arbitration tribunal to have occurred. Either the Owners or, with the prior written



consent of the Owners (such consent not to be unreasonably withheld), the Charterers shall be entitled to give notice claiming a constructive total loss but prior to the giving of such notice there shall be consultation between the Charterers and the Owners and the party proposing to give such notice shall be supplied with all such information as such party may request; and

- (C) Compulsory Acquisition shall be deemed to have occurred at the time of occurrence of the relevant circumstances described in Clause 25 (b) hereof.
- (e) All moneys payable under the insurance effected by the Charterers pursuant to Clauses 13 and 40, or other compensation, in respect of a Total Loss or pursuant to Compulsory Acquisition of the Vessel shall be received in full by the Owners (or the Mortgagees as assignees thereof) and applied by the Owners (or, as the case may be, the Mortgagees):-
- FIRST, in payment of all the Owners' costs incidental to the collection thereof,
- SECONDLY, in or towards payment to the Owners (to the extent that the Owners have not already received the same in full) of a sum equal to the aggregate of (i) unpaid but due hire under this Charter and unpaid interest thereon up to and including the Date of Loss and (ii) the amount of purchase option price payable under clause 49 as at the Date of Loss, and
- THIRDLY, in payment of any surplus to the Charterers by way of compensation for early termination.
- (f) The Charterers and the Mortgagee shall execute the "Assignment of Insurances" of which contents and wording shall be mutually agreed between the Owners and the Charterers.

#### 41. TERMINATION EVENTS

- (a) Each of the following events shall be a "Termination Event" for purposes of this Charter:-
- (i) if any installment of hire or any other sum payable by the Charterers under this Charter (including any sum expressed to be payable by the Charterers on demand) shall not be paid at its due date or within ten (10) Banking Days following the due date of payment and such failure to pay is not remedied within ten (10) Banking Days of receipt by the Charterers of written notice from the Owners notifying the Charterers of such failure and requesting that payment is made; or
  - (ii) Save in circumstances where requisition for hire or compulsory requisition result in termination of insurances for the Vessel, if either (A) the Charterers shall fail at any time to effect or maintain any insurances required to be effected and maintained under this Charter, or any insurer shall avoid or cancel any such insurances (other than where the relevant avoidance or cancellation results from an event or circumstance outside the reasonable control of the Charterers and the relevant insurances are reinstated or re-constituted in a manner meeting the requirements of this Charter within seven (7) days of such avoidance or cancellation) or the Charterers shall commit any breach of or make any misrepresentation in respect of any such insurances the result of which the relevant insurer avoids the policy or otherwise excuses or releases itself from all or any of its liability thereunder, or (B) any of the said insurances shall cease for any reason whatsoever to be in full force and effect (other than where the reason in question is outside the reasonable control of the Charterer and the relevant insurances are reinstated or re-constituted in a manner meeting the requirements of this Charter within seven (7) days of such cease); or
  - (iii) if the Charterers shall at any time fail to observe or perform any of their material obligations under this Charter, other than those obligations referred to in sub-clause (i) or sub-clause (ii) of this Clause 41(a), and such failure to observe or perform any such obligation is either not remediable or is remediable but is not remedied within thirty (30) days of receipt by the Charterers of a written notice from the Owners requesting remedial action; or

- (iv) if any material representation or warranty by the Charterers in connection with this Charter or in any document or certificate furnished to the Owners by the Charterers in connection herewith or therewith shall prove to have been untrue, inaccurate or misleading in any material respect when made (and such occurrence continues unremedied for a period of thirty (30) days after receipt by the Charterers of written notice from the Owners requesting remedial action): or
- (v) if a petition shall be presented (and not withdrawn or stayed within sixty (60) days) or an order shall be made or an effective resolution shall be passed for the administration or winding-up of the Charterers (other than for the purpose of a reconstruction or amalgamation during and after which the Charterers remain solvent and the terms of which have been previously approved in writing by the Owners which approval shall not be unreasonably withheld) or if an encumbrancer shall take possession or an administrative or other receiver shall be appointed of the whole or any substantial part of the property, undertaking or assets of the Charterers or if an administrator of the Charterers shall be appointed (and, in any such case, such possession is not given up or such appointment is not withdrawn within sixty (60) days) or if anything analogous to any of the foregoing shall occur under the laws of the place of the Charterers' incorporation, or
- (vi) if the Charterers shall stop payments to all of its creditors or shall cease to carry on or suspend all or a substantial part of their business or shall be unable to pay their debts, or shall admit in writing their inability to pay their debts, as they become due or shall otherwise become or be adjudicated insolvent; or
- (vii) if the Charterers shall apply to any court or other tribunal for, a moratorium or suspension of payments with respect to all or a substantial part of their debts or liabilities, or
- (viii) (A) if the Vessel is arrested or detained (other than for reasons solely attributable to the Owners or to those for whom, for the purposes of this provision, the Owners shall be deemed responsible, including without limitation, any legal person who, at the date hereof or at any time in the future is affiliated with the Owners) and such arrest or detention is not lifted within forty-five (45) days (or such longer period as the Owners shall reasonably agree in the light of all the circumstances) ; or

- (B) if a distress or execution shall be levied or enforced upon or sued out against all or any substantial part of the property or assets of the Charterers and shall not be discharged or stayed within thirty (30) days; or
  - (ix) if any consent, authorization, license or approval necessary for this Charter to be or remain the valid legally binding obligations of the Charterers, or to the Charterers to perform their obligations hereunder or thereunder, shall be materially adversely modified or is not granted or is revoked, suspended, withdrawn or terminated or expires and is not renewed (provided that the occurrence of such circumstances shall not give rise to a Termination Event if the same are remedied within thirty (30) days of the date of their occurrence); or
  - (x) if (a) any legal proceeding for the purpose of the reconstruction or rehabilitation of the Charterers is commenced and continuing in any jurisdiction and (b) the Owners receive a termination notice from the receiver, trustee or others of the Charterers which informs the termination/rejection of the Charter pursuant to the relevant laws, codes and regulations applicable to such proceeding.
- (b) A Termination Event shall constitute (as the case may be) either a repudiatory breach of, or breach of condition by the Charterers under, this Charter or an agreed terminating event the occurrence of which will (in any such case) entitle the Owners by notice to the Charterers to terminate the chartering of the Vessel under this Charter and recover the amounts provided for in Clause 42(c) either as liquidated damages or as an agreed sum payable on the occurrence of such event.

#### **42. OWNERS' RIGHTS ON TERMINATION**

- (a) At any time after a Termination Event shall have occurred and be continuing, the Owners may, by notice to the Charterers immediately, or on such date as the Owners shall specify, terminate the chartering by the Charterers of the Vessel under this Charter, whereupon the Vessel shall no longer be in the possession of the Charterers with the consent of the Owners, and the Charterers shall redeliver the Vessel to the Owners. For the avoidance of doubt, in case of the termination of the Charter in accordance with 41 (a) (x) hereof, the Charter shall be deemed to be terminated upon receipt by the Owners of the termination notice set forth in Clause 41 (a) (x) hereof.

- (b) On or at any time after termination of the chartering by the Charterers of the Vessel pursuant to Clause 42(a) hereof the Owners shall be entitled to retake possession of the Vessel, the Charterers hereby agreeing that the Owners, for that purpose, may put into force and exercise all their rights and entitlements at law and may enter upon any premises belonging to or in the occupation or under the control of the Charterers where the Vessel may be located.
- (c) If the Owners pursuant to Clause 42(a) hereof give notice to terminate the chartering by the Charterers of the Vessel, the Charterers shall pay to the Owners on the date of termination (the "**Termination Date**"), the aggregate of (A) all hire due and payable, but unpaid, under this Charter to (and including) the Termination Date together with interest accrued thereon pursuant to Clause 36(d) hereof from the due date for payment thereof to the Termination Date, (B) any sums, other than hire, due and payable by the Charterers, but unpaid, under this Charter together with interest accrued thereon pursuant to Clause 36(d) to the Termination Date and (C) any actual direct financial loss suffered by the Owners which direct loss shall be determined as the shortfall, if any, between (a) the current market value of the Vessel (average value as estimated by two independent valuers such as major London brokers i.e. Arrow Valuations Ltd, Barry Rogliano Salles, Braemar ACM Shipbroking, H Clarkson & Co. Ltd., E.A. Gibsons Shipbrokers, Fearnleys, Galbraith, Simpson Spencer & Young, Howe Robinson & Co Ltd London and Maersk Broker K.S. (to include, in each case, their successors or assigns and such subsidiary or other company in the same corporate group through which valuations are commonly issued by each of these brokers), or such other first-class independent broker as the Owners and Charterers may agree in writing from time to time) and (b) the Remaining Purchase Option Price (as defined in Clause 49.2 hereof) at any given time always taking into account any charterhire paid during the year to which the specified Remaining Purchase Option Price relates **PROVIDED ALWAYS** that if the said market value exceeds the aggregate of (A) and (B) and the Remaining Purchase Option Price, then the Owners shall pay the amount of such excess to the Charterers forthwith. The aggregate of (A), (B) and (C) above shall hereinafter be referred to as the "**Termination Compensation**").
- (d) If the Charter is terminated in accordance with this Clause 42 the Charterers shall immediately redeliver the Vessel at a safe and ice-free port or place as indicated by the Owners. The Vessel shall be redelivered to the Owners in substantially the same condition and class as that in which she was delivered, fair wear and tear not affecting class excepted.

- (e) The Owners agree that if following termination of the Charter under this Clause, the Owners sell or otherwise transfer the Vessel to a third party, or enter into any other arrangement with a third party with an option to purchase the Vessel, then the Owners shall pay to the Charterers after that sale (i) the amount of the greater of (a) the sale price and (b) the market value of the Vessel at such sale/transfer/arrangement date less (ii) the aggregate of the unpaid Termination Compensation and the Remaining Purchase Option Price (as defined in Clause 49.2) which would be payable by the Charterers as set out in Clause 49 as at the date of such sale.

**43. NAME**

The Charterers shall, subject only to prior notification to the relevant authorities of the jurisdiction in which for the time being the Vessel is registered, be entitled from time to time to change the name of the Vessel. During the Charter Period, the Charterers shall have the liberty to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag. Painting and installment shall be at Charterers' expense and time. The Charterer shall also have the liberty to change the name of the Vessel during the Charter Period at the expense and time of the Charterers (including the legal charge for finance documents for the Mortgagee, if any).

The Owners shall have no right to change the name of the Vessel during the Charter Period.

**44. MORTGAGE and ASSIGNMENT**

The Owners confirm that they are familiar with the terms of the assignment of insurances made or to be made by the Charterers in favour or the Mortgagee, and they agree to the terms thereof and will do nothing that conflicts therewith, excepting that the Owners shall be entitled to assign its rights, title and interest in and to this Charter to the Mortgagee or its assignee. Neither party shall assign its right or obligations or part of thereof to any third party without the written consent of the other.

In respect of the Vessel the Owners undertake not to borrow more than the respective purchase option prices as set out at the relevant milestone in Clause 49 hereof.

The Owners have the right to register a first preferred mortgage on the Vessel in favour of the Mortgagee (THE SAN-IN GODO BANK, LTD.) securing a loan under the Loan Agreement under standard mortgages and security documentation. In which case, the Owners undertake to procure from the Mortgagee a Letter of Quiet Enjoyment in a form and substance acceptable to the Charterers.

The Charterers agree to sign an acknowledgement of the Owners' charterhire assignment or any other comparable document reasonably required by the Mortgagee, in favour of the Mortgagee. During the course of the Charter the Owners have the right to register a substitute mortgage in favour of another bank provided such registration is effected in a similar amount to the loan amount outstanding with the Mortgagee at that time and only if such substitute mortgagee executes a Letter of Quiet Enjoyment in favour of the Charterers in the same form as that provided by the Mortgagee or the form acceptable for the Charterers. The Charterers will then agree to sign a charterhire assignment in favour of the substitute mortgage in a form as shall be agreed by the Charterers, which agreement not be unreasonably withheld. Any cost incurred by the Charterers shall be for Owners' account.

Subject to the term and conditions of this Charter, the Charterers also agree that the Owners have the right to assign its rights, title and interest in and to the insurances by way of assignment of insurance in respect of the Vessel to and in favour of the Assignee in a form and substance acceptable to Charterers and the Assignee.

Owners shall procure that any mortgage and charterhire assignment shall be subject to this Charter and to the rights of the Charterers hereunder, in accordance with, and subject to, a Letter of Quiet Enjoyment.

In the event that the Owners execute security of any nature (including but not limited to any mortgage, assignment of insurances) over the Vessel then the Owners hereby undertake and agree as a condition of this Charter to procure that the beneficiary of such security executes in favour of the Charterers a letter of quiet enjoyment in such form and content as is reasonably acceptable to the Charterers, and the effectiveness of this assignment clause is subject to the agreement of a letter of Quiet Enjoyment before delivery of the Vessel.

#### **45. REDELIVERY INSPECTION**

Prior to redelivery and without interference to the operation of the Vessel, the Owners, at their risk and expense, shall have the right provided that such right is declared at least 20 days prior to the expected redelivery date to carry out an underwater inspection of the Vessel by Class approved diver and in the presence of Class surveyor and Owners' and Charterers' representatives. Should any damages in the Vessel's underwater parts be found that will impose a condition or recommendation of Vessel's class then:

- a) In case Class imposes a condition or recommendation of class that does not require drydocking before next scheduled drydocking. Charterers shall pay to Owners the estimated cost to repair such damage in way which is acceptable to Class, which to be direct cost to repair such damage only, as per average quotation for the repair work obtained from two reputable independent shipyards at or in the vicinity of the redelivery port, one to be obtained by Owners and one by Charterers within 2 banking days from the date of imposition of the condition/recommendation unless the parties agree otherwise.
- b) In case Class require Vessel to be drydocked before the next scheduled drydocking the Charterers shall drydock the Vessel at their expense prior to redelivery of the Vessel to the Owners and repair same to Class satisfaction.

In such event the Vessel shall be redelivered at the port of the dockyard.

#### **46. REDELIVERY**

The Charterers shall redeliver to the Owners the Vessel with everything belonging to her at the time of redelivery including spare parts on board, used or unused subject to the Clause 38 hereof. The Owners shall take over and pay the Charterers for remaining bunkers and unused lubricating oils including hydraulic oils, and greases, unbroached provisions, paints, ropes and other consumable stores as per Clause 53 at the Charterers' purchased prices with supporting vouchers. For the purpose of this clause, the Charterers shall withhold the Hire two last hire payments (the "Withheld Hire") and shall offset the cost of bunkers, unused lubricating oils and unbroached provisions etc., remaining on board at the time of redelivery from the Withheld Hire. If the Withheld Hire is not sufficient to cover the cost of bunkers, unused lubricating oils, and unbroached provisions etc. the Owners shall settle the outstanding amount within 3 Singapore banking days after redelivery of the Vessel.



Personal effects of the Master, officers and crew including slop chest, hired equipment, if any and the following listed items are excluded and shall be removed by the Charterers prior to or at the time of redelivery of the Vessel:

- E-mail equipment not part of GMDSS
- Gas bottles
- Electric deck air compressor
- Blasting and painting equipment
- Videotel (or similar) film library

**47. MORTGAGE NOTICE**

The Charterers keep prominently displayed in the chart room and in the master's cabin of the Vessel a framed printed notice (the print on which shall measure at least six inches by nine inches) reading as follows:-

NOTICE OF MORTGAGE

This Vessel is owned by Batanagar Shipping Corporation and is subject to a first preferred mortgage in favour of THE SAN-IN GODO BANK, LTD. Under the terms of the said Mortgage neither the Owner, nor the master, nor any charterer of the Vessel nor any other person has the right or authority to create, incur or permit any lien, charge or encumbrance to be placed on the Vessel other than sums for crews' wages and salvage.

#### 48. SALE OF VESSEL BY OWNERS

1. The Owners have the right to sell the Vessel to a reputable third party ("**Purchaser**") at any time during the Charter Period with the prior written consent of the Charterers and provided that (i) the Purchaser agrees to take over the benefit and burden of this Charter, (ii) such ownership change does not result in any reflagging of the Vessel, (iii) such ownership change does not result in the Charterers being obliged to increase any payment under this Charter, (iv) such ownership change does not increase the actual or contingent obligations of the Charterers under this Charter, and (v) the Charterers shall not be liable for the costs and expenses (including legal fees) incurred in the sale of the Vessel by the Owners under this Clause 48.
2. The Owners shall give the Charterers at least one month's prior written notice of any sale.
3. Subject to 48.1, the Charterers and Owners undertake with each other to execute one or more novation agreements (or other documents required under applicable law) to novate the rights and obligations of the Owners under this Charter to the Purchaser such novation agreement(s) or other documents to be in such form and substance acceptable to the Charterers and such novation will be effective upon delivery of the Vessel from the Owners to the Purchaser."

#### 49. CHARTERERS' OPTION TO PURCHASE VESSEL

1. Charterers to have purchase option at the end of 72nd months of the Charter Period at a price of USD5,000,000. - (the "**Final Purchase Option Price**"); however, Charterers to have purchase option to purchase the Vessel at the end of 3rd year anniversary date of the Delivery Date at USD10,700,000 net (the "**First Purchase Option Price**") subject to Charterers declaration 3 months before such date.
2. Charterers further have an option to purchase, such purchase being declared at any time through the remaining period at the following price or pro-rata de-escalation until the maturity of the Charter Period (the "**Subsequent Purchase Option Price**").

At end of 3rd year	:	USD 10,700,000
At end of 4th year	:	USD 8,800,000
At end of 5th year	:	USD 6,900,000
At end of 6th year	:	USD 5,000,000

(The purchase option price of the Vessel to be calculated in accordance with Clause 49.1 and 49.2 hereof, whether the Final Purchase Option Price or the First Option Price or the Subsequent Purchase Option Price, hereinafter called the “**Remaining Purchase Option Price**”).

3. Immediately prior to delivery of the Vessel by the Owners to the Charterers under the PO MOA (as defined in Clause 49.4) the Parties shall execute a Protocol of Redelivery and Acceptance under this Charter (the “**Redelivery Protocol**”) and save in respect of any claims accrued under this Charter prior to the date and time of the Redelivery Protocol, this Charter shall terminate forthwith.
4. Upon the date of any written notification by the Charterers to the Owners of their intention to purchase the Vessel, the Owners and the Charterers shall be deemed to have unconditionally entered into a contract to sell and purchase the Vessel for the Remaining Purchase Option Price on and in strict conformity with the terms and conditions contained in the Memorandum of Agreement attached to this Charter as Exhibit A (the “**PO MOA**”).

## 50. MISCELLANEOUS

- (a) The terms and conditions of this Charter and the respective rights of the Owners and the Charterers shall not be waived or varied otherwise than by an instrument in writing of the same date as or subsequent to this Charter executed by both parties or by their duly authorized representatives.
- (b) Unless otherwise provided in this Charter whether expressly or by implication, time shall be of the essence in relation to the performance by the Charterers of each and every one of their obligations hereunder.

- (c) No failure or delay on the part of the Owners or the Charterers in exercising any power, right or remedy hereunder or in relation to the Vessel shall operate as a waiver thereof nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise of any such right or power or the exercise of any other right, power or remedy.
- (d) If any terms or condition of this Charter shall to any extent be illegal invalid or unenforceable the remainder of this Charter shall not be affected thereby and all other terms and condition shall be legal valid and enforceable to the fullest extent permitted by law.
- (e) The respective rights and remedies conferred on the Owners and the Charterers by this Charter are cumulative, may be exercised as often as the Owners or the Charterers (as the case may be) think fit and are in addition to, and are not exclusive of, any rights and remedies provided by law.

## 51. COMMUNICATIONS

Except as otherwise provided for in this Charter, all notices or other communications under or in respect of this Charter to either party hereto shall be in writing and shall be made or given to such party at the address, facsimile number or e-mail address appearing below (or at such other address, facsimile number or e-mail address as such party may hereafter specify for such purposes to the other by notice in writing):-

- (i) in the case of the Owners c/o Okouchi Kaiun Co., Ltd.
  - Address : 2264-35, Namikata, Namikata-cho, Imabari City,  
Ehime Prefecture 799-2101, Japan
  - Telephone : +81-898-41-9318
  - Telefax : +81-898-43-0674
  - E-mail : okouchi@lime.ocn.ne.jp
- (ii) in the case of the Charterers c/o Navios Shipmanagement Inc.
  - Address : 85 Akti Miaouli Street, 18538, Piraeus, Greece
  - Telephone : 30-210-4595000
  - E-mail : ops@navios.com, legal@navios.com  
[tech@navios.com](mailto:tech@navios.com), [legal\\_corp@navios.com](mailto:legal_corp@navios.com)
- (iii) in the case of the Brokers c/o ITOCHU Corporation
  - Address : TOKBR Section, 5-1, Kiya-Aoyama 2-chome,  
Minato-ku, Tokyo, 107-8077 Japan
  - Telephone : 81-3-3497-2999
  - Telefax : 81-3-3497-7111
  - E-mail : tokbr@itochu.co.jp

A written notice includes a notice by facsimile or e-mail. A notice or other communication received on a non-working day or after business hours in the place of receipt shall be deemed to be served on the next following working day in such place.

Subject always to the foregoing sentence, any communication by personal delivery or letter shall be deemed to be received on delivery, any communication by e-mail shall be deemed to be received upon transmission of the automatic answerback of the addresses and any communication by facsimile shall be deemed to be received upon appropriate acknowledgment by the addressee's receiving equipment.

All communications and documents delivered pursuant to or otherwise relating to this Charter shall either be in English or accompanied by a certified English translation.

## **52. TRADING IN WAR RISK AREA**

The Charterers shall be permitted to order the Vessel into an area subject to War Risks as defined in Clause 26 without consent of the Owners provided that all Marine, War and P&I Insurance are maintained with full force and effect and the Charterers shall pay any and all additional premiums to maintain such insurance.

## **53. INVENTORIES, OIL AND STORES**

A complete inventory of the Vessel's entire equipment, outfit including spare parts, appliances and of all consumable stores on board the Vessel shall be made by the Charterers in conjunction with the Owners on delivery and again on redelivery of the Vessel.

The Owners shall at the time of redelivery take over and pay for all bunkers, lubricating oil, unbroached provisions, paints, ropes and other consumable stores (excluding spare parts) in the said Vessel at the Charterers' purchased prices with supporting vouchers. However, the Charterers shall not pay to the Owners at time of delivery for any bunkers, lubricating oil, provisions, paints, ropes and consumable stores which the Charterers have supplied to the Vessel at the Charterers' expense prior to delivery. The Charterers shall ensure that all spare parts listed in the inventory and used during the Charter Period are replaced at their expense prior to redelivery of the Vessel.

#### **54. INDEMNITY FOR POLLUTION RISKS**

The Charterers shall indemnify the Owners against the following Pollution Risks:-

- (a) liability for damages or compensation payable to any person arising from pollution;
- (b) the costs of any measures reasonably taken for the purpose of preventing, minimizing or cleaning up any pollution together with any liability for losses or damages arising from any measures so taken;
- (c) liability which the Owners and/or the Charterers may incur, together with costs and expenses incidental thereto, as the result of escape or discharge or threatened escape discharge of oil or any other substance;
- (d) the costs or liabilities incurred as a result of compliance with any order or direction given by any government or authority for the purpose of preventing or reducing pollution or the risk of pollution; provided always that such costs or liabilities are not recoverable under the Hull and Machinery Insurance Policies on the Vessel;
- (e) liability which the Owners and/or the Charterers may incur to salvors under the exception to the principal of “no cure-no pay” in Article 1 (b) of Lloyds Standard Form of Salvage Agreement (LOF 1990); and
- (f) liability which the Charterers may incur for the payment of fines in respect of pollution in so far as such liability may be covered under the rules of the P&I Club.

#### **55. TRADE AND COMPLIANCE CLAUSE**

The Charterers and the Owners hereby agree that no person/s or entity/ies under this Charter will be individual(s) or entity(ies) designated under any applicable national or international law imposing trade and economic sanctions.

Further, the Charterers and the Owners agree that the performance of this Charter will not require any action prohibited by sanctions or restrictions under any applicable national or international law or regulation imposing trade or economic sanctions.

#### **56. ANTI-BRIBERY AND ANTI-CORRUPTION**

The Charterers and the Owners hereby agree that in connection with this Contract and/or any other business transactions related to it, they as well as their sub-contractors and each of their affiliates, directors, officers, employees, agents, and every other person acting on its and its sub-contractors' behalf, shall perform all required duties, transactions and dealings in compliance with all applicable laws, rules, regulations relating to anti-bribery and anti-money laundering.

(end)

**Dated 19 August 2021**

**\$18,000,000**

**TERM LOAN FACILITY**

**ARAMIS NAVIGATION INC.**

as Borrower

and

**NAVIOS MARITIME PARTNERS L.P.**

as Guarantor

and

**THE BANKS AND FINANCIAL INSTITUTIONS**

**listed in Schedule 1**

as Lenders

and

**DNB BANK ASA, LONDON BRANCH**

as Facility Agent, Security Agent  
and Sustainability Agent

and

**DNB (UK) LIMITED**

as Mandated Lead Arranger

**FACILITY AGREEMENT**

relating to

the refinancing part of the acquisition cost of  
m.v. "NAVIOS AZIMUTH"

**WATSON FARLEY  
&  
WILLIAMS**



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## **PARTIES**

- (1) **ARAMIS NAVIGATION INC.**, a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as borrower (the “**Borrower**”)
- (2) **NAVIOS MARITIME PARTNERS L.P.**, a limited partnership formed in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 as guarantor (the “**Guarantor**”)
- (3) **THE FINANCIAL INSTITUTIONS** listed in Part B of Schedule 1 (*The Parties*) as lenders (the “**Original Lenders**”)
- (4) **DNB BANK ASA, LONDON BRANCH** as agent of the other Finance Parties (the “**Facility Agent**”)
- (5) **DNB BANK ASA, LONDON BRANCH** as security agent for the Secured Parties (the “**Security Agent**”)
- (6) **DNB BANK ASA, LONDON BRANCH** as sustainability agent (the “**Sustainability Agent**”)
- (7) **DNB (UK) LIMITED** as mandated lead arranger (the “**Mandated Lead Arranger**”)

## **BACKGROUND**

The Lenders have agreed to make available to the Borrower a term loan facility in an amount equal to the lesser of:

- (A) \$18,000,000; and
- (B) 60 per cent. of the Initial Market Value of the Ship,

to be drawn in a single advance for the purposes of refinancing part of the acquisition cost of the Ship.

## **OPERATIVE PROVISIONS**

## INTERPRETATION

## 1 DEFINITIONS AND INTERPRETATION

## 1.1 Definitions

In this Agreement:

“**Account Security**” means a document creating Security over the Earnings Account in agreed form.

“**Additional Business Day**” means any day specified as such in the Compounded Rate Terms.

“**AER**” means, in relation to an AER Reference Vessel for a calendar year, the efficiency ratio of that AER Reference Vessel using the parameters of fuel consumption, distance travelled and deadweight at maximum summer draught, reported in unit grams of CO2 per tonne per mile and calculated as follows:

$$AER = \frac{\sum_i C_i}{\sum_i dwt D_i}$$

where:

- (a)  $C_i$  is based on fuel consumption multiplied by the relevant CO2 factor (3.114 for Heavy Fuel Oil (HFO), 3.15104 for Low Fuel Oil (LFO), 3.206 for Marine Diesel Oil (MDO) and the relevant CO2 factor for biofuel) per departure voyage  $i$ ;
- (b)  $dwt$  is the deadweight at maximum summer draught of the relevant AER Reference Vessel;
- (c)  $D_i$  is the distance travelled on the voyage; and
- (d) such calculation is based on all voyages performed by that AER Reference Vessel during that calendar year,

as certified by an Approved Classification Society.

“**AER Delta Average**” means, in relation to a calendar year, the aggregated AER Vessel Delta for the AER Reference Vessels for that calendar year.

“**AER Reference Vessels**” means all dry bulk vessels owned by a member of the Group.

“**AER Trajectory Values**” means, in relation to an AER Reference Vessel, the relevant value defined in the following Poseidon Principles reporting guidance sheet for each respective year and vessel size relevant to that AER Reference Vessel—

<https://www.poseidonprinciples.org/wp-content/uploads/2020/06/Poseidon-Principles-Reporting-and-Trajectories-Guidance-Sheet.pdf>.

“**AER Vessel Delta**” means, in relation to an AER Reference Vessel, the difference between the AER and the AER Trajectory Value in respect of that AER Reference Vessel.





“**Affiliate**” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“**Annex VI**” means Annex VI of the Protocol of 1997 (as subsequently amended from time to time) to amend the International Convention for the Prevention of Pollution from Ships 1973 (Marpol), as modified by the Protocol of 1978 relating thereto.

“**Applicable Margin**” means:

- (a) the Initial Margin; or
- (b) on and from 1 January 2022 and at any time thereafter at which it falls to be determined, the Initial Margin as adjusted by the Sustainable Margin Adjustment, as determined in accordance with Clause 9.6 (*Margin Adjustment*).

“**Approved Brokers**” means any firm or firms of insurance brokers approved in writing by the Facility Agent (acting on the instructions of the Majority Lenders).

“**Approved Classification**” means, as at the date of this Agreement,  A1, Bulk Carrier, BC-A (holds 2,4,6 & 8 may be empty), ESP,  ,  AMS,  ACCU, CSR AB-CM with the Approved Classification Society or the equivalent classification with another Approved Classification Society or any other classification approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders (such consent not to be unreasonably withheld).

“**Approved Classification Society**” means, as at the date of this Agreement, American Bureau of Shipping any other classification society approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

“**Approved Flag**” means, in relation to the Ship, the flag of Panama, Liberia, Marshall Islands or such other flag approved in writing by the Facility Agent acting with the authorisation of the Lenders, such authorisation not to be unreasonably withheld.

“**Approved Manager**” means, in relation to the Ship, as at the date of this Agreement Navios Shipmanagement Inc., a corporation domesticated under the laws of the Republic of the Marshall Islands having its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 and/or, or any Affiliate of Navios Shipmanagement Inc. or any other person approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders, such authorisation not to be unreasonably withheld, as the commercial and technical manager of the Ship.

“**Approved Valuer**” means Arrow Shipbroking Group, Fearnleys A/S, Braemar ACM Shipbroking, Clarksons Valuation Limited, Simpson Spence & Young Ltd, Maersk Broker KS, MSI Valuation and Howe Robinson (or any Affiliate of such person through which valuations are commonly issued) and any other firm or firms of independent sale and purchase shipbrokers approved in writing by the Facility Agent, acting with the authorisation of the Majority Lenders.

“**Article 55 BRRD**” means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

“**Assignable Charter**” means any time charterparty, consecutive voyage charter or contract of affreightment in respect of the Ship of a duration (or capable of exceeding a duration) of 12 months or more or any bareboat charter entered into in accordance with Clauses 24.16 (*Restrictions on Charter, Appointment of Managers etc.*) and 24.19 (*Charterparty Assignment*).

“**Assignment Agreement**” means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

“**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, legalisation or registration.

“**Availability Period**” means the period from and including the date of this Agreement to and including 30 September 2021, or such later date as may be agreed by the Facility Agent in writing.

“**Available Commitment**” means a Lender’s Commitment minus:

- (a) the amount of its participation in the outstanding Loan; and
- (b) in relation to any proposed Utilisation, the amount of its participation in the Loan that is due to be made on or before the proposed Utilisation Date.

“**Available Facility**” means the aggregate for the time being of each Lender’s Available Commitment.

“**Backstop Rate Switch Date**” means 31 March 2023 or any other date agreed as such between the Facility Agent, the Majority Lenders and the Borrower.

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers.

“**Bail-In Legislation**” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and
- (c) in relation to the United Kingdom, the UK Bail in Legislation.

“**Balloon Instalments**” has the meaning given in Clause 6.1.

“**Break Costs**” means:

- (a) In respect of any Term Rate Loan, the amount (if any) by which:
  - (i) the interest which a Lender should have received for the period from the date of receipt of all or any part of its participation in the Loan or that Unpaid Sum to the last day of the current Interest Period in relation to the Loan, the relevant part of the Loan or that Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period exceeds

- (ii) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period; and

(b) in respect of any Compounded Rate Loan, any amount specified as such in the Compounded Rate Terms.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Athens and New York, on or after the Rate Switch Date, in relation to:

- (a) any date for payment or purchase of an amount relating to the Loan, any part of the Loan or Unpaid Sum; or
- (b) the determination of the first day or the last day of an Interest Period for a Compounded Rate Loan or otherwise in relation to the determination of the length of such an Interest Period,

an Additional Business Day.

“**Central Bank Rate**” has the meaning given to that term in the Compounded Rate Terms

“**Change of Control**” has the meaning given to it in Clause 7.2 (*Change of Control*).

“**Central Bank Rate Adjustment**” has the meaning given to that term in the Compounded Rate Terms.

“**Charter**” means any charter relating to the Ship, or other contract for its employment, whether or not already in existence (including without limitation, any Assignable Charter).

“**Charter Guarantee**” means any guarantee, bond, letter of credit or other instrument (whether or not already issued) supporting a Charter.

“**Charterparty Assignment**” means, in relation to an Assignable Charter, a first priority assignment of the rights of the Borrower under that Assignable Charter and any related Charter Guarantee executed or to be executed by the Borrower in favour of the Security Agent in agreed form.

“**Code**” means the United States Internal Revenue Code of 1986.

“**Commitment**” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading “Commitment” in Part B of Schedule 1 (*The Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

**“Compliance Certificate”** means a certificate in the form set out in Schedule 6 (*Form of Compliance Certificate*) or in any other form agreed between the Guarantor and the Facility Agent.

**“Compounded Rate Interest Payment”** means the aggregate amount of interest that:

- (a) is, or is scheduled to become, payable under any Finance Document; and
- (b) relates to a Compounded Rate Loan.

**“Compounded Rate Loan”** means the Loan, part of the Loan or, if applicable, Unpaid Sum which is, or becomes, a “Compounded Rate Loan” pursuant to Clause 8 (*Rate Switch*).

**“Compounded Rate Supplement”** means a document which:

- (a) is agreed in writing by the Borrower and the Facility Agent (in its own capacity) and the Facility Agent (acting on the instructions of the Majority Lenders);
- (b) specifies the relevant terms which are expressed in this Agreement to be determined by reference to Compounded Rate Terms; and
- (c) has been made available to the Borrower and each Finance Party.

**“Compounded Rate Terms”** means the terms set out in Schedule 8 (*Compounded Rate Terms*) or in any Compounded Rate Supplement.

**“Compounded Reference Rate”** means, in relation to any RFR Banking Day during the Interest Period of a Compounded Rate Loan, the percentage rate per annum which is the aggregate of:

- (a) the Daily Non-Cumulative Compounded RFR Rate for that RFR Banking Day; and
- (b) the applicable Credit Adjustment Spread.

**“Compounding Methodology Supplement”** means, in relation to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate, a document which:

- (a) is agreed in writing by the Borrower, the Facility Agent (in its own capacity) and the Facility Agent (acting on the instructions of Majority Lenders);
- (b) specifies a calculation methodology for that rate; and
- (c) has been made available to the Borrower and each Finance Party.

**“Confidential Information”** means all information relating to any Transaction Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group or any of its advisers; or



- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:
- (i) information that:
    - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 45 (*Confidential Information*); or
    - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
    - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
  - (ii) any Funding Rate or Reference Bank Quotation.

“**Confidentiality Undertaking**” means a confidentiality undertaking in substantially the appropriate form recommended by the LMA from time to time or in any other form agreed between the Borrower and the Facility Agent.

“**Corresponding Debt**” means any amount, other than any Parallel Debt, which an Obligor owes to a Secured Party under or in connection with the Finance Documents.

“**Credit Adjustment Spread**” means, in respect of any Compounded Rate Loan, any rate which is specified as such in the Compounded Rate Terms.

“**Cumulative Compounded RFR Rate**” means, in relation to an Interest Period for a Compounded Rate Loan, the percentage rate per annum determined by the Facility Agent (or by any other Finance Party which agrees to determine that rate in place of the Facility Agent) in accordance with the methodology set out in Schedule 11 (*Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

“**Daily Non-Cumulative Compounded RFR Rate**” means, in relation to any RFR Banking Day during an Interest Period for a Compounded Rate Loan, the percentage rate per annum determined by the Facility Agent (or by any other Finance Party which agrees to determine that rate in place of the Facility Agent) in accordance with the methodology set out in Schedule 9 (*Daily Non-Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

“**Daily Rate**” means the rate specified as such in the Compounded Rate Terms.

“**Deed of Covenant**” means, if required by the laws of the Approved Flag of the Ship, a deed of covenant collateral to the Mortgage over the Ship in agreed form.

“**Default**” means an Event of Default or a Potential Event of Default.

“**Delegate**” means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

“**Disruption Event**” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties or, if applicable, any Transaction Obligor; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party or, if applicable, any Transaction Obligor preventing that, or any other, Party or, if applicable, any Transaction Obligor:
  - (i) from performing its payment obligations under the Finance Documents; or
  - (ii) from communicating with other Parties or, if applicable, any Transaction Obligor in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party or, if applicable, any Transaction Obligor whose operations are disrupted.

“**Document of Compliance**” has the meaning given to it in the ISM Code.

“**dollars**” and “**\$**” mean the lawful currency, for the time being, of the United States of America.

“**Earnings**” means all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower or the Security Agent and which arise out of or in connection with or relate to the use or operation of the Ship, including (but not limited to):

- (a) the following, save to the extent that any of them is, with the prior written consent of the Facility Agent, pooled or shared with any other person:
  - (i) all freight, hire and passage moneys including, without limitation, all moneys payable under, arising out of or in connection with a Charter or a Charter Guarantee;
  - (ii) the proceeds of the exercise of any lien on sub-freights;
  - (iii) compensation payable to the Borrower or the Security Agent in the event of requisition of the Ship for hire or use;
  - (iv) remuneration for salvage and towage services;
  - (v) demurrage and detention moneys;
  - (vi) without prejudice to the generality of sub-paragraph (i) above, damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of the Ship;

- (vii) all moneys which are at any time payable under any Insurances in relation to loss of hire;
- (viii) all monies which are at any time payable to the Borrower in relation to general average contribution; and
- (b) if and whenever the Ship is employed on terms whereby any moneys falling within sub-paragraphs (i) to (viii) of paragraph (a) above are pooled or shared with any other person, that proportion of the net receipts of the relevant pooling or sharing arrangement which is attributable to the Ship.

**“Earnings Account”** means:

- (a) an account in the name of the Borrower with the Facility Agent designated “Earnings Account”;
- (b) any other account (with that or another office of the Facility Agent) which is designated by the Facility Agent as the Earnings Account for the purposes of this Agreement; or
- (c) any sub-account of any account referred to in paragraphs (a) or (b) above.

**“EEA Member Country”** means any member state of the European Union, Iceland, Liechtenstein and Norway.

**“Environmental Approval”** means any present or future permit, ruling, variance or other Authorisation required under Environmental Laws.

**“Environmental Claim”** means any claim by any governmental, judicial or regulatory authority or any other person which arises out of an Environmental Incident or an alleged Environmental Incident or which relates to any Environmental Law and, for this purpose, **“claim”** includes a claim for damages, compensation, contribution, injury, fines, losses and penalties or any other payment of any kind, including in relation to clean-up and removal, whether or not similar to the foregoing; an order or direction to take, or not to take, certain action or to desist from or suspend certain action; and any form of enforcement or regulatory action, including the arrest or attachment of any asset.

**“Environmental Incident”** means:

- (a) any release, emission, spill or discharge of Environmentally Sensitive Material whether within the Ship or from the Ship into any other vessel or into or upon the air, water, land or soils (including the seabed) or surface water; or
- (b) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water from a vessel other than the Ship and which involves a collision between the Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which the Ship is actually or potentially liable to be arrested, attached, detained or injuncted and/or the Ship and/or any Transaction Obligor and/or any operator or manager of the Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action; or

- (c) any other incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, water, land or soils (including the seabed) or surface water otherwise than from the Ship and in connection with which the Ship is actually or potentially liable to be arrested and/or where any Transaction Obligor and/or any operator or manager of the Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action.

“**Environmental Law**” means any present or future law relating to pollution or protection of human health or the environment, to conditions in the workplace, to the carriage, generation, handling, storage, use, release or spillage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material.

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

“**EU Bail-In Legislation Schedule**” means the document described as such and published by the LMA from time to time.

“**EU Ship Recycling Regulation**” means Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (Text with EEA relevance).

“**Event of Default**” means any event or circumstance specified as such in Clause 27 (*Events of Default*).

“**Facility**” means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

“**Facility Office**” means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than 5 Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement.

“**FATCA**” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

“**FATCA Application Date**” means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or

- (b) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

“**FATCA Deduction**” means a deduction or withholding from a payment under a Finance Document required by FATCA.

“**FATCA Exempt Party**” means a Party that is entitled to receive payments free from any FATCA Deduction.

“**Fee Letter**” means any letter or letters dated on or about the date of this Agreement between any of the Mandated Lead Arranger, the Sustainability Agent, the Facility Agent and the Security Agent and any Obligor setting out any of the fees referred to in Clause 12 (*Fees*).

“**Finance Document**” means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) the Utilisation Request;
- (d) any Compounded Rate Supplement;
- (e) any Compounding Methodology Supplement
- (f) any Security Document;
- (g) any other document which is executed for the purpose of establishing any priority or subordination arrangement in relation to the Secured Liabilities; or
- (h) any other document designated as such by the Facility Agent and the Borrower.

“**Finance Party**” means the Facility Agent, the Security Agent, the Sustainability Agent, the Mandated Lead Arranger or a Lender.

“**Financial Indebtedness**” means any indebtedness for or in relation to:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in relation to any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in relation to a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in relation to any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“**Funding Rate**” means any individual rate notified by a Lender to the Facility Agent pursuant to sub-paragraph (ii) of paragraph (a) of Clause 10.4 (*Cost of funds*).

“**GAAP**” means generally accepted accounting principles in the US.

“**General Assignment**” means the general assignment creating Security over:

- (a) the Earnings, the Insurances and any Requisition Compensation in relation to the Ship; and
- (b) any Charter and any Charter Guarantee,

in agreed form.

“**Group**” means the Guarantor and its Subsidiaries for the time being (excluding any Subsidiaries whose shares are listed on any public stock exchange and whose financial statements are not consolidated into the financial statements of the Guarantor) and “**member of the Group**” shall be construed accordingly.

“**Group Vessel**” means any ship (including, but not limited to, the Ship) from time to time wholly owned by a member of the Group (directly or indirectly) including chartered-in vessels for which a member of the Group has a purchase obligation but excluding, for the avoidance of doubt, any newbuilding vessels not delivered to the relevant member of the Group at the relevant time.

“**Holding Company**” means, in relation to a person, any other person in relation to which it is a Subsidiary.

“**IHM**” means an inventory of hazardous materials (“**IHM**”) classification in respect of the Ship from the Approved Classification Society.

“**Indemnified Person**” has the meaning given to it in Clause 15.2 (*Other indemnities*).

“**Initial Margin**” means 2.85 per cent. per annum.

“**Initial Market Value**” means the Market Value of the Ship calculated in accordance with the valuations relative thereto referred to in paragraph 2.5 of Schedule 2, Part B.

“**Insurances**” means:

- (a) all policies and contracts of insurance, including entries of the Ship in any protection and indemnity or war risks association, effected in relation to the Ship, that Ship’s Earnings or otherwise in relation to the Ship whether before, on or after the date of this Agreement; and
- (b) all rights and other assets relating to, or derived from, any of such policies, contracts or entries, including any rights to a return of premium and any rights in relation to any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement.

“**Interest Payment Date**” has the meaning given to it in paragraph (a) of Clause 9.3 (*Payment of interest*).

“**Interest Period**” means, in relation to the Loan or any part of the Loan, each period determined in accordance with Clause 10 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.4 (*Default interest*).

“**Interpolated Screen Rate**” means, in relation to any Term Rate Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Term Rate Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Term Rate Loan,

each as of the Specified Time for dollars.

“**ISM Code**” means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation, as the same may be amended or supplemented from time to time.

“**ISPS Code**” means the International Ship and Port Facility Security (ISPS) Code as adopted by the International Maritime Organization’s (IMO) Diplomatic Conference of December 2002, as the same may be amended or supplemented from time to time.

“**ISSC**” means an International Ship Security Certificate issued under the ISPS Code.

“**Lender**” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 28 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with this Agreement.

“**LIBOR**” means, in relation to any Term Rate Loan:

- (a) the applicable Screen Rate as of the Specified Time for dollars and for a period equal in length to the Interest Period of that Term Rate Loan; or
- (b) as otherwise determined pursuant to Clause 11.1 (*Unavailability of Screen Rate before Rate Switch Date*),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

“**LMA**” means the Loan Market Association or any successor organisation.

“**Loan**” means the loan to be made available under the Facility or the aggregate principal amount outstanding for the time being of the borrowings under the Facility and a “**part of the Loan**” means any part of the Loan as the context may require.

“**Lookback Period**” means the number of days specified as such in the Compounded Rate Terms.

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

“**Majority Lenders**” means:

- (a) if the Loan has not yet been made, a Lender or Lenders whose Commitments aggregate more than 66 $\frac{2}{3}$  per cent. of the Total Commitments; or
- (b) at any other time, a Lender or Lenders whose participations in the Loan aggregate more than 66 $\frac{2}{3}$  per cent. of the amount of the Loan then outstanding or, if the Loan has been repaid or prepaid in full, a Lender or Lenders whose participations in the Loan immediately before repayment or prepayment in full aggregate more than 66 $\frac{2}{3}$  per cent. of the Loan immediately before such repayment.

“**Management Agreement**” means the agreement entered into between the Borrower and the Approved Manager regarding the commercial and technical management of the Ship.

“**Manager’s Undertaking**” means the letter of undertaking from the Approved Manager subordinating the rights of the Approved Manager against the Ship and the Borrower to the rights of the Finance Parties in agreed form.

“**Market Disruption Rate**” means the rate specified as such in the Compounded Rate Terms.

“**Market Value**” means, in relation to the Ship or any other vessel, at any date, the market value of the Ship or vessel determined in accordance with Clause 25.7 (*Provision of valuations*) and, prepared:

- (a) unless otherwise specified by the Facility Agent, as at a date not more than 30 days previously;
- (b) by an Approved Valuer or Approved Valuers;



- (c) with or without physical inspection of the Ship or vessel (as the Facility Agent may require); and
- (d) on the basis of a sale for prompt delivery for cash on normal arm's length commercial terms as between a willing seller and a willing buyer, free of any Charter.

**“Material Adverse Effect”** means in the reasonable opinion of the Majority Lenders a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Group as a whole; or
- (b) the ability of any Transaction Obligor to perform its obligations under any Finance Document; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or intended to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

**“Money Laundering”** has the meaning given in Article 1 of Directive 2015/849/EC of the Council of the European Communities.

**“Month”** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) Other than where paragraph (b) applies:
  - (i) (subject to paragraph (iii) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
  - (ii) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
  - (iii) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.
- (b) in relation to an Interest Period for any Compounded Rate Loan (or any other period for the accrual of commission or fees after the Rate Switch Date) for which there are rules specified as “Business Day Conventions” in the Compounded Rate Terms, those rules shall apply.

The above rules will only apply to the last Month of any period.

**“Mortgage”** means a first priority, or, as the case may be, preferred ship mortgage on the Ship in agreed form.

**“Obligor”** means the Borrower or the Guarantor.

**“Original Financial Statements”** means the annual audited consolidated financial statements of the Group for its financial year ended 31 December 2020.

**“Original Jurisdiction”** means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement.

**“Overseas Regulations”** means the Overseas Companies Regulations 2009 (SI 2009/1801).

**“Parallel Debt”** means any amount which an Obligor owes to the Security Agent under Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or under that clause as incorporated by reference or in full in any other Finance Document.

**“Participating Member State”** means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

**“Party”** means a party to this Agreement.

**“Permitted Charter”** means, in relation to the Ship, a Charter:

- (a) which is a time, voyage or consecutive voyage charter;
- (b) the duration of which does not exceed and is not capable of exceeding, by virtue of any optional extensions, 12 months plus a redelivery allowance of not more than 30 days;
- (c) which is entered into on *bona fide* arm’s length terms at the time at which the Ship is fixed; and
- (d) in relation to which not more than two months’ hire is payable in advance,

and any other Charter which is approved in writing by the Facility Agent acting with the authorisation of the Majority Lenders.

**“Permitted Financial Indebtedness”** means:

- (a) any Financial Indebtedness incurred under the Finance Documents; and
- (b) any Financial Indebtedness (including without limitation, any shareholder or intra-Group loans made available to the Borrower in the normal course of its business of trading and operating the Ship) that is subordinated to all Financial Indebtedness incurred under the Finance Documents in writing in a manner acceptable to the Facility Agent in all respects.

**“Permitted Security”** means:

- (a) Security created by the Finance Documents or disclosed in writing to the Facility Agent prior to the signing of this Agreement and acceptable to the Facility Agent;
- (b) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;

- (c) liens for unpaid master's and crew's wages in accordance with first-class ship ownership and management practice;
- (d) liens for salvage;
- (e) liens for master's disbursements incurred in the ordinary course of trading; and
- (f) any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of the Ship:
  - (i) not as a result of any default or omission by the Borrower;
  - (ii) not being enforced through arrest; and
  - (iii) subject, in the case of liens for repair or maintenance, to Clause 24.16 (*Restrictions on chartering, appointment of managers etc.*) and provided such lien does not secure amounts more than 30 days overdue (unless the overdue amount is being contested in good faith by appropriate steps).

**"Poseidon Principles"** means the financial industry framework for assessing and disclosing the climate alignment of ship finance portfolios published in June 2019 as the same may be amended or replaced from time to time.

**"Potential Event of Default"** means any event or circumstance specified in Clause 27 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

**"Protected Party"** has the meaning given to it in Clause 13.1 (*Definitions*).

**"Quotation Day"** means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period unless market practice differs in the Relevant Market in which case the Quotation Day will be determined by the Facility Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given by leading banks in the Relevant Market on more than one day, the Quotation Day will be the last of those days).

**"Quoted Tenor"** means any period for which the Screen Rate is customarily displayed on the relevant page or screen of an information service (other than for one week and two months).

**"Rate Switch Date"** means the earlier of:

- (a) the Backstop Rate Switch Date; and
- (b) any Rate Switch Trigger Event Date,

**"Rate Switch Trigger Event"** means:

- (a)
  - (i)
    - (A) the administrator of the Screen Rate or its supervisor publicly announces that such administrator is insolvent; or

(B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the Screen Rate is insolvent,

provided that, in each case, at that time, there is no successor administrator to continue to provide the Screen Rate;

- (ii) the administrator of the Screen Rate publicly announces that it has ceased or will cease, to provide the Screen Rate for any Quoted Tenor permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the Screen Rate for that Quoted Tenor;
- (iii) the supervisor of the administrator of the Screen Rate publicly announces that the Screen Rate has been or will be permanently or indefinitely discontinued for any Quoted Tenor; or
- (iv) the administrator of the Screen Rate or its supervisor publicly announces that the Screen Rate for any Quoted Tenor may no longer be used; or

(b) the supervisor of the administrator of the Screen Rate publicly announces or publishes information:

- (i) stating that the Screen Rate for any Quoted Tenor is no longer, or as of a specified future date will no longer be, representative of the underlying market and the economic reality that it is intended to measure and that such representativeness will not be restored (as determined by such supervisor); and
- (ii) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication; or

(c) the date agreed in writing between the Borrower, the Facility Agent and the Lenders.

**“Rate Switch Trigger Event Date”** means:

- (a) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (i) of paragraph (a) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate ceases to be published or otherwise becomes unavailable;
- (b) in the case of an occurrence of a Rate Switch Trigger Event described in sub-paragraph (ii), (iii) or (iv) of paragraph (b) (a) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be published or otherwise becomes unavailable;
- (c) in the case of an occurrence of a Rate Switch Trigger Event described in paragraph (b) of the definition of Rate Switch Trigger Event, the date on which the Screen Rate for the relevant Quoted Tenor ceases to be representative of the underlying market and the economic reality that it is intended to measure (as determined by the supervisor of the administrator of such Screen Rate); and

- (d) in the case of an occurrence of a Rate Switch Trigger Event described in paragraph (c) of the definition of Rate Switch Trigger Event, the date so agreed.”

**Receiver**” means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

**Reference Bank Quotation**” means any quotation supplied to the Facility Agent by a Reference Bank.

**Reference Bank Rate**” means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request by the Reference Banks:

- (a) if:
- (b) the Reference Bank is a contributor to the Screen Rate; and
- (c) it consists of a single figure,  
as the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the Screen Rate are asked to submit to the relevant administrator; or
- (d) in any other case, as the rate at which the relevant Reference Bank could fund itself in dollars for the relevant period with reference to the unsecured wholesale funding market.

**Reference Banks**” means the principal London offices of each of the Lenders or such other banks as may be appointed by the Facility Agent with the approval of the Majority Lenders in consultation with the Borrower.

**Related Fund**” in relation to a fund (the **“first fund”**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

**Relevant Jurisdiction**” means, in relation to a Transaction Obligor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to, or intended to be subject to, any of the Transaction Security created, or intended to be created, by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

**Relevant Market**” means:

- (a) subject to paragraph (b) below, the London interbank market; and
- (b) on or after the Rate Switch Date, the market specified as such in the Compounded Rate Terms.

**“Relevant Person”** means:

- (a) the Obligors and each of their Subsidiaries; and
- (b) each of their directors, officers and employees.

**“Repayment Date”** means each date on which a Repayment Instalment is required to be paid under Clause 6.1 (*Repayment of Loan*).

**“Repayment Instalment”** has the meaning given to it in Clause 6.1 (*Repayment of Loan*).

**“Repeating Representation”** means each of the representations set out in Clause 19 (*Representations*) except Clause 19.10 (*Insolvency*), Clause 19.11 (*No filing or stamp taxes*) and Clause 19.12 (*Deduction of Tax*) and any representation of any Transaction Obligor made in any other Finance Document that is expressed to be a “Repeating Representation” or is otherwise expressed to be repeated.

**“Reporting Day”** means the day specified as such in the Compounded Rate Terms.

**“Reporting Time”** means the relevant time (if any) specified as such in the Compounded Rate Terms.

**“Representative”** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

**“Requisition”** means:

- (a) any expropriation, confiscation, requisition (excluding a requisition for hire or use which does not involve a requisition for title) or acquisition of the Ship, whether for full consideration, a consideration less than its proper value, a nominal consideration or without any consideration, which is effected (whether de jure or de facto) by any government or official authority or by any person or persons claiming to be or to represent a government or official authority; and
- (b) any capture or seizure of the Ship (including any hijacking or theft) by any person whatsoever.

**“Requisition Compensation”** includes all compensation or other moneys payable to the Borrower by reason of any Requisition or any arrest or detention of the Ship in the exercise or purported exercise of any lien or claim.

**“Restricted Party”** means a person that is:

- (a) listed on any Sanctions List or targeted by Sanctions (whether designated by name or by reason of being included in a class of person); or
- (b) located in or incorporated under the laws of any country or territory that is the target of comprehensive, country- or territory-wide Sanctions; or
- (c) directly or indirectly owned or controlled by, or acting on behalf, at the direction, or for the benefit of, of a person referred to in (a) and/or (to the extent relevant under Sanctions) (b) above.

**“Resolution Authority”** means any body which has authority to exercise any Write-down and Conversion Powers.

**“RFR”** means the rate specified as such in the Compounded Rate Terms.

**“RFR Banking Day”** means any day specified as such in the Compounded Rate Terms.

**“Safety Management Certificate”** has the meaning given to it in the ISM Code.

**“Safety Management System”** has the meaning given to it in the ISM Code.

**“Sanctions Authority”** means the Norwegian State, the United Nations, the European Union, the Member States of the European Union, the United Kingdom, the United States of America, and any authority acting on behalf of any of them of their respective legislative, executive, enforcement and/or regulatory authorities or bodies acting in connection with Sanctions.

**“Sanctions Laws”** means the economic or financial sanctions laws and/or regulations, trade embargoes, prohibitions, restrictive measures, decisions, executive orders or notices from regulators implemented, adapted, imposed, administered, enacted and/or enforced by any Sanctions Authority;

**“Sanctions List”** means:

- (a) the lists of Sanctions designations and/or targets maintained by any Sanctions Authority; and/or
- (b) any other Sanctions designation or target listed and/or adopted by a Sanctions Authority,

in all cases, as amended, supplemented or replaced from time to time.

**“Sanctions”** means any applicable (to any Relevant Person and/or Finance Party as the context provides) laws, regulations or orders concerning any trade, economic or financial sanctions or embargoes.

**“Screen Rate”** means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for dollars for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate).

**“Secured Liabilities”** means all present and future obligations and liabilities, (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under or in connection with each Finance Document.

**“Secured Party”** means each Finance Party from time to time party to this Agreement, a Receiver or any Delegate.

**“Security”** means a mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security.

**“Security Assets”** means all of the assets of the Transaction Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

**“Security Document”** means:

- (a) the Shares Security;
- (b) the Mortgage;
- (c) the General Assignment;
- (d) any Charterparty Assignment;
- (e) the Account Security;
- (f) any Manager’s Undertaking;
- (g) any other document (whether or not it creates Security) which is executed as security for the Secured Liabilities; or
- (h) any other document designated as such by the Facility Agent and the Borrower.

**“Security Period”** means the period starting on the date of this Agreement and ending on the date on which the Facility Agent is satisfied that there is no outstanding Commitment in force and that the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full.

**“Security Property”** means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in relation to the Secured Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Security Agent as trustee for the Secured Parties;
- (c) the Security Agent’s interest in any turnover trust created under the Finance Documents;
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties,

except:

- (i) rights intended for the sole benefit of the Security Agent; and
- (ii) any moneys or other assets which the Security Agent has transferred to the Facility Agent or (being entitled to do so) has retained in accordance with the provisions of this Agreement.



“**Selection Notice**” means a notice substantially in the form set out in Part B of Schedule 3 (*Requests*) given in accordance with Clause 10 (*Interest Periods*).

“**Servicing Party**” means the Facility Agent or the Security Agent.

“**Shareholder**” means Navios Maritime Operating L.L.C., a limited liability company formed and existing in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960.

“**Shares Security**” means a document creating Security over the issued shares in the Borrower in agreed form.

“**Ship**” means the dry bulk carrier (having IMO No. 9589839) of 179,169 metric deadweight tons, built in 2011 by Sungdong Ship Building, South Korea and registered in the ownership of the Borrower under an Approved Flag with the name “NAVIOS AZIMUTH”.

“**Specified Time**” means a day or time determined in accordance with Schedule 7 (*Timetables*).

“**Statement of Compliance**” means a Statement of Compliance related to fuel oil consumption pursuant to regulations 6.6 and 6.7 of Annex VI.

“**Subsidiary**” means that 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 attached to the issued shares of S;

and any company of which S is a subsidiary is a parent company of S.

“**Sustainability Certificate**” means, in relation to a calendar year, a certificate addressed to the Facility Agent and the Sustainability Agent and in the form set out in Schedule 11 (*Form of Sustainability Certificate*) or any other form agreed between the Borrower and the Sustainability Agent.

“**Sustainable Margin Adjustment**” means an adjustment to the Applicable Margin subject to and in accordance with Clause 9.6 (*Margin Adjustment*).

“**Tax**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“**Tax Credit**” has the meaning given to it in Clause 13.1 (*Definitions*).

“**Tax Deduction**” has the meaning given to it in Clause 13.1 (*Definitions*).

“**Tax Payment**” has the meaning given to it in Clause 13.1 (*Definitions*).

“**Term Rate Loan**” means the Loan, any part of the Loan or, if applicable, Unpaid Sum which is not a Compounded Rate Loan.

“**Termination Date**” means the earlier of the date falling on (i) the fifth anniversary of the Utilisation Date and (ii) 30 September 2026.

“**Third Parties Act**” has the meaning given to it in Clause 1.5 (*Third party rights*).

“**Total Commitments**” means the aggregate of the Commitments, being the lower of (i) \$18,000,000 and (ii) 60 per cent. of the Initial Market Value of the Ship.

“**Total Loss**” means:

- (a) actual, constructive, compromised, agreed or arranged total loss of the Ship; or
- (b) in the case of any of the events described in paragraph (a) of the definition “Requisition”, any such Requisition of the Ship unless the Ship is returned to the full control of the Borrower within 90 days of such Requisition; and
- (c) in the case of any of the events described in paragraph (b) of the definition “Requisition”, any such Requisition of the Ship unless the Ship is returned to the full control of the Borrower within 90 days of such Requisition, provided that in the case of hijacking, if the relevant underwriters confirm to the Facility Agent in writing (in customary terms) prior to the end of the 90 day period that the Ship will be covered by the Borrower’s war risk insurance, the shorter of 12 months and the period for which such cover is confirmed to attach.

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

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

“**Transaction Document**” means:

- (a) a Finance Document;
- (b) any Assignable Charter;
- (c) any Charter Guarantee; or
- (d) any other document designated as such by the Facility Agent and the Borrower.

“**Transaction Obligor**” means an Obligor, the Shareholder, any Approved Manager who is a member of the Group or any other member of the Group who executes a Transaction Document.

“**Transaction Security**” means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

“**Transfer Certificate**” means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the Borrower.

“**Transfer Date**” means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

“**UK Bail-In Legislation**” means Part 1 of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutes or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

“**UK Establishment**” means a UK establishment as defined in the Overseas Regulations.

“**Unpaid Sum**” means any sum due and payable but unpaid by a Transaction Obligor under the Finance Documents.

“**US**” means the United States of America.

“**US Tax Obligor**” means:

- (a) a person which is resident for tax purposes in the US; or
- (b) a person some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

“**Utilisation**” means the utilisation of the Facility.

“**Utilisation Date**” means the date of the Utilisation, being the date on which the Loan is to be advanced.

“**Utilisation Request**” means the notice substantially in the form set out in Part A of Schedule 3 (*Requests*).

“**VAT**” means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

- (c) any other tax of a similar nature, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) or (b) above, or imposed elsewhere.

“**Write-down and Conversion Powers**” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to any other applicable Bail In Legislation other than the UK Bail-In Legislation:
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
  - (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to the UK Bail-In Legislation, any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
  - (i) the “**Facility Agent**”, any “**Finance Party**”, the “**Mandated Lead Arranger**”, the “**Sustainability Agent**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Secured Party**”, the “**Security Agent**”, any “**Transaction Obligor**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
  - (ii) “**assets**” includes present and future properties, revenues and rights of every description;
  - (iii) a liability which is “**contingent**” means a liability which is not certain to arise and/or the amount of which remains unascertained;

- (iv) “**document**” includes a deed and also a letter, fax, email or telex;
- (v) “**expense**” means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Tax including VAT;
- (vi) a Lender’s “**cost of funds**” in relation to its participation in the Loan or any part of the Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in the Loan or that part of the Loan for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (vii) a “**Finance Document**”, a “**Security Document**” or “**Transaction Document**” or any other agreement or instrument is a reference to that Finance Document, Security Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (viii) a “**group of Lenders**” includes all the Lenders;
- (ix) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (x) “**law**” includes any order or decree, any form of delegated legislation, any treaty or international convention and any regulation or resolution of the Council of the European Union, the European Commission, the United Nations or its Security Council;
- (xi) “**proceedings**” means, in relation to any enforcement provision of a Finance Document, proceedings of any kind, including an application for a provisional or protective measure;
- (xii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (xiii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (xiv) a provision of law is a reference to that provision as amended or re-enacted;
- (xv) a time of day is a reference to London time;
- (xvi) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of a jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;
- (xvii) words denoting the singular number shall include the plural and vice versa; and
- (xviii) “**including**” and “**in particular**” (and other similar expressions) shall be construed as not limiting any general words or expressions in connection with which they are used.

- (b) The determination of the extent to which a rate is “**for a period equal in length**” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Section, Clause and Schedule headings are for ease of reference only and are not to be used for the purposes of construction or interpretation of the Finance Documents.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under, or in connection with, any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
  - (i) any replacement page of that information service which displays that rate; and
  - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service, and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Facility Agent after consultation with the Borrower.
- (f) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (g) Any Compounded Rate Supplement overrides anything in:
  - (i) Schedule 8 (*Compounded Rate Terms*); or
  - (ii) any earlier Compounded Rate Supplement.
- (h) A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate overrides anything relating to that rate in:
  - (i) Schedule 9 (*Daily Non-Cumulative Compounded RFR Rate*) or Schedule 10 (*Cumulative Compounded RFR Rate*), as the case may be; or
  - (ii) any earlier Compounding Methodology Supplement.
- (i) A Potential Event of Default is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived.

### 1.3 Construction of insurance terms

In this Agreement:

“**approved**” means, for the purposes of Clause 23 (*Insurance Undertakings*), approved in writing by the Facility Agent.

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

“**obligatory insurances**” means all insurances effected, or which the Borrower is obliged to effect, under Clause 23 (*Insurance Undertakings*) or any other provision of this Agreement or of another Finance Document.

“**policy**” includes a slip, cover note, certificate of entry or other document evidencing the contract of insurance or its terms.

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

“**war risks**” includes the risk of mines and all risks excluded by clauses 29, 30 or 31 of the International Hull Clauses (1/11/02), clauses 29 or 30 of the International Hull Clauses (1/11/03), clause 24, 25 or 26 of the Institute Time Clauses (Hulls) (1/11/95) or clause 23 of the Institute Time Clauses (Hulls) (1/10/83) or any equivalent provision.

#### 1.4 **Agreed forms of Finance Documents**

References in Clause 1.1 (*Definitions*) to any Finance Document being in “agreed form” are to that Finance Document:

- (a) in a form attached to a certificate dated the same date as this Agreement (and signed by the Borrower and the Facility Agent); or
- (b) in any other form agreed in writing between the Borrower and the Facility Agent acting with the authorisation of the Majority Lenders or, where Clause 44.2 (*All Lender matters*) applies, all the Lenders.

#### 1.5 **Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Subject to Clause 44.3 (*Other exceptions*) but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate, Affiliate or any other person described in paragraph (d) of Clause 15.2 (*Other indemnities*), Clause 30.21 (*Role of Reference Banks*), Clause 30.22 (*Third Party Reference Banks*) may, subject to this Clause 1.5 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

## SECTION 2

### THE FACILITY

#### 2 THE FACILITY

##### 2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a term loan facility in an amount not exceeding the Total Commitments.

##### 2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from a Transaction Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of the Loan or any other amount owed by a Transaction Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Facility Agent on its behalf) is a debt owing to that Finance Party by that Transaction Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

#### 3 PURPOSE

##### 3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility only for the purpose stated in the preamble (*Background*) to this Agreement.

##### 3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

#### 4 CONDITIONS OF UTILISATION

##### 4.1 Initial conditions precedent

The Borrower may not deliver the Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Part A of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent.



#### **4.2 Further conditions precedent**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if:

- (a) on the date of the Utilisation Request and on the proposed Utilisation Date and before the Loan is made available:
  - (i) no Default has occurred or would occur from the proposed Utilisation;
  - (ii) the Repeating Representations to be made by each Transaction Obligor are true; and
  - (iii) the Ship has not been sold or become a Total Loss; and
- (b) on or before the Utilisation Date, the Facility Agent has received, or is satisfied it will receive when the Loan is made available, all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent.

#### **4.3 Notification of satisfaction of conditions precedent**

- (a) The Facility Agent shall notify the Borrower and the Lenders promptly upon being satisfied as to the satisfaction of the conditions precedent referred to in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*).
- (b) Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

#### **4.4 Waiver of conditions precedent**

If the Majority Lenders, at their discretion, permit the Loan to be borrowed before any of the conditions precedent referred to in Clause 4.1 (*Initial conditions precedent*) or Clause 4.2 (*Further conditions precedent*) has been satisfied, the Borrower shall ensure that that condition is satisfied within five Business Days after the Utilisation Date or such later date as the Facility Agent, acting with the authorisation of the Majority Lenders, may agree in writing with the Borrower.

## SECTION 3

### UTILISATION

#### 5 UTILISATION

##### 5.1 Delivery of the Utilisation Request

- (a) The Borrower may utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time.
- (b) The Borrower may not deliver more than one Utilisation Request for the Loan.

##### 5.2 Completion of the Utilisation Request

The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- (a) the proposed Utilisation Date is a Business Day within the Availability Period;
- (b) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
- (c) the proposed Interest Period complies with Clause 10 (*Interest Periods*).

##### 5.3 Currency and amount

- (a) The currency specified in the Utilisation Request must be dollars.
- (b) The amount of the proposed Loan must be an amount which is not more than the lower of:
  - (i) 60 per cent. of the Initial Market Value of the Ship; and
  - (ii) the Available Facility.
- (c) The amount of the proposed Loan must be an amount which would not oblige the Borrower to provide additional security or prepay part of the Loan if the ratio set out in Clause 25 (*Security Cover*) were applied and notice was given by the Facility Agent under Clause 25.1 (*Minimum required security cover*) immediately after the Loan was utilised.

##### 5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in the Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in the Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately before making the Loan.
- (c) The Facility Agent shall notify each Lender of the amount of the Loan and the amount of its participation in the Loan by the Specified Time.

##### 5.5 Payment to third parties

The Borrower irrevocably authorises the Facility Agent on the Utilisation Date to pay to, or for the account of, the Borrower the amounts which the Facility Agent receives from the Lenders in respect of the Loan. That payment shall be made in like funds as the Facility Agent received from the Lenders to the account which the Borrower specifies in the Utilisation Request.

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**5.6 Disbursement of Loan to third party**

Payment by the Facility Agent under Clause 5.5 (*Payment to third parties*) to a person other than the Borrower shall constitute the making of the Loan and the Borrower shall at that time become indebted, as principal and direct obligors, to each Lender in an amount equal to that Lender's participation in the Loan.

**5.7 Cancellation of Commitments**

The Commitments which are unutilised at the end of the Availability Period shall then be cancelled.

## REPAYMENT, PREPAYMENT AND CANCELLATION

## 6 REPAYMENT

## 6.1 Repayment of Loan

The Borrower shall repay the Loan by (i) 20 consecutive quarterly instalments each in an amount of \$640,000 (each a “**Repayment Instalment**”), the first of which shall be repaid on the date falling 3 Months after the Utilisation Date and the last on the Termination Date and (ii) a balloon instalment in the amount of \$5,200,000 (the “**Balloon Instalment**”) on the Termination Date.

## 6.2 Effect of cancellation and prepayment on scheduled repayments

- (a) If the Borrower cancels the whole or any part of any Available Commitment in accordance with Clause 7.6 (*Right of repayment and cancellation in relation to a single Lender*) or if the Available Commitment of any Lender is cancelled under Clause 7.1 (*Illegality*) then the Repayment Instalments and the Balloon Instalment falling after that cancellation will be reduced *pro rata* by the amount of the Available Commitments so cancelled.
- (b) If the Borrower cancels the whole or any part of any Available Commitment in accordance with Clause 7.3 (*Voluntary and automatic cancellation*) or if the whole or part of any Commitment is cancelled pursuant to Clause 5.5 (*Cancellation of Commitments*), then the Repayment Instalments and the Balloon Instalment falling after that cancellation will be reduced *pro rata* by the amount of the Commitments so cancelled.
- (c) If any part of the Loan is repaid or prepaid in accordance with Clause 7.6 (*Right of repayment and cancellation in relation to a single Lender*) or Clause 7.1 (*Illegality*) then the Repayment Instalments and the Balloon Instalment falling after that repayment or prepayment (as applicable) will be reduced *pro rata* by the amount of the Loan repaid or prepaid.
- (d) If any part of the Loan is prepaid in accordance with Clause 7.4 (*Voluntary prepayment of the Loan*), then the amount of the Repayment Instalments for each Repayment Date falling after that repayment or prepayment will be reduced in in order of maturity by the amount of the Loan repaid or prepaid.

## 6.3 Termination Date

On the Termination Date, the Borrower shall additionally pay to the Facility Agent for the account of the Finance Parties all other sums then accrued and owing under the Finance Documents.

## 6.4 Reborrowing

The Borrower may not reborrow any part of the Facility which is repaid.

## 7 PREPAYMENT AND CANCELLATION

### 7.1 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in the Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) upon the Facility Agent notifying the Borrower, the Available Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall prepay that Lender's participation in the Loan on the last day of the Interest Period for the Loan occurring after the Facility Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participation prepaid.

### 7.2 Change of control

If there is a Change of Control:

- (i) the Borrower and/or the Guarantor shall promptly notify the Facility Agent upon becoming aware of that event; and
  - (ii) if the Majority Lenders so require, the Facility Agent shall, by not less than 10 Business Days' notice to the Borrower, cancel the Facility and declare the Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Facility will be cancelled and the Loan and all such outstanding interest and other amounts will become immediately due and payable.
- (b) In this Clause 7.2 (*Change of control*):

“**Change of Control**” means a change which results in:

- (a) Navios Maritime Holdings Inc. and/or Mrs. Angeliki Frangou and her direct descendants (either directly or indirectly) (through entities owned and controlled by her or trusts or foundations of which she is a beneficiary) ceasing to be the owner of, or having ultimate control of the voting rights attaching to more than 5 per cent. of all the issued shares in the Guarantor; or
- (b) Mrs. Angeliki Frangou and her direct descendants (either directly or indirectly) (through entities owned and controlled by her or trusts or foundations of which she is a beneficiary), ceasing to be the owner of, or having ultimate control of the voting rights attaching to all the issued shares in the general partner of the Guarantor, which is currently Olympos Maritime Ltd; or
- (c) Mrs. Angeliki Frangou ceasing to act as chairman or chief executive officer of the Guarantor and Olympos Maritime Ltd ceasing to be the general partner of the Guarantor; or

- (d) any person or group of persons acting in concert, other than Navios Maritime Holdings Inc., Mrs Angeliki Frangou and her direct descendants (either directly or indirectly), gaining control of the Guarantor.

For the purpose of paragraph (d) above “**control**” means the holding beneficially or more than 50 per cent. of the issued shares of the Guarantor (excluding any part of those issued shares that carries no right to participate beyond a specified amount in a distribution of either profits or capital;

For the purpose of paragraph (d) above “**acting in concert**” means a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Guarantor by any of them, either directly or indirectly, to obtain or consolidate control of the Guarantor.

### 7.3 Voluntary and automatic cancellation

- (a) The Borrower may, if it gives the Facility Agent not less than 5 Business Days’ (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of \$500,000 of the Available Facility. Any cancellation under this Clause 7.3 (*Voluntary and automatic cancellation*) shall reduce the Commitments of the Lenders rateably.
- (b) The unutilised Commitment (if any) of each Lender shall be automatically cancelled at close of business on the date on which the Loan is made available.

### 7.4 Voluntary prepayment of Loan

The Borrower may, if it gives the Facility Agent:

- (a) in the case of a Term Rate Loan, not less than 5 Business Days’ (or such shorter period as the Majority Lenders may agree) prior notice; or
- (b) in the case of a Compounded Rate Loan, 5 RFR Banking Days (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of \$500,000 or an integral multiple of that amount).

### 7.5 Mandatory prepayment on sale, seizure or Total Loss

- (a) If the Ship is sold (without prejudice to Clause 22.12 (*Disposals*)) or becomes a Total Loss, the Borrower shall on the Relevant Date prepay the Loan.
- (b) In this Clause 7.5 (*Mandatory prepayment on sale, seizure or Total Loss*):

“**Relevant Date**” means:

- (a) in the case of a sale of the Ship, on the date on which the sale is completed by delivery of the Ship to the buyer of the Ship; and
- (b) in the case of any piracy or capture, seizure, confiscation or detention (including hijacking or theft) of the Ship, where the Ship is not within 90 days redelivered to the full control of the Borrower, on or before the date falling 97 days after the date of the piracy or capture, seizure, confiscation or detention (including hijacking or theft) of the Ship, Provided that the relevant underwriters confirm to the Facility Agent in writing (in customary terms) within 30 days of the piracy event that adequate war risks insurance cover is in place in respect of the Ship; or

- (c) in the case of a Total Loss, on the earlier of (i) the date falling 180 days after the Total Loss Date and (ii) the date of receipt by the Security Agent of the proceeds of insurance relating to such Total Loss.

## **7.6 Right of repayment and cancellation in relation to a single Lender**

- (a) If:
  - (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 13.2 (*Tax gross-up*); or
  - (ii) any Lender claims indemnification from the Borrower under Clause 13.3 (*Tax indemnity*) or Clause 14 (*Increased costs*),the Borrower may give the Facility Agent notice of cancellation of the Commitment of that Lender and their intention to procure the repayment of that Lender's participation in the Loan.
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in the Loan.
- (d) The Borrower may, in the circumstances set out in paragraph (a) above, on 15 Business Days' prior notice to the Facility Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 28 (*Changes to the Lenders*) (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 28 (*Changes to the Lenders*) for a purchase price in cash or other cash payment payable at the time of the transfer equal to the outstanding principal amount of such Lender's participation in the Loan and all accrued interest (to the extent that the Facility Agent has not given a notification under Clause 28.9 (*Pro rata interest settlement*), Break Costs and other amounts payable in relation thereto under the Finance Documents.
- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
  - (i) the Borrower shall have no right to replace a Servicing Party;
  - (ii) neither the Facility Agent nor any Lender shall have any obligation to find a replacement Lender;
  - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and

- (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in sub-paragraph (iv) of paragraph (e) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Facility Agent and the Borrower when it is satisfied that it has complied with those checks.

#### **7.7 Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 (*Prepayment and Cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment and, if relevant, the part of the Loan to be prepaid or cancelled.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and any Break Costs, without premium or penalty.
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.
- (d) The Borrower shall not repay or prepay all or any part of the Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrower or the affected Lenders, as appropriate.
- (g) If all or part of any Lender’s participation in the Loan is repaid or prepaid, an amount of that Lender’s Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

#### **7.8 Application of prepayments**

Any prepayment of any part of the Loan (other than a prepayment pursuant to Clause 7.1 (*Illegality*)) or Clause 7.6 (*Right of repayment and cancellation in relation to a single Lender*) shall be applied pro rata to each Lender’s participation in that part of the Loan.



## COSTS OF UTILISATION

**8 RATE SWITCH****8.1 Switch to Compounded Reference Rate**

Subject to Clause 8.2 (*Delayed switch for existing Term Rate Loans*), on and from the Rate Switch Date:

- (a) use of the Compounded Reference Rate will replace the use of LIBOR for the calculation of interest for the Loan or any part of the Loan; and
- (b) the Loan or any part of the Loan or Unpaid Sum shall be a “Compounded Rate Loan” and Clause 9.2 (*Calculation of interest – Compounded Rate Loans*) shall apply to the Loan, any such part of the Loan or Unpaid Sum.

**8.2 Delayed switch for existing Term Rate Loans**

If the Rate Switch Date falls before the last day of an Interest Period for a Term Rate Loan:

- (a) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall continue to be a Term Rate Loan for that Interest Period and Clause 9.1 (*Calculation of interest – Term Rate Loans*) shall continue to apply to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period;
- (b) any provision of this Agreement which is expressed to relate solely to a Compounded Rate Loan shall not apply in relation to the Loan, relevant part of the Loan or Unpaid Sum (as applicable) for that Interest Period; and
- (c) on and from the first day of the next Interest Period (if any) for the Loan, relevant part of the Loan or Unpaid Sum (as applicable):
  - (i) the Loan, relevant part of the Loan or Unpaid Sum (as applicable) shall be a “Compounded Rate Loan”; and
  - (ii) Clause 9.2 (*Calculation of interest – Compounded Rate Loans*) shall apply to it.

**8.3 Early termination of Interest Periods for existing Term Rate Loans**

If:

- (a) an Interest Period for a Term Rate Loan would otherwise end on a day which falls after the Rate Switch Date; and
- (b) before the date of selection of that Interest Period:
  - (i) the Backstop Rate Switch Date was scheduled to occur during that Interest Period; or
  - (ii) notice of a Rate Switch Trigger Event Date falling during that Interest Period had been given pursuant to sub-paragraph (ii) of paragraph (a) of Clause 8.4 (*Notifications by Facility Agent*), that Interest Period will instead end on the Rate Switch Date.

#### **8.4 Notifications by Facility Agent**

- (a) Subject to paragraph (c) below, following the occurrence of a Rate Switch Trigger Event, the Facility Agent shall:
  - (i) promptly upon becoming aware of the occurrence of that Rate Switch Trigger Event, notify the Borrower and the Lenders of that occurrence; and
  - (ii) promptly upon becoming aware of the date of the Rate Switch Trigger Event Date, notify the Borrower and the Lenders of that date.
- (b) The Facility Agent shall, promptly upon becoming aware of the occurrence of the Rate Switch Date, notify the Borrower and the Lenders of that occurrence.
- (c) The Parties agree that the FCA Cessation Announcement constitutes a Rate Switch Trigger Event, that the Rate Switch Trigger Event Date applicable to such Rate Switch Trigger Event will be 1 July 2023 and that the Facility Agent is not under any obligation under paragraph (a) above to notify any Party of such Rate Switch Trigger Event or Rate Switch Trigger Event Date resulting from the FCA Cessation Announcement.
- (d) For the purposes of paragraph (c) above, the “FCA Cessation Announcement” means the announcement on 5 March 2021 by the UK’s Financial Conduct Authority that all LIBOR settings will, as of certain specified future dates, either cease to be provided by any administrator or no longer be representative of the market and economic reality that they are intended to measure and that such representativeness will not be restored.

### **9 INTEREST**

#### **9.1 Calculation of interest Term Rate Loan**

The rate of interest on the Term Rate Loan for each Interest Period is the percentage rate per annum which is the aggregate of:

- (a) the Applicable Margin; and
- (b) LIBOR.

#### **9.2 Calculation of interest – Compounded Rate Loans**

- (a) The rate of interest on each Compounded Rate Loan for any day during an Interest Period is the percentage rate per annum which is the aggregate of:
  - (i) the Applicable Margin; and
  - (ii) the Compounded Reference Rate for that day.
- (b) If any day during an Interest Period for a Compounded Rate Loan is not an RFR Banking Day, the rate of interest on that Compounded Rate Loan for that day will be the rate applicable to the immediately preceding RFR Banking Day.

### 9.3 Payment of interest

- (a) The Borrower shall pay accrued interest on the Loan or any part of the Loan on the last day of each Interest Period (each an “**Interest Payment Date**”).
- (b) If an Interest Period is longer than 3 Months, the Borrower shall also pay interest then accrued on the Loan or the relevant part of the Loan on the dates falling at 3 Monthly intervals after the first day of the Interest Period.

### 9.4 Default interest

- (a) If a Transaction Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 2 per cent. per annum higher than the rate which would have been payable if the Unpaid Sum had, during the period of non-payment, constituted part of the Loan in the currency of the Unpaid Sum for successive Interest Periods, each of a duration selected by the Facility Agent. Any interest accruing under this Clause 9.4 (*Default interest*) shall be immediately payable by the Obligor on demand by the Facility Agent.
- (b) Without prejudice to the rights of the Finance Parties under Clause 27.20 (*Acceleration*), if the Facility Agent (acting on the instructions of the Majority Lenders) gives written notice to the Borrower of the occurrence of an Event of Default which is continuing and demands payment of interest under this paragraph (b) of Clause 9.4 (*Default interest*), interest shall accrue on the amount of the Loan from the date of such notice up to the date on which the Facility Agent (acting on the instructions of the Majority Lenders) gives notice to the Borrower that such Event of Default is no longer continuing. Interest shall accrue at a rate which is 2 per cent per annum higher than the applicable rate for each part of the Loan.
- (c) If an Unpaid Sum consists of all or part of the Term Rate Loan which became due on a day which was not the last day of an Interest Period relating to the Loan or that part of the Term Rate Loan:
  - (i) the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to the Loan or that part of the Loan; and
  - (ii) the rate of interest applying to that Unpaid Sum during that first Interest Period shall be 2 per cent. per annum higher than the rate which would have applied if that Unpaid Sum had not become due.
- (d) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum but will remain immediately due and payable.

### 9.5 Notification of rates of interest

- (a) The Facility Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest relating to a Term Rate Loan.
- (b) The Facility Agent shall promptly upon a Compounded Rate Interest Payment being determinable, notify:

- (i) the Borrower of that Compounded Rate Interest Payment;
- (ii) each Lender of the proportion of that Compounded Rate Interest Payment which relates to that Lender's participation in the relevant Compounded Rate Loan; and
- (iii) the Lenders and the Borrower of:
  - (A) each applicable rate of interest relating to the determination of that Compounded Rate Interest Payment; and
  - (B) to the extent it is then determinable, the Market Disruption Rate relating to the relevant Compounded Rate Loan. The Facility Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan, any part of the Loan or any Unpaid Sum.
- (c) The Facility Agent shall promptly notify the Borrower of each Funding Rate relating to the Loan or any part of the Loan or any Unpaid Sum.
- (d) The Facility Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest relating to a Compounded Rate Loan to which Clause 11.4 (*Cost of funds*) applies.
- (e) This Clause 9.5 (*Notification of rates of interest*) shall not require the Facility Agent to make any notification to any Party on a day which is not a Business Day.

#### **9.6 Margin Adjustment**

- (a) If, on and from 1 January 2022:
  - (i) the AER Delta Average for the preceding year in respect of the AER Reference Vessels is less than or equal to zero, as evidenced by the Sustainability Certificate delivered to the Sustainability Agent in accordance with Clause 20.3 (*Compliance Certificate and Sustainability Certificate*), the Applicable Margin shall be 2.80 per cent per annum until the earlier of:
    - (A) the date of delivery of the next Sustainability Certificate; and
    - (B) the date falling 121 days after the end of the then current financial year of the Guarantor;
  - (ii) the AER Delta Average for the preceding year in respect of the AER Reference Vessels is greater than zero as evidenced by the Sustainability Certificate delivered to the Sustainability Agent in accordance with Clause 20.3 (*Sustainability Certificate*), or if the Guarantor has failed to provide the relevant Sustainability Certificate, the Applicable Margin shall be 2.90 per cent. per annum until the date of delivery of the next Sustainability Certificate.
- (b) In determining the Applicable Margin for a calendar year, any Sustainable Margin Adjustment determined by reference to a particular calendar year applies from the next Interest Period after the date on which the Sustainability Agent confirms receipt of the Sustainability Certificate in form and substance satisfactory to the Sustainability Agent and in accordance with Clause 20.3 (*Compliance Certificate and Sustainability Certificate*) relating to that calendar year (confirmation thereof to be confirmed by the Sustainability Agent within 5 Business Days after the receipt of such certificate).

## **10 INTEREST PERIODS**

### **10.1 Selection of Interest Periods**

- (a) The Borrower may select the first Interest Period in the Utilisation Request. Subject to paragraph (f) below and Clause 10.2 (*Changes to Interest Periods*), the Borrower may select each subsequent Interest Period in a Selection Notice.
- (b) Each Selection Notice is irrevocable and must be delivered to the Facility Agent by the Borrower not later than the Specified Time.
- (c) If the Borrower fails to select an Interest Period in the Utilisation Request or fails to deliver a Selection Notice to the Facility Agent in accordance with paragraphs (a) and (b) above, the relevant Interest Period will, subject to paragraph (f) below and Clause 10.2 (*Changes to Interest Periods*), be 3 Months or, if the Loan is a Compounded Rate Loan, the period specified in the Compounded Rate Terms.
- (d) Subject to this Clause 10 (*Interest Periods*), the Borrower may select an Interest Period of three or six Months if the Loan is not a Compounded Rate Loan, or if the Loan is a Compounded Rate Loan, of any period specified in the Compounded Rate Terms, or in either case or any other period agreed between the Borrower and the Facility Agent (acting on the instructions of all the Lenders).
- (e) An Interest Period in respect of the Term rate Loan shall not extend beyond the Termination Date.
- (f) In respect of a Repayment Instalment, the Borrower may request in the relevant Selection Notice that an Interest Period for a part of the Loan equal to such Repayment Instalment shall end on the Repayment Date relating to it and, subject to paragraph (d) above, select a longer Interest Period for the remaining part of the Loan.
- (g) The first Interest Period for the Loan shall start on the Utilisation Date and each subsequent Interest Period shall start on the last day of the preceding Interest Period.
- (h) Except for the purposes of paragraph (f) above and Clause 10.2 (*Changes to Interest Periods*), the Loan shall have one Interest Period only at any time.
- (i) No Interest Period for a Compounded Rate Loan shall be longer than six Months.
- (j) No Interest Period for a Compounded Rate Loan shall extend beyond Termination Date.

### **10.2 Changes to Interest Periods**

- (a) In respect of a Repayment Instalment, prior to determining the interest rate for the Loan, the Facility Agent may establish an Interest Period for a part of the Loan equal to such Repayment Instalment to end on the Repayment Date relating to it and the remaining part of the Loan shall have the Interest Period selected in the relevant Selection Notice, subject to paragraph (d) of Clause 10.1 (*Selection of Interest Periods*).

- (b) If the Facility Agent makes any change to an Interest Period referred to in this Clause 10.2 (*Changes to Interest Periods*), it shall promptly notify the Borrower and the Lenders.

### **10.3 Non-Business Days**

- (a) Other than where paragraph (b) below applies, if an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) In respect of any Compounded Rate Loan, if there are rules specified as “Business Day Conventions” in the Compounded Rate Terms, those rules shall apply to each Interest Period for that Compounded Rate Loan.

## **11 CHANGES TO THE CALCULATION OF INTEREST**

### **11.1 Unavailability of Screen Rate before Rate Switch Date**

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for the Interest Period of the Loan or any part of the Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for:
- (i) dollars; or
  - (ii) the Interest Period of the Loan or any part of the Loan and it is not possible to calculate the Interpolated Screen Rate,
- the applicable LIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of the Loan or that part of the Loan.
- (c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for dollars or the relevant Interest Period there shall be no LIBOR for the Loan or that part of the Loan (as applicable) and Clause 11.4 (*Cost of funds*) shall apply to the Loan or that part of the Loan for that Interest Period.

### **11.2 Calculation of Reference Bank Rate**

- (a) Subject to paragraph (b) below, if LIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- (b) If at or about noon on the Quotation Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

### **11.3 Market disruption**

- (a) In the case of a Term Rate Loan, if before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notification from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 50 per cent. of the Loan or the relevant part of the Loan as appropriate) that its cost of funds relating to its participation in the Loan or that part of the Loan would be in excess of LIBOR then Clause 11.4 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

- (b) In the case of a Compounded Rate Loan, if:
- (i) a Market Disruption Rate is specified in the Compounded Rate Terms for that Loan; and
  - (ii) before the Reporting Time for the Loan or any part of the Loan, the Facility Agent receives notifications from a Lender or Lenders (whose participations in the Loan or the relevant part of the Loan exceed 33.3 per cent. of the Loan or the relevant part of the Loan as appropriate) that its cost of funds relating to its participation in the Loan or that part of the Loan would be in excess of that Market Disruption Rate,

then Clause 11.4 (*Cost of funds*) shall apply to the Loan or that part of the Loan (as applicable) for the relevant Interest Period.

#### **11.4 Cost of funds**

- (a) If this Clause 11.4 (*Cost of funds*) applies to the Loan or part of the Loan for an Interest Period neither Clause 9.1 (*Calculation of interest—Term Rate Loans*) nor Clause 9.2 (*Calculation of interest—Compounded Rate Loans*) shall apply to the Loan or that part of the Loan for that Interest Period and, the rate of interest on each Lender's share of the Loan or that part of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Applicable Margin; and
  - (ii) the weighted average of the rates notified to the Facility Agent by each Lender, as soon as practicable and in any event:
    - (A) in relation to a Term Rate Loan, within five Business Days of the first day of that Interest Period (or, if earlier, on the date falling five Business Days before the date on which interest is due to be paid in respect of that Interest Period); or
    - (B) in relation to a Compounded Rate Loan, by the Reporting Time for that Compounded Rate Loan,
- to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in the Loan or that part of the Loan.
- (b) If this Clause 11.4 (*Cost of funds*) applies and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest or (as the case may be) an alternative basis for funding.
- (c) Subject to Clause 44.4 (*Changes to reference rates*), any substitute or alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

- (d) If paragraph (e) below does not apply and any rate notified to the Facility Agent under sub-paragraph (ii) of paragraph (a) above is less than zero, the relevant rate shall be deemed to be zero.
- (e) If this Clause 11.4 (*Cost of funds*) applies pursuant to Clause 11.3 (*Market disruption*) and:
- (i) in relation to a Term Rate Loan:
- (A) a Lender's Funding Rate is less than LIBOR; or
- (B) a Lender does not notify a rate to the Facility Agent by the time specified in sub-paragraph (ii) of paragraph (a) above, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.
- (ii) in relation to a Compounded Rate Loan:
- (A) a Lender's Funding Rate is less than the relevant Market Disruption Rate; or
- (B) a Lender does not notify a rate to the Facility Agent by the time specified in sub-paragraph (ii) of paragraph (a) above, that Lender's cost of funds relating to its participation in the Loan or the relevant part of the Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be the Market Disruption Rate for that Compounded Rate Loan.
- (f) If this Clause 11.5 (*Cost of Funds*) applies, the Facility Agent shall, as soon as practicable, notify the Borrower.

## **11.5 Break Costs**

- (a) The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs (if any) attributable to all or any part of a Term Rate Loan being paid by the Borrower on a day other than the last day of an Interest Period for the Loan, the relevant part of the Loan or that Unpaid Sum.
- (b) Paragraph (a) above shall apply in respect of a Compounded Rate Loan if an amount is specified as Break Costs in the Compounded Rate Terms.
- (c) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in respect of which they become, or may become, payable.

## **12 FEES**

### **12.1 Flat Fee**

The Borrower shall pay to the Facility Agent a flat fee in the amount and at the times agreed in the Fee Letter.



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**12.2 Commitment fee**

- (a) The Borrower shall pay a non-refundable commitment fee payable to the Facility Agent on behalf of the Lenders computed at the rate of 40 per cent of the Applicable Margin on that Lender's Available Commitment, from time to time for the Availability Period.
- (b) The accrued commitment fee is payable quarterly in arrears during the period commencing on (and including) the date of this Agreement to the last day of the Availability Period (and on the last day of such period) and, if cancelled, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- (c) The commitment fee shall be waived if the Loan is drawn within 10 days of the signing date of this Agreement.

## ADDITIONAL PAYMENT OBLIGATIONS

## 13 TAX GROSS UP AND INDEMNITIES

## 13.1 Definitions

(a) In this Agreement:

“**Protected Party**” means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

“**Tax Payment**” means either the increase in a payment made by an Obligor to a Finance Party under Clause 13.2 (*Tax gross-up*) or a payment under Clause 13.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 13 (*Tax Gross Up and Indemnities*) reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

## 13.2 Tax gross-up

(a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.

(c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

### 13.3 Tax indemnity

- (a) The Obligors shall (within three Business Days of demand by the Facility Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Finance Party:
    - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,  
  
if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
  - (ii) to the extent a loss, liability or cost:
    - (A) is compensated for by an increased payment under Clause 13.2 (*Tax gross-up*); or
    - (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Obligors.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 13.3 (*Tax indemnity*), notify the Facility Agent.

### 13.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was received; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

### 13.5 Stamp taxes

The Obligors shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability which that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

### 13.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this sub-paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
- (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 13.6 (VAT) to any Party shall, at any time when that Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union or equivalent provisions imposed elsewhere) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or representative or head) of that group or unity at the relevant time (as the case may be).

- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

### 13.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to sub-paragraph (i) of paragraph (a) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything and sub-paragraph (iii) of paragraph (a) above shall not oblige any other Party to do anything which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with sub-paragraphs (i) or (ii) of paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

- (e) If the Borrower is a US Tax Obligor, or the Facility Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:
- (i) where the Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
  - (ii) where the Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or
  - (iii) where the Borrower is not a US Tax Obligor, the date of a request from the Facility Agent,
- supply to the Facility Agent:
- (iv) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
  - (v) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.
- (h) The Facility Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Facility Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

### **13.8 FATCA Deduction**

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify each Obligor and the Facility Agent and the Facility Agent shall notify the other Finance Parties.

## 14 INCREASED COSTS

### 14.1 Increased costs

- (a) Subject to Clause 14.3 (*Exceptions*), the Borrowers shall, within three Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
  - (ii) compliance with any law or regulation made,
- in each case after the date of this Agreement; or
- (iii) the implementation, application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.
- (b) In this Agreement:
- (i) **“Basel III”** means:
    - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
    - (B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement—Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
    - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.
  - (ii) **“CRD IV”** means:
    - (A) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012, as amended by Regulation (EU) 2019/876;
    - (B) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended by Directive (EU) 2019/878; and
    - (C) any other law or regulation which implements Basel III.

(iii) **“Increased Costs”** means:

- (A) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
- (B) an additional or increased cost; or
- (C) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

#### **14.2 Increased cost claims**

- (a) A Finance Party intending to make a claim pursuant to Clause 14.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.

#### **14.3 Exceptions**

Clause 14.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 13.3 (*Tax indemnity*) (or would have been compensated for under Clause 13.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 13.3 (*Tax indemnity*) applied);
- (d) compensated for by any payment made pursuant to Clause 15.3 (*Mandatory Cost*); or
- (e) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

### **15 OTHER INDEMNITIES**

#### **15.1 Currency indemnity**

- (a) If any sum due from an Obligor under the Finance Documents (a **“Sum”**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **“First Currency”**) in which that Sum is payable into another currency (the **“Second Currency”**) for the purpose of:
  - (i) making or filing a claim or proof against that Obligor; or
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,



that Obligor shall, as an independent obligation, on demand, indemnify each Secured Party to which that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

## 15.2 Other indemnities

- (a) Each Obligor shall, on demand, indemnify each Secured Party against any cost, loss or liability incurred by it as a result of:
- (i) the occurrence of any Event of Default;
  - (ii) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 33 (*Sharing among the Finance Parties*);
  - (iii) funding, or making arrangements to fund, its participation in the Loan requested by the Borrower in the Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Secured Party alone); or
  - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.
- (b) Each Obligor shall, on demand, indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate (each such person for the purposes of this Clause 15.2 (*Other indemnities*) an “**Indemnified Person**”), against any cost, loss or liability incurred by that Indemnified Person pursuant to or in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry, in connection with or arising out of the entry into and the transactions contemplated by the Finance Documents, having the benefit of any Security constituted by the Finance Documents or which relates to the condition or operation of, or any incident occurring in relation to, the Ship unless such cost, loss or liability is caused by the gross negligence or wilful misconduct of that Indemnified Person.
- (c) Without limiting, but subject to any limitations set out in paragraph (b) above, the indemnity in paragraph (b) above shall cover any cost, loss or liability incurred by each Indemnified Person in any jurisdiction:
- (i) arising or asserted under or in connection with any law relating to safety at sea, the ISM Code, any Environmental Law or any Sanctions; or
  - (ii) in connection with any Environmental Claim.
- (d) Any Affiliate or any officer or employee of a Finance Party or of any of its Affiliates may rely on this Clause 15.2 (*Other indemnities*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

### 15.3 Mandatory Cost

The Borrower shall, on demand by the Facility Agent, pay to the Facility Agent for the account of the relevant Lender, such amount which any Lender certifies in a notice to the Facility Agent to be its good faith determination of the amount necessary to compensate it for complying with:

- (a) in the case of a Lender lending from a Facility Office in a Participating Member State, the minimum reserve requirements (or other requirements having the same or similar purpose) of the European Central Bank or any other authority or agency which replaces all or any of its functions) in respect of loans made from that Facility Office; and
- (b) in the case of any Lender lending from a Facility Office in the United Kingdom, any reserve asset, special deposit or liquidity requirements (or other requirements having the same or similar purpose) of the Bank of England (or any other governmental authority or agency) and/or paying any fees to the Financial Conduct Authority and/or the Prudential Regulation Authority (or any other governmental authority or agency which replaces all or any of their functions),

which, in each case, is referable to that Lender's participation in the Loan.

### 15.4 Indemnity to the Facility Agent

Each Obligor shall, on demand, indemnify the Facility Agent against:

- (a) any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of:
  - (i) investigating any event which it reasonably believes is a Default; or
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
  - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents; and
- (b) any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) or, in the case of any cost, loss or liability pursuant to Clause 34.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Finance Documents.

### 15.5 Indemnity to the Security Agent

- (a) Each Obligor shall, on demand, indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them:
  - (i) in relation to or as a result of:
    - (A) any failure by the Borrower to comply with its obligations under Clause 17 (*Costs and Expenses*);

- (B) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (C) the taking, holding, protection or enforcement of the Finance Documents and the Transaction Security;
  - (D) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
  - (E) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
  - (F) any action by any Transaction Obligor which vitiates, reduces the value of, or is otherwise prejudicial to, the Transaction Security; and
  - (G) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Finance Documents,
- (ii) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Security Property or the performance of the terms of this Agreement or the other Finance Documents (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Security Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 15.5 (*Indemnity to the Security Agent*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

## **16 MITIGATION BY THE FINANCE PARTIES**

### **16.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 13 (*Tax Gross Up and Indemnities*), Clause 14 (*Increased Costs*) or paragraph (a) of Clause 15.3 (*Mandatory Cost*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Transaction Obligor under the Finance Documents.

### **16.2 Limitation of liability**

- (a) Each Obligor shall, on demand, indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 16.1 (*Mitigation*).

- (b) A Finance Party is not obliged to take any steps under Clause 16.1 (*Mitigation*) if either:
  - (i) a Default has occurred and is continuing; or
  - (ii) in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **17 COSTS AND EXPENSES**

### **17.1 Transaction expenses**

The Obligors shall, on demand, pay the Facility Agent, the Security Agent, the Mandated Lead Arranger and the Sustainability Agent the amount of all costs and expenses (including legal fees and VAT) reasonably incurred by any Secured Party in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and
- (b) any other Finance Documents executed after the date of this Agreement.

### **17.2 Amendment costs**

Subject to Clause 17.4 (*Reference rate transition costs*), if:

- (a) a Transaction Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 34.9 (*Change of currency*); or
- (c) a Transaction Obligor requests, and the Security Agent agrees to, the release of all or any part of the Security Assets from the Transaction Security,

the Obligors shall, on demand, reimburse each of the Facility Agent and the Security Agent for the amount of all costs and expenses (including legal fees and VAT) reasonably incurred by each Secured Party in responding to, evaluating, negotiating or complying with that request or requirement.

### **17.3 Enforcement and preservation costs**

The Obligors shall, on demand, pay to each Secured Party the amount of all costs and expenses (including legal fees and VAT) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and with any proceedings instituted by or against that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

### **17.4 Reference rate transition costs**

The Borrower shall on demand reimburse each of the Facility Agent and the Security Agent for the amount of all documented costs and expenses (including legal fees and VAT) reasonably incurred by each Secured Party in connection with:

- (a) the negotiation or entry into of any Compounded Rate Supplement or Compounding Methodology Supplement; or

- 
- (b) any amendment, waiver or consent relating to:
- (i) the transition to the Compounded Rate Terms;
  - (ii) any Compounded Rate Supplement or Compounding Methodology Supplement; or
  - (iii) any change arising as a result of an amendment required under Clause 44.4 (*Changes to reference rates*).

## SECTION 7

### GUARANTEE

#### 18 GUARANTEE AND INDEMNITY

##### 18.1 Guarantee and indemnity

The Guarantor irrevocably and unconditionally:

- (a) guarantees to each Finance Party punctual performance by each Transaction Obligor other than the Guarantor of all such other Transaction Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever a Transaction Obligor other than the Guarantor does not pay any amount when due under or in connection with any Finance Document, the Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of a Transaction Obligor other than the Guarantor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 18 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

##### 18.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Transaction Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

##### 18.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Transaction Obligor or any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this Clause 18 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

##### 18.4 Waiver of defences

The obligations of the Guarantor under this Clause 18 (*Guarantee and Indemnity*) and in respect of any Transaction Security will not be affected or discharged by an act, omission, matter or thing which, but for this Clause 18.4 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Clause 18 (*Guarantee and Indemnity*) or in respect of any Transaction Security (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Transaction Obligor or other person;
- (b) the release of any other Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect or delay in perfecting, or refusal or neglect to take up or enforce, or delay in taking or enforcing any rights against, or security over assets of, any Transaction Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Transaction Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

#### **18.5 Immediate recourse**

The Guarantor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person (including without limitation to commence any proceedings under any Finance Document or to enforce any Transaction Security) before claiming or commencing proceedings under this Clause 18 (*Guarantee and Indemnity*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### **18.6 Appropriations**

Until all amounts which may be or become payable by the Transaction Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Secured Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Clause 18 (*Guarantee and Indemnity*).

### **18.7 Deferral of Guarantor's rights**

All rights which the Guarantor at any time has (whether in respect of this guarantee, a mortgage or any other transaction) against the Borrower, any other Transaction Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents and until the end of the Security Period and unless the Facility Agent otherwise directs, the Guarantor will not exercise any rights which it may have (whether in respect of any Finance Document to which it is a Party or any other transaction) by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 18 (*Guarantee and Indemnity*):

- (a) to be indemnified by a Transaction Obligor;
- (b) to claim any contribution from any third party providing security for, or any other guarantor of, any Transaction Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Transaction Obligor to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under Clause 18.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Transaction Obligor; and/or
- (f) to claim or prove as a creditor of any Transaction Obligor in competition with any Secured Party.

If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Transaction Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct for application in accordance with Clause 34 (*Payment Mechanics*).

### **18.8 Additional security**

This guarantee and any other Security given by the Guarantor is in addition to and is not in any way prejudiced by, and shall not prejudice, any other guarantee or Security or any other right of recourse now or subsequently held by any Secured Party or any right of set-off or netting or right to combine accounts in connection with the Finance Documents.

### **18.9 Applicability of provisions of Guarantee to other Security**

Clauses 18.2 (*Continuing guarantee*), 18.3 (*Reinstatement*), 18.4 (*Waiver of defences*), 18.5 (*Immediate recourse*), 18.6 (*Appropriations*), 18.7 (*Deferral of Guarantor's rights*) and 18.8 (*Additional security*) shall apply, with any necessary modifications, to any Security which the Guarantor creates (whether at the time at which it signs this Agreement or at any later time) to secure the Secured Liabilities or any part of them.



## REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

**19 REPRESENTATIONS****19.1 General**

Each Obligor makes the representations and warranties set out in this Clause 19 (*Representations*) to each Finance Party on the date of this Agreement.

**19.2 Status**

- (a) It is a corporation or limited partnership, duly incorporated or formed and validly existing in good standing under the law of its jurisdiction of incorporation.
- (b) It and each Transaction Obligor has the power to own its assets and carry on its business as it is being conducted.

**19.3 Share capital and ownership**

- (a) The Borrower is authorised to issue 500 registered and/or bearer shares of no par value common stock, all of which shares have been issued in registered form and are fully paid and non-assessable.
- (b) The legal title to and beneficial interest in the issued shares in the Borrower are held free of any Security or any other claim by the Shareholder and the Borrower is 100 per cent. owned, directly or indirectly (but if indirectly only through the Shareholder), by the Guarantor.
- (c) None of the issued shares in the Borrower are subject to any option to purchase, pre-emption rights or similar rights.

**19.4 Binding obligations**

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations.

**19.5 Validity, effectiveness and ranking of Security**

- (a) Each Finance Document to which it is a party does now or, as the case may be, will upon execution and delivery and, where applicable, registration as provided for in that Finance Document create, the Security it purports to create over any assets to which such Security, by its terms, relates, and such Security will, when created or intended to be created, be valid and effective.
- (b) No third party has or will have any Security (except for Permitted Security) over any assets that are the subject of any Transaction Security granted by it.
- (c) The Transaction Security granted by it to the Security Agent or any other Secured Party has or will when created or intended to be created have first ranking priority or such other priority it is expressed to have in the Finance Documents and is not subject to any prior ranking or *pari passu* ranking security.

- (d) No concurrence, consent or authorisation of any person is required for the creation of or otherwise in connection with any Transaction Security.

#### **19.6 Non-conflict with other obligations**

The entry into and performance by it, and the transactions contemplated by, each Transaction Document to which it is a party do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any Transaction Obligor or any member of the Group; or
- (c) any agreement or instrument binding upon it or any member of the Group or any of its assets or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument.

#### **19.7 Power and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise:
  - (i) its entry into, performance and delivery of, each Transaction Document to which it is or will be a party and the transactions contemplated by those Transaction Documents; and
  - (ii) in the case of the Borrower, its registration of the Ship under the Approved Flag.
- (b) No limit on its powers will be exceeded as a result of the borrowing, granting of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

#### **19.8 Validity and admissibility in evidence**

All Authorisations required or desirable:

- (a) to enable it to lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
- (b) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and are in full force and effect.

#### **19.9 Governing law and enforcement**

- (a) The choice of governing law of each Transaction Document to which it is a party will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in relation to a Transaction Document to which it is a party in the jurisdiction of the governing law of that Transaction Document will be recognised and enforced in its Relevant Jurisdictions.

#### **19.10 Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 27.8 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 27.9 (*Creditors' process*),  
has been taken or, to its knowledge, threatened in relation to a member of the Group; and none of the circumstances described in Clause 27.7 (*Insolvency*) applies to a member of the Group.

#### **19.11 No filing or stamp taxes**

Under the laws of its Relevant Jurisdictions it is not necessary that the Finance Documents to which it is a party be registered, filed, recorded, notarised or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated by those Finance Documents except any filing, recording or enrolling or any tax or fee payable in relation to any Transaction Obligor which is referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) and which will be made or paid promptly after the date of the relevant Finance Document.

#### **19.12 Deduction of Tax**

It is not required to make any Tax Deduction from any payment it may make under any Finance Document to which it is a party.

#### **19.13 No default**

- (a) No Event of Default and, on the date of this Agreement and on the Utilisation Date, no Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes a default or a termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which might have a Material Adverse Effect.

#### **19.14 No misleading information**

- (a) Any factual information provided by any member of the Group for the purposes of this Agreement was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) The financial projections contained in any such information have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from any such information and no information has been given or withheld that results in any such information being untrue or misleading in any material respect.

#### **19.15 Financial Statements**

- (a) The Original Financial Statements were prepared in accordance with GAAP consistently applied.
- (b) The Original Financial Statements give a true and fair view of the Group's financial condition as at the end of the relevant financial year and its and the Group's results of operations during the relevant financial year.
- (c) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Guarantor) since 31 December 2020.
- (d) Its and the Guarantor's most recent financial statements delivered pursuant to Clause 20.2 (*Financial statements*):
  - (i) have been prepared in accordance with Clause 20.4 (*Requirements as to financial statements*); and
  - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Guarantor).
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 20.2 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition (or the business or consolidated financial condition of the Group, in the case of the Guarantor).

#### **19.16 *Pari passu* ranking**

Its payment obligations under the Finance Documents to which it is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

#### **19.17 No proceedings pending or threatened**

- (a) No litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any other Transaction Obligor or any member of the Group.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it or any other Transaction Obligor or any member of the Group.

#### **19.18 Valuations**

- (a) All information supplied by it or on its behalf to an Approved Valuer for the purposes of a valuation delivered to the Facility Agent in accordance with this Agreement was true and accurate as at the date it was supplied or (if appropriate) as at the date (if any) at which it is stated to be given.

- (b) It has not omitted to supply any information to an Approved Valuer which, if disclosed, would adversely affect any valuation prepared by such Approved Valuer.
- (c) There has been no change to the factual information provided pursuant to paragraph (a) above in relation to any valuation between the date such information was provided and the date of that valuation which, in either case, renders that information untrue or misleading in any material respect.

**19.19 No breach of laws**

It has not (and no other member of the Group has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

**19.20 No Charter**

The Ship is not subject to any Charter other than a Permitted Charter.

**19.21 Compliance with Environmental Laws**

All Environmental Laws relating to the ownership, operation and management of the Ship and the business of each member of the Group (as now conducted and as reasonably anticipated to be conducted in the future) and the terms of all Environmental Approvals have been complied with.

**19.22 No Environmental Claim**

No Environmental Claim has been made or threatened against any member of the Group or the Ship which might reasonably be expected to have a Material Adverse Effect.

**19.23 No Environmental Incident**

No Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred.

**19.24 ISM and ISPS Code compliance**

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

**19.25 Taxes paid**

- (a) It is not and no other member of the Group is materially overdue in the filing of any Tax returns and it is not (and no other member of the Group is) overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or to the best of its knowledge, are reasonably likely to be, made or conducted against it (or any other member of the Group) with respect to Taxes.

#### **19.26 Financial Indebtedness**

The Borrower has no Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

#### **19.27 Overseas companies**

No Obligor has delivered particulars, whether in its name stated in the Finance Documents or any other name, of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or, if it has so registered, it has provided to the Facility Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

#### **19.28 Good title to assets**

It has good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

#### **19.29 Ownership**

- (a) The Borrower is the sole legal and beneficial owner of the Ship, the Earnings and the Insurances.
- (b) The Shareholder is the sole legal and beneficial owner of all the issued shares in the Borrower.
- (c) The Guarantor is the sole legal and beneficial owner of all the shares in the Shareholder.
- (d) With effect on and from the date of its creation or intended creation, each Transaction Obligor will be the sole legal and beneficial owner of any asset that is the subject of any Transaction Security created or intended to be created by such Transaction Obligor.
- (e) The constitutional documents of each Obligor do not and could not restrict or inhibit any transfer of the shares of the Borrower on creation or enforcement of the security conferred by the Security Documents.

#### **19.30 Centre of main interests and establishments**

For the purposes of The Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings (recast) (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is not situated in the US (save for the Guarantor) or the United Kingdom and it has no “establishment” (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

#### **19.31 Place of business**

No Transaction Obligor has a place of business in the US (save for the Guarantor) or the United Kingdom and its head office functions are carried out at the address sated in Schedule 1 Part A.

#### **19.32 No employee or pension arrangements**

No Obligor has any employees or any liabilities under any pension scheme.

### **19.33 Sanctions**

No Relevant Person is:

- (a) a Restricted Party;
- (b) in breach of Sanctions; or
- (c) to its knowledge subject to or involved in any complaint, claim, proceeding, formal notice, investigation or other action by any regulatory or enforcement authority or third party concerning any Sanctions.

### **19.34 US Tax Obligor**

No Transaction Obligor is a US Tax Obligor.

### **19.35 No Money laundering**

- (a) Each Obligor is acting for its own account in relation to the Loan and in relation to the performance and the discharge of its respective obligations and liabilities under the Finance Documents and the transactions and other arrangements effected or contemplated by the Finance Documents to which such Obligor is a party, and the foregoing will not involve or lead to contravention of any law, official requirement or other regulatory measure or procedure implemented to combat Money Laundering.
- (b) Without prejudice to any of the foregoing, none of the Transaction Obligors nor any other member of the Group and their respective members directors, officers, Subsidiaries and, to the best of their knowledge, their Affiliates or employees has engaged in any activity or conduct which would violate any applicable anti-bribery, anti-corruption or anti-Money Laundering laws, regulations or rules in any applicable jurisdiction and each of the Transaction Obligors has instituted and maintains policies and procedures designed to prevent violation of such laws, regulations and rules.

### **19.36 Repetition**

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of the Utilisation Request and the first day of each Interest Period.

## **20 INFORMATION UNDERTAKINGS**

### **20.1 General**

The undertakings in this Clause 20 (*Information Undertakings*) remain in force throughout the Security Period unless the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders), may otherwise permit.

## 20.2 Financial statements

The Guarantor shall supply to the Facility Agent in sufficient copies for all the Lenders:

- (a) as soon as they become available, but in any event within 180 days after the end of each of its financial years, commencing with the financial year ended on 31 December 2021, the annual audited consolidated financial statement of the Group for that financial year; and
- (b) as soon as the same become available, but in any event within 90 days after the end of each quarter of each of its financial years (ending 31 March, 30 June and 30 September), the unaudited consolidated quarterly financial statements of the Group for that financial quarter.

## 20.3 Compliance Certificate and Sustainability Certificate

- (a) The Guarantor shall supply to the Facility Agent, with each set of financial statements delivered pursuant to Clause 20.2 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 21 (*Financial Covenants*) as at the date as at which those financial statements were drawn up; and
- (b) The Guarantor shall supply to the Facility Agent and the Sustainability Agent, within 120 days after the last day of December in each year during the Security Period, a Sustainability Certificate signed by the Chief Financial Officer of the Guarantor and setting out the details of the AER Reference Vessels, the AER Trajectory Values, the AER Vessel Delta and the AER Delta Average, for that calendar year for the purposes of determining any Sustainable Margin Adjustment in accordance with Clause 9.6 (*Margin Adjustment*).
- (c) Each Compliance Certificate shall be signed by the Chief Financial Officer of the Guarantor and, if required to be delivered with the financial statements delivered pursuant to Clause 20.2 (*Financial statements*), shall be reported on by the Guarantor's auditors in the form agreed by the Guarantor and all the Lenders before the date of this Agreement.

## 20.4 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Guarantor pursuant to Clause 20.2 (*Financial statements*) shall be certified by an officer of the company as giving a true and fair view (if audited) or fairly representing (if unaudited) its financial condition and operations as at the date as at which those financial statements were drawn up if it has not been filed with the US Securities and Exchange Commission.
- (b) The Obligors shall procure that each set of financial statements of the Guarantor delivered pursuant to Clause 20.2 (*Financial statements*) is prepared using GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for the Group unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in GAAP, the accounting practices or reference periods, unless such change is described in the filings made with the US Securities and Exchange Commission, and its auditors (or, if appropriate, the auditors of the Guarantor) deliver to the Facility Agent:
  - (i) a description of any change necessary for those financial statements to reflect the GAAP, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
  - (ii) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Lenders to determine whether Clause 21 (*Financial Covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.



Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

## **20.5 DAC6**

- (a) In this Clause 22.6 (DAC6), “**DAC6**” means the Council Directive of 25 May 2018 (2018/822/EU) amending Directive 2011/16/EU or any replacement legislation applicable in the United Kingdom.
- (b) The Borrower shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests):
  - (i) promptly upon the making of such analysis or the obtaining of such advice, any analysis made or advice obtained on whether any transaction contemplated by the Transaction Documents or any transaction carried out (or to be carried out) in connection with any transaction contemplated by the Transaction Documents contains a hallmark as set out in Annex IV of DAC6; and
  - (ii) promptly upon the making of such reporting and to the extent permitted by applicable law and regulation, any reporting made to any governmental or taxation authority by or on behalf of any member of the Group or by any adviser to such member of the Group in relation to DAC6 or any law or regulation which implements DAC6 and any unique identification number issued by any governmental or taxation authority to which any such report has been made (if available).

## **20.6 Information: miscellaneous**

Each Obligor shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests):

- (a) all material documents dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched unless the contents of such communication have already been disclosed in the filings made with the US Securities and Exchange Commission;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations (including proceedings or investigations relating to any alleged or actual breach of the ISM Code or of the ISPS Code) which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against any member of the Group and which might have a Material Adverse Effect or which would involve a liability, a potential or alleged liability, exceeding \$1,000,000 (or its equivalent in any other currency or currencies);
- (d) promptly, its constitutional documents where these have been amended or varied unless, in respect of the Guarantor, these changes have been disclosed in the filings with the US Securities and Exchange Commission;

- (e) promptly, such further information and/or documents regarding:
  - (i) the Ship, goods transported on the Ship, the Earnings or the Insurances;
  - (ii) the Security Assets;
  - (iii) compliance of the Transaction Obligors with the terms of the Finance Documents;
  - (iv) the financial condition, business and operations of any member of the Group,as any Finance Party (through the Facility Agent) may reasonably request; and
- (f) promptly, such further information and/or documents as any Finance Party (through the Facility Agent) may reasonably request so as to enable such Finance Party to comply with any laws applicable to it or as may be required by any regulatory authority.

#### **20.7 Notification of Default**

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor shall, notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Facility Agent, the Borrower shall supply to the Facility Agent a certificate signed by an officer on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

#### **20.8 Use of websites**

- (a) Each Obligor may satisfy its obligation under the Finance Documents to which it is a party to deliver any information in relation to those Lenders (the “**Website Lenders**”) which accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Facility Agent (the “**Designated Website**”) if:
  - (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
  - (ii) both the relevant Obligor and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
  - (iii) the information is in a format previously agreed between the relevant Obligor and the Facility Agent.

If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then the Facility Agent shall notify the Obligors accordingly and each Obligor shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event each Obligor shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Obligors or any of them and the Facility Agent.

- (c) An Obligor shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
- (i) the Designated Website cannot be accessed due to technical failure;
  - (ii) the password specifications for the Designated Website change;
  - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
  - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
  - (v) if that Obligor becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If an Obligor notifies the Facility Agent under sub-paragraph (i) or (v) of paragraph (c) above, all information to be provided by the Obligors under this Agreement after the date of that notice shall be supplied in paper form unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Obligors shall comply with any such request within 10 Business Days.

## **20.9 “Know your customer” checks**

- (a) If:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
  - (ii) any change in the status of a Transaction Obligor (including, without limitation, a change of ownership of a Transaction Obligor save for the Guarantor) after the date of this Agreement; or
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges a Finance Party (or, in the case of sub-paragraph (iii) above, any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of any Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by a Servicing Party (for itself or on behalf of any other Finance Party) or any Lender (for itself or, in the case of the event described in sub-paragraph (iii) above, on behalf of any prospective new Lender) in order for such Finance Party or, in the case of the event described in sub-paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of a Servicing Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Servicing Party (for itself) in order for that Servicing Party to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

## 21 FINANCIAL COVENANTS

### 21.1 Financial Covenants

The Guarantor shall ensure that at all times during the Security Period:

- (a) the members of the Group will maintain Liquid Funds in an amount equal to at least the product of \$500,000 and the total number of Fleet Vessels at that time;
- (b) the Market Value Adjusted Leverage shall be no greater than 75 per cent.;
- (c) the Interest Cover Ratio shall be at least 2:1; and
- (d) the Net Worth shall be at least \$135,000,000.

### 21.2 Compliance Check

Compliance with the undertakings contained in Clause 21.1 (*Financial Covenants*) shall be determined on each Test Date and evidenced by the Compliance Certificate.

### 21.3 Definitions

In this Clause 21 (*Financial Covenants*):

“**EBITDA**” means, in respect of the Guarantor for any Relevant Period, the aggregate amount of combined pre-tax profits of the Group before extraordinary or exceptional items, interest, depreciation and amortisation as shown, at any relevant time, by the Latest Accounts.

“**Fleet Vessels**” means any ship (including, but not limited to, the Ship) from time to time wholly owned by members of the Group and, in the singular, means any of them.

“**Interest**” means, as at the date of calculation or for any accounting period, the aggregate interest expense less any interest income as shown in the most recent accounting information.

“**Interest Cover Ratio**” means, by reference to a Test Date, the ratio of EBITDA to Interest on a trailing four-quarter basis.

“**Latest Accounts**” means, in respect of any financial quarter or year of the Group, the latest unaudited (in respect of each financial quarter) or audited (in respect of each financial year) financial statements required to be prepared pursuant to Clause 20.2 (*Financial statements*).

“**Liquid Funds**” means, as at the date of calculation or, as the case may be, for any accounting period, the aggregate of any cash deposits legally or beneficially held by all members of the Group and including any funds held by the Facility Agent and other banks from time to time as minimum liquidity requirements.

“**Market Value Adjusted Leverage**” means, at any relevant time, the ratio of:

- (a) the Total Liabilities Adjusted; to
- (b) the Market Value Adjusted Total Assets.

**“Market Value Adjusted Total Assets”** means, at any time, Total Assets adjusted to reflect the difference between the book values of all Fleet Vessels and the aggregate market value of all Fleet Vessels as provided in the Latest Accounts but excluding from the Total Assets up to five vessels chartered-into the Group whose charters have purchase options exercisable within five years from the effectiveness of the charters (each a **“Chartered-in Vessel”**). Where there are more than five Chartered-in Vessels, any additional vessel chartered into the Group shall, unless otherwise agreed with the Facility Agent, be included within the Total Assets.

**“Net Worth”** means the amount by which the Total Assets exceed the Total Liabilities.

**“Relevant Period”** means, by reference to a Test Date, each period of three months ending on that Test Date.

**“Test Date”** means 31 March, 30 June, 30 September and 31 December, being the last day of the financial quarter to which the Latest Accounts relate commencing with 30 September 2021 (in the event that the Loan is drawn prior to such date) or 31 December 2021 (in the event that the Loan is drawn after 30 September 2021).

**“Total Assets”** means, as at the Test Date, as at the date of calculation or, as the case may be, for any accounting period, the total assets of the Group (including, without limitation, the Ship) as at that date (based on book values) or for that period (which shall have the meaning given thereto under the GAAP) as shown in the Latest Accounts.

**“Total Liabilities”** means, as at the Test Date or, as the case may be, for any accounting period, the total liabilities of the Group as at that date or for that period (which shall have the meaning given thereto under GAAP) as shown in the Latest Accounts but excluding from the Total Liabilities the liabilities arising under up to five Chartered-in Vessels. Where there are more than five Chartered-in Vessels, any liabilities arising under any additional vessel chartered into the Group shall, unless otherwise agreed with the Facility Agent, be included within the Total Liabilities.

**“Total Liabilities Adjusted”** means, as at the Test Date, the Total Liabilities excluding the amount which appears as deferred revenue and relates to the compensation received in respect of m.vs. “HYUNDAI BUSAN”, “HYUNDAI SINGAPORE”, “HYUNDAI SHANGHAI”, “HYUNDAI TOKYO” and “HYUNDAI HONG KONG”, in each case, as such amount reduces from time to time.

## 22 GENERAL UNDERTAKINGS

### 22.1 General

The undertakings in this Clause 21.1 (*General Undertakings*) remain in force throughout the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

### 22.2 Authorisations

Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Facility Agent of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction or the state of the Approved Flag at any time of the Ship to enable it to:

- (i) perform its obligations under the Transaction Documents to which it is a party;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence in any Relevant Jurisdiction and in the state of the Approved Flag at any time of the Ship of any Transaction Document to which it is a party; and
- (iii) own and operate the Ship (in the case of the Borrower).

### **22.3 Compliance with laws**

Each Obligor shall, and shall procure that each other Transaction Obligor will, comply in all respects with:

- (a) all Sanctions Laws to which it may be subject, and
- (b) all other laws and regulations to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

### **22.4 Environmental compliance**

Each Obligor shall, and shall procure that each other Transaction Obligor will, and the Guarantor shall ensure that each other member of the Group will:

- (a) comply with all Environmental Laws;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Approvals;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law, where failure to do so has or is reasonably likely to have a Material Adverse Effect.

### **22.5 Environmental Claims**

Each Obligor shall, and shall procure that each other Transaction Obligor will, (through the Guarantor), promptly upon becoming aware of the same, inform the Facility Agent in writing of:

- (a) any Environmental Claim against any member of the Group which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

## 22.6 Taxation

- (a) Each Obligor shall, and shall procure that each other Transaction Obligor will pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
- (i) such payment is being contested in good faith;
  - (ii) adequate reserves are maintained for those Taxes and the costs required to contest them and both have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 20.2 (*Financial statements*); and
  - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) No Obligor shall change its residence for Tax purposes.

## 22.7 Overseas companies

Each Obligor shall, and shall procure that each other Transaction Obligor will, promptly inform the Facility Agent if it delivers to the Registrar particulars required under the Overseas Regulations of any UK Establishment and it shall comply with any directions given to it by the Facility Agent regarding the recording of any Transaction Security on the register which it is required to maintain under The Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009.

## 22.8 No change to centre of main interests

No Obligor shall change the location of its centre of main interest (as that term is used in Article 3(1) of the Regulation) from that stated in relation to it in Clause 19.30 (*Centre of main interests and establishments*) and it will create no “**establishment**” (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

## 22.9 *Pari passu* ranking

Each Obligor shall and shall procure that each other Transaction Obligor will, ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

## 22.10 Title

- (a) The Borrower shall hold the legal title to, and own the entire beneficial interest in:
- (i) the Ship, the Earnings and the Insurances; and
  - (ii) with effect on and from its creation or intended creation, any other assets the subject of any Transaction Security created or intended to be created by the Borrower.
- (b) The Guarantor shall hold the legal title to, and own the entire beneficial interest in with effect on and from its creation or intended creation, any assets the subject of any Transaction Security created or intended to be created by the Guarantor.

### **22.11 Negative pledge**

- (a) No Obligor shall, and the Obligors shall procure that no other Transaction Obligor will, (and the Guarantor shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets which are, in the case of members of the Group other than the Borrower, the subject of the Security created or intended to be created by the Finance Documents.
- (b) The Borrower shall not:
- (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by a Transaction Obligor or any other member of the Group;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect,
- in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Permitted Security.

### **22.12 Disposals**

- (a) The Borrower shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset (including without limitation the Ship, the Earnings or the Insurances).
- (b) Paragraph (a) above does not apply to any Charter as all Charters are subject to Clause 24.16 (*Restrictions on chartering, appointment of managers etc.*).

### **22.13 Merger**

No Obligor shall enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction except in circumstances where the Guarantor is the surviving entity of any such event and there is no Material Adverse Effect on the Guarantor.

### **22.14 Change of business**

- (a) The Guarantor shall procure that no substantial change is made to the general nature of the business of the Guarantor or the Group from that carried on at the date of this Agreement.
- (b) The Borrower shall not engage in any business other than the ownership and operation of the Ship.

### **22.15 Financial Indebtedness**

The Borrower shall not incur or permit to be outstanding any Financial Indebtedness except Permitted Financial Indebtedness.



**22.16 Expenditure**

The Borrower shall not incur any expenditure, except for expenditure reasonably incurred in the ordinary course of owning, operating, maintaining and repairing the Ship.

**22.17 Share capital**

The Borrower shall not:

- (a) purchase, cancel, redeem or retire any of its issued shares;
- (b) increase or reduce the number of shares that it is authorized to issue or change the par value of such shares or create any new class of shares;
- (c) issue any further shares except to the Shareholder and provided such new shares are made subject to the terms of the Shares Security immediately upon the issue of such new shares in a manner satisfactory to the Security Agent and the terms of the Shares Security are complied with; or
- (d) appoint any further director, officer or secretary (unless the provisions of the Shares Security are complied with).

**22.18 Dividends**

- (a) No Obligor shall, following the occurrence of an Event of Default (which has been notified by the Facility Agent to the Borrower):
  - (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its issued shares (or any class of its shares);
  - (ii) repay or distribute any dividend or share premium reserve; or
  - (iii) redeem, repurchase, defease, retire or repay any of its issued shares or resolve to do so.
- (b) The Guarantor shall not (and shall procure that no other member of the Group shall) enter into any other facility agreement pursuant to the terms and conditions of which the Guarantor or that other member of the Group will be restricted from paying dividends, other than following the occurrence of an Event of Default.

**22.19 Other transactions**

The Borrower shall not:

- (a) be the creditor in respect of any loan or any form of credit to any person other than another Obligor and where such loan or form of credit is in the ordinary course of its business and in a manner acceptable to the Facility Agent;
- (b) give or allow to be outstanding any guarantee or indemnity in the ordinary course of business in aggregate not more than \$500,000 to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which the Borrower assumes any liability of any other person other than any guarantee or indemnity given under the Finance Documents;

- (c) enter into any material agreement other than:
  - (i) the Transaction Documents;
  - (ii) any other agreement expressly allowed under any other term of this Agreement; and
- (d) enter into any transaction on terms which are, in any respect, less favourable to the Borrower than those which it could obtain in a bargain made at arms' length; or
- (e) acquire any shares or other securities other than US or UK Treasury bills and certificates of deposit issued by major North American or European banks.

**22.20 Unlawfulness, invalidity and ranking; Security imperilled**

No Obligor shall, and the Obligors shall procure that no other Transaction Obligor will, do (or fail to do) or cause or permit another person to do (or omit to do) anything which is likely to:

- (a) make it unlawful for a Transaction Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of a Transaction Obligor under the Transaction Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Finance Documents;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Transaction Security to rank after, or lose its priority to, any other Security; and
- (e) imperil or jeopardise the Transaction Security.

**22.21 Further assurance**

- (a) Each Obligor shall (and the Guarantor shall procure that each member of the Group will) promptly, and in any event within the time period specified by the Security Agent do all such acts (including procuring or arranging any registration, notarisation or authentication or the giving of any notice) or execute or procure execution of all such documents (including assignments, transfers, mortgages, charges, notices, instructions, acknowledgments, proxies and powers of attorney), as the Security Agent may specify (and in such form as the Security Agent may require in favour of the Security Agent or its nominee(s)):
  - (i) to create, perfect, vest in favour of the Security Agent or protect the priority of the Security or any right of any kind created or intended to be created under or evidenced by the Finance Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of any of the Secured Parties provided by or pursuant to the Finance Documents or by law;

- (ii) to confer on the Security Agent or confer on the Secured Parties Security over any property and assets of that Transaction Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Finance Documents;
  - (iii) to facilitate or expedite the realisation and/or sale of, the transfer of title to or the grant of, any interest in or right relating to the assets which are, or are intended to be, the subject of the Transaction Security or to exercise any power specified in any Finance Document in respect of which the Security has become enforceable; and/or
  - (iv) to enable or assist the Security Agent to enter into any transaction to commence, defend or conduct any proceedings and/or to take any other action relating to any item of the Security Property.
- (b) Each Obligor shall, and shall procure that each other Transaction Obligor will, (and the Guarantor shall procure that each member of the Group will) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to the Finance Documents.
- (c) At the same time as an Obligor delivers to the Security Agent any document executed by itself or another Transaction Obligor pursuant to this Clause 22.21 (*Further assurance*), that Obligor shall deliver, or shall procure that such other Transaction Obligor will deliver, to the Security Agent a certificate signed by one of that Obligor's or Transaction Obligor's officers which shall:
- (i) set out the text of a resolution of that Obligor's or Transaction Obligor's directors specifically authorising the execution of the document specified by the Security Agent; and
  - (ii) state that either the resolution was duly passed at a meeting of the directors validly convened and held, throughout which a quorum of directors entitled to vote on the resolution was present, or that the resolution has been signed by all the directors or officers and is valid under that Obligor's or Transaction Obligor's articles of incorporation or limited partnership agreement, as applicable.

#### **22.22 Money Laundering**

The Obligors undertake throughout the Security Period to:

- (a) provide the Lenders with information, certificates and any documents required by the Lenders to ensure compliance with any law, official requirement or other regulatory measure or procedure implemented to combat Money Laundering; and
- (b) notify the Lenders as soon as it becomes aware of any matters evidencing that a breach of any law, official requirement or other regulatory measure or procedure implemented to combat Money Laundering may or is about to occur.

#### **22.23 Sanctions**

- (a) No Obligor shall (and the Borrower shall ensure that no other Relevant Person will) take any action, make any omission or use (directly or indirectly) any proceeds of the Loan, in a manner that:

- (i) is a breach of Sanctions; and/or
  - (ii) causes (or will cause) a breach of Sanctions by any Finance Party.
- (b) No Obligor shall (and the Borrower shall ensure that no other Relevant Person will) take any action or make any omission that results, or is reasonably likely to result, in it or any Finance Party becoming a Restricted Party.

#### **22.24 Use of proceeds**

No proceeds of the Loan shall be lent, contributed or otherwise made available, directly or indirectly, to or for the benefit of a Restricted Party (including to fund any activities or business of a Restricted Party) nor shall they be lent, contributed or otherwise made available, directly or indirectly, to any person or otherwise be applied (i) to fund any activities or business in any country or territory, that, at the time of such funding, is a country or territory which is subject to Sanctions Laws or (ii) in any other manner that would result in a violation of Sanctions Laws by any person (including any person participating in the Loan, whether as a Finance Party or otherwise) or otherwise in a manner or for a purpose prohibited by Sanctions Laws including, but not limited to, in using any benefits of any money, proceeds or services provided by, or received from, the Lenders under this Agreement, in business activities (including, but not limited to, entering into any ship finance acquisition agreement, ship refinancing agreement or charter agreement relating to a vessel, project or asset) subject to Sanctions Laws or related to a country which is subject to Sanctions Laws and/or a Restricted Party.

#### **22.25 Anti-corruption law**

- (a) No Transaction Obligor shall directly or indirectly use the proceeds of the Facility for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.
- (b) Each Transaction Obligor shall:
- (i) conduct its business in compliance with applicable anti-corruption laws; and
  - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

#### **22.26 Listing of Guarantor**

The Guarantor shall ensure that its shares are listed on the New York Stock Exchange, US Stock Exchange or any other stock exchange acceptable to the Facility Agent.

### **23 INSURANCE UNDERTAKINGS**

#### **23.1 General**

The undertakings in this Clause 23 (*Insurance Undertakings*) remain in force throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

### 23.2 Maintenance of obligatory insurances

The Borrower shall keep the Ship insured at its expense against:

- (a) hull and machinery plus freight interest and hull interest and any other usual marine risks (including excess risks);
- (b) war risks, including blocking and trapping and to cover piracy and terrorism if those risks are excluded from fire and usual marine risks cover;
- (c) protection and indemnity risks (including freight, demurrage and defence cover without exclusion of any Environmental Incident) with a protection and indemnity association being a member of the international Group of Protection and Indemnity Clubs); and
- (d) any other risks against which the Facility Agent acting on the instructions of the Majority Lenders considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for the Borrower to insure and which are specified by the Facility Agent by notice to the Borrower.

### 23.3 Terms of obligatory insurances

The Borrower shall effect such insurances:

- (a) in dollars;
- (b) in the case of fire and usual marine risks and war risks (the “**Agreed Insured Value**”), in an amount on an agreed value basis at least the greater of:
  - (i) 120 per cent. of the Loan; and
  - (ii) the Market Value of the Ship;
- (c) in the case of hull and machinery insurance, in an amount on an agreed value basis of at least 70 per cent. of the Agreed Insured Value with the remainder of that Agreed Insured Value being covered by hull interest and freight interest covers;
- (d) in the case of oil pollution liability risks, for an aggregate amount equal to the highest level of cover from time to time available under basic protection and indemnity club entry and in the international marine insurance market;
- (e) in the case of protection and indemnity risks, in respect of the full tonnage of the Ship;
- (f) on approved terms; and
- (g) through Approved Brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations.

### 23.4 Further protections for the Finance Parties

In addition to the terms set out in Clause 23.3 (*Terms of obligatory insurances*), the Borrower shall procure that the obligatory insurances shall:

- (a) subject always to paragraph (b), name the Borrower, the Guarantor or any Approved Manager as the named assured or co-assureds unless the interest of every other named assured is limited:
  - (i) in respect of any obligatory insurances for hull and machinery and war risks;

- (A) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and
  - (B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and
- (ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;

and every other named insured has undertaken in writing to the Security Agent (in such form as it requires) that any deductible shall be apportioned between the Borrower and every other named insured in proportion to the gross claims made or paid by each of them and that it shall do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances;

- (b) whenever the Facility Agent requires, name (or be amended to name) the Security Agent as additional named insured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Agent, but without the Security Agent being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (c) name the Security Agent as loss payee with such directions for payment as the Facility Agent may specify;
- (d) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Agent shall be made without set off, counterclaim or deductions or condition whatsoever;
- (e) provide that the obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Agent or any other Finance Party; and
- (f) provide that the Security Agent may make proof of loss if the Borrower fails to do so.

### **23.5 Renewal of obligatory insurances**

The Borrower shall:

- (a) at least 21 days before the expiry of any obligatory insurance:
  - (i) notify the Facility Agent of the Approved Brokers (or other insurers) and any protection and indemnity or war risks association through or with which it proposes to renew that obligatory insurance and of the proposed terms of renewal; and
  - (ii) obtain the Facility Agents' approval to the matters referred to in sub-paragraph (i) above;
- (b) at least 14 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Facility Agent's approval pursuant to paragraph (a) above; and

- (c) procure that the Approved Brokers and/or the approved war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Facility Agent in writing of the terms and conditions of the renewal.

### **23.6 Copies of policies; letters of undertaking**

The Borrower shall ensure that the Approved Brokers provide the Security Agent with:

- (a) *pro forma* copies of all policies relating to the obligatory insurances which they are to effect or renew; and
- (b) a letter or letters or undertaking in a form required by the Facility Agent and including undertakings by the Approved Brokers that:
  - (i) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of Clause 23.4 (*Further protections for the Finance Parties*);
  - (ii) they will hold such policies, and the benefit of such insurances, to the order of the Security Agent in accordance with such loss payable clause;
  - (iii) they will advise the Security Agent immediately of any material change to the terms of the obligatory insurances;
  - (iv) they will, if they have not received notice of renewal instructions from the relevant Borrower or its agents, notify the Security Agent not less than 14 days before the expiry of the obligatory insurances;
  - (v) if they receive instructions to renew the obligatory insurances, they will promptly notify the Facility Agent of the terms of the instructions;
  - (vi) they will not set off against any sum recoverable in respect of a claim relating to the Ship under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of the Ship or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts; and
  - (vii) they will arrange for a separate policy to be issued in respect of that Ship forthwith upon being so requested by the Facility Agent.

### **23.7 Copies of certificates of entry**

The Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship is entered provide the Security Agent with:

- (a) a certified copy of the certificate of entry for the Ship;
- (b) a letter or letters of undertaking in such form as may be required by the Facility Agent acting on the instructions of Majority Lenders; and

- (c) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to the Ship.

**23.8 Deposit of original policies**

The Borrower shall ensure that all policies relating to obligatory insurances are deposited with the Approved Brokers through which the insurances are effected or renewed.

**23.9 Payment of premiums**

The Borrower shall punctually pay all premiums or other sums payable in respect of the obligatory insurances and produce all relevant receipts when so required by the Facility Agent or the Security Agent.

**23.10 Guarantees**

The Borrower shall ensure that any guarantees required by a protection and indemnity or war risks association are promptly issued and remain in full force and effect.

**23.11 Compliance with terms of insurances**

- (a) The Borrower shall not do or omit to do (nor permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable under an obligatory insurance repayable in whole or in part.
- (b) Without limiting paragraph (a) above, the Borrower shall:
- (i) take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and (without limiting the obligation contained in sub-paragraph (iii) of paragraph (b) of Clause 23.6 (*Copies of policies; letters of undertaking*)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Facility Agent has not given its prior approval;
  - (ii) not make any changes relating to the classification or classification society or manager or operator of the Ship approved by the underwriters of the obligatory insurances;
  - (iii) make (and promptly supply copies to the Facility Agent of) all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and
  - (iv) not employ the Ship, nor allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory insurances, without first obtaining the consent of the insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.



**23.12 Alteration to terms of insurances**

The Borrower shall not make or agree to any alteration to the terms of any obligatory insurance or waive any right relating to any obligatory insurance.

**23.13 Settlement of claims**

The Borrower shall:

- (a) not settle, compromise or abandon any claim under any obligatory insurance for Total Loss or for a Major Casualty; and
- (b) do all things necessary and provide all documents, evidence and information to enable the Security Agent to collect or recover any moneys which at any time become payable in respect of the obligatory insurances.

**23.14 Provision of copies of communications**

The Borrower shall provide the Security Agent, at the time of each such communication, with copies of all written communications between the Borrower and:

- (a) the Approved Brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters,  
which relate directly or indirectly to:
  - (i) the Borrower's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls; and
  - (ii) any credit arrangements made between the Borrower and any of the persons referred to in paragraphs (a) or (b) above relating wholly or partly to the effecting or maintenance of the obligatory insurances.

**23.15 Provision of information**

The Borrower shall promptly provide the Facility Agent (or any persons which it may designate) with any information which the Facility Agent (or any such designated person) requests for the purpose of:

- (a) obtaining or preparing any report from an independent marine insurance broker as to the adequacy of the obligatory insurances effected or proposed to be effected; and/or
- (b) effecting, maintaining or renewing any such insurances as are referred to in Clause 23.16 (*Mortgagee's interest and additional perils insurances*) or dealing with or considering any matters relating to any such insurances,

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

### 23.16 Mortgagee's interest and additional perils insurances

- (a) The Security Agent shall be entitled from time to time to effect, maintain and renew a mortgagee's interest marine insurance and a mortgagee's interest additional perils insurance in such amounts, on such terms, through such insurers and generally in such manner as the Security Agent acting on the instructions of the Majority Lenders may reasonably from time to time consider appropriate.
- (b) Each of the insurances referred to in paragraph (a) above shall be in an amount of not less than 120 per cent. of the Loan aggregate (A) of the Loan and (B) any Available Facility.
- (c) The Borrower shall upon demand fully indemnify the Security Agent in respect of all premiums and other expenses which are incurred in connection with or with a view to effecting, maintaining or renewing any insurance referred to in paragraph (a) above or dealing with, or considering, any matter arising out of any such insurance.

## 24 SHIP UNDERTAKINGS

### 24.1 General

The undertakings in this Clause 24 (*Ship Undertakings*) remain in force throughout the rest of the Security Period except as the Facility Agent, acting with the authorisation of the Majority Lenders (or, where specified, all the Lenders) may otherwise permit.

### 24.2 Ship's names and registration

The Borrower shall:

- (a) keep the Ship registered in its name under the Approved Flag from time to time at its port of registration;
- (b) not do or allow to be done anything as a result of which such registration might be suspended, cancelled or imperilled;
- (c) not enter into any dual flagging arrangement in respect of the Ship; and
- (d) not change the name of the Ship,

**Provided that** any change of flag of the Ship shall be subject to:

- (i) the Ship remaining subject to Security securing the Secured Liabilities created by a first priority or preferred ship mortgage on that Ship and, if appropriate, a first priority Deed of Covenant collateral to that mortgage (or equivalent first priority Security) on substantially the same terms as the Mortgage and, if applicable, related Deed of Covenant on such other terms and in such other form as the Facility Agent, acting with the authorisation of the Majority Lenders, shall approve or require; and
- (ii) the execution of such other documentation amending and supplementing the Finance Documents as the Facility Agent, acting with the authorisation of the Majority Lenders, shall approve or require.

### **24.3 Repair and classification**

The Borrower shall keep the Ship in a good and safe condition and state of repair:

- (a) consistent with first class ship ownership and management practice; and
- (b) so as to maintain the Approved Classification free of overdue recommendations and conditions.

### **24.4 Classification society undertaking**

The Borrower shall instruct the Approved Classification Society:

- (a) to send to the Security Agent, following receipt of a written request from the Security Agent, certified true copies of all original class records held by the Approved Classification Society in relation to the Ship;
- (b) to allow the Security Agent (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 Approved Classification Society and to take copies of them;
- (c) to notify the Security Agent immediately in writing if the Approved Classification Society:
  - (i) receives notification from the Borrower or any person that the Ship's Approved Classification Society is to be changed; or
  - (ii) becomes aware of any facts or matters which may result in or have resulted in a change, suspension, discontinuance, withdrawal or expiry of the Ship's class under the rules or terms and conditions of the Borrower or the Ship's membership of the Approved Classification Society;
- (d) following receipt of a written request from the Security Agent:
  - (i) to confirm that the Borrower is not in default of any of its contractual obligations or liabilities to the Approved Classification Society, including confirmation that it has paid in full all fees or other charges due and payable to the Approved Classification Society; or
  - (ii) to confirm that the Borrower is in default of any of its contractual obligations or liabilities to the Approved Classification Society, to specify to the Security Agent in reasonable detail the facts and circumstances of such default, the consequences of such default, and any remedy period agreed or allowed by the Approved Classification Society.

### **24.5 Modifications**

The Borrower shall not make any modification or repairs to, or replacement of, the Ship or equipment installed on it which would or might materially alter the structure, type or performance characteristics of the Ship or materially reduce its value.

#### **24.6 Removal and installation of parts**

- (a) Subject to paragraph (b) below, the Borrower shall not remove any material part of the Ship, or any item of equipment installed on the Ship unless:
- (i) the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed;
  - (ii) the replacement part or item is free from any Security in favour of any person other than the Security Agent; and
  - (iii) the replacement part or item becomes, on installation on the Ship, the property of the Borrower and subject to the security constituted by the Mortgage and, if applicable, the related Deed of Covenant.
- (b) The Borrower may install equipment owned by a third party if the equipment can be removed without any risk of damage to the Ship.

#### **24.7 Surveys**

The Borrower shall submit the Ship regularly to all periodic or other surveys which may be required for classification purposes and, if so required by the Facility Agent acting on the instructions of the Majority Lenders, provide the Facility Agent, with copies of all survey reports.

#### **24.8 Inspection**

The Borrower shall permit the Security Agent (acting through surveyors or other persons appointed by it for that purpose) to board the Ship at all reasonable times to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections. The cost of the inspection shall be borne by the Borrower once per annum, unless an Event of Default has occurred, in which case the cost of all inspections while the Event of Default is continuing shall be borne by the Borrower.

#### **24.9 Prevention of and release from arrest**

- (a) The Borrower shall, promptly discharge:
- (i) all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against the Ship, the Earnings or the Insurances;
  - (ii) all Taxes, dues and other amounts charged in respect of the Ship, the Earnings or the Insurances; and
  - (iii) all other outgoings whatsoever in respect of the Ship, the Earnings or the Insurances.
- (b) The Borrower shall immediately upon receiving notice of the arrest of the Ship or of its detention in exercise or purported exercise of any lien or claim, take all steps necessary to procure its release by providing bail or otherwise as the circumstances may require.

#### **24.10 Compliance with laws etc.**

The Borrower shall:

- (a) comply, or procure compliance with all laws or regulations:
  - (i) relating to its business generally; and
  - (ii) relating to the Ship, its ownership, employment, operation, management and registration, including, but not limited to, the ISM Code, the ISPS Code, all Environmental Laws, all Sanctions and the laws of the Approved Flag;
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environmental Approvals; and
- (c) without limiting paragraph (a) above, not employ the Ship owned by it nor allow its employment, operation or management in any manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and Sanctions (or which would be contrary to Sanctions if Sanctions were binding on each Transaction Obligor).

#### **24.11 ISPS Code**

Without limiting paragraph (a) of Clause 24.10 (*Compliance with laws etc.*), the Borrower shall:

- (a) procure that the Ship and the company responsible for the Ship's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain an ISSC for the Ship; and
- (c) notify the Facility Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

#### **24.12 Sanctions and Ship trading**

Without limiting Clause 24.10 (*Compliance with laws etc.*), the Borrower shall procure:

- (a) that the Ship owned shall not be used by or for the benefit of a Prohibited User;
- (b) that the Ship shall not be used in trading in any manner contrary to Sanctions (or which could be contrary to Sanctions if Sanctions were binding on each Transaction Obligor);
- (c) that the Ship shall not be traded in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in the Insurances; and
- (d) that each Charter in respect of that Ship shall contain, for the benefit of the Borrower, language which gives effect to the provisions of paragraph (c) of Clause 24.10 (*Compliance with laws etc.*) as regards Sanctions and of this Clause 24.12 (*Sanctions and Ship trading*) and which permits refusal of employment or voyage orders if compliance would result in a breach of Sanctions (or which would result in a breach of Sanctions if Sanctions were binding on each Obligor).

#### **24.13 Trading in war zones**

- (a) In the event of hostilities in any part of the world (whether war is declared or not), the Borrower shall not cause or permit the Ship to enter or trade to any zone which is declared a war zone by any government or by the Ship's war risks insurers unless:
- (b) the prior written consent of the Security Agent acting on the instructions of the Majority Lenders has been given; and
- (c) the Borrower has (at its expense) effected any special, additional or modified insurance cover which the Security Agent acting on the instructions of the Majority Lenders may require.

#### **24.14 Provision of information**

Without prejudice to Clause 20.5 (*Information: miscellaneous*) the Borrower shall promptly provide the Facility Agent with any information which it requests regarding:

- (a) the Ship, its employment, position and engagements;
- (b) the Earnings and payments and amounts due to its master and crew;
- (c) any expenditure incurred, or likely to be incurred, in connection with the operation, maintenance or repair of the Ship and any payments made by it in respect of the Ship;
- (d) any towages and salvages; and
- (e) its compliance, the Approved Manager's compliance and the compliance of the Ship with the ISM Code and the ISPS Code, and, upon the Facility Agent's request, promptly provide copies of any current Charter, of any current guarantee of any such Charter, the Ship's Safety Management Certificate and any relevant Document of Compliance.

#### **24.15 Notification of certain events**

The Borrower shall immediately notify the Facility Agent by fax, confirmed forthwith by letter, of:

- (a) any casualty to the Ship which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which the Ship has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requisition of the Ship for hire;
- (d) any requirement or recommendation made in relation to the Ship by any insurer or classification society or by any competent authority which is not immediately complied with;
- (e) any arrest or detention of the Ship or any exercise or purported exercise of any lien on the Ship or the Earnings;
- (f) any intended dry docking of the Ship;

- (g) any Environmental Claim made against the Borrower or in connection with the Ship, or any Environmental Incident;
- (h) any claim for breach of the ISM Code or the ISPS Code being made against the Borrower, an Approved Manager or otherwise in connection with the Ship; or
- (i) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with,

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

#### **24.16 Restrictions on chartering, appointment of managers etc.**

The Borrower shall not:

- (a) let the Ship on demise charter for any period or charter-in any vessel;
- (b) enter into any time, voyage or consecutive voyage charter in respect of the Ship other than a Permitted Charter;
- (c) materially amend, supplement or terminate a Management Agreement if such amendment, supplement or termination causes the occurrence of an Event of Default;
- (d) appoint a manager of the Ship other than the Approved Manager;
- (e) de activate or lay up the Ship; or
- (f) put the Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed \$750,000 (or the equivalent in any other currency) unless the Borrower ensures that that person has first given to the Security Agent and in terms satisfactory to it a written undertaking not to exercise any lien on the Ship or the Earnings for the cost of such work or for any other reason.

#### **24.17 Notice of Mortgage**

The Borrower shall keep the Mortgage registered against the Ship as a valid first preferred mortgage, carry on board that Ship a certified copy of the Mortgage and place and maintain in a conspicuous place in the navigation room and the master's cabin of the Ship a framed printed notice stating that the Ship is mortgaged by the Borrower to the Security Agent.

#### **24.18 Sharing of Earnings**

The Borrower shall not enter into any agreement or arrangement for the sharing of any Earnings other than any profit sharing arrangements on arm's length terms.

#### **24.19 Charterparty Assignment**

If the Borrower enters into an Assignable Charter the Borrower shall promptly after the date of such Assignable Charter enter into a Charterparty Assignment and the assignment contemplated thereunder shall be notified to the relevant charterer and any charter guarantor in accordance with the terms of such Charterparty Assignment and the Borrower shall use its

commercially reasonable endeavours to obtain an acknowledgment of that Charterparty Assignment from the relevant charterer and/or charter guarantor, and shall additionally deliver to the Facility Agent such other documents equivalent to those referred to at paragraphs 1.2, 1.3, 1.5, 1.8, 2, 6.2 and 6.7 of Part A of Schedule 2 (*Conditions*) as the Facility Agent may require.

#### **24.20 IHM**

The Borrower shall ensure that the Ship carries an IHM classification from the Approved Classification Society from the date of completion of the first dry docking of the Ship after the date of this Agreement and at all times thereafter and shall promptly deliver to the Facility Agent upon its request a copy of the class report noting the same.

#### **24.21 Dismantling of Ships**

The Obligors confirm that they will procure that the Ship and any other Group Vessel will be or, if sold to an intermediary with the intention of being scrapped, will use their best endeavours that the Ship or, as the case may be the Group Vessel is, recycled at a recycling yard which conducts its recycling business in a socially and environmentally responsible manner, in accordance with the provisions of The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 or, with regards to any EU flagged vessels, the EU Ship Recycling Regulation.

#### **24.22 Poseidon Principles**

The Borrower shall, upon the request of any Lender and at the cost of the Borrower on or before 31st July in each calendar year, supply or procure the supply (as specified by the relevant Lender) to the Facility Agent (on behalf of that Lender) of all information necessary in order for that Lender to comply with its obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ship owned by it for the preceding calendar year provided always that, for the avoidance of doubt, such information shall be "Confidential Information" for the purposes of Clause 45 (*Confidential information*) but the Borrower acknowledges that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the relevant Lender's portfolio climate alignment.

#### **24.23 Notification of compliance**

The Borrower shall promptly provide the Facility Agent from time to time with evidence (in such form as the Facility Agent requires) that it is complying with this Clause 24 (*Ship Undertakings*).

### **25 SECURITY COVER**

#### **25.1 Minimum required security cover**

Clause 25.2 (*Provision of additional security; prepayment*) applies if the Facility Agent notifies the Borrower that:

- (a) the Market Value of the Ship; plus



- (b) the net realisable value of additional Security previously provided under this Clause 25 (*Security Cover*), is below 135 per cent. of the Loan.

#### **25.2 Provision of additional security; prepayment**

- (a) If the Facility Agent serves a notice on the Borrower under Clause 25.1 (*Minimum required security cover*), the Borrower shall, on or before the date falling 10 Business Days after the date on which the Facility Agent's notice is served (the "**Prepayment Date**"), prepay such part of the Loan as shall eliminate the shortfall.
- (b) The Borrower may, instead of making a prepayment as described in paragraph (a) above, provide, or ensure that a third party has provided, additional security which, in the opinion of the Facility Agent acting on the instructions of the Majority Lenders:
- (i) has a net realisable value at least equal to the shortfall; and
  - (ii) is documented in such terms as the Facility Agent may approve or require,
- before the Prepayment Date; and conditional upon such security being provided in such manner, it shall satisfy such prepayment obligation.

#### **25.3 Value of additional vessel security**

The net realisable value of any additional security which is provided under Clause 25.2 (*Provision of additional security; prepayment*) and which consists of Security over a vessel shall be the Market Value of the vessel concerned.

#### **25.4 Valuations binding**

Any valuation under this Clause 25 (*Security Cover*) shall be binding and conclusive as regards the Borrower.

#### **25.5 Provision of information**

- (a) The Borrower shall promptly provide the Facility Agent and any shipbroker acting under this Clause 25 (*Security Cover*) with any information which the Facility Agent or the shipbroker may request for the purposes of the valuation.
- (b) If the Borrower fails to provide the information referred to in paragraph (a) above by the date specified in the request, the valuation may be made on any basis and assumptions which the shipbroker or the Facility Agent considers prudent.

#### **25.6 Prepayment mechanism**

Any prepayment pursuant to Clause 25.2 (*Provision of additional security; prepayment*) shall be made in accordance with the relevant provisions of Clause 7 (*Prepayment and Cancellation*), and each such prepayment shall reduce the Repayment Instalments and the Balloon Instalment falling after such on a pro rata basis by the amount prepaid.

## 25.7 Provision of valuations

- (a) For the purpose of the Utilisation and subject to paragraph (b) below, the Market Value of the Ship shall be determined by reference to the valuation of the Ship as given by an Approved Valuer selected and appointed by the Borrower and addressed to the Facility Agent or in the event that the Borrower fails to do so appointed by the Facility Agent. The Agent shall, in its full discretion be entitled to request a second valuation from an Approved Valuer selected and appointed by the Facility Agent, in which case, the Market Value shall be the arithmetic average of the two valuations.
- (b) If the two valuations in respect of the Ship obtained pursuant to paragraph (a) above differ by at least 10 per cent., then a third valuation for the Ship shall be obtained from a third Approved Valuer selected by the Facility Agent, appointed by the Facility Agent and such valuation shall be addressed to the Facility Agent and the Market Value of the Ship shall be the arithmetic average of all three such valuations.
- (c) The Facility Agent shall be entitled, after the Utilisation Date, to test the security cover requirement under Clause 25.1 (*Minimum required security cover*) by reference to the Market Value of the Ship as determined in accordance with paragraphs (a) to (b) above, semi-annually during the Security Period.
- (d) The Facility Agent shall ascertain compliance with Clause 21 (*Financial Covenants*) by reference to the market value of the Fleet Vessels as provided in the Latest Accounts.
- (e) Each of the valuations referred to at paragraphs (a) and (b) above shall be obtained not more than 30 days before the Utilisation Date, while each of the valuations referred to in paragraph (d) above shall be obtained not more than 30 days before the Test Date of the relevant quarter.
- (f) The Facility Agent may at any time after an Event of Default has occurred and is continuing obtain valuations of the Ship and any other vessel over which additional security has been created in accordance with Clause 25.2 (*Provision of additional security; prepayment*) from Approved Valuers to enable the Facility Agent to determine the Market Value of the Ship and any other vessel and also for the purpose of testing the security cover requirement under Clause 25.1 (*Minimum required security cover*). The Facility Agent shall be entitled to determine the Market Value of the Ship at any other time.
- (g) The valuations referred to in paragraph (a) to (c) above shall be obtained at the cost and expense of the Borrower and the Borrower shall within three Business Days of demand by the Facility Agent pay to the Facility Agent all costs and expenses incurred by it in obtaining any such valuation. The cost of the valuations referred to in paragraph (d) for the Borrower shall be limited to four times per annum, unless an Event of Default has occurred or the covenant contained in Clause 25.1 (*Minimum required security cover*) is not complied with, in which case the cost of all valuations shall be borne by the Borrower.

## 26 ACCOUNTS APPLICATION OF EARNINGS

### 26.1 Accounts

The Borrower may not, without the prior consent of the Facility Agent, maintain any bank account other than the Earnings Account.

## **26.2 Payment of Earnings**

- (a) The Borrower shall ensure that subject only to the provisions of the General Assignment, all the Earnings are paid in to the Earnings Account.
- (b) The Borrower shall ensure that at all times there is standing to the credit of the Earnings Account an amount of no less than \$500,000.

## **26.3 Location of Accounts**

The Borrower shall promptly:

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

## **27 EVENTS OF DEFAULT**

### **27.1 General**

Each of the events or circumstances set out in this Clause 27 (*Events of Default*) is an Event of Default except for Clause 27.20 (*Acceleration*) and Clause 27.21 (*Enforcement of security*).

### **27.2 Non-payment**

A Transaction Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
  - (i) administrative or technical error; or
  - (ii) a Disruption Event; and
- (b) payment is made within five Business Days of its due date.

### **27.3 Specific obligations**

A breach occurs of Clause 4.4 (*Waiver of conditions precedent*), Clause 21 (*Financial Covenants*), Clause 22.10 (*Title*), Clause 22.11 (*Negative pledge*), Clause 22.20 (*Unlawfulness, invalidity and ranking; Security imperilled*), Clause 23.2 (*Maintenance of obligatory insurances*), Clause 23.3 (*Terms of obligatory insurances*), Clause 23.5 (*Renewal of obligatory insurances*) or, save to the extent such breach is a failure to pay and therefor subject to Clause 27.2 (*Non-payment*), Clause 25 (*Security Cover*).

### **27.4 Other obligations**

- (a) A Transaction Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 27.2 (*Non-payment*) and Clause 27.3 (*Specific obligations*)).

- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days of the Facility Agent giving notice to the Borrower or (if earlier) any Transaction Obligor becoming aware of the failure to comply.

#### **27.5 Misrepresentation**

Any representation or statement made or deemed to be made by a Transaction Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

#### **27.6 Cross default**

- (a) Any Financial Indebtedness of any Transaction Obligor (other than the Approved Manager) is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Transaction Obligor (other than the Approved Manager) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described) unless the Transaction Obligor (other than the Approved Manager) is contesting the declaration of an event of default or of the Financial Indebtedness becoming due and payable in good faith and on substantial grounds by appropriate proceedings and adequate reserves (in the reasonable opinion of the Facility Agent) have been set aside for its payment if such proceedings fail.
- (c) Any commitment for any Financial Indebtedness of any Transaction Obligor (other than the Approved Manager) is cancelled or suspended by a creditor of that Transaction Obligor as a result of an event of default (however described).
- (d) Any creditor of Transaction Obligor (other than the Approved Manager) becomes entitled to declare any Financial Indebtedness of that Transaction Obligor (other than the Approved Manager) due and payable prior to its specified maturity as a result of an event of default (however described) unless the Transaction Obligor is contesting the declaration of an event of default or of the Financial Indebtedness becoming due and payable in good faith and on substantial grounds by appropriate proceedings and adequate reserves (in the reasonable opinion of the Facility Agent) have been set aside for its payment if such proceedings fail.
- (e) No Event of Default will occur under this Clause 27.6 (*Cross default*) in respect of the Guarantor if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than \$10,000,000 (or its equivalent in any other currency).

#### **27.7 Insolvency**

- (a) A Transaction Obligor (other than the Approved Manager):
- (i) is unable or admits inability to pay its debts as they fall due; or
  - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law.
- (b) A moratorium is declared in respect of any indebtedness of any Transaction Obligor (other than the Approved Manager). If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

## **27.8 Insolvency proceedings**

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Transaction Obligor (other than an Approved Manager);
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor (other than an Approved Manager);
  - (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Transaction Obligor (other than an Approved Manager) or any of its assets; or
  - (iv) enforcement of any Security over any assets of any Transaction Obligor (other than an Approved Manager),
- or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

## **27.9 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affects any asset or assets of a Transaction Obligor (other than any Approved Manager or an arrest or detention of the Ship which, in accordance with Clause 27.14 (*Arrest*), is discharged within 30 days).

## **27.10 Ownership of the Obligors**

There is a change in the ownership of the Borrower which results in the Guarantor owning directly or indirectly (but if indirectly only through companies with registered shares), less than 100 per cent. of the shares in the Borrower.

## **27.11 Unlawfulness, invalidity and ranking**

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents.
- (b) Any obligation of a Transaction Obligor under the Finance Documents is not or ceases to be legal, valid, binding or enforceable.
- (c) Any Finance Document ceases to be in full force and effect or to be continuing or is or purports to be determined or any Transaction Security is alleged by a party to it (other than a Finance Party) to be ineffective.
- (d) Any Transaction Security proves to have ranked after, or loses its priority to, any other Security.

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**27.12 Security imperilled**

Any Security created or intended to be created by a Finance Document is in any way imperilled or in jeopardy.

**27.13 Cessation of business**

Any Transaction Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

**27.14 Arrest**

Any arrest of the Ship or its detention in the exercise or the purported exercise of any lien or claim unless it is redelivered to the full control of the Borrower within 30 days of such arrest or detention.

**27.15 Expropriation**

The authority or ability of any member of the Group to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Group or any of its assets other than:

- (a) an arrest or detention of the Ship referred to in Clause 27.14 (*Arrest*); or
- (b) any Requisition.

**27.16 Repudiation and rescission of agreements**

A Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Transaction Document or any Transaction Security.

**27.17 Litigation**

Any litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency are started or threatened, or any judgment or order of a court, arbitral body or agency is made, in relation to any of the Transaction Documents or the transactions contemplated in any of the Transaction Documents or against any member of the Group or its assets which has or is reasonably likely to have a Material Adverse Effect.

**27.18 Material adverse change**

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

**27.19 Sanctions**

- (a) Any of the Transaction Obligors becomes a Restricted Party or becomes owned or controlled by, or acts directly or indirectly on behalf of, a Restricted Party or any of such persons becomes the owner or controller of a Restricted Party.

- (b) Any proceeds of the Loan is made available, directly or indirectly, to or for the benefit of a Restricted Party or otherwise is, directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions Laws.
- (c) Any Transaction Obligor is not in compliance with all Sanctions Laws.

**27.20 Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Facility Agent may, and shall if so directed by the Majority Lenders:

- (a) by notice to the Borrower:
  - (i) cancel the Total Commitments, whereupon they shall immediately be cancelled;
  - (ii) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon it shall become immediately due and payable; and/or
  - (iii) declare that all or part of the Loan be payable on demand, whereupon it shall immediately become payable on demand by the Facility Agent acting on the instructions of the Majority Lenders; and/or
- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents, and the Facility Agent may serve notices under sub-paragraphs (i), (ii) and (iii) of paragraph (a) above simultaneously or on different dates and any Servicing Party may take any action referred to in paragraph (b) above or Clause 27.21 (*Enforcement of security*) if no such notice is served or simultaneously with or at any time after the service of any of such notice.

**27.21 Enforcement of security**

On and at any time after the occurrence of an Event of Default the Security Agent may, and shall if so directed by the Majority Lenders, take any action which, as a result of the Event of Default or any notice served under Clause 27.20 (*Acceleration*), the Security Agent is entitled to take under any Finance Document or any applicable law or regulation.

## SECTION 9

### CHANGES TO PARTIES

#### 28 CHANGES TO THE LENDERS

##### 28.1 Assignments and transfers by the Lenders

Subject to this Clause 28 (*Changes to the Lenders*), a Lender (the “**Existing Lender**”) may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations, under the Finance Documents to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “**New Lender**”).

##### 28.2 Conditions of assignment or transfer

- (a) The Existing Lender shall consult with the Borrower for up to 5 Business Days before completing an assignment or transfer pursuant to Clause 28.1 (*Assignments and transfers by the Lenders*), unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of a Lender;
  - (ii) if the Existing Lender is a fund, to a fund which is a Related Fund;
  - (iii) to the Mandated Lead Arranger, the Sustainability Agent or an Affiliate of the Mandated Lead Arranger or the Sustainability Agent and made in connection with the primary syndication or Utilisation of the Facility; or
  - (iv) made at a time when an Event of Default is continuing.
- (b) An assignment will only be effective on:
  - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Secured Parties as it would have been under if it were an Original Lender; and
  - (ii) performance by the Facility Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.
- (c) Each Obligor on behalf of itself and each Transaction Obligor agrees that all rights and interests (present, future or contingent) which the Existing Lender has under or by virtue of the Finance Documents are assigned to the New Lender absolutely, free of any defects in the Existing Lender’s title and of any rights or equities which the Borrower or any other Transaction Obligor had against the Existing Lender.



- (d) A transfer will only be effective if the procedure set out in Clause 28.5 (*Procedure for transfer*) is complied with.
- (e) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, a Transaction Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 13 (*Tax Gross Up and Indemnities*) or under that clause as incorporated by reference or in full in any other Finance Document or Clause 14 (*Increased Costs*),
- then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (e) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.
- (f) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### **28.3 Assignment or transfer fee**

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of \$3,000.

### **28.4 Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
  - (ii) the financial condition of any Transaction Obligor;
  - (iii) the performance and observance by any Transaction Obligor of its obligations under the Transaction Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,
- and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties and the Secured Parties that it:

- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Transaction Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of each Transaction Obligor and its related entities throughout the Security Period.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
- (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 28 (*Changes to the Lenders*); or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Transaction Obligor of its obligations under the Transaction Documents or otherwise.

#### **28.5 Procedure for transfer**

- (a) Subject to the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate.
- (b) The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 28.9 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security, each of the Transaction Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
  - (ii) each of the Transaction Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Transaction Obligor and the New Lender have assumed and/or acquired the same in place of that Transaction Obligor and the Existing Lender;

- (iii) the Facility Agent, the Security Agent, the Mandated Lead Arranger, the Sustainability Agent, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Security Agent, the Mandated Lead Arranger, the Sustainability Agent and the Existing Lenders shall each be released from further obligations to each other under the Finance Documents; and
- (iv) the New Lender shall become a Party as a “**Lender**”.

#### **28.6 Procedure for assignment**

- (a) Subject to the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 28.9 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 28.6 (*Procedure for assignment*) to assign their rights under the Finance Documents (but not, without the consent of the relevant Transaction Obligor or unless in accordance with Clause 28.5 (*Procedure for transfer*), to obtain a release by that Transaction Obligor from the obligations owed to that Transaction Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 28.2 (*Conditions of assignment or transfer*).

#### **28.7 Copy of Transfer Certificate or Assignment Agreement to Borrower**

The Facility Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

## 28.8 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 28 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from any Transaction Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities, except that no such charge, assignment or Security shall:
  - (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
  - (ii) require any payments to be made by a Transaction Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

## 28.9 Pro rata interest settlement

- (a) If the Facility Agent has notified the Lenders that it is able to distribute interest payments on a "*pro rata* basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 28.5 (*Procedure for transfer*) or any assignment pursuant to Clause 28.6 (*Procedure for assignment*)) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
  - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
  - (ii) The rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
    - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
    - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 28.9 (*Pro rata interest settlement*), have been payable to it on that date, but after deduction of the Accrued Amounts.

- (b) In this Clause 28.9 (*Pro rata interest settlement*) references to “Interest Period” shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 28.9 (*Pro rata interest settlement*) but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

## **29 CHANGES TO THE TRANSACTION OBLIGORS**

### **29.1 Assignment or transfer by Transaction Obligors**

No Transaction Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

### **29.2 Release of security**

- (a) If a disposal of any asset subject to security created by a Security Document is made in the following circumstances:
  - (i) the disposal is permitted by the terms of any Finance Document;
  - (ii) all the Lenders agree to the disposal;
  - (iii) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable; or
  - (iv) the disposal is being effected by enforcement of a Security Document,the Security Agent may release the asset(s) being disposed of from any security over those assets created by a Security Document. However, the proceeds of any disposal (or an amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).
- (b) If the Security Agent is satisfied that a release is allowed under this Clause 29.2 (*Release of security*) (at the request and expense of the Borrower) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document. Any release will not affect the obligations of any other Transaction Obligor under the Finance Documents.

THE FINANCE PARTIES

**30 THE FACILITY AGENT, THE MANDATED LEAD ARRANGER, THE SUSTAINABILITY AGENT AND THE REFERENCE BANKS**

**30.1 Appointment of the Facility Agent**

- (a) Each of the Mandated Lead Arranger, the Sustainability Agent and the Lenders appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Mandated Lead Arranger, the Sustainability Agent and the Lenders authorises the Facility Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

**30.2 Instructions**

- (a) The Facility Agent shall:
  - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in a Finance Document;

- (ii) where a Finance Document requires the Facility Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Facility Agent's own position in its personal capacity as opposed to its role of Facility Agent for the relevant Finance Parties.
- (e) If giving effect to instructions given by the Majority Lenders would in the Facility Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 44 (*Amendments and Waivers*), the Facility Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Facility Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where it has not received any instructions as to the exercise of that discretion the Facility Agent shall do so having regard to the interests of all the Finance Parties.
- (g) The Facility Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 30.2 (*Instructions*), in the absence of instructions, the Facility Agent shall not be obliged to take any action (or refrain from taking action) even if it considers acting or not acting to be in the best interests of the Finance Parties. The Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Finance Parties.
- (i) The Facility Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

### **30.3 Duties of the Facility Agent**

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (c) Without prejudice to Clause 28.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), paragraph (b) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

- (e) If the Facility Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent, the Mandated Lead Arranger, the Sustainability Agent or the Security Agent) under this Agreement, it shall promptly notify the other Finance Parties.
- (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

#### **30.4 Role of the Mandated Lead Arranger and Sustainability Agent**

Except as specifically provided in the Finance Documents, neither the Mandated Lead Arranger or the Sustainability Agent has any obligations of any kind to any other Party under or in connection with any Finance Document.

#### **30.5 No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Facility Agent, the Mandated Lead Arranger or the Sustainability Agent as a trustee or fiduciary of any other person.
- (b) None of the Facility Agent, the Mandated Lead Arranger or the Sustainability Agent shall be bound to account to other Finance Party for any sum or the profit element of any sum received by it for its own account.

#### **30.6 Application of receipts**

Except as expressly stated to the contrary in any Finance Document, any moneys which the Facility Agent receives or recovers in its capacity as Facility Agent shall be applied by the Facility Agent in accordance with Clause 34.5 (*Application of receipts; partial payments*).

#### **30.7 Business with the Group**

The Facility Agent, the Mandated Lead Arranger or the Sustainability Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

#### **30.8 Rights and discretions**

- (a) The Facility Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents; and



- (B) unless it has received notice of revocation, that those instructions have not been revoked; and
- (iii) rely on a certificate from any person:
  - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing, as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 27.2 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
  - (iii) any notice or request made by the Borrower (other than the Utilisation Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.

- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under the Finance Documents.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, none of the Facility Agent, the Mandated Lead Arranger or the Sustainability Agent is obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

**30.9 Responsibility for documentation**

None of the Facility Agent, the Mandated Lead Arranger or the Sustainability Agent is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Mandated Lead Arranger or the Sustainability Agent a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party or Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

**30.10 No duty to monitor**

The Facility Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

**30.11 Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to paragraph (e) of Clause 34.11 (*Disruption to Payment Systems etc.*) or any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property;
  - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Facility Agent may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Facility Agent, the Mandated Lead Arranger or the Sustainability Agent to carry out:
- (i) any “know your customer” or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,

on behalf of any Finance Party and each Finance Party confirms to the Facility Agent, the Mandated Lead Arranger and the Sustainability Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent, the Mandated Lead Arranger or the Sustainability Agent.

- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent's liability, any liability of the Facility Agent arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Facility Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.

#### **30.12 Lenders' indemnity to the Facility Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 34.11 (*Disruption to Payment Systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Facility Agent to an Obligor.

#### **30.13 Resignation of the Facility Agent**

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrower.
- (b) Alternatively, the Facility Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrower, in which case the Majority Lenders may appoint a successor Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent may appoint a successor Facility Agent.
- (d) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Facility Agent amendments to this Clause 30 (*The Facility Agent, the Mandated Lead Arranger, the Sustainability Agent and the Reference Banks*) and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees.

- (e) The retiring Facility Agent shall make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Facility Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 15.4 (*Indemnity to the Facility Agent*) and this Clause 30 (*The Facility Agent, the Mandated Lead Arranger, the Sustainability Agent and the Reference Banks*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Facility Agent. Any fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with paragraph (b) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (e) above shall be for the account of the Borrower.
- (i) The consent of the Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Facility Agent.
- (j) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
  - (i) the Facility Agent fails to respond to a request under Clause 13.7 (*FATCA Information*) and a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Facility Agent pursuant to Clause 13.7 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or

- (iii) the Facility Agent notifies the Borrower and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date, and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Facility Agent, requires it to resign.

#### **30.14 Confidentiality**

- (a) In acting as Facility Agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Facility Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Facility Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, none of the Facility Agent, the Mandated Lead Arranger or the Sustainability Agent is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

#### **30.15 Relationship with the other Finance Parties**

- (a) Subject to Clause 28.9 (*Pro rata interest settlement*), the Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
  - (i) entitled to or liable for any payment due under any Finance Document on that day; and
  - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Each Finance Party shall supply the Facility Agent with any information that the Security Agent may reasonably specify (through the Facility Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Finance Party shall deal with the Security Agent exclusively through the Facility Agent and shall not deal directly with the Security Agent and any reference to any instructions being given by or sought from any Finance Party or group of Finance Parties to or by the Security Agent in this Agreement must be given or sought through the Facility Agent.
- (c) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 37.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the

department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 37.2 (*Addresses*) and sub-paragraph (ii) of paragraph (a) of Clause 37.5 (*Electronic communication*) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

### **30.16 Credit appraisal by the Finance Parties**

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Facility Agent, the Mandated Lead Arranger and the Sustainability Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Facility Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

### **30.17 Facility Agent's management time**

Any amount payable to the Facility Agent under Clause 15.4 (*Indemnity to the Facility Agent*), Clause 17 (*Costs and Expenses*) and Clause 30.12 (*Lenders' indemnity to the Facility Agent*) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the Borrower and the other Finance Parties, and is in addition to any fee paid or payable to the Facility Agent under Clause 12 (*Fees*).

### **30.18 Deduction from amounts payable by the Facility Agent**

If any Party owes an amount to the Facility Agent under the Finance Documents, the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

### **30.19 Reliance and engagement letters**

Each Secured Party confirms that each of the Mandated Lead Arranger, the Sustainability Agent and the Facility Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Mandated Lead Arranger, the Sustainability Agent or the Facility Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

### **30.20 Full freedom to enter into transactions**

Without prejudice to Clause 30.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Facility Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, the Facility Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.



### **30.21 Role of Reference Banks**

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Facility Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 30.21 (*Role of Reference Banks*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

### **30.22 Third Party Reference Banks**

A Reference Bank which is not a Party may rely on Clause 30.21 (*Role of Reference Banks*), Clause 44.3 (*Other exceptions*) and Clause 46 (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

## **31 THE SECURITY AGENT**

### **31.1 Trust**

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause 31 (*The Security Agent*) and the other provisions of the Finance Documents.
- (b) Each other Finance Party authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under, or in connection with, the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### **31.2 Parallel Debt (Covenant to pay the Security Agent)**

- (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Agent its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of an Obligor:
  - (i) shall become due and payable at the same time as its Corresponding Debt;
  - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.
- (c) For the purposes of this Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent:

- (i) is the independent and separate creditor of each Parallel Debt;
  - (ii) acts in its own name and not as agent, representative or trustee of the Finance Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
  - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).
- (d) The Parallel Debt of an Obligor shall be:
- (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
  - (ii) increased to the extent that its Corresponding Debt has increased,
- and the Corresponding Debt of an Obligor shall be decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged,
- in each case provided that the Parallel Debt of an Obligor shall never exceed its Corresponding Debt.
- (e) All amounts received or recovered by the Security Agent in connection with this Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 34.5 (*Application of receipts; partial payments*).
- (f) This Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) shall apply, with any necessary modifications, to each Finance Document.

### **31.3 Enforcement through Security Agent only**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

### **31.4 Instructions**

- (a) The Security Agent shall:
- (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by:
    - (A) all Lenders (or the Facility Agent on their behalf) if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders (or the Facility Agent on their behalf); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above (or if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, in accordance with instructions given to it by that Finance Party or group of Finance Parties).

- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or the Facility Agent on their behalf) (or, if the relevant Finance Document stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Finance Party or group of Finance Parties under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Security Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in a Finance Document;
  - (ii) where a Finance Document requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the relevant Secured Parties.
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 31.28 (*Application of receipts*);
    - (B) Clause 31.29 (*Permitted Deductions*); and
    - (C) Clause 31.30 (*Prospective liabilities*).
- (e) If giving effect to instructions given by the Majority Lenders would in the Security Agent's opinion have an effect equivalent to an amendment or waiver referred to in Clause 44 (*Amendments and Waivers*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (f) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
  - (i) it has not received any instructions as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to sub-paragraph (iv) of paragraph (d) above,the Security Agent shall do so having regard to the interests of all the Secured Parties.

- (g) The Security Agent may refrain from acting in accordance with any instructions of any Finance Party or group of Finance Parties until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (h) Without prejudice to the remainder of this Clause 31.4 (*Instructions*), in the absence of instructions, the Security Agent may (but shall not be obliged to) take such action in the exercise of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.
- (i) The Security Agent is not authorised to act on behalf of a Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (i) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

### **31.5 Duties of the Security Agent**

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

### **31.6 No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Security Agent as an agent, trustee or fiduciary of any Transaction Obligor.
- (b) The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

### **31.7 Business with the Group**

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

### 31.8 Rights and discretions

- (a) The Security Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Finance Parties or any group of Finance Parties are duly given in accordance with the terms of the Finance Documents;
    - (B) unless it has received notice of revocation, that those instructions have not been revoked;
    - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
  - (iii) rely on a certificate from any person:
    - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
    - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,  
as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the other Finance Parties through the Facility Agent and may give to the Facility Agent any notice or other communication required to be given by the Security Agent to any Finance Party.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security agent for the Secured Parties) that:
- (i) no Default has occurred;
  - (ii) any right, power, authority or discretion vested in any Party or any group of Finance Parties has not been exercised; and
  - (iii) any notice or request made by the Borrower (other than the Utilisation Request or a Selection Notice) is made on behalf of and with the consent and knowledge of all the Transaction Obligors.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of paragraph (c) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Facility Agent or the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.
- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

- (g) The Security Agent may act in relation to the Finance Documents and the Security Property through its officers, employees and agents and shall not:
- (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Security Agent's gross negligence or wilful misconduct.
- (h) Unless a Finance Document expressly provides otherwise the Security Agent may disclose to any other Party any information it reasonably believes it has received as security agent under the Finance Documents.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would or might, in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

### **31.9 Responsibility for documentation**

None of the Security Agent, any Receiver or Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Security Agent, the Mandated Lead Arranger, the Sustainability Agent, a Transaction Obligor or any other person in, or in connection with, any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

### 31.10 No duty to monitor

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Transaction Obligor of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

### 31.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate), none of the Security Agent nor any Receiver or Delegate will be liable for:
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Security Property, unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Security Property; or
  - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party other than the Security Agent, that Receiver or that Delegate (as applicable) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Security Agent to carry out:
  - (i) any “know your customer” or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Finance Party,on behalf of any Finance Party and each Finance Party confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent or any Receiver or Delegate, any liability of the Security Agent or any Receiver or Delegate arising under or in connection with any Transaction Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent. Receiver or Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, any Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, the Receiver or Delegate has been advised of the possibility of such loss or damages.

#### **31.12 Lenders’ indemnity to the Security Agent**

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the Security Agent’s, Receiver’s or Delegate’s gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under the Finance Documents (unless the Security Agent, Receiver or Delegate has been reimbursed by a Transaction Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to an Obligor.



### **31.13 Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrower.
- (b) Alternatively, the Security Agent may resign by giving 30 days' notice to the other Finance Parties and the Borrower, in which case the Majority Lenders may appoint a successor Security Agent.
- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent may appoint a successor Security Agent.
- (d) The retiring Security Agent shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the transfer, by way of a document expressed as a deed, of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged, by way of a document executed as a deed, from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 31.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of Clause 15.5 (*Indemnity to the Security Agent*) and this Clause 31 (*The Security Agent*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability (or to indemnify it) in acting as Security Agent. Any fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) The Majority Lenders may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
- (h) The consent of the Borrower (or any other Transaction Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Agent.

### **31.14 Confidentiality**

- (a) In acting as Security Agent for the Finance Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by a division or department of the Security Agent other than the division or department responsible for complying with the obligations assumed by it under the Finance Documents, that information may be treated as confidential to that division or department, and the Security Agent shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.

- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

### **31.15 Credit appraisal by the Finance Parties**

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Transaction Document, each Finance Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under, or in connection with, any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (c) whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under, or in connection with, any Transaction Document, the Security Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under, or in connection with, any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to or the value or sufficiency of any part of the Security Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Security Assets.

### **31.16 Security Agent's management time**

- (a) Any amount payable to the Security Agent under Clause 15.5 (*Indemnity to the Security Agent*), Clause 17 (*Costs and Expenses*) and Clause 31.12 (*Lenders' indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Borrower and the other Finance Parties, and is in addition to any fee paid or payable to the Security Agent under Clause 12 (*Fees*).
- (b) Without prejudice to paragraph (a) above, in the event of:
  - (i) a Default;
  - (ii) the Security Agent being requested by a Transaction Obligor or the Majority Lenders to undertake duties which the Security Agent and the Borrower agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or

- (iii) the Security Agent and the Borrower agreeing that it is otherwise appropriate in the circumstances, the Borrower shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.
- (c) If the Security Agent and the Borrower fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrower or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrower) and the determination of any investment bank shall be final and binding upon the Parties.

#### **31.17 Reliance and engagement letters**

Each Secured Party confirms that the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Security Agent) the terms of any reliance letter or engagement letters or any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

#### **31.18 No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Transaction Obligor to any of the Security Assets;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Transaction Obligor to take, any step to perfect its title to any of the Security Assets or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Finance Document.

### **31.19 Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:
- (i) to insure any of the Security Assets;
  - (ii) to require any other person to maintain any insurance; or
  - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,
- and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.
- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority Lenders request it to do so in writing and the Security Agent fails to do so within 14 days after receipt of that request.

### **31.20 Custodians and nominees**

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

### **31.21 Delegation by the Security Agent**

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of any such delegate or sub delegate.

### **31.22 Additional Security Agents**

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
- (i) if it considers that appointment to be in the interests of the Secured Parties; or
  - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Agent shall give prior notice to the Borrower and the Finance Parties of that appointment.

- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

### **31.23 Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Transaction Obligor may have to any of the Security Assets and shall not be liable for or bound to require any Transaction Obligor to remedy any defect in its right or title.

### **31.24 Releases**

Upon a disposal of any of the Security Assets pursuant to the enforcement of the Transaction Security by a Receiver, a Delegate or the Security Agent, the Security Agent is irrevocably authorised (at the cost of the Obligors and without any consent, sanction, authority or further confirmation from any other Secured Party) to release, without recourse or warranty, that property from the Transaction Security and to execute any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

### **31.25 Winding up of trust**

If the Security Agent, with the approval of the Facility Agent determines that:

- (a) all of the Secured Liabilities and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Transaction Obligor pursuant to the Finance Documents,

then

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 31.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

### 31.26 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

### 31.27 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement and the other Finance Documents. Where there are any inconsistencies between (i) the Trustee Acts 1925 and 2000 and (ii) the provisions of this Agreement and any other Finance Document, the provisions of this Agreement and any other Finance Document shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement and any other Finance Document shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

### 31.28 Application of receipts

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Document, under Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or in connection with the realisation or enforcement of all or any part of the Security Property (for the purposes of this Clause 31 (*The Security Agent*)), the “**Recoveries**”) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the remaining provisions of this Clause 31 (*The Security Agent*)), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as such) other than pursuant to Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*) or any Receiver or Delegate;
- (b) in payment or distribution to the Facility Agent, on its behalf and on behalf of the other Secured Parties, for application towards the discharge of all sums due and payable by any Transaction Obligor under any of the Finance Documents in accordance with Clause 34.5 (*Application of receipts; partial payments*);
- (c) if none of the Transaction Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Transaction Obligor; and
- (d) the balance, if any, in payment or distribution to the relevant Transaction Obligor.

### 31.29 Permitted Deductions

The Security Agent may, in its discretion:

- (a) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and

- (b) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

**31.30 Prospective liabilities**

Following enforcement of any of the Transaction Security, the Security Agent may, in its discretion, or at the request of the Facility Agent, hold any Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later payment to the Facility Agent for application in accordance with Clause 31.28 (*Application of receipts*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Secured Liabilities,

that the Security Agent or, in the case of paragraph (b) only, the Facility Agent, reasonably considers, in each case, might become due or owing at any time in the future.

**31.31 Investment of proceeds**

Prior to the payment of the proceeds of the Recoveries to the Facility Agent for application in accordance with Clause 31.28 (*Application of receipts*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the payment from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of Clause 31.28 (*Application of receipts*).

**31.32 Currency conversion**

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

**31.33 Good discharge**

- (a) Any payment to be made in respect of the Secured Liabilities by the Security Agent may be made to the Facility Agent on behalf of the Secured Parties and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Facility Agent under paragraph (a) above in the same currency as that in which the obligations and liabilities owing to the relevant Finance Party are denominated.

### **31.34 Amounts received by Obligor**

If any of the Obligor receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, that Obligor will hold the amount received or recovered on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement.

### **31.35 Application and consideration**

In consideration for the covenants given to the Security Agent by each Obligor in relation to Clause 31.2 (*Parallel Debt (Covenant to pay the Security Agent)*), the Security Agent agrees with each Obligor to apply all moneys from time to time paid by such Obligor to the Security Agent in accordance with the foregoing provisions of this Clause 31 (*The Security Agent*).

### **31.36 Full freedom to enter into transactions**

Without prejudice to Clause 31.7 (*Business with the Group*) or any other provision of a Finance Document and notwithstanding any rule of law or equity to the contrary, the Security Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Transaction Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Transaction Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Transaction Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document, and, in particular, the Security Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

## **32 CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;



- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

### **33 SHARING AMONG THE FINANCE PARTIES**

#### **33.1 Payments to Finance Parties**

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from a Transaction Obligor other than in accordance with Clause 34 (*Payment Mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due to it under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 34 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 34.5 (*Application of receipts; partial payments*).

#### **33.2 Redistribution of payments**

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Transaction Obligor and distribute it among the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 34.5 (*Application of receipts; partial payments*) towards the obligations of that Transaction Obligor to the Sharing Finance Parties.

#### **33.3 Recovering Finance Party’s rights**

On a distribution by the Facility Agent under Clause 33.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from a Transaction Obligor, as between the relevant Transaction Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Transaction Obligor.

#### **33.4 Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and
- (b) as between the relevant Transaction Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Transaction Obligor.

### **33.5 Exceptions**

- (a) This Clause 33 (*Sharing among the Finance Parties*) shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Transaction Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
  - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## ADMINISTRATION

**34 PAYMENT MECHANICS****34.1 Payments to the Facility Agent**

- (a) On each date on which a Transaction Obligor or a Lender is required to make a payment under a Finance Document, that Transaction Obligor or Lender shall make an amount equal to such payment available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Facility Agent), and with such bank as the Facility Agent, in each case, specifies.

**34.2 Distributions by the Facility Agent**

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 34.3 (*Distributions to a Transaction Obligor*) and Clause 34.4 (*Clawback and pre-funding*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London), as specified by that Party or, in the case of the Loan, to such account of such person as may be specified by the Borrower in the Utilisation Request.

**34.3 Distributions to a Transaction Obligor**

The Facility Agent may (with the consent of the Transaction Obligor or in accordance with Clause 35 (*Set-Off*)) apply any amount received by it for that Transaction Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Transaction Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

**34.4 Clawback and pre-funding**

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

- (c) If the Facility Agent is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Facility Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrower:
- (i) the Borrower shall on demand refund it to the Facility Agent; and
  - (ii) the Lender by whom those funds should have been made available or, if the Lender fails to do so, the Borrower, shall on demand pay to the Facility Agent the amount (as certified by the Facility Agent) which will indemnify the Facility Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

#### **34.5 Application of receipts; partial payments**

- (a) If the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by a Transaction Obligor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Transaction Obligor under the Finance Documents in the following order:
- (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of, and any other amounts owing to, the Facility Agent, the Security Agent, any Receiver or any Delegate under the Finance Documents;
  - (ii) **secondly**, in or towards payment pro rata of any accrued interest and fees due but unpaid to the Lenders under this Agreement;
  - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid to the Lenders under this Agreement; and
  - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary, or instruct the Security Agent to vary (as applicable) the order set out in sub-paragraphs (ii) to (iv) of paragraph (a) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by a Transaction Obligor.

#### **34.6 No set-off by Transaction Obligors**

All payments to be made by a Transaction Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

#### **34.7 Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

#### **34.8 Currency of account**

- (a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from a Transaction Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

#### **34.9 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (after consultation with the Borrower); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

#### **34.10 Currency Conversion**

- (a) For the purpose of, or pending any payment to be made by any Servicing Party under any Finance Document, such Servicing Party may convert any moneys received or recovered by it from one currency to another, at a market rate of exchange.
- (b) The obligations of any Transaction Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

#### **34.11 Disruption to Payment Systems etc.**

If either the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by the Borrower that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;

- (b) the Facility Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties and any Transaction Obligors as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 44 (*Amendments and Waivers*);
- (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 34.11 (*Disruption to Payment Systems etc.*); and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

### **35 SET-OFF**

A Finance Party may set off any matured obligation due from a Transaction Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Transaction Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

### **36 BAIL-IN**

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each Party acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

## 37 NOTICES

### 37.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### 37.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents are:

- (a) in the case of the Borrower, that specified in Schedule 1 (*The Parties*);
- (b) in the case of each Lender or any other Obligor, that specified in Schedule 1 (*The Parties*) or, if it becomes a Party after the date of this Agreement, that notified in writing to the Facility Agent on or before the date on which it becomes a Party;
- (c) in the case of the Facility Agent, that specified in Schedule 1 (*The Parties*);
- (d) in the case of a Mandated Lead Arranger, that specified in Schedule 1 (*The Parties*);
- (e) in the case of the Sustainability Agent, that specified in Schedule 1 (*The Parties*); and
- (f) in the case of the Security Agent, that specified in Schedule 1 (*The Parties*),

or any substitute address, fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice.

### 37.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,  
and, if a particular department or officer is specified as part of its address details provided under Clause 37.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to a Servicing Party will be effective only when actually received by that Servicing Party and then only if it is expressly marked for the attention of the department or officer of that Servicing Party specified in Schedule 1 (*The Parties*) (or any substitute department or officer as that Servicing Party shall specify for this purpose).
- (c) All notices from or to a Transaction Obligor shall be sent through the Facility Agent unless otherwise specified in any Finance Document.

- (d) Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to each of the Transaction Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

**37.4 Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 37.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

**37.5 Electronic communication**

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5.00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 37.5 (*Electronic communication*).



### **37.6 English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Facility Agent, accompanied by a certified English translation prepared by a translator approved by the Facility Agent and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **38 CALCULATIONS AND CERTIFICATES**

### **38.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

### **38.2 Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **38.3 Day count convention**

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and the amount of any such interest, commission or fee is calculated:
  - (i) on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice; and
  - (ii) subject to paragraph (b) below, without rounding.
- (b) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by an Obligor under a Finance Document after the Rate Switch Date shall be rounded to 2 decimal places.

## **39 PARTIAL INVALIDITY**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **40 REMEDIES AND WAIVERS**

- (a) No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

- (b) No variation or amendment of a Finance Document shall be valid unless in writing and signed by or on behalf of all the relevant Finance Parties in accordance with the provisions of Clause 44 (*Amendments and waivers*).

#### **41 ENTIRE AGREEMENT**

- (a) This Agreement, in conjunction with the other Finance Documents, constitutes the entire agreement between the Parties and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral, in respect of its subject matter.
- (b) Each Obligor acknowledges that it has not entered into this Agreement or any other Finance Document in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement or in any other Finance Document.

#### **42 SETTLEMENT OR DISCHARGE CONDITIONAL**

Any settlement or discharge under any Finance Document between any Finance Party and any Transaction Obligor shall be conditional upon no security or payment to any Finance Party by any Transaction Obligor or any other person being set aside, adjusted or ordered to be repaid, whether under any insolvency law or otherwise.

#### **43 IRREVOCABLE PAYMENT**

If the Facility Agent considers that an amount paid or discharged by, or on behalf of, a Transaction Obligor or by any other person in purported payment or discharge of an obligation of that Transaction Obligor to a Secured Party under the Finance Documents is capable of being avoided or otherwise set aside on the liquidation or administration of that Transaction Obligor or otherwise, then that amount shall not be considered to have been unconditionally and irrevocably paid or discharged for the purposes of the Finance Documents.

#### **44 AMENDMENTS AND WAIVERS**

##### **44.1 Required consents**

- (a) Subject to Clause 44.2 (*All Lender matters*) and Clause 44.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and, in the case of an amendment, the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 44 (*Amendments and Waivers*).
- (c) Without prejudice to the generality of Clause 30.8 (*Rights and discretions*), the Facility Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

- (d) Paragraph (c) of Clause 28.9 (*Pro rata interest settlement*) shall apply to this Clause 44 (*Amendments and Waivers*).

#### **44.2 All Lender matters**

Subject to Clause 44.4 (*Changes to reference rates*), an amendment of or waiver or consent in relation to any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definitions of “Majority Lenders”, “Sanctions”, “Sanctions Authority”, “Sanctions Laws”, “Sanctions List” and “Restricted Party” in Clause 1.1 (*Definitions*);
- (b) a postponement to or extension of the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Applicable Margin other than in accordance with Clause 9.6 (*Margin adjustment*) or the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Facility;
- (f) a change to any Transaction Obligor other than in accordance with Clause 29 (*Changes to the Transaction Obligors*);
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) this Clause 44 (*Amendments and Waivers*);
- (i) any change to the preamble (*Background*), Clause 2 (*The Facility*), Clause 3 (*Purpose*), Clause 5 (*Utilisation*), Clause 6.2 (*Effect of cancellation and prepayment on scheduled repayments*), Clause 7.5 (*Mandatory prepayment on sale, seizure or Total Loss*), Clause 8 (*Interest*), Clause 25.7(a) (*Accounts, Application of Earnings*), Clause 28 (*Changes to the Lenders*), Clause 33 (*Sharing among the Finance Parties*), Clause 48 (*Governing Law*) or Clause 49 (*Enforcement*);
- (j) any release of, or material variation to, any Transaction Security, guarantee, indemnity or subordination arrangement set out in a Finance Document (except in the case of a release of Transaction Security as it relates to the disposal of an asset which is the subject of the Transaction Security and where such disposal is expressly permitted by the Majority Lenders or otherwise under a Finance Document);
- (k) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
  - (i) the guarantees and indemnities granted under Clause 17 (*Guarantee and Indemnity –Guarantor*);
  - (ii) the Security Assets; or

- (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed, (except in the case of sub-paragraph (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
  - (l) the release of the guarantee and indemnity granted under Clause 18 (*Guarantee and Indemnity*) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document,
- shall not be made, or given, without the prior consent of all the Lenders.

#### **44.3 Other exceptions**

- (a) An amendment or waiver which relates to the rights or obligations of a Servicing Party, the Mandated Lead Arranger, the Sustainability Agent or a Reference Bank (each in their capacity as such) may not be effected without the consent of that Servicing Party, the Mandated Lead Arranger, the Sustainability Agent or that Reference Bank, as the case may be.
- (b) The Borrower and the Facility Agent, the Mandated Lead Arranger, the Sustainability Agent or the Security Agent, as applicable, may amend or waive a term of a Fee Letter to which they are party.

#### **44.4 Changes to reference rates**

- (a) Subject to Clause 44.3 (*Other exceptions*) any amendment or waiver which relates to:
  - (i) providing for the use of a Replacement Reference Rate in relation to that currency in place of that Published Rate; and
  - (ii) :
    - (A) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;
    - (B) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
    - (C) implementing market conventions applicable to that Replacement Reference Rate;
    - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
    - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation), may be made with the consent of the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrower.

- (b) An amendment or waiver that relates to, or has the effect of, aligning the means of calculation of interest on a Compounded Rate Loan under this Agreement to any recommendation of a Relevant Nominating Body which:
- (i) relates to the use of the RFR on a compounded basis in the international or any relevant domestic syndicated loan markets; and
  - (ii) is issued on or after the date of this Agreement,
- may be made with the consent of the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrower.
- (c) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) or (b) above within 5 Business Days (or such longer time period in relation to any request which the Borrower and the Facility Agent may agree) of that request being made:
- (i) its Commitment or its participation in the Loan (as the case may be) shall not be included for the purpose of calculating the Total Commitments or the amount of the Loan (as applicable) when ascertaining whether any relevant percentage of Total Commitments or the aggregate of participations in the Loan (as applicable) has been obtained to approve that request; and
  - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.
- (a) In this Clause 44.4 (*Changes to reference rates*):

**“Published Rate”** means:

- (a) the RFR; or
- (b) the Screen Rate.

**“Relevant Nominating Body”** means any applicable central bank, regulator or other supervisory authority or a group of the, or any working group.

**“Replacement Reference Rate”** means a reference rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Published Rate by:
  - (i) the administrator of that Published Rate (provided that the market or economic reality that such reference rate measures is the same as that measured by that Published Rate); or
  - (ii) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Reference Rate” will be the replacement under sub-paragraph (ii) above;

- (b) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Published Rate; or
- (c) in the opinion of the Majority Lenders and the Borrower, an appropriate successor to a Published Rate.

#### **44.5 Obligor Intent**

Without prejudice to the generality of Clauses 1.2 (*Construction*) and 18.4 (*Waiver of defences*), each Obligor expressly confirms that it intends that any guarantee contained in this Agreement or any other Finance Document and any Security created by any Finance Document shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **45 CONFIDENTIAL INFORMATION**

##### **45.1 Confidentiality**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 45.2 (*Disclosure of Confidential Information*) and Clause 45.4 (*Disclosure to numbering service providers*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

##### **45.2 Disclosure of Confidential Information**

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners, credit insurers and reinsurers, reinsurers, insurance brokers and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Security Agent and, in each case, to any of that person’s Affiliates, Related Funds, Representatives and professional advisers;

- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Transaction Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by any Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 30.15 (*Relationship with the other Finance Parties*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-paragraph (i) or (ii) of paragraph (b) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitrations, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 28.8 (*Security over Lenders' rights*);
- (viii) which is a classification society or other entity which a Lender has engaged to make the calculations necessary to enable that Lender to comply with its reporting obligations under the Poseidon Principles;
- (ix) who is a Party, a member of the Group or any related entity of a Transaction Obligor;
- (x) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document; or
- (xi) with the consent of the Guarantor;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to sub-paragraphs (i), (ii) and (iii) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

- (B) in relation to sub-paragraph (iv) of paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
  - (C) in relation to sub-paragraphs (v), (vi) and (vii) of paragraph (b) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom sub-paragraph (i) or (ii) of paragraph (b) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered in to a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party;
  - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

#### **45.3 DAC6**

Nothing in any Finance Document shall prevent disclosure of any Confidential Information or other matter to the extent that preventing that disclosure would otherwise cause any transaction contemplated by the Finance Documents or any transaction carried out in connection with any transaction contemplated by the Finance Documents to become an arrangement described in Part II A 1 of Annex IV of Directive 2011/16/EU.

#### **45.4 Disclosure to numbering service providers**

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Transaction Obligors the following information:
  - (i) names of Transaction Obligors;
  - (ii) country of domicile of Transaction Obligors;
  - (iii) place of incorporation of Transaction Obligors;
  - (iv) date of this Agreement;



- (v) Clause 48 (*Governing Law*);
  - (vi) the names of the Facility Agent, the Mandated Lead Arranger and the Sustainability Agent;
  - (vii) date of each amendment and restatement of this Agreement;
  - (viii) amount of Total Commitments;
  - (ix) currency of the Facility;
  - (x) type of Facility;
  - (xi) ranking of Facility;
  - (xii) Termination Date;
  - (xiii) changes to any of the information previously supplied pursuant to sub-paragraphs (i) to (xii) above; and
  - (xiv) such other information agreed between such Finance Party and the Borrower,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Transaction Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
  - (c) Each Obligor represents, on behalf of itself and the other Transaction Obligors, that none of the information set out in sub-paragraphs (i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
  - (d) The Facility Agent shall notify the Guarantor and the other Finance Parties of:
    - (i) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facility and/or one or more Transaction Obligors; and
    - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Transaction Obligors by such numbering service provider.

#### **45.5 Entire agreement**

This Clause 45 (*Confidential Information*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **45.6 Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

#### **45.7 Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (v) of paragraph (b) of Clause 45.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 45 (*Confidential Information*).

#### **45.8 Use of logo and/or trademark**

Subject to the Borrower's prior written consent (such consent not to be unreasonably withheld), each of the Facility Agent and/or the Mandated Lead Arranger and/or the Sustainability Agent has the right, at its expense, to publish information regarding its participation in, and the agency and arrangement of this Agreement and have the right to use the Borrower's and/or the Guarantor's logo and trademark in connection with such publication.

#### **45.9 Continuing obligations**

The obligations in this Clause 45 (*Confidential Information*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

### **46 CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS**

#### **46.1 Confidentiality and disclosure**

- (a) The Facility Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Facility Agent may disclose:
  - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause 9.4(c) (*Notification of rates of interest*); and

- (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The Facility Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
  - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this sub-paragraph (i) is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
  - (iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.
- (d) The Facility Agent's obligations in this Clause 46 (*Confidentiality of Funding Rates and Reference Bank Quotations*) relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 9.4(c) (*Notification of rates of interest*) **provided that** (other than pursuant to sub-paragraph (i) of paragraph (b) above) the Facility Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

#### **46.2 Related obligations**

- (a) The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Facility Agent, any Reference Bank Quotation for any unlawful purpose.

- (b) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
- (i) of the circumstances of any disclosure made pursuant to sub-paragraph (ii) of paragraph (c) of Clause 46.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
  - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 46 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

**46.3 No Event of Default**

No Event of Default will occur under Clause 27.4 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 46 (*Confidentiality of Funding Rates and Reference Bank Quotations*).

**47 COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

## GOVERNING LAW AND ENFORCEMENT

## 48 GOVERNING LAW

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

## 49 ENFORCEMENT

## 49.1 Jurisdiction

- (a) Unless specifically provided in another Finance Document in relation to that Finance Document, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute regarding the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a “Dispute”).
- (b) The Obligors accept that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Obligor will argue to the contrary.
- (c) This Clause 49.1 (*Jurisdiction*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

## 49.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints Hill Dickinson LLP at its current address at The Broadgate Tower, 20 Primrose Street, London EC2A 2EW, England, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
  - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**BORROWER**

SIGNED by Charlotte Lymer ) /s/ Charlotte Lymer

its attorney-in-fact ) Attorney-in-fact  
for and on behalf of )  
**ARAMIS NAVIGATION INC.** )  
In the presence of: )

Witness' signature: ) /s/ Sarika Parmar

Witness' name: ) Sarika Parmar  
Witness' address: ) Trainee Solicitor  
Watson Farley & Williams LLP  
15 Appold Street London EC21 2HB

**GUARANTOR**

SIGNED by Charlotte Lymer ) /s/ Charlotte Lymer

its attorney-in-fact ) Attorney-in-fact  
for and on behalf of )  
**NAVIOS MARITIME PARTNERS L.P.** )  
In the presence of: )

Witness' signature: ) /s/ Sarika Parmar

Witness' name: ) Sarika Parmar  
Witness' address: ) Trainee Solicitor  
Watson Farley & Williams LLP  
15 Appold Street London EC21 2HB

**ORIGINAL LENDERS**

SIGNED by James Burgess ) /s/ James Burgess

duly authorised ) Attorney-in-fact  
for and on behalf of )  
**DNB (UK) LIMITED** )  
In the presence of: )

Witness' signature: ) /s/ Sarika Parmar

Witness' name: ) Sarika Parmar  
Witness' address: ) Trainee Solicitor  
Watson Farley & Williams LLP  
15 Appold Street London EC21 2HB

**MANDATED LEAD ARRANGER**

SIGNED by James Burgess

) /s/ James Burgess

duly authorised  
for and on behalf of

**DNB BANK (UK) LIMITED**

In the presence of:

) Attorney-in-fact  
)  
)  
)

Witness' signature:

) /s/ Sarika Parmar

Witness' name:

Witness' address:

) Sarika Parmar  
) Trainee Solicitor  
Watson Farley & Williams LLP  
15 Appold Street London EC21 2HB

**SUSTAINABILITY AGENT**

SIGNED by James Burgess

) /s/ James Burgess

duly authorised  
for and on behalf of

**DNB BANK (ASA), LONDON BRANCH**

In the presence of:

) Attorney-in-fact  
)  
)  
)

Witness' signature:

) /s/ Sarika Parmar

Witness' name:

Witness' address:

) Sarika Parmar  
) Trainee Solicitor  
Watson Farley & Williams LLP  
15 Appold Street London EC21 2HB

**FACILITY AGENT**

SIGNED by James Burgess

) /s/ James Burgess

duly authorised  
for and on behalf of

**DNB BANK ASA, LONDON BRANCH**

In the presence of:

) Attorney-in-fact  
)  
)  
)

Witness' signature:

) /s/ Sarika Parmar

Witness' name:

Witness' address:

) Sarika Parmar  
) Trainee Solicitor  
Watson Farley & Williams LLP  
15 Appold Street London EC21 2HB

**SECURITY AGENT**

SIGNED by James Burgess

) /s/ James Burgess

duly authorised  
for and on behalf of

**DNB BANK ASA, LONDON BRANCH**

In the presence of:

) Attorney-in-fact

)

)

)

Witness' signature:

) /s/ Sarika Parmar

Witness' name:

) Sarika Parmar

Witness' address:

) Trainee Solicitor

Watson Farley & Williams LLP

15 Appold Street London EC21 2HB



DATED 17 June 2021

ANTHOS SHIPPING INC.  
AZALEA SHIPPING INC.  
FANDANGO SHIPPING CORPORATION  
FLAVESCENT SHIPPING CORPORATION  
SUNSTONE SHIPPING CORPORATION and  
ZAFFRE SHIPPING COPORATION (1)

- and -

NATIONAL BANK OF GREECE S.A. (2)

---

FACILITY AGREEMENT  
in respect of a loan of  
up to USD43,000,000

---

**Ince**  
PIRAEUS

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**THIS AGREEMENT** dated 17 June 2021 is made **BY** and **BETWEEN**:

- (1) **ANTHOS SHIPPING INC., AZALEA SHIPPING INC., FANDANGO SHIPPING CORPORATION, FLAVESCENT SHIPPING CORPORATION, SUNSTONE SHIPPING CORPORATION and ZAFFRE SHIPPING COPORATION**, each a corporation incorporated in the Republic of the Marshall Islands with its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960, as joint and several **Borrowers**; and
- (2) **NATIONAL BANK OF GREECE S.A.** as **Lender**.

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

**1 PURPOSE, DEFINITIONS AND CONSTRUCTION**

**1.1 Purpose**

This Agreement sets out the terms and conditions upon which the Lender agrees to make available to the Borrowers a loan facility in an amount not exceeding the lesser of (i) forty three million Dollars (USD43,000,000) and (ii) 60% of the aggregate Initial Valuation Amount of the Vessels, in a single advance for the purposes of:

- (a) refinancing (in whole or in part) the principal amount outstanding under the Existing Loan Agreements secured on the Vessels (of which the outstanding principal amount as at the date of this Agreement is USD36,602,722.99); and
- (b) providing liquidity in any amount equal to any balance to the Corporate Guarantor for general corporate purposes.

**1.2 Definitions**

In this Agreement, unless the context otherwise requires:

“**Affiliate**” means, in relation to any person, a subsidiary of that person or a holding company of that person or any other subsidiary of that holding company;

“**Approved Broker**” means Arrow Valuations, Allied Shipbroking, Braemar ACM Valuations, H. Clarkson & Co. Ltd, Fearnleys, Gibson Shipbrokers, Howe Robinson, Maersk Shipbrokers and SSY Valuations Services Ltd or such other reputable, independent and first class firm of ship sale and purchase brokers as the Lender may, in its absolute discretion, agree is an Approved Broker for the purposes of this Agreement;

“**Article 55 BRRD**” means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms;

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers;

“**Bail-In Legislation**” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;

(b) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and

(c) in relation to the United Kingdom, the UK Bail-In Legislation;

“**Balloon Instalment**” has the meaning given to it in clause 4.1.1, as the same may reduce from time to time;

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

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

“**Borrower**” means Borrower A, Borrower B, Borrower C, Borrower D, Borrower E or Borrower F and, in the plural, means all of them;

“**Borrower A**” means Anthos Shipping Inc., a corporation incorporated in the Republic of the Marshall Islands with its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960;

“**Borrower B**” means Azalea Shipping Inc., a corporation incorporated in the Republic of the Marshall Islands with its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960;

“**Borrower C**” means Fandango Shipping Corporation, a corporation incorporated in the Republic of the Marshall Islands with its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960;

“**Borrower D**” means Flavescent Shipping Corporation, a corporation incorporated in the Republic of the Marshall Islands with its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960;

“**Borrower E**” means Sunstone Shipping Corporation, a corporation incorporated in the Republic of the Marshall Islands with its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960;

“**Borrower F**” means Zaffre Shipping Corporation, a corporation incorporated in the Republic of the Marshall Islands with its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960;

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

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

“**Casualty Amount**” means five hundred thousand Dollars (USD500,000) (or the equivalent in any other currency);

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

“**Change of Control Event**” means the occurrence after the date of this Agreement of any of the following:

- (a) the Permitted Owners own less than 5% of the partnership interests in the Corporate Guarantor;
- (b) the Permitted Owners own less than 100% of Olympos Maritime Ltd of the Marshall Islands, the general partner of the Corporate Guarantor
- (c) Olympos Maritime Ltd of the Marshall Islands ceases to be the general partner of the Corporate Guarantor unless the Permitted Owners control the successor general partner;
- (d) the Corporate Guarantor is not the sole member of the Shareholder;
- (e) the Shareholder ceases to be the registered owners of 100% of the issued shares in each Borrower and/or to control 100% of the voting rights attaching to such shares;
- (f) any change in the ultimate beneficial ownership of Navios Shipmanagement or any other Manager (except any Third-Party Manager); and
- (g) Ms. Angeliki Frangou (and/or her immediate family) ceases to have direct and/or indirect involvement in the management of the Corporate Guarantor and/or the Borrowers.

“**Charter Assignment**” means, in relation to a Vessel, a specific assignment of any Extended Employment Contract (and any guarantee thereof) required to be executed hereunder by the Borrower owning that Vessel in favour of the Lender (including any consent of the relevant charterer or guarantor necessary for such assignment to be effective and/or notices and/or acknowledgements and/or undertakings associated therewith) in such form as the Lender may require in its sole discretion;

“**Classification**” means, in relation to a Vessel, the highest class available for a vessel of her type and age with the relevant Classification Society, which as at the date of this Agreement is in relation to each Vessel the approved classification as specified in Schedule 5 (*Vessel Details*);

“**Classification Society**” means, in relation to the Vessel, any classification society which is a member of the International Association of Classification Societies and which shall be acceptable to the Lender at its absolute discretion for the purposes of the relevant Ship Security Documents, which as at the date of this Agreement is in relation to each Vessel the approved classification society as specified in Schedule 5 (*Vessel Details*);

“**Co-assured’s Undertaking and Assignment of Insurances**” means, in relation to a Vessel, an undertaking and assignment of the rights, title and interest in and to all the benefit of the Insurances in respect of that Vessel and subordination of its claims to the Lender to be executed hereunder by any co-assured party in favour of the Lender in such form as the Lender may agree or require, and in the plural means all of them;

“**Code**” means the US Internal Revenue Code of 1986, as amended, and the regulations promulgated and rulings issued thereunder;

“**Commitment**” means forty three million Dollars (USD43,000,000) which the Lender is obliged to lend to the Borrowers under this Agreement, to the extent not reduced and/or cancelled under this Agreement;

“**Compliance Certificate**” means a certificate substantially in the form set out in schedule 3 signed by the chief financial officer of the Corporate Guarantor;

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

“**Confidential Information**” means all information relating to the Borrowers, any Security Party, any Group Member, the Security Documents or the Loan of the Lender becomes aware in its capacity as, or for the purpose of becoming, a Lender or which is received by a Lender in relation to, or for the purpose of becoming a Lender under, the Security Documents or the Loan from the Borrowers, the Corporate Guarantor or any other Security Party or any of their advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Lender of Clause 15.6 (*Disclosure of information*); or

- (b) is identified in writing at the time of delivery as non-confidential by any Borrower, any other Security Party or any of their advisers; or
- (c) is known by the Lender before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with any Borrower or any other Security Party and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality;

**“Confidentiality Undertaking”** means a confidentiality undertaking in substantially the appropriate form recommended by the London Market Association (or any successor organisation) from time to time or in any other form agreed between the Borrowers and the Lender;

**“Corporate Guarantee”** means the unconditional, irrevocable and on demand guarantee of the obligations of the Borrowers under this Agreement required to be executed by the Corporate Guarantor in favour of the Lender in such form as the Lender may require;

**“Corporate Guarantor”** means Navios Maritime Partners L.P., a limited partnership formed in the Republic of the Marshall Islands with its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960;

**“Deed of Release”** means, in relation to an Existing Loan Agreement a deed releasing the Existing Security Interests and any Existing Indebtedness relating to that Existing Loan Agreement in in such form as the Lender may require in its sole discretion and, in the plural, means all of them;

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

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

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

**“Drawdown Notice”** means a notice substantially in the form of schedule 1;

**“Drawdown Period”** means the period commencing on the Execution Date and ending on the earliest of (i) 31 July 2021; (ii) such later date as the Lender may agree in its sole discretion and (iii) any date on which the Commitment is finally cancelled or fully drawn under the terms of this Agreement;

“**Earnings**” means, in relation to a Vessel, all moneys whatsoever from time to time due or payable to the Borrower owning that Vessel during the Facility Period arising out of the use or operation of that Vessel including (but without limiting the generality of the foregoing) all freight, hire and passage moneys, income arising under pooling arrangements, compensation payable to the Borrower in event of requisition of the Vessel for hire, remuneration for salvage and towage services, contributions in general average, demurrage and detention moneys, and damages for breach (or payments for variation or termination) of any charterparty or other contract (including any contract of affreightment) for the employment of the Vessel (including any proceeds under any loss of hire insurance (if any));

“**Earnings Account**” means, in relation to a Borrower, an interest bearing USD current account opened or (as the context may require) to be opened by that Borrower with the Lender in Piraeus and includes any sub-accounts thereof and any other account designated in writing by the Lender to be the Earnings Account for the purposes of this Agreement;

“**EBITDA**” means the aggregate amount of combined pre-tax profits of the Group before extraordinary or exceptional items, interest, depreciation and amortisation as shown, for any relevant period, by the Latest Accounts for the relevant period;

“**EEA Member Country**” means any member state of the European Union, Iceland, Liechtenstein and Norway;

“**EIAPP Certificate**” means, in relation to a Vessel, the Engine International Air Pollution Prevention Certificate issued or to be issued pursuant to Annex VI of the International Convention for the Prevention of Pollution from Ships, MARPOL 73/78 (Regulations for the Prevention of Air Pollution from Ships) (as currently in force and as the same may be amended from time to time) in relation to that Vessel;

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

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

“**Environmental Approvals**” means all present and future authorisations, consents, licences, permits, exemptions or other approvals required under applicable Environmental Laws;

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



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

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

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

**“EU Bail-In Legislation Schedule”** means the document described as such and published by the Loan Market Association (or any successor person) from time to time;

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

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

**“Existing Indebtedness”** means, in relation to an Existing Loan Agreement at any date, the outstanding Borrowed Money on that date under that Existing Loan Agreement;

**“Existing Lender”** means:

- (a) in relation to Existing Loan Agreement A, Dory Finance DAC,
- (b) in relation to Existing Loan Agreement B, ABN AMRO Bank N.V.;

**“Existing Loan Agreement”** means the Existing Loan Agreement A or the Existing Loan Agreement B;

**“Existing Loan Agreement A”** means the loan agreement dated 24 September 2019, as amended and restated on 16 December 2019, and as further amended from time to time and made between, inter alios (i) Borrower A and Borrower B as borrowers and (ii) the relevant Existing Lender as lender in respect of a loan facility of (originally) up to USD37,000,000.

“**Existing Loan Agreement B**” means the loan agreement dated 26 June 2020 as amended from time to time and made between, inter alios (i) Borrower C, Borrower D, Borrower E and Borrower F as joint and several borrowers and (ii) the relevant Existing Lender as lender in respect of a loan facility of (originally) up to USD32,500,000.

“**Existing Security Interests**” means, in relation to an Existing Loan Agreement, any Security Interests created to secure the Existing Indebtedness under the Existing Loan Agreement.

“**Expenses**” means together any expenses incurred by the Lender as set out in Clause 5.2;

“**Expenses Interest Rate**” means (i) in respect of expenses incurred in currencies other than Euro, the aggregate of the overnight or daily rate, as the case may be, displayed each day at the Lender’s board of relevant interest rates and the Margin plus 2% per annum for an amount equal to the amount of such expenses and (ii) in respect of expenses incurred in Euro, the highest time default interest rate in force at the relevant time in Greece;

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

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

“**FATCA**” means:

- (c) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (d) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (e) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

“**FATCA Deduction**” means a deduction or withholding from a payment under a Security Document required by FATCA;

“**FATCA Exempt Party**” means a party to a Security Document that is entitled to receive payments free from any FATCA Deduction;

“**FATCA FFI**” means a foreign financial institution as defined in section 1471(d)(4) of the Code which, if the Lender is not a FATCA Exempt Party, could be required to make a FATCA Deduction;

“**Flag State**” means, in relation to a Vessel, Panama, Liberia, Marshall Islands or the country, which is acceptable to the Lender, on whose flag such Vessel is or is to be registered in the ownership of the relevant Borrower, which as at the date of this Agreement is in relation to each Vessel the flag specified in Schedule 5 (*Vessel Details*);

“**Fraction**” means, at any relevant time, a fraction having as numerator:

- (a) in respect of a sale of a Vessel, the sale price of such Vessel; and
- (b) in respect of a Total Loss of a Vessel, the Valuation Amount of such Vessel immediately prior to such Total Loss,

and as denominator an amount equal to the aggregate of:

- (c) an amount equal to:
  - (i) in respect of a sale of a Vessel, the sale price of such Vessel; and
  - (ii) in respect of a Total Loss of a Vessel, the Valuation Amount of such Vessel immediately prior to such Total Loss; and
- (d) the aggregate Valuation Amounts of all other Mortgaged Vessels;

“**General Assignment**” means, in relation to a Vessel, the deed of assignment of its earnings, insurances and requisition compensation executed or to be executed by the Borrower owning that Vessel in favour of the Lender in such form as the Lender may require and in the plural means all of them;

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

“**Group**” means, at any relevant time, the Borrowers, the Corporate Guarantor and their subsidiaries;

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

“**HMT**” means Her Majesty’s Treasury;

“**IAPP Certificate**” means, in relation to a Vessel, the International Air Pollution Prevention Certificate issued or to be issued pursuant to Annex VI of the International Convention for the Prevention of Pollution from Ships, MARPOL 73/78 (Regulations for the Prevention of Air Pollution from Ships) (as currently in force and as the same may be amended from time to time) in relation to that Vessel;

“**IFRS**” means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements;

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

“**Initial Valuation Amount**” means, in relation to a Vessel, the Valuation Amount of that Vessel determined in accordance with the valuation in respect of that Vessel referred to in Schedule 2, Part 2, paragraph (p) and otherwise in accordance with Clause 8.2.2 (*Valuation of Vessel*);

“**Insurances**” means, in relation to a Vessel, all policies and contracts of insurance (which expression includes all entries of that Vessel in a protection and indemnity or war risks association) which are from time to time during the Facility Period in place or taken out or entered into by or for the benefit of the Borrower owning that Vessel (whether in the sole name of that Borrower, or otherwise) in respect of that Vessel or otherwise howsoever in connection with that Vessel and all benefits thereof (including claims of whatsoever nature and return of premiums);

“**Interest Expense**” means, for any relevant financial period, the aggregate interest paid or payable by the Group and any member thereof on any Indebtedness during such period;

“**Interest Payment Date**” means the last day of an Interest Period and, if an Interest Period is longer than three (3) months, the date falling at the end of each successive period of three (3) months from the start of such Interest Period;

“**Interest Period**” means each period for the calculation of interest in respect of the Loan ascertained in accordance with clauses 3.2 and 3.3 and 3.4;

“**Interest Rate Determination Date**” means, in relation to any period for which an interest rate is to be determined, the date falling two (2) Banking Days before the first day of that period unless market practice differs in the London Interbank Market, in which case the Interest Rate Determination Date will be determined by the Lender in accordance with market practice in the London interbank market (and if quotations would normally be given by leading banks in the London interbank market on more than one day, the Interest Rate Determination Date will be the last of those days);

“**Interpolated Screen Rate**” means, in relation to LIBOR, the rate which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the relevant Interest Period; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the relevant Interest Period,

each as of 11.00 a.m. on the Quotation Day for Dollars;

“**ISM Code**” means in relation to its application to the Borrowers, the Vessels and their operation:

- (a) ‘The International Management Code for the Safe Operation of Ships and for Pollution Prevention’, currently known or referred to as the ‘ISM Code’, adopted by the Assembly of the International Maritime Organisation by Resolution A.741(18) on 4 December 1993 and incorporated on 19 May 1994 into Chapter IX of the International Convention for Safety of Life at Sea 1974 (SOLAS 1974); and

- (b) all further resolutions, circulars, codes, guidelines, regulations and recommendations which are now or in the future issued by or on behalf of the International Maritime Organisation or any other entity with responsibility for implementing the ISM Code, including, without limitation, the 'Guidelines on implementation or administering of the International Safety Management (ISM) Code by Administrations' produced by the International Maritime Organisation pursuant to Resolution A.788(19) adopted on 25 December 1995,

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

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

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

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

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

**"Latest Accounts"** means, in respect of any fiscal year of the Group, the latest annual audited consolidated accounts of the Corporate Guarantor required to be prepared pursuant to clause 8.1.6;

**"Lender"** means National Bank of Greece S.A. acting through its shipping branch at 2 Bouboulinas Street & Akti Miaouli 185 35 Piraeus, Greece (fax no. +30 210 414 4120);

**"LIBOR"** means for an Interest Period in relation to the Loan or any part thereof:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the relevant Interest Period) the Interpolated Screen Rate; or
- (c) (if (i) no Screen Rate is available for the currency of the Loan or (ii) no Screen Rate is available for the relevant Interest Period and it is not possible to calculate the Interpolated Screen Rate) the Reference Bank Rate,

as of 11.00 a.m. on the Quotation Day for Dollars and for a period equal in length to the relevant Interest Period and, if that rate is less than zero, LIBOR shall be deemed to be zero;

**"Lightweight"** means the lightweight tonnage of the Vessel as provided in (i) the Vessel's capacity plan or (ii) the Vessel's trim and stability booklet;

**"Liquidity"** means:

- (a) cash in hand legally and beneficially owned by any Group Member; and

- (b) cash deposits legally and beneficially owned by any Group Member and which are deposited with (A) the Lender or (B) any other bank or financial institution,

including any funds held with any bank from time to time to satisfy minimum liquidity requirements;

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

“**Loan Facility**” means the loan facility provided by the Lender on the terms and subject to the conditions of this Agreement in an amount not exceeding forty three million Dollars (USD43,000,000);

“**Management Agreement**” means, in relation to a Vessel:

- (a) the management agreement dated 16 November 2007 (as amended and/or otherwise up-dated from time to time) made between the Corporate Guarantor (on behalf of, among others, each Borrower) and Navios Shipmanagement in such form and substance acceptable to the Lender; and
- (b) any other management or sub-management agreement entered into by a Manager in relation to that Vessel;

“**Manager**” means, in relation to a Vessel:

- (a) Navios Shipmanagement;
- (b) any Affiliate of Navios Shipmanagement;
- (c) any other ship management entity ultimately controlled by Angeliki Frangou;
- (d) the Third Party Manager; and/or
- (e) any other commercial and/or technical manager (or, as the case may be, sub-manager) appointed by the Borrower owning that Vessel, with the prior written consent of the Lender, as the manager of that Vessel,

which as at the date of this Agreement in relation to each Vessel is the commercial and technical manager specified in Schedule 5 (*Vessel Details*);

“**Manager’s Undertaking**” means, in relation to a Vessel, the undertaking and assignment of insurances and subordination of its claims to the Lender required to be executed hereunder by each Manager of that Vessel in favour of the Lender in such form as the Lender may require and in the plural means all of them;

“**Mandatory Cost**” means in respect of any Interest Period the amount which the Lender certifies is the cost to it for making available the Loan for that Interest Period as a result of the Lender’s compliance with any regulation and any requirements of any competent authority or agency relating to monetary control and liquidity (including reserve asset and/or special deposit or liquidity requirements or other requirements having the same or a similar purpose whether or not having the force of law but with which it is customary to comply);

“**Margin**” means 3.00% (three per cent) per annum;

“**Material Adverse Effect**” means in the opinion of the Lender a material adverse effect on (i) the Lender’s rights under, or the security provided by, any Security Document, (ii) the ability of any Borrower or the Corporate Guarantor to perform or comply with any of its obligations under any Security Document or (iii) the value or nature of the financial condition of the Borrowers as a whole or the Corporate Guarantor;

“**Maturity Date**” means the date falling 5 years after the Drawdown Date but in any event no later than 31 July 2026;

“**Maximum Available Amount**” means an amount equal to the lesser of:

(f) USD43,000,000; and

(g) the amount equal to 60 per cent. of the aggregate Initial Valuation Amount of the Vessels.

“**MII Policy**” means a mortgagee’s interest in respect of each Vessel to be effected by the Lender on the Drawdown Date to cover the Vessels as the same may be renewed or replaced annually thereafter and maintained throughout the Facility Period through such brokers, with such underwriters and containing such coverage, terms and conditions as may be acceptable to the Lender in its sole discretion, insuring a sum of at least one hundred and fifteen per cent (115%) of the Outstanding Indebtedness;

“**Money Laundering**” has the meaning given to it in Article 1 of Directive 2015/849/EC of the Council of the European Communities;

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

“**Mortgage**” means, in relation to a Vessel, the first priority or, as the case may be, preferred ship mortgage on that Vessel required to be executed hereunder by the Borrower owning that Vessel, to be in such form as the Lender may require in its sole discretion and in the plural means all of them;

“**Mortgaged Vessel**” means, at any relevant time, a Vessel which is at such time subject to a Mortgage.

“**Navios Shipmanagement**” means Navios Shipmanagement Inc., a corporation incorporated in the Republic of the Marshall Islands with its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960;

“**Net Debt**” means, as at the date of calculation or, as the case may be, for any accounting period, the total debt of the Group less cash (which shall have the meaning given thereto under US GAAP meaning both restricted and freely available cash) as at that date or for that period as shown in the Latest Accounts;

“**Net Worth**” means, at any relevant time, the Total Assets less Total Liabilities;

“**OFAC**” means the Office of Foreign Assets Control of the US Department of Treasury;

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

“**Outstanding Indebtedness**” means the aggregate of all sums of money from time to time owing to the Lender, whether actually or contingently, under this Agreement and the Security Documents or any of them;

“**Party**” means a party to this Agreement or a Security Document;

“**Permitted Encumbrance**” means any Encumbrance in favour of the Lender created pursuant to the Security Documents, until the Drawdown Date any Existing Security Interests and Permitted Liens;

“**Permitted Liens**” means, in relation to a Vessel:

(a) any lien on that Vessel for:

(i) master’s, officer’s or crew’s wages outstanding

(ii) any lien for salvage and any ship repairer’s or outfitter’s possessory lien for a sum not (except with the prior written consent of the Lender) exceeding the Casualty Amount,

in each case in the ordinary course of trading provided such liens (A) do not exceed the amount of USD600,000 and (B) do not secure amounts more than 30 days overdue;

(b) any other lien arising in the ordinary course of trading by statute or by operation of law (and not as a result of a default of any Security Party) in respect of obligations which are not overdue (and while such obligations are not overdue);

“**Permitted Owners**” means:

(a) Angeliki Frangou;

(b) each of her spouse, siblings, ancestors, descendants (whether by blood, marriage or adoption, and including stepchildren) and the spouses, siblings, ancestors and descendants (whether by blood, marriage or adoption, and including stepchildren) of such natural persons, the beneficiaries, estates and legal representatives of any of the foregoing, the trustee of any bona fide trust of which any of the foregoing, individually or in the aggregate, are the majority in interest beneficiaries or grantors, and any corporation, partnership, limited liability company or other person in which any of the foregoing, individually or in the aggregate, own or control a majority in interest (Angeliki Frangou and/or any one of the foregoing called, a “**Person**”);



- (c) Navios Maritime Holdings Inc., a corporation incorporated in the Marshall Islands and having its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960; and
- (d) all Affiliates controlled by a Person;

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

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

“**Prohibited Parties**” means any persons, entities or parties that are:

- (a) listed on, or owned or controlled by, a person, entity or party listed on any Sanctions List; or
- (b) located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person, entity or party located in, or organised under the laws of, a country or territory that is the target of country-wide Sanctions (or whose government is the target of Sanctions), as applicable; or
- (c) located, berthed or anchored at prohibited ports; or
- (d) being otherwise a target of Sanctions; or
- (e) acting or purporting to act on behalf of any of the parties listed under paragraphs (a) and (b) above; or
- (f) with which the Lender is prohibited from dealing, or otherwise engaging in any transaction, pursuant to OFAC, United Nations, European Union and HMT Sanctions.

“**Quotation Day**” means, in relation to any period for which an interest rate is to be determined two Business Days before the first day of that period, unless market practice differs in the Relevant Interbank Market, in which case the Quotation Day will be determined by the Lender in accordance with market practice in the London Interbank Market (and if quotations would normally be given by leading banks in the London Interbank Market on more than one day, the Quotation Day will be the last of those days);

“**Reference Bank Rate**” means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Lender at its request by the Reference Banks in relation to LIBOR as either:

- (a) if:
  - (i) the Reference Bank is a contributor to the applicable Screen Rate; and
  - (ii) it consists of a single figure,

the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator; or

(b) in any other case, the rate at which the relevant Reference Bank could fund itself in the relevant currency for the relevant period with reference to the unsecured wholesale funding market;

**“Reference Banks”** means, in relation to LIBOR, National Bank of Greece S.A., acting through its branch at 75 King William Street, London EC4N 7BE, England or such other banks as may be appointed by the Lender, in its discretion;

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

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

**“Repayment Date”** means the date on which any instalment of the Loan is repayable under the provisions of clause 4.1.1;

**“Repayment Instalment”** means in respect of the Loan, each of the repayment instalments falling due under and in accordance with clause 4.1.1, as the same may be reduced in accordance with this Agreement;

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

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

**“Requisition Compensation”** means, in relation to a Vessel, all moneys or other compensation from time to time payable during the Facility Period by reason of Compulsory Acquisition of that Vessel;

**“Resolution Authority”** means any body which has authority to exercise any Write-down and Conversion Powers;

**“Retention Account”** means an interest bearing USD account in the name of the Borrower opened or (as the context may require) to be opened by the Borrower with the Lender and includes any sub-accounts thereof and any other account designated in writing by the Lender to be the Retention Account for the purposes of this Agreement;

“**Retention Account Pledge**” means the first priority pledge required to be executed hereunder by the Borrower over the Retention Account in such form as the Lender may agree or require;

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

- (a) one-third (1/3rd) of the repayment instalment in respect of the Loan falling due for payment pursuant to clause 4.1.1 (as the same may have been reduced by any prepayment) on the next Repayment Date after the relevant Retention Date; and
- (b) the applicable fraction (as hereinafter defined) of the aggregate amount of interest falling due for payment in respect of the Loan during and at the end of each Interest Period current at the relevant Retention Date and, for this purpose, the expression “**applicable fraction**” in relation to each Interest Period shall mean a fraction having a numerator of one and a denominator equal to the number of Retention Dates falling within the relevant Interest Period;

“**Retention Dates**” means the date falling one month after the Drawdown Date and each of the dates falling at monthly intervals after such date and prior to the Maturity Date;

“**Sanctions**” means any applicable sanctions, embargoes, freezing provisions, prohibitions or other restrictions relating to trading, doing business, investment, exporting, financing or making assets available (or other activities similar to or connected with any of the foregoing):

- (a) imposed by law or regulation of the Hellenic Republic, the United Kingdom, the Council of the European Union, the United Nations or its Security Council or the United States of America, whether or not any Borrower, any other Security Party, any other member of the Group or any affiliate of any of them is legally bound to comply with the foregoing; or
- (b) otherwise imposed by any law or regulation by which any Borrower, any other Security Party, any other member of the Group or any affiliate of any of them is bound or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of any Borrower, any other Security Party, any other member of the Group or any affiliate of any of them; or
- (c) otherwise imposed by the respective governmental institutions and agencies of any of the foregoing, including without limitation, OFAC, HMT, the Council of the European Union, the United Nations or its Security Council (together, the “**Sanctions Authorities**”).

“**Sanctions List**” means the “Specially Designated Nationals and Blocked Persons” list issued by OFAC, the “Consolidated List of Financial Sanctions Targets and Investment Ban List” issued by HMT, the Consolidated list of persons, groups and entities subject to European Union financial sanctions and the United Nations or any similar list issued or maintained or made public by any of the Sanctions Authorities, as applicable.

**“Screen Rate”** means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or the service ceases to be available, the Lender may specify another page or service displaying the relevant rate after consultation with the Borrowers;

**“Security Documents”** means this Agreement, the Mortgages, the Corporate Guarantee, the General Assignments, any Charter Assignment, the Retention Account Pledge, the Manager’s Undertakings, any Tripartite Deed, any Co-assured Undertaking and Insurances Assignment and any other documents as may have been or shall from time to time after the date of this Agreement be executed to guarantee and/or to govern and/or secure all or any part of the Loan, interest thereon and other moneys from time to time owing by the Borrowers pursuant to this Agreement;

**“Security Party”** means the Borrowers, the Corporate Guarantor, the Managers or any other person who may at any time be a party to any of the Security Documents (other than the Lender);

**“Security Value”** means the amount in USD (as certified by the Lender) which is, at any relevant time, the aggregate of (a) the aggregate of the Valuation Amounts of the Mortgaged Vessels and (b) the net realizable market value of any additional security for the time being actually provided to the Lender pursuant to Clause 8.2.1(b);

**“Shareholder”** means Navios Maritime Operating L.L.C., a limited liability company formed in Republic of the Marshall Islands with its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960;

**“Ship Security Documents”** means, in relation to a Vessel, the relevant Mortgage, the relevant General Assignment, any relevant Charter Assignment, any Tripartite Deed, any Co-assured Undertaking and Insurances Assignment and any relevant Manager’s Undertaking in respect of that Vessel;

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

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

**“Total Assets”** means, as at the date of calculation or, as the case may be, for any accounting period, the total assets (based on book values) (which shall have the meaning given thereto under US GAAP) of the Corporate Guarantor as at that date or for that period as shown in the Latest Accounts.

**“Total Liabilities”** means, as at the date of calculation or, as the case may be, for any accounting period, the total liabilities (which shall have the meaning given thereto under US GAAP) of the Corporate Guarantor as at that date or for that period as shown in the Latest Accounts;

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

- (a) any actual, constructive, agreed, compromised or arranged total loss of that Vessel; or
- (b) any Compulsory Acquisition; or
- (c) any hijacking, forfeiture, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel not falling within the definition of Compulsory Acquisition by any Government Entity, or by persons allegedly acting or purporting to act on behalf of any Government Entity, unless (i) the Vessel be released and restored to the relevant Owner within ninety (90) days after such incident, or (ii) if relevant underwriters confirm in writing (in customary terms) prior to the end of such ninety (90) day period that such capture, seizure, detention or confiscation will be fully covered by the relevant Owner’s war risks insurance, the shorter of six (6) months and such period for which cover is confirmed to attach;

“**Tripartite Deed**” means, in relation to a Vessel and if such Vessel is subject to a bareboat charter, a deed containing (inter alia) an assignment of the relevant charterer’s rights, title and interest in the insurances of that Vessel and an undertaking by the relevant charterer pursuant to which such charterer will agree to comply with the relevant Borrower’s obligations with regards to the employment, insurances, operation, repairs and maintenance of that Vessel and, if that Vessel is to be dually registered, grant the Lender the right to de-register such Vessel from any bareboat registry, required to be executed by the Borrower who is the owner thereof and the relevant charterer in favour of the Lender in such form as the Lender may require in its sole discretion;

“**Underlying Documents**” means any Extended Employment Contracts and any Management Agreement;

“**Unlawfulness**” means any event or circumstance which is the subject of a notification by the Lender to the Borrowers under clause 12.1;

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

“**US Tax Obligor**” means:

- (a) a person which is resident for tax purposes in the USA; or
- (b) a person some or all of whose payments under the Security Documents are from sources within the USA for US federal income tax purposes;

“**Valuation Amount**” means, in relation to a Vessel, the value of that Vessels most recently determined pursuant to Clause 8.2.2 (*Valuation of Vessels*);

“**Vessel**” means Vessel A, Vessel B, Vessel C, Vessel D, Vessel E or Vessel F, as each is specified in Schedule 5 (*Vessel Details*) as at the date of this Agreement;

“**UK Bail-In Legislation**“ means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings); and

“**US GAAP**” means generally accepted accounting principles in the United States of America;

“**Write-down and Conversion Powers**” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to any other applicable Bail-In Legislation other than the UK Bail-In Legislation:
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers;
  - (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to the UK Bail-In Legislation any powers under the UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers.

Words and expression defined in Schedule 4 shall have the meanings given to them therein stated as if the same were set out full in this Clause 1.2 (*Definitions*).

### 1.3 **Construction**

In this Agreement, unless the context otherwise requires:

- 1.3.1 clause headings and the index are inserted for convenience of reference only and shall be ignored in the construction of this Agreement;

- 1.3.2 references to clauses and schedules are to be construed as references to clauses of, and schedules to, this Agreement and references to this Agreement include its schedules and any supplemental agreements executed pursuant hereto;
- 1.3.3 references to (or to any specified provision of) this Agreement or any other document shall be construed as references to this Agreement, that provision or that document as in force for the time being and as duly amended and/or supplemented and/or novated;
- 1.3.4 references to a “regulation” include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any Government Entity, central bank or any self-regulatory or other supra-national authority (including, without limitation, any regulation implementing or complying with (1) the “*International Convergence of Capital Measurement and Capital Standards, a Revised Framework*” published by the Basel Committee on Banking Supervision in June 2004, in the form existing on the date of this Agreement (“**Basel II**”), and/or (2) “*Basel III: International framework for liquidity risk measurement, standards and monitoring*” and “*Basel III: A global regulatory framework for more resilient banks and banking systems*”, published by the Basel Committee on Banking Supervision in December 2010, in the form existing on the date of this Agreement (“**Basel III**”) and/or (3) any amendment, replacement or refinement of Basel III (“**Basel IV**”) and/or (4) any other law or regulation which, at any time and from time to time, implements and/or amends and/or supplements and/or re-enacts and/or supersedes, whether in whole or in part, Basel II and/or Basel III and/or Basel IV (including Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (“**CRD IV**”) and Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms (“**CRR**”)), and whether such implementation, application or compliance is by a Government Entity, a lender or any company affiliated to it;
- 1.3.5 references to any person in or party to this Agreement shall include reference to such person’s lawful successors and assigns and references to the Lender shall also include a Transferee Lender;
- 1.3.6 words importing the plural shall include the singular and vice versa;
- 1.3.7 references to a time of day are, unless otherwise stated, to Athens time;
- 1.3.8 references to a person shall be construed as references to an individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- 1.3.9 references to a “guarantee” include references to an indemnity or any other kind of assurance whatsoever (including, without limitation, any kind of negotiable instrument, bill or note) against financial loss or other liability including, without limitation, an obligation to purchase assets or services as a consequence of a default by any other person to pay any Indebtedness and “guaranteed” shall be construed accordingly;
- 1.3.10 references to any statute or other legislative provision are to be construed as references to any such statute or other legislative provision as the same may be re enacted or modified or substituted by any subsequent statute or legislative provision (whether before or after the date hereof) and shall include any regulations, orders, instruments or other subordinate legislation issued or made under such statute or legislative provision;

- 1.3.11 a certificate by the Lender as to any amount due or calculation made or any matter whatsoever determined in connection with this Agreement shall be conclusive and binding on the Borrowers except for manifest error;
- 1.3.12 if any document, term or other matter or thing is required to be approved, agreed or consented to by the Lender such approval, agreement or consent must be obtained in writing unless the contrary is stated;
- 1.3.13 time shall be of the essence in respect of all obligations whatsoever of the Borrowers under this Agreement, howsoever and whensoever arising;
- 1.3.14 and the words “other” and “otherwise” shall not be construed *eiusdem generis* with any foregoing words where a wider construction is possible; and
- 1.3.15 a Default (other than an Event of Default) is “continuing” if it has not been remedied or waived and an Event of Default is “continuing” if it has not been waived or remedied **provided that** for the purposes of Clause 10.2 (*Acceleration*), an Event of Default may only be remedied within 15 days from its occurrence.

#### 1.4 **References to currencies**

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

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

Except for clause 18, no part of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

## 2 **THE COMMITMENT AND CANCELLATION**

### 2.1 **Agreement to lend**

The Lender, relying upon each of the representations and warranties in clause 7, agrees to make available to the Borrowers upon and subject to the terms of this Agreement, the Loan Facility in a single advance for the purposes specified in Clause 1.1 (*Purpose*).

### 2.2 **Drawdown**

- 2.2.1 Subject to the terms and conditions of this Agreement, the Commitment shall be made available to the Borrowers in a single advance following receipt by the Lender from the Borrowers of the Drawdown Notice not later than 10:00 a.m. on the third Banking Day before the date, which shall be a Banking Day falling within the Drawdown Period, on which the Borrowers proposes the Loan is made available PROVIDED that the Lender shall be under no obligation to advance the Loan or any part thereof (i) should any relevant Government Entity not approve the transfer of funds abroad (if any such approval is required) or (ii) if disbursement of the Loan would violate any law applicable at the time.

- 2.2.2 The Drawdown Notice shall be effective on actual receipt by the Lender and, once given, shall, subject as provided in clause 3.5, be irrevocable.



2.3 **Limitation and application of the Loan**

2.3.1 The amount of the Loan shall not exceed the amount of the Loan Facility.

2.3.2 The principal amount specified in the Drawdown Notice for borrowing on the Drawdown Date shall, subject to the terms of this Agreement, not exceed the Maximum Available Amount.

2.3.3 The Loan shall be paid forthwith upon drawdown to such account as the Borrowers shall stipulate in the Drawdown Notice.

2.4 **Availability**

The Borrowers acknowledge that payment of the Loan referred to in Clause 2.3.2 to the account or accounts specified in the Drawdown Notice shall satisfy the obligation of the Lender to lend the Loan to the Borrowers under this Agreement.

2.5 **Cancellation in changed circumstances**

The Borrowers may at any time prior to the Drawdown Date by notice to the Lender (effective only on actual receipt) cancel with effect from a date not less than ten (10) Banking Days after receipt by the Lender of such notice, all or part of the undrawn Commitment.

2.6 **Use of proceeds**

2.6.1 Without prejudice to the Borrowers' obligations under clause 8.1.4, the Lender shall not have any responsibility for the application of the proceeds of the Loan or any part thereof by the Borrowers.

2.6.2 The Borrowers shall not, and shall procure that each Security Party and each other Group Member and any subsidiary of any of them shall not, permit or authorise any other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of the Loan or other transactions contemplated by this Agreement to fund or facilitate trade, business or other activities: (i) involving or for the benefit of any Prohibited Party; or (ii) in any other manner that could result in the Borrowers or any other Security Party being in breach of any Sanctions or becoming a Prohibited Party.

3 **INTEREST AND INTEREST PERIODS**

3.1 **Normal interest rate**

The Borrowers must pay interest on the Loan in respect of each Interest Period relating thereto on each Interest Payment Date at the rate per annum determined by the Lender to be the aggregate of (a) the Margin, (b) LIBOR for that Interest Period and (c) any Mandatory Cost for that Interest Period or, if applicable, on the Substitute Basis.

3.2 **Selection of Interest Periods**

Subject to clause 3.3, the Borrowers may, by written notice sent by the Borrowers and received by the Lender not later than 10:00 a.m. on the second Banking Day before the beginning of each Interest Period specify whether such Interest Period shall have a duration of one (1), three (3), six (6) or twelve (12) months or such other shorter than twelve (12) month period as the Borrowers may select and the Lender may agree.

3.3 **Determination of Interest Periods**

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

- 3.3.1 the first Interest Period in respect of the Loan shall start on the date the Loan is drawn and each subsequent Interest Period shall start on the last day of the previous Interest Period;
- 3.3.2 if any Interest Period would otherwise overrun a Repayment Date, then, in the case of the last Interest Period, such Interest Period shall end on the Maturity Date, and in the case of any other Interest Period, the Loan shall be divided into parts so that there is one part in the amount of the Repayment Instalment due on such Repayment Date and having an Interest Period ending on the relevant Repayment Date and another part in the amount of the balance of the Loan having an Interest Period ascertained in accordance with clause 3.2 and the other provisions of this clause 3.3; and
- 3.3.3 if the Borrowers fail to specify the duration of an Interest Period in accordance with the provisions of clause 3.2 and this clause 3.3, such Interest Period shall have a duration of three (3) months or such other period as shall comply with this clause 3.3.

3.4 **Default interest**

If the Borrowers fail to pay any amount payable by it under a Security Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at (a) in respect of any Expenses, the Expenses Interest Rate and (b) in respect of any other amount, a rate which is two per cent (2%) per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted the Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Lender. Any interest accruing under this Clause 3.4 shall be immediately due and payable by the Borrowers on 30 June and 31 December of the relevant year and each such day shall, for the purposes of this Agreement, be treated as the final day of an Interest Period in respect of that amount of interest.

Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

3.5 **Market disruption; non-availability**

- 3.5.1 If at any time prior to the commencement of any Interest Period:
  - (a) the Lender for any reason is unable to obtain Dollars in the London Interbank Market in order to fund the Loan (or any part of it) during that Interest Period; or
  - (b) the Lender considers that LIBOR would not accurately reflect the cost to it of funding the Loan (or any part of them) during that Interest Period

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

3.5.2 Following issue by the Lender of a Determination Notice, the Borrowers and the Lender shall negotiate in good faith for a period of ten (10) days in order to agree a substitute basis in place of LIBOR for maintaining the Loan and, if within such ten (10) day period the Borrowers and the Lender agree such a substitute basis such basis shall be the “Substitute Basis” for the purposes of this Agreement and the Substitute Basis shall be retroactive to, and effective from, the first day of the relevant Interest Period.

The Substitute Basis shall be binding on the Borrowers, and shall take effect until such time as the Lender notifies the Borrowers that none of the circumstances specified in clause 3.5.1 continues to exist, whereupon interest shall again be calculated on the basis of LIBOR.

If the Lender and the Borrowers fail to agree a Substitute Basis within ten (10) days of any Determination Notice being given by the Lender under clause 3.5.1, the Lender shall certify an alternative basis in place of LIBOR for maintaining the Loan, which shall be the “Substitute Basis” for the purposes of this Agreement and the Substitute Basis shall be retroactive to, and effective from, the first day of the relevant Interest Period.

The Substitute Basis determined by the Lender may at the Lender’s sole discretion include (without limitation) alternative interest periods, alternative currencies or alternative rates of interest but shall include the relevant Margin above the cost of funds (including any Mandatory Cost) to the Lender.

If the Borrowers do not agree the Substitute Basis, then the Borrowers shall have the right to repay the Loan on the tenth (10<sup>th</sup>) day after receiving notice of the Substitute Basis, together with accrued interest thereon payable to the Lender at the rate certified by the Lender and notified to the Borrowers as being an interest reflecting the cost to the Lender of funding the Loan during the period ending on the date of such prepayment, plus the Margin and any Mandatory Cost.

### 3.5.3 **Interest Rate Swaps**

None of the Borrowers or the Corporate Guarantor may enter into any interest hedging arrangements in order to fix Interest Periods under this Agreement without the prior written consent of the Lender.

## 4 **REPAYMENT AND PREPAYMENT**

### 4.1 **Repayment**

4.1.1 Subject to any obligation to pay earlier under this Agreement, the Borrowers must repay the Loan by:

- (a) twenty (20) equal quarterly consecutive instalments in an amount equal to:
  - (i) the first to the fourth such instalment, USD1,500,000 each; and
  - (ii) the fifth to the twentieth such instalment, USD1,250,000 each; and

(b) an instalment (the “**Balloon Instalment**”) of USD17,000,000,

the first repayment instalment falling due 3 months after the Drawdown Date and subsequent instalments falling due at quarterly intervals thereafter, with the final instalment falling due on the Maturity Date and the Balloon Instalment being repayable together with the final such instalment.

4.1.2 If less than the full amount of the Loan is drawn down, then each of the said repayment instalments and the Balloon Instalment shall be reduced pro rata by the amount of, in aggregate, such undrawn amount.

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

#### 4.2 **Voluntary prepayment**

Subject to clauses 4.3, 4.4, 4.5 and 4.6, the Borrowers may, subject to having given 5 days’ prior written notice thereof to the Lender, prepay any specified amount (such part being in an amount of one hundred thousand Dollars (USD 100,000) or any larger sum which is an integral multiple of such amount or any other amount mutually agreed between the Borrowers and the Lender) of the Loan on any relevant Interest Payment Date without premium or penalty.

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

On the date falling ninety (90) days after that on which the Vessel became a Total Loss or, if earlier, on the date upon which the relevant insurance proceeds are, or Requisition Compensation is, received by the Borrowers (or the Lender pursuant to the Security Documents) the Borrowers and/or the Corporate Guarantor must prepay the Loan by an amount equal to the higher of:

- (a) an amount equal to the product of (i) the amount of the Loan outstanding immediately prior to occurrence of such Total Loss multiplied by (ii) the Fraction;
- (b) an amount (if any) which after the application of the prepayment to be made pursuant to this Clause 4.3 results in the Security Value being equal to the Required Security Amount; and
- (c) an amount (if any) which after the application of the prepayment to be made pursuant to this Clause 4.3 results in the Security Value expressed as a percentage of the Loan being equal to the respective percentage which applied immediately prior to the occurrence of such Total Loss.

Any surplus following such prepayment and the payment of any additional amounts payable pursuant to Clause 4.5 shall be paid to the relevant Borrower, subject to no Event of Default having occurred at the relevant time.

##### 4.3.2 Interpretation

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

- (a) in the case of an actual total loss of a Vessel, on the actual date and at the time that Vessel was lost or, if such date is not known, on the date on which that Vessel was last reported;
- (b) in the case of a constructive total loss of a Vessel, upon the date and at the time notice of abandonment of that Vessel is given to the then insurers of that Vessel;
- (c) in the case of a compromised or arranged total loss of a Vessel, on the date upon which the then insurers of the Vessel agree to treat that Vessel as a compromised or arranged total loss;
- (d) in the case of Compulsory Acquisition, on the date upon which the relevant requisition of title or other compulsory acquisition occurs; and
- (e) in the case of any requisition for title or other compulsory acquisition of that Vessel including, if that Vessel is not released therefrom within the Relevant Period, capture, appropriation, forfeiture, seizure, detention, deprivation or confiscation howsoever for any reason (but excluding requisition for use or hire) by or on behalf of any Government Entity or other competent authority or by pirates, hijackers, terrorists or similar persons; “**Relevant Period**” means either (i) ninety (90) days or, (ii) in respect of pirates, hijackers, terrorists or similar persons, if relevant underwriters confirm in writing (in terms satisfactory to the Lenders) prior to the end of such ninety (90) day period that such capture, appropriation, forfeiture, seizure, detention, deprivation or confiscation will be covered by the relevant Owner’s war risks insurance, the shorter of six (6) months after the date upon which the relevant incident occurred and such period at the end of which cover is confirmed to attach.

#### 4.4

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

On the date of completion of the sale of the Vessel, which sale shall always be subject to the prior written consent of the Lender pursuant to Clause 8.3.3, the Borrowers and/or the Corporate Guarantor must prepay the Loan by an amount equal to the higher of:

- (a) an amount equal to the product of (i) the amount of the Loan outstanding immediately prior to completion of such sale multiplied by (ii) the Fraction;
- (b) an amount (if any) which after the application of the prepayment to be made pursuant to this Clause 4.4 results in the Security Value being equal to the Required Security Amount; and
- (c) an amount (if any) which after the application of the prepayment to be made pursuant to this Clause 4.4 results in the Security Value expressed as a percentage of the Loan being equal to the respective percentage which applied immediately prior to the completion of such sale.

Any surplus following such prepayment and the payment of any additional amounts payable pursuant to Clause 4.4 shall be paid to the relevant Borrower, subject to no Event of Default having occurred at the relevant time.

4.5 **Amounts payable on prepayment**

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

- (a) accrued interest on the amount to be prepaid to the date of such prepayment;
- (b) any additional amount payable under clauses 3.5, 6.6 or 12.2; and
- (c) all other sums payable by the Borrowers to the Lender under this Agreement or any of the other Security Documents including, without limitation any Break Costs.

4.6 **Notice of prepayment; reduction of Repayment Instalments**

4.6.1 Every notice of prepayment shall be effective only on actual receipt by the Lender, shall be irrevocable, shall specify the amount to be prepaid and shall oblige the Borrowers to make such prepayment on the date specified.

4.6.2 Any amount prepaid pursuant to clause 4.2 shall be applied pro rata against the remaining Repayment Instalments (including the Balloon Instalment) specified in clause 4.1.1.

4.6.3 The Borrowers may not prepay, repay or cancel the Loan or any part thereof except as expressly provided in this Agreement.

4.6.4 No amount repaid, prepaid or cancelled may be re-borrowed.

5 **FEES AND EXPENSES**

5.1 **Arrangement fee**

The Borrowers agree to pay to the Lender on the Drawdown Date a non-refundable arrangement fee equal to USD430,000.

5.2 **Expenses**

The Borrowers agree, and shall procure that the Corporate Guarantor agrees, to reimburse the Lender on a full indemnity basis on demand all expenses and/or disbursements whatsoever (including without limitation legal, printing, travel and out of pocket expenses) certified by the Lender as having been incurred by them from time to time:

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

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

- 5.2.3 in connection with obtaining any valuations, survey or inspection reports or other consultants reports which the Lender may be entitled to obtain under this Agreement and the Security Documents; and
- 5.2.4 in connection with obtaining a written report from a maritime insurance consultant or broker acceptable to the Lender in relation to the Insurances of the Vessel (which the Lender may obtain at least once a year, and at any time when there has been a change of insurer or terms of cover for the Vessel),
- each in the currency in which they are incurred (and the Borrowers acknowledge and agree that the Lender shall pay any such amounts in the currency in which they are incurred),
- in each case together with interest at the Expenses Interest Rate from the date on which reimbursement of such expenses and/or disbursements were due following demand to the date of payment (as well after as before judgment).

5.3 **Value added tax**

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

5.4 **Stamp and other duties**

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

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

6.1 **No set-off or counterclaim**

The Borrowers shall (and shall procure that any Security Party shall) make all payments under any of the Security Documents in full, without any set off or counterclaim whatsoever and, subject as provided in clause 6.6, free and clear of any deductions or withholdings, in USD on or before 11:00 am (London time) on the due date in freely available funds to such account at the Lender and in such place as the Lender may from time to time specify for this purpose.

6.2 **Payment by the Lender**

All sums to be advanced by the Lender to the Borrowers under this Agreement shall be remitted in USD on the Drawdown Date to the account specified in the Drawdown Notice.

6.3 **Non-Banking Days**

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

6.4 **Calculations**

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

6.5 **Currency of account**

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

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

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



6.7 **Claw back of Tax benefit**

If, following any such deduction or withholding as is referred to in clause 6.6 from any payment by any Borrower or any Security Party, the Lender shall receive or be granted a credit against or remission for any Taxes payable by it, the Lender shall, and to the extent that it can do so without prejudicing the retention of the amount of such credit or remission and without prejudice to the right of the Lender to obtain any other relief or allowance which may be available to it, reimburse any Borrower or any Security Party with such amount as Lender shall in its absolute discretion certify to be the proportion of such credit or remission as will leave the Lender (after such reimbursement) in no worse position than it would have been in had there been no such deduction or withholding from the payment by any Borrower or any Security Party as aforesaid. Such reimbursement shall be made forthwith upon the Lender certifying that the amount of such credit or remission has been received by it. Nothing contained in this Agreement shall oblige the Lender to rearrange its tax affairs or to disclose any information regarding its tax affairs and computations. Without prejudice to the generality of the foregoing, any Borrower or any Security Party shall not, by virtue of this clause 6.7, be entitled to enquire about the Lender's tax affairs.

6.8 **Loan account**

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

6.9 **Partial payments**

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

- 6.9.1 first, in or towards payment, in such order as the Lender may decide, of any unpaid costs and expenses of the Lender under any of the Security Documents;
- 6.9.2 secondly, in or towards payment of any fees payable to the Lender under, or in relation to, the Security Documents which remain unpaid;
- 6.9.3 thirdly, in or towards payment to the Lender of any accrued default interest owing pursuant to clause 3.4 but remains unpaid;
- 6.9.4 fourthly, in or towards payment to the Lender of any accrued interest owing in respect of the Loan which shall have become due under any of the Security Documents but remains unpaid;
- 6.9.5 fifthly, in or towards payment to the Lender of any due but unpaid Repayment Instalments; and

6.9.6 sixthly, in or towards payment to the Lender of any other sum relating to the Loan or which is payable under this Agreement which shall have become due under any of the Security Documents but remains unpaid.

The order of application set out in clauses 6.9.1 to 6.9.6 may be varied by the Lender without any reference to, or consent or approval from, any Borrower or any Security Party.

## 7 REPRESENTATIONS AND WARRANTIES

### 7.1 Continuing representations and warranties

Each Borrower represents and warrants to the Lender that:

#### 7.1.1 Due incorporation

each of the corporate Security Parties is duly incorporated or, as the case may be, formed, validly existing and in good standing under the laws of its respective country of incorporation, in each case, as a corporation and has power to carry on its respective businesses as it is now being conducted and to own its respective property and other assets, to which it has unencumbered legal and beneficial title except as disclosed to the Lender, and the shares of each Borrower have been issued in registered form;

#### 7.1.2 Corporate power

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

#### 7.1.3 Binding obligations

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

#### 7.1.4 No conflict with other obligations

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

- 7.1.5 No default  
no Event of Default has occurred or, on the date of this Agreement, is likely to occur;
- 7.1.6 No litigation or judgments  
no Proceedings are current, pending or threatened against any of the Security Parties or any other Group Members or their assets and there exist no judgments, orders, injunctions which could have a Material Adverse Effect on the obligations of the Security Parties under the Security Documents;
- 7.1.7 No filings required  
except for the registration of the Mortgage in the relevant register under the laws of the Flag State through the Registry, it is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of any of the Underlying Documents or any of the Security Documents that they or any other instrument be notarised, filed, recorded, registered or enrolled in any court, public office or elsewhere in any Pertinent Jurisdiction or that any stamp, registration or similar tax or charge be paid in any Pertinent Jurisdiction on or in relation to any of the Underlying Documents or the Security Documents and each of the Underlying Documents and the Security Documents is in proper form for its enforcement in the courts of each Pertinent Jurisdiction;
- 7.1.8 Required Authorisations and legal compliance  
all Required Authorisations have been obtained or effected or waived by the person requiring the same and, to the extent no such waiver exists, are in full force and effect and no Security Party has in any way contravened any applicable law, statute, rule or regulation (including all such as relate to Money Laundering);
- 7.1.9 Choice of law  
the choice of English law to govern the Underlying Documents and the Security Documents (other than each Mortgage and the Retention Account Pledge), the choice of the law of the Flag State to govern each Mortgage, the choice of Greek law to govern the Retention Account Pledge and the submissions by the Security Parties to the jurisdiction of the English courts and the obligations of such Security Parties associated therewith, are valid and binding;
- 7.1.10 No immunity  
no Security Party nor any of their assets is entitled to immunity on the grounds of sovereignty or otherwise from any Proceedings whatsoever;
- 7.1.11 Financial statements correct and complete  
the latest audited and unaudited consolidated financial statements of the Corporate Guarantor in respect of the relevant financial year as delivered to the Lender present or will present fairly and accurately the consolidated financial position of the Corporate Guarantor as at the date thereof and the results of the operations of the Corporate Guarantor and, as at such date, the Corporate Guarantor do not have any significant liabilities (contingent or otherwise) or any unrealised or anticipated losses which are not disclosed by, or reserved against or provided for in, such financial statements;

- 7.1.12 **Pari passu**  
the obligations of each Borrower under this Agreement and the obligations of the Corporate Guarantor under the Corporate Guarantee are direct, general and unconditional obligations of the relevant Borrower and the Corporate Guarantors respectively and rank at least pari passu with all other present and future Indebtedness of the relevant Borrower and the Corporate Guarantor except for obligations which are mandatorily preferred by operation of law and not by contract;
- 7.1.13 **Information**  
all information, whatsoever provided by any Security Party (other than the Managers) to the Lender in connection with the negotiation and preparation of the Security Documents or otherwise provided hereafter in relation to, or pursuant to this Agreement is, or will be, true and accurate in all material respects and not misleading, does or will not omit material facts and all reasonable enquiries have been, or shall have been, made to verify the facts and statements contained therein; there are, or will be, no other facts the omission of which would make any fact or statement therein misleading;
- 7.1.14 **No withholding Taxes**  
no Taxes anywhere are imposed whatsoever by withholding or otherwise on any payment to be made by any Security Party (other than the Managers) under the Underlying Documents or the Security Documents to which such Security Party is or is to be a party or are imposed on or by virtue of the execution or delivery by the Security Parties of the Underlying Documents or the Security Documents or any other document or instrument to be executed or delivered under any of the Security Documents;
- 7.1.15 **No Default under Underlying Documents**  
except as disclosed in writing by the Borrowers to the Lender, there is no Default under any of the Underlying Documents;
- 7.1.16 **Use of proceeds**  
the Borrowers shall apply the Loan only for the purposes specified in clause 2.1;
- 7.1.17 **Copies true and complete**  
the Certified Copies of the Underlying Documents delivered or to be delivered to the Lender pursuant to clause 9.1 are, or will when delivered be, true and complete copies or, as the case may be, originals of such documents; and such documents constitute valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and there have been no amendments or variations thereof or defaults thereunder;
- 7.1.18 **No Indebtedness**  
no Borrower has incurred any Borrowed Moneys save as envisaged by this Agreement or as otherwise disclosed in the Corporate Guarantor's public filings;

7.1.19 Tax returns

each Borrower and the Corporate Guarantor have filed all tax and other fiscal returns required to be filed by any tax authority to which they are subject or have obtained required extensions and no claims or investigations are being, or are likely to be, made or conducted against any of the Security Parties (other than the Managers) or any other member of the Group with respect to Taxes;

7.1.20 Freedom from Encumbrances

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

7.1.21 Environmental Matters

except as may already have been disclosed by the Borrowers in writing to the Lender:

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

7.1.22 ISM and ISPS Code

each Borrower has complied with and continue to comply with and have procured that any Manager of the Vessel owned by that Borrower has complied with and continues to comply with the ISM Code, the ISPS Code and all other statutory and other requirements relative to their business and in particular they or any Manager have obtained and maintains a valid DOC, IAPP Certificate, EIAPP Certificate (if applicable) and SMC for the Vessel owned by that Borrower and all other certificates required for the operation of such Vessel and that they and any Manager of such Vessel have implemented and continue to implement an ISM SMS;

7.1.23 Accounting reference date

each Borrower's accounting reference date is 31 December.

7.1.24 Office

neither any Borrower nor the Corporate Guarantor have an office in England or the United States of America;

7.1.25 Prohibited Parties, unlawful activity

- (a) none of the shares in any Borrower, any Security Party or any Vessel are or will be at any time during the Facility Period legally or beneficially owned or controlled by a Prohibited Party;
- (b) no Prohibited Party has or will have at any time during the Facility Period any legal or beneficial interest of any nature whatsoever in any of the shares of any of the Security Parties;

7.1.26 Sanctions

- (a) each Borrower shall procure that no Security Party or any other member of the Group or Affiliate of any of them:
  - (i) is a Prohibited Party; or
  - (ii) is owned or controlled by or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Party; or
  - (iii) owns or controls a Prohibited Party; or
  - (iv) has a Prohibited Party serving as a director, officer or, to the best of its knowledge, employee; or
  - (v) is domiciled or is incorporated in any of the restricted, embargoed or sanctioned countries according to applicable Sanctions (as more specifically set out in the most recent applicable laws and regulations in respect of Sanctions);
- (b) each Borrower shall procure that no proceeds of the Loan or any part of the Loan shall be made available, directly or indirectly, to or for the benefit of a Prohibited Party nor shall they be otherwise directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions;
- (c) each Borrower shall procure that each Security Party, each other member of the Group and each Affiliate of any of them is in compliance with all Sanctions as applicable;
- (d) each Borrower shall procure that each Security Party shall procure that no proceeds, funds or benefit from any activity or dealing with a Prohibited Party are used in discharging any obligation due or owing to the Lender or are credited to any bank account held with the Lender (including without limitation, the Earnings Account and the Retention Account), and that no payment is effected, whether to discharge any obligation due or owing to such party or for any other purpose, through the use of any bank account held with the Lender; and
- (e) each Borrower shall (and shall procure that each Security Party, each other member of the Group and each Affiliate of them will) to the extent permitted by law and promptly upon becoming aware of them, supply to the Lender details of any claim, action, suit, proceedings or investigation against it with respect to Sanctions by any Sanctions Authority;

- 7.1.27 **Material Adverse Effect**  
there has occurred nothing since 13 May 2021 which has had, or could have, a Material Adverse Effect; and
- 7.1.28 **Insolvency etc**  
no bankruptcy, insolvency, administration or similar proceedings have been commenced or threatened to commence against any Security Party (other than the Managers) with a view to winding up that Security Party;
- 7.1.29 **Anti-bribery**  
none of the improper or illegal acts referred to in Clause 8.1.26 (*Anti-bribery*) have occurred;
- 7.1.30 **Legal compliance**  
no Security Party has in any way contravened any applicable law, statute, rule or regulation (including, but not limited to, the Foreign Corrupt Practices Act of 1977 of the USA and all such as relate to Money Laundering, terrorism and/or bribery);
- 7.1.31 **Money laundering**  
in relation to the borrowing by the Borrowers of the Loan, the performance and discharge of their respective obligations and liabilities under this Agreement or any of the Security Documents and the transactions and other arrangements effected or contemplated by this Agreement or any of the Security Documents to which each Borrower is a party, each Borrower is acting for its own account and that the foregoing will not involve or lead to a contravention of any law, official requirement or other regulatory measure or procedure which has been implemented to combat Money Laundering;
- 7.1.32 **FATCA**  
none of the Security Parties is a FATCA FFI or a US Tax Obligor; and
- 7.2 **Repetition of representations and warranties**  
On each day throughout the Facility Period, each Borrower shall be deemed to repeat the representations and warranties in clause 7 updated mutatis mutandis as if made with reference to the facts and circumstances existing on such day and in clause 7.1.11 as if made with reference to the Latest Account at any relevant time.
- 8 **UNDERTAKINGS**
- 8.1 **General**  
Each Borrower undertakes with the Lender that, from the Execution Date until the end of the Facility Period, it will (and will procure that the Securities Parties will):

8.1.1 Notice of Event of Default and Proceedings

inform the Lender (a) promptly of any Event of Default and of any other circumstances or occurrence which might adversely affect the ability of any Security Party to perform its obligations under any of the Security Documents, details of all steps being taken to remedy such Event of Default and (b) as soon as the same is commenced or threatened, details of any Proceedings involving any Security Party which could have a Material Adverse Effect on that Security Party and/or the operation of any Vessel (including, but not limited to any Total Loss of any Vessel or the occurrence of any Environmental Incident) and will from time to time, if so requested by the Lender, confirm to the Lender in writing that, save as otherwise stated in such confirmation, no Event of Default has occurred and no such Proceedings have been commenced or threatened;

8.1.2 Authorisation

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

8.1.3 Corporate Existence

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

8.1.4 Use of proceeds

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

8.1.5 Pari passu

ensure that its obligations under this Agreement and the Corporate Guarantor's obligations under the Corporate Guarantee shall, without prejudice to the provisions of clause 8.3, at all times rank at least pari passu with all its other present and future Indebtedness with the exception of any obligations which are mandatorily preferred by law and not by contract;

8.1.6 Financial statements

cause to be prepared and shall ensure that the Corporate Guarantor will cause to be prepared:

- (a) as soon as possible, but in no event later than 180 days after the end of each of its financial years, annual unaudited (prepared in accordance with US GAAP) financial statements of each Borrower in the pre-agreed form (commencing with the financial year ending 31 December 2021) and annual audited consolidated financial statements of the Corporate Guarantor (commencing with the financial year ending 31 December 2021), respectively for that financial year; and



- (b) as soon as possible, but in no event later than 90 days after the end of each of 6-month period in each of its financial years, the unaudited semi-annual management accounts of the Corporate Guarantor for that 6-month period (commencing with the financial period ending 30 June 2021), certified as to their correctness by a chief financial officer of the Corporate Guarantor;

#### 8.1.7 Compliance Certificates

deliver to the Lender on the date on which the audited and unaudited consolidated accounts are delivered under clause 8.1.6 a Compliance Certificate together with such supporting information as the Lender may require;

#### 8.1.8 Financial Covenants

procure that the Guarantor ensures that:

- (a) at no time shall the Liquidity of the Group be less than \$500,000 multiplied by the number of vessels owned by any member of the Group;
- (b) the Net Debt divided by the Total Assets (adjusted for market values of vessels owned) less cash (which shall have the meaning given thereto under US GAAP meaning both restricted and freely available cash) shall be at all times less than 75%;
- (c) the ratio of EBITDA to Interest Expense shall at all times be at least 2 to 1; and
- (d) the Net Worth shall at all times be equal to or more than USD135,000,000.

such covenants to be calculated based on the Latest Accounts of the Corporate Guarantor delivered under clause 8.1.6 (and to be tested for the first time on the basis of the audited consolidated financial statements of the Corporate Guarantor for the financial year ending on 31 December 2021) and be included in the Compliance Certificate provided under clause 8.1.7;

#### 8.1.9 Payment of MII Policy premiums

pay, and procure that the Corporate Guarantor pay, on the Lender's written demand, the amount of the premium for the inception or, as the case may be, extension and/or continuance of the MII Policy (including any insurance tax thereon) and the Borrower hereby irrevocably authorises and instructs the Lender to pay such amount from any Earnings Account and/or the Retention Account to the relevant insurers in the event that the Borrowers and the Corporate Guarantor do not do so;

#### 8.1.10 Provision of further information

provide the Lender, and procure that the Corporate Guarantor (including their subsidiaries), shall provide to the Lender, on the Lender's request (i) details of all major financial developments affecting the Group and/or any member thereof, including (but not limited to) the sale or purchase of any ship and the borrowing or incurring of any Borrowed Money and (ii) such financial or other information (including, but not limited to, financial standing, Indebtedness, balance sheet, off-balance sheet commitments, repayment schedules, operating expenses, charter arrangements of all the ships (whether on the water or under construction) operating under the management of any Manager) concerning any Borrower, the Corporate Guarantor (including its subsidiaries), the Group and their respective affairs, activities, financial standing, Indebtedness and operations and the performance of any Vessel, including, but not limited to, copies of all certificates required for the trading and operation of any Vessel;

- 8.1.11 Obligations under Security Documents, etc.  
duly and punctually perform each of the obligations expressed to be imposed or assumed by them under the Security Documents and any Extended Employment Contract and will procure that each of the other Security Parties (other than the Managers) will, duly and punctually perform each of the obligations expressed to be assumed by it under the Security Documents and any Extended Employment Contract to which it is a party;
- 8.1.12 Compliance with ISM Code  
and will procure that any Operator will, comply with and ensure that each Vessel and any Operator complies with the requirements of the ISM Code, including (but not limited to) the maintenance and renewal of valid certificates pursuant thereto throughout the Facility Period (as defined in the relevant Ship Security Documents);
- 8.1.13 Withdrawal of DOC and SMC  
immediately inform the Lender if there is any actual withdrawal of its, any Manager's or any other Operator's DOC, IAPP Certificate, EIAPP Certificate or the SMC of any Vessel;
- 8.1.14 Issuance of DOC and SMC  
and will procure that any Manager and any other Operator will promptly inform the Lender of the receipt by any Borrower, any Manager or such other Operator of notification that its application for a DOC or any application for an SMC or IAPP Certificate or EIAPP Certificate for any Vessel has been refused;
- 8.1.15 ISPS Code Compliance  
and will procure that any Manager or any Operator will:
- (a) maintain at all times a valid and current ISSC in respect of each Vessel and all other certificates required for the trading and operation of each Vessel;
  - (b) immediately notify the Lender in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC in respect of each Vessel;
  - (c) procure that each Vessel will comply at all times with the ISPS Code;
- 8.1.16 Compliance with Laws and payment of taxes
- (a) comply with all relevant Environmental Laws, laws, statutes, applicable conventions and regulations and pay all taxes for which it is liable as they fall due; and

- (b) comply in all respects with, and will procure that each Security Party and each other Group Member and any affiliate of any of them will comply in all respects with, (i) all Sanctions and (ii) the Trading with the Enemy Act and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) and any other enabling legislation or executive order thereto);

#### 8.1.17 Inspection

upon receipt of at least 15 days written notice (unless there is an Event of Default where no notice shall be required), ensure that the Lender, by independent marine surveyors or other persons appointed by it for such purpose, may board any Vessel at all reasonable times (which the Lender, subject to no Event of Default continuing at the relevant time, shall use reasonable endeavours to ensure does not adversely affect the operation of such Vessel) for the purpose of inspecting her and to afford all proper facilities for such inspections and for this purpose shall give the Lender reasonable advance notice of any intended drydocking of any Vessel (whether for the purpose of classification, survey or otherwise) and the Borrowers shall pay the costs in respect of (i) one inspection in each calendar year in respect of each Vessel and (ii) all such inspections following the occurrence of an Event of Default which is continuing and the relevant Borrower shall effect all repairs which the Lender may reasonably request as a result of such inspection;

#### 8.1.18 The Vessels

ensure that each Vessel will at all times after her delivery be:

- (a) in the absolute sole, legal and beneficial ownership of the relevant Borrower and not held on trust for any third party;
- (b) registered through the offices of the relevant Registry as a ship under the laws and flag of the relevant Flag State;
- (c) in compliance with the ISM Code and the ISPS Code and operationally seaworthy and in every way fit for service;
- (d) in good and sea-worthy and cargo-worthy condition;
- (e) classed with the Classification free of all overdue recommendations and conditions of the Classification Society affecting the Classification and the relevant Borrower shall upon the Lender's request provide to the Lender up to date classification certificate in respect of the relevant Vessel duly issued by the Classification Society;
- (f) insured in accordance with the Ship Security Documents; and
- (g) managed by a Manager in accordance with the terms of the relevant Management Agreement, which shall be acceptable to the Lender;

8.1.19 Charters

deliver to the Lender, a Certified Copy of each Extended Employment Contract upon its execution, forthwith on the Lender's request execute (a) a Charter Assignment in respect thereof and of any guarantee thereof and (b) any notices of assignment required in connection therewith and use commercially reasonable endeavours to procure the acknowledgement of any such notice of assignment by the relevant charterer and of any charter guarantor (save that in circumstances where such acknowledgement is not obtained, this shall not constitute an Event of Default provided that the relevant Borrower shall ensure that evidence of service of the notice of assignment to the relevant charterer and any charter guarantor is provided to the Lender and (c) (if any Vessel is subject to a bareboat charter) procure execution by the relevant Borrower and the charterer of a Tripartite Deed, together with all notices required to be determined thereunder and will provide evidence acceptable to the Lender that such notice has been given to the relevant charterer and to any charter guarantor and the relevant Borrower shall pay all legal and other costs incurred by the Lender in connection with any such Charter Assignment and Tripartite Deed, forthwith following the Lender's demand;

8.1.20 Chartering

not without the prior written consent of the Lender and, if such consent is given, only subject to such conditions as the Lender may impose, to let any Vessel:

- (a) on demise charter for any period; or
- (b) by any time or consecutive voyage charter for a term which equals or exceeds or which by virtue of any optional extensions therein contained might equal or exceed twelve (12) months' duration; or
- (c) on terms whereby more than two (2) months' hire (or the equivalent) is payable in advance; or
- (d) below a fair and reasonable arms-length rate, and otherwise on terms less advantageous than terms, obtainable at the time when the relevant Vessel is fixed; or

8.1.21 Sanctions

- (a) not be, and shall procure that no Security Party or any other member of the Group or Affiliate of any of them shall be:
  - (i) a Prohibited Party;
  - (ii) owned or controlled by or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Party;
  - (iii) owning or controlling a Prohibited Party;
  - (iv) having a Prohibited Party serving as a director, officer or, to the best of its knowledge, employee; or
  - (v) domiciled or incorporated in any of embargoed or sanctioned countries according to applicable Sanctions (as more specifically set out in the most recent applicable laws and regulations in respect of Sanctions);
- (b) procure that no proceeds of the Loan or any part of the Loan shall be made available, directly or indirectly, to or for the benefit of a Prohibited Party nor shall they be otherwise directly or indirectly, applied in a manner or for a purpose prohibited by Sanctions;

- (c) procure that each Security Party, each other member of the Group and each Affiliate of any of them is in compliance with all Sanctions as applicable;
- (d) procure that each Security Party shall procure that no proceeds, funds or benefit from any activity or dealing with a Prohibited Party are used in discharging any obligation due or owing to the Lender or are credited to any bank account held with the Lender (including without limitation, any Earnings Account and the Retention Account), and that no payment is effected, whether to discharge any obligation due or owing to such party or for any other purpose, through the use of any bank account held with the Lender; and
- (e) procure, (and shall procure that each Security Party, each other member of the Group and each Affiliate of them will) to the extent permitted by law and promptly upon becoming aware of them, supply to the Lender details of any claim, action, suit, proceedings or investigation against it with respect to Sanctions by any Sanctions Authority.

#### 8.1.22 Minimum Liquidity

procure and shall ensure that the Corporate Guarantor shall procure, that at all times during the Facility Period, it shall maintain in an account or accounts with the Lender cash which is (other than the Retention Account Pledge) free of any Encumbrance in an aggregate amount of not less than USD400,000 in respect of each Mortgaged Vessel (USD2,400,000 as at the date of this Agreement);

#### 8.1.23 Subordination

ensure that all Borrowed Money of each Borrower is fully subordinated to the Loan, and to subordinate to the Loan any Borrowed Money issued to such Borrower by the Corporate Guarantor, all in a form acceptable to the Lender;

#### 8.1.24 Money Laundering

- (a) not, and will procure that no Security Party, to the extent applicable, will, in connection with this Agreement or any of the other Security 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 Directive 2015/849/EC of the Council of the European Communities) and comparable United States Federal and state laws and the Borrower shall further submit any documents and declarations on request, if such documents or declarations are required by the Lender to comply with its domestic money laundering and/or legal identification requirements;
- (b) provide the Lender with information, certificates and any documents or declarations on request, if such documents or declarations are required by the Lender to ensure compliance with any applicable law, official requirement or other regulatory measure or procedure or other legal identifications requirements implemented to combat Money Laundering; and

- (c) notify the Lender as soon as it becomes aware of any matters evidencing that a breach of any law, official requirement or other regulatory measure or procedure implemented to combat Money Laundering may or is about to occur or that the person(s) who have or will receive the commercial benefit of this Agreement have changed after the date of this Agreement;

8.1.25 Anti-bribery

- (a) ensure that it will not, and none of their respective affiliates, officers, directors, employees or agents acting on its behalf will, offer, give, insist on, receive or solicit any illegal payment or improper advantage to influence the action of any person in connection with any of its business;
- (b) ensure that it shall not (and shall procure that no other Security Party will) directly or indirectly use the proceeds of the Loan for any purpose which would breach or might breach applicable anti-bribery laws, including but not limited to the UK Bribery Act of 2010 and the United States Foreign Corrupt Practices Act of 1977, each as amended
- (c) ensure that it shall (and shall procure that each other Security Party will):
  - (i) conduct its business in compliance with applicable anti-bribery laws and regulations; and
  - (ii) maintain effective policies and procedures designed to promote and achieve compliance with such laws and regulations;

8.1.26 Know your Customer

will provide, and will procure that the Corporate Guarantor will provide, prior to the Execution Date and at any time during the Facility Period at the Lender's request, all information and documentation as the Lender may in its sole discretion require in order to satisfy its "Know Your Customer" procedures under applicable law;

8.1.27 FATCA Information

- (a) subject to paragraph (c) below, within 10 Banking Days of a request by the Lender:
  - (i) confirm to the Lender whether it or any Security Party is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and
  - (ii) supply to the requesting party such forms, documentation and other information relating to its status, or the status of such Security Party, under FATCA as the Lender requests for the purposes of its compliance with FATCA;
- (b) if the Borrower confirms pursuant to Clause 8.1.28(a)(i) that it, or a Security Party, is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, shall notify the Lender promptly;

- (c) if the Borrower fails to confirm its status, or the status of a Security Party (other than the Managers), or to supply forms, documentation or other information requested in accordance with subclause (a) above, then such Security Party (other than the Managers) shall be treated for the purposes of the Security Documents (and payments under them) as if it is not a FATCA Exempt Party until (in each case) such time as the Borrower provides the requested confirmation, forms, documentation or other information;

8.1.28 FATCA Deduction

- (a) a party to any Security Document may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no party to any Security Document shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) a party to any Security Document shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the party to whom it is making the payment and, in addition, shall notify the Borrower and the Lender;

8.1.29 Information technology

maintain in good working order, and ensure that each Manager and the Corporate Guarantor maintain in good working order, all computer and information technology system to enable the smooth and efficient running of their respective businesses;

8.1.30 DAC6

supply to the Lender:

- (a) promptly upon the making of such analysis or the obtaining of such advice, any analysis made or advice obtained on whether any transaction contemplated by the Security Documents or any transaction carried out (or to be carried out) in connection with any transaction contemplated by the Security Documents contains a hallmark as set out in Annex IV of DAC6; and
- (b) promptly upon the making of such reporting and to the extent permitted by applicable law and regulation, any reporting made to any governmental or taxation authority by or on behalf of any member of the Group or by any adviser to such member of the Group in relation to DAC6 or any law or regulation which implements DAC6 and any unique identification number issued by any governmental or taxation authority to which any such report has been made (if available).

In this Clause 8.1.24 (DAC6), “**DAC6**” means the Council Directive of 25 May 2018 (2018/822/EU).

Nothing in any Security Document shall prevent disclosure of any confidential information or other matter to the extent that preventing that disclosure would otherwise cause any transaction contemplated by the Security Documents or any transaction carried out in connection with any transaction contemplated by the Security Documents to become an arrangement described in Part II A 1 of Annex IV of Directive 2011/16/EU.

## 8.2 Security value maintenance

### 8.2.1 Security shortfall

If at any time throughout the Facility Period the Security Value shall be less than the Required Security Amount, the Lender shall give notice to the Borrowers requiring that such deficiency be remedied and then the Borrowers must within 30 days of receipt of the Lender's said notice, either:

- (a) prepay, or procure that the Corporate Guarantor prepays, such part of the Loan as will result in the Security Value after such prepayment (taking into account any other repayment of the Loan made between the date of the notice and the date of such prepayment) being equal to or higher than the Required Security Amount; or
- (b) constitute, or procure that the Corporate Guarantor constitutes, to the satisfaction of the Lender such further security for the Loan as shall be acceptable to the Lender (in its absolute discretion) having a value for security purposes (as determined by the Lender in its absolute discretion) at the date upon which such further security shall be constituted which, when added to the Security Value, shall not be less than the Required Security Amount as at such date.

The provisions of clauses 4.5 and 4.6 shall apply to prepayments under clause 8.2.1(a) provided that the Lender shall apply such prepayments pro rata against the Loan and the amount of the Loan prepaid hereunder shall not be available to be re-borrowed.

### 8.2.2 Valuation of the Vessels

- (a) Each Vessel shall, for the purposes of this Agreement, be valued (at the Borrowers' and/or the Corporate Guarantor's expense) in USD by one Approved Broker appointed by the Borrowers and, if required by the Lender at its absolute discretion, by a second Approved Broker appointed by the Lender, and any such Approved Broker reporting to, the Lender, any such valuations to be made without physical inspection (unless a Vessel is found not be operationally seaworthy or any Vessel is arrested or laid-up, in which case physical inspection will be required), and on the basis of a sale for prompt delivery for cash at arms' length, on normal commercial terms, as between a willing buyer and a willing seller, without taking into account the benefit of any charterparty or other engagement concerning that Vessel), and the Valuation Amount of that Vessel shall be the amount of any such single valuation or, in the case of valuations obtained by two Approved Brokers, the arithmetic average of such two valuations PROVIDED that if such two valuations vary by more than 15% then the Lender shall appoint a third Approved Broker to provide a valuation and the Valuation Amount of that Vessel shall be the arithmetic average of such three valuations.



(b) The Approved Brokers' valuation or valuations for each Vessel on each such occasion shall constitute the Valuation Amount of that Vessel for the purposes of this Agreement until superseded by the next such valuation.

#### 8.2.3 Information

Each Borrower undertakes with the Lender to supply to the Lender and to the Approved Brokers such information concerning each Vessel and its condition as the Lender or such shipbrokers may require for the purpose of determining any Valuation Amount.

#### 8.2.4 Costs/frequency

The Borrowers shall pay all costs in connection with any determination of any Valuation Amount (which the Lender may determine at any time, and at least once a year).

#### 8.2.5 Valuation of additional security

For the purposes of this clause 8.2, the market value (i) of any additional security over a ship (other than a Vessel) shall be determined in accordance with clause 8.2.2(a) and (ii) of any other additional security provided or to be provided to the Lender shall be determined by the Lender in its absolute discretion; provided however that in the case of additional security in the form of cash, the same will be valued on a Dollar for Dollar basis.

#### 8.2.6 Documents and evidence

In connection with any additional security provided in accordance with this clause 8.2, the Lender shall be entitled to receive (at the Borrowers' expense) such evidence and documents of the kind referred to in schedule 2 as may in the Lender's opinion be appropriate and such favourable legal opinions as the Lender shall in its absolute discretion require.

### 8.3 **Negative undertakings relating to the Borrowers**

Each Borrower undertakes with the Lender that, from the Execution Date until the end of the Facility Period, it will not, except with the prior written consent of the Lender:

#### 8.3.1 Negative pledge

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

#### 8.3.2 No merger or transfer

merge or consolidate with any other person or permit any change to the legal or beneficial ownership of its, or the Corporate Guarantor's shares, from that existing at the Execution Date which would (in the case of the Corporate Guarantor) give rise to a Change of Control Event;

- 8.3.3 Disposals  
sell, transfer, assign, create security or option over, pledge, pool, abandon, lend or otherwise dispose of or cease to exercise direct control over any part of their present or future undertaking, assets, rights or revenues whether by one or a series of transactions related or not, including, without limitation, the Vessel owned by it;
- 8.3.4 Other business or manager  
undertake any business other than the ownership and operation of its Vessel or employ anyone other than a Manager as a commercial and/or technical manager of its Vessel;
- 8.3.5 Acquisitions  
acquire any assets other than its Vessel and rights arising under contracts entered into by or on behalf of that Borrower in the ordinary course of its business of owning, operating and chartering its Vessel;
- 8.3.6 Other obligations  
incur any obligations except for obligations arising under the Underlying Documents nor the Security Documents or contracts entered into in the ordinary course of business of owning, operating and chartering its Vessel;
- 8.3.7 No borrowing  
incur any Borrowed Money except for Borrowed Money pursuant to the Security Documents or incurred in the ordinary course of business of owning, operating and chartering its Vessel;
- 8.3.8 Repayment of borrowings  
repay or prepay the principal of, or pay interest on or any other sum in connection with any of their Borrowed Money except for Borrowed Money pursuant to the Security Documents;
- 8.3.9 Guarantees  
issue any guarantees or otherwise become directly or contingently liable for the obligations of any person, firm, or corporation except pursuant to the Security Documents and except for guarantees from time to time required in the ordinary course by any protection and indemnity or war risks association with which the Vessel owned by it is entered, guarantees required to procure the release of the Vessel owned by it from any arrest, detention, attachment or levy or guarantees required for the salvage of that Vessel;
- 8.3.10 Sureties  
permit any Indebtedness of any Borrower to any person (other than to the Lender pursuant to the Security Documents) to be guaranteed by any person (except for guarantees from time to time required in the ordinary course of business and/or by any protection and indemnity or war risks association with which the Vessel owned by it is entered, guarantees required to procure the release of that Vessel from any arrest, detention, attachment or levy or guarantees or undertakings required for the salvage of that Vessel); or

- 8.3.11 Flag, Class etc.  
Permit:
- (a) any change in the name, port of registry or flag of the Vessel owned by it;
  - (b) any change of Classification or Classification Society in respect of the Vessel owned by it;
  - (c) any change of Manager in respect of the Vessel owned by it; or
  - (d) any change in the name or country of incorporation of any Security Party (other than the Managers); or
- 8.3.12 Lay-up  
de-activate or lay up any Vessel; or
- 8.3.13 Place of business  
own or operate and will procure that no Security Party (other than the Managers) shall own or operate a place of business situate in England or the United States of America; or
- 8.3.14 Share capital and distribution  
if there has occurred an Event of Default or an Event of Default would result therefrom, declare or pay any dividends or make any other form of distribution;
- 8.3.15 Sharing of Earnings  
permit there to be any agreement or arrangement whereby the Earnings may be shared or pooled howsoever with any other person, other than any pool agreement on bona fide arm's length terms;
- 8.3.16 Lawful use
- (a) permit the Vessel owned by it to be:
    - (i) used by or for the benefit of a Prohibited Party;
    - (ii) trading in a manner contrary to Sanctions (or which could be contrary to Sanctions, if Sanctions were binding on any Security Party);
    - (iii) trading in any manner which would trigger the operation of any Sanctions limitation or exclusion clause (or similar) in the Insurances;
    - (iv) employed in carrying illicit or prohibited goods;
    - (v) employed in a way which may make that Vessel liable to be condemned by a prize court or destroyed, seized or confiscated;

(vi) employed or permit her employment to enter, trade or continue to trade in any zone which is declared a war zone by any Government Entity or by such Vessel's war risks insurers unless the prior written consent of such Vessel's war risks insurers is obtained and such special insurance cover as such Vessel's war risks insurers may require shall have been effected by the relevant Owner at its expense; or

(vii) employed in carrying contraband goods,

and each Borrower shall:

(aa) procure that the persons responsible for the operation of the Vessel owned by it shall take all necessary and proper precautions to ensure that this clause is complied with, including participation in industry or other voluntary schemes available to that Vessel and in which leading operators of ships operating under the same flag or engaged in similar trades generally participate at the relevant time; and

(bb) not enter into any charterparty in respect of the Vessel owned by it unless (i) it contains, for the benefit of such Borrower, language which gives effect to the provisions of Clause 8.3.16(a)(i)-(vii) above and (ii) permits that Borrower to refuse employment or voyage orders if compliance would result in a breach of the terms of Clause 8.3.16(a)(i)-(vii) above; and

#### 8.3.17 FATCA

become a FATCA FFI or a US Tax Obligor and shall procure that no Security Party (other than the Managers) shall do so.

### 9 CONDITIONS

#### 9.1 Availability of the Loan

The obligation of the Lender to make available the Loan is conditional upon:

9.1.1 the Lender, or its authorised representative, having received, not later than two (2) Banking Days before the day on which the Drawdown Notice is given, the documents and evidence specified in Part 1 of schedule 2 in form and substance satisfactory to the Lender; and

9.1.2 the representations and warranties contained in clause 7 being then true and correct as if each was made with respect to the facts and circumstances existing at such time and the same being unaffected by the drawdown of the Loan; and

9.1.3 no Default having occurred and there being no Default which would result from the lending of the Loan.

#### 9.2 Advance of the Loan

The obligation of the Lender to make available the Loan is conditional upon the Lender, or its authorised representative, having received, on or prior to the Drawdown Date, the documents and evidence specified in Part 2 of schedule 2 in form and substance satisfactory to the Lender.

9.3 **Waiver of conditions precedent**

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

9.4 **Further conditions precedent**

Prior to the Drawdown Date the Lender may request and the Borrower must, prior to such date, deliver to the Lender (at the Borrower's expense), further favourable certificates and/or opinions as to any or all of the matters which are the subject of clauses 7, 8, 9 and 10.

10 **EVENTS OF DEFAULT**

10.1 **Events**

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

10.1.1 **Non-payment:** any Security Party fails to pay any sum payable by it under any of the Security Documents at the time, in the currency and in the manner stipulated in the Security Documents (and so that, for this purpose, sums payable (i) under clauses 3.1 (*Normal interest rate*) and 4.1 (*Repayment*) shall be treated as having been paid at the stipulated time if (aa) received by the Lender within three (3) Banking Days of the dates therein referred to and (bb) such delay in receipt is caused by administrative delays or errors of the Lender and (ii) on demand shall be treated as having been paid at the stipulated time if paid within three (3) Banking Days of demand); or

10.1.2 **Breach of Insurance and certain other obligations:** any Borrower or, as the context may require, any Manager or any other person fails to obtain and/or maintain the Insurances (as defined in, and in accordance with the requirements of, the Ship Security Documents) for each Vessel or if any insurer in respect of such Insurances cancels such Insurances or disclaims liability by reason, in either case, of misstatement in any proposal for such Insurances or for any other failure or default on the part of any Borrower or any other person or any Borrower commits any breach of or omits to observe any of the obligations or undertakings expressed to be assumed by it under clause 8; or

10.1.3 **Breach of other obligations:** any Security Party commits any breach of or omits to observe any of its obligations or undertakings expressed to be assumed by it under any of the Security Documents (other than those referred to in clauses 10.1.1 and 10.1.2 above) unless such breach or omission is cured within fifteen (15) calendar days; or

10.1.4 **Misrepresentation:** any representation or warranty made or deemed to be made or repeated by or in respect of any Security Party (other than the Managers) in or pursuant to any of the Security Documents or in any notice, certificate or statement referred to in or delivered under any of the Security Documents is or proves to have been incorrect or misleading in any material respect when made or deemed to be made; or

- 10.1.5 **Cross-default:** any Indebtedness of any Borrower or the Corporate Guarantor is not paid when due (subject to applicable grace periods) or any Indebtedness of any Borrower or the Corporate Guarantor becomes (whether by declaration or automatically in accordance with the relevant agreement or instrument constituting the same) due and payable prior to the date when it would otherwise have become due (unless as a result of the exercise by any Borrower or the Corporate Guarantor of a voluntary right of prepayment), or any creditor of any Borrower or the Corporate Guarantor becomes entitled to declare any such Indebtedness due and payable or any facility or commitment available to any Borrower or the Corporate Guarantor relating to Indebtedness is withdrawn, suspended or cancelled by reason of any default (however described) of the person concerned, or any guarantee given by any Borrower or the Corporate Guarantor in respect of Indebtedness is not honoured when due and called upon **provided that** no Event of Default will occur under this Clause 10.1.5 if the aggregate amount of Financial Indebtedness or commitment for Indebtedness falling within this paragraph is, at any relevant time, less than \$7,500,000 in aggregate in the case of the Corporate Guarantor (or, in each case, the equivalent in any other currency); or
- 10.1.6 **Execution:** any judgment or order made against any Security Party (other than the Managers) is not stayed, appealed against or complied with within thirty (30) days or a creditor attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced upon or sued out against, any of the undertakings, assets, rights or revenues of any Security Party (other than the Managers) and is not discharged within thirty (30) days; or
- 10.1.7 **Insolvency:** any Security Party (other than the Managers) is unable or admits inability to pay its debts as they fall due; suspends making payments on any of its debts or announces an intention to do so; becomes insolvent; or suffers the declaration of a moratorium in respect of any of its Indebtedness; or
- 10.1.8 **Dissolution:** any corporate action, Proceedings or other steps are taken to dissolve or wind-up any Security Party (other than the Managers); or
- 10.1.9 **Administration:** any petition is presented, notice given or other steps are taken anywhere to appoint an administrator of any Security Party (other than the Managers) or an administration order is made in relation to any Security Party (other than the Managers); or
- 10.1.10 **Appointment of receivers and managers:** any administrative or other receiver is appointed anywhere of any Security Party (other than the Managers) or any part of its assets and/or undertaking or any other steps are taken to enforce any Encumbrance over all or any part of the assets of any Security Party (other than the Managers); or
- 10.1.11 **Compositions:** any corporate action, legal proceedings or other procedures or steps are taken or negotiations commenced, by any Security Party (other than the Managers) or by any of its creditors (other than the Corporate Guarantor) with a view to the general readjustment or rescheduling of all or a part of its Indebtedness or to proposing any kind of composition, compromise or arrangement involving such company and any of its creditors; or
- 10.1.12 **Analogous proceedings:** there occurs, in relation to any Security Party (other than the Managers), in any country or territory in which any of them carries on business or to the jurisdiction of whose courts any part of their assets is subject, any event which, in the reasonable opinion of the Lender, appears in that country or territory to correspond with, or have an effect equivalent or similar to, any of those mentioned in clauses 10.1.6 to 10.1.11 (inclusive) or any Security Party (other than the Managers) otherwise becomes subject, in any such country or territory, to the operation of any law relating to insolvency, bankruptcy or liquidation; or

- 10.1.13 **Cessation of business:** any Security Party (other than the Managers) suspends or ceases or threatens to suspend or cease to carry on its business or a substantial part thereof (it being agreed that the sale of a Vessel by the relevant Owner shall not constitute an Event of Default, provided that such sale is always subject to the prior written consent of the Lender pursuant to Clause 8.3.3); or
- 10.1.14 **Seizure:** all or a (in relation to Security Party other than a Borrower) material part of the undertaking, assets, rights or revenues of, or shares or other ownership interests in, any Security Party (other than the Managers) are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any Government Entity; or
- 10.1.15 **Invalidity:** any of the Security Documents shall at any time and for any reason become invalid or unenforceable or otherwise cease to remain in full force and effect, or if the validity or enforceability of any of the Security Documents shall at any time and for any reason be contested by any Security Party which is a party thereto, or if any such Security Party shall deny that it has any, or any further, liability thereunder; or
- 10.1.16 **Unlawfulness:** any Unlawfulness occurs or it becomes impossible or unlawful at any time for any Security Party (other than the Managers), to fulfil any of the covenants and obligations expressed to be assumed by it in any of the Security Documents or for the Lender to exercise the rights or any of them vested in it under any of the Security Documents or otherwise; or
- 10.1.17 **Repudiation:** any Security Party (other than the Managers) repudiates any of the Security Documents or does or causes or permits to be done any act or thing evidencing an intention to repudiate any of the Security Documents; or
- 10.1.18 **Encumbrances enforceable:** any Encumbrance (other than Permitted Encumbrances) in respect of any of the property (or part thereof) which is the subject of any of the Security Documents becomes enforceable; or
- 10.1.19 **Arrest:** any Vessel is arrested, confiscated, seized, taken in execution, impounded, forfeited, detained in exercise or purported exercise of any possessory lien or other claim or otherwise taken from the possession of any Borrower and such Borrower shall fail to procure the release of the Vessel owned by it within a period of ninety (90) days thereafter provided that this clause shall not include capture of a Vessel by pirates for up to 6 months (but shall apply if such capture exceeds 6 months) if relevant underwriters confirm in writing (in terms satisfactory to the Lender) prior to the end of such ninety (90) – day period of capture, that such capture will be covered by the relevant Borrower’s war risks insurance); or
- 10.1.20 **Registration:** the registration of any Vessel under the laws and flag of the relevant Flag State is cancelled or terminated without the prior written consent of the Lender; or
- 10.1.21 **Unrest:** the Flag State of any Vessel becomes involved in hostilities or civil war or there is a seizure of power in that Flag State by unconstitutional means (which hostilities or civil war or seizure of power would reasonably be expected to have a Material Adverse Effect) unless the Owner of the Vessel registered in such Flag State shall have transferred its Vessel onto a new flag acceptable to the Lender within forty five days (45) days of the start of such hostilities or civil war or seizure of power; or

- 10.1.22 **Environmental Incidents:** an Environmental Incident occurs which gives rise, or may give rise, to an Environmental Claim which could, in the opinion of the Lender be expected to have a Material Adverse Effect (i) on the financial condition of any Security Party (other than the Managers) or the Group taken as a whole or (ii) on the security constituted by any of the Security Documents or the enforceability of that security in accordance with its terms; or
- 10.1.23 **P&I:** any Borrower or any Manager or any other person fails or omits to comply with any requirements of the protection and indemnity association or other insurer with which any Vessel is entered for insurance or insured against protection and indemnity risks (including oil pollution risks) to the effect that any cover (including, without limitation, any cover in respect of liability for Environmental Claims arising in jurisdictions where the Vessel operates or trades) is or may be liable to cancellation, qualification or exclusion at any time; or
- 10.1.24 **Material Adverse Effect:** any event occurs or circumstance arises which, in the opinion of the Lender, has a Material Adverse Effect; or
- 10.1.25 **Account:** moneys are withdrawn from any Earnings Account other than in accordance with clause 14; or
- 10.1.26 **Required Authorisations:** to the extent it has not been waived, any Required Authorisation is revoked or withheld or modified (the effect of which would be to have a Material Adverse Effect) or is otherwise not granted or fails to remain in full force and effect; or
- 10.1.27 **Money Laundering:** any Security Party is in breach of or fails to observe any law, requirement, measure or procedure implemented to combat “money laundering” as defined in Article 1 of Directive (2015/849/EC) of the Council of the European Communities; or
- 10.1.28 **Management Agreement:** there is a change of Manager in relation to any Vessel except (i) with the prior consent of the Lender or (ii) in circumstances where another Manager is appointed and the Borrowers shall procure that any such substitute Manager provides a Manager’s Undertaking (and any documents to be delivered thereunder) in relation to that Vessel and documents equivalent to those referred to in Schedule 2, Part 1, paragraphs (a) and (b) and in Part 2, paragraphs (b)(iii), (b)(iv) and (k) and such other documents as the Lender may reasonably require as they relate to such appointment; or
- 10.1.29 **Sanctions:** a Security Party fails to comply with clauses 7.1.26 (Prohibited Parties, unlawful activity), 7.1.27 (Sanctions), 8.1.22 (Sanctions) or 8.3.18 (Lawful use) of this Agreement;
- 10.1.30 **Anti-bribery.** Any Security Party is in breach of or fails to comply with clauses 7.1.29 (Anti-bribery), 8.1.16 (Compliance with Laws and payment of taxes), 8.1.27 (Anti-bribery) or 8.1.28 (Know your Customer) of this Agreement.
- 10.1.31 **Change of Control.** Any Change of Control Event occurs.



10.2 **Acceleration**

The Lender may at any time after the occurrence of an Event of Default which is continuing by notice to the Borrowers declare that:

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

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

10.3 **Demand Basis**

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

11 **INDEMNITIES**

11.1 **General indemnity**

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

11.2 **Environmental indemnity**

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

11.3 **Capital adequacy and reserve requirements indemnity**

Each Borrower shall promptly indemnify the Lender on demand against any cost incurred or loss suffered by the Lender as a result of its complying with (i) the minimum reserve requirements from time to time of the European Central Bank (ii) any capital

adequacy directive of the European Union and/or (iii) any revised framework for international convergence of capital measurements and capital standards and/or any regulation imposed by any Government Entity in connection therewith, and/or in connection with maintaining required reserves with a relevant national central bank to the extent that such compliance or maintenance relates to the Commitment and/or the Loan or deposits obtained by it to fund the whole or part thereof and to the extent such cost or loss is not recoverable by the Lender under clause 12.2.

## 12 UNLAWFULNESS, INCREASED COSTS AND BAIL-IN

### 12.1 Unlawfulness

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

### 12.2 Increased costs

If the result of any change in, or in the interpretation or application of, or the introduction of, any law or any regulation, request or requirement of any central bank or Government Entity (including, but not limited to, 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) (or any subsequent amendment or substitute agreement) or pursuant to Basel III, CRD IV and CRR (whether or not having the force of law, but, if not having the force of law, with which the Lender or, as the case may be, its holding company habitually complies), including (without limitation) those relating to Taxation, capital adequacy, liquidity, reserve assets, cash ratio deposits and special deposits, is to:

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

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

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

12.3 **Exception**

Nothing in clause 12 shall entitle the Lender to receive any amount in respect of compensation for any such liability to Taxes, increased or additional cost, reduction, payment, foregone return or loss to the extent that the same is the subject of an additional payment under clause 6.6.

12.4 **Contractual recognition of bail-in**

Notwithstanding any other term of any Security Document or any other agreement, arrangement or understanding between the parties to this Agreement, each such party acknowledges and accepts that any liability of any party to this Agreement to any other party to this Agreement under or in connection with the Security Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Security Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability

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

13.1 **Application of moneys**

All moneys received by the Lender under or pursuant to any of the Security Documents and expressed to be applicable in accordance with the provisions of this clause 13.1 or in a manner determined in the Lender's discretion, shall be applied in the following manner:

- 13.1.1 first, in or towards payment, in such order as the Lender may decide, of any unpaid costs and expenses of the Lender and the Lender under any of the Security Documents;
- 13.1.2 secondly, in or towards payment of any fees payable to the Lender under, or in relation to, the Security Documents which remain unpaid;
- 13.1.3 thirdly, in or towards payment to the Lender of any accrued default interest owing pursuant to clause 3.4 but remains unpaid;
- 13.1.4 fourthly, in or towards payment to the Lender of any accrued interest owing in respect of the Loan which shall have become due under any of the Security Documents but remains unpaid;
- 13.1.5 fifthly, in or towards payment to the Lender of any due but unpaid Repayment Instalments;
- 13.1.6 sixthly, in or towards payment to the Lender in application in repayment of the Loan in accordance with clause 4.6.2. hereof;
- 13.1.7 seventhly, in or towards payment for any loss suffered by reason of any such payment in respect of principal not being effected on an Interest Payment Date relating to the part of the Loan repaid and which amounts are so payable under this Agreement and any other sum relating to the Loan which shall have become due under any of the Security Documents but remains unpaid; and
- 13.1.8 eighthly, in or towards payment under clause 14.3 (on the first Banking Day following the day on which the obligation any the Borrower to make such payment under clause 14.3 arises); and
- 13.1.9 ninthly, the surplus (if any) shall be paid to the Borrowers or to whomsoever else may then be entitled to receive such surplus.

The order of application set out in clauses 13.1.1 to 13.1.8 may be varied by the Lender without any reference to, or consent or approval from, the Borrowers.

13.2 **Set-off**

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

13.2.2 The Lender shall not be obliged to exercise any right given to it by this clause 13.2.

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

13.3 **Further assurance**

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

13.4 **Conflicts**

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

13.5 **No implied waivers, remedies cumulative**

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

13.6 **Severability**

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

13.7 **Force Majeure**

Regardless of any other provision of this Agreement, the Lender shall not be liable for any failure to perform the whole or any part of this Agreement resulting directly or indirectly from (i) the action or inaction or purported action of any governmental or local authority (ii) any strike, lockout, boycott or blockade (including any strike, lockout, boycott or blockade effected by or upon the Lender or any of its representatives or employees) (iii) any act of God (iv) any act of war (whether declared or not) or terrorism or (v) any other circumstances whatsoever outside the Lender's control.

13.8 **Amendments**

This Agreement may be amended or varied only by an instrument in writing executed by all parties hereto who irrevocably agree that the provisions of this clause 13.8 may not be waived or modified except by an instrument in writing to that effect signed by all of them.

13.9 **Counterparts**

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

13.10 **English language**

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

14 **ACCOUNTS AND RETENTION**

14.1 **General**

Each Borrower undertakes with the Lender that it will ensure that:

14.1.1 it will on or before the Drawdown Date, open an Earnings Account in its name and the Retention Account in their joint names; and

14.1.2 all moneys payable to any Borrower in respect of the Earnings of the Vessel owned by it shall, unless and until the Lender directs to the contrary pursuant to the provisions of the relevant General Assignment, be paid to its Earnings Account, **Provided however that** if any of the moneys paid to any Earnings Account are payable in a currency other than USD, the Lender shall then convert such moneys into USD at the Lender's spot rate of exchange at the relevant time for the purchase of USD with such currency and the term "spot rate of exchange" shall include any premium and costs of exchange payable in connection with the purchase of USD with such currency.

14.2 **Earnings Account: withdrawals**

Any sums standing to the credit of any Earnings Account may be applied by the Borrowers from time to time, subject to no Event of Default having occurred, in (i) making the payments required under this Agreement (ii) the operation of the Vessel owned by the relevant Borrower and (iii) subject to Clause 8.3.16, payment of dividends to the Shareholder annually.

14.3 **Retention Account: credits and withdrawals**

14.3.1 The Borrowers undertake with the Lender that, throughout the Facility Period, they will procure that, on each Retention Date there is paid (whether from an Earnings Account or elsewhere) to the Retention Account, the Retention Amount for such date and the Borrowers hereby irrevocably authorise the Lender, to the extent that funds are available, to transfer the Retention Amount from any Earnings Account to the Retention Account on or about each Retention Date.

14.3.2 Unless and until there shall occur an Event of Default (whereupon the provisions of clause 14.4 shall apply), all Retention Amounts credited to the Retention Account together with interest from time to time accruing or at any time accrued thereon must be applied by the Lender (and the Borrower hereby irrevocably authorises the Lender so to apply the same) upon each Repayment Date and/or on each day that interest is payable on the Loan pursuant to clause 3.1, in or towards payment to the Lender of the instalment then falling due for repayment or, as the case may be, the amount of interest then due. Each such application by the Lender shall constitute a payment in or towards satisfaction of the Borrowers' corresponding payment obligations under this Agreement but shall be strictly without prejudice to the obligations of the Borrowers to make any such payment to the extent that the aforesaid application by the Lender is insufficient to meet the same.

Unless the Lender otherwise agrees in writing and subject to this clause 14.3.2, no Borrower shall be entitled to withdraw any moneys from the Retention Account at any time during the Facility Period.

14.4 **Shortfall in Earnings.**

If the aggregate Earnings received in the Earnings Accounts are insufficient at any time for the required amount to be transferred to the Retention Account under Clause 14.3.1, the Borrowers shall make up the amount of the insufficiency on demand from the Lender; but, without thereby prejudicing the Lender's right to make such demand at any time, the Lender may permit the Borrowers to make up all or part of the insufficiency by increasing the amount of any transfer under Clause 14.3.1 from the Earnings received in the next or subsequent months

14.5 **Application of accounts**

At any time after the occurrence of an Event of Default, the Lender may, without prior notice to any Borrower and/or the Corporate Guarantor apply all moneys then standing to the credit of any Earnings Account and/or the Retention Account (together with interest from time to time accruing or accrued thereon) in or towards satisfaction of any sums due to Lender under the Security Documents at the time of such applications in the manner specified in clause 13.1.

14.6 **Charging of accounts**

The Retention Account and all amounts from time to time standing to the credit thereof shall be subject to the security constituted and the rights conferred by the Retention Account Pledge but otherwise free of Encumbrance.

15 **ASSIGNMENT, TRANSFER AND LENDING OFFICE**

15.1 **Benefit and burden**

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

15.2 **No assignment by Borrowers**

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

15.3 **Transfer by Lender**

15.3.1 The Lender may at any time (i) change its office through which the Loan is made available or (ii) with the prior written consent of the Borrower (such consent not to be unreasonably withheld) cause all or any part of its rights, benefits and/or obligations under this Agreement and the other Security Documents to be transferred or assigned, to a wholly-owned banking subsidiary or associated company of the Lender or to any third party (in either case a “**Transferee Lender**”) provided always that any such Transferee Lender, by delivery of such undertaking as the Lender may approve, becomes bound by the terms of this Agreement and agrees to perform all or, as the case may be, relevant part of the Lender’s obligations under this Agreement the rights and equities of the Borrowers or of any other Security Party referred to above include, but are not limited to, any right of set-off and any other kind of cross-claim.

15.3.2 The prior consent of the Borrowers (such consent not to be unreasonably withheld, delayed or conditioned) is required for a transfer or assignment pursuant to this Clause 15.3 (*Transfer by a Lender*), unless:

- (a) the Transferee Lender is another affiliate or a company or financial institution which is in the same ownership or control the Lender; or
- (b) an Event of Default has occurred and is continuing at the relevant time.

15.3.3 The consent of the Borrowers, where required, shall be deemed granted if the Borrowers have failed to object to such request by written notice to the Lender within five Business Days from the Borrowers’ receipt of the Lender’s notice.

15.4 **Documenting transfers**

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

15.5 **Sub-Participation**

The Lender may sub-participate all or any part of its rights and/or obligations under the Security Documents without the consent of, or notice to, the Borrowers. Any such sub-participation shall have no effect on the Lender’s rights under the Security Documents.

15.6 **Disclosure of information**

15.6.1 The Lender agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraphs 15.6.2 and 15.6.3 below, and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information,



15.6.2 The Lender may disclose, without requiring the consent of any Borrower or any other Security Party:

- (a) to any of its affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and representatives, such Confidential Information as the Lender shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information; or
- (b) to any person; or
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Security Documents or who succeeds (or may potentially succeed) it as Lender and, in each case, to any of that person's Affiliates, representatives and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Security Documents and/or one or more of the Borrowers or any other Security Party and to any of that person's Affiliates, representatives and professional advisers;
  - (iii) appointed by the Lender or by a person to whom sub-paragraph (A) or (B) above applies to receive communications, notices, information or documents delivered pursuant to the Security Documents on its behalf;
  - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in sub-paragraph (A) or (B) above;
  - (v) to whom information is required or requested to be disclosed by (1) any governmental, banking, taxation or other regulatory authority or similar body, or the rules of any relevant stock exchange; or (2) pursuant to any applicable law or regulation; or (3) any court of competent jurisdiction; or (4) in connection with and for the purposes of any litigation, arbitration, administrative or other investigations, proceedings or disputes;
  - (vi) to whom or for whose benefit the Lender charges, assigns or otherwise creates an Encumbrance (or may do so) pursuant to Clause 26.16 (*Security over Lenders' Rights*); or
  - (vii) who is a Party,

in each case, such Confidential Information as the Lender shall consider appropriate if:

- (A) in relation to sub-paragraphs (A), (B) and (C) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
  - (B) in relation to sub-paragraph (D) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
  - (C) in relation to sub-paragraphs (E), (F) and (G) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;
- (c) to any person appointed by the Lender or by a person to whom sub-paragraph (A) or (B) above applies to provide administration or settlement services in respect of one or more of the Security Documents including without limitation, in relation to the trading of participations in respect of the Security Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this sub-paragraph (iii) if the service provider to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking; and
  - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Security Documents and/or any Borrower or any other Security Party if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

15.6.3 Notwithstanding any other term of any Security Document or any other agreement between the Parties to the contrary (whether express or implied) any Creditor Party may disclose to any national or international numbering service provider appointed by that Creditor Party to provide identification numbering services in respect of this Agreement, the Loan and/or one or more of any Borrower or any other Security Party the following information:

- (a) name of any Borrower or of any other Security Party;
- (b) country of domicile of the Borrower or any Security Party;
- (c) place of incorporation of any Borrower or any other Security Party;
- (d) date and governing law of this Agreement;

- (e) the names of any Lender;
- (f) date of each amendment and restatement of this Agreement;
- (g) amount of the Loan and the Total Commitments;
- (h) currency of the Loan;
- (i) type of Loan;
- (j) ranking of the Loan;
- (k) Availability Period;
- (l) Maturity Date;
- (m) Final changes to any of the information previously supplied pursuant to sub-paragraphs (a) to (l) above; and
- (n) such other information agreed between such Creditor Party and the Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- 15.6.4 The Parties acknowledge and agree that each identification number assigned to this Agreement, the Loan and/or one or more of the Borrowers and the other Security Parties by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- 15.6.5 The Borrowers represent that none of the information set out in sub-paragraphs (a) to (n) of paragraph 15.6.3 above is, nor will at any time be, unpublished price-sensitive information.
- 15.6.6 The Lender shall notify the Borrowers of:
- (a) the name of any numbering service provider appointed by the Lender in respect of this Agreement, the Loan and/or one or more of the Borrowers or any other Security Party; and
  - (b) the number or, as the case may be, numbers assigned to this Agreement, the Loan and/or one or more of the Borrowers or any other Security Party by such numbering service.
- 15.6.7 Notwithstanding any other term of any Security Document or any other agreement between the Parties to the contrary (whether express or implied), the Lender may disclose to any person appointed by:
- (a) the Lender; and
  - (b) a person with (or through) whom the Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made, or may be made, by reference to, one or more Security Documents and/or one or more of the Borrowers or any other Security Party,

to provide administration or settlement services in respect of one or more of the Security Documents including without limitation, in relation to the trading of participations in respect of the Security Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this Clause if the service provider to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking.

15.6.8 The Lender and any potential assignee acknowledges and shall acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of them undertakes not to use any Confidential Information for any unlawful purpose.

15.6.9 This Clause 15.6 (*Disclosure of information*) constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Security Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### 15.7 **Securitisation**

The Lender may include all or any part of the Loan in a securitisation or similar transaction without the consent of any Borrower or any Security Party. Each Borrower will (and shall procure that each Security Party will) assist the Lender as necessary to achieve a successful securitisation (or similar transaction).

#### 15.8 **Security over Lender's rights**

In addition to the other rights provided to the Lender under this Clause 15, the Lender may without consulting with or obtaining consent from any Security Party, at any time charge, assign or otherwise create an Encumbrance in or over (whether by way of collateral or otherwise) all or any of its rights under any Security Document to secure obligations of the Lender including, without limitation:

- (a) an Encumbrance to secure obligations to a federal reserve or central bank; and
- (b) if the Lender is a fund, any charge, assignment or other Encumbrance granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by the Lender as security for those obligations or securities,

except that no such Encumbrance shall:

- (i) release a Security Party from any of its obligations under the Security Documents or substitute the beneficiary of the relevant Encumbrance for the Lender as a party to any of the Security Documents; or
- (ii) require any payments to be made by a Security Party other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the Lender under the Security Documents.

16 **NOTICES AND OTHER MATTERS**

16.1 **Notices**

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

16.1.2 in this clause “notice” includes any demand, consent, authorisation, approval, instruction, certificate, request, waiver or other communication.

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

16.2.1 Subject to clause 16.2.2 and clause 16.2.5 notices to the Borrower shall be deemed to have been given and shall take effect when received in full legible form by the Borrower at the address and/or the fax number and/or the email address appearing below (or at such other address or fax number or the email address as the Borrower may hereafter specify for such purpose to the Lender by notice in writing);

Address: c/o Navios Shipmanagement Inc.  
85 Akti Miaouli  
185 38 Piraeus  
Greece

Fax no: + 30 210 453 1984

Email: [legal.corp@Navios.com](mailto:legal.corp@Navios.com)

notwithstanding the provisions of clause 16.2.1 or clause 16.2.4, a notice of Default and/or a notice given pursuant to clause 10.2 or clause 10.3 to the Borrower shall be deemed to have been given and shall take effect when delivered, sent or transmitted by the Lender to the Borrowers to the address or fax number or the email address referred to in clause 16.2.1;

16.2.2 subject to clause 16.2.4, notices to the Lender shall be deemed to be given, and shall take effect, when received in full legible form by the Lender at the address and/or the fax number and/or the email address appearing below (or at any such other address or fax number or the email address as the Lender may hereafter specify for such purpose to the Borrower in writing);

Address: Shipping Division  
2 Bouboulinas Str, & Akti Miaouli  
Piraeus 185 35  
Greece

Fax No. +30 210 4144120

Attention: Mr. Em.Tsagarakis, Mr. P. Katsoulas

16.2.3 if under clause 16.2.1 or clause 16.2.3 a notice would be deemed to have been given and effective on a day which is not a working day in the place of receipt or is outside the normal business hours in the place of receipt, the notice shall be deemed to have been given and to have taken effect at the opening of business on the next working day in such place.

17 **GOVERNING LAW**

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

18 **JURISDICTION**

18.1 **Exclusive Jurisdiction**

For the benefit of the Lender, and subject to clause 18.4 below, each Borrower hereby irrevocably agrees that the courts of England shall have exclusive jurisdiction:

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

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

18.2 **Submission and service of process**

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

18.2.1 irrevocably empowers and appoints Messrs Hill Dickinson LLP at present of Broadgate Tower, 20 Primrose Street, London EC2A 2EW, England, as its agent to receive and accept on its behalf any process or other document relating to any proceedings before the English courts in connection with this Agreement;

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

18.2.3 agrees that failure by a process agent to notify any Borrower of service of process will not invalidate the proceedings concerned;

18.2.4 without prejudice to the effectiveness of service of process on its agent under clause 18.2.1 above but as an alternative method, consents to the service of process relating to any such proceedings by mailing or delivering a copy of the process to its address for the time being applying under clause 16.2; and

18.2.5 agrees that if the appointment of any person mentioned in clause 18.2.1 ceases to be effective, each Borrower shall immediately appoint a further person in England to accept service of process on its behalf in England and, failing such appointment within seven (7) days the Lender shall thereupon be entitled and is hereby irrevocably authorised by the Borrowers in those circumstances to appoint such person by notice to the Borrowers.

18.3 **Forum non conveniens and enforcement abroad**

Each Borrower:

18.3.1 waives any right and agrees not to apply to the English court or other court in any jurisdiction whatsoever to stay or strike out any proceedings commenced in England on the ground that England is an inappropriate forum and/or that Proceedings have been or will be started in any other jurisdiction in connection with any dispute or related matter falling within clause 18.1; and

18.3.2 agrees that a judgment or order of an English court in a dispute or other matter falling within clause 18.1 shall be conclusive and binding on each Borrower and may be enforced against it in the courts of any other jurisdiction.

18.4 **Right of Lender, but not Borrowers, to bring proceedings in any other jurisdiction**

18.4.1 Nothing in this clause 18 limits the right of the Lender to bring Proceedings, including third party proceedings, against the Borrowers or to apply for interim remedies, in connection with this Agreement in any other court and/or concurrently in more than one jurisdiction;

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

18.5 **Enforceability despite invalidity of Agreement**

Without prejudice to the generality of clause 13.6, the jurisdiction agreement contained in this clause 18 shall be severable from the rest of this Agreement and shall remain valid, binding and in full force and shall continue to apply notwithstanding this Agreement or any part thereof being held to be avoided, rescinded, terminated, discharged, frustrated, invalid, unenforceable, illegal and/or otherwise of no effect for any reason.

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

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

18.6.2 the Borrower shall not bring or pursue any Foreign Proceedings against the Lender and the Borrower shall prevent persons not party to this Agreement from bringing or pursuing any Foreign Proceedings against the Lender;

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

the Lender and the Borrowers hereby agree and declare that the benefit of this clause 18 shall extend to and may be enforced by any officer, employee, agent or business associate of the Lender against whom any Borrower brings a claim in connection howsoever with any of the Security Documents or any assets subject thereto or any action of any kind whatsoever taken by, or on behalf of or for the purported benefit of the Lender pursuant thereto or which, if it were brought against the Lender, would fall within the material scope of clause 18.1. In those circumstances this clause 18 shall be read and construed as if references to the Lender were references to such officer, employee, agent or business associate, as the case may be.

19 **Borrowers' obligations**

19.1 **Joint and several**

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

19.2 **Borrowers as principal debtors**

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

19.3 **Indemnity**

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

19.4 **Liability unconditional**

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

19.4.1 the death, bankruptcy, unsoundness of mind, insolvency, liquidation, dissolution, winding-up, administration, receivership, amalgamation, reconstruction or other incapacity of any person whatsoever (including, in the case of a partnership, a termination or change in the composition of the partnership) or any change of name or style or constitution of any Borrower or any other person liable;



19.4.2 the Lender granting any time, indulgence or concession to, or compounding with, discharging, releasing or varying the liability of, any Borrower or any other person liable or renewing, determining, varying or increasing any accommodation, facility or transaction or otherwise dealing with the same in any manner whatsoever or concurring in, accepting, varying any compromise, arrangement or settlement or omitting to claim or enforce payment from either Borrower or any other person liable; or

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

19.5 **Recourse to other security**

The Lender shall not be obliged to make any claim or demand or to resort to any security or other means of payment now or hereafter held by or available to them for enforcing any of the Security Documents against any Borrower or any other person liable and no action taken or omitted by the Lender in connection with any such security or other means of payment will discharge, reduce, prejudice or affect the liability of the Borrowers under the Security Documents to which any of them is, or is to be, a party.

19.6 **Waiver of Borrowers' rights**

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

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

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

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

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

**THE BORROWERS**

SIGNED by **Maria Trivela** ) /s/ Maria Trivela

attorney-in-fact for and on behalf of ) Attorney-in-fact  
**ANTHOS SHIPPING INC.** )  
Pursuant to a Power of Attorney )  
dated 20 May 2021 )

SIGNED by **Maria Trivela** ) /s/ Maria Trivela

attorney-in-fact for and on behalf of ) Attorney-in-fact  
**AZALEA SHIPPING INC.** )  
pursuant to a Power of Attorney )  
Dated 20 May 2021 )

SIGNED by **Maria Trivela** ) /s/ Maria Trivela

attorney-in-fact for and on behalf of ) Attorney-in-fact  
**FANDANGO SHIPPING CORPORATION** )  
Pursuant to a Power of Attorney )  
dated 20 May 2021 )

SIGNED by **Maria Trivela** ) /s/ Maria Trivela

attorney-in-fact for and on behalf of ) Attorney-in-fact  
**FLAVESCENT SHIPPING CORPORATION** )  
pursuant to a Power of Attorney )  
Dated 20 May 2021 )

SIGNED by **Maria Trivela** ) /s/ Maria Trivela

attorney-in-fact for and on behalf of ) Attorney-in-fact  
**SUNSTONE SHIPPING CORPORATION** )  
Pursuant to a Power of Attorney )  
dated 20 May 2021 )

SIGNED by **Maria Trivela** ) /s/ Maria Trivela

attorney-in-fact for and on behalf of ) Attorney-in-fact  
**ZAFFRE SHIPPING CORPORATION** )  
pursuant to a Power of Attorney )  
Dated 20 May 2021 )

**THE LENDER**

SIGNED by **Sophia Biannaki**

And by Aikaterini Sarri

) /s/ Sophia Giannaki

For and on behalf of

) /s/ Aikaterini Sarri

**NATIONAL BANK OF GREECE S.A.**

) Autorised signatories

Witness to all the above signatures

) /s/ Stavroula Mylona

Name: Stavroula Mylona

)

Address: 47-49 Akti Miaouli

)

185 36 Piraeus Greece

)

Dated 11 May 2021

**ALEGRIA SHIPPING CORPORATION  
ANDROMEDA SHIPTRADE LIMITED  
AURORA SHIPPING ENTERPRISES LTD.  
BERYL SHIPPING CORPORATION  
CHERYL SHIPPING CORPORATION  
CHRISTAL SHIPPING CORPORATION  
HYPERION ENTERPRISES INC.  
KYMATA SHIPPING CO.  
ORBITER SHIPPING CORP.  
PEARL SHIPPING CORPORATION  
RUBINA SHIPPING CORPORATION  
SEYMOUR TRADING LIMITED  
TOPAZ SHIPPING CORPORATION  
CAMELIA SHIPPING INC. and  
BALDER MARITIME LTD**  
as joint and several Borrowers

and

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

and

**HAMBURG COMMERCIAL BANK AG**  
as Agent, Mandated Lead Arranger  
and Security Trustee

**LOAN AGREEMENT**

relating to a senior secured post-delivery term  
loan facility of up to US\$160,000,000  
to provide finance secured on ten bulk carriers and five container vessels

**WATSON FARLEY  
&  
WILLIAMS**

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## PARTIES

- (1) **ALEGRIA SHIPPING CORPORATION, ANDROMEDA SHIPTRADE LIMITED, AURORA SHIPPING ENTERPRISES LTD., BERYL SHIPPING CORPORATION, CHERYL SHIPPING CORPORATION, CHRISTAL SHIPPING CORPORATION, HYPERION ENTERPRISES INC., KYMATA SHIPPING CO., ORBITER SHIPPING CORP., PEARL SHIPPING CORPORATION, RUBINA SHIPPING CORPORATION, SEYMOUR TRADING LIMITED, TOPAZ SHIPPING CORPORATION, CAMELIA SHIPPING INC. and BALDER MARITIME LTD** each a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960, as joint and several **Borrowers**;
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, as **Lenders**;
- (3) **HAMBURG COMMERCIAL BANK AG** acting through its office at Gerhart-Hauptmann-Platz 50, 20095 Hamburg, Germany, as **Agent**;
- (4) **HAMBURG COMMERCIAL BANK AG** acting through its office at Gerhart-Hauptmann-Platz 50, 20095 Hamburg, Germany, as **Mandated Lead Arranger**; and
- (5) **HAMBURG COMMERCIAL BANK AG** acting through its office at Gerhart-Hauptmann-Platz 50, 20095 Hamburg, Germany, as **Security Trustee**.

## BACKGROUND

The Lenders have agreed to make available to the Borrowers a senior secured post-delivery term loan facility in one advance in an amount of up to the lesser of (i) US\$160,000,000 and (ii) 50 per cent. of the aggregate Initial Market Value of the Ships, for the purpose of refinancing the Existing Indebtedness secured on Ship A, Ship B, Ship C, Ship D, Ship E, Ship F, Ship G, Ship H, Ship I, Ship J, Ship K, Ship L and Ship M and partly financing the Initial Market Value of Ship N and Ship O.

## OPERATIVE PROVISIONS

**IT IS AGREED** as follows:

### 1 **INTEPRETATION**

#### 1.1 **Definitions**

Subject to Clause 1.5, in this Agreement:

“**Account**” means each of the Earnings Accounts, the Minimum Liquidity Account and the Retention Account and, in the plural, means all of them;

“**Account Bank**” means Hamburg Commercial Bank AG, acting in such capacity through its office at Gerhart-Hauptmann-Platz 50, 20095 Hamburg, Germany, or any successor;

“**Account Pledge**” means, in relation to each Account, a pledge agreement creating security in respect of that Account in the Agreed Form and, in the plural, means all of them;

“**Advance**” means the principal amount of the borrowing by the Borrowers under this Agreement in respect of the Ships or, as the context may require, the principal amount outstanding of the Advance under this Agreement;

“**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 and the Creditor Parties in the Agreed Form;

“**Agent**” means Hamburg Commercial Bank AG, acting in such capacity through its office at Gerhart-Hauptmann-Platz 50, D-20095 Hamburg, 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 approved in writing by the Agent (acting on the instructions of the Majority Lenders) or as otherwise approved in accordance with any other approval procedure specified in any relevant provisions of any Finance Document;

“**Applicable Lender**” has the meaning given in Clause 5.2;

“**Approved Broker**” means each of Arrow Valuations Ltd, Barry Rogliano Salles, H. Clarkson & Co. Ltd., Maersk Brokers K/S, Howe Robinson & Co Ltd London and (which are however excluded for Ship D, Ship E, Ship F, Ship K and Ship M) Fearnleys and Simpson Spence Young and, in the plural, means all of them;

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

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

“**Approved Manager**” means, in respect of a Ship, Navios Shipmanagement Inc., Navios Containers Management Inc. or Navios Technical Management S.A., each a corporation incorporated in the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960, or Synergy Marine Pte. Ltd., a company incorporated in Singapore whose registered address is at 1 Kim Seng Promenade #10-11/12 Great World City West Tower, Singapore, 237994 or any other company which is a subsidiary or affiliate of Navios Shipmanagement Inc. or of Angeliki Frangou or any other company which the Agent (acting on the instructions of the Majority Lenders) may approve from time to time as the commercial and/or technical manager of that Ship;

“**Approved Manager’s Undertaking**” means, in relation to a Ship, a letter of undertaking including (*inter alia*) an assignment of the Approved Manager’s rights, title and interest in the Insurances of that Ship 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 Approved Manager serving as manager and subordinating its rights against that Ship and the Borrower which is the owner thereof to the rights of the Creditor Parties under the Finance Documents and, in the plural, means all of them;

“**Assignable Charter**” means any Initial Charter and any time charterparty, consecutive voyage charter or contract of affreightment in respect of a Ship having a duration (or capable of exceeding a duration) equal or more than 12 months and any guarantee of the obligations of

the charterer under such charter or any bareboat charter in respect of that Ship and any guarantee of the obligations of the charterer under such bareboat charter, entered or to be entered into by the Borrower which is the owner thereof and a charterer or, as the context may require, bareboat charterer and, in the plural, means all of them;

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

- (a) 30 June 2021 (or such later date as the Agent may, with the authorisation of the Majority Lenders, agree with the Borrowers); or
- (b) if earlier, the date on which the Total Commitments are fully borrowed, cancelled or terminated;

**“Balloon Instalment”** has the meaning given in Clause 8.1;

**“Basel III”** means, together:

- (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (b) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement—Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”;

**“Borrower”** means each of Borrower A, Borrower B, Borrower C, Borrower D, Borrower E, Borrower F, Borrower G, Borrower H, Borrower I, Borrower J, Borrower K, Borrower L, Borrower M, Borrower N and Borrower O and, in the plural, means all of them;

**“Borrower A”** means Alegria Shipping Corporation, a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower B”** means Andromeda Shiptrade Limited, a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower C”** means Aurora Shipping Enterprises Ltd., a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower D”** means Beryl Shipping Corporation, a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;



**“Borrower E”** means Cheryl Shipping Corporation, a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower F”** means Christal Shipping Corporation, a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower G”** means Hyperion Enterprises Inc., a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower H”** means Kymata Shipping Co., a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower I”** means Orbiter Shipping Corp., a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower J”** means Pearl Shipping Corporation, a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower K”** means Rubina Shipping Corporation, a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower L”** means Seymour Trading Limited, a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower M”** means Topaz Shipping Corporation, a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower N”** means Camelia Shipping Inc., a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Borrower O”** means Balder Maritime Ltd, a corporation incorporated and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

**“Break Costs”** has the meaning given in Clause 21.2;

**“Bulk Carrier Ship”** means each of Ship A, Ship B, Ship C, Ship G, Ship H, Ship I, Ship J, Ship L, Ship N and Ship O and, in the plural, means all of them;

**“Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business:

- (a) in Hamburg, Piraeus, Athens and London regarding the fixing of any interest rate which is required to be determined under this Agreement or any Finance Document;
- (b) in Hamburg, New York and Piraeus in respect of any payment which is required to be made under a Finance Document; and
- (c) in Hamburg, Athens and Piraeus regarding any other action to be taken under this Agreement or any other Finance Document;

“**Cancellation Notice**” has the meaning given in Clause 8.6;

“**Change of Control**” means, in relation to:

(a) a Borrower, a change in:

- (i) the beneficial ownership of any of the shares in that Borrower; or
- (ii) the legal ownership of any of those shares; or

(b) the Corporate Guarantor, a change which results in Mrs Angeliki Frangou either directly or indirectly (through entities owned and controlled by her or trusts or foundations of which she is the beneficiary) and/or Navios Maritime Holdings Inc. or any of their affiliates being the ultimate beneficial owners of, or having ultimate control of the voting rights attaching to:

- (i) less than 5 per cent. of all the units (including for the avoidance of doubt both general partner units and common units) in the Corporate Guarantor; or
- (ii) less than 100 per cent. of all the issued shares in the general partner of the Corporate Guarantor, which is currently Olympos Maritime Ltd.

“**Charterparty Assignment**” means, in relation to an Assignable Charter, an assignment of the rights of the Borrower who is a party to that Assignable Charter under that Assignable Charter and any guarantee of such Assignable Charter executed or to be executed by that Borrower in favour of the Security Trustee in the Agreed Form and, in the plural, means all of them;

“**Code**” means the US Internal Revenue Code of 1986;

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

“**Compliance Certificate**” means a certificate in the form set out in Schedule 1 of the Corporate Guarantee (or in any other form which the Agent approves or requires) to be provided at the times and in the manner set out in Clause 11.20;

“**Container Ship**” means each of Ship D, Ship E, Ship F, Ship K and Ship M and, in the plural, means all of them;

“**Contractual Currency**” has the meaning given in Clause 21.6;

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

“**Corporate Guarantee**” means a guarantee of the obligations of the Borrowers under this Agreement and the other Finance Documents to which each Borrower is a party, in the Agreed Form;

“**Corporate Guarantor**” means Navios Maritime Partners L.P. a limited partnership formed and existing under the laws of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960 and is listed on the New York Stock Exchange;

“**Correction Rate**” means, at any relevant time in relation to an Applicable Lender, the amount (expressed as a rate per annum) by which that Lender’s Cost of Funding exceeds LIBOR;

“**Cost of Funding**” means, in relation to a Lender, the rate per annum determined by that Lender to be the rate at which deposits in Dollars are offered to that Lender by leading banks in the Relevant Interbank Market at that Lender’s request at or about the Specified Time on the Quotation Date for an Interest Period and for a period equal to that Interest Period and for delivery on the first Business Day of it, or, if that Lender uses other ways to fund deposits in Dollars, such rate as determined by that Lender to be the Lender’s cost of funding deposits in Dollars for that Interest Period, such determination being conclusive and binding in the absence of manifest error;

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

“**Disruption Event**” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Loan (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other, Party:
  - (i) from performing its payment obligations under the Finance Documents; or
  - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted;

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

“**Drawdown Date**” means the date requested by the Borrowers for the Advance to be borrowed, or (as the context requires) the date on which the Advance is actually borrowed;

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

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

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

**“Earnings Account”** means, in relation to a Ship, an account in the name of the Borrower owning that Ship with the Account Bank designated “[*name of relevant Borrower*] - Earnings Account”, or any other account (with that or another office of the Account Bank) which replaces such account and is designated by the Agent as that Earnings Account for the purposes of this Agreement;

**“Environmental Claim”** means:

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

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

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

- (a) any release of Environmentally Sensitive Material from that Ship; or

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

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

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

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

“**Existing Finance Documents**” means, in respect of the Existing Loan Agreement, the “Finance Documents” as such term is defined in the Existing Loan Agreement;

“**Existing Indebtedness**” means, at any date, any outstanding Financial Indebtedness (or part thereof) on that date under the Existing Loan Agreement;

“**Existing Loan Agreement**” means the loan agreement dated 26 September 2019 and made between (i) Borrower A to Borrower M as joint and several borrowers and (ii) Hamburg Commercial Bank AG as lender, agent, mandated lead arranger and security trustee;

“**Existing Security Interest**” means any Security Interest created under the Existing Finance Documents;

“**FATCA**” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

“**FATCA Deduction**” means a deduction or withholding from a payment under a Finance Document required by FATCA;

“**FATCA Exempt Party**” means a Party that is entitled to receive payments free from any FATCA Deduction;

“**Final Repayment Date**” means the date falling 4 years from the Drawdown Date;

“**Finance Documents**” means together:

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

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

- (a) for principal, interest or any other sum payable in respect of any moneys borrowed or raised by the debtor;
- (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 (in each case, other than in respect of assets or services obtained on normal commercial terms in the ordinary course of business) or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;
- (e) under any foreign exchange transaction, any interest or currency swap, exchange 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 receivables sold or discounted (other than any receivables to the extent that they are sold on a non-recourse basis); or

(g) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within (a) to (f) if the references to the debtor referred to the other person;

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

“**General Assignment**” means, in relation to a Ship, a general assignment of (*inter alia*) the Earnings, the Insurances and any Requisition Compensation relative to that Ship in the Agreed Form and, in the plural, means all of them;

“**Group**” means the Corporate Guarantor and all subsidiaries directly or indirectly owned by the Corporate Guarantor, including, but not limited to, the Shareholder and the relevant Borrower and “**member of the Group**” shall be construed accordingly;

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

“**Initial Charter**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships and Initial Charters*);

“**Initial Market Value**” means, in relation to a Ship, the Market Value thereof calculated in accordance with the valuation(s) relative thereto referred to in paragraph 5 of Schedule 3, Part B;

“**Instalment**” has the meaning given in Clause 8.1;

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

- (a) all policies and contracts of insurance (including, without limitation, any loss of hire insurance) and any reinsurance, policies or contracts, including entries of that Ship in any protection and indemnity or war risks association, effected in respect of that Ship, its Earnings or otherwise in relation to it whether before, on or after the date of this Agreement; and
- (b) all rights (including, without limitation, any and all rights or claims which the Borrower owning that Ship may have under or in connection with any cut-through clause relative to any reinsurance contract relating to the aforesaid policies or contracts of insurance) and other assets relating to, or derived from, any of the foregoing, including any rights to a return of a premium and any rights in respect of any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement;

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

“**Interpolated Screen Rate**” means, in relation to an Interest Period, the rate which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than that Interest Period; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds that Interest Period, each as of the Specified Time on the Quotation Date for that Interest Period;

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

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

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

“**Lender**” means, subject to Clause 26.6, a bank or financial institution listed in Schedule 1 and acting through its branch indicated in Schedule 1 (or through another branch notified to the Agent under Clause 26.16) or its transferee, successor or assign;

“**LIBOR**” means, for an Interest Period:

- (a) the rate per annum equal to the offered quotation for deposits in Dollars for a period equal to, or as near as possible equal to, the relevant Interest Period which appears on the Screen Rate; or
- (b) (if no Screen Rate is available for that Interest Period), the applicable Interpolated Screen Rate for that Interest Period; or
- (c) if no Screen Rate is available and it is not possible to calculate an Interpolated Screen Rate for that Interest Period, the rate per annum determined by the Agent to be the arithmetic mean (rounded upwards, if necessary, to the nearest fifth decimal point) of the rate(s) per annum notified to the Agent by each, or if there is only one Reference Bank, that Reference Bank as the rate at which deposits in Dollars are offered to that Reference Bank by leading banks in the Relevant Interbank Market at that Reference Bank’s request,

at or about the Specified Time on the Quotation Date for that Interest Period for a period equal to that Interest Period and for delivery on the first Business Day of it and, if any such rate is below zero, LIBOR will be deemed to be zero;

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

“**LSW 1189**” means the London Standard Wording for marine insurances which incorporates the German Direct Mortgage Clause;

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

“**Majority Lenders**” means:

- (a) before the Advance is made, Lenders whose Commitments total 66 <sup>2</sup>/<sub>3</sub> per cent. of the Total Commitments; and



(b) after the Advance is made, Lenders whose Contributions total 66 2/3 per cent. of the Loan;

**“Mandated Lead Arranger”** means Hamburg Commercial Bank AG, acting in such capacity through its office at Gerhart-Hauptmann-Platz 50, D-20095 Hamburg, Germany, or any successor;

**“Mandatory Cost”** means the percentage rate per annum calculated by the Agent in accordance with Schedule 4;

**“Margin”** means 3.10 per cent. per annum;

**“Market Value”** means, in relation to a Ship, the market value thereof determined 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, in the reasonable opinion of the Majority Lenders, a material adverse effect on:

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

**“Maximum Advance Amount”** means an amount up to the lesser of (i) \$160,000,000 and (ii) 50 per cent. of the aggregate Initial Market Value the Ships;

**“Minimum Liquidity”** has the meaning given in Schedule 7;

**“Minimum Liquidity Account”** means an account in the joint names of the Borrowers with the Account Bank designated “[name of account holder(s)] – Minimum Liquidity Account”, or any other account (with that or another office of the Account Bank) which replaces such account and is designated by the Agent as the Minimum Liquidity Account for the purposes of this Agreement;

**“Mortgage”** means, in relation to a Ship, the first preferred ship mortgage or, as the case may be, first priority ship mortgage and deed of covenants collateral thereto, on that Ship in the Agreed Form and, in the plural, means all of them;

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

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

**“Notifying Lender”** has the meaning given in Clause 21.2, Clause 23.1 or Clause 24.1 as the context requires;

“**Option**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Participating Member State**” means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union;

“**Party**” means a party to a Finance Document;

“**Payment Currency**” has the meaning given in Clause 21.6;

“**Permitted Security Interests**” means:

- (a) Security Interests created by the Finance Documents;
- (b) at any time prior to the Drawdown Date, any Existing Security Interest;
- (c) liens for unpaid master’s and crew’s wages in accordance with usual maritime practice;
- (d) liens for salvage;
- (e) liens arising by operation of law for not more than one month’s prepaid hire under any charter in relation to a Ship not prohibited by this Agreement;
- (f) liens for master’s disbursements incurred in the ordinary course of trading and any other lien arising by operation of law or otherwise in the ordinary course of the operation, repair or maintenance of a Ship, provided such liens do not secure amounts more than 30 days overdue (unless the overdue amount is being contested by the relevant Borrower in good faith by appropriate steps) and subject, in the case of liens for repair or maintenance, to Clause 14.14(d);
- (g) any Security Interest created in favour of a plaintiff or defendant in any proceedings or arbitration as security for costs and expenses while a Borrower is actively prosecuting or defending such proceedings or arbitration in good faith; and
- (h) 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.

“**Pertinent Document**” means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause 13 or any other provision of this Agreement or another Finance Document;
- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to a Servicing Bank in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c);

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

- (a) England and Wales;

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

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

**"Prepayment Date"** has the meaning given in Clause 15.2;

**"Prepayment Notice"** has the meaning given in Clause 8.5(b);

**"Quotation Date"** means, in relation to any Interest Period (or any other period for which an interest rate is to be determined under any provision of a Finance Document), the day on which quotations would ordinarily be given by leading banks in the Relevant 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;

**"Reference Banks"** means, subject to Clause 26.19, together, the Hamburg branch of Hamburg Commercial Bank AG, the head office of any other bank which is a Lender at the relevant time (unless such Lender has advised the Agent in writing that it does not wish to be a Reference Bank) and any of their respective successors;

**"Relevant Nominating Body"** means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board;

**"Replacement Benchmark"** means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
  - (i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or

- (ii) any Relevant Nominating Body,  
and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Benchmark” will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Majority Lenders and the Borrowers, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to that Screen Rate; or
- (c) in the opinion of the Majority Lenders and the Borrowers, an appropriate successor to a Screen Rate.

“**Relevant Interbank Market**” means the London interbank market;

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

“**Repayment Date**” means the date falling three months after the Drawdown Date and each of the dates falling at three-monthly intervals thereafter and the Final Repayment Date;

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

“**Retention Account**” means an account in the joint names of the Borrowers with the Account Bank designated “[*name of account holder(s)*] – Retention Account”, or any other account (with that or another office of the Account Bank) which replaces this account and is designated by the Agent as the Retention Account for the purposes of this Agreement;

“**Screen Rate**” means the London interbank offered rate administered by the ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for Dollars for the relevant period displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrowers;

“**Screen Rate Replacement Event**” means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders, and the Borrowers materially changed;
- (b)
  - (i)
    - (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
    - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent, provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;

- (ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
  - (iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
  - (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
- (c) in the opinion of the Majority Lenders and the Borrowers, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

“**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 Cover Ratio**” means, at any relevant time, the aggregate of (i) the aggregate of the Market Value of the Mortgaged Ships and (ii) the net realisable value of any additional security provided at that time under Clause 15 at that time expressed as a percentage of the Loan;

“**Security Interest**” means:

- (a) a mortgage, charge (whether fixed or floating) or pledge, any maritime or other lien or any other security interest of any kind; and
- (b) the rights of a plaintiff under an action *in rem*;

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

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

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

- (c) neither a Borrower, the Approved Manager nor any Security Party has any future or contingent liability under Clauses 20, 21 or 22 or any other provision of this Agreement or another Finance Document; and
- (d) the Agent, the Mandated Lead Arranger, the Security Trustee and the Majority Lenders do not consider that there is a significant risk that any payment or transaction under a Finance Document would be set aside, or would have to be reversed or adjusted, in any present or possible future bankruptcy of a Borrower, the Approved Manager 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 Hamburg Commercial Bank AG, acting in such capacity through its office at Gerhart-Hauptmann-Platz 50, D-20095, Hamburg, Germany, or any successor of it appointed under clause 5 of the Agency and Trust Agreement;

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

“**Shareholder**” means Navios Maritime Operating L.L.C., a company formed and existing under the laws of the Republic of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, the Marshall Islands MH96960;

“**Ship**” means each of Ship A, Ship B, Ship C, Ship D Ship E, Ship F, Ship G, Ship H, Ship I, Ship J, Ship K, Ship L, Ship M, Ship N and Ship O and, in the plural, means all of them;

“**Ship A**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship B**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship C**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship D**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship E**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship F**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship G**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship H**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship I**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship J**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship K**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship L**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship M**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship N**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Ship O**” has the meaning ascribed thereto in Schedule 7 (*Details of Ships*);

“**Specified Time**” means 11.00 a.m. London time;

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

- (a) actual, constructive, compromised, agreed or arranged total loss of that Ship;
- (b) any expropriation, confiscation, requisition or acquisition of that Ship, whether for full or part 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 unless it is within one month from the date of such occurrence redelivered to the full control of the Borrower owning that Ship excluding a requisition for hire a fixed period not exceeding 90 days without any right to an extension;
- (c) any condemnation of that Ship by any tribunal or by any person or person claiming to be a tribunal; and
- (d) any arrest, capture, seizure, confiscation or detention of that Ship (including any hijacking or theft) unless it is within the Relevant Period redelivered to the full control of the Borrower owning that Ship;

“**Relevant Period**” means:

- (a) in the case of any arrest, capture, seizure, confiscation or detention of a Ship (including any hijacking or theft), other than piracy, within 90 days; and
- (b) in the case of piracy, if the relevant underwriters confirm to the Agent in writing prior to the end of the 90-day period referred to in (i) above that the relevant Ship is subject to an approved piracy insurance cover, the earlier of 270 days after the date on which that Ship is captured by pirates and the date on which the piracy insurance cover expires;

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

- (a) in the case of an actual loss of that Ship, the date on which it occurred or, if that is unknown, the date when that Ship was last heard of;
- (b) in the case of a constructive, compromised, agreed or arranged total loss of that Ship, the earlier of:
  - (i) 30 days after the date on which a notice of abandonment is given to the insurers; and
  - (ii) the date of any compromise, arrangement or agreement made by or on behalf of the Borrower owning that Ship with that Ship’s insurers in which the insurers agree to treat the 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 26.2;

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

“**Underlying Documents**” means any Assignable Charters and, in the singular, means any of them;

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

“**US GAAP**” means generally accepted accounting principles as from time to time in effect in the US; and

“**US Tax Obligor**” means:

- (a) a Borrower which is resident for tax purposes in the US; or
- (b) a Borrower or a Security Party some or all whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

## 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 at its discretion;

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

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

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



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

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

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

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

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

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

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

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

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

“**obligatory insurances**” means, in relation to a Ship, all insurances effected, or which the Borrower owning that Ship is obliged to effect in respect of that Ship, 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 individual, any partnership, any company; any state, political sub-division of a state and local or municipal authority; and any international organisation;

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

“**protection and indemnity risks**” means the usual risks 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 1 of the Institute Time Clauses (Hulls) (1/10/83) or clause 6 of the International Hull Clauses (1/11/02) (1/11/03) or clause 8 of the Institute Time Clauses (Hulls) (1/11/1995) 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 (monetary or otherwise), department, central bank, regulatory, self-regulatory or other authority or organisation;

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

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

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

“**war risks**” includes the risk of mines and all risks excluded by clauses 29, 30 or 31 of the International Hull Clauses (1/11/02), clauses 29 or 30 of the International Hull Clauses (1/11/03), clauses 24, 25 or 26 of the Institute Time Clauses (Hulls) (1/11/95) or clauses 23, 24 or 25 of the Institute Time Clauses (Hulls) (1/10/83) or any equivalent provision.

### 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 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 any company of which S is a subsidiary is a parent company of S.

### 1.5 **General Interpretation**

In this Agreement:

- (a) references to, or to a provision of, a Finance Document or any other document are references to it as amended or supplemented, whether before the date of this Agreement or otherwise;

- (b) references to, or to a provision of, any law include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (c) words denoting the singular number shall include the plural and vice versa; and
- (d) 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 Amount of facility**

Subject to the other provisions of this Agreement, the Lenders shall make available to the Borrowers a senior secured term loan facility of up to \$160,000,000 in one Advance.

### **2.2 Lenders' participations in the Advance**

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

### **2.3 Purpose of the Advance**

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

## **3 POSITION OF THE LENDERS**

### **3.1 Interests several**

The rights of the Lenders under this Agreement are several.

### **3.2 Individual right of action**

Each Lender shall be entitled to sue for any amount which has become due and payable by the 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 requiring Majority Lender consent**

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

### **3.4 Obligations several**

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

- (a) the obligations of the other Lenders being increased; nor

- (b) a Borrower, the Approved Manager, 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.

#### **4 DRAWDOWN**

##### **4.1 Request for the Advance**

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

##### **4.2 Availability**

The conditions referred to in Clause 4.1 are that:

- (a) a Drawdown Date has to be a Business Day during the Availability Period;
- (b) the Advance shall not exceed the Maximum Advance Amount;
- (c) any undrawn portion of the Total Commitments in respect of the Advance, upon the determination of the aggregate Initial Market Value of the Ships, shall be automatically cancelled as at the Drawdown Date; and
- (d) the amount of the Advance shall not exceed the Total Commitments.

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

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

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

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

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

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

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

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

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

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

The payment by the Agent under this Clause 4.6 shall constitute the making of the Advance and the Borrowers shall at that time become indebted, as principal and direct obligors, to each Lender in an amount equal to that Lender's participation in the Advance.

### **5 INTEREST**

#### **5.1 Payment of normal interest**

Subject to the provisions of this Agreement, interest on the 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 the Advance in respect of an Interest Period shall be the aggregate of (i) the Margin, (ii) the Mandatory Cost (if any), (iii) LIBOR for that Interest Period and (iv) if a Lender (the "**Applicable Lender**") notifies the Agent at least 5 Business Days before the start of that Interest Period that its Cost of Funding exceeds LIBOR (including the amount of such excess) on the Quotation Date for that Interest Period, additionally in respect of that Applicable Lender's Contribution in the relevant Advance, the Correction Rate applicable to the Applicable Lender for that Interest Period.

#### **5.3 Payment of accrued interest**

In the case of an Interest Period of longer than three months (subject to the prior agreement of the Agent in accordance with Clause 6.2(b)), accrued interest shall be paid every three months during that Interest Period and on the last day of that Interest Period.

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

The Agent shall notify the Borrowers and each Lender of:

- (a) each rate of interest; and
  - (b) the duration of each Interest Period,
- as soon as reasonably practicable after each is determined.

#### **5.5 Obligation of Reference Banks to quote**

A Reference Bank which is a Lender shall use all reasonable efforts to supply the quotation required of it for the purposes of fixing a rate of interest under this Agreement unless that Reference Bank ceases to be a Lender pursuant to Clause 26.19.

**5.6 Absence of quotations by Reference Banks**

If any Reference Bank fails to supply a quotation, the Agent shall determine the relevant LIBOR on the basis of the quotations supplied by the other Reference Bank(s) but if two or more of the Reference Banks fail (or, if at any time there is only one Reference Bank, that Reference Bank fails) to provide a quotation, the relevant rate of interest shall be set in accordance with the following provisions of this Clause 5.

**5.7 Market disruption**

The following provisions of this Clause 5 apply if:

- (a) no rate is quoted on the Screen Rate, it is not possible to calculate an Interpolated Screen Rate for that Interest Period and two or more of the Reference Banks do not (or, if at any time there is only one Reference Bank, that Reference Bank does not), before 1.00 p.m. (London time) on the Quotation Date for an Interest Period, provide a quotation to the Agent in order to fix LIBOR; or
- (b) at least three Business Days 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 Relevant Interbank Market in order to fund its Contribution (or any part of it) during the Interest Period.

**5.8 Notification of market disruption**

The Agent shall promptly notify the Borrowers and each of the Lenders stating the circumstances falling within Clause 5.7 which have caused its notice to be given.

**5.9 Suspension of drawdown**

If the Agent’s notice under Clause 5.8 is served before the Advance is made:

- (a) In a case falling within Clause 5.7(a), the Lender’s obligation to make the Advance; and
  - (b) In a case falling within Clause 5.7(b), the Affected Lender’s obligation to participate in the Advance,
- shall be suspended while the circumstances referred to in the Agent’s notice continue.

**5.10 Negotiation of alternative rate of interest**

- (a) If the Agent’s notice under Clause 5.8 is served after the Advance is borrowed, the Borrowers, the Agent, the Lenders (subject to Clause 27.5) or (as the case may be) the Affected Lender shall use reasonable endeavours to agree, within 30 days after the date on which the Agent serves its notice under Clause 5.8 (the “**Negotiation Period**”), an alternative interest rate or (as the case may be) an alternative basis for the Lenders or (as the case may be) the Affected Lender to fund or continue to fund their or its Contribution during the Interest Period concerned.
- (b) During the Negotiation Period 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, in each case as determined by the relevant Lender, or in any available currency of their or its Contribution plus the Margin and the Mandatory Cost (if any).

**5.11 Application of agreed alternative rate of interest**

Subject to Clause 27.5 (*Replacement of Screen Rate*), any alternative interest rate or an alternative basis which is agreed during the Negotiation Period shall take effect in accordance with the terms agreed.

**5.12 Alternative rate of interest in absence of agreement**

Subject to Clause 27.5 (*Replacement of Screen Rate*), 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 procedure provided for in Clause 5.10(b) shall be repeated at the end of the interest period set by the Agent pursuant to that Clause.

**5.13 Notice of prepayment**

If the Borrowers do not agree with an interest rate set by the Agent under Clause 5.12, the Borrowers may give the Agent not less than 5 Business Days' notice of their intention to prepay the Loan at the end of the interest period set by the Agent.

**5.14 Prepayment; termination of Commitments**

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

- (a) on the date on which the Agent serves that notice, the Total Commitments or (as the case may require) the Commitment of the Affected Lender shall be cancelled; and
- (b) on the last Business Day of the interest period set by the Agent, the Borrowers shall prepay (without premium or penalty) the Loan or, as the case may be, the Affected Lender's Contribution, together with accrued interest thereon at the applicable rate plus the Margin and the Mandatory Cost (if any).

**5.15 Application of prepayment**

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

**6 INTEREST PERIODS**

**6.1 Commencement of Interest Periods**

The first Interest Period applicable to the Advance shall commence on the Drawdown Date 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 the Advance shall be:

- (a) 3 months; or
- (b) such other period (as proposed by the Borrowers to the Agent not later than 11:00 a.m. (Hamburg time) 5 Business Days before the commencement of the Interest Period in respect of the Advance) as the Agent may, with the authorisation of the Majority Lenders, agree with the Borrowers (failing which the Interest Period shall be three months).

**6.3 Duration of Interest Periods for 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 proposed and the Lenders have agreed an Interest Period longer than three months, any Lender notifies the Agent by 11.00 a.m. (Hamburg 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 Relevant Interbank Market when the Interest Period commences, the Interest Period shall be of three months.

**7 DEFAULT INTEREST**

**7.1 Payment of default interest on overdue amounts**

The Borrowers shall pay interest in accordance with the following provisions of this Clause 7 on any amount payable by the Borrowers under any Finance Document which the Agent, the Security Trustee or the other designated payee does not receive on or before the relevant date, that is:

- (a) the date on which the Finance Documents provide that such amount is due for payment; or
- (b) if a Finance Document provides that such amount is payable on demand, the date on which the demand is served; or
- (c) if such amount has become immediately due and payable under Clause 19.4, the date on which it became immediately due and payable.

**7.2 Default rate of interest**

Interest shall accrue on an overdue amount from (and including) the relevant date until the date of actual payment (as well after as before judgment) at the rate per annum determined by the Agent to be 2.50 per cent. above:

- (a) in the case of an overdue amount of principal, the higher of the rates set out at Clauses 7.3(a) and 7.3(b); or
- (b) in the case of any other overdue amount, the rate set out at Clause 7.3(b).

**7.3 Calculation of default rate of interest**

The rates referred to in Clause 7.2 are:

- (a) the rate applicable to the overdue principal amount immediately prior to the relevant date (but only for any unexpired part of any then current Interest Period applicable to it);



- (b) the aggregate of the Margin, any Correction Rate and the Mandatory Cost (if any) plus, in respect of successive periods of any duration (including at call) up to three months which the Agent may select from time to time:
- (i) LIBOR; or
  - (ii) if the Agent (after consultation with the Reference Banks) determines that Dollar deposits for any such period are not being made available to any Reference Bank by leading banks in the Relevant Interbank Market in the ordinary course of business, a rate from time to time determined by the Agent by reference to the cost of funds to the Reference Banks from such other sources as the Agent (after consultation with the Reference Banks) may from time to time determine.

**7.4 Notification of interest periods and default rates**

The Agent shall promptly notify the Lenders and the Borrowers of each interest rate determined by the Agent under Clause 7.3 and of each period selected by the Agent for the purposes of paragraph 7.3(b) of that Clause; but this shall not be taken to imply that the Borrowers are liable to pay such interest only with effect from the date of the Agent's notification.

**7.5 Payment of accrued default interest**

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

**7.6 Compounding of default interest**

Any such interest which is not paid at the end of the period by reference to which it was determined shall be compounded every 6 months and shall be payable on demand.

**8 REPAYMENT AND PREPAYMENT**

**8.1 Amount of Instalments**

The Borrowers shall repay the Advance by:

- (i) 16 consecutive instalments, of which the first eight (1<sup>st</sup> – 8<sup>th</sup>) instalments shall each be in the amount of \$6,250,000 and the following eight (9<sup>th</sup> – 16<sup>th</sup>) instalments shall each be in the amount of \$3,750,000 (each an “**Instalment**” and, together, the “**Instalments**”); and
- (ii) together with the last Instalment, a balloon instalment in the amount of \$80,000,000 (the “**Balloon Instalment**”),

**Provided that**, if the amount advanced is less than \$160,000,000, the aggregate amount of the Instalments and the Balloon Instalment shall be reduced by an amount equal to the undrawn amount on a *pro rata* basis.

## 8.2 Repayment Dates

The first Instalment in respect of the Advance shall be repaid on the first Repayment Date falling after the Drawdown Date, each subsequent Instalment shall be repaid at three-monthly intervals thereafter and the last Instalment, shall be repaid together with the Balloon Instalment, on the Final Repayment Date.

## 8.3 Final Repayment Date

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

## 8.4 Voluntary prepayment

Subject to the following conditions, the Borrowers may prepay the whole or any part of the Loan on the last day of an Interest Period or on such other date agreed between the Borrowers and the Agent.

## 8.5 Conditions for voluntary prepayment

The conditions referred to in Clause 8.4 are that:

- (a) a partial prepayment shall be \$500,000 or a higher integral multiple thereof (or such other amount acceptable to the Agent in its sole discretion);
- (b) the Agent has received from the Borrowers at least 3 Business Days' prior irrevocable written notice (each, a "**Prepayment Notice**") specifying the amount to be prepaid and the date on which the prepayment is to be made;
- (c) the Borrowers have provided evidence satisfactory to the Agent that any consent required by any Borrower or any Security Party in connection with the prepayment has been obtained and remains in force, and that any regulation relevant to this Agreement which affects any Borrower or any Security Party has been complied with; and
- (d) the Borrowers are in compliance with Clause 8.10 on or prior to the date of prepayment.

## 8.6 Optional facility cancellation

The Borrowers shall be entitled, upon giving to the Agent not less than 5 Business Days' prior written notice, to cancel, in whole or in part, and, if in part, by an aggregate amount not less than \$500,000 or a higher integral multiple thereof (or such other amount acceptable to the Agent in its sole discretion), the undrawn balance of the Total Commitments (the "**Cancellation Notice**") which notice shall be irrevocable. Upon such cancellation taking effect on expiry of a Cancellation Notice the several obligations of the Lenders to make their respective Commitments available in relation to the portion of the Total Commitments to which such Cancellation Notice relates shall terminate.

## 8.7 Cancellation Notice or Prepayment Notice

The Agent shall notify the Lenders promptly upon receiving a Cancellation Notice or Prepayment Notice, and shall provide, in the case of a Prepayment Notice, any Lender which so requests with a copy of any document delivered by the Borrowers under Clause 8.5(c).

## 8.8 Mandatory prepayment

The Borrowers shall be obliged to prepay the Relevant Amount:

- (a) if a Ship is sold, on or before the date on which the sale is completed by delivery of the Ship to the buyer;
- (b) if a Ship becomes a Total Loss, on the earlier of the date falling 90 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) if the relevant Borrower does not exercise the Option and give notice accordingly to the Charterer in accordance with addendum no. 7 and thereafter to the Agent of the relevant Initial Charter of the Container Ship owned by it, such prepayment to be made on the last day of the charter period pursuant to such Initial Charter, unless such Borrower owning the relevant Container Ship:
  - (A) has entered into a new charter (a "**Replacement Charter**") in respect of that Ship as a direct continuation of employment of the relevant Container Ship after the relevant Initial Charter with a duration (without taking account of any optional extension periods) which is at least 3 years, with a net daily hire rate of at least \$21,083 and on terms (including, without limitation, the identity of the charterer) acceptable to the Agent (acting on the instructions of the Majority Lenders at their sole discretion);
  - (B) has delivered to the Agent copies of such Replacement Charter (or other satisfactory evidence of such employment) and, if applicable, any related charter guarantee duly executed by the parties thereto and of each document to be delivered pursuant to each of them; and
  - (C) has complied with its obligations pursuant to Clause 14.13 in relation to such Replacement Charter and, if applicable, any related charter guarantee.

In this Clause 8.8:

**"Relevant Amount"** means:

- (i) an amount equal to the Relevant Fraction of the Loan on the date on which (1) the relevant Ship is sold, (2) the relevant Ship becomes a Total Loss or (3) the Option relating to the relevant Container Ship is not exercised or Replacement Charter is not entered into in accordance with (c) above, which shall be increased:
  - (A) in relation to a Bulk Carrier Ship, by 25 per cent. in the event that the Security Cover Ratio is less than 200 per cent.; and
  - (B) in relation to a Container Ship, by 20 per cent.
- (ii) if the relevant Ship is the last Ship subject to a Mortgage, the whole of the Loan.

**"Relevant Fraction"** means a fraction of which the numerator is the Market Value of that Ship, being sold or which has become a Total Loss and the denominator is the aggregate Market Value of all Mortgaged Ships at the relevant time.

## **8.9 Effect of Prepayment Notice and Cancellation Notice**

Neither a Prepayment Notice nor a Cancellation Notice may be withdrawn or amended without the consent of the Agent, given with the authorisation of the Majority Lenders, and:

- (a) in the case of a Prepayment Notice, the amount specified in that Prepayment Notice shall become due and payable by the Borrowers on the date for prepayment specified in that Prepayment Notice; and
- (b) in the case of a Cancellation Notice, the amount cancelled shall be permanently cancelled and may not be borrowed.

## **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 21.2) but without premium or penalty.

## **8.11 Application of partial prepayment or cancellation**

Each partial prepayment shall be applied:

- (a) if made pursuant to Clauses 5.13, 8.8, 15.2, 19.2, 23.3 or 24.6, pro rata against the Instalments and the Balloon Instalment; and
- (b) if made pursuant to Clause 8.4, against the Loan being prepaid in order of maturity of the Instalments and the Balloon Instalment.

## **8.12 No reborrowing**

No amount prepaid or cancelled may be (re)borrowed.

## **9 CONDITIONS PRECEDENT**

### **9.1 Documents, fees and no default**

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

- (a) that, on or before the date of this Agreement, the Agent receives the documents described in Part A of Schedule 3 in form and substance satisfactory to the Agent and its lawyers; and
- (b) that, on the Drawdown Date, the Agent receives:
  - (i) the documents and conditions described in Part B of Schedule 3 in form and substance satisfactory to the Agent and its lawyers;
  - (ii) any fee payable pursuant to Clause 20.1; and
  - (iii) payment of any expenses payable pursuant to Clause 20.2 which are due and payable on the Drawdown Date;

- (c) that both at the date of the Drawdown Notice and at the Drawdown Date:
- (i) no Event of Default or Potential Event of Default has occurred or would result from the borrowing of the relevant Advance;
  - (ii) the representations and warranties in Clause 10 and those of the Borrowers, the Approved Manager or any Security Party which are set out in the other Finance Documents would be true and not misleading if repeated on each of those dates with reference to the circumstances then existing;
  - (iii) none of the circumstances contemplated by Clause 5.7 has occurred and is continuing; and
  - (iv) there has been no Material Adverse Change; and
- (d) that, if the Security Cover Ratio were applied immediately following the making of the Advance, the Borrowers would not be obliged to provide additional security or prepay part of the Loan under that Clause; and
- (e) that the Agent has received, and found to be acceptable to it, any further opinions, consents, agreements and documents in connection with the Finance Documents which the Agent may, with the authorisation of the Majority Lenders, request by notice to the Borrowers prior to the Drawdown Date.

## **9.2 Waiver of conditions precedent**

If the Majority Lenders, at their discretion, permit the Advance to be borrowed before certain of the conditions referred to in Clause 9.1 are satisfied, the Borrowers shall ensure that those conditions are satisfied within 5 Business Days after the Drawdown Date (or such longer period as the Agent may, with the authorisation of the Majority Lenders, specify).

## **10 REPRESENTATIONS AND WARRANTIES**

### **10.1 General**

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

### **10.2 Status**

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

### **10.3 Share capital and ownership**

- (a) Each of Borrower A, Borrower C, Borrower G and Borrower I is authorised to issue fifty thousand (50,000) registered shares with a par value of \$1.00 per share, all of which shares have been issued in registered form and are fully paid and are held, free of any Security Interest or other claim, by the Shareholder;
- (b) Each of Borrower B, Borrower H, Borrower L and Borrower O is authorised to issue five hundred (500) registered and/or bearer shares without par value, all of which have been issued in registered form and are fully paid and are held, free of any Security Interest or other claim, (and in relation to Borrower O on and from the Drawdown Date) by the Shareholder;

- (c) Each of Borrower D, Borrower E, Borrower F, Borrower J, Borrower K and Borrower M is authorised to issue five hundred (500) registered shares with a par value of \$1.00 per share, all of which shares have been issued in registered form and are fully paid and are held, free of any Security Interest or other claim, by the Shareholder;
- (d) Borrower N is authorised to issue five hundred (500) registered shares without par value, all of which shares have been issued in registered form and are fully paid and are held, free of any Security Interest or other claim, on and from the Drawdown Date, by the Shareholder; and
- (e) All the shares of the Shareholder are held, free of any Security Interest or other claim, by the Corporate Guarantor.

#### **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 Underlying Documents to which it is a party and to maintain the relevant Ship in its ownership under the applicable Approved Flag;
- (b) to execute the Finance Documents to which that Borrower is a party; and
- (c) to borrow under this Agreement and to make all the payments contemplated by, and to comply with, those Finance Documents to which that 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 each Borrower is a party, do now or, as the case may be, will, upon execution and delivery (and, where applicable, registration as provided for in the Finance Documents):

- (a) constitute that Borrower's legal, valid and binding obligations enforceable against that Borrower in accordance with their respective terms (having the requisite corporate benefit which is legally and economically sufficient); and
- (b) create legal, valid and binding Security Interests (having the priority specified in the relevant Finance Document) 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:

- (a) that 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, the Approved Manager and each other Security Party of each Finance Document and each Underlying Document to which it is a party, and the borrowing by that Borrower (together with the other Borrowers) of the Loan (or any part thereof), and its compliance with each Finance Document and each Underlying Document to which it is a party:

- (a) will not involve or lead to a contravention of:
- (i) any law or regulation; or
  - (ii) the constitutional documents of that Borrower the Approved Manager or other Security Party; or
  - (iii) any contractual or other obligation or restriction which is binding on that Borrower the Approved Manager or other Security Party or any of its assets, and
- (b) will not have a Material Adverse Effect; and
- (c) is for the corporate benefit of that Borrower or each other Security Party.

**10.9 No withholding taxes**

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

**10.10 No default**

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

**10.11 Information**

All information which has been provided in writing by or on behalf of the Borrowers, the Approved Manager 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 and financial statements 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, the Corporate Guarantor or the Group (as the case may be); and there has been no change in the financial position or state of affairs of a Borrower, the Corporate Guarantor or the Group (or any member thereof) from that disclosed in the latest of those accounts which is likely to have a Material Adverse Effect.

**10.12 No litigation**

No legal or administrative action involving a Borrower, the Approved Manager 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 that Borrower's knowledge, is likely to be commenced or taken which would, in either case, be likely to have a Material Adverse Effect.

**10.13 Validity and completeness of Underlying Documents**

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

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

**10.14 Compliance with certain undertakings**

At the date of this Agreement, the Borrowers are in compliance with Clauses 11.2, 11.4, 11.9, 11.13, 13, 14.3 and 14.11 and none of the events listed in Clause 19.1(g) has occurred in respect of any of the Borrowers or any Security Party.

**10.15 Taxes paid**

Each Borrower has paid all taxes applicable to, or imposed on or in relation to that Borrower, its business or the Ship owned by it.

**10.16 ISM Code and ISPS Code compliance**

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

**10.17 No Money laundering**

Each Borrower:

- (a) will not, and will procure that neither the Approved Manager nor a 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 2015/849/EC of the European Parliament and 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) confirms that it is the beneficiary within the meaning of the German Anti Money Laundering Act (Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten (Geldwäschegesetz)), 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.

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

The Agent shall promptly notify the Lenders of any written notice it receives under this Clause 10.17.



**10.18 No immunity**

No Borrower nor any of its assets is entitled to immunity on grounds of sovereignty or otherwise from any legal action or proceeding (including, without limitation, suit, attachment prior to judgement, execution or other enforcement).

**10.19 Choice of law**

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

**10.20 Pari passu ranking**

The obligations of the Borrowers and each Security Party under the Finance Documents to which it is a party are direct, general and unconditional obligations and rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except for obligations mandatorily preferred by law applying to companies generally.

**10.21 Repetition**

The representations and warranties in this Clause 10 shall be deemed to be repeated by the Borrowers:

- (a) on the date of service of the Drawdown Notice;
  - (b) on the Drawdown Date; and
  - (c) with the exception of Clauses 10.9 and 10.14, on the first day of each Interest Period and on the date of any Compliance Certificate issued pursuant to Clause 11.20,
- as if made with reference to the facts and circumstances existing on each such day.

**11 GENERAL UNDERTAKINGS**

**11.1 General**

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

## **11.2 Title and negative pledge**

Each Borrower will:

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

## **11.3 No disposal of assets**

Subject to Clause 8.8 no 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,
- but paragraph (a) does not apply to any charter of a Ship.

## **11.4 No other liabilities or obligations to be incurred**

No Borrower will enter into any other investments, any sale or leaseback agreements, any off-balance sheet transaction or incur any other liability or obligation (including, without limitation, any Financial Indebtedness or any obligations under a guarantee) except:

- (a) liabilities and obligations under the Finance Documents and the Underlying Documents to which it is or, as the case may be, will be a party;
- (b) at any time prior to the Drawdown Date, the Existing Indebtedness; and
- (c) liabilities or obligations reasonably incurred in the normal course of its business of trading, operating and chartering, maintaining and repairing the Ship owned by it.

## **11.5 Information provided to be accurate**

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

## **11.6 Provision of financial statements**

Each Borrower will send or procure that there are sent 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 Corporate Guarantor, the consolidated audited annual financial statements of the Group for that Financial Year (commencing with the financial statements for the Financial Year which ended on 31 December 2021); and

- (b) as soon as possible, but in no event later than 90 days after the end of the 6-month period ending on 30 June in each Financial Year of the Corporate Guarantor, the semi-annual consolidated unaudited financial statements of the Group, for that 6-month period (commencing with the financial statements for the 6-month period ending on 30 June 2021), duly certified as to their correctness by an officer of the Corporate Guarantor; and
- (c) promptly after each request by the Agent, such further financial or other information in respect of that Borrower, a Ship, the Corporate Guarantor, the other Security Parties and the Group (including, without limitation, any information regarding any sale and purchase agreements, investment brochures, shipbuilding contracts, charter agreements and operational expenditures for the Ships) as may be requested by the Agent.

#### **11.7 Form of financial statements**

All accounts delivered under Clause 11.6 will:

- (a) be prepared in accordance with all applicable laws and US GAAP and, in the case of any audited financial statements, be certified by an independent and reputable auditor having requisite experience selected and appointed by the relevant Security Party;
- (b) fairly represent the financial condition of the Corporate Guarantor and the Group at the date of those accounts and of their profit for the period to which those accounts relate; and
- (c) fully disclose or provide for all significant liabilities of the Corporate Guarantor and the Group and each of its/their subsidiaries.

#### **11.8 Shareholder and creditor notices**

Each Borrower will send the Agent copies of any relevant press releases and, promptly upon its request, copies of all communications which are despatched to that Borrower's shareholders or creditors or any class of them.

#### **11.9 Consents**

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

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

#### **11.10 Maintenance of Security Interests**

Each Borrower will:

- (a) at its own cost, do all that it 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 Majority Lenders, is or has become necessary or desirable for any Finance Document to be valid, enforceable or admissible in evidence or to ensure or protect the priority of any Security Interest which it creates.

**11.11 Notification of litigation**

Each Borrower will provide the Agent with details of any legal or administrative action involving that Borrower, the Ship owned by it, the Earnings or the Insurances in respect of that Ship, any Security Party or the Approved Manager, as soon as such action is instituted or it becomes apparent to that Borrower that it is likely to be instituted, unless it is clear that the legal or administrative action cannot be considered material in the context of any Finance Document, and each Borrower shall procure that all reasonable measures are taken to defend any such legal or administrative action.

**11.12 No amendment to Underlying Documents**

No Borrower will waive or fail to enforce, the Underlying Documents to which it is a party or any of its provisions and shall promptly notify the Agent of any amendment or supplement to any Underlying Document.

**11.13 Principal place of business**

Each Borrower will maintain its place of business, and keep its corporate documents and records, at the address stated in Clause 28.2(a); and no Borrower will establish, or do anything as a result of which it would be deemed to have, a place of business in the United Kingdom or the United States.

**11.14 Confirmation of no default**

Each Borrower will, within two Business Days after service by the Agent of a written request, serve on the Agent a notice which is signed by the officer(s) of that Borrower and which:

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

The Agent may serve requests under this Clause 11.14 from time to time but only if asked to do so by a Lender or Lenders having Contributions exceeding 10 per cent. of the Loan or (if no Advances have been made) Commitments exceeding 10 per cent. of the Total Commitments; and this Clause 11.14 does not affect the Borrowers' obligations under Clause 11.15.

**11.15 Notification of default**

Each Borrower will notify the Agent as soon as that Borrower becomes aware of:

- (a) the occurrence of an Event of Default or a Potential Event of Default; or

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

**11.16 Provision of further information**

Each Borrower will, as soon as practicable after receiving the request, provide the Agent with any additional financial or other information relating:

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

**11.17 Provision of copies and translation of documents**

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

**11.18 “Know your customer” checks**

If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the composition of the shareholders of the Borrowers or any Security Party after the date of this Agreement; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (c), any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrowers shall promptly upon the request of the Agent or the Lender concerned supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or the Lender concerned (for itself or, in the case of the event described in paragraph (c), on behalf of any prospective new Lender) in order for the Agent, the Lender concerned or, in the case of the event described in paragraph (c), any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

**11.19 Minimum Liquidity**

The Borrowers shall maintain in the Minimum Liquidity Account credit balances in an aggregate amount of not less than the applicable Minimum Liquidity commencing from the Drawdown Date and at all times thereafter throughout the remainder of the Security Period.

## **11.20 Compliance Certificate**

- (a) The Borrowers shall supply to the Agent, a Compliance Certificate together with each set of financial statements delivered pursuant to paragraphs (a) and (b) of Clause 11.6 (commencing with the financial statements of the Corporate Guarantor to be provided for the period ending on 30 June 2021).
- (b) Each Compliance Certificate shall be duly signed by the chief financial officer of the Corporate Guarantor, evidencing (*inter alia*) the Borrowers' compliance (or not, as the case may be) with the provisions of Clause 11.19 and Clause 15.1 and the Corporate Guarantor's compliance with clause 12.4 of the Corporate Guarantee.

## **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, acting with the authorisation of the Majority Lenders, may otherwise permit in writing.

### **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 carry on any business other than the ownership, chartering and operation of the Ship owned by it;
- (b) pay any dividend or make any other form of distribution or effect any form of redemption, purchase or return of share capital if an Event of Default has occurred and is continuing at the relevant time or an Event of Default will result from the payment of a dividend or the making of any other form of distribution;
- (c) provide any form of credit or financial assistance to:
  - (i) a person who is directly or indirectly interested in that 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 that Borrower than those which it could obtain in a bargain made at arms' length;
- (d) open or maintain any account with any bank or financial institution except accounts with the Agent, the Account Bank and the Security Trustee for the purposes of the Finance Documents;

- (e) issue, allot or grant any person a right to any shares in its capital or repurchase or reduce its issued share capital;
- (f) acquire any shares or other securities other than short term debt obligations or Treasury bills issued by the US, the UK or a Participating Member State and certificates of deposit issued by major North American or European banks, or enter into any transaction in a derivative; or
- (g) enter into any form of amalgamation, merger or de-merger, acquisition, divesture, split-up or any form of reconstruction or reorganisation.

#### **12.4 Corporate Guarantor's Subsidiaries**

The Borrowers shall provide the Agent with a list of the Borrowers' and the Corporate Guarantor's (direct and indirect) subsidiaries at the date of this Agreement (together with information requested by the Agent pursuant to Clause 11.6(c) in respect of such subsidiaries) and shall promptly update this list from time to time to advise the Agent of any amendments to the information included in the original list delivered to the Agent, unless such information is included in the financial statement or periodic public filings of the Corporate Guarantor.

### **13 INSURANCE**

#### **13.1 General**

Each Borrower also undertakes with each Creditor Party, on and from the Drawdown Date, to comply with the following provisions of this Clause 13, except as the Agent may, with the authority of the Majority Lenders, otherwise permit in writing.

#### **13.2 Maintenance of obligatory insurances**

Each Borrower shall keep the Ship owned by it insured at the expense of that Borrower against:

- (a) fire and usual marine risks (including hull and machinery and excess risks);
- (b) war risks (including, without limitation, protection and indemnity war risks with a separate limit not less than hull value of the relevant Ship);
- (c) protection and indemnity risks (including, without limitation, protection and indemnity war risks in excess of the amount for war risks (hull) and oil pollution liability risks) in each case in the highest amount available in the international insurance market; and
- (d) any other risks the insurance of which the Security Trustee (acting on the instructions of the Majority Lenders), having regard to practices, recommendations and other circumstances prevailing at the relevant time, may from time to time require by notice to that Borrower.

#### **13.3 Terms of obligatory insurances**

Each Borrower shall effect such insurances in such amounts in such currency and upon such terms and conditions (including, without limitation, any LSW 1189 or, in the opinion of the Security Trustee, comparable mortgage clause) as shall from time to time be approved in writing by the Security Trustee in its sole discretion, but in any event as follows:

- (a) in Dollars;

- (b) in the case of fire and usual marine risks and war risks, on an agreed value basis in an amount equal to at least the higher of (i) an amount which is equal to 120 per cent. of the aggregate of (A) the Loan multiplied by a fraction whose: (1) nominator is the Market Value of the Ship owned by that Owner; and (2) denominator is the Market Value of all Mortgaged Ships and (B) the principal amount secured by any equal or prior ranking Security Interest on that Ship and (ii) the Market Value of that Ship;
- (c) in the case of oil pollution liability risks, for an amount equal to the highest level of cover from time to time available under basic protection and indemnity club entry (with the International Group of Protection and Indemnity Clubs) and the international marine insurance market (currently \$1,000,000,000 for any one accident or occurrence);
- (d) in relation to protection and indemnity risks in respect of the full value and tonnage of that Ship;
- (e) in relation to war risks insurance, extended to cover piracy and terrorism where excluded under the fire and usual marine risks insurance;
- (f) on approved terms and conditions;
- (g) such other risks of whatever nature and howsoever arising in respect of which insurance would be maintained by a prudent owner of a vessel similar to that Ship; and
- (h) through approved brokers and with approved insurance companies and/or underwriters which have a Standard & Poor's rating of at least BBB- or a comparable rating by any other rating agency acceptable to the Security Trustee (acting on the instructions of the Majority Lenders) or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations which are members of the International Group of Protection and Indemnity Clubs.

#### **13.4 Further protections for the Creditor Parties**

In addition to the terms set out in Clause 13.3, each Borrower shall and shall procure that:

- (a) it and any and all third parties who are named assured or co-assured under any obligatory insurance shall assign their interest in any and all obligatory insurances and other Insurances if so required by the Agent;
- (b) whenever the Security Trustee requires, the obligatory insurances name (or be amended to name) the Security Trustee as additional named assured for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation they may have under any applicable law against the Security Trustee but without the Security Trustee thereby being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (c) the interest of the Security Trustee as assignee and as loss payee shall be duly endorsed on all slips, cover notes, policies, certificates of entry or other instruments of insurance in respect of the obligatory insurances;
- (d) the obligatory insurances shall name the Security Trustee as sole loss payee with such directions for payment as the Security Trustee may specify;



- (e) the obligatory insurances shall provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Trustee shall be made without set-off, counterclaim or deductions or condition whatsoever;
- (f) the obligatory insurances shall provide that the insurers shall waive, to the fullest extent permitted by English law, their entitlement (if any) (whether by statute, common law, equity, or otherwise) to be subrogated to the rights and remedies of the Security Trustee in respect of any rights or interests (secured or not) held by or available to the Security Trustee in respect of the Secured Liabilities, until the Secured Liabilities shall have been fully repaid and discharged, except that the insurers shall not be restricted by the terms of this paragraph (f) from making personal claims against persons (other than the Borrowers or any Creditor Party) in circumstances where the insurers have fully discharged their liabilities and obligations under the relevant obligatory insurances;
- (g) the obligatory insurances shall provide that the obligatory insurances shall be primary without right of contribution from other insurances effected by the Security Trustee or any other Creditor Party;
- (h) the obligatory insurances shall provide that the Security Trustee may make proof of loss if that Borrower fails to do so; and
- (i) the obligatory insurances shall provide that if any obligatory insurance is cancelled, or if any substantial change is made in the coverage which adversely affects the interest of the Security Trustee, or if any obligatory insurance is allowed to lapse for non-payment of premium, such cancellation, charge or lapse shall only be effective against the Security Trustee 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 effected by it:
  - (i) notify the Security Trustee of the brokers, underwriters, insurance companies and any protection and indemnity or war risks association through or with whom that Borrower proposes to renew that obligatory insurance and of the proposed terms and conditions of renewal; and
  - (ii) seek the Security Trustee's approval to the matters referred to in paragraph (i);
- (b) at least 7 days before the expiry of any obligatory insurance, renew that obligatory insurance in accordance with the Security Trustee's approval pursuant to paragraph (a); and
- (c) procure that the approved brokers and/or the war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Security Trustee in writing of the terms and conditions of the renewal.

### **13.6 Copies of policies; letters of undertaking**

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

- (a) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of Clause 13.4;
- (b) they will hold such policies, and the benefit of such insurances, to the order of the Security Trustee in accordance with the said loss payable clause;
- (c) they will advise the Security Trustee immediately of any material change to the terms of the obligatory insurances;
- (d) they will notify the Security Trustee, not less than 14 days before the expiry of the obligatory insurances, in the event of their not having received notice of renewal instructions from that Borrower or its agents and, in the event of their receiving instructions to renew, they will promptly notify the Security Trustee of the terms of the instructions; and
- (e) they will not set off against any sum recoverable in respect of a claim relating to the Ship owned by that Borrower under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Ship or otherwise, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts, and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts, and will arrange for a separate policy to be issued in respect of that Ship forthwith upon being so requested by the Security Trustee.

**13.7 Copies of certificates of entry; letters of undertaking**

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by that Borrower is entered provides the Security Trustee with:

- (a) a certified copy of the certificate of entry for that Ship;
- (b) a letter or letters of undertaking in such form as may be required by the Security Trustee;
- (c) where required to be issued under the terms of insurance/indemnity provided by that Borrower's protection and indemnity association, a certified copy of each United States of America voyage quarterly declaration (or other similar document or documents) made by that Borrower in accordance with the requirements of such protection and indemnity association; and
- (d) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority or, as the case may be, protection and indemnity associations in relation to that Ship (if applicable).

**13.8 Deposit of original policies**

Each Borrower shall ensure that all policies relating to obligatory insurances effected by it are deposited with the approved brokers through which the insurances are effected or renewed.

**13.9 Payment of premiums**

Each Borrower shall punctually pay all premiums or other sums payable in respect of the obligatory insurances effected by it and produce all relevant receipts when so required by the Security Trustee.

**13.10 Guarantees**

Each Borrower shall ensure that any guarantees required by a protection and indemnity or war risks association are promptly issued and remain in full force and effect.

**13.11 Compliance with terms of insurances**

Each Borrower shall not do or omit to do (nor permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable under an obligatory insurance repayable in whole or in part; and, in particular it shall:

- (a) take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and (without limiting the obligation contained in Clause 13.6(c)) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Security Trustee has not given its prior approval;
- (b) not make any changes relating to the classification or classification society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
- (c) make (and promptly supply copies to the Agent) of all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which that Ship is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation) and, if applicable, shall procure that the Approved Manager complies with this requirement; and
- (d) not employ that Ship, nor allow it to be employed, otherwise than in conformity with the terms and conditions of the obligatory insurances, without first obtaining the consent of the insurers and complying with any requirements (as to extra premium or otherwise) which the insurers specify.

**13.12 Alteration to terms of insurances**

Each Borrower shall neither make nor agree to any alteration to the terms of any obligatory insurance or waive any right relating to any obligatory insurance.

**13.13 Settlement of claims**

No 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 and shall do all things necessary to ensure such collection or recovery is made.

**13.14 Provision of copies of communications**

Each Borrower shall provide the Security Trustee, when so requested, copies of all written communications between that Borrower and:

- (a) the approved brokers;
- (b) the approved protection and indemnity and/or war risks associations; and
- (c) the approved insurance companies and/or underwriters, which relate directly or indirectly to:
  - (i) that Borrower's obligations relating to the obligatory insurances including, without limitation, all requisite declarations and payments of additional premiums or calls; and
  - (ii) any credit arrangements made between that Borrower and any of the persons referred to in paragraphs (a) or (b) relating wholly or partly to the effecting or maintenance of the obligatory insurances.

**13.15 Provision of information and further undertakings**

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 or dealing with or considering any matters relating to any such insurances,

and that Borrower shall:

- (i) do all things necessary and provide the Agent and the Security Trustee with all documents and information to enable the Security Trustee to collect or recover any moneys in respect of the Insurances which are payable to the Security Trustee pursuant to the Finance Documents; and
- (ii) promptly provide the Agent with full information regarding any Major Casualty in consequence whereof the Ship owned by that Borrower has become or may become a Total Loss and agree to any settlement of such casualty or other accident or damage to that Ship only with the Agent's prior written consent,

and that 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).

**13.16 Mortgagee's interest and additional perils insurances**

The Security Trustee shall be entitled from time to time to effect, maintain and renew all or any of the following insurances in such amounts, on such terms, through such insurers and generally in such manner as the Majority Lenders may from time to time consider appropriate:

- (a) a mortgagee's interest insurance providing for the indemnification of the Creditor Parties for any losses under or in connection with any Finance Document (in an amount which is equal to 120 per cent. of the aggregate of (A) the Loan multiplied by a fraction whose (1) nominator is the Market Value of the Ship owned by that Owner; and (2) denominator is the Market Value of all Mortgaged Ships and (B) the principal amount secured by any equal or prior ranking Security Interest on that Ship) which directly or indirectly result from loss of or damage to a Ship or a liability of that Ship or of the Borrower owning that Ship, 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 that Borrower, of any operator, charterer, manager or sub-manager of that Ship or of any officer, employee or agent of that 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 that Borrower, any other person referred to in paragraph (i) above, or of any officer, employee or agent of that Borrower or of such a person, including the casting away or damaging of that Ship and/or that 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; and
- (b) a mortgagee's interest additional perils insurance providing for the indemnification of the Creditor Parties against, among other things, any possible losses or other consequences of any Environmental Claim, including the risk of expropriation, arrest or any form of detention of a Ship, the imposition of any Security Interest over that Ship and/or any other matter capable of being insured against under a mortgagee's interest additional perils policy whether or not similar to the foregoing, and in an amount which is equal to 110 per cent. of the aggregate of (A) the Loan multiplied by a fraction whose: (1) nominator is the Market Value of the Ship owned by that Owner; and (2) denominator is the Market Value of all Mortgaged Ships and (B) the principal amount secured by any equal or prior ranking Security Interest on that Ship, 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.

### **13.17 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 opinion of the Agent (acting on the instructions of the Majority Lenders), significant and capable of affecting the Borrowers, each Ship and its Insurances (including, without limitation, changes in the availability or the cost of insurance coverage or the risks to which the Borrower owning that Ship may be subject) and the Borrowers shall upon demand fully indemnify the Agent in respect of all fees and other expenses incurred by or for the account of the Agent in appointing an independent marine insurance broker or adviser to conduct such review.

**13.18 Modification of insurance requirements**

The Security Trustee shall notify the Borrowers of any proposed modification under Clause 13.17 to the requirements of this Clause 13 which the Security Trustee reasonably considers appropriate in the circumstances, and such modification shall take effect on and from the date it is notified in writing to the Borrowers as an amendment to this Clause 13 and shall bind the Borrowers accordingly.

**13.19 Compliance with mortgagee's instructions**

The Security Trustee shall be entitled (without prejudice to or limitation of any other rights which it may have or acquire under any Finance Document) to require a Ship to remain at any safe port or to proceed to and remain at any safe port designated by the Security Trustee until the Borrower owning that Ship implements any amendments to the terms of the obligatory insurances and any operational changes required as a result of a notice served under Clause 13.18.

**14 SHIP COVENANTS**

**14.1 General**

Each Borrower also undertakes with each Creditor Party on and from the Drawdown Date to comply with the following provisions of this Clause 14 at all times during the Security Period except as the Agent, acting with the authorisation of the Majority Lenders, may otherwise permit in writing.

**14.2 Ship's name and registration**

Each Borrower shall keep the Ship owned by it registered in its name under an Approved Flag; shall not do, omit to do or allow to be done anything as a result of which such registration might be cancelled or imperilled; and shall not change the name or port of registry of that Ship.

**14.3 Repair and classification**

Each Borrower shall, and shall procure that the Approved Manager shall, keep the Ship owned by that Borrower in a good and safe condition and state of repair, sea and cargo worthy in all respects:

- (a) consistent with first-class ship ownership and management practice;
- (b) so as to maintain the highest class free of overdue recommendations and conditions, with a classification society which is a member of IACS (other than the China Classification Society and the Russian Maritime Registry of Shipping) and acceptable to the Agent; and
- (c) so as to comply with all laws and regulations applicable to vessels registered at ports in the applicable Approved Flag State or to vessels trading to any jurisdiction to which that Ship may trade from time to time, including but not limited to the ISM Code and the ISPS Code, and the Agent shall be given power of attorney in the form attached as Schedule 6 to act on behalf of that Borrower in order to, inspect the class records and any files held by the classification society and to require the classification society to provide the Agent or any of its nominees with any information, document or file, it might request and the classification society shall be fully entitled to rely hereon without any further inquiry.

#### **14.4 Classification society undertaking**

Each Borrower shall instruct the classification society referred to in Clause 14.3 (and procure that the classification society undertakes with the Security Trustee) in relation to its Ship:

- (a) to send to the Security Trustee, following receipt of a written request from the Security Trustee, certified true copies of all original class records and any other related records held by the classification society in relation to the Ship owned by that Borrower;
- (b) to allow the Security Trustee (or its agents), at any time and from time to time, to inspect the original class and related records of that Ship at the offices of the classification society and to take copies of them;
- (c) to notify the Security Trustee immediately in writing if the classification society:
  - (i) receives notification from 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 Hazardous materials and sustainable dismantling**

- (a) Each Borrower shall carry on board of its Ship the inventory of hazardous materials required by the classification society of the Ship on board that Ship.
- (b) Each Borrower shall ensure that in the event its Ship is permanently put out of service, it is dismantled at, or sold for dismantling only to buyers that undertake to dismantle the Ship at, a ship yard complying with such standards as are required by the Hong Kong International Convention for the safe and environmentally sound recycling of ships of 15 May 2009 or by the regulation (EG) no 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.

#### **14.6 Modification**

No Borrower shall make any modification or repairs to, or replacement of, its Ship or equipment installed on it which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.

**14.7 Removal of parts**

No Borrower shall remove any material part of its Ship, or any item of equipment installed on that Ship unless the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed, is free from any Security Interest or any right in favour of any person other than the Security Trustee and becomes on installation on that Ship the property of 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.

**14.8 Surveys**

Each Borrower shall submit the Ship owned by it regularly to all periodical or other surveys which may be required for classification purposes and, if so required by the Security Trustee provide the Security Trustee, with copies of all survey reports.

**14.9 Inspection**

Each Borrower shall permit the Security Trustee (by surveyors or other persons appointed by it for that purpose) to board the Ship owned by that Borrower at all reasonable times to inspect its condition or to satisfy themselves about proposed or executed repairs and shall afford all proper facilities for such inspections at the Borrower's expense (which if no Event of Default has occurred and is continuing shall be limited to once in each calendar year).

**14.10 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 that Ship, the Earnings or the Insurances; and
  - (c) all other outgoings whatsoever in respect of that Ship, the Earnings or the Insurances,
- and, forthwith upon receiving notice of the arrest of that Ship, or of its detention in exercise or purported exercise of any lien or claim, that Borrower shall procure its release by providing bail or otherwise as the circumstances may require.

**14.11 Compliance with laws etc.**

Each Borrower shall:

- (a) comply, or procure compliance with the ISM Code, the ISPS Code, all Environmental Laws and all other laws or regulations relating to the Ship owned by it, its ownership, operation and management or to the business of that Borrower;
- (b) not employ the Ship owned by it nor allow its employment in any manner contrary to any law or regulation in any relevant jurisdiction including but not limited to the ISM Code and the ISPS Code; and



- (c) in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit that Ship to enter or trade to any zone which is declared a war zone by any government or by the Ship's war risks insurers unless the prior written consent of the Security Trustee has been given and that Borrower has (at its expense) effected any special, additional or modified insurance cover which the Security Trustee may require.

**14.12 Provision of information**

Each Borrower shall promptly provide the Security Trustee with any information which it requests regarding:

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

**14.13 Notification of certain events**

Each Borrower shall:

- (a) before entering into:
  - (i) any demise charter for any period in respect of its Ship; or
  - (ii) any other Assignable Charter,

notify the Agent and provide copies of any draft charter relating to its Ship and, if applicable, any draft charter guarantee and that Borrower shall be entitled to enter into such charter without the consent of the Creditor Parties **Provided that:**

- (A) that Borrower executes in favour of the Security Trustee a specific assignment of all its rights, title and interest in and to such charter and any charter guarantee in the form of a Charterparty Assignment;
- (B) the charterer and any charter guarantor receive a notice (1) of the specific assignment of such charter and charter guarantee and (2) that the Mortgage over that Ship has been registered prior to the entry into such charter;
- (C) in the case where such charter is a demise charter the charterer undertakes to the Security Trustee (1) to comply with all of that Borrower's undertakings with regard to the employment, insurances, operation, repairs and maintenance of its Ship contained in this Agreement, the Mortgage and the General Assignment in relation to that Ship and (2) to provide an assignment of its interest in the insurances of the Ship in the Agreed Form;

- (D) the relevant Borrower provides certified true and complete copies of the charter relating to its Ship and of any current charter guarantee, if any, promptly after its execution;
- (E) the Agent's receipt of a copy of the charter and its failure or neglect to act, delay or acquiescence in connection with the relevant Borrower's entering into such charter shall not in any way constitute an acceptance by the Agent of whether or not the Earnings under the charter are sufficient to meet the debt service requirements under this Agreement nor shall it in any way affect the Agent's or the Security Trustee's entitlement to exercise its rights under the Finance Documents pursuant to Clause 19 upon the occurrence of an Event of Default arising as a result of an act or omission of the charterer; and
- (F) the Borrower delivers to the Agent such other documents equivalent to those referred to at paragraphs 2, 3, 4, 5, 7, 8 and 9 of Schedule 3, Part A as the Agent may require; and

(b) immediately notify the Security Trustee by letter, of:

- (i) its entry 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 that Borrower to any Earnings;
- (ii) its entry 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, 12 months;
- (iii) any casualty which is or is likely to be or to become a Major Casualty;
- (iv) any occurrence as a result of which the Ship owned by it has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (v) any requirement, overdue condition or recommendation made by any insurer or classification society or by any competent authority which is not complied with in accordance with its terms;
- (vi) any arrest or detention of that Ship, any exercise or purported exercise of any lien on that Ship or its Earnings or any requisition of that Ship for hire;
- (vii) any unscheduled dry docking of that Ship;
- (viii) any Environmental Claim made against that Borrower or in connection with that Ship, or any Environmental Incident;
- (ix) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, the Approved Manager or otherwise in connection with that Ship;
- (x) its intention to de-activate or lay up its Ship; or
- (xi) any other matter, event or incident, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with,

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

**14.14 Restrictions on chartering, appointment of managers etc.**

No Borrower shall, save for the relevant Initial Charter, in relation to the Ship owned by it:

- (a) enter into any charter in relation to that Ship under which more than two months' hire (or the equivalent) is payable in advance;
- (b) charter that Ship otherwise than on bona fide arm's length terms at the time when that Ship is fixed;
- (c) appoint a manager of that Ship other than the Approved Manager; or
- (d) put that Ship into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed \$500,000 (or the equivalent in any other currency) unless that person has first given to the Security Trustee and in terms satisfactory to it a written undertaking not to exercise any lien on that Ship or its Earnings for the cost of such work or for any other reason.

**14.15 Notice of Mortgage**

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

**14.16 Sharing of Earnings**

No Borrower shall enter into any agreement or arrangement for the sharing of any Earnings (other than (i) any profit sharing agreement with a charterer which takes effect above an agreed minimum charter hire rate payable to the relevant Borrower under a charter to which that Borrower is a party and (ii) any pool agreement, in either case, on bona fide arm's length terms).

**14.17 ISPS Code**

Each Borrower shall comply with the ISPS Code and in particular, without limitation, shall:

- (a) procure that the Ship owned by it and the company responsible for that Ship's compliance with the ISPS Code comply with the ISPS Code; and
- (b) maintain for that Ship an ISSC; and
- (c) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC.

15 **SECURITY COVER**

15.1 **Minimum required security cover**

Clause 15.2 applies if the Agent notifies the Borrowers that the Security Cover Ratio is below 130 per cent.

15.2 **Prepayment; provision of additional security**

If the Agent serves a notice on the Borrowers under Clause 15.1, the Borrowers shall prepay such part at least of the Loan as will eliminate the shortfall on or before the date falling 14 Business Days after the date on which the Agent's notice is served under Clause 15.1 (the "**Prepayment Date**") unless at least five calendar days before the Prepayment Date the Borrowers have provided, or ensured that a third party has provided, additional security which, in the reasonable opinion of the Majority Lenders, has a net realisable value at least equal to the shortfall and is documented in such terms as the Agent may, with the authorisation of the Majority Lenders, approve or require.

15.3 **Valuation of Ships**

The Market Value of a Ship:

- (a) for the purposes of the Initial Market Value, is that shown in one valuation addressed to the Agent issued by one Approved Broker to be nominated and appointed by the Agent. If the Borrowers do not agree with such valuation, the Borrowers can nominate another Approved Broker to provide a second valuation addressed to the Agent and appointed by the Agent, in which case the Initial Market Value is that shown by taking the arithmetic average of such two valuations. If the difference between these two valuations is greater than 15 per cent. paragraph (d) of this Clause 15.3 shall be applicable; and
- (b) at any other date, is that shown in one valuation addressed to the Agent to be issued by an Approved Broker, nominated and appointed by the Borrowers and addressed to the Agent (the "**First Valuation**") unless the Agent obtains a second valuation issued by an Approved Broker nominated and appointed by the Agent (the "**Second Valuation**") in which case the Market Value of the relevant Ship at the relevant date is that shown:
  - (i) if the difference between the First Valuation and the Second Valuation is less than 10 per cent., by the First Valuation; and
  - (ii) if the difference between the First Valuation and the Second Valuation is greater than 10 per cent. but less than 15 per cent. or less, by taking the arithmetic average of such two valuations,
- (c) each valuation issued pursuant to paragraphs (a) and (b) of this Clause 15.3 to be prepared:
  - (A) as at a date not more than 30 days previously;
  - (B) with or without physical inspection of that Ship (as the Agent may require); and
  - (C) on the basis of a sale for prompt delivery for cash on normal arm's length commercial terms as between a willing seller and a willing buyer, free of any existing charter or other contract of employment; and

(d) if the difference between 2 valuations in respect of a Ship obtained at any one time, in each case, pursuant to this Clause 15.3 is greater than 15 per cent. a valuation shall be commissioned from a third Approved Broker selected and appointed by the Agent. Such valuation to be conducted in accordance with this Clause 15.3 and the Market Value of that Ship in such circumstances shall be the arithmetic average of all three 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 Majority Lenders make of any additional security which does not consist of or include a Security Interest.

**15.6 Provision of information**

The Borrowers shall promptly provide the Agent and any Approved Broker or expert acting under Clause 15.3 or 15.4 with any information which the Agent or that Approved Broker or expert may request for the purposes of the valuation; and, if the Borrowers fail to provide the information by the date specified in the request, the valuation may be made on any basis and assumptions which that Approved Broker or the Majority 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 Borrowers shall provide the Agent with a valuation of each Ship, dated as of June or, as the case may be, December of each calendar year during the Security Period, within the month of July or January following thereafter respectively and the Agent may, otherwise, request valuations to determine the Borrowers' compliance under Clause 15.1 not less than twice during each 12-month period during the Security Period.

**16 PAYMENTS AND CALCULATIONS**

**16.1 Currency and method of payments**

All payments to be made by the Lenders or by any Borrower under a Finance Document shall be made to the Agent or to the Security Trustee, in the case of an amount payable to it:

(a) by not later than 11.00 a.m. (New York City time) on the due date;

- (b) in same day Dollar funds settled through the New York Clearing House Interbank Payments System (or in such other Dollar funds and/or settled in such other manner as the Agent shall specify as being customary at the time for the settlement of international transactions of the type contemplated by this Agreement);
- (c) in the case of an amount payable by a Lender to the Agent or by any Borrower to the Agent or any Lender, to the account of the Agent at J.P. Morgan Chase Bank (SWIFT Code CHASUS33) (Account No. 001 1331 808 in favour of Hamburg Commercial Bank AG, SWIFT Code HSHNDEHH; Reference “Alegria Shipping Corporation *et al*”) or to such other account with such other bank as the Agent may from time to time notify to the Borrowers and the other Creditor Parties; and
- (d) in the case of an amount payable to the Security Trustee, to such account as it may from time to time notify to the Borrowers and the other Creditor Parties.

**16.2 Payment on non-Business Day**

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

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

**16.3 Basis for calculation of periodic payments**

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

**16.4 Distribution of payments to Creditor Parties**

Subject to Clauses 16.5, 16.6 and 16.7:

- (a) any amount received by the Agent under a Finance Document for distribution or remittance to a Lender or the Security Trustee shall be made available by the Agent to that Lender or, as the case may be, the Security Trustee by payment, with funds having the same value as the funds received, to such account as the Lender or the Security Trustee may have notified to the Agent not less than five 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 any Borrower or any Lender any sum which the Agent is expecting to receive for remittance or distribution to that Borrower 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, that Borrower 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 the Borrowers and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrowers and any Security Party.

**16.10 Agent's memorandum account**

The Agent shall maintain a memorandum account showing the amounts advanced by the Lenders and all other sums owing to the Agent, the Security Trustee and each Lender from the Borrowers and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrowers and any Security Party.

**16.11 Accounts prima facie evidence**

If any accounts maintained under Clauses 16.9 and 16.10 show an amount to be owing by a Borrower or a Security Party to a Creditor Party, those accounts shall be *prima facie* evidence that that amount is owing to that Creditor Party.

**17 APPLICATION OF RECEIPTS**

**17.1 Normal order of application**

Except as any Finance Document may otherwise provide, any sums which are received or recovered by any Creditor Party under or by virtue of any Finance Document shall be applied:

- (a) FIRST: in or towards satisfaction of any amounts then due and payable under the Finance Documents in the following order and proportions:
- (i) firstly, in or towards satisfaction pro rata of all amounts then due and payable to the Creditor Parties under the Finance Documents (including, but without limitation, all amounts payable by any Borrower under Clauses 20, 21 and 22 of this Agreement or by any Borrower or any Security Party under any corresponding or similar provision in any other Finance Document) other than those amounts referred to at paragraphs (ii) and (iii);
  - (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; and
- (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 (or any of them), the Security Parties and the other Creditor Parties, states in its opinion will either or may become due and payable in the future and, upon those amounts becoming due and payable, in or towards satisfaction of them in accordance with the provisions of Clause 17.1(a); and
- (c) THIRDLY: any surplus shall be paid to the Borrowers or to any other person appearing to be entitled to it.

**17.2 Application by any covered bond Lender**

If and to the extent that any Lender includes the Loan and/or a Mortgage in its covered bond register, any enforcement proceeds recovered under the Finance Documents and attributable to it under the relevant Finance Document shall, notwithstanding the provisions of Clause 17.1(a), be applied by it first to the part of the Loan that corresponds to that Lender's Contribution registered in its covered bond register and thereafter in the following order:

- (a) firstly, in or towards satisfaction of the amounts set out under Clause 17.1(a)(i);
- (b) secondly, in or towards satisfaction of the amounts set out under Clause 17.1(a)(ii); and
- (c) thirdly, in or towards satisfaction of any part of the Loan that corresponds to any unregistered part of that Lender's contribution.

**17.3 Variation of order of application**

The Agent may, with the authorisation of the Majority Lenders, by notice to the Borrowers, the Security Parties and the other Creditor Parties provide for a different manner of application from that set out in Clause 17.1 (but not, for the avoidance of doubt, that set out in Clause 17.2) either as regards a specified sum or sums or as regards sums in a specified category or categories.

**17.4 Notice of variation of order of application**

The Agent may give notices under Clause 17.3 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.



**17.5 Appropriation rights overridden**

This Clause 17 and any notice which the Agent gives under Clause 17.3 shall override any right of appropriation possessed, and any appropriation made, by any Borrower or either Security Party.

**18 APPLICATION OF EARNINGS**

**18.1 Payment of Earnings**

Each Borrower undertakes with each Creditor Party that, throughout the Security Period (and subject only to the provisions of the General Assignment to which it is a party):

- (a) it shall maintain the Accounts with the Account Bank; and
- (b) it shall ensure that all Earnings of the Ship owned by it are paid to the Earnings Account for that Ship; and
- (c) the Minimum Liquidity amounts required pursuant to Clause 11.19 (*Minimum Liquidity*) shall be maintained in the Minimum Liquidity Account.

**18.2 Monthly retentions**

The Borrowers undertake with each Creditor Party to ensure that, on and from the date falling one month after the Drawdown Date and at monthly intervals thereafter during the Security Period, there are transferred to the Retention Account out of the Earnings received in the relevant Earnings Account during the preceding month:

- (a) one-third of the amount of the relevant Instalment falling due under Clause 8.1 on the next Repayment Date; and
- (b) the relevant fraction of the aggregate amount of interest which is payable on the next due date for payment of interest under this Agreement, and the Borrowers irrevocably authorise the Agent to make those transfers (in its sole discretion and without any obligation) if the Borrowers fail to do so.

The “**relevant fraction**”, in relation to paragraph (b), is a fraction of which the numerator is 1 and the denominator the number of months comprised in the then current Interest Period (or if the current Interest Period ends after the next due date for payment of interest under this Agreement, the number of months from the later of the commencement of the current Interest Period or the last due date for payment of interest to the next due date for payment of interest under this Agreement).

**18.3 Shortfall in Earnings**

If the aggregate Earnings received in each Earnings Account are insufficient at any time for the required amount to be transferred to the Retention Account under Clause 18.2, the Borrowers shall immediately pay the amount of the insufficiency into the Retention Account.

**18.4 Application of retentions**

Until an Event of Default or a Potential Event of Default occurs, the Agent shall, to the extent there are sufficient funds standing to the credit of the Retention Account, on each Repayment Date and on each due date for the payment of interest under this Agreement distribute to the Lenders in accordance with Clause 16.4 so much of the then balance on the Retention Account as equals:

- (a) the Instalment due on that Repayment Date pursuant to Clause 8.1; or
- (b) the amount of interest in respect of the Loan payable on that interest payment date, in discharge of the Borrowers' liability for that Instalment or that interest.

**18.5 Interest accrued on the Accounts**

Any credit balance on each Account shall bear interest at the rate from time to time offered by the Agent to its customers for Dollar deposits of similar amounts and for periods similar to those for which such balances appear to the Agent likely to remain on that Account.

**18.6 Release of accrued interest**

Interest accruing under Clause 18.5 shall be credited to the relevant Account and may be released to the relevant Borrower pursuant to Clause 18.10.

**18.7 Location of Accounts**

Each Borrower shall promptly:

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

**18.8 Debits for fees, 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 Clauses 20 or 21 to a Creditor Party or payment of which any Creditor Party has become entitled to demand under Clauses 20 or 21.

**18.9 Borrowers' obligations unaffected**

The provisions of this Clause 18 (as distinct from a distribution effected under Clause 18.4) do not affect:

- (a) the liability of the Borrowers to make payments of principal and interest on the due dates; or
- (b) any other liability or obligation of the Borrowers or any Security Party under any Finance Document.

**18.10 Restriction on withdrawal**

During the Security Period no sum may be withdrawn by a Borrower from the Retention Account (other than interest pursuant to Clause 18.6, provided that no Event of Default or Potential Event of Default has occurred which is continuing), without the prior written consent of the Agent.

The Borrowers may, in any calendar month, after having transferred and/or after having taken into account all amounts due or which will become due to be transferred to the Retention Account in such calendar month in accordance with Clause 18.2, withdraw any surplus (a “**Surplus**”) from the Earnings Accounts (or any of them) as they may think fit for purposes permitted by this Agreement and the other Finance Documents **Provided always** no Event of Default or Potential Event of Default has occurred which is continuing in which case any Surplus shall remain on the relevant Earnings Account and the Borrowers may only withdraw the Surplus (or any part thereof) with the prior written consent of the Agent (acting upon the instructions of the Majority Lenders) in order to satisfy the documented and properly incurred operating expenses of the Ships (or any of them).

**19 EVENTS OF DEFAULT**

**19.1 Events of Default**

An Event of Default occurs if:

- (a) any Borrower or any Security Party fails to pay when due or (if so payable) on demand any sum payable under a Finance Document or under any document relating to a Finance Document unless:
  - (i) its failure to pay is caused by administrative or technical error or a Disruption Event; and
  - (ii) payment is made within 3 Business Days; or
- (b) any breach occurs of Clause 9.2, 11.2, 11.3, 11.18, 11.19, 12.2, 12.3 or 15.2 or clause 12.4 of the Corporate Guarantee; or
- (c) any breach by any Borrower, the Approved Manager or any Security Party occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a) or (b)) which, in the reasonable opinion of the Majority Lenders, is capable of remedy, and such default continues unremedied 30 Business Days (or any other grace period agreed by the Agent) after written notice from the Agent requesting action to remedy the same; or
- (d) (subject to any applicable grace period specified in the Finance Documents) any material breach by any Borrower, the Approved Manager or any Security Party occurs of any provision of a Finance Document (other than a breach falling within paragraphs (a), (b) or (c)); or
- (e) any representation, warranty or statement made or repeated by, or by an officer of, a Borrower, the Approved Manager or a Security Party in a Finance Document or in a Drawdown Notice or any other notice or document relating to a Finance Document is untrue or misleading in any material respect when it is made or repeated; or
- (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 unless the Relevant Person is contesting its obligation to pay the relevant amount in good faith and on substantial grounds and by appropriate proceedings and adequate reserves have been set aside for its payment if such proceedings fail; or
  - (ii) any Financial Indebtedness of a Relevant Person which in the case of any Relevant Person other than any Borrower exceeds \$15,000,000 (or the equivalent in any other currency in aggregate), 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 overdraft, loan, note issuance, acceptance credit, letter of credit, guarantee, foreign exchange or other facility, or any swap or other derivative contract or transaction, relating to any Financial Indebtedness of a Relevant Person which in the case of any Relevant Person other than any Borrower exceeds \$15,000,000 (or the equivalent in any other currency in aggregate) 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
  - (iv) any Security Interest securing any Financial Indebtedness of a Relevant Person, which in the case of any Relevant Person other than any Borrower exceeds an amount of \$15,000,000 (or the equivalent in any other currency in aggregate), becomes enforceable; or
- (g) any of the following occurs in relation to a Relevant Person:
- (i) a Relevant Person becomes, in the reasonable opinion of the Majority Lenders, unable to pay its debts as they fall due; or
  - (ii) any assets of a Relevant Person are subject to any form of execution, attachment, arrest, sequestration or distress or any form of freezing order which in the case of any Relevant Person other than any Borrower exceeds \$15,000,000 (or the equivalent in any other currency in aggregate), and such execution, attachment, arrest, sequestration, distress or freezing order is not withdrawn within thirty (30) Business Days; or
  - (iii) any administrative or other receiver is appointed over any asset of a Relevant Person; or
  - (iv) an administrator is appointed (whether by the court or otherwise) in respect of a Relevant Person; or
  - (v) any formal declaration of bankruptcy or any formal statement to the effect that a Relevant Person is insolvent or likely to become insolvent is made by a Relevant Person or by the directors or officers 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 shareholders, directors or officers 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 any Borrower or the Corporate Guarantor or the Shareholder which is, or is to be, effected for the purposes of an amalgamation or reconstruction previously approved by the Majority Lenders and effected not later than three 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 60 days of being made or presented, or (bb) within 60 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 or officers 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 shareholders 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 shareholders, 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 reasonable opinion of the Majority Lenders is similar to any of the foregoing; or

- (h) any Borrower ceases or suspends carrying on its business or a part of its business which, in the reasonable opinion of the Majority Lenders, is material in the context of this Agreement; or
- (i) it becomes unlawful in any Pertinent Jurisdiction or impossible:
  - (i) for any Borrower, the Approved Manager or any Security Party to discharge any liability under a Finance Document or to comply with any other obligation which the Majority Lenders consider material under a Finance Document; or
  - (ii) for the Agent, the Security Trustee or the Lenders to exercise or enforce any right under, or to enforce any Security Interest created by, a Finance Document; or
- (j) any official consent necessary to enable any Borrower to own, operate or charter the Ship owned by it or to enable any Borrower, the Approved Manager or any Security Party to comply with any provision which the Majority Lenders reasonably consider material of a Finance Document or any Underlying Document is not granted, expires without being renewed, is revoked or becomes liable to revocation or any condition of such a consent is not fulfilled unless such revocation is validly contested in good faith by the Borrower, the Approved Manager or, as the case may be, that Security Party; or
- (k) it appears to the Majority Lenders that, without their prior consent, either (i) a Change of Control has occurred or probably has occurred after the date of this Agreement or, (ii) the Corporate Guarantor ceases being the direct legal and beneficial owner of the shares in the Shareholder and the voting rights attaching to those shares or (iii) the Shareholder ceases being the direct legal and beneficial owner of the shares in the relevant Borrower and of the voting rights attaching to those shares  
**provided that** paragraphs (i) and (iii) above shall apply in relation to Borrower N and Borrower O on and from the Drawdown Date; or
- (l) any provision which the Majority Lenders reasonably 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 (excluding any Permitted Security Interests); or
- (m) the security constituted by a Finance Document is in any way imperilled or in jeopardy; or
- (n) any Borrower, the Approved Manager or any Security Party or any other person (other than a Creditor Party) repudiates any of the Finance Documents to which that Borrower, the Approved Manager or that Security Party or person is a party or evidences an intention to do so; or
- (o) 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, the Corporate Guarantor or any other Security Party; or
  - (ii) the commencement of legal or administrative action involving a Borrower, a Ship, either of the Approved Manager or any Security Party; or

- (iii) the withdrawal of any material license or governmental or regulatory approval in respect of a Ship, a Borrower, the Approved Manager or any Borrower's or Approved Manager's business (unless such withdrawal can be contested with the effect of suspension and is in fact so contested in good faith by the Borrowers or the Approved Manager),

which in the reasonable opinion of the Lenders constitutes a Material Adverse Change.

## **19.2 Actions following an Event of Default**

On, or at any time after, the occurrence of an Event of Default:

- (a) the Agent may, and if so instructed by the Majority Lenders, the Agent shall:

- (i) serve on the Borrowers a notice stating that all or part of the Commitments and of the other obligations of each Lender to the Borrowers under this Agreement are cancelled; and/or
- (ii) serve on the Borrowers a notice stating that all or part of the Loan together with accrued interest and all other amounts accrued or owing under this Agreement are immediately due and payable or are due and payable on demand; and/or
- (iii) take any other action which, as a result of the Event of Default or any notice served under paragraph (i) or (ii), the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law; and/or

- (b) the Security Trustee may, and if so instructed by the Agent, acting with the authorisation of the Majority Lenders, the Security Trustee shall take any action which, as a result of the Event of Default or any notice served under paragraph (a)(i) or (a)(ii), the Security Trustee, the Agent, the Mandated Lead Arranger and/or the Lenders are entitled to take under any Finance Document or any applicable law.

## **19.3 Termination of Commitments**

On the service of a notice under Clause 19.2(a)(i), the Commitments and all other obligations of each Lender to the Borrowers under this Agreement shall be cancelled.

## **19.4 Acceleration of Loan**

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

## **19.5 Multiple notices; action without notice**

The Agent may serve notices under Clauses 19.2(a)(i) or 19.2(a)(ii) simultaneously or on different dates and it and/or the Security Trustee may take any action referred to in Clause 19.2 if no such notice is served or simultaneously with or at any time after the service of both or either of such notices.

**19.6 Notification of Creditor Parties and Security Parties**

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

**19.7 Creditor Party 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 gross negligence, 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 a Borrower or any 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 Fees**

The Borrowers shall pay to the Agent:

- (a) on the Drawdown Date a non-refundable structuring fee in the amount equal to 0.85 per cent. of the Loan actually drawn; and



- (b) a non-refundable commitment fee, at the rate of 1.00 per cent. per annum on the difference between the Existing Indebtedness and the undrawn or uncanceled amount of the Total Commitments, payable quarterly in arrears for distribution among the Lenders pro rata to their Commitments, during the period from (and including) upon the earlier of (i) the date of the Borrowers' acceptance of the firm offer letter regarding the Loan or the signing of the Loan Agreement and (ii) 17 May 2021 to the earlier of (i) the Drawdown Date and (ii) the last day of the Availability Period.

**20.2 Costs of negotiation, preparation etc.**

The Borrowers shall pay to the Agent on its demand the amount of all legal and other 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.

**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 legal and other expenses incurred by a Creditor Party in connection with:

- (a) any amendment or supplement (or any proposal for such an amendment or supplement) requested (or, in the case of a proposal, made) by or on behalf of the Borrowers and relating to a Finance Document or any other Pertinent Document contemplated in Clause 27.5 (*Replacement of Screen Rate*);
- (b) any consent, waiver or suspension of rights by the Lenders, the Majority Lenders or the Creditor Party concerned or any proposal for any of the foregoing requested (or, in the case of a proposal, made) by or on behalf of the Borrowers under or in connection with a Finance Document or any other Pertinent Document;
- (c) the valuation of any security provided or offered under and pursuant to Clause 15 or any other matter relating to such security;
- (d) any step taken by the Creditor Party concerned with a view to the preservation, protection, exercise or enforcement of any rights or Security Interest created by a Finance Document or for any similar purpose including, without limitation, any proceedings to recover or retain proceeds of enforcement or any other proceedings following enforcement proceedings until the date all outstanding indebtedness to the Creditor Parties under the Finance Documents and any other Pertinent Document is repaid in full; or
- (e) any amendment or supplement (or any proposal for such an amendment or supplement) in connection with a Finance Document or any other Pertinent Document required as contemplated in Clause 27.5.

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 Borrowers to pay such a tax.

**20.5 Certification of amounts**

A notice which is signed by two 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 Advance not being borrowed on the date specified in the relevant Drawdown Notice for any reason other than a default by the Lender claiming the indemnity after the relevant Drawdown Notice has been served in accordance with the provisions of this Agreement;
- (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 the Borrowers (or any of them) 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) including but not limited to any costs and expenses of enforcing any Security Interests created by the Finance Documents and any claims, liabilities and losses which may be brought against, or incurred by, a Creditor Party when enforcing any Security Interests created by the Finance Documents; and
- (d) the occurrence and/or continuance of an Event of Default or a Potential Event of Default and/or the acceleration of repayment of the Loan under Clause 19,

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

**21.2 Break Costs**

If a Lender (the "**Notifying Lender**") notifies the Agent that as a consequence of receipt or recovery of all or any part of the Loan (a "**Payment**") on a day other than the last day of an Interest Period applicable to the sum received or recovered the Notifying Lender has or will, with effect from a specified date, incur Break Costs:

- (a) the Agent shall promptly notify the Borrowers of a notice it receives from a Notifying Lender under this Clause 21.2;

- (b) the Borrowers shall, within five Business Days of the Agent's demand, pay to the Agent for the account of the Notifying Lender the amount of such Break Costs; and
- (c) the Notifying Lender shall, as soon as reasonably practicable, following a request by the Borrowers, provide a certificate confirming the amount of the Notifying Lender's Break Costs for the Interest Period in which they accrue, such certificate to be, in the absence of manifest error, conclusive and binding on the Borrowers.

In this Clause 21.2, "**Break Costs**" means, in relation to a Payment the amount (if any) by which:

- (i) the interest which the Notifying Lender, should have received in accordance with Clause 5 in respect of the sum received or recovered from the date of receipt or recovery of such Payment to the last day of the then current Interest Period applicable to the sum received or recovered had such Payment been made on the last day of such Interest Period;

exceeds

- (ii) the amount which the Notifying Lender, would be able to obtain by placing an amount equal to such Payment on deposit with a leading bank in the Relevant Interbank Market for a period commencing on the Business Day following receipt or recovery of such Payment (as the case may be) and ending on the last day of the then current Interest Period applicable to the sum received or recovered.

### **21.3 Other breakage costs**

Without limiting its generality, Clause 21.1 covers any claim, expense, liability or loss, including (without limitation) (i) a loss of a prospective profit, incurred by a Lender in borrowing, liquidating or re-employing deposits from third parties acquired, contracted for or arranged to fund, effect 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) other than claims, expenses, liabilities and losses which are shown to have been directly and mainly caused by the gross negligence or wilful misconduct of the officers or employees of the Creditor Party concerned and (ii) any applicable legal fees.

### **21.4 Miscellaneous indemnities**

The Borrowers shall fully indemnify each Creditor Party severally on their respective demands, without prejudice to any of their other rights under any of the Finance Documents, in respect of all claims, expenses, liabilities and losses which may be made or brought against or sustained or incurred by a Creditor Party, in any country, as a result of or in connection with:

- (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;
- (b) investigating any event which the Creditor Party concerned reasonably believes constitutes an Event of Default or Potential Event of Default; or
- (c) acting or relying on any notice, request or instruction which the Creditor Party concerned reasonably believes to be genuine, correct and appropriately authorised,

other than claims, expenses, liabilities and losses which are shown to have been directly and mainly caused by the dishonesty, gross negligence or wilful misconduct of the officers or employees of the Creditor Party concerned.

#### 21.5 **Environmental Indemnity**

Without prejudice to the generality of Clause 21.4, this Clause 21.5 covers any claims, demands, proceedings, liabilities, taxes, losses, liabilities or expenses of every kind which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code or the ISPS Code, any Environmental Law.

#### 21.6 **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, award or judgment relating to a Finance Document (a “**Sum**”) has to be converted from the currency in which the Finance Document provided for the Sum to be paid (the “**Contractual Currency**”) into another currency (the “**Payment Currency**”) for the purpose of:

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

the Borrowers shall as an independent obligation, within three Business Days of demand, indemnify the Creditor Party to whom that Sum is due against any cost, loss or liability arising when the payment actually received by that Creditor Party is converted at the available rate of exchange back into the Contractual Currency including any discrepancy between (A) the rate of exchange actually used to convert the Sum from the Payment Currency into the Contractual Currency and (B) the available rate of exchange.

In this Clause 21.6, the “**available rate of exchange**” means the rate at which the Creditor Party concerned is able at the opening of business (London time) on the Business Day after it receives the Sum to purchase the Contractual Currency with the Payment Currency.

Each Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.

If any Creditor Party receives any Sum in a currency other than the Contractual Currency, the Borrowers shall indemnify in full the Creditor Party concerned against any cost, loss or liability arising directly or indirectly from any conversion of such Sum to the Contractual Currency.

This Clause 21.6 creates a separate liability of that Borrower which is distinct from its other liabilities under the Finance Documents and which shall not be merged in any judgment or order relating to those other liabilities.

#### 21.7 **Certification of amounts**

A notice which is signed by two 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.

**21.8 Sums deemed due to a Lender**

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

**22 NO SET-OFF OR TAX DEDUCTION**

**22.1 No deductions**

All amounts due from the Borrowers under a Finance Document shall be paid:

- (a) without any form of set-off, counter-claim, 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, at any time, a Borrower is required by law, regulation or regulatory requirement to make a tax deduction from any payment due under a Finance Document:

- (a) that Borrower shall notify the Agent as soon as it becomes aware of the requirement;
- (b) the amount due in respect of the payment shall be increased by the amount necessary to ensure that, after the making of such tax deduction, each Creditor Party receives on the due date for such payment (and retains free from any liability relating to the tax deduction) a net amount which is equal to the full amount which it would have received had no such tax deduction been required to be made; and
- (c) that Borrower shall pay the full amount of the tax required to be deducted to the appropriate taxation authority promptly in accordance with the relevant law, regulation or regulatory requirement, and in any event before any fine or penalty arises.

**22.3 Indemnity and evidence of payment of taxes**

The Borrowers shall fully indemnify each Creditor Party on the Agent's demand in respect of all claims, expenses, liabilities and losses incurred by any Creditor Party by reason of any failure of the Borrowers (or any of them) to make any tax deduction or by reason of any increased payment not being made on the due date for such payment in accordance with Clause 22.2. Within 30 days after making any tax deduction, the Borrowers or, as the case may be, the relevant Borrower shall deliver to the Agent any receipts, certificates or other documentary evidence satisfactory to the Agent that the tax had been paid to the appropriate taxation authority.

**22.4 Exclusion of tax on overall net income**

In this Clause 22 "**tax deduction**" means any deduction or withholding from any payment due under a Finance Document for or on account of any present or future tax except:

(a) tax on a Creditor Party's overall net income; and

(b) a FATCA Deduction.

## 22.5 FATCA Information

(a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:

(i) confirm to that other Party whether it is:

(A) a FATCA Exempt Party; or

(B) not a FATCA Exempt Party; and

(ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and

(iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation or exchange of information regime.

(b) If a Party confirms to another Party pursuant to sub-paragraph (i) of paragraph (a) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

(c) Paragraph (a) above shall not oblige any Creditor Party to do anything and sub-paragraph (iii) of paragraph (a) above shall not oblige any other Party to do anything which would or might in its reasonable opinion constitute a breach of:

(i) any law or regulation;

(ii) any fiduciary duty; or

(iii) any duty of confidentiality.

(d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with sub-paragraphs (i) or (ii) of paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

(e) If a Lender knows or has reason to know that a Borrower is a US Tax Obligor, or where the Agent reasonably believes that its obligations under FATCA require it, each Lender shall, within ten Business Days of:

(i) where the Lender knows or has reason to know that a Borrower is a US Tax Obligor and the relevant Lender is a Party as at the date of this Agreement, the date of this Agreement;

- (ii) where the Lender knows or has reason to know that a Borrower is a US Tax Obligor and the relevant Lender became a Party after the date of this Agreement, the date on which the relevant Transfer Certificate became effective; or
- (iii) the date of a request from the Agent,  
supply to the Agent:
  - (iv) a withholding certificate on US Internal Revenue Service Form W-8 or Form W-9 (or any successor form) (as applicable); or
  - (v) any withholding statement and other documentation, authorisations and waivers as the Agent may require to certify or establish the status of such Lender under FATCA.

The Agent shall provide any withholding certificate, withholding statement, documentation, authorisations and waivers it receives from a Lender pursuant to this paragraph (e) to the Borrowers, to the extent required for compliance with FATCA or any other law or regulation, and shall be entitled to rely on any such withholding certificate, withholding statement, documentation, authorisations and waivers provided without further verification. The Agent shall not be liable for any action taken by it under or in connection with this paragraph (e).

- (f) Each Lender agrees that if any withholding certificate, withholding statement, documentation, authorisations and waivers provided to the Agent pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, it shall promptly update such withholding certificate, withholding statement, documentation, authorisations and waivers or promptly notify the Agent in writing of its legal inability to do so. The Agent shall provide any such updated withholding certificate, withholding statement, documentation, authorisations and waivers to the Borrowers, to the extent required for compliance with FATCA or any other law or regulation. The Agent shall not be liable for any action taken by it under or in connection with this paragraph (f).

## **22.6 FATCA Deduction**

- (a) Each Party may make any FATCA Deduction as it reasonably determines it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify each Borrower and the Agent and the Agent shall notify the other Creditor Parties.

## **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 perform, maintain or give effect to any of its obligations under this Agreement in the manner contemplated by this Agreement or to fund or maintain the Loan.

### 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 23.2, the Notifying Lender's Commitment shall be immediately cancelled; and thereupon or, if later, on the date specified in the Notifying Lender's notice under Clause 23.1 as the date on which the notified event would become effective the Borrowers shall prepay the Notifying Lender's Contribution on the last day of the then current Interest Period in accordance with Clauses 8.10 and 8.11.

## 24 **INCREASED COSTS**

### 24.1 **Increased costs**

This Clause 24 applies if a Lender (the "**Notifying Lender**") notifies the Agent that the Notifying Lender considers that as a result of:

- (a) the introduction or alteration after the date of this Agreement of a law or an alteration after the date of this Agreement in the manner in which a law is interpreted or applied (disregarding any effect which relates to the application to payments under this Agreement of a tax on the Lender's overall net income); or
- (b) complying with any regulation (including any which relates to capital adequacy or liquidity controls or which affects the manner in which the Notifying Lender allocates capital resources to its obligations under this Agreement) which is introduced, or altered, or the interpretation or application of which is altered, after the date of this Agreement; or
- (c) the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (the "**Basel II Accord**") or any other law or regulation implementing the Basel II Accord or any of the approaches provided for and allowed to be used by banks under or in connection with the Basel II Accord, in each case when compared to the cost of complying with such regulations as determined by the Agent (or parent company of it) on the date of this Agreement (whether such implementation, application or compliance is by a government, regulator, supervisory authority, the Notifying Lender or its holding company); or
- (d) the implementation or application of or compliance with Basel III or any law or regulation which implements or applies Basel III (regardless of the date on which it is enacted, adopted or issued and regardless of whether any such implementation, application or compliance is by a government, regulator, the Notifying Lender or any of its affiliates),

the Notifying Lender (or a parent company of it) has incurred or will incur an "**increased cost**".



**24.2 Meaning of “increased cost”**

In this Clause 24, “increased cost” means, in relation to a Notifying Lender:

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

but not an item attributable to 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 a FATCA Deduction required to be made by a Party.

For the purposes of this Clause 24.2 the Notifying Lender may in good faith allocate or spread costs and/or losses among its assets and liabilities (or any class of its assets and liabilities) on such basis as it considers appropriate.

**24.3 Notification to Borrowers of claim for increased costs**

The Agent shall promptly notify the Borrowers and the Security Parties of the notice which the Agent received from the Notifying Lender under Clause 24.1.

**24.4 Payment of increased costs**

The Borrowers shall pay to the Agent within 5 Business Days after the Agent’s demand, for the account of the Notifying Lender the amounts which the Agent from time to time notifies the Borrowers that the Notifying Lender has specified to be necessary to compensate the Notifying Lender for the increased cost.

**24.5 Notice of prepayment**

If the Borrowers are not willing to continue to compensate the Notifying Lender for the increased cost under Clause 24.4, the Borrowers may give the Agent not less than 14 days’ notice of their intention to prepay the Notifying Lender’s Contribution at the end of an Interest Period.

**24.6 Prepayment; termination of Commitment**

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

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

**24.7 Application of prepayment**

Clause 8 shall apply in relation to the prepayment.

**25 SET-OFF**

**25.1 Application of credit balances**

Each Creditor Party may without prior notice to the Borrowers but with prior notice to the Agent:

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

**25.2 Existing rights unaffected**

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

**25.3 Sums deemed due to a Lender**

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

**25.4 No Security Interest**

This Clause 25 gives the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of any Borrower.

**26 TRANSFERS AND CHANGES IN LENDING OFFICES**

**26.1 Transfer by Borrowers**

No Borrower may assign or transfer any of its rights, liabilities or obligations under any Finance Document.

**26.2 Transfer by a Lender**

Subject to Clause 26.4, a Lender (the “**Transferor Lender**”) may at any time, without the consent of the Borrowers or any Security Party but after consultation with the Borrowers, cause:

- (a) its rights in respect of all or part of its Contribution; or
- (b) its obligations in respect of all or part of its Commitment; or
- (c) a combination of (a) and (b); or
- (d) all or part of its credit risk under this Agreement and the other Finance Documents,

to be syndicated to or, (in the case of its rights) assigned, pledged or transferred to, or (in the case of its obligations) pledged or assumed by, any other bank or financial institution or to a trust, fund or other entity, provided such other entity is regularly engaged in, or established for the purpose of, making, purchasing or investing in loans, securities or other financial assets (a “**Transferee Lender**”) by delivering to the Agent a completed certificate in the form set out in Schedule 5 with any modifications approved or required by the Agent (a “**Transfer Certificate**”) executed by the Transferor Lender and the Transferee Lender.

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.

All costs and expenses relating to a transfer effected pursuant to this Clause 26.2 shall be borne by the Transferee Lender.

**26.3 Transfer Certificate, delivery and notification**

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

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

**26.4 Effective Date of Transfer Certificate**

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

**26.5 No transfer without Transfer Certificate**

Except as provided in Clause 26.18, no assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation to, any Borrower, any Security Party, the Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

**26.6 Lender re-organisation**

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 successor shall become a Lender with the same Commitment and Contribution as were held by the predecessor Lender only upon receipt by the Agent of a notice to this effect and evidence that all rights and obligations have automatically and by operation of law vested in the successor by virtue of the merger, de-merger or other reorganisation, without the need for the execution and delivery of a Transfer Certificate; the Agent shall in that event inform the Borrowers and the Security Trustee accordingly.

**26.7 Effect of Transfer Certificate**

A Transfer Certificate takes effect in accordance with English law as follows:

- (a) to the extent specified in the Transfer Certificate, all rights and interests (present, future or contingent) which the Transferor Lender has under or by virtue of the Finance Documents are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender’s title and of any rights or equities which any Borrower or any Security Party had against the Transferor Lender;
- (b) the Transferor Lender’s Commitment is discharged to the extent specified in the Transfer Certificate;
- (c) the Transferee Lender becomes a Lender with the Contribution previously held by the Transferor Lender and a Commitment of an amount specified in the Transfer Certificate;
- (d) the Transferee Lender becomes bound by all the provisions of the Finance Documents which are applicable to the Lenders generally, including those about pro-rata sharing and the exclusion of liability on the part of, and the indemnification of, the Agent and the Security Trustee and, to the extent that the Transferee Lender becomes bound by those provisions (other than those relating to exclusion of liability), the Transferor Lender ceases to be bound by them;
- (e) any part of the Loan which the Transferee Lender advances after the Transfer Certificate’s effective date ranks in point of priority and security in the same way as it would have ranked had it been advanced by the transferor, assuming that any defects in the transferor’s title and any rights or equities of any Borrower or any Security Party against the Transferor Lender had not existed;
- (f) the Transferee Lender becomes entitled to all the rights under the Finance Documents which are applicable to the Lenders generally, including but not limited to those relating to the Majority Lenders and those under Clause 5.7 and Clause 20, and to the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender ceases to be entitled to them; and

(g) in respect of any breach of a warranty, undertaking, condition or other provision of a Finance Document or any misrepresentation made in or in connection with a Finance Document, the Transferee Lender shall be entitled to recover damages by reference to the loss incurred by it as a result of the breach or misrepresentation, irrespective of whether the original Lender would have incurred a loss of that kind or amount.

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

#### **26.8 Maintenance of register of Lenders**

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

#### **26.9 Reliance on register of Lenders**

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

#### **26.10 Authorisation of Agent to sign Transfer Certificates**

Each Borrower, the Security Trustee and each Lender irrevocably authorises the Agent to sign Transfer Certificates on its behalf. The Borrower and each Security Party irrevocably agree to the transfer procedures set out in this Clause 26 and to the extent the cooperation of the Borrowers and/or any Security Party shall be required to effect any such transfer, the Borrowers and such Security Party shall take all necessary steps to afford such cooperation **Provided that** this shall not result in any additional costs to the Borrowers or such Security Party.

#### **26.11 Sub-participation; subrogation assignment**

A Lender may sub-participate or include in a securitisation or similar transaction all or any part of its rights and/or obligations under or in connection with the Finance Documents without the Borrowers' prior consent and without serving a notice thereon; the Lenders may assign without the Borrowers' prior consent but after consultation with the Borrowers, in any manner and terms agreed by the Majority Lenders, the Agent and the Security Trustee, all or any part of those rights to an insurer or surety who has become subrogated to them.

#### **26.12 Registration fee**

In respect of any Transfer Certificate, the Agent shall be entitled to recover a registration fee of \$2,500 from the Transferor Lender or (at the Agent's option) the Transferee Lender.

#### **26.13 Sub-division, split, modification or re-tranching**

Any Lender may, in its sole discretion, sub-divide, split, sever, modify or re-tranche its Contribution into one or more parts subject to the overall cost of its Contribution to the Borrowers remaining unchanged, if such changes are necessary in order to achieve a successful execution of a securitisation, syndication or any other capital market exit in respect of its Contribution (or any applicable part thereof).

**26.14 Disclosure of information**

A Lender may, without the prior consent of the Borrowers, the Corporate Guarantor or any other Security Party, disclose to a potential Transferee Lender or sub participant as well as, where relevant, to rating agencies, trustees and accountants, any financial or other information which that Lender has received in relation to the Loan, the Borrowers (or any of them), the Corporate Guarantor and any other Security Party or their affairs and collateral or security provided under or in connection with any Finance Document, their financial circumstances and any other information whatsoever, as that Lender may deem reasonably necessary or appropriate in connection with the potential syndication, the assessment of the credit risk and the ongoing monitoring of the Loan by any potential Transferee Lender and that Lender shall be released from its obligation of secrecy and from banking confidentiality.

This permission is given for the purposes of giving relief from banking secrecy and confidentiality requirements. It is not intended as and is no declaration of consent in accordance with the DS\_GVO (DS-GVO refers to Datenschutz-Grundverordnung, the German term for General Data Protection Regulation) (EU Regulation 2016/679, General Data Protection Regulation).

In the event any such potential Transferee Lender, sub-participant, rating agency, trustee or accountant is not already bound by any legal obligation of secrecy or banking confidentiality, the Lender concerned may only give, disclose or reveal such information as the Corporate Guarantor is entitled to disclose by rules and regulations of the SEC and any US Stock Exchange applicable to the Corporate Guarantor and shall require such other party to sign a confidentiality agreement. The Borrowers shall, and shall procure that the Corporate Guarantor and any other Security Party shall:

- (a) provide the Creditor Parties (or any of them) with all information deemed, reasonably, necessary by the Creditor Parties (or any of them) for the purposes of any transfer, syndication or sub-participation to be effected pursuant to this Clause 26;
- (b) procure that the directors and officers of each Borrower, the Corporate Guarantor or any other Security Party, are available to participate in any meeting with any Transferee Lender or any rating agency at such times and places as the Creditor Parties may reasonably request following prior notice (to be served on the Borrowers reasonably in advance) to that Borrower, the Corporate Guarantor or that Security Party; and
- (c) permit any Transferee Lender to board the Ship at all reasonable times and locations to inspect its condition in accordance with Clause 14.9.

**26.15 Confidentiality**

Any publicity regarding the Loan or any of the terms thereof shall be agreed in advance by the Corporate Guarantor and the Agent (acting on the instructions of the Majority Lenders) unless otherwise required in connection with the Corporate Guarantor's reporting obligations under or in connection with the rules and regulations of the SEC and any US Stock Exchange applicable to the Corporate Guarantor.

**26.16 Change of lending office**

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

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

**26.17 Notification**

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

**26.18 Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 26, each Lender may without consulting with or obtaining consent from, any Borrower or any Security Party, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities;

except that no such charge, assignment or Security Interest shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by any Borrower or any Security Party or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

**26.19 Replacement of a Reference Bank**

If any Reference Bank ceases to be a Lender or is unable on a continuing basis to supply quotations for the purposes of Clause 5 then, unless the Borrowers, the Agent and the Majority Lenders otherwise agree, the Agent, acting on the instructions of the Majority Lenders, and after consulting with the Borrowers, shall appoint another bank (whether or not a Lender) to be a replacement Reference Bank; and, when that appointment comes into effect, the first-mentioned Reference Bank's appointment shall cease to be effective.

**26.20 Securitisation**

Each Borrower shall, and the Borrowers shall procure that each Security Party will, assist the Agent and/or any Lender in achieving a successful securitisation (or similar transaction) in respect of the Loan and the Finance Documents and such Security Party's reasonable costs for providing such assistance shall be met by the relevant Lender.

**26.21 No additional costs**

If a Transferor Lender assigns or transfers any of its rights or obligations under the Finance Documents and as a result of circumstances existing at the date the assignment or transfer occurs, a Borrower or a Security Party would be obliged to make a payment to the Transferee Lender under Clause 22.2 or under that clause as incorporated by reference or in full in any other Finance Document, then the Transferee Lender is only entitled to receive payment under that clause to the same extent as the Transferor Lender would have been if the assignment or transfer had not occurred.

**27 VARIATIONS AND WAIVERS**

**27.1 Required consents**

- (a) Subject to Clause 27.2 any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrowers and any such amendment or waiver will be binding on all Creditor Parties and the Borrowers.
- (b) Any instructions given by the Majority Lenders will be binding on all the Creditor Parties.
- (c) The Agent may effect, on behalf of any Creditor Party, any amendment or waiver permitted by this Clause.

**27.2 Exceptions**

- (a) An amendment or waiver that has the effect of changing or which relates to:
  - (i) the definition of “Majority Lenders” or “Finance Documents” in Clause 1.1;
  - (ii) an extension to the date of payment of any amount under the Finance Documents;
  - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest fees, commission or other amount payable under any of the Finance Documents;
  - (iv) an increase in or an extension of any Lender’s Commitment;
  - (v) any provision which expressly requires the consent of all the Lenders;
  - (vi) Clause 3 (*Position of the Lenders*), Clause 11.5 (*Information provided to be accurate*), Clause 11.6 (*Provision of financial statements*), Clause 11.7 (*Form of financial statements*), Clause 11.16 (*Provision of further information*), Clause 26 (*Transfers and Changes in Lending Offices*) or this Clause 27.2;
  - (vii) any release of any Security Interest, guarantee, indemnities or subordination arrangement created by any Finance Document;
  - (viii) any change of the currency in which the Loan is provided or any amount is payable under any of the Finance Documents;
  - (ix) an extension of the Availability Period; or
  - (x) a change in Clauses 16.4 (*Distribution of payment to Creditor Parties*) or 22 (*Grossing-up*),



may not be effected without the prior written consent of all Lenders.

- (b) An amendment or waiver which relates to the rights or obligations of the Agent, the Arranger or the Security Trustee may not be effected without the consent of the Agent, the Arranger or the Security Trustee, as the case may be.

**27.3 Exclusion of other or implied variations**

Except for a document which satisfies the requirements of Clauses 27.1 and 27.2, no document, and, subject to Clause 27.4, no act, course of conduct, failure or neglect to act, delay or acquiescence on the part of the Creditor Parties or any of them (or any person acting on behalf of any of them) shall result in the Creditor Parties or any of them (or any person acting on behalf of any of them) being taken to have varied, waived, suspended or limited, or being precluded (permanently or temporarily) from enforcing, relying on or exercising:

- (a) a provision of this Agreement or another Finance Document; or
  - (b) an Event of Default; or
  - (c) a breach by a Borrower, the Approved Manager or a Security Party of an obligation under a Finance Document or the general law; or
  - (d) any right or remedy conferred by any Finance Document or by the general law,
- and there shall not be implied into any Finance Document any term or condition requiring any such provision to be enforced, or such right or remedy to be exercised, within a certain or reasonable time.

**27.4 Deemed consent**

With respect to any amendment, variation, waiver, suspension or limit requested by any Party and which requires the approval of all the Lenders or the Majority Lenders (as the case may be), other than an amendment or supplement (or any proposal for such an amendment or supplement) in connection with a Finance Document or any other Pertinent Document required as contemplated in Clause 27.5, the Agent shall provide each Lender with written notice of such request accompanied by such detailed background information as may be reasonably necessary (in the opinion of the Agent) to determine whether to approve such action. A Lender shall be deemed to have approved such action if such Lender fails to object to such action by written notice to the Agent within 10 days of that Lender's receipt of the Agent's notice or such other time as the Agent may state in the relevant notice as being the time available for approval of such action.

**27.5 Replacement of Screen Rate**

- (a) Subject to paragraph (b) of Clause 27.2, if a Screen Rate Replacement Event has occurred in relation to the Screen Rate for dollars, any amendment or waiver which relates to:
  - (i) providing for the use of a Replacement Benchmark in relation to (or in addition to) that currency in place of that Screen Rate; and
  - (ii)

- (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
- (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
- (C) implementing market conventions applicable to that Replacement Benchmark;
- (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
- (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Borrowers.

- (b) If, as at 1 January 2023 this Agreement provides that the rate of interest for the Loan in dollars is to be determined by reference to the Screen Rate for LIBOR:
  - (i) a Screen Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate for dollars; and
  - (ii) the Agent, (acting on the instructions of the Majority Lenders) and the Borrowers shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in relation to dollars in place of that Screen Rate from and including a date no later than 31 May 2023.
- (c) If any Lender fails to respond to a request for an amendment or waiver described in, or for any other vote of Lenders in relation to, paragraphs **Error! Reference source not found.** or (b) above within 5 Business Days (or such longer time period in relation to any request which the Borrowers and the Agent may agree) of that request being made:
  - (i) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
  - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

**28 NOTICES**

**28.1 General**

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

**28.2 Addresses for communications**

A notice by letter, fax or e-mail shall be sent:

(a) to the Borrowers:

c/o Navios Shipmanagement Inc.  
85 Akti Miaouli  
Piraeus 185 38  
Fax No: +30 210 4172070  
  
Email:legal\_corp@navios.com,  
vpapaefthymiou@navios.com

for the attention of:

Vassiliki Papaefthymiou

(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 and Security Trustee:

for general matters:

Hamburg Commercial Bank AG  
BU Asset Based Finance / Shipping  
Gerhart-Hauptmann-Platz 50  
20095 Hamburg  
Germany

Fax No: +302104295323

Attn: Mr Loukas Lagaras / Mr Solon Merikas

for credit administrative matters:

Hamburg Commercial Bank AG  
BU Business Operations  
Loan & Collateral Operations  
Gerhart-Hauptmann-Platz 50  
20095 Hamburg  
Germany

Fax No: +49 40 3333 34167

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

**28.3 Effective date of notices**

Subject to Clauses 28.4 and 28.5:

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

**28.4 Service outside business hours**

However, if under Clause 28.3 a notice would be deemed to be served:

- (a) on a day which is not a business day in the place of receipt; or
  - (b) on such a business day, but after 5 p.m. local time,
- the notice shall (subject to Clause 28.5) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

**28.5 Illegible notices**

Clauses 28.3 and 28.4 do not apply if the recipient of a notice notifies the sender within one hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

**28.6 Valid notices**

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

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

**28.7 Electronic communication**

Any communication from the Agent or the other Creditor Parties made by electronic means will be sent unsecured and without electronic signature, however, the Borrowers may request the Agent and the other Creditor Parties at any time in writing to change the method of electronic communication from unsecured to secured electronic mail communication.

The Borrowers hereby acknowledge and accept the risks associated with the use of unsecured electronic mail communication including, without limitation, risk of delay, loss of data, confidentiality breach, forgery, falsification and malicious software. The Agent and the other Creditor Parties shall not be liable in any way for any loss or damage or any other disadvantage suffered by the Borrowers resulting from such unsecured electronic mail communication.

If the Borrowers (or any of them) or any other Security Party wish to cease all electronic communication, they shall give written notice to the Agent and the other Creditor Parties accordingly after receipt of which notice the Parties shall cease all electronic communication.

For as long as electronic communication is an accepted form of communication, the Parties shall:

- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (b) notify each other of any change to their respective addresses or any other such information supplied to them; and
- in case electronic communication is sent to recipients with the domain <domain with ending>, the parties shall without undue delay inform each other if there are changes to the said domain or if electronic communication shall thereafter be sent to individual e-mail addresses.

**28.8 English language**

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

**28.9 Meaning of “notice”**

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

**29 JOINT AND SEVERAL LIABILITY**

**29.1 General**

All liabilities and obligations of the Borrowers under this Agreement shall, whether expressed to be so or not, be several and, if and to the extent consistent with Clause 29.2, joint.

**29.2 No impairment of Borrower’s obligations**

The liabilities and obligations of a Borrower shall not be impaired by:

- (a) this Agreement being or later becoming void, unenforceable or illegal as regards the other Borrowers;
- (b) any Lender or the Security Trustee entering into any rescheduling, refinancing or other arrangement of any kind with the other Borrowers;
- (c) any Lender or the Security Trustee releasing the other Borrowers or any Security Interest created by a Finance Document; or
- (d) any combination of the foregoing.

**29.3 Principal debtors**

Each Borrower declares that it is and will, throughout the Security Period, remain a principal debtor for all amounts owing under this Agreement and the Finance Documents and no Borrower shall in any circumstances be construed to be a surety for the obligations of the other Borrowers under this Agreement.

**29.4 Subordination**

Subject to Clause 29.5, during the Security Period, no Borrower shall:

- (a) claim any amount which may be due to it from the other Borrowers 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 Borrowers for such an amount, or in any other way seek to have recourse in respect of such an amount against any asset of the other Borrowers; or
- (c) set off such an amount against any sum due from it to the other Borrowers; or
- (d) prove or claim for such an amount in any liquidation, administration, arrangement or similar procedure involving the other Borrowers or other Security Party; or
- (e) exercise or assert any combination of the foregoing.

**29.5 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 29.4, in relation to the other Borrowers, that Borrower shall take that action as soon as practicable after receiving the Agent's notice.

**30 SUPPLEMENTAL**

**30.1 Rights cumulative, non-exclusive**

The rights and remedies which the Finance Documents give to each Creditor Party are:

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

**30.2 Severability of provisions**

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

**30.3 Counterparts**

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

**30.4 Third party rights**

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

**30.5 Benefit and binding effect**

The terms of this Agreement shall be binding upon, and shall enure to the benefit of, the Parties and their respective (including subsequent) successors and permitted assigns and transferees.

**30.6 Electronic disclosure**

- (a) The Borrowers hereby recognise as binding any relevant documents (whether signed or not) to fulfil the disclosure of the financial circumstances in accordance with Sec. 18 of the German Banking Act (KWG) that were or are, after the date of this Agreement, submitted to Hamburg Commercial Bank AG electronically or on data carriers through the Borrower, any Security Party or any third party and declares such documents as complete and correct.
- (b) Any documents submitted to Hamburg Commercial Bank AG electronically or on data carriers in accordance with Sec. 18 of the German Banking Act (KWG) have the same legal significance as any signed documents in paper form.

**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 Dispute.

**31.3 Choice of forum for the exclusive benefit of the Creditor Parties**

Clause 31.2 is for the exclusive benefit of the Creditor Parties, each of which reserves the right:

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

No Borrower shall commence any proceedings in any country other than England in relation to a Dispute.

**31.4 Process agent**

Each Borrower irrevocably appoints Hill Dickinson LLP at their office for the time being, presently at The Broadgate Tower, 20 Primrose Street, London EC2A 2EW, England to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with a Dispute.

**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” and “Dispute”**

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.

**BORROWERS**

EXECUTION PAGES

**SIGNED** by Maria Trivela ) /s/ Maria Trivela \_\_\_\_\_

for and on behalf of )  
**ALEGRIA SHIPPING CORPORATION** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou \_\_\_\_\_

**SIGNED** by Maria Trivela ) /s/ Maria Trivela \_\_\_\_\_  
for and on behalf of )  
**ANDROMEDA SHIPTRADE LIMITED** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou \_\_\_\_\_

**SIGNED** by Maria Trivela ) /s/ Maria Trivela \_\_\_\_\_  
for and on behalf of )  
**AURORA SHIPPING ENTERPRISES LTD.** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou \_\_\_\_\_

**SIGNED** by Maria Trivela ) /s/ Maria Trivela \_\_\_\_\_  
for and on behalf of )  
**BERYL SHIPPING CORPORATION** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou \_\_\_\_\_

**SIGNED** by Maria Trivela ) /s/ Maria Trivela \_\_\_\_\_  
for and on behalf of )  
**CHERYL SHIPPING CORPORATION** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou \_\_\_\_\_

**SIGNED** by Maria Trivela ) /s/ Maria Trivela \_\_\_\_\_  
for and on behalf of )  
**CHRISTAL SHIPPING CORPORATION** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou \_\_\_\_\_

**SIGNED** by Maria Trivela ) /s/ Maria Trivela \_\_\_\_\_  
for and on behalf of )  
**HYPERION ENTERPRISES INC.** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou \_\_\_\_\_



**SIGNED** by Maria Trivela ) /s/ Maria Trivela  
for and on behalf of )  
**KYMATA SHIPPING CO.** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou

**SIGNED** by Maria Trivela ) /s/ Maria Trivela  
for and on behalf of )  
**ORBITER SHIPPING CORP.** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou

**SIGNED** by Maria Trivela ) /s/ Maria Trivela  
for and on behalf of )  
**PEARL SHIPPING CORPORATION** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou

**SIGNED** by Maria Trivela ) /s/ Maria Trivela  
for and on behalf of )  
**RUBINA SHIPPING CORPORATION** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou

**SIGNED** by Maria Trivela ) /s/ Maria Trivela  
for and on behalf of )  
**SEYMOUR TRADING LIMITED** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou

**SIGNED** by Maria Trivela ) /s/ Maria Trivela  
for and on behalf of )  
**TOPAZ SHIPPING CORPORATION** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou

**SIGNED** by Maria Trivela ) /s/ Maria Trivela  
for and on behalf of )  
**CAMELIA SHIPPING INC.** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou

**SIGNED** by Maria Trivela ) /s/ Maria Trivela  
for and on behalf of )  
**BALDER MARITIME LTD** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou

**LENDERS**

**SIGNED** by Charalampos Kazantzis ) /s/ Charalampos Kazantzis  
for and on behalf of )  
**HAMBURG COMMERCIAL BANK AG** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou

**AGENT**

**SIGNED** by Charalampos Kazantzis ) /s/ Charalampos Kazantzis  
for and on behalf of )  
**HAMBURG COMMERCIAL BANK AG** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou

**MANDATED LEAD ARRANGER**

**SIGNED** by Charalampos Kazantzis ) /s/ Charalampos Kazantzis  
for and on behalf of )  
**HAMBURG COMMERCIAL BANK AG** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou

**SECURITY TRUSTEE**

**SIGNED** by Charalampos Kazantzis ) /s/ Charalampos Kazantzis  
for and on behalf of )  
**HAMBURG COMMERCIAL BANK AG** )  
in the presence of: Aikaterina Dimitriou ) /s/ Aikaterina Dimitriou

**BOOKRUNNER**

**SIGNED** by Eleni Antonakou ) /s/ Eleni Antonakou  
for and on behalf of )  
**BNP PARIBAS** )

**ARRANGER**

**SIGNED** by Eleni Antonakou ) /s/ Eleni Antonakou  
for and on behalf of )  
**BNP PARIBAS** )

**MANDATED LEAD ARRANGERS**

**SIGNED** by Eleni Antonakou ) /s/ Eleni Antonakou  
for and on behalf of )  
**BNP PARIBAS** )

**SIGNED** by Charalampos Kazantzis ) /s/ Charalampos Kazantzis  
for and on behalf of )  
**CREDIT AGRICOLE CORPORATE** )  
**AND INVESTMENT BANK** )

**AGENT**

**SIGNED** by Eleni Antonakou ) /s/ Eleni Antonakou  
for and on behalf of )  
**BNP PARIBAS** )

**SECURITY TRUSTEE**

**SIGNED** by Eleni Antonakou ) /s/ Eleni Antonakou  
for and on behalf of )  
**BNP PARIBAS** )

**Dated 28 April 2021**

**AMMOS SHIPPING CORP.  
WAVE SHIPPING CORP.  
BRANDEIS SHIPPING CORPORATION  
BUFF SHIPPING CORPORATION**  
as joint and several Borrowers

and

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

and

**BNP PARIBAS**  
as Agent and Security Trustee

**LOAN AGREEMENT**

relating to a loan facility of up to \$40,000,000  
secured on m.vs. “NAVIOS PROSPERITY I”, “NAVIOS LIBERTAS”, “ETE N” and “FLEUR N”

**WATSON FARLEY  
&  
WILLIAMS**

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**THIS LOAN AGREEMENT** is made on 28 April 2021

## **PARTIES**

- (1) **AMMOS SHIPPING CORP., WAVE SHIPPING CORP., BRANDEIS SHIPPING CORPORATION** and **BUFF SHIPPING CORPORATION**, each a corporation incorporated and existing under the laws of the Marshall Islands whose registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960, as joint and several **Borrowers**.
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, as **Lenders**.
- (3) **BNP PARIBAS** whose registered office (siege social) is at 16 Boulevard des Italiens, 75009 Paris, France, acting through its office at 35 rue de la Gare, 75019, Paris, France as **Agent** and **Security Trustee**.

## **WHEREAS**

The Lenders have agreed to make available to the Borrowers a senior secured term loan facility, in an aggregate amount equal to the lesser of (i) \$40,000,000 and (ii) 65 per cent. of the aggregate Initial Market Value of the Ships, in one advance, for the purpose of refinancing the Existing Indebtedness secured on Ship A and Ship B, financing Ship C and Ship D and for general working capital purposes.

## **BACKGROUND**

**IT IS AGREED** as follows:

### **1 INTERPRETATION**

#### **1.1 Definitions**

Subject to Clause 1.5, in this Agreement:

“**Account**” means each of the Earnings Accounts and the Retention Account and, in the plural, means all of them;

“**Account Bank**” means BNP Paribas (Suisse) SA, acting through its office at Place de Hollande 2, CP CH-1211, Geneva 11, Switzerland;

“**Account Pledge**” means, in relation to each Account, a deed of pledge of that Account in such form as the Lenders may approve or require, and in the plural means all of them;

“**Advance**” means the borrowing of all or part of the Loan under this Agreement;

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

“**Agency and Trust Deed**” means the agency and trust deed executed or to be executed between the Borrowers, the Lenders, the Agent and the Security Trustee in such form as the Lenders may approve or require;

“**Agent**” means BNP Paribas acting through its office at 35 rue de la Gare, 75019, Paris, France or any successor of it appointed under clause 5 of the Agency and Trust Deed;

“**Applicable Person**” has the meaning given in Clause 29.4;

**“Approved Broker”** means any of Arrow Valuations Ltd, Barry Rogliano Salles, Braemar ACM Shipbroking, H Clarkson & Co. Ltd., E.A. Gibsons Shipbrokers, Fearnleys, Galbraith, Simpson Spencer & Young, Howe Robinson & Co Ltd London, Maersk Broker K.S. and Affinity (Shipping) LLP (to include, in each case, their successors or assigns and such subsidiary or other company in the same corporate group through which valuations are commonly issued by each of these brokers), or such other first-class independent broker as the Borrowers and the Agent (acting on the instructions of the Majority Lenders) may agree in writing from time to time;

**“Approved Flag”** means, in relation to a Ship, the flag of Marshall Islands, the flag of Liberia, the flag of Panama or such other flag as the Agent (acting on the instructions of the Majority Lenders) may approve as the flag on which that Ship is or, as the case may be, shall be registered;

**“Approved Flag State”** means, in relation to a Ship, the Republic of the Marshall Islands, the Republic of Liberia, the Republic of Panama or any other country in which the Agent (acting on the instructions of the Majority Lenders) may approve that that Ship is or, as the case may be, shall be registered;

**“Approved Manager”** means, in respect of the commercial and technical management of each Ship, Navios Shipmanagement or any other company (for the avoidance of doubt, other than an affiliate or subsidiary of Navios Shipmanagement), which the Agent (acting on the instructions of the Majority Lenders) may approve from time to time as the commercial and technical manager of any Ship;

**“Approved Manager’s Undertaking”** means, in relation to a Ship, a letter of undertaking including, without limitation, an assignment of the Approved Manager’s rights, title and interest in the Insurances of the relevant Ship executed or to be executed by the Approved Manager in favour of the Security Trustee agreeing certain matters in relation to the Approved Manager serving as the manager of that Ship and subordinating the rights of the Approved Manager against that Ship and that Borrower to the rights of the Creditor Parties under the Finance Documents, in such form as the Security Trustee, with the authorisation of the Lenders, may approve or require and, in the plural, means all of them;

**“Article 55 BRRD”** means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms;

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

- (a) 30 June 2021 (or such later date as the Agent may, in its sole discretion, agree with the Borrowers); or
- (b) if earlier, the date on which the Total Commitments are fully borrowed, cancelled or terminated;

**“Bail-In Action”** means the exercise of any Write-down and Conversion Powers;

**“Bail-In Legislation”** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;

- (b) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and
- (c) in relation to the United Kingdom, the UK Bail-In Legislation;

“**Balloon Instalment**” has the meaning given to it in Clause 8.1;

“**Basel III**” means:

- (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (b) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement—Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”;

“**Borrower**” means each of Borrower A, Borrower B, Borrower C and Borrower D and, in the plural, means all of them;

“**Borrower A**” means Ammos Shipping Corp., a corporation incorporated and existing under the laws of the Marshall Islands having its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960;

“**Borrower B**” means Wave Shipping Corp., a corporation incorporated and existing under the laws of the Marshall Islands having its registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960;

“**Borrower C**” means Brandeis Shipping Corporation, a corporation incorporated and existing under the laws of the Marshall Islands having its registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960;

“**Borrower D**” means Buff Shipping Corporation, a corporation incorporated and existing under the laws of the Marshall Islands having its registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960;

“**Business Day**” means a day on which banks are open in London, Athens, Paris and Geneva and in respect of a day on which a payment is required to be made under a Finance Document, also in New York City;

“**Charterparty**” means, in relation to a Ship, any charterparty in respect of that Ship (including, without limitation, an Existing Charter) of a duration exceeding or capable of exceeding 12 months, made on terms and with a charterer acceptable in all respects to the Lenders;



“**Charterparty Assignment**” means, in relation to a Ship, the deed of assignment of any Charterparty in favour of the Security Trustee, in such form as the Lenders may approve or require;

“**Classification Society**” means a member of the IACS or any other classification society approved in writing by the Agent acting with the authorisation of the Majority Lenders;

“**Code**” means the United States Internal Revenue Code of 1986;

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

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially in a recommended form of the Loan Market Association (LMA) or in any other form agreed between the Borrowers and the Agent;

“**Confidential Information**” means all information relating to the Borrowers, any Security Party, the Group, the Finance Documents or the Loan of which a Creditor Party becomes aware in its capacity as, or for the purpose of becoming, a Creditor Party or which is received by a Creditor Party in relation to, or for the purpose of becoming a Creditor Party under, the Finance Documents or the Loan from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Creditor Party, if the information was obtained by that Creditor Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (i) information that:
  - (A) is or becomes public information other than as a direct or indirect result of any breach by that Creditor Party of Clause 30; or
  - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
  - (C) is known by that Creditor Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Creditor Party after that date, from a source which is, as far as that Creditor Party is aware, unconnected with the Group and which, in either case, as far as that Creditor Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate or any quotation supplied to the Agent by a Reference Bank;

“**Confidential Rate**” means any quotation supplied to the Agent by a Reference Bank or any Funding Rate;

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

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

“**Corporate Guarantee**” means the guarantee given or 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 such form as the Lenders may approve or require;

“**Corporate Guarantor**” means Navios Maritime Partners L.P., a limited partnership formed and existing under the laws of the Marshall Islands whose registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960, listed on the New York Stock Exchange;

“**CRD IV**” means Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2003/87/EC and repealing Directive 2006/48/EC and 2006/29/EC;

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

“**CRR**” means Regulation (EU) No. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012;

“**Designated Shareholder**” means Mrs Angeliki Frangou either directly or indirectly (through entities owned and controlled by her or trusts or foundations of which she is the beneficiary) and/or Navios Maritime Holdings Inc. or any of its affiliates being, either individually or together, the ultimate beneficial owner(s) of, or having ultimate control of the voting rights attaching to, at least 5 per cent. of all the issued shares in the Corporate Guarantor and in the plural means all of them;

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

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

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

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

- (a) all freight, hire and passage moneys, compensation payable to that Borrower or the Security Trustee in the event of requisition of the Ship owned by it for hire, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of that Ship;
- (b) all moneys which are at any time payable under Insurances in respect of loss of earnings; and

- (c) if and whenever that 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 that Ship;

“**Earnings Account**” means, in relation to a Ship, an account in the name of the Borrower owning that Ship with the Account Bank which is designated by the Agent in writing as the Earnings Account in respect of that Ship for the purposes of this Agreement, and, in the plural, means all of them;

“**EEA Member Country**” means any member state of the European Union, Iceland, Liechtenstein and Norway;

“**Environmental Claim**” means:

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

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

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

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

“**Environmental Law**” means any law 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;

**“EU Bail-In Legislation Schedule”** means the document described as such and published by the Loan Market Association (or any successor person) from time to time;

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

**“Existing Charter”** shall have the meaning given to that term in Schedule 5;

**“Existing Charterer”** shall have the meaning given to that term in Schedule 5;

**“Existing Finance Documents”** means, in respect of each Existing Loan Agreement, the “Finance Documents” and/or “Security Documents” as such term is defined in each Existing Loan Agreement;

**“Existing Indebtedness”** means, at any date, any outstanding Financial Indebtedness (or part thereof) on that date under the relevant Existing Loan Agreement;

**“Existing Loan Agreement”** means the loan agreement dated 26 June 2017 (as amended and restated on 9 April 2019) and made between (i) Borrower A and Borrower B as joint and several borrowers and (ii) BNP Paribas as lender, agent and security trustee;

**“Existing Security Interest”** means any Existing Security Interests created under the Existing Finance Documents;

**“FATCA”** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

**“FATCA Deduction”** means a deduction or withholding from a payment under any Finance Document required by or under FATCA;

**“FATCA Exempt Party”** means a party to a Finance Document that is entitled to receive payments free from any FATCA Deduction;

**“FATCA FFI”** means a foreign financial institution as defined in section 1471 (d)(4) of the Code which, if any Creditor Party is not a FATCA Exempt Party, could be required to make a FATCA Deduction;

**“Final Maturity Date”** means the earlier of:

- (a) the date falling on the fourth anniversary of the Drawdown Date; and
- (b) 30 June 2025.

**“Finance Documents”** means:

- (a) this Agreement;
- (b) the Agency and Trust Deed;
- (c) the Corporate Guarantee;
- (d) the General Assignments;
- (e) the Mortgages;
- (f) the Account Pledges;
- (g) the Charterparty Assignments;
- (h) the Approved Manager’s Undertakings;
- (i) the Negative Pledges; and
- (j) any other document (whether creating a Security Interest or not) which is executed at any time by a Borrower, the Corporate Guarantor, the Shareholder, the Approved Manager or any other person as security for, or to establish any form of subordination or priorities arrangement in relation to, any amount payable to the Lenders under this Agreement or any of the other documents referred to in this definition;

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

- (a) for principal, interest or any other sum payable in respect of any moneys borrowed or raised by the debtor;
- (b) under any loan stock, bond, note or other security issued by the debtor;
- (c) under any acceptance credit, guarantee or letter of credit facility or dematerialised equivalent 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 foreign exchange transaction, 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 (a) to (e) if the references to the debtor referred to the other person;

**“Funding Rate”** means any rate notified to the Agent by a Lender pursuant to Clause 5.12;

**“General Assignment”** means, in relation to a Ship, a general assignment of the Earnings, the Insurances and any Requisition Compensation, in such form as the Lenders may approve or require and in the plural means all of them;

“**Group**” means together, the Corporate Guarantor and its wholly-owned subsidiaries (direct or indirect) including, but not limited to, the Borrowers from time to time during the Security Period and “**member of the Group**” shall be construed accordingly;

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

“**Initial Market Value**” means, in relation to a Ship, the Market Value thereof determined by taking the valuation of that Ship referred to in paragraph 6 of Schedule 3, Part B;

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

- (a) all policies and contracts of insurance, including entries of that Ship in any protection and indemnity or war risks association, which are effected in respect of that Ship, the Earnings or otherwise in relation to it whether before, on or after the date of this Agreement; and
- (b) all rights and other assets relating to, or derived from, any of the foregoing, including any rights to a return of a premium and any rights in respect of any claim whether or not the relevant policy, contract of insurance or entry has expired on or before the date of this Agreement;

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

“**Interpolated Screen Rate**” means, in relation to LIBOR for an Interest Period, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than that Interest Period; and
  - (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds that Interest Period,
- each as of 11.00 a.m. (London time) on the Quotation Day for the currency of the Loan;

“**ISM Code**” means, in relation to its application to the Borrowers, the Ships and their operation:

- (a) ‘The International Management Code for the Safe Operation of Ships and for Pollution Prevention’, currently known or referred to as the ‘ISM Code’, adopted by the Assembly of the International Maritime Organisation by Resolution A.741(18) on 4 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 Organisations 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, in relation to a Ship:

- (a) the document of compliance (DOC) and safety management certificate (SMC) issued pursuant to the ISM Code 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 that Ship’s or that Borrower’s compliance with the ISM Code which the Agent may require;

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

“**ISPS Code**” means the International Ship and Port Facility Security Code constituted pursuant to resolution A.924 (22) of the International Maritime Organisation (“**IMO**”) adopted by a Diplomatic conference of the IMO on Maritime Security on 13 December 2002 and now set out in Chapter XI-2 of the Safety of Life at Sea Convention (SOLAS) 1974 (as amended) to take effect on 1 July 2004;

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

“**Lender**” means, subject to Clause 26.6:

- (a) a bank or financial institution listed in Schedule 1 and acting through its branch or office indicated in Schedule 1 (or through another branch notified to the Borrowers under Clause 26.14) 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;

“**LIBOR**” means, for an Interest Period:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for that Interest Period) the Interpolated Screen Rate; or
- (c) if:
  - (i) no Screen Rate is available for the currency of the Loan; or
  - (ii) no Screen Rate is available for that Interest Period and it is not possible to calculate an Interpolated Screen Rate, the Reference Bank Rate,

as of, in the case of paragraphs (a) to (c) above, 11.00 a.m. (London time) on the Quotation Day for the currency of the Loan and for a period equal in length to that Interest Period and, if any such rate is below zero, LIBOR will be deemed to be zero;

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

“**Major Casualty**” means, in relation to a Ship, any casualty to 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 Advance has been made, Lenders whose Commitments total 66.66 per cent. of the Total Commitments; and
- (b) after the Advance has been made, Lenders whose Contributions total 66.66 per cent. of the Loan;

“**Margin**” means 2.85 per cent. per annum;

“**Market Value**” means the market value of the Ship determined from time to time in accordance with Clause 15.4;

“**Minimum Liquidity**” has the meaning given in Clause 11.20;

“**Mortgage**” means, in relation to a Ship, the first preferred or, as the case may be, priority ship mortgage and, if applicable, deed of covenant collateral thereto on that Ship, executed by the Borrower which is the owner thereof in favour of the Security Trustee or (as the case may be) the Lenders, in such form as the Lenders may approve or require and in the plural means all of them;

“**Navios Shipmanagement**” means Navios Shipmanagement Inc. a corporation domesticated in the Marshall Islands having its registered address is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands;

“**Negative Pledge**” means, in relation to the shares of each Borrower, the negative pledge agreement given or to be given by the Shareholder in favour of the Security Trustee as security for the obligations of the Borrowers under this Agreement and the other Finance Documents, in such form as the Lenders may approve or require and in the plural means all of them;

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

“**Notifying Lender**” has the meaning given in Clause 23.1 or Clause 24.2 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) at any time prior to the Drawdown Date, any Existing Security Interest;
- (c) liens for unpaid crew’s wages in accordance with usual maritime practice;
- (d) liens for salvage;
- (e) liens arising by operation of law for not more than 2 months’ prepaid hire under any charter in relation to a Ship not prohibited by this Agreement;



- (f) 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 45 days overdue (unless the overdue amount is being contested by the relevant Borrower in good faith by appropriate steps) and subject, in the case of liens for repair or maintenance, to Clause 14.13(g);
- (g) any Security Interest created in favour of a plaintiff or defendant in any action of the court or tribunal before whom such action is brought as security for costs and expenses where the relevant Borrower is prosecuting or defending such action in good faith by appropriate steps; and
- (h) Security Interests arising by operation of law in respect of taxes which are not overdue for payment other than taxes being contested in good faith by appropriate steps and in respect of which appropriate reserves have been made;

“**Person**” has the meaning given to it in Clause 10.18;

“**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'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 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 or which would have such jurisdiction if their assistance were requested by the courts of a country referred to in paragraphs (b) or (c) above;

“**Poseidon Principles**” means the financial industry framework for assessing and disclosing the climate alignment of ship finance portfolios published in June 2019 as the same may be amended or replaced to reflect changes in applicable law or regulation or the introduction of or changes to mandatory requirements of the International Maritime Organisation from time to time;

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

“**Quotation Date**” means, in relation to any period for which an interest rate is to be determined under any provision of a Finance Document, the day which is 2 Business Days

before the first day of that period, unless market practice differs in the London Interbank Market for a currency, in which case the Quotation Date will be determined by the Agent in accordance with market practice in the London Interbank Market (and if quotations would normally be given by leading banks in the London Interbank Market on more than one day, the Quotation Date will be the last of those days);

“**Reference Bank**” means, in relation to the determination of LIBOR and any mandatory costs, the London office of such bank as may be appointed by the Agent after consultation with (but without the approval of) the Borrowers;

“**Reference Bank Rate**” means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks:

- (a) if:
  - (i) the Reference Bank is a contributor to the Screen Rate; and
  - (ii) it consists of a single figure,  
as the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributes to the Screen Rate and asked to submit to the relevant administrator; or
- (b) in any other case, as the rate at which the Reference Bank could fund itself in dollars for the relevant period with reference to the unsecured whole sale funding market;

“**Related Fund**” in relation to a fund (the “**first fund**”), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an affiliate of the investment manager or investment adviser of the first fund.

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

“**Relevant Nominating Body**” means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board;

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

“**Repayment Instalment**” has the meaning given to it in Clause 8.1;

“**Replacement Benchmark**” means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
  - (i) the administrator of that Screen Rate; or
  - (ii) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Benchmark” will be the replacement under paragraph (ii) above;

- (b) in the opinion of the Majority Lenders and the Borrowers, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or
- (c) in the opinion of the Majority Lenders and the Borrowers, an appropriate successor to a Screen Rate;

“**Representative**” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian;

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

“**Retention Account**” means an account in the joint names of the Borrowers with the Account Bank designated “Ammos Shipping Corp./ Wave Shipping Corp./ Brandeis Shipping Corporation/ Buff Shipping Corporation – Retention Account”, or any other account (with that or another office of the Account Bank) which replaces this account and is designated by the Agent as the Retention Account for the purposes of this Agreement;

“**Sanctioned Person**” has the meaning given to it in Clause 10.18;

“**Sanctioned Country**” has the meaning given to it in Clause 10.18;

“**Sanctions**” means any economic or trade sanctions or restrictive measures enacted, administered, imposed or enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), the U.S. Department of State, the United Nations Security Council and/or the European Union and/or any of its member states and/or Her Majesty’s Treasury and/or the State Secretariat for Economic Affairs of Switzerland (SECO) and/or the French Republic or other relevant sanctions authority;

“**Screen Rate**” means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for dollars for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrowers.

“**Screen Rate Replacement Event**” means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders, and the Borrowers materially changed;
- (b)
  - (i)
    - (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or

- (B) information is published in any order, decree, notice, petition or filing, however described, or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent, provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;
- (ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
- (iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
- (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
- (v) the supervisor of the administrator of that Screen Rate makes a public announcement or publishes information:
  - (A) stating that that Screen Rate is no longer or, as of a specified future date will no longer be, representative of the underlying market or economic reality that it is intended to measure and that representativeness will not be restored (as determined by such supervisor); and
  - (B) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication; or
- (c) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
  - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrowers) temporary; or
  - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the Screen Rate Contingency Period; or
- (d) in the opinion of the Majority Lenders and the Borrowers, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement;

**“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 by virtue of the Finance Documents or any judgment relating to the Finance Documents; and for this purpose, there shall be disregarded any total or partial discharge of these liabilities, or variation of their terms, which is effected by, or in connection with, any bankruptcy, liquidation, arrangement or other procedure under the insolvency laws of any country;

**“Security Cover Ratio”** means, at any relevant time, the aggregate of:

- (a) the aggregate of the Market Value of the Ships; plus
- (b) the net realisable value of any additional security provided at that time under Clause 15,

at that time expressed as a percentage of the Loan;

**“Security Interest”** means:

- (a) a mortgage, charge (whether fixed or floating) or pledge, any maritime or other lien or any other security interest of any kind; and
- (b) the rights of the plaintiff under an action *in rem* in which the vessel concerned has been arrested or a writ has been issued or similar step taken.

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

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

- (a) all amounts which have become due for payment by a 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) no 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 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 BNP Paribas acting through its office 35, rue de la Gare 75019 Paris, France, or any successor of it appointed under clause 5 of the Agency and Trust Deed;

“**Shareholder**” means in relation to each of the Borrowers, Navios Maritime Operating L.L.C. a limited liability company formed and existing under the laws of the Marshall Islands whose registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960;

“**Ship**” means each of Ship A, Ship B, Ship C and Ship D and, in the plural, means all of them;

“**Ship A**” has the meaning given to that term in Schedule 5;

“**Ship B**” has the meaning given to that term in Schedule 5;

“**Ship C**” has the meaning given to that term in Schedule 5;

“**Ship D**” has the meaning given to that term in Schedule 5;

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

- (a) actual, constructive, compromised, agreed or arranged total loss of that Ship;
- (b) any expropriation, confiscation, requisition or acquisition of a 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 one year without any right to an extension unless a Ship is within 30 days redelivered to the full control of the Borrower owning that Ship;
- (c) any condemnation of that Ship by any tribunal or by any person or person claiming to be a tribunal; and
- (d) any arrest, capture, seizure, confiscation or detention of that Ship (including any hijacking or theft) unless it is within the Relevant Period redelivered to the full control of the Borrower owning that Ship.

In this definition “**Relevant Period**” means:

- (a) in the case of any arrest of a Ship, within 1 month; and
- (b) in the case of piracy or capture, seizure, confiscation or detention of a Ship (including any hijacking or theft) 90 days **Provided that** if the relevant underwriters confirm to the Agent in writing prior to the end of the 90-day period referred to in (i) above that the relevant Ship is subject to an approved piracy insurance cover, the earlier of 12 months after the date on which that Ship is captured by pirates and the date on which the piracy insurance cover expires;

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

- (a) in the case of an actual loss, the date on which it occurred or, if that is unknown, the date when that Ship was last heard of;
- (b) in the case of a constructive, compromised, agreed or arranged total loss of that Ship, the earlier of:
  - (i) the date on which a notice of abandonment is given to the insurers; and

- (ii) the date of any compromise, arrangement or agreement made by or on behalf of the Borrower owning that Ship, with that Ship's insurers in which the insurers agree to treat that Ship as a total loss; and
- (c) in the case of any other type of total loss, on the earlier of:
  - (i) the date at which a total loss is subsequently admitted by such insurers;
  - (ii) the date at which a total loss is subsequently adjudged by a competent court of law or arbitration tribunal to have occurred, if such insurers do not immediately admit such claim; or
  - (iii) 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 26.2;

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

**"UK Bail-In Legislation"** means Part 1 of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutes or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings);

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

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

**"US Tax Obligor"** means:

- (a) a person which is resident for tax purposes in the United States of America; or
- (b) a person some or all of whose payments under the Finance Documents are from sources within the United States for US federal income tax purposes; and

**"Write-down and Conversion Powers"** means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to any other applicable Bail-In Legislation other than the UK Bail-In Legislation:
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and

- (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to the UK Bail-In Legislation, any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers.

## 1.2 Construction of certain terms

In this Agreement:

“**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 or fax;

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

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

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

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

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



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

“**obligatory insurances**” means, in relation to a Ship, all insurances effected, or which the Borrower owning that Ship, 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 individual, any entity, 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) (1/11/03), clause 8 of the Institute Time Clauses (Hulls) (1/10/83) (1/11/95) or the Institute Amended Running Down Clause (1/10/71) or any equivalent provision;

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

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

“**successor**” includes any person who is entitled (by assignment, novation, merger or otherwise) to any 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;

“**war risks**” includes the risk of mines and all risks excluded by clauses 29, 30 or 31 of the International Hull Clauses (1/11/02), clauses 29 or 30 of the International Hull Clauses (1/11/03), clauses 24, 25 or 26 of the Institute Time Clauses (Hulls) (1/11/95) or clauses 23, 24 or 25 of the Institute Time Clauses (Hulls) (1/10/83) or any equivalent provision; and

“**which is continuing**” or “**is continuing**”, a Potential Event of Default is continuing if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived.

### 1.3 **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; or
  - (b) P has direct or indirect control over a majority of the voting rights attached to the issued shares of S;
- and any company of which S is a subsidiary is a parent company of S **Provided** that there shall be excluded from this definition any subsidiaries which are listed on a public stock exchange.

### 1.5 **General Interpretation**

- (a) In this Agreement:
  - (i) 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;
  - (ii) 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; and
  - (iii) words denoting the singular number shall include the plural and vice versa.
- (b) Clauses 1.1 to 1.4 and paragraph (a) of this Clause 1.5 apply unless the contrary intention appears.
- (c) References in Clause 1.1 to a 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 the Lenders in the case of substantial modifications) approves or requires.
- (d) The clause headings shall not affect the interpretation of this Agreement.

## **2 LOAN FACILITY**

### **2.1 Amount of loan facility**

Subject to the other provisions of this Agreement, the Lenders shall make available to the Borrowers a senior secured term loan facility, in one Advance, in an aggregate amount not exceeding the Total Commitments.

### **2.2 Lenders' participations in the Advance**

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

### **2.3 Purpose of Advance**

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

## **3 POSITION OF THE LENDERS**

### **3.1 Interests of Lenders several**

The rights of the Creditor Parties under this Agreement are several; accordingly each Lender shall be entitled to sue for any amount which has become due and payable by the Borrowers to it under this Agreement without joining the Security Trustee or any other Creditor Party as additional parties in the proceedings, save that the Security Interests created by any of the Finance Documents may only be enforced in accordance with Clause 19.2.

### **3.2 Proceedings by individual Creditor Party**

However, without the prior consent of the Lenders, no Creditor Party may bring proceedings in respect of:

- (a) any other liability or obligation of any Borrower or a Security Party under or connected with a Finance Document; or
- (b) any misrepresentation or breach of warranty by any Borrower or a Security Party in or connected with a Finance Document.

### **3.3 Obligations of Creditor Parties several**

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

- (a) the obligations of the other Lenders being increased; nor
- (b) a Borrower, any Security Party or any other Lender being discharged (in whole or in part) from its obligations under any Finance Documents,

and in no circumstances shall a Lender have any responsibility for a failure of another Lender to perform its obligations under this Agreement.

### **3.4 Parties bound by certain actions of Lenders**

Every Lender, each Borrower and each Security Party shall be bound by:

- (a) any determination made, or action taken, by the Lenders under any provision of a Finance Document;
- (b) any instruction or authorisation given by the Lenders to the Agent or the Security Trustee under or in connection with any Finance Document; and
- (c) any action taken (or in good faith purportedly taken) by the Agent or the Security Trustee in accordance with such an instruction or authorisation.

### **3.5 Reliance on action of Agent**

However, each Borrower and each Security Party:

- (a) shall be entitled to assume that the Lenders have duly given any instruction or authorisation which, under any provision of a Finance Document, is required in relation to any action which the Agent has taken or is about to take; and
- (b) shall not be entitled to require any evidence that such an instruction or authorisation has been given.

### **3.6 Construction**

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

## **4 DRAWDOWN**

### **4.1 Request for Advance**

- (a) Subject to the following conditions, the Borrowers may request the Advance to be advanced by ensuring that the Agent receives a completed Drawdown Notice not later than 11.00 a.m. (Paris time) 2 Business Days prior to the intended Drawdown Date (or such other shorter period as the Lenders may agree).
- (b) The Borrowers may not deliver more than one Drawdown Notice.

### **4.2 Availability**

The conditions referred to in Clause 4.1 are that:

- (a) the Drawdown Date has to be a Business Day during the Availability Period;
- (b) the amount of the Advance shall not exceed the lesser of (i) \$40,000,000 and (ii) 65 per cent. of the aggregate Initial Market Value of the Ships;
- (c) the Advance shall be made available in a single amount; and
- (d) the aggregate amount of the Advance shall not exceed the Total Commitments.

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

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

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

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

A Drawdown Notice must be signed by an officer or other authorised person of each Borrower; and once served a Drawdown Notice cannot be revoked without the prior consent of the Agent, acting on the authority of the Majority Lenders.

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

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

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

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

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

#### **4.7 Disbursement of Loan to third party**

The payment by the Agent under Clause 4.6 to any third party specified by the Borrowers in the Drawdown Notice shall constitute the making of the Advance and the Borrowers shall at that time become indebted, as principal and direct obligors, to each Lender in an amount equal to that Lender's Contribution.

### **5 INTEREST**

#### **5.1 Payment of normal interest**

Subject to the provisions of this Agreement, interest on the Loan 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 (i) the Margin and (ii) LIBOR for that Interest Period subject to Clause 5.6 and 5.7.

**5.3 Payment of accrued interest**

In the case of an Interest Period longer than 3 months, accrued interest shall be paid every 3 months during that Interest Period and on the last day of that Interest Period.

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

The Agent shall notify the Borrowers and each Lender of:

- (a) each rate of interest; and
  - (b) the duration of each Interest Period,
- as soon as reasonably practicable after each is determined.

**5.5 Obligation of Reference Bank to quote**

Each of the Reference Banks which is a Lender shall use all reasonable efforts to supply the quotation required of it for the purposes of fixing a rate of interest under this Agreement unless that Reference Bank ceases to be a Lender pursuant to Clause 26.16.

**5.6 Absence of quotations by Reference Bank**

If any Reference Bank fails to supply a quotation, the relevant rate of interest shall be set in accordance with the following provisions of this Clause 5.

**5.7 Market disruption**

The following provisions of this Clause 5 apply if:

- (a) LIBOR is to be determined by reference to the Reference Banks and no Reference Bank does, before 1.00 p.m. (London time) on the Quotation Date for an Interest Period, provide quotations to the Agent in order to fix LIBOR; or
- (b) at least 1 Business Day before the start of an Interest Period, a Lender may notify the Agent that LIBOR fixed by the Agent would not accurately reflect the cost to that Lender of funding its respective Contribution (or any part of it) during the Interest Period in the London interbank market at or about 11.00 a.m. (London time) on the Quotation Date for the Interest Period; or
- (c) at least 1 Business Day before the start of an Interest Period, the Agent is notified by a Lender (the “**Affected Lender**”) that for any reason it is unable to obtain Dollars in the London Interbank Market in order to fund its Contribution (or any part of it) during the Interest Period.

**5.8 Notification of market disruption**

The Agent shall promptly notify the Borrowers and each of the Lenders stating the circumstances falling within Clause 5.7 which have caused its notice to be given.

**5.9 Suspension of drawdown**

If the Agent’s notice under Clause 5.8 is served before the Advance is made:

- (a) in a case falling within paragraphs (a) or (b) of Clause 5.7, the Lenders’ obligations to make such Advance;

- (b) in a case falling within Clause 5.7(c), the Affected Lender's obligation to participate in such Advance, shall be suspended while the circumstances referred to in the Agent's notice continue.

**5.10 Negotiation of alternative rate of interest**

Subject to Clause 27.4 (*Replacement of Screen Rate*), if the Agent's notice under Clause 5.8 is served after the Advance is made, the Borrowers, the Agent and the Lenders or (as the case may be) the Affected Lender shall use reasonable endeavours to agree, within the 30 days after the date on which the Agent serves its notice under Clause 5.8 (the "**Negotiation Period**"), an alternative interest rate or (as the case may be) an alternative basis for the Lenders or (as the case may be) the Affected Lender to fund or continue to fund their or its Contribution during the Interest Period concerned.

**5.11 Application of agreed alternative rate of interest**

Subject to Clause 27.4 (*Replacement of Screen Rate*), any alternative interest rate or an alternative basis which is agreed during the Negotiation Period shall take effect in accordance with the terms agreed.

**5.12 Alternative rate of interest in absence of agreement**

Subject to Clause 27.4 (*Replacement of Screen Rate*), 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 concerned or (as the case may be) the Affected Lender in Dollars or in any available currency of their or its Contribution plus the Margin; and the procedure provided for by this Clause 5.12 shall be repeated if the relevant circumstances are continuing at the end of the interest period so set by the Agent.

**5.13 Notice of prepayment**

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

**5.14 Prepayment; termination of Commitments**

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

- (a) on the date on which the Agent serves that notice, the Total Commitments or (as the case may require) the Commitment of the Affected Lender shall be cancelled; and
- (b) on the last Business Day of the interest period set by the Agent, the Borrowers shall prepay (without premium or penalty) the Loan or, as the case may be, the Affected Lender's Contribution, together with accrued interest thereon at the applicable rate plus the Margin.

## **5.15 Application of prepayment**

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

## **6 INTEREST PERIODS**

### **6.1 Commencement of Interest Periods**

The first Interest Period shall commence on the Drawdown Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

### **6.2 Duration of normal Interest Periods**

Subject to Clauses 6.3 and 6.4, each Interest Period shall be:

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

### **6.3 Duration of Interest Periods for Repayment Instalments**

- (a) 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.
- (b) An Interest Period in respect of the Loan shall not extend beyond the Final Maturity Date.

### **6.4 Non-availability of matching deposits for Interest Period selected**

If, after the Borrowers have selected an Interest Period longer than 3 months, any Lender notifies the Agent by 11.00 a.m. (London 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 3 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 any Borrower under any Finance Document which the Agent, the Security Trustee or the other designated payee does not receive on or before the relevant date, that is:

- (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 paragraphs (a) and (b) of Clause 7.3; or
- (b) in the case of any other overdue amount, the rate set out at paragraph (b) of Clause 7.3.

**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 aggregate of 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 (after consultation with the Reference Bank) determines that Dollar deposits for any such period are not being made available to the Reference Bank by leading banks in the London Interbank Market in the ordinary course of business, a rate from time to time determined by the Agent by reference to the cost of funds to the Reference Bank from such other sources as the Agent (after consultation with the Reference Bank) may from time to time determine.

**7.4 Notification of interest periods and default rates**

The Agent shall promptly notify the Lenders and the Borrowers of each interest rate determined by the Agent under Clause 7.3 and of each period selected by the Agent for the purposes of paragraph (b) of that Clause; but this shall not be taken to imply that the Borrowers are liable to pay such interest only with effect from the date of the Agent's notification.

**7.5 Payment of accrued default interest**

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

**7.6 Compounding of default interest**

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

## **8 REPAYMENT AND PREPAYMENT**

### **8.1 Amount of repayment instalments**

The Borrowers shall repay the Loan by:

- (a) 16 equal consecutive quarterly instalments (each a “**Repayment Instalment**” and together, the “**Repayment Instalments**”) each in the amount of \$1,428,750 each; and
- (b) a balloon instalment in the amount of up to \$17,140,000 (the “**Balloon Instalment**”).

**Provided that** if the amount of the Loan actually drawn down is less than \$40,000,000 each Repayment Instalment and the Balloon Instalment shall be reduced pro rata by an amount in aggregate equal to the undrawn amount.

### **8.2 Repayment Dates**

The first Repayment Instalment shall be repaid on the date falling 3 months after the Drawdown Date with the remaining Repayment Instalments to be repaid at 3-months intervals thereafter and the last Repayment Instalment together with the Balloon Instalment shall be repaid on the Final Maturity Date.

### **8.3 Final Repayment Date**

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

### **8.4 Voluntary prepayment**

Subject to the following conditions, the Borrowers may prepay the whole or any part of the Loan on the last day of an Interest Period in respect thereof.

### **8.5 Conditions for voluntary prepayment**

The conditions referred to in Clause 8.4 are that:

- (a) a partial prepayment shall be \$1,000,000 or an integral multiple of \$1,000,000;
- (b) the Agent has received from the Borrowers at least 10 Business Days’ prior written notice specifying the amount to be prepaid and the date on which the prepayment is to be made (such date shall be the last day of an Interest Period); and
- (c) the Borrowers have provided evidence satisfactory to the Agent that any consent required by the Borrowers or any Security Party in connection with the prepayment has been obtained and remains in force, and that any requirement relevant to this Agreement which affects the Borrowers or any Security Party has been complied with.

### **8.6 Effect of notice of prepayment**

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

### **8.7 Notification of notice of prepayment**

The Agent shall notify the Lenders promptly upon receiving a prepayment notice, and shall provide any Lender which so requests with a copy of any document delivered by the Borrowers under Clause 8.5(c).

## 8.8 Mandatory prepayment

The Borrowers shall be obliged to prepay the Relevant Amount:

- (a) if a Ship is sold, on or before the date on which the sale is completed by delivery of that Ship to the buyer; or
- (b) if a Ship becomes a Total Loss, on the earlier of the date falling 180 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.

In this Clause 8.8:

“**Relevant Amount**” means:

- (i) an amount equal to the higher of:
  - (A) the Relevant Fraction of the Loan on the date on which the relevant Ship is sold or becomes a Total Loss; and
  - (B) an amount which after the application of the prepayment to be made pursuant to Clause 8.10(b) results in the Security Cover Ratio being at last equal to the greater of (A) the Security Cover Ratio required to be maintained under Clause 15.1. and (B) the percentage which applied immediately prior to the applicable event described in paragraph (a) or (b) of this Clause 8.8; or
- (ii) if the relevant Ship is the last Ship subject to a Mortgage, the whole of the Loan.

“**Relevant Fraction**” means a fraction of which the numerator is the Market Value of the Ship which is sold or becomes a Total Loss and the denominator is the aggregate of (A) the Market Value of the other Ships then subject to a Mortgage and (B) the Market Value of that Ship.

## 8.9 Amounts payable on prepayment

A prepayment shall be made together with accrued interest (and any other amount payable under Clause 21 below 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 (subject to Clause 8.11) without premium or penalty.

## 8.10 Application of partial prepayment

Any partial prepayment shall be applied:

- (a) if made pursuant to Clause 8.4, in order of maturity against the then outstanding Repayment Instalments and the Balloon Instalment or in such other manner as the Agent (acting on the instructions of the Lenders) may agree with the Borrowers;
- (b) if made pursuant to Clause 8.8:
  - (i) **FIRSTLY:** pro rata first against the Repayment Instalments and the Balloon Instalment; and

- (ii) SECONDLY: pro rata towards repayment of any overdue interest, any breakage costs, any accrued interest relating to the Loan, any other costs, fees, expenses, commissions due under this Agreement; and
- (iii) THIRDLY: any surplus shall be released to the Borrowers **Provided that** no Event of Default or Potential Event of Default has occurred or is continuing.

**8.11 No reborrowing**

No amount repaid or prepaid may be reborrowed.

**9 CONDITIONS PRECEDENT**

**9.1 Documents, fees and no default**

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

- (a) that on or before the date of this Agreement, the Agent receives:
  - (i) the documents described in Part A of Schedule 3 in a form and substance satisfactory to the Agent and its lawyers;
  - (ii) the up-front fee referred to in Clause 20.1; and
  - (iii) the commitment fee referred to in Clause 20.2; and
  - (iv) payment in full of any expenses payable pursuant to Clause 20.2 which are due and payable on the date of this Agreement;
- (b) that, before or on the Drawdown Date, the Agent receives:
  - (i) the documents described in Part B of Schedule 3 in form and substance satisfactory to the Agent and its lawyers; and
  - (ii) payment in full of any expenses payable pursuant to Clause 20.2 which are due and payable on the date of this Agreement;
- (c) that at the date of the Drawdown Notice and at the Drawdown Date:
  - (i) no Event of Default or Potential Event of Default has occurred or is continuing or would result from the borrowing of the relevant Advance; and
  - (ii) the representations and warranties in Clause 10 and those of the Borrowers or any Security Party which are set out in the other Finance Documents would be true and not misleading if repeated on each of those dates with reference to the circumstances then existing;
  - (iii) none of the circumstances contemplated by Clause 5.7 has occurred and is continuing; and
  - (iv) there has been no material adverse change in the business, management, condition (financial or otherwise), results of operations, operation, performance, prospects or properties of the Borrowers or any of them and/or the Corporate Guarantor applying as at 31 December 2020;

- (d) that, if the ratio set out in Clause 15.1 were applied immediately following the making of the Advance, the Borrowers would not be obliged to provide additional security or prepay part of the Loan under that Clause; and
- (e) that the Agent has received, and found to be acceptable to it, any further opinions, consents, agreements and documents in connection with the Finance Documents which the Agent may, with the authorisation of the Majority Lenders, request by notice to the Borrowers prior to the Drawdown Date.

## **9.2 Waiver of conditions precedent**

If the Majority Lenders, at their discretion, permit the Advance to be borrowed before certain of the conditions referred to in Clause 9.1 are satisfied, the Borrowers shall ensure that those conditions are satisfied within 5 Business Days after the Drawdown Date (or such longer period as the Agent may, with the authority of the Majority Lenders, specify).

## **10 REPRESENTATIONS AND WARRANTIES**

### **10.1 General**

Each Borrower represents and warrants (which representations and warranties (other than the ones in Clauses 10.11 and 10.12) shall survive the execution of this Agreement and shall be deemed to be repeated throughout the Security Period on the first day of each Interest Period with respect to the facts and circumstances then existing) 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 the Marshall Islands.

### **10.3 Share capital and ownership**

Borrower A and Borrower B are authorised to issue 500 registered and/or bearer shares, without par value, Borrower C and Borrower D are authorised to issue 500 registered and/or bearer shares of \$1.00 each, and the ownership of all those shares is held in registered form by the Shareholder, free of any Security Interest or other claim, by the persons disclosed in writing to the Agent prior to the date of this Agreement.

### **10.4 Corporate power**

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

- (a) continue to own the Ship owned by it under the relevant Approved Flag;
- (b) execute the Finance Documents to which that Borrower is a party; and
- (c) borrow under this Agreement and to make all the payments contemplated by, and to comply with, those Finance Documents to which that 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 that 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 that Borrower's legal, valid and binding obligations enforceable against that 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 a Borrower is a party:

- (a) each 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 a Borrower of each Finance Document to which it is a party, and the borrowing by that Borrower of the Loan, and its compliance with each Finance Document to which it is a party will not involve or lead to a contravention of:

- (a) any 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.

**10.9 No withholding taxes**

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

- 10.10 No default**  
No Event of Default or Potential Event of Default has occurred and is continuing or would result from the entry into, the performance of, or any transaction contemplated by, any Finance Document.
- 10.11 Information**  
All information which has been provided in writing by or on behalf of the Borrowers or any member of the Group to any Creditor Party in connection with any Finance Document satisfied the requirements of Clause 11.5; all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.7; and there has been no material adverse change in the financial position or state of affairs, operation, performance or prospects of the Borrowers or any of them or any Security Party (excluding the Approved Manager) as at 31 March 2021 from that disclosed to the Agent.
- 10.12 No litigation**  
No material, legal or administrative action involving any Borrower or any Security Party (excluding the Approved Manager) has been commenced or taken or, to a Borrower's knowledge, is likely to be commenced or taken.
- 10.13 Compliance with certain undertakings**  
At the date of this Agreement, each Borrower is in compliance with Clauses 11.2, 11.4, 11.9 and 11.13.
- 10.14 Taxes paid**  
Each Borrower has paid all taxes applicable to, or imposed on or in relation to that Borrower, its business or the Ship owned by it.
- 10.15 No money laundering; anti-bribery**  
None of the Borrowers, the Security Parties and the Designated Shareholder nor any of their subsidiaries, directors or officers, or, to their best knowledge, any affiliate, agent or employee of them, have engaged in any activity or conduct which would violate any applicable anti-bribery, anti-corruption or anti-money laundering laws, regulations or rules in any applicable jurisdiction and each of the Borrowers, the Security Parties and the Designated Shareholder has instituted and maintains policies and procedures designed to prevent violation of such laws, regulations and rules.
- 10.16 ISM Code, ISPS Code Compliance and Environmental Laws**  
All requirements of the ISM Code, ISPS Code and Environmental Laws as they relate to the Borrowers, the Approved Manager and the Ships have been complied with.
- 10.17 No immunity**  
No Borrower, nor any of its assets is entitled to immunity on the grounds of sovereignty or otherwise from any legal action or proceeding (which shall include, without limitation, suit attachment prior to judgement, execution or other enforcement).

**10.18 Sanctions**

None of the Borrowers, the Security Parties, the Designated Shareholder or any charterer in respect of a Ship nor any of their subsidiaries, directors or officers, or, to their best knowledge, any affiliate, agent or employee of them, is an individual or entity (a “**Person**”), that is, or is owned or controlled by Persons that are: (i) the target of any Sanctions (a “**Sanctioned Person**”) or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions broadly prohibiting dealings with such government, country or territory (a “**Sanctioned Country**”).

**10.19 Validity and completeness of the Existing Charters**

- (a) Each Existing Charter constitutes legal, valid, binding and enforceable obligations of the Borrower which is a party thereto.
- (b) The copies of the Existing Charters delivered to the Agent before the date of this Agreement are true and complete copies.
- (c) No amendments or additions to the Existing Charters have been agreed nor has any Borrower waived any of its respective rights under the relevant Existing Charter.

**10.20 Insolvency**

In relation to each Borrower, no corporate action, legal proceeding or other procedure or step described in Clause 19.1(g) or creditors’ process described in that clause has been taken or, to its knowledge, threatened in relation to it, and none of the circumstances described in Clause 19.1(g) applies to it.

**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 authority of the Majority Lenders, otherwise permit in writing.

**11.2 Title and negative pledge**

Each Borrower will:

- (a) hold the legal title to, and own the entire beneficial interest in the Ship owned by it, the Insurances and Earnings, free from all Security Interests and other interests and rights of every kind, except for those created by the Finance Documents and the effect of assignments contained in the Finance Documents;
- (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 party do and will rank at least pari passu with all other present and future unsecured liabilities, except for liabilities which are mandatorily preferred by law.



### **11.3 No disposal of assets**

No 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,

but paragraph (a) does not apply to any charter of a Ship as to which Clause 14.13 applies.

### **11.4 No other liabilities or obligations to be incurred**

No Borrower will incur any liability or obligation except:

- (a) liabilities and obligations under the Finance Documents to which it is a party;
- (b) subject to other provisions of this Agreement, liabilities or obligations reasonably incurred in the ordinary course of trading, maintaining, repairing, operating and chartering the Ship owned by it;
- (c) at any time prior to the Drawdown Date, the Existing Indebtedness; and
- (d) Financial Indebtedness to any other corporation which is a member of the Group or individual who is a shareholder or majority shareholder in a member of the Group **Provided that** such Financial Indebtedness shall be fully subordinated to the Loan and the relevant Borrower shall, promptly following the Agent's demand, execute or procure the execution of any documents which the Agent specifies to create or maintain the subordination of the rights of the relevant member of the Group against the relevant Borrower to those of the Creditor Parties under the Finance Documents.

### **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, correct, accurate and not misleading and will not omit any material fact or consideration.

### **11.6 Provision of financial statements**

Each Borrower will send or procure that they are sent 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 Corporate Guarantor (commencing with the financial year ending on 31 December 2020), the audited annual consolidated accounts of the Group; and
- (b) as soon as possible, but in no event later than 90 days after the end of the 6-month period ending on 30 June in each financial year of the Corporate Guarantor (commencing with the 6-month period ending on 30 June 2021), the semi-annual consolidated management accounts in respect of the Group, duly certified as to their correctness by an officer of the Corporate Guarantor; and

- (c) promptly after each request by the Agent, such further financial information about that Borrower, the Ship owned by it and the Corporate Guarantor or any other member of the Group (including, but not limited to, information regarding the charter arrangements, Financial Indebtedness and operating expenses) as the Agent may 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;
- (b) 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
- (c) fully disclose or provide for all significant liabilities of the Group.

**11.8 Shareholder notices**

Each Borrower will send to the Agent following a request by the Agent, and at the same time as they are despatched, copies of all communications which are despatched to that Borrower's shareholders or any class of them.

**11.9 Consents**

Each Borrower will, and will procure that each Security Party will, maintain in force and promptly obtain or renew, and will promptly send certified copies to the Agent of, all consents required:

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

**11.10 Maintenance of Security Interests**

Each Borrower will:

- (a) at its own cost, do all that it 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) above, at its own cost, promptly register, file, record or enrol any Finance Document with any court or authority in all Pertinent Jurisdictions, pay any stamp, registration or similar tax in all Pertinent Jurisdictions in respect of any Finance Document, give any notice or take any other step which, in the opinion of the Majority Lenders, is or has become necessary or desirable for any Finance Document to be valid, enforceable or admissible in evidence or to ensure or protect the priority of any Security Interest which it creates.

**11.11 Notification of litigation**

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

**11.12 Principal place of business**

Each Borrower will maintain its place of business, and keep its corporate documents and records, at the address stated in Clause 28.2(a); and no Borrower will establish, or do anything as a result of which it would be deemed to have, a place of business in the United States or the United Kingdom or any country other than Greece.

**11.13 Confirmation of no default**

Each Borrower will, within 2 Business Days after service by the Agent of a written request, serve on the Agent a notice which is signed by an officer of each Borrower and which:

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

The Agent may serve requests under this Clause 11.13 from time to time; this Clause 11.13 does not affect the Borrowers' obligations under Clause 11.14.

**11.14 Notification of default**

Each Borrower will notify the Agent as soon as that Borrower becomes aware of the occurrence of an Event of Default or a Potential Event of Default and will thereafter keep the Agent fully up-to-date with all developments.

**11.15 Provision of further information**

Each Borrower will, as soon as practicable after receiving the request, provide the Agent with any additional financial or other information relating:

- (a) to that Borrower, the Ship owned by it, the Insurances, the Earnings or the Corporate Guarantor;
- (b) to any other matter relevant to, or to any provision of, a Finance Document; or
- (c) any information requested in respect of that Borrower, the Corporate Guarantor, the Shareholder and the Designated Shareholder in connection with the Creditor Parties' and/or the Account Bank's "Know your customer" regulations, including, but not limited to information required pursuant to all applicable laws and regulations, including, without limitation, the laws of the European Union, Switzerland and the United States of America in connection with that Borrower, the Corporate Guarantor and any other Security Party and their respective beneficial owners,

which may be requested by the Agent, the Security Trustee or any Lender at any time.

**11.16 Provision of copies and translation of documents**

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

**11.17 “Know your customer” checks. If:**

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of any Borrower or any Security Party after the date of this Agreement; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (c), any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrowers shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or the Lender concerned (for itself or, in the case of the event described in paragraph (c), on behalf of any prospective new Lender) in order for the Agent, the Lender concerned or, in the case of the event described in paragraph (c), any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

**11.18 Sanctions**

- (a) None of the Borrowers and the Security Parties will, directly or indirectly, use the proceeds of the loan hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or any other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, a Sanctioned Person or Sanctioned Country or (ii) use in repayment of any moneys due to the Finance Parties any earnings of the Ship paid directly or indirectly from any activities or business of or with any Person, or in any country, territory or port, that, at the time of such payment, is, a Sanctioned Person or Sanctioned Country, or (iii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the loan hereunder, whether as underwriter, advisor, investor, lender, hedge provider, facility or security agent or otherwise);
- (b) Without limiting paragraphs (a) and (b) of Clause 14.10, the Borrowers shall procure:
  - (i) that the Ships shall not be used directly or indirectly by or for the benefit of a Sanctioned Person;
  - (ii) that the Ships shall not be used directly or indirectly in calling, trading or otherwise going to a Sanctioned Country;

- (iii) that the Ships shall not be used directly or indirectly in any transport or any goods that prohibited by Sanctions;
- (iv) that the Ships shall not be used directly or indirectly in any manner which would expose the Ships, any Security Party, any Existing Charterer, crew or the insurers to enforcement proceedings or any other consequences whatsoever arising from Sanctions;
- (v) that the Ships shall not be used or traded directly or indirectly in any manner which would trigger the operation of any sanctions limitation or exclusion clause (or similar) in the Insurances and/or re-insurance of the Ships; and
- (vi) that each Charterparty and each sub-charterparty in respect of a Ship shall contain, for the benefit of the relevant Borrower, language which broadly gives effect to the provisions of paragraph (b) of Clause 14.10 as regards Sanctions and of this sub-paragraph (b)(vi) of this Clause 11.18 and which permits refusal of employment or voyage orders if compliance would result in a breach of Sanctions.

**11.19 Hedging of interest rate risks – Right of first refusal**

The Borrowers hereby grant to the Lenders a right of first refusal for the purpose of hedging any part of the interest rate risk under this Agreement throughout the Security Period. In the event that the Borrowers decide to hedge their exposure under this Agreement, they shall enter into such documentation as may be required by the relevant Lender (in such capacity the “**Swap Bank**”) and the provisions of this Agreement will be amended to incorporate the amendments required, including, but not limited to, Clause 17 reflecting pari passu sharing in the security and receipts between the Lenders and the Swap Bank.

**11.20 Minimum Liquidity**

Each Borrower shall maintain in its Earnings Account credit balances (“**Minimum Liquidity**”) in an aggregate amount of not less than \$500,000, commencing from the Drawdown Date and at all times thereafter throughout the Security Period.

**11.21 No amendment to the Existing Charter**

No Borrower will agree to any material amendment (and for, the avoidance of doubt, “material” to mean any amendment which may detrimentally affect the interests of any Creditor Party) or supplement to, or waive or fail to enforce, any Existing Charter or any of its provisions.

**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) carry on any business other than the ownership, chartering and operation of the Ship owned by it; or
- (b) pay any dividend or make any other form of distribution or effect any form of redemption, purchase or return of share capital if:
  - (i) an Event of Default has occurred at such time; or
  - (ii) an Event of Default would occur as a direct result of such distribution, redemption, purchase or return; or
- (c) provide any form of credit or financial assistance or issue guarantees in favour of any other corporation or individual other than in the normal course of its business **Provided that** that corporation or individual to whom the of credit or financial assistance has been granted or in favour of whom the guarantee has been issued fully subordinates its rights to the rights of the Creditor Parties under the Finance Documents on terms acceptable to the Agent;
- (d) provide any form of credit or financial assistance to:
  - (i) a person who is directly or indirectly interested in that 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 that Borrower than those which it could obtain in a bargain made at arms' length; or
- (e) open or maintain any account with any bank or financial institution except accounts with the Account Bank for the purposes of the Finance Documents and any accounts disclosed to the Agent on or prior to the date of this Agreement; or
- (f) issue, allot or grant any person a right to any shares in its capital or repurchase or reduce its issued share capital; or
- (g) 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; or
- (h) enter into any form of amalgamation, merger or de-merger or any form of reconstruction or reorganisation.

## 13 INSURANCE

### 13.1 General

Each Borrower undertakes with each Creditor Party to comply with the following provisions of this Clause 13, from the Drawdown Date and throughout the term of the Security Period, except as the Agent may, with the authority of the Majority Lenders, otherwise permit in writing.

### **13.2 Maintenance of obligatory insurances**

Each Borrower shall keep the Ship owned by it, at all times during the Security Period, insured at the expense of that Borrower against:

- (a) fire and usual marine risks (including hull and machinery and excess risks); and
- (b) war risks; and
- (c) protection and indemnity mean the usual risks including liability for oil pollution and excess war risk P&I cover; and
- (d) any other risks against which the Lenders consider, having regard to practices and other circumstances prevailing at the relevant time, it would in the opinion of the Lenders be reasonable for that Borrower to insure and which are specified by the Security Trustee by notice to that Borrower.

### **13.3 Terms of obligatory insurances**

Each Borrower shall effect such insurances:

- (a) in Dollars;
- (b) in the case of fire and usual marine risks and war risks, in such amounts as shall from time to time be approved by the Agent but in any event in an amount not less than the greater of (i) the Market Value of the Ship owned by it and (ii) an amount which, when aggregated with the amount for which the other Ships then subject to a Mortgage is insured, is equal to 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 under basic protection and indemnity club entry (with the international group of protection and indemnity clubs) and the international marine insurance market (currently \$1,000,000,000);
- (d) in relation to protection and indemnity risks in respect of the relevant Ship's full value and tonnage;
- (e) on such terms as shall from time to time be approved in writing by the Agent (including, without limitation, a blocking and trapping clause); and
- (f) through approved brokers and with approved insurance companies and/or underwriters or, in the case of war risks and protection and indemnity risks, in approved war risks and protection and indemnity risks associations which are members of the International Group of Protection and Indemnity Associations.

#### 13.4 Further protections for the Creditor Parties

In addition to the terms set out in Clause 13.3, each Borrower shall procure that the obligatory insurances shall:

- (a) subject always to paragraph (b), name that Borrower as the sole named assured unless the interest of every other named assured is limited:
  - (i) in respect of any obligatory insurances for hull and machinery and war risks;
    - (A) to any provable out-of-pocket expenses that it has incurred and which form part of any recoverable claim on underwriters; and
    - (B) to any third party liability claims where cover for such claims is provided by the policy (and then only in respect of discharge of any claims made against it); and
  - (ii) in respect of any obligatory insurances for protection and indemnity risks, to any recoveries it is entitled to make by way of reimbursement following discharge of any third party liability claims made specifically against it;
- (b) name (or be amended to name) the Security Trustee as mortgagee for its rights and interests, warranted no operational interest and with full waiver of rights of subrogation against the Security Trustee, but without the Security Trustee thereby being liable to pay (but having the right to pay) premiums, calls or other assessments in respect of such insurance;
- (c) name the Security Trustee as sole loss payee with such directions for payment as the Security Trustee may specify;
- (d) provide that all payments by or on behalf of the insurers under the obligatory insurances to the Security Trustee shall be made without set-off, counterclaim or deductions or condition whatsoever;
- (e) provide that the insurers shall waive, to the fullest extent permitted by English law, their entitlement (if any) (whether by statute, common law, equity, or otherwise) to be subrogated to the rights and remedies of the Security Trustee in respect of any rights or interests (secured or not) held by or available to the Security Trustee in respect of the Secured Liabilities, until the Secured Liabilities shall have been fully repaid and discharged, except that the insurers shall not be restricted by the terms of this paragraph (d) from making personal claims against persons (other than any Borrower or any Creditor Party) in circumstances where the insurers have fully discharged their liabilities and obligations under the relevant obligatory insurances;
- (f) provide that such obligatory insurances shall be primary without right of contribution from other insurances which may be carried by the Security Trustee;
- (g) provide that the Security Trustee may make proof of loss if that Borrower fails to do so; and
- (h) 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 30 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 that Borrower proposes to renew that insurance and of the proposed terms of renewal; and
  - (ii) in case of any substantial change in insurance cover, obtain the Lenders' approval to the matters referred to in paragraph (i) above;
- (b) at least 7 days before the expiry of any obligatory insurance, renew the insurance; and
- (c) procure that the approved brokers and/or the war risks and protection and indemnity associations with which such a renewal is effected shall promptly after the renewal notify the Security Trustee in writing of the terms and conditions of the renewal.

### **13.6 Copies of policies; letters of undertaking**

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

- (a) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment complying with the provisions of Clause 13.4;
- (b) they will hold such policies, and the benefit of such insurances, to the order of the Security Trustee in accordance with the said loss payable clause;
- (c) they will advise the Security Trustee immediately of any material change to the terms of the obligatory insurances;
- (d) they will notify the Security Trustee, not less than 14 days before the expiry of the obligatory insurances, in the event of their not having received notice of renewal instructions from that Borrower or its agents and, in the event of their receiving instructions to renew, they will promptly notify the Security Trustee of the terms of the instructions; and
- (e) they will not set off against any sum recoverable in respect of a claim relating to the Ship owned by it under such obligatory insurances any premiums or other amounts due to them or any other person whether in respect of that Ship or otherwise, they waive any lien on the policies or, any sums received under them, which they might have in respect of such premiums or other amounts, and they will not cancel such obligatory insurances by reason of non-payment of such premiums or other amounts, and will arrange for a separate policy to be issued in respect of that Ship forthwith upon being so requested by the Security Trustee.

### **13.7 Copies of certificates of entry**

Each Borrower shall ensure that any protection and indemnity and/or war risks associations in which the Ship owned by it is entered provides the Security Trustee with:

- (a) a certified copy of the certificate of entry for that Ship; and
- (b) a letter or letters of undertaking in such form as may be required by the Lenders; and

- (c) where required to be issued under the terms of insurance/indemnity provided by that Borrower's protection and indemnity association, a certified copy of each United States of America voyage quarterly declaration (or other similar document or documents) made by that Borrower in relation to that Ship in accordance with the requirements of such protection and indemnity association; and
- (d) a certified copy of each certificate of financial responsibility for pollution by oil or other Environmentally Sensitive Material issued by the relevant certifying authority in relation to that Ship.

**13.8 Deposit of original policies**

Each Borrower shall ensure that all policies relating to obligatory insurances are deposited with the approved 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**

No Borrower shall employ the Ship owned by it, nor permit her to be employed, outside the cover provided by any obligatory insurances.

**13.12 Compliance with terms of insurances**

No Borrower shall either do or omit to do (or permit to be done or not to be done) any act or thing which would or might render any obligatory insurance invalid, void, voidable or unenforceable or render any sum payable thereunder repayable in whole or in part; and in particular:

- (a) each Borrower shall take all necessary action and comply with all requirements which may from time to time be applicable to the obligatory insurances, and (without limiting the obligation contained in Clause 13.6(c) above) ensure that the obligatory insurances are not made subject to any exclusions or qualifications to which the Security Trustee has not given its prior approval;
- (b) no Borrower shall make any changes relating to the classification or the Classification Society or manager or operator of the Ship owned by it approved by the underwriters of the obligatory insurances;
- (c) each Borrower shall make all quarterly or other voyage declarations which may be required by the protection and indemnity risks association in which the Ship owned by it is entered to maintain cover for trading to the United States of America and Exclusive Economic Zone (as defined in the United States Oil Pollution Act 1990 or any other applicable legislation); and

- (d) no 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 (including but not limited to any applicable laws and Sanctions), 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**

No Borrower shall make or agree to any alteration to the terms of any obligatory insurance or waive any right relating to any obligatory insurance without the prior written consent of the Security Trustee.

**13.14 Settlement of claims**

No 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**

Each Borrower shall provide the Security Trustee, at the time of each such communication, copies of all written communications in case of, but not limited to, an Event of Default, Total Loss or Major Casualty 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) above 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 appointed by the Agent as to the adequacy of the obligatory insurances effected or proposed to be effected; and/or

- (b) effecting, maintaining or renewing any such insurances as are referred to in Clause 13.17 below or dealing with or considering any matters relating to any such insurances,

and that 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 Lenders may from time to time consider appropriate:

- (a) a mortgagee's interest marine insurance in relation to the Ships in an amount equal to 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 that Ship or of the Borrower owning that Ship, 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 that Borrower, of any operator, charterer, manager or sub-manager of that Ship or of any officer, employee or agent of that 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 that Borrower, any other person referred to in paragraph (i) above, or of any officer, employee or agent of that Borrower or of such a person, including the casting away or damaging of that Ship and/or that 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 relation to the Ships in an amount equal to 110 per cent. of the Loan, providing for the indemnification of the Security Trustee 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 a Ship, the imposition of any Security Interest over that Ship and/or any other matter capable of being insured against under a mortgagee's interest additional perils policy whether or not similar to the foregoing,

and 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 Lenders shall be entitled to review the requirements of this Clause 13 from time to time in order to take account of any changes in circumstances after the date of this Agreement which are, in the opinion of the Lenders, significant and capable of affecting any Borrower or any Ship and its or their Insurances (including, without limitation, changes in the availability or the cost of Insurances or the risks to which the Borrower owning that Ship may be subject), and may appoint insurance consultants in relation to this review at the cost of the Borrowers, such review to be carried out at the Agent's request, at any time during the Security Period if the Agent (acting on the instructions of the Lenders) considers necessary (the reasonable fees

of the insurance consultants to conduct such review shall be deducted from the Earnings Accounts (or any of them) and each Borrower hereby agrees to arrange the transfer of monies from its Earnings Account in order to pay such fees) **Provided that** the Borrowers shall not be required to pay the fees of the insurance consultants to conduct such review more often than once a year unless an Event of Default has occurred and is continuing.

**13.19 Modification of insurance requirements**

The Security Trustee shall notify the Borrowers of any proposed modification under Clause 13.18 to the requirements of this Clause 13 which the Lenders consider appropriate in the circumstances, and such modification shall take effect on and from the date it is notified in writing to the Borrowers as an amendment to this Clause 13 and shall bind the Borrowers accordingly.

**13.20 Compliance with mortgagee's instructions**

The Security Trustee shall be entitled (without prejudice to or limitation of any other rights which it may have or acquire under any Finance Document) to require a Ship to remain at any safe port or to proceed to and remain at any safe port designated by the Security Trustee until the Borrower owning that Ship implements any amendments to the terms of the obligatory insurances and any operational changes required as a result of a notice served under Clause 13.19.

**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, except as the Agent may, with the authorisation of the Majority Lenders, otherwise permit in writing.

**14.2 Ship's name and registration**

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

**14.3 Repair and classification**

Each Borrower shall keep the Ship owned by it in a good, safe and seaworthy condition and state of repair:

- (a) consistent with first-class ship ownership and management practice;
- (b) so as to maintain the highest class with a Classification Society which is a member of IACS acceptable to the Agent (acting with the authorisation of the Lenders) free of overdue recommendations and conditions of such Classification Society;
- (c) so as to comply with all laws and regulations applicable to vessels registered at ports of the Approved Flag State or to vessels trading to any jurisdiction to which such Ship may trade from time to time, including but not limited to the ISM Code and the ISM Code Documentation and the ISPS Code; and

- (d) each Borrower shall use its best efforts to allow the Agent (or its agents), at any time, to inspect the original class and related records of that Borrower and the Ship owned by it electronically (through the Classification Society directly) and to take copies of such records.
- 14.4 Modification**
- No Borrower shall make any modification or repairs to, or replacement of, the Ship or equipment installed on the Ship owned by it which would or might materially alter the structure, type or performance characteristics of that Ship or materially reduce its value.
- 14.5 Removal of parts**
- No Borrower shall 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 relevant Ship the property of that Borrower and subject to the security constituted by the relevant Mortgage **Provided that** each Borrower may install equipment owned by a third party if the equipment can be removed without any risk of damage to its Ship.
- 14.6 Surveys**
- Each Borrower shall submit the Ship owned by it regularly to all periodical or other surveys which may be required for classification purposes and, if so required by the Lenders provide the Security Trustee, with copies of all survey reports.
- 14.7 Technical Survey**
- Without prejudice to each Borrower's obligations pursuant to Clause 14.6, each Borrower promptly following the request of the Agent will, submit the Ship for a technical survey by an independent surveyor or surveyors appointed by the Agent (provided such technical survey does not interfere with the ordinary trading of the Ship owned by it). All fees and expenses incurred in relation to the appointment of the surveyor or surveyors and the preparation and issue of all technical reports pursuant to this Clause 14.7 shall be for the account of the Borrowers.
- 14.8 Inspection**
- Each Borrower shall permit the Security Trustee (by surveyors or other persons appointed by it for that purpose) to board the Ship owned by it at all times (but in any event without interfering with the ordinary trading of the Ship owned by it) to inspect its condition or to satisfy themselves about proposed or executed repairs, shall afford all proper facilities for such inspections and pay to the Agent the amount of all fees, costs and expenses incurred in respect of such inspections **Provided that** so long as no Event of Default shall have occurred that Borrower shall not be obliged to pay any fees and expenses in respect of more than one inspection of its Ship in any calendar year.

**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 owned by it, the Earnings or the Insurances; and
  - (c) all other outgoings whatsoever in respect of the Ship owned by it, the Earnings or the Insurances,
- and, forthwith upon receiving notice of the arrest of that Ship, or of her detention in exercise or purported exercise of any lien or claim, that Borrower shall procure her release by providing bail or otherwise as the circumstances may require.

**14.10 Compliance with laws etc.**

Each Borrower shall:

- (a) comply, or procure compliance with the ISM Code (including, for the avoidance of doubt, by the Approved Manager), all Environmental Laws, the ISPS Code, Sanctions and all other laws or regulations relating to the Ship owned by it, its ownership, operation and management or to the business of that Borrower;
- (b) not employ the Ship owned by it, nor allow its employment in any manner contrary to any law or regulation in any relevant jurisdiction including but not limited to the ISM Code and the ISPS Code and Sanctions; 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 Lenders has been given and that Borrower has (at its expense) effected any special, additional or modified insurance cover which the Lenders may require.

**14.11 Provision of information**

Each Borrower shall promptly provide the Security Trustee with any information which the Lenders request regarding:

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

- (g) any other information which the Creditor Parties (or any of them) may reasonably request, and, upon the Security Trustee's request, provide copies of any current charter relating to that Ship, and copies of that Borrower's or the Approved Manager's Document of Compliance or any other document issued under ISM Code Documentation.

**14.12 Notification of certain events**

Each Borrower shall immediately notify the Security Trustee by letter of:

- (a) any casualty which is or is likely to be or to become a Major Casualty;
- (b) any occurrence as a result of which the Ship owned by it has become or is, by the passing of time or otherwise, likely to become a Total Loss;
- (c) any requirement or recommendation made by any insurer or Classification Society or by any competent authority which is not complied with in accordance with its terms;
- (d) any arrest or detention of the Ship owned by it, any exercise or purported exercise of any lien on the Ship or its Earnings or any requisition of such Ship for hire;
- (e) any dry docking of the Ship owned by it;
- (f) any Environmental Claim made against that Borrower or in connection with the Ship owned by it, or any Environmental Incident;
- (g) any claim for breach of the ISM Code or the ISPS Code being made against that Borrower, the Approved Manager or otherwise in connection with the Ship owned by it; or
- (h) any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with,

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

**14.13 Restrictions on chartering, appointment of managers etc.**

No Borrower shall, in relation to the Ship owned by it:

- (a) let that Ship on demise charter for any period;
- (b) enter into any time or consecutive voyage charter in respect of that Ship for a term which exceeds, or which by virtue of any optional extensions may exceed, 12 months except as the Agent may consent, such consent not to be unreasonably withheld;
- (c) enter into any charter in relation to that Ship under which more than 2 months' hire (or the equivalent) is payable in advance;
- (d) charter that Ship otherwise than on bona fide arm's length terms at the time when that Ship is fixed;
- (e) appoint a manager of that Ship other than the Approved Manager or agree to any material alteration to the terms of the Approved Manager's appointment which could lead to an Event of Default ("material alterations" to include, without limitation, alterations concerning fees, duration and parties);



- (f) de-activate or lay up that Ship; or
- (g) put that Ship into the possession of any person for the purpose of work being done upon her in an amount exceeding or likely to exceed \$500,000 (or the equivalent in any other currency) unless that person has first given to the Security Trustee and in terms satisfactory to it a written undertaking not to exercise any lien on that Ship or her Earnings for the cost of such work or otherwise.

**14.14 Notice of Mortgage**

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

**14.15 Sharing of Earnings**

No Borrower shall:

- (a) enter into any agreement or arrangement for the sharing of any Earnings;
- (b) enter into any agreement or arrangement for the postponement of any date on which any Earnings are due; the reduction of the amount of any Earnings or otherwise for the release or adverse alteration of any right of that 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 other than customary profit sharing arrangements in time charter contracts.

**14.16 Time Charter Assignment**

If a Borrower enters into any Charterparty, that Borrower shall, at the request of the Agent, execute in favour of the Security Trustee a Charterparty Assignment, and shall deliver to the Agent such other documents equivalent to those referred to at paragraphs 3, 4 and 5 of Part A and 7 of Part B of Schedule 3 hereof as the Agent may require.

**14.17 ISM Code, ISPS Code compliance and Environmental Laws**

All requirements of the ISM Code, ISPS Code and Environmental Laws as they relate to each Borrower, the Approved Manager, the Ship owned by the relevant Borrower shall be complied with at all times.

**14.18 Poseidon Principles**

Each Borrower shall, upon the request of any Lender and at the cost of the Borrowers, on or before 31st July in each calendar year, supply or procure the supply by the relevant Approved Classification Society (as specified by the relevant Lender) to the Agent of all information necessary in order for any Lender to comply with its obligations under the Poseidon Principles in respect of the preceding year, including, without limitation, all ship fuel oil consumption data required to be collected and reported in accordance with Regulation 22A of Annex VI and any Statement of Compliance, in each case relating to the Ship owned by it for the preceding calendar year provided always that, for the avoidance of doubt, such information shall be "Confidential Information" for the purposes of Clause 30.1 (*Confidential Information*) but the Borrowers acknowledge that, in accordance with the Poseidon Principles, such information will form part of the information published regarding the relevant Lender's portfolio climate alignment.

**15 SECURITY COVER**

**15.1 Minimum required security cover**

Clause 15.2 applies if the Agent notifies the Borrowers that the Security Cover Ratio is below 120 per cent.

**15.2 Provision of additional security; prepayment**

If the Agent serves a notice on the Borrowers under Clause 15.1, the Borrowers shall prepay such part (at least) of the Loan as will eliminate the shortfall on or before the date falling 1 month after the date on which the Agent's notice is served under Clause 15.1 (the "**Prepayment Date**") unless at least 1 Business Day before the Prepayment Date it has provided, or ensured that a third party has provided, additional security which, in the reasonable opinion of the Majority Lenders, has a net realisable value at least equal to the shortfall.

In this Clause 15.2 "**security**" means a Security Interest over an asset or assets (whether securing a Borrower's liabilities under the Finance Documents or a guarantee in respect of those liabilities), or a guarantee, letter of credit or other security (including any cash pledged to the Security Trustee) in respect of that Borrower's liabilities under the Finance Documents.

**15.3 Requirement for additional documents**

The Borrowers shall not be deemed to have complied with Clause 15.2 above until the Agent has received in connection with the additional security certified copies of documents of the kinds referred to in paragraphs 3, 4 and 5 of Schedule 3, Part A and such legal opinions in terms acceptable to the Majority Lenders from such lawyers as they may select.

**15.4 Valuation of Ship**

The market value of a Ship at any date is that shown in a valuation prepared:

- (a) as at a date not more than 30 days previously;
- (b) by an Approved Broker selected by the Borrower and appointed by the Agent (unless the Borrower has not nominated an Approved Broker within 14 Business Days of the Agent's request in which case the Agent will be entitled to select and appoint an Approved Broker);
- (c) with or without physical inspection of that Ship (as the Agent may require); and
- (d) on the basis of a sale for prompt delivery for cash on normal arm's length commercial terms as between a willing seller and a willing buyer, free of any existing charter or other contract of employment (as the Agent may require).

**15.5 Value of additional security**

The net realisable value of any additional security which is provided under Clause 15.1 and which consists of a Security Interest over a vessel shall be that shown by a valuation complying with the requirements of Clause 15.4.

**15.6 Valuations binding**

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

**15.7 Provision of information**

The Borrowers shall promptly provide the Agent and any Approved Broker or expert acting under Clause 15.4 or 15.5 with any information which the Agent or the Approved Broker or expert may request for the purposes of the valuation; and, if the Borrowers fails to provide the information by the date specified in the request, the valuation may be made on any basis and assumptions which the Approved Broker or the Majority Lenders (or the expert appointed by them) consider prudent.

**15.8 Payment of valuation expenses**

Without prejudice to the generality of the Borrowers' obligations under Clauses 20.3, 20.4 and 20.5, the Borrowers shall, on demand, pay the Agent the amount of the fees and expenses of any Approved Broker or expert instructed by the Agent under this Clause and all legal and other expenses incurred by any Creditor Party in connection with any matter arising out of this Clause **Provided that** so long as no Event of Default shall have occurred and is continuing all valuations of each Ship commissioned by the Agent for the purposes of this Clause 15 which confirm that the Borrowers have satisfied the test in Clause 15.1, no Borrower shall be obliged to pay the fees and expenses in respect of more than one valuation or (as applicable) one set of valuations of the Ship owned by it in any calendar year.

**15.9 Frequency of valuations**

The Borrowers acknowledge and agree that the Agent may commission valuation(s) of any Ship at such times as the Agent may reasonably request (including, without limitation, on the occurrence of any breach of obligation under this Agreement, any Finance Document or any other relevant documentation in connection therewith) and, in any event not less than once in any calendar year.

**16 PAYMENTS AND CALCULATIONS**

**16.1 Currency and method of payments**

All payments to be made:

- (a) by the Lenders to the Agent; or

- (b) by any Borrower to the Agent, the Security Trustee or any Lender,  
under a Finance Document shall be made to the Agent or to the Security Trustee, in the case of an amount payable to it:
- (i) by not later than 11.00 a.m. (New York City time) on the due date;
  - (ii) 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);
  - (iii) to the account of Agent, as the Agent may from time to time notify to the Borrowers and the other Creditor Parties; and
  - (iv) in the case of an amount payable to the Security Trustee, to such account as it may from time to time notify to the Borrowers and the other Creditor Parties.

**16.2 Payment on non-Business Day**

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

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

**16.3 Basis for calculation of periodic payments**

All interest and 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 the Lender or the Security Trustee may have notified to the Agent not less than 5 Business Days previously; and
- (b) amounts to be applied in satisfying amounts of a particular category which are due to the Lenders generally shall be distributed by the Agent to each Lender pro rata to the amount in that category which is due to it.

**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 the Borrowers or a Lender, without first having received that sum, the Borrowers 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 the Borrowers and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrowers and any Security Party.

**16.10 Agent's memorandum account**

The Agent shall maintain a memorandum account showing the amounts advanced by the Lenders and all other sums owing to the Agent, the Security Trustee and each Lender from the Borrowers and each Security Party under the Finance Documents and all payments in respect of those amounts made by the Borrowers and any Security Party.

**16.11 Accounts prima facie evidence**

If any accounts maintained under Clauses 16.9 and 16.10 show an amount to be owing by a Borrower or a Security Party to a Creditor Party, those accounts shall be prima facie evidence that that amount is owing to that Creditor Party.

**17 APPLICATION OF RECEIPTS**

**17.1 Normal order of application**

Except as any Finance Document may otherwise provide, any sums which are received or recovered by any Creditor Party under or by virtue of any Finance Document shall be applied:

- (a) FIRST: in or towards satisfaction of any amounts then due and payable under the Finance Documents in the following 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 (ii) and (iii) below (including, but without limitation, all amounts payable by any Borrower under Clauses 20, 21 and 22 of this Agreement or by any Borrower or any Security Party under any corresponding or similar provision in any other Finance Document);

- (ii) secondly, in or towards satisfaction pro rata of any and all amounts of interest or default interest payable to the Creditor Parties under the Finance Documents; and
  - (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 (or any of them), 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 17.1(a);
- (c) THIRDLY: in or towards satisfaction of any amounts representing management fees then due and payable by the Borrowers (or any of them) to the Approved Manager in connection with the Ships; and
- (d) FOURTHLY: any surplus shall be paid to the Borrowers (or any of them) or to any other person appearing to be entitled to it.

**17.2 Variation of order of application**

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

**17.3 Notice of variation of order of application**

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

**17.4 Appropriation rights overridden**

This Clause 17 and any notice which the Agent gives under Clause 17.2 shall override any right of appropriation possessed, and any appropriation made, by any Borrower or any Security Party.

## **18 APPLICATION OF EARNINGS**

### **18.1 Payment of Earnings**

Each Borrower undertakes with each Creditor Party that, throughout the Security Period (and subject only to the provisions of the General Assignment to which it is a party):

- (a) it shall maintain the Accounts opened in its name (whether individually or jointly) with the Account Bank;
- (b) it shall ensure that all Earnings of the Ship owned by it are paid to the Earnings Account for that Ship; and
- (c) the Minimum Liquidity amounts required to be maintained pursuant to Clause 11.20 shall be maintained in the relevant Earnings Account.

### **18.2 Monthly retentions**

The Borrowers undertake with each Creditor Party to ensure that, on and from the date falling one month after the Drawdown Date and at monthly intervals thereafter during the Security Period, there are transferred to the Retention Account out of the Earnings received in the relevant Earnings Account during the preceding month:

- (a) one-third of the amount of the relevant Repayment Instalment falling due under Clause 8.1 on the next Repayment Date; and
- (b) the relevant fraction of the aggregate amount of interest on the Loan which is payable on the next due date for payment of interest under this Agreement,

and the Borrowers irrevocably authorise the Agent to make those transfers if the Borrowers fail to do so.

The “**relevant fraction**”, in relation to paragraph (b), is a fraction of which the numerator is 1 and the denominator the number of months comprised in the then current Interest Period (or if the current Interest Period in respect of the Loan ends after the next due date for payment of interest under this Agreement, the number of months from the later of the commencement of the current Interest Period in respect of the Loan or the last due date for payment of interest to the next due date for payment of interest in respect of the Loan under this Agreement).

### **18.3 Shortfall in Earnings**

If the aggregate Earnings received in an Earnings Account are insufficient at any time for the required amount to be transferred to the Retention Account under Clause 18.2, the Borrowers shall immediately pay the amount of the insufficiency into the Retention Account.

### **18.4 Application of retentions**

Until an Event of Default or a Potential Event of Default occurs, the Agent shall, to the extent there are sufficient funds standing to the credit of the Retention Account, on each Repayment Date and on each due date for the payment of interest under this Agreement distribute to the Lenders in accordance with Clause 16.4 so much of the then balance on the Retention Account as equals:

- (a) the Repayment Instalment due on that Repayment Date pursuant to Clause 8.1; or
- (b) the amount of interest in respect of the relevant Advance or, as the case may be, the Loan payable on that interest payment date, in discharge of the Borrowers’ liability for that Repayment Instalment or that interest.

### **18.5 Application of Earnings**

Each Borrower undertakes with the Lenders that money from time to time credited to, or for the time being standing to the credit of, its Earnings Account shall (i) unless and until an Event of Default shall have occurred (whereupon the provisions of Clause 17.1 shall be and become applicable) or (ii) unless otherwise agreed in writing between the Borrowers and the Agent, be available for application in the following manner:

- (a) in or towards making payments of all amounts due and payable by the Borrowers under this Agreement (other than payments of principal and interest);
- (b) in or towards satisfaction of all amounts of interest or default interest payable to the Creditor Parties under the Finance Documents;
- (c) in or towards satisfaction of the Loan;
- (d) in or towards making payments of all fees due to the Approved Manager and thereafter meeting the costs and expenses from time to time incurred by or on behalf of a Borrower in connection with the operation of the Ship owned by it; and
- (e) as to any surplus from time to time arising on an Earnings Account following application as aforesaid, to be paid to the Borrower owning that Ship or to whomsoever it may direct.

### **18.6 Location of account**

Each Borrower shall promptly:

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

### **18.7 Debits for expenses etc.**

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

### **18.8 Borrowers' obligations unaffected**

The provisions of this Clause 18 (as distinct from a distribution effected under Clause 18.4) do not affect:

- (a) the liability of the Borrowers to make payments of principal and interest on the due dates; or
- (b) any other liability or obligation of the Borrowers or any Security Party under any Finance Document.



**18.9 Restriction on withdrawal**

During the Security Period no sum may be withdrawn by a Borrower from the Retention Account.

**19 EVENTS OF DEFAULT**

**19.1 Events of Default**

An Event of Default occurs if:

- (a) the Borrowers or any of them 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; or
- (b) any breach occurs of Clause 9.2, 10.15, 10.18, 11.2, 11.3, 11.18, 11.20, 12.2, 12.3, 13.2, 13.3, 14.2 or 15.2 or clause 12.3 of the Corporate Guarantee; or
- (c) any breach by the Borrowers or any of them or any Security Party occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a) or (b) above) if, in the opinion of the Majority Lenders, such default is capable of remedy, and such default continues unremedied 14 days after the earlier of (i) written notice from the Agent requesting action to remedy the same and (ii) any Borrower becoming aware of such breach; or
- (d) (subject to any applicable grace period specified in the Finance Document) any breach by the Borrowers or any of them or any Security Party occurs of any provision of a Finance Document (other than a breach covered by paragraphs (a), (b) or (c) above); or
- (e) any representation, warranty or statement made or repeated by, or by an officer of, any Borrower or a Security Party in a Finance Document or in a Drawdown Notice or any other notice or document relating to a Finance Document is untrue or misleading when it is made or repeated; or
- (f) any of the following occurs in relation to any Financial Indebtedness of a Relevant Person (for an amount exceeding, in the case of any Relevant Person other than a Borrower \$10,000,000 (or the equivalent in any other currency) in aggregate):
  - (i) any Financial Indebtedness of a Relevant Person is not paid when due or, if so payable, on demand; or
  - (ii) any Financial Indebtedness of a Relevant Person becomes due and payable or capable of being declared due and payable prior to its stated maturity date as a consequence of any event of default unless the Relevant Person is contesting the declaration of an event of default or of the Financial Indebtedness becoming due and payable in good faith and on substantial grounds by appropriate proceedings and adequate reserves have been set aside for its payment if such proceedings fail; or
  - (iii) a lease, hire purchase agreement or charter creating any Financial Indebtedness of a Relevant Person is terminated by the lessor or owner or becomes capable of being terminated as a consequence of any termination event; or

- (iv) any overdraft, loan, note issuance, acceptance credit, letter of credit, guarantee, foreign exchange or other facility, or any swap or other derivative contract or transaction, relating to any Financial Indebtedness of a Relevant Person ceases to be available or becomes capable of being terminated as a result of any event of default, or cash cover is required, or becomes capable of being required, in respect of such a facility as a result of any event of default; or
  - (v) any Security Interest securing any Financial Indebtedness of a Relevant Person becomes enforceable; or
- (g) any of the following occurs in relation to a Relevant Person:
- (i) a Relevant Person becomes, in the reasonable opinion of the Lenders, unable to pay its debts as they fall due; or
  - (ii) any assets of a Relevant Person are subject to any form of execution, attachment, arrest, sequestration or distress in respect of a sum of, or sums aggregating, \$10,000,000 or more or the equivalent in another currency and such execution, attachment, arrest, sequestration or distress is not withdrawn or discharged within thirty (30) days; or
  - (iii) any administrative or other receiver is appointed over any asset of a Relevant Person; or
  - (iv) an administrator is appointed (whether by the court or otherwise) in respect of a Relevant Person; or
  - (v) any formal declaration of bankruptcy or any formal statement to the effect that a Relevant Person is insolvent or likely to become insolvent is made by a Relevant Person or by the directors or officers 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, shareholders, officers or directors of a Relevant Person, (cc) a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person, or (dd) a government minister or public or regulatory authority of a Pertinent Jurisdiction for or with a view to the winding up of that or another Relevant Person or the appointment of a provisional liquidator or administrator in respect of that or another Relevant Person, or that or another Relevant Person ceasing or suspending business operations or payments to creditors, save that this paragraph does not apply to a fully solvent winding up of a Relevant Person other than a Borrower or the Corporate Guarantor which is, or is to be, effected for the purposes of an amalgamation or reconstruction previously approved by the Majority Lenders and effected not later than 3 months after the commencement of the winding up; or

- (viii) an administration notice is given or filed, an application or petition to a court is made or presented or any other step is taken by a creditor of a Relevant Person (other than a holder of Security Interests which together relate to all or substantially all of the assets of a Relevant Person) for the winding up of a Relevant Person or the appointment of a provisional liquidator or administrator in respect of a Relevant Person in any Pertinent Jurisdiction, unless the proposed winding up, appointment of a provisional liquidator or administrator is being contested in good faith, on substantial grounds and not with a view to some other insolvency law procedure being implemented instead and either (aa) the application or petition is dismissed or withdrawn within 60 days of being made or presented, or (bb) within 60 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 or officers 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, shareholders 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, shareholders, 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 country other than England, any event occurs, any proceedings are opened or commenced or any step is taken which, in the reasonable opinion of the Majority Lenders is similar to any of the foregoing; or
- (h) any Borrower or any Security Party ceases or suspends carrying on its business or a part of its business which, in the reasonable opinion of the Majority Lenders, is material in the context of this Agreement **Provided that** no Event of Default will occur under this paragraph (h) if the Security Party is an Approved Manager and the Borrowers replace such Approved Manager by another Approved Manager within 30 days from the date of such event; or
- (i) it becomes unlawful in any Pertinent Jurisdiction or impossible:
- (i) for any Borrower or any Security Party to discharge any liability under a Finance Document or to comply with any other obligation which the Majority Lenders consider material under a Finance Document; or
  - (ii) for the Agent, the Security Trustee or the Lenders to exercise or enforce any right under, or to enforce any Security Interest created by, a Finance Document; or

- (j) any official consent necessary to enable any Borrower to own, operate or charter the Ship owned by it or to enable any Borrower or any Security Party to comply with any provision which the Majority Lenders reasonably 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, unless the relevant Borrower contests any denial, expiration or revocation (other than with respect to a Finance Documents) and on the condition that, in the reasonable opinion of the Majority Lenders (i) there are real prospects of such contest being successfully granted/upheld by the relevant Borrower (ii) such contest being made in good faith; or
- (k) it appears to the Majority Lenders that, without their prior written consent:
- (i) a change has occurred or probably has occurred after the date of this Agreement in the legal or direct beneficial ownership of any of the shares in any Borrower or the Shareholder in the voting rights attaching to any of those shares; or
  - (ii) any Borrower ceases to be a wholly owned indirect subsidiary of the Corporate Guarantor; or
  - (iii) the Designated Shareholders own, in aggregate, less than 5 per cent. of the issued and outstanding voting shares in the Corporate Guarantor; or
  - (iv) the shares of the Corporate Guarantor cease to be listed on the New York Stock Exchange (NYSE) or any other US or European stock exchange acceptable to the Agent; or
  - (v) Mrs Angeliki Frangou and her direct descendants (either directly or indirectly) (through entities owned and controlled by her or trusts or foundations of which she is a beneficiary), ceasing to be the owner of, or having ultimate control of the voting rights attaching to all the issued shares in the general partner of the Corporate Guarantor, which is currently Olympos Maritime Ltd; or
- (l) any provision which the Majority Lenders consider material of a Finance Document proves to have been or becomes invalid or unenforceable, or a Security Interest created by a Finance Document proves to have been or becomes invalid or unenforceable or such a Security Interest proves to have ranked after, or loses its priority to, another Security Interest or any other third party claim or interest; or
- (m) the security constituted by a Finance Document is in any way imperilled or in jeopardy; or
- (n) any other event occurs or any other circumstances arise or develop including, without limitation:
- (i) a material adverse change in the business, condition (financial or otherwise), operation, state of affairs or prospects of any Borrower, the Corporate Guarantor or the Group; or
  - (ii) any accident or other event involving any Ship or another vessel owned, chartered or operated by a Relevant Person,
- in the light of which the Majority Lenders reasonably consider that there is a significant risk that any Security Party is, or will later become, unable to discharge its liabilities under the Finance Documents as they fall due or the enforceability of any Finance Document may be adversely affected.
- (o) **Existing Charters**

- (i) Any Existing Charter is frustrated (except as a result of a Total Loss of the relevant Ship), terminated (except by mere effluxion of time), cancelled or rescinded or purported to be cancelled or rescinded or the relevant Ship is withdrawn from service under that Existing Charter prior to its termination by effluxion of time.
- (ii) No Event of Default will occur under paragraph (i) of this Clause 19.1(o) (*Existing Charters*) if, as soon as possible, but in any event not later than 90 days after such frustration, termination, cancellation or rescission the Borrower owning the relevant Ship:
  - (A) has entered into a new charter (a “**Replacement Charter**”) in respect of that Ship with a duration which is approximately the same as the remaining duration of such Existing Charter on terms otherwise acceptable to the Agent (acting on the instructions of the Majority Lenders at their sole discretion), which shall not be unreasonably withheld or delayed;
  - (B) has delivered to the Agent copies of such Replacement Charter or sufficient evidence that such Replacement Charter has been agreed and, if applicable, any related charter guarantee duly executed by the parties thereto and of each document to be delivered pursuant to each of them; and
  - (C) has complied with its obligations pursuant to Clause 14.16 (*Time Charter Assignment*) in relation to such Replacement Charter (as if same was by definition a Charterparty) and, if applicable, any related charter guarantee.

## 19.2 Actions following an Event of Default

On, or at any time after, the occurrence of an Event of Default, which is continuing:

- (a) the Agent may, and if so instructed by the Majority Lenders, the Agent shall:
  - (i) serve on the Borrowers a notice stating that all or part of the Commitments and all other obligations of each Lender to the Borrowers under this Agreement are terminated; and/or
  - (ii) serve on the Borrowers a notice stating that all or part of 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) above, 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 Lenders, the Security Trustee shall take any action which, as a result of the Event of Default or any notice served under paragraph (a) (i) or (ii) above, the Security Trustee, the Agent and/or the Majority 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 paragraph (a)(i) of Clause 19.2, 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 paragraph (a)(ii) of Clause 19.2, 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 paragraphs (a) (i) and (ii) of Clause 19.2 simultaneously or on different dates and it and/or the Security Trustee may take any action referred to in that Clause 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 the Borrowers or any Security Party with any form of claim or defence.

**19.7 Creditor Party's rights unimpaired**

Nothing in this Clause shall be taken to impair or restrict the exercise of any right given to individual Lenders 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 the Borrowers 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 caused by the gross negligence 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 a Borrower, a Security Party (excluding the Approved Manager), and any company which is a subsidiary of any Borrower or of a Security Party (excluding the Approved Manager) or of which any Borrower is a subsidiary.

## **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 Up-front fee**

The Borrowers shall pay to the Agent on or prior to the date of this Agreement a non-refundable up-front fee in the amount of \$400,000 (representing 1 per cent. of part of the Total Commitments) for distribution among the Lenders pro rata to their Commitments.

### **20.2 Commitment fee**

The Borrowers shall pay to the Agent (for the account of each Lender) a non-refundable commitment fee, at the rate of 1.00 per cent. per annum on the undrawn or uncanceled amount of the Total Commitments, payable quarterly in arrears for distribution among the Lenders pro rata to their Commitments, during the period from (and including) the date of this Agreement to the earlier of (i) the last Drawdown Date to occur under this Agreement and (ii) the last day of the Availability Period (and on the last day of such period).

### **20.3 Account Bank fee**

The Borrowers shall pay to the Account Bank on or prior to the date of this Agreement and on each anniversary thereof a non-refundable annual fee in the amount of \$1,000 in respect of each Earnings Account.

### **20.4 Costs of negotiation, preparation etc.**

The Borrowers shall pay to the Agent, within ten Business Days’ from its demand, the amount of all 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, out of pocket expenses, legal fees and any related VAT).

### **20.5 Costs of variations, amendments, enforcement etc.**

The Borrowers shall pay to the Agent, within ten Business Days’ from its demand, the amount of all documented 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, including, but not limited to, any amendment or supplement (or any proposal for such an amendment or supplement) contemplated in Clause 27.4 (*Replacement of Screen Rate*);
- (b) any consent or waiver by the Lenders, the Majority Lenders or the Creditor Party concerned under or in connection with a Finance Document, or any request for such a consent or waiver;
- (c) the valuation of any security provided or offered under Clause 15 or any other matter relating to such security;

- (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 a Ship pursuant to Clause 13.18;
- (e) the opinions of the independent insurance consultant referred to in paragraph 7 of Part B, Schedule 3; and
- (f) any step taken by any 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.

#### **20.6 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 liabilities, claims losses and expenses resulting from any failure or delay by the Borrowers to pay such a tax.

#### **20.7 Certification of amounts**

A notice which is signed by two 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 Advance 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 including, without limitation, where such receipt or recovery is made as a result of the voluntary or mandatory repayment or prepayment of the Loan, or any part thereof;
- (c) any failure (for whatever reason) by the Borrowers to make payment of any amount due under a Finance Document on the due date or, if so payable, on demand (after giving credit for any default interest paid by the Borrowers on the amount concerned under Clause 7); and



- (d) the occurrence and/or continuance of an Event of Default and/or the acceleration of repayment of the Loan under Clause 19, and in respect of any tax (other than tax on its overall net income or a FATCA Deduction) for which a Creditor Party is liable in connection with any amount paid or payable to that Creditor Party (whether for its own account or otherwise) under any Finance Document.

## **21.2 Breakage costs**

Without limiting its generality, Clause 21.1 covers any liability, expense 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, demands, proceedings, liabilities, taxes, losses and expenses of every kind ("**liability items**") which may be made or brought against, or incurred by, a Creditor Party, in any country, in relation to:

- (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 claims, expenses, liabilities and losses which are shown to have been directly and mainly caused by the dishonesty or wilful misconduct of the officers or employees of the Creditor Party concerned.

## **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 21.3 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 relating to safety at sea, pollution or the protection of the environment, the ISM Code, the ISPS Code or any Environmental Law.

## 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 a 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 each Borrower which is distinct from its other liabilities under the Finance Documents and which shall not be merged in any judgment or order relating to those other liabilities.

## 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 of the amounts due) 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 the Borrowers to the Agent or the Security Trustee for distribution to a Lender shall be treated as a sum due to that Lender.

## 21.8 **Sanctions**

- (a) The Borrowers shall, within three (3) Business Days of demand by a Creditor Party, indemnify each Creditor Party against any cost, loss or liability incurred by it as a result of any civil penalty or fine against, and all reasonable costs and expenses (including reasonable counsel fees and disbursements) incurred in connection with the defence thereof by, the Agent or any Lender as a result of conduct of the Borrowers or any Security Party or any of their partners, directors, officers, employees, agents or advisors, that violates any Sanctions.
- (b) The indemnity in Clause 21.8(a) above shall cover any losses incurred by each Creditor Party in any jurisdiction arising or asserted under or in connection with any law relating to any Sanctions.

**22 NO SET-OFF OR TAX DEDUCTION**

**22.1 No deductions**

All amounts due from the Borrowers under a Finance Document shall be paid:

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

**22.2 Grossing-up for taxes**

If a Borrower is required by law to make a tax deduction from any payment:

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

**22.3 Evidence of payment of taxes**

Within 1 month after making any tax deduction, the Borrower concerned shall deliver to the Agent documentary evidence satisfactory to the Agent that the tax had been paid to the appropriate taxation authority.

**22.4 Exclusion of tax on overall net income**

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

**22.5 FATCA information**

- (a) Subject to paragraph (c) below, each party to the Finance Documents shall, within 5 Business Days of a reasonable request by another party to the Finance Documents:
  - (i) confirm to that other party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and
  - (ii) supply to that other party such forms, documentation and other information relating to its status under FATCA as that other party reasonably requests for the purposes of that other party’s compliance with FATCA; and
  - (iii) supply to that other party such forms, documentation and other information relating to its status as that other party reasonably requests for the purposes of that other party’s compliance with any other law, regulation or exchange of information regime;

- (b) if a party to any Finance Document confirms to another party pursuant to sub-paragraph (i) of paragraph (a) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that party shall notify that other party reasonably promptly;
- (c) paragraph (a) above shall not oblige any Creditor Party, and paragraph (a)(iii) above shall not oblige any other party to a Finance Document, to do anything which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality;
- (d) if a party to any Finance Document fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party until such time as the party in question provides the requested confirmation, forms, documentation or other information.
- (e) If a Borrower is or becomes a US Tax Obligor or a FATCA FFI, it shall as soon as reasonably practicable inform the Agent of the same;
- (f) Where the Agent reasonably believes that its obligations under FATCA require it, the relevant Borrower or the relevant Security Party shall provide the Agent, upon request, with a W-8 BEN-E form (or any successor form) or any other forms or documentation the Agent may reasonably require, as soon as reasonably practicable. The Agent shall not be liable for any action which it takes or refrains from taking under or in connection with this paragraph (f);
- (g) If a Borrower is or becomes a US Tax Obligor or a FATCA FFI, or where the Agent reasonably believes that its obligations under FATCA require it, each Creditor Party shall, within 10 Business Days of the date of a request from the Agent supply to the Agent:
- (i) a withholding certificate on Form W-8 or Form W-9 (or any successor form) (as applicable); and/or
  - (ii) any withholding statement and other documentation, authorisations and waivers as the Agent may require to certify or establish the status of such Creditor Party under FATCA,
- the Agent shall provide any withholding certificate, withholding statement, documentation, authorisations and waivers it receives from a Creditor Party pursuant to this paragraph (g) to that Borrower or the relevant Security Party and shall be entitled to rely on any such withholding certificate, withholding statement, documentation, authorisations and waivers provided without further verification. The Agent shall not be liable for any action which it takes or refrains from taking under or in connection with this paragraph (g); and
- (h) The Borrowers, each Security Party and each Creditor Party agrees that if any withholding certificate, withholding statement, documentation, authorisations and waivers provided to the Agent pursuant to paragraphs (f) to (g) above is or becomes materially inaccurate or incomplete, it shall promptly update such withholding certificate, withholding statement,

documentation, authorisations and waivers or promptly notify the Agent in writing of its legal inability to do so. The Agent shall, if applicable, provide any such updated withholding certificate, withholding statement, documentation, authorisations and waivers to the Borrowers or the relevant Security Party. The Agent shall not be liable for any action which it takes or refrains from taking under or in connection with this paragraph (h).

## **22.6 FATCA Deduction**

- (a) Each party to a Finance Document may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and shall not be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each party to a Finance Document shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the party to a Finance Document to whom it is making the payment and, in addition, shall notify the Borrowers and the Agent and the Agent shall notify the other Creditor Parties.

## **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 for that Lender or any affiliate of that Lender:

- (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 23.2, 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

(a) Each Borrower shall, within 3 Business Days of a demand by the Agent, pay for the account of a Creditor Party the amount of any Increased Costs incurred by that Creditor Party or any of its affiliates as a result of:

- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
- (ii) compliance with any law or regulation made,

after the date of this Agreement.

(b) In this Agreement, “**Increased Costs**” means:

- (i) a reduction in the rate of return from the Loan or on a Creditor Party’s (or its affiliate’s) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Creditor Party or any of its affiliates to the extent that it is attributable to that Creditor Party having entered into its Commitment or funding or performing its obligations under any Finance Document and, for the avoidance of doubt, includes any Increased Costs incurred or suffered by a Creditor Party or any of its affiliates as a result of or with connection to Basel III, CRD IV or CRR,

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

### 24.2 Increased cost claims

(a) A Creditor Party (the “**Notifying Lender**”) intending to make a claim pursuant to Clause 24.1 shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.

(b) Each Creditor Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

### 24.3 Notification to Borrowers of claim for increased costs

The Agent shall promptly notify the Borrowers and the Security Parties of the notice which the Agent received from the Notifying Lender under Clause 24.2.

### 24.4 Payment of increased costs

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

**24.5 Notice of prepayment**

If the Borrowers are not willing to continue to compensate the Notifying Lender for the increased cost under Clause 24.4, the Borrowers may give the Agent not less than 15 days' notice of their intention to prepay the Notifying Lender's Contribution at the end of an Interest Period and/or to cancel the Notifying Lender's Available Commitment.

**24.6 Prepayment; termination of Commitment**

A notice under Clause 24.5 shall be irrevocable; the Agent shall promptly notify the Notifying Lender of the Borrowers' notice of intended prepayment; and:

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

**24.7 Application of prepayment**

Clause 8 shall apply in relation to the prepayment.

**25 SET-OFF**

**25.1 Application of credit balances**

Each Creditor Party may without prior notice:

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

**25.2 Existing rights unaffected**

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

**25.3 Sums deemed due to a Lender**

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

**25.4 No Security Interest**

This Clause 25 gives the Creditor Parties a contractual right of set off only and does not create any equitable charge or other Security Interest over any credit balance of any Borrower.

**26 TRANSFERS AND CHANGES IN LENDING OFFICES**

**26.1 Transfer by Borrowers**

No Borrower may, without the consent of the Agent, given on the instructions of all the Lenders:

- (a) transfer any of its rights or obligations under any Finance Document; or
- (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.

**26.2 Transfer by a Lender**

- (a) Subject to Clause 26.4, a Lender (the “**Transferor Lender**”) may, with the prior written consent of the Borrowers (such consent not to be unreasonably withheld or delayed), at any time allow:

- (i) its rights in respect of all or part of its Contribution; or
- (ii) its obligations in respect of all or part of its Commitment; or
- (iii) a combination of (i) and (ii),

to be (in the case of its rights) transferred to, or (in the case of its obligations) assumed by, another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in shipping loans, securities or other financial assets (a “**Transferee Lender**”) by delivering to the Agent a completed certificate in the form set out in Schedule 4 with any modifications approved or required by the Agent (a “**Transfer Certificate**”) executed by the Transferor Lender and the Transferee Lender,

**Provided that** the consent of the Borrowers shall not be required:

- (i) if an Event of Default has occurred; or
- (ii) the Transferee Lender is an existing Lender or an affiliate of an existing Lender.

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

- (b) Each Borrower will be deemed to have given its consent ten Business Days after the Transferor Lender has requested it unless consent is expressly refused by that Borrower within that time.



### **26.3 Transfer Certificate, delivery and notification**

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

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

### **26.4 Effective Date of Transfer Certificate**

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

### **26.5 No transfer without Transfer Certificate**

No assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation to, any Borrower, any Security Party, the Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

### **26.6 Lender re-organisation; waiver of Transfer Certificate**

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

### **26.7 Effect of Transfer Certificate**

A Transfer Certificate takes effect in accordance with English law as follows:

- (a) to the extent specified in the Transfer Certificate, all rights and interests (present, future or contingent) which the Transferor Lender has under or by virtue of the Finance Documents are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender’s title and of any rights or equities which the Borrowers 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 any Borrower or any Security Party against the Transferor Lender had not existed;
- (f) the Transferee Lender becomes entitled to all the rights under the Finance Documents which are applicable to the Lenders generally, including but not limited to those relating to the Majority Lenders and those under Clause 5.7 and Clause 20, and to the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender ceases to be entitled to them; and
- (g) in respect of any breach of a warranty, undertaking, condition or other provision of a Finance Document or any misrepresentation made in or in connection with a Finance Document, the Transferee Lender shall be entitled to recover damages by reference to the loss incurred by it as a result of the breach or misrepresentation, irrespective of whether the original Lender would have incurred a loss of that kind or amount.  
The rights and equities of any Borrower or any Security Party referred to above include, but are not limited to, any right of set off and any other kind of cross-claim.

**26.8 Maintenance of register of Lenders**

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

**26.9 Reliance on register of Lenders**

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

**26.10 Authorisation of Agent to sign Transfer Certificates**

The Borrowers, the Security Trustee and each Lender irrevocably authorise the Agent to sign Transfer Certificates on its behalf.

**26.11 Registration fee**

In respect of any Transfer Certificate, the Agent shall be entitled to recover a registration fee of \$1,500 (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.

**26.12 Sub-participation; subrogation assignment**

A Lender may sub-participate all or any part of its rights and/or obligations under or in connection with the Finance Documents without the consent of, or any notice to, the Borrowers, any Security Party, the Agent or the Security Trustee; and the Lenders may assign, in any manner and terms agreed by the Majority Lenders, the Agent and the Security Trustee, all or any part of those rights to an insurer or surety who has become subrogated to them.

**26.13 Disclosure of information**

Subject to Clause 26.4, a Lender may, disclose to a potential Transferee Lender or, to any sub-participant any information which the Lender has received in relation to the Borrowers, any Security Party or their affairs under or in connection with any Finance Document, unless the information is clearly of a confidential nature in which case the consent of the Corporate Guarantor would be required **Provided that** a potential Transferee Lender or any sub-participant to whom disclosure is made agrees to be bound by the terms of the confidentiality undertaking in this Clause 26.13 by way of a confidentiality agreement in a form acceptable to the Borrowers.

The Borrowers agree that the terms and conditions of this Agreement shall remain confidential and shall not, or shall procure that the Corporate Guarantor shall not, disclose (whether, without limitation, in writing or orally) to third parties (other than any disclosure to the Corporate Guarantor's shareholders, officers, employees or professional advisers **Provided that** the person to whom disclosure is made agrees to be bound by the terms of the confidentiality undertaking in this Clause 26.13 any information required to be disclosed by law, regulation or any governmental or competent regulatory authority (including without limitation, any securities exchange), provided that, to the extent reasonably practicable, the Corporate Guarantor shall inform the Agent on the proposed form, timing, nature and purpose of the disclosure) the existence of this Agreement or the terms and conditions contained herein without the prior written consent of the Lenders.

**26.14 Change of lending office**

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

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

**26.15 Notification**

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

**26.16 Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 26, each Lender may without consulting with or obtaining consent from any Borrower or any Security Party, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities; except that no such charge, assignment or Security Interest shall:
  - (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for the Lender as a party to any of the Finance Documents; or
  - (ii) require any payments to be made by the Borrowers or any Security Party or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

## 27 VARIATIONS AND WAIVERS BY MAJORITY LENDERS

### 27.1 Variations, waivers etc. by Lenders

Subject to Clause 27.2, a document shall be effective to vary, waive, suspend or limit any provision of a Finance Document, or any Creditor Party's rights or remedies under such a provision or the general law, only if the document is signed, or specifically agreed to by fax, by the Borrowers, by the Agent on behalf of the Majority Lenders, by the Agent and the Security Trustee in their own rights, and, if the document relates to a Finance Document to which a Security Party is party, by that Security Party.

### 27.2 Variations, waivers etc. requiring agreement of all Lenders

Subject to Clause 27.4 (*Replacement of Screen Rate*), as regards the following, Clause 27.1 applies as if the words "by the Agent on behalf of the Majority Lenders" were replaced by the words "by or on behalf of every Lender":

- (a) a reduction in the Margin;
- (b) a postponement to the date for, or a reduction in the amount of, any payment of principal, interest, fees or other sum payable under this Agreement;
- (c) an increase in any Lender's Commitment;
- (d) a change to the definition of "**Majority Lenders**";
- (e) a change to Clause 3 or this Clause 27;
- (f) any release of, or material variation to, a Security Interest, guarantee, indemnity or subordination arrangement set out in a Finance Document; and
- (g) any other change or matter as regards which this Agreement or another Finance Document expressly provides that each Lender's consent is required.

### 27.3 Exclusion of other or implied variations

Except for a document which satisfies the requirements of Clauses 27.1 and 27.2, no document, and no act, course of conduct, failure or neglect to act, delay or acquiescence on the part of the Creditor Parties or any of them (or any person acting on behalf of any of them) shall result in the Creditor Parties or any of them (or any person acting on behalf of any of them) being taken to have varied, waived, suspended or limited, or being precluded (permanently or temporarily) from enforcing, relying on or exercising:

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

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

### 27.4 Replacement of Screen Rate

(a) If a Screen Rate Replacement Event has occurred in relation to the Screen Rate for dollars, any amendment or waiver which relates to:

- (i) providing for the use of a Replacement Benchmark; and
- (ii)
  - (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
  - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
  - (C) implementing market conventions applicable to that Replacement Benchmark;
  - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
  - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Borrowers.

- (b) If, as at 1 January 2023 this Agreement provides that the rate of interest for the Loan in dollars is to be determined by reference to the Screen Rate for LIBOR:
- (i) a Screen Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate for dollars; and
  - (ii) the Agent, (acting on the instructions of the Majority Lenders) and the Borrowers shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in relation to dollars in place of that Screen Rate from and including a date no later than 31 May 2023.
- (c) If any Lender fails to respond to a request for an amendment or waiver described in, or for any other vote of Lenders in relation to, paragraphs (a) or (b) above within 10 Business Days (or such longer time period in relation to any request which the Borrowers and the Facility Agent may agree) of that request being made:
- (i) its Commitment or its participation in the Loan (as the case may be) shall not be included for the purpose of calculating the Total Commitments or the amount of the Loan (as applicable) when ascertaining whether any relevant percentage of Total Commitments or the aggregate of participations in the Loan (as applicable) has been obtained to approve that request; and
  - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

## 28 NOTICES

### 28.1 General

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

### 28.2 Addresses for communications

A notice shall be sent:

- (a) to a Borrower:
- c/o Navios Shipmanagement Inc.  
85 Akti Miaouli  
Piraeus 185 38  
Fax No: +30 210 4172070  
for the attention of: Vassiliki Papaefthymiou  
E-mail: [vpapaefthymiou@Navios.com](mailto:vpapaefthymiou@Navios.com)
- (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  
and the Security Trustee:

BNP Paribas  
35 rue de la Gare  
75019 Paris  
France

Fax: +33 (0) 142984355

For the attention of: Eleana Athanasiadou; Nurhan Gulec; Michael Neel

E-mail: [nurhan.gulec@bnpparibas.com](mailto:nurhan.gulec@bnpparibas.com);

[michael.neel@bnpparibas.com](mailto:michael.neel@bnpparibas.com)

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

**28.3 Effective date of notices**

Subject to Clauses 28.4 and 28.5:

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

**28.4 Service outside business hours**

However, if under Clause 28.3 a notice would be deemed to be served:

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

the notice shall (subject to Clause 28.5) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

**28.5 Illegible notices**

Clauses 28.3 and 28.4 do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

**28.6 Valid notices**

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

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

**28.7 English language**

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

**28.8 Meaning of “notice”**

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

**29 SUPPLEMENTAL**

**29.1 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.

**29.2 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.

**29.3 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.

**29.4 Waiver of Banking Secrecy**

The Borrowers hereby irrevocably authorise and give consent to the Agent and, each of its affiliates, and their respective subsidiaries, branches and representative offices and their respective directors, officers, employees and agents (the “**Authorised Persons**” and each an “**Authorised Person**”), to disclose and transmit to the Applicable Persons, whether orally, in writing or by any other means, information and documents which relates to, or are connected with, the Borrowers, their beneficial owner, any other member of the Group, their business, dealings or assets (the “**Information**”), from time to time and to the extent that the Authorised Person deems such disclosure or transmission to be necessary or desirable for or incidental to the carrying out of its duties, obligations, commitments and activities whether arising under contract or by operation of law and/or consolidated supervision and risk management policy, to the extent that the Information is covered by banking secrecy under any applicable law in general and Swiss banking secrecy rules in particular and/or:



- (a) necessary or desirable for the purposes of its internal cross-selling enabling the Borrowers and/or any other member of the Group to benefit from the Agent's or any other Authorised Person's business activities; and/or
- (b) necessary or desirable to insure a risk related to the Borrowers and/or any other member of the Group; and/or
- (c) necessary or desirable to syndicate a risk related to the Borrowers and/or any other member of the Group; and/or
- (d) necessary or desirable to securitise a risk related to the Borrowers and/or any other member of the Group; and/or
- (e) necessary or desirable to open an account or to start a business relation with the Agent's or any other Authorised Person's parent company or any of its subsidiaries or branches.

In this Clause 29.4, "**Applicable Person**" means any or all of the following persons:

- (i) any authority or person against which, pursuant to any applicable law, administrative order or court ruling, banking secrecy may not be validly asserted by an Authorised Person;
- (ii) the Agent's or any other Authorised Person's parent company, any of its subsidiaries, branches or representative offices;
- (iii) any rating agency, auditor, insurance and reinsurance company, broker or professional adviser, to the extent such entity or person is bound by a statutory or contractual duty of confidentiality;
- (iv) any financial institution and institutional or other investor who is or might be involved in securitisation schemes, hedging agreements, participations, credit derivatives or any other risk transfer or sharing arrangements, including, inter alia, a bank and/or other financial institution's participation in, or syndication in respect of, the Loan;
- (v) any potential assignee or transferee or person who has entered into or is proposing to enter into contractual arrangements with the Authorised Person in relation to a Borrower; and
- (vi) any external computer services provider, for the purpose of maintenance or repair of the Agent's or any other Authorised Person's computer systems and data provided that such external computer services provider is bound by the confidentiality policy of BNP Paribas.

#### **29.5 Reference Banks**

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an affiliate) ceases to be a Lender, the Agent shall (in consultation with the Borrowers) appoint another Lender or an affiliate of a Lender to replace that Reference Bank.

**29.6 Role of Reference Banks**

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Agent but may do so at the Agent's request.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any quotation provided to the Agent.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any quotation provided to the Agent, and any officer, employee or agent of each Reference Bank may rely on this clause subject to clause 29.3 and the provisions of the Third Parties Act.

**29.7 Third party Reference Banks**

Any Reference Bank which is not a party to this Agreement may rely on Clause 29.6 subject to Clause 29.3 and the provisions of the Third Parties Act.

**29.8 Counterparts**

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

**30 CONFIDENTIALITY**

**30.1 Confidential Information**

Each Creditor Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clauses 30.2 and 30.3 and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information taking also into account the public nature of the Corporate Guarantor.

**30.2 Disclosure of Confidential Information**

Any Creditor Party may disclose:

- (a) to any of its affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, insurers, reinsurers, partners and Representatives such Confidential Information as that Creditor Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent and, in each case, to any of that person's affiliates, Related Funds, Representatives and professional advisers;

- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrowers and/or any Security Party and to any of that person's affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by any Creditor Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Creditor Party charges, assigns or otherwise creates a Security Interest (or may do so) pursuant to Clause 26.16 (*Security over Lenders' rights*), including to a federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) to (or through) whom it creates Security Interest pursuant to Clause 26.16 (*Security over Lenders' rights*) and any federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) may disclose such Confidential Information to a third party to whom it transfers (or may potentially transfer) rights under the Finance Documents or the securities issued by the special purpose vehicle in connection with the enforcement of such Security Interest;
- (viii) who is a party to a Finance Document, a member of the Group or any related entity of the Borrowers or any Security Party; or
- (ix) with the consent of the Borrowers;

in each case, such Confidential Information as that Creditor Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
  - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Creditor Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Creditor Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrowers and the relevant Creditor Party; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrowers and/or the Security Parties.

### **30.3 Disclosure to numbering service providers**

- (a) Any Creditor Party may disclose to any national or international numbering service provider appointed by that Creditor Party to provide identification numbering services in respect of this Agreement, the Loan and/or the Borrowers and/or the Security Parties the following information:
- (i) names of the Borrowers and the Security Parties;
  - (ii) country of domicile of the Borrowers and the Security Parties;
  - (iii) place of incorporation of the Borrowers and the Security Parties;
  - (iv) date of this Agreement;
  - (v) governing law;
  - (vi) the name of the Agent;
  - (vii) date of each amendment and restatement of this Agreement;
  - (viii) amount of the Loan;
  - (ix) amount of Total Commitments;
  - (x) currency of the Loan;

- (xi) type of facility;
- (xii) ranking of facility;
- (xiii) final Repayment Date;
- (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
- (xv) such other information agreed between such Creditor Party and the Borrowers,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The parties to this Agreement acknowledge and agree that each identification number assigned to this Agreement, the Loan and/or the Borrowers and/or any Security Party by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Borrowers represent that none of the information set out in paragraphs (a)(i) to (a)(xv) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Borrowers and the other Creditor Parties of:
  - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Loan and/or the Borrowers and/or the Security Parties; and
  - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Loan and/or the Borrowers and/or the Security Parties by such numbering service provider.

#### **30.4 Entire agreement**

This Clause 30 constitutes the entire agreement between the parties to this Agreement in relation to the obligations of the Creditor Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **30.5 Inside information**

Each of the Creditor Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Creditor Parties undertakes not to use any Confidential Information for any unlawful purpose.

#### **30.6 Notification of disclosure**

Each of the Creditor Parties agrees (to the extent permitted by law and regulation) to inform the Borrowers:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 30.2 except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 30.

**30.7 Continuing obligations**

The obligations in this Clause 30 are continuing and, in particular, shall survive and remain binding on each Creditor Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Borrowers and the Security Parties under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Creditor Party otherwise ceases to be a Creditor Party.

**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 Dispute.

**31.3 Choice of forum for the exclusive benefit of the Creditor Parties**

Clause 31.2 is for the exclusive benefit of the Creditor Parties, each of which reserves the right:

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

No Borrower shall commence any proceedings in any country other than England in relation to a Dispute.

**31.4 Process agent**

Each Borrower irrevocably appoints Hill Dickinson LLP at their office for the time being, presently at The Broadgate Tower, 20 Primrose Street, London EC2A 2EW, England to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with a Dispute.

**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” and “Dispute”**

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).

**32 BAIL-IN**

**32.1 Contractual recognition of bail-in**

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the parties to a Finance Document, each party hereto acknowledges and accepts that any liability of any party to a Finance Document under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

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

**BORROWERS**

**SIGNED** by Georgios Panagakis )  
for and on behalf of ) /s/ Georgios Panagakis  
**AMMOS SHIPPING CORP.** )

**SIGNED** by Georgios Panagakis )  
for and on behalf of ) /s/ Georgios Panagakis  
**WAVE SHIPPING CORP.** )

**SIGNED** by Georgios Panagakis )  
for and on behalf of ) /s/ Georgios Panagakis  
**BRANDEIS SHIPPING CORPORATION** )

**SIGNED** by Georgios Panagakis )  
for and on behalf of ) /s/ Georgios Panagakis  
**BUFF SHIPPING CORPORATION** )

**LENDERS**

**SIGNED** by Aikaterina Dimitriou )  
for and on behalf of ) /s/ Aikaterina Dimitriou  
**BNP PARIBAS** )

**AGENT**

**SIGNED** by Aikaterina Dimitriou )  
for and on behalf of ) /s/ Aikaterina Dimitriou  
**BNP PARIBAS** )

**SECURITY TRUSTEE**

**SIGNED** by Aikaterina Dimitriou )  
for and on behalf of ) /s/ Aikaterina Dimitriou  
**BNP PARIBAS** )

Witness to all the above  
Signature /s/ Charalampos Kazantzis  
Name: Charalampos Kazantzis  
Address: 17674 Kallithea Athens-Greece



Date 23 April 2021

**CRONUS SHIPPING CORPORATION  
DIONYSUS SHIPPING CORPORATION**

**-and-**

**BOLE SHIPPING CORPORATION  
as joint and several Borrowers**

**-and-**

**HELLENIC BANK PUBLIC COMPANY LIMITED  
as Lenders**

**-and-**

**HELLENIC BANK PUBLIC COMPANY LIMITED  
as Arranger, Account Bank, Agent and Security Trustee**

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**SECOND SUPPLEMENTAL AGREEMENT**

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**in relation to a Facility Agreement  
dated 25 June 2020 (as amended)**

**Ince**  
**PIRAEUS**

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THIS AGREEMENT is made on 23 April 2021

**BETWEEN**

- (1) **CRONUS SHIPPING CORPORATION** and **DIONYSUS SHIPPING CORPORATION** as joint and several Borrowers (the “**Existing Borrowers**”);
- (2) **BOLE SHIPPING CORPORATION** as new Borrower (the “**New Borrower**”);
- (3) **HELLENIC BANK PUBLIC COMPANY LIMITED** as Arranger, Account Bank, Agent and Security Trustee;
- (4) **HELLENIC BANK PUBLIC COMPANY LIMITED** as Lenders.

**BACKGROUND**

- (A) By a Facility Agreement dated 25 June 2020 (as amended by a supplemental letter dated 3 March 2021) and made between (originally) the Existing Borrowers, Oceanus Shipping Corporation, Prometheus Shipping Corporation, the Lenders, the Arranger, the Account Bank, the Agent and the Security Trustee, the Lenders have made available to the Existing Borrowers, Oceanus Shipping Corporation, Prometheus Shipping Corporation, a loan of originally up to USD17,000,000.
- (B) The Existing Borrowers have made a request to the Lenders that they agree (inter alia):
  - a. that the New Borrower accedes to, and becomes a new borrower under, the Facility Agreement;
  - b. to amend the repayment schedule of each Advance contained in clause 4.1.1 (*Repayment*) of the Facility Agreement;
  - c. to extend the Maturity Date; and
  - d. to make certain other amendments to the Facility Agreement.
- (C) This Agreement sets out the terms and conditions on which the Banks agree, with effect on and from the Effective Date, at the request of the Existing Borrowers, to make amendments to the Facility Agreement.

**IT IS AGREED** as follows:

**1 INTERPRETATION**

- 1.1 **Defined expressions.** Words and expressions defined in the Facility Agreement and the other Security Documents shall have the same meanings when used in this Agreement unless the context otherwise requires.
- 1.2 **Definitions.** In this Agreement, unless the contrary intention appears:

“**Accounts Charge**” means a first priority charge required to be executed between the Borrowers and the Security Trustee in respect of the Earnings Accounts, the Liquidity Account and the Retention Account in such form as the Agent may require in its sole discretion;

**“Advance E”** means the principal amount equal to the lesser of (i) eight million eight hundred and fifty thousand Dollars (USD8,850,000) and (ii) 70% of the Valuation Amount of Vessel E as at the Drawdown Date of Advance E, for the purpose of the Borrowers making Advance E available to the Shareholder, which the Shareholder will use to pay to the current shareholder of Bole the purchase price of the shares in Bole, or, as the context requires, the amount thereof outstanding from time to time;

“**Bole**” means Bole Shipping Corporation, having its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960;

“**Effective Date**” means the Business Day on which all the conditions precedent referred to in Clause 4.2 have been fulfilled by the Borrowers;

“**Facility Agreement**” means the Facility Agreement dated 25 June 2020 (as amended by a supplemental letter dated 3 March 2021) referred to in Recital (A);

“**Mortgage Addendum**” means an addendum to the Mortgage in respect of Vessel B, in such form as the Agent may require in its sole discretion;

“**Outstanding Indebtedness**” means the aggregate of the Loan and interest accrued and accruing thereon, the Expenses and all other sums of money from time to time owing to the Banks or any of them, whether actually or contingently, under the Security Documents or any of them;

“**Substitute Mortgage**” means a first priority Cyprus statutory mortgage and deed of covenant collateral thereto required to be executed by Cronus in respect of Vessel A, in such form as the Agent may require in its sole discretion;

Words and expressions advised in the Schedule to this Agreement shall have the meanings given to them therein as if set out in full in this Clause 1.2.

- 1.3 **Application of construction and interpretation provisions of Facility Agreement.** Clauses 1.2 and 1.3 of the Facility Agreement apply, with any necessary modifications, to this Agreement.

## 2 **ACCESSION DEED**

- 2.1 The New Borrower agrees to become, and hereby becomes, an additional Borrower and agrees to be bound by the terms of the Facility Agreement and the other Security Documents as an additional Borrower jointly and severally with the Existing Borrowers and hereby assumes responsibility to pay, satisfy or perform any outstanding Indebtedness under any of the Security Documents. All references to “Borrowers” or “Borrower” in any of the Security Documents and this Supplemental Agreement are hereby construed to include the New Borrower.
- 2.2 The Existing Borrowers each confirm that no Default is continuing or would occur as a result of the New Borrower becoming an additional Borrower.
- 2.3 The New Borrower intends to incur liabilities under the Facility Agreement and the Security Documents to which it will be a party.
- 2.4 By a Trust Deed dated 25 June 2020 the Security Trustee agreed to hold the Trust Property on trust for the other Banks.
- 2.5 The New Borrower and the Security Trustee agree that the Security Trustee shall hold:
- 2.5.1 any Encumbrance in respect of liabilities created or expressed to be created pursuant to the Security Documents to which it will be a party;

- 2.5.2 all proceeds of that Encumbrance; and
- 2.5.3 all obligations expressed to be undertaken by the New Borrower to pay amounts in respect of the liabilities to the Security Trustee as trustee for the Banks (in the Security Documents or otherwise) and secured by any of the Security Documents together with all representations and warranties expressed to be given by the New Borrower (in the Security Documents or otherwise) in favour of the Security Trustee as trustee for the Banks,
- on trust for the Banks on the terms and conditions contained in the Trust Deed.

### 3 AGREEMENT OF THE LENDERS

- 3.1 **Agreement of the Lenders.** The Lenders, relying upon each of the representations and warranties in Clause 5 and subject to Clause 4, agree to (i) make Advance E available to the Existing Borrowers and Bole as joint and several borrowers upon and subject to the terms of this Agreement and the Facility Agreement for the purpose of the Borrowers making Advance E available to the Shareholder, which the Shareholder will use to pay to the current shareholder of Bole the purchase price of the shares in Bole and (ii) amend the Facility Agreement in accordance with Clause 6.
- 3.2 **Effective Date.** The agreement of the Lenders contained in Clause 2.1 of this Agreement shall have effect on and from the Effective Date.

### 4 CONDITIONS PRECEDENT

- 4.1 **Lenders' consent and advance of Advance E.** The consent of the Lenders to amend the Facility Agreement is conditional upon:
- 4.1.1 the Agent, or its authorised representative, having received the documents and evidence specified in Clause 4.2 of this Agreement in form and substance satisfactory to the Agent and its lawyers;
- 4.1.2 the representations and warranties contained in Clause 5 being then true and correct as if each was made with respect to the facts and circumstances existing at such time and the same being unaffected by drawdown of Advance E; and
- 4.1.3 no Default having occurred and being continuing and there being no Default which would result from the lending of Advance E.
- 4.2 **Conditions precedent.** The conditions referred to in Clause 4.1 of this Agreement are that the Agent shall have received the following documents on or before the date of this Agreement (or such later date as the Agent may agree with the Borrowers):
- (a) Corporate documents
- certified copies of all documents which evidence or relate to the constitution of each Existing Borrower, Bole, the Corporate Guarantor, the Shareholder and each Manager (other than the Third Party Manager) and its current corporate existence;
- (b) Corporate authorities

- (i) certified copies of resolutions of the directors or, as the case may be, member(s) of each Existing Borrower, Bole, the Corporate Guarantor, the Shareholder and each Manager (other than the Third Party Manager) approving this Agreement or endorsement thereof, Mortgage Addendum and Substitute Mortgage (as the case may be) and authorising the execution and delivery thereof and performance of the obligations of the Existing Borrower, Bole, the Corporate Guarantor, the Shareholder and each Manager (other than the Third Party Manager) thereunder, additionally certified by an officer of such Existing Borrower, Bole, Corporate Guarantor, Shareholder and Manager as having been duly adopted by the directors or, as the case may be, member(s) of such Existing Borrower, Bole, Corporate Guarantor, Shareholder and Manager and not having been amended, modified or revoked and being in full force and effect; and
  - (ii) originals of any powers of attorney issued by each Existing Borrower, Bole, the Corporate Guarantor, the Shareholder and each Manager (other than the Third Party Manager) pursuant to such resolutions;
- (c) Certificate of incumbency
- a list of directors and officers of each Existing Borrower, Bole, the Corporate Guarantor, the Shareholder and each Manager (other than the Third Party Manager) specifying the names and positions of such persons, certified by an officer of such Existing Borrower, Bole, Corporate Guarantor, Shareholder and Manager to be true, complete and up to date;
- (d) Accounts Charge
- the Accounts Charge duly executed and delivered;
- (e) Substitute Mortgage
- the Substitute Mortgage duly executed and delivered;
- (f) Substitute Mortgage registration
- evidence that the Substitute Mortgage has been duly registered against Vessel A in accordance with the laws of the relevant Flag State;
- (g) Mortgage Addendum
- the Mortgage Addendum duly executed and delivered;
- (h) Mortgage Addendum registration
- evidence that the Mortgage Addendum has been duly registered against Vessel B in accordance with the laws of the relevant Flag State;
- (i) Fee letter
- a Fee Letter in such form as the Agent may require in its sole discretion;
- (j) Laws of the Marshall Islands: opinion
- an opinion of Ince, special legal advisers to the Banks on Marshall Islands law;

- (k) Laws of Liberia: opinion  
an opinion of Ince, special legal advisers to the Banks on Liberia law;
  - (l) Laws of Cyprus: opinion  
an opinion of Montanios & Montanios, special legal advisers to the Banks on Cyprus law;
  - (m) Agent for service of process  
documentary evidence that the agent for service of process named in clause 20.2.1 of the Facility Agreement has accepted its appointment hereunder;
  - (n) Further opinions  
such further professional opinions as the Agent may reasonably require;
  - (o) Endorsement  
the endorsement at the end of this Agreement signed by each Security Party (other than the Borrowers); and
  - (p) Further conditions precedent  
evidence of fulfilment of such further conditions precedent as the Agent may reasonably require.
- 4.3 **Waiver of conditions precedent.** If the Lenders, at their discretion, agree to amend the Facility Agreement before certain of the conditions referred to in Clause 4.2 are satisfied, the Borrowers shall ensure that those conditions are satisfied within 5 Business Days after the amendment.

## 5 REPRESENTATIONS AND WARRANTIES

- 5.1 **Repetition of Facility Agreement representations and warranties.** Each Borrower represents and warrants to each Creditor that the representations and warranties in Clause 7 of the Facility Agreement, as amended and supplemented by this Agreement and updated with appropriate modifications to refer to this Agreement, remain true and not misleading if repeated on the date of this Agreement with reference to the circumstances now existing.

## 6 AMENDMENTS TO FACILITY AGREEMENT AND OTHER SECURITY DOCUMENTS

- 6.1 **Specific amendments to Facility Agreement.** With effect on and from the Effective Date the Facility Agreement shall be, and shall be deemed by this Agreement to be, amended as follows:
- (a) by deleting Clause 1.1 thereof and replacing it with:  
“1.1 **Purpose**



- This Agreement sets out the terms and conditions on which the Lenders agree to make available to the Borrowers, subject to clause 2 of this Agreement, a loan of up to (originally) seventeen million Dollars (USD17,000,000) in (a) four Advances, namely Advance A, Advance B, Advance C and Advance D, to be drawn down simultaneously for the purpose of enabling the partial prepayment of the amount outstanding under the Existing Loan Agreement and (b) after Advance C and Advance D and all other relevant amounts have been prepaid after and in respect of the sale of Vessels C and Vessel D, one Advance, namely Advance E, for the purpose of the Borrowers making Advance E available to the Shareholder, which the Shareholder will use to pay to the current shareholder of Bole the purchase price of the shares in Bole.”;
- (b) by adding in Clause 1.2 thereof the definitions of “**Accounts Charge**” and “**Advance E**” from Clause 1.2 of this Agreement;
  - (c) by adding in Clause 1.2 thereof the definition of “**Mortgage Addendum**” from Clause 1.2 of this Agreement and construing the definition of “**Mortgage**” in Clause 1.2 thereof to mean, in the case of Vessel A, the Substitute Mortgage and, in the case of Vessel B, the same as amended by the Mortgage Addendum;
  - (d) by adding in Schedule 7 thereof each of the definitions in the Schedule of this Agreement;
  - (e) by deleting the definition of “**Accounts Pledge**” in Clause 1.2 thereof;
  - (f) by deleting the definition of “**Bail-In Legislation**” in Clause 1.2 thereof and replacing it with:  
“**Bail-In Legislation**” means:
    - (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time
    - (b) in relation to any other state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and
    - (c) in relation to the United Kingdom, the UK Bail-In Legislation;”;
  - (g) by deleting the definition of “**Borrower**” in Clause 1.2 thereof and replacing it with:  
“**Borrower**” means each of Bole Shipping Corporation (“**Bole**”), Cronus Shipping Corporation (“**Cronus**”) and Dionysus Shipping Corporation (“**Dionysus**”), each having its registered address at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH96960 and in the plural means all of them;”;
  - (h) by deleting in the definition of “**Drawdown Date**” the word “simultaneously”;
  - (i) by deleting the definition of “**Drawdown Period**” in Clause 1.2 thereof and replacing it with:

- “**Drawdown Period**” means the period commencing on the Execution Date and ending on the earliest of (a) (i) in the case of Advance A, Advance B, Advance C and Advance D, 31 July 2020 and (ii) in the case of Advance E, 31 May 2021 and (b) any date on which (i) the amount of the Loan has been made available in full to the Borrowers by the Lenders in accordance with the provisions of clause 2 or (ii) the Total Commitment is reduced to zero pursuant to clauses 2.7, 10.2 or 12;”;
- (j) by deleting the definition of “**Margin**” in Clause 1.2 thereof and replacing it with:
- “**Margin**” means, (i) in relation to each Interest Period in respect of the Loan less Advance E, 3.50% per annum and (ii) in relation to each Interest Period in respect of Advance E, 3% per annum;”;
- (k) by deleting the definition of “**Maturity Date**” in Clause 1.2 thereof and replacing it with:
- “**Maturity Date**” means (a) in respect of each of Advance A and Advance B, 26 December 2024 and (b) in respect of Advance E, the earlier of (i) the date falling forty five (45) months years after the Drawdown Date in respect of Advance E and (ii) 31 December 2024;”;
- (l) by adding at the end of the definition of “**Owner**” in Clause 1.2 thereof before the words “and in the plural means all of them” the words “(v) Vessel E, Bole, ”;
- (m) by adding at the end of the definition of “**Relevant Advance**” in Clause 1.2 thereof the words “and in respect of Vessel E, Advance E”;
- (n) by deleting the definition of “**Repayment Dates**” in Clause 1.2 thereof and replacing it with:
- “**Repayment Dates**” means, subject to clause 6.3:
- (a) in respect of each of Advance A and Advance B, 26 June 2021 and each of the dates falling at quarterly intervals thereafter, up to and including the Maturity Date in respect thereof; and
- (b) in respect of Advance E, each of the dates falling at quarterly intervals after the Drawdown Date in respect thereof, up to and including the date falling 45 months after such date;”;
- (o) by deleting the definition of “**UK Bail-In Legislation**” in Clause 1.2 thereof and replacing it with:
- “**UK Bail-In Legislation**” means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings);”;
- (p) by adding in the definition of “**Vessel**” in Clause 1.2 thereof after the words “Vessel D” the words “and Vessel E”;
- (q) by deleting the definition of “**Write-down and Conversion Powers**” in Clause 1.2 thereof and replacing it with:
- “**Write-down and Conversion Powers**” means:
- (a) in relation to any Bail In Legislation described in the EU Bail In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;

- (b) in relation to any other applicable Bail-In Legislation other than the UK Bail-In Legislation:
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
  - (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to the UK Bail-in Legislation, any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers.”;
- (r) by deleting the words “Accounts Pledge” throughout the Facility Agreement and replacing them with the words “Accounts Charge”;
- (s) by deleting the words “the Drawdown Notice” throughout the Facility Agreement and replacing them with the words “the relevant Drawdown Notice”;
- (t) by deleting in the definition of “**Retention Dates**”, clauses 2.1, 2.4.1, 2.5.1, 6.2, 9.3, 14.1.1 and paragraph (m) of Schedule 3 Part B the words “Drawdown Date” and replacing them with the words “relevant Drawdown Date”;
- (u) by deleting Clause 2.1 thereof and replacing it with:

**“2.1 Agreement to lend**

The Lenders, relying upon each of the representations and warranties in clause 7, agree to provide to the Borrowers upon and subject to the terms of this Agreement, the Advances, which shall be drawn in (a) four Advances, namely Advance A, Advance B, Advance C and Advance D, to be drawn down simultaneously for the purpose of enabling the partial prepayment of the amount outstanding under the Existing Loan Agreement and (b) after Advance C and Advance D and all other relevant amounts have been prepaid after and in respect of the sale of Vessels C and Vessel D, one Advance, namely Advance E, for the purpose of the Borrowers making Advance E available to the Shareholder, which the Shareholder will use to pay to the current shareholder of Bole the purchase price of the shares in Bole. Subject to the terms of this Agreement, the obligations of the Lenders shall be to contribute to each Advance, the proportion of the relevant Advance which their respective Commitments bear to the Total Commitment on the Drawdown Date.”;

(v) by deleting Clause 2.5.2 and replacing it with:

“2.5.2 The principal amount specified in the relevant Drawdown Notice for borrowing on the Drawdown Date in respect of Advance E shall, subject to the terms of this Agreement, be an amount equal to the lesser of (i) eight million eight hundred and fifty thousand Dollars (USD8,850,000) and (ii) 70% of the Valuation Amount of Vessel E as at the Drawdown Date of Advance E.”;

(w) by deleting Clause 4.1.1 thereof and replacing it with:

“4.1.1 Subject as otherwise provided in this Agreement, the Borrowers must repay:

- (a) Advance A outstanding as at 23 April 2021 in the aggregate amount of USD3,880,732.44 by fifteen (15) quarterly instalments to be repaid on each of the Repayment Dates in respect of that Advance and a balloon instalment to be repaid on the final Repayment Date in respect of that Advance. The amount of the first instalment shall be USD129,000, the amount of the next fourteen (14) instalments shall be USD166,000 each and the amount of the Balloon Instalment shall be USD1,427,732.44;
- (b) Advance B outstanding as at 23 April 2021 in the aggregate amount of USD3,911,306.69 by fifteen (15) quarterly instalments to be repaid on each of the Repayment Dates in respect of that Advance and a balloon instalment to be repaid on the final Repayment Date in respect of that Advance. The amount of the first instalment shall be USD130,000, the amount of the next fourteen (14) instalments shall be USD167,000 each and the amount of the Balloon Instalment shall be USD1,443,306.69; and
- (c) Advance E by fifteen (15) quarterly instalments to be repaid on each of the Repayment Dates in respect of that Advance and a balloon instalment to be repaid on the final Repayment Date in respect of that Advance. The amount of the first four (4) instalments shall be USD750,000 each, the amount of the next two (2) instalments shall be USD300,000 each, the amount of the next nine (9) instalments shall be USD150,000 each and the amount of the Balloon Instalment shall be USD3,900,000.

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

(x) by deleting Clause 4.8 thereof and replacing it with:

**“4.8 Deferral Option**

The Borrowers may defer two consecutive repayment instalments in respect of each of Advance A and Advance B (each a “**Deferred Instalment**”) falling due under Clause 4.1.1 on any of the Repayment Dates falling after the first four Repayment Dates falling after 23 April 2021 (or, if earlier, after the first four repayment instalments of each of Advance A and Advance B falling after 23 April 2021 have been repaid or prepaid) by giving written notice to the Agent at least ten (10) Banking Days prior to the Repayment Date in respect of the instalment to be deferred, following which the repayment instalment due on that Repayment Date shall be added to the Balloon Instalment in respect of the relevant Advance, which will be increased accordingly, Provided that (i) an election under this Clause 4.8 shall apply at the same time to both Advance A and Advance B and (ii) the Borrowers may make an election under this Clause 4.8 only if at the time such election is made and on the Repayment Date relative to the deferred repayment instalment (a) no Event of Default has occurred which is continuing and (b) no breach of any covenant under this Agreement or no Event of Default would occur as a result of such deferral.”;

- (y) by deleting Clause 14.3 thereof and replacing it with:

“14.3 Minimum Balance

The Borrowers shall deposit on the Drawdown Date and maintain thereafter throughout the Facility Period on the Liquidity Account a balance of not less than the aggregate of (i) USD250,000 multiplied by the number of Mortgaged Vessels other than Vessel E and (ii) USD350,000 whilst Vessel E is a mortgaged Vessel.”;

- (z) by deleting paragraph (n) of Schedule 3 Part B thereof and replacing it with:

“(n) **Liquidity**

evidence that there is standing to the credit of the Liquidity Account a balance of not less than the aggregate of (i) USD250,000 multiplied by the number of Mortgaged Vessels other than Vessel E and (ii) USD350,000 in respect of Vessel E;”;

- (aa) by deleting paragraph 2 of Schedule 6 (*Form of Compliance Certificate*) thereof and replacing it with:

“there is USD[ ] standing to the credit of the Liquidity Account, compared against the required minimum of not less than the aggregate of (i) USD250,000 multiplied by the number of Mortgaged Vessels other than Vessel E and (ii) USD350,000 whilst Vessel E is a mortgaged Vessel, in accordance with Clause 14.3;”;

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

**6.2 Amendments to Security Documents.** With effect on and from the Effective Date each of the Security Documents other than the Facility Agreement, shall be, and shall be deemed by this Agreement to be, amended so that the definition of, and references throughout each of the Security Documents to, the Facility Agreement and any of the other Security Documents shall be construed as if the same referred to the Facility Agreement and those Security Documents as amended and supplemented or replaced (as the case may be) by this Agreement, the Mortgage Addendum, the Substitute Mortgage or the Accounts Charge.

**6.3 Security Documents to remain in full force and effect.**

The Security Documents shall remain in full force and effect, as security for the Outstanding Indebtedness, as amended and supplemented by:

- (a) the amendments to the Security Documents contained or referred to in Clauses 6.1 and 6.2; and
- (b) such further or consequential modifications as may be necessary to give full effect to the terms of this Agreement.

## 7 FURTHER ASSURANCES

7.1 **Borrower's obligation to execute further documents etc.** The Borrowers shall, and shall procure that any other party to any Security Document shall:

- (a) execute and deliver to the Security Trustee (or as it may direct) any assignment, mortgage, power of attorney, proxy or other document, governed by the law of England or such other country as the Security Trustee may, in any particular case, specify; and
- (b) effect any registration or notarisation, give any notice or take any other step, which the Security Trustee may, by notice to the Borrowers or other party, reasonably specify for any of the purposes described in Clause 7.2 or for any similar or related purpose.

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

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

7.3 **Terms of further assurances.** The Security Trustee may specify the terms of any document to be executed by the Borrowers or any other party under Clause 7.1, and those terms may include any covenants, powers and provisions which the Agent reasonably considers appropriate to protect its interests.

7.4 **Obligation to comply with notice.** The Borrowers shall comply with a notice under Clause 7.1 by the date specified in the notice.

7.5 **Additional corporate action.** At the same time as any Borrower or any other party delivers to the Security Trustee any document executed under Clause 7.1(a), that Borrower or such other party shall also deliver to the Security Trustee a certificate signed by 2 of that Borrower's or that other party's directors or officers which shall:

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

## 8 FEES

8.1 **Fees and Expenses.** The provisions of Clause 5 (Fees and expenses) of the Facility Agreement shall apply to this Agreement as if they were expressly incorporated in this Agreement with any necessary modifications.

## 9 NOTICES

9.1 **General.** The provisions of Clause 17 (Notices and other matters) of the Facility Agreement shall apply to this Agreement as if they were expressly incorporated in this Agreement with any necessary modifications.

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10 **SUPPLEMENTAL**

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

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

11 **LAW AND JURISDICTION**

11.1 **Governing 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.

11.2 **Incorporation of the Facility Agreement provisions.** The provisions of Clause 19 (Governing law) and Clause 20 (Jurisdiction) of the Facility Agreement shall apply to this Agreement as if they were expressly incorporated in this Agreement with any necessary modifications.

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

SIGNED as a deed for and on behalf of )  
CRONUS SHIPPING CORPORATION ) /s/ Maria Trivela  
by **MARIA TRIVELA** )  
as attorney-in-fact )  
(as Borrower under and pursuant to )  
a power of attorney dated 20 April 2021) )

in the presence of Ioanna Mitsaki ) /s/ Ioanna Mitsaki

SIGNED as a deed for and on behalf of )  
**DIONYSUS SHIPPING** )  
**CORPORATION** ) /s/ Maria Trivela  
by **MARIA TRIVELA** )  
as attorney-in-fact )  
(as Borrower under and pursuant to )  
a power of attorney dated 20 April 2021) )

in the presence of Ioanna Mitsaki ) /s/ Ioanna Mitsaki

SIGNED as a deed for and on behalf of )  
**BOLE SHIPPING CORPORATION** ) /s/ Maria Trivela  
by **MARIA TRIVELA** )  
as attorney-in-fact )  
(as Borrower under and pursuant to )  
a power of attorney dated 20 April 2021) )

in the presence of Ioanna Mitsaki ) /s/ Ioanna Mitsaki

SIGNED by **STAVROULA MYLONA** )  
for and on behalf of ) /s/ Stavroula Mylona  
**HELLENIC BANK PUBLIC** )  
**COMPANY** )  
LIMITED )  
(as a Lender) )

in the presence of Ioanna Mitsaki ) /s/ Ioanna Mitsaki

SIGNED by **STAVROULA MYLONA** )  
for and on behalf of ) /s/ Stavroula Mylona  
**HELLENIC BANK PUBLIC** )  
**COMPANY** )  
LIMITED )  
(as Arranger, Account Bank, Agent and )  
Security Trustee) )

in the presence of Ioanna Mitsaki ) /s/ Ioanna Mitsaki