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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  
UNDER THE SECURITIES EXCHANGE ACT OF 1934**

**Date of Report: March 20, 2014**

**Commission File Number 001-34153**

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**GLOBAL SHIP LEASE, INC.**

(Exact name of Registrant as specified in its Chatter)

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**c/o Portland House,  
Stag Place,  
London SW1E 5RS,  
United Kingdom**  
(Address of principal executive office)

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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-I 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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## Information Contained in this Form 6-K Report

### Indenture

On March 19, 2014 (the "Issue Date"), Global Ship Lease, Inc. (the "Company") completed its previously announced private placement (the "Offering") of \$420.0 million aggregate principal amount of 10.000% first priority secured notes due 2019 (the "Notes"). In connection with the Offering, the Company also entered into a \$40.0 million senior secured revolving credit facility (the "Revolving Credit Facility") on the Issue Date.

The Company used a portion of the net proceeds of the Offering to repay all outstanding borrowings under, and terminate, its existing credit facility, to terminate its existing interest rate swap agreements and to pay related fees and expenses. The Company intends to use the remaining net proceeds of the Offering for general corporate purposes.

The Notes were issued under an indenture, dated as of the Issue Date (the "Indenture"), among the Company, the guarantors party thereto and Deutsche Bank Trust Company Americas, as trustee and as security agent.

The description of the Indenture and the Notes contained in this Form 6-K Report does not purport to be complete and is qualified in its entirety by reference to the full text of the Indenture and the form of the Notes, which are filed herewith as Exhibits 99.1 and 99.2, respectively, and are incorporated herein by reference.

#### *Interest and Maturity*

The Notes bear interest at 10.000% per annum and mature on April 1, 2019. Interest is payable semi-annually on April 1 and October 1 of each year, beginning on October 1, 2014, to holders of record at the close of business on March 15 or September 15, as the case may be, immediately preceding each such interest payment date.

#### *Security*

The Notes are secured by first priority ship mortgages on 17 vessels owned by certain subsidiary guarantors (the "Mortgaged Vessels") and certain other associated property, contract rights and bank accounts, as well as share pledges over the subsidiary guarantors that own the Mortgaged Vessels (together with the Mortgaged Vessels, the "Initial Collateral"). In the future, vessels, shipping containers and container shipping-related assets and certain other associated property and contract rights may be pledged in addition to or in substitution for Initial Collateral. As used herein, "Collateral" refers to the Initial Collateral and any such additional or substitute collateral.

The Collateral also secures on a first priority basis up to \$40.0 million of indebtedness which may be incurred under the Revolving Credit Facility, which is described below.

#### *Guarantees*

As of the Issue Date, the Notes are fully and unconditionally guaranteed, jointly and severally, on a senior basis, by Global Ship Lease Services Limited ("GSL Limited") and each of the Company's 17 subsidiaries that own Mortgaged Vessels. In the future, the Notes will be guaranteed by the Company's existing and future restricted subsidiaries in the circumstances provided in the Indenture.

#### *Optional Redemption*

The Company may redeem the Notes in whole or in part, at its option, at any time before April 1, 2016, at a redemption price equal to 100% of the principal amount plus a make-whole premium as provided in the Indenture. The Company may redeem the Notes in whole or in part, at its option, at any time on or after April 1, 2016, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest, if any, on the Notes redeemed, to the applicable redemption date, if redeemed during the twelve-month period beginning on April 1 of the years indicated below, subject to the rights of holders of Notes on the relevant record date to receive interest on the relevant interest payment date:

<u>Year</u>	<u>Percentage</u>
2016	105.000%
2017	102.500%
2018	100.000%

In addition, at any time before April 1, 2016, the Company may redeem up to 35% of the aggregate principal amount of the Notes with the net proceeds of an equity offering at 110.000% of the principal amount of the Notes, plus accrued and unpaid interest, if any, so long as at least 65% of the originally issued aggregate principal amount of the Notes remains outstanding after such redemption.

#### *Additional Amounts and Redemption for Changes in Withholding Taxes*

Except as required by law, the Company will make payments on the Notes free of withholding or deduction for taxes. If withholding or deduction is required, the Company will, subject to certain customary exceptions, be required to pay additional amounts so that the net amounts holders of the Notes receive will equal the amount holders of the Notes would have received if withholding or deduction had not been imposed. If, as a result of a change in law, the Company is required to pay such additional amounts, the Company may redeem the Notes in whole but not in part, at any time at 100% of their principal amount, plus accrued and unpaid interest, if any, to the redemption date.

#### *Change of Control*

Upon the occurrence of certain change of control events, holders of the Notes will have the right to require the Company to repurchase some or all of their Notes at 101% of their face amount, plus accrued and unpaid interest to the repurchase date.

#### *Proceeds of Asset Sales and Events of Loss*

The Company will be obligated in certain instances to make offers to purchase outstanding Notes with the net proceeds of certain sales or other dispositions of assets or upon the occurrence of an Event of Loss with respect to Collateral. The purchase price of the Notes will be 102% of their principal amount plus accrued and unpaid interest, if any.

#### *Excess Cash Flow*

If the Company has at least \$1.0 million of Excess Cash Flow (as defined in the Indenture) for each fiscal year, commencing in respect of the year ended December 31, 2014, the Company will be required to make an offer to repurchase a maximum principal amount of Notes per annum equal to the lesser of (a) the Excess Cash Flow for such fiscal year and (b) \$20.0 million, at a price equal to 102% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes.

#### *Certain Covenants*

The Indenture contains covenants that, among other things, limit the ability of the Company and its restricted subsidiaries to:

- incur additional indebtedness or issue certain preferred stock;
- pay dividends on, redeem or repurchase their capital stock or make other restricted payments and investments;
- create certain liens;
- transfer or sell assets;
- enter into certain transactions with affiliates;
- merge, consolidate or sell all or substantially all of the Company's properties and assets;
- create or designate unrestricted subsidiaries; and
- impair the security interests.

These covenants are subject to important exceptions and qualifications, which are provided in the Indenture.

#### *Governing Law*

The Indenture and the Notes will be governed by New York law.

## **Revolving Credit Facility**

In connection with the Offering, the Company and GSL Limited, as initial borrowers, and together with each of the Company's 17 subsidiaries that own Mortgaged Vessels, as initial guarantors, entered into a new credit agreement dated as of the Issue Date (the "Credit Agreement"), with Citibank, N.A., London Branch, as original lender, lead arranger and book-runner, Citibank International PLC, as facility agent and Deutsche Bank Trust Company Americas, as security agent, together with security and other agreements, which provide for a \$40.0 million senior secured revolving credit facility.

The description of the Revolving Credit Facility contained in this Form 6-K Report does not purport to be complete and is qualified in its entirety by reference to the full text of the Credit Agreement, which is filed herewith as Exhibit 99.3 and is incorporated herein by reference.

### *General*

The Revolving Credit Facility provides for aggregate commitments of \$40.0 million, which shall be reduced to \$25.0 million if on any testing date, the Company's debt service coverage ratio in respect of the preceding six months is less than 1:1. Debt service coverage will be tested on December 31, 2016, June 30, 2017 and December 31, 2017. Subject to customary conditions precedent, certain of the Company's subsidiaries may borrow under the Revolving Credit Facility to finance (or refinance) the acquisition of vessels and may also borrow amounts not to exceed, at any time outstanding, \$5.0 million for general corporate purposes. To the extent that borrowings under the Revolving Credit Facility are applied towards all or part of the acquisition cost (or the refinancing thereof) of a vessel, the Company will be required to pledge, on a first-priority basis, such vessel, together with certain other associated property, contract rights and bank accounts, and the capital stock of the applicable vessel-owning subsidiary, as additional Collateral securing the obligations under the Revolving Credit Facility and the Notes.

### *Interest Rate, Fees and Maturity*

Borrowings under the Revolving Credit Facility will bear interest at LIBOR plus a margin of 3.25% per annum, payable quarterly in arrears or at the end of certain other interest payment periods.

In addition to paying interest on outstanding principal under the Revolving Credit Facility, the Company will be required to pay a quarterly commitment fee of 1.30% per annum to the lenders under the Revolving Credit Facility in respect of the unutilized commitments thereunder. The Company also will pay certain other customary fees.

The final maturity date of the Revolving Credit Facility will be October 1, 2018.

### *Mandatory Prepayments*

The Revolving Credit Facility will require the Company to prepay outstanding loans, subject to certain exceptions, with the net cash proceeds of certain sales or other dispositions of Collateral or upon the occurrence of an event of loss with respect to Collateral and upon a change of control.

### *Voluntary Prepayments*

The Company will be able to voluntarily prepay outstanding loans under the Revolving Credit Facility at any time, subject to certain notice requirements.

### *Guarantees and Security*

Guarantees will be jointly and severally provided by the Company and the same subsidiaries guaranteeing the Notes. In addition, any subsidiaries who become borrowers under the Revolving Credit Facility will also provide a guarantee. The Company's obligations under the Revolving Credit Facility will be secured by first-priority security interests (subject to certain permitted liens) over the Collateral that will rank equal with the security interest of the Notes, subject to the right of the finance parties under the Revolving Credit Facility to receive the net proceeds of any foreclosure on the Collateral before the holders of the Notes.

### *Certain Covenants and Events of Default*

The Company will be required to maintain minimum cash and cash equivalents in an amount ranging from \$15.0 million to \$20.0 million, as provided in the Credit Agreement.

In addition, the Revolving Credit Facility contains negative covenants that, among other things and subject to certain significant exceptions, limit the Company's ability and the ability of its restricted subsidiaries to:

- incur additional indebtedness or issue certain preferred stock;
- pay dividends on, redeem or repurchase capital stock or make other restricted payments and investments;
- create certain liens;
- transfer or sell assets;
- enter into certain transactions with affiliates;
- merge, consolidate or sell all or substantially all of the Company's properties and assets;
- create or designate unrestricted subsidiaries; and
- impair the security interests.

The Credit Agreement also contains certain customary representations and warranties, affirmative covenants and events of default. If an event of default occurs, the lenders under the Revolving Credit Facility will be entitled to take various actions, including the acceleration of amounts due under the Revolving Credit Facility and actions customarily permitted to be taken by a secured creditor. Amendments and waivers of the covenants described above or any other provisions which affect solely the Revolving Credit Facility will require the consent of lenders holding all or the majority of the commitments and loans under the Revolving Credit Facility.

### *Governing Law*

The Credit Agreement will be governed by English law.

### **Intercreditor Agreement**

In connection with the issuance of the Notes and the execution of the Indenture and the Credit Agreement, the Company and the guarantors entered into an intercreditor agreement with the security agent and the other parties thereto, that will govern, among other things, the relationships and relative priorities among the lenders under the Revolving Credit Facility and the holders of Notes. The intercreditor agreement is filed herewith as Exhibit 99.4, and is incorporated herein by reference.

### **Other Information**

This Report contains forward-looking statements. Forward-looking statements provide the Company's current expectations or forecasts of future events. Forward-looking statements include statements about the Company's expectations, beliefs, plans, objectives, intentions, assumptions and other statements that are not historical facts. Words or phrases such as "anticipate," "believe," "continue," "estimate," "expect," "intend," "may," "ongoing," "plan," "potential," "predict," "project," "will" or similar words or phrases, or the negatives of those words or phrases, may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking. These forward-looking statements are based on assumptions that may be incorrect, and the Company cannot assure you that the events or expectations included in these forward-looking statements will come to pass. Actual results could differ materially from those expressed or implied by the forward-looking statements as a result of various factors, including the factors described in "Risk Factors" in the Company's Annual Report on Form 20-F. Accordingly, you should not unduly rely on these forward-looking statements, which speak only as of the date of this Report. The Company undertakes no obligation to publicly revise any forward-looking statement to reflect circumstances or events after the date of this Report or to reflect the occurrence of unanticipated events.

**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.

GLOBAL SHIP LEASE, INC.

Date: March 20, 2014

By: /s/ Susan Cook  
Susan Cook  
Chief Financial Officer

## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Exhibit</u>
99.1	Indenture, dated as of March 19, 2014, among the Company, the guarantors party thereto and Deutsche Bank Trust Company Americas, as trustee and as security agent.
99.2	Form of Notes (included in Exhibit 99.1)
99.3	Credit Agreement, dated as of March 19, 2014, among the Company, Global Ship Lease Services Limited, the guarantors party thereto, Citibank N.A., London Branch, Citibank International plc and Deutsche Bank Trust Company Americas.
99.4	Intercreditor Agreement, dated as of March 19, 2014, among the Company, the parties listed on Part A of Schedule 5 thereto, Citibank N.A., London Branch, Deutsche Bank Trust Company Americas and the other parties from time to time party thereto.

**GLOBAL SHIP LEASE, INC.,**

AS ISSUER,

**THE GUARANTORS PARTY HERETO,**

AS GUARANTORS,

**DEUTSCHE BANK TRUST COMPANY AMERICAS,**

AS TRUSTEE AND AS SECURITY AGENT,

**DEUTSCHE BANK AG, LONDON BRANCH AND DEUTSCHE BANK TRUST COMPANY AMERICAS,**

AS PAYING AGENTS,

AND

**DEUTSCHE BANK TRUST COMPANY AMERICAS,**

AS REGISTRAR AND TRANSFER AGENT

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**INDENTURE**

Dated as of March 19, 2014

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**\$420,000,000**

**10.000% First Priority Secured Notes due 2019**

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**Note:** This Table of Contents shall not, for any purpose, be deemed to be part of this Indenture.

**INDENTURE** dated as of March 19, 2014 among Global Ship Lease, Inc., a corporation organized under the laws of the Marshall Islands, as Issuer (the “*Issuer*”), certain subsidiaries of the Issuer named herein, as Guarantors (the “*Guarantors*”), Deutsche Bank Trust Company Americas, as Trustee (the “*Trustee*”) and, as applicable, as Security Agent (the “*Security Agent*”), Deutsche Bank AG, London Branch and Deutsche Bank Trust Company Americas, as Paying Agents (as defined herein), and Deutsche Bank Trust Company Americas, as Registrar and Transfer Agent (each as defined herein).

### RECITALS OF THE ISSUER AND THE GUARANTORS

The Issuer has duly authorized the execution and delivery of this Indenture to provide for the issuance of: (i) its 10.000% First Priority Secured Notes due 2019 issued on the date hereof (the “*Initial Notes*”); and (ii) any additional notes having identical terms and conditions to the Initial Notes (save for the impact of the later date of issue) (“*Additional Notes*”) that may be issued after the Issue Date (as defined herein) (the Initial Notes together with any Additional Notes, the “*Notes*”). The Issuer and the Guarantors have received good and valuable consideration for the execution and delivery of this Indenture.

All necessary acts and things have been done to make: (i) the Notes, when duly issued and executed by the Issuer and authenticated and delivered hereunder, the legal, valid and binding obligations of the Issuer; and (ii) this Indenture a legal, valid and binding agreement of the Issuer and the Guarantors in accordance with the terms of this Indenture.

### NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Notes by the Holders thereof, it is mutually covenanted and agreed by the parties hereto, for the benefit of each other and for the equal and proportionate benefit of all Holders (as defined below), as follows:

### ARTICLE ONE DEFINITIONS AND INCORPORATION BY REFERENCE

#### SECTION 1.01. Definitions.

Set forth below are certain defined terms used in this Indenture.

“**Acceptable Charterer**” means CMA CGM or any of the other charterers set out in Schedule 9 (*Acceptable Charterers*) to the Revolving Credit Facility as in effect on the Issue Date.

“**Acquired Debt**” means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or becomes a Restricted Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “*control*,” as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms “*controlling*,” “*controlled by*” and “*under common control with*” have correlative meanings.

“**Applicable Premium**” means, with respect to a Note at any time, the greater of (1) 1.0% of the principal amount of such Note at such time and (2) the excess of (A) the present value at such time of (i) the redemption price of such Note at April 1, 2016, plus (ii) all remaining interest payments due on such Note through and including April 1, 2016 (excluding any interest accrued to the Make-Whole Redemption Date), discounted on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) from April 1, 2016 to the Make-Whole Redemption Date, computed using a discount rate equal to the Applicable Treasury Rate plus 0.50%, over (B) the principal amount of such Note on the Make-Whole Redemption Date.

“**Applicable Treasury Rate**” for any redemption date, means the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two Business Days prior to the Make-Whole Redemption Date of such Note (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the Make-Whole Redemption Date to April 1, 2016; *provided, however*, that if the period from the Make-Whole Redemption Date to April 1, 2016 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Applicable Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given except that if the period from the Make-Whole Redemption Date to April 1, 2016 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

“**Appraised Value**” means the fair market value as of a specified date of a specified Vessel (including the value of the Charter, if any, associated with such Vessel) that would be obtained in an arm’s-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined by a Designated Appraiser selected by the Issuer.

“*Asset Sale*” means:

(1) the sale, lease, conveyance or other disposition of any assets (other than, in the case of Collateral, an Event of Loss); *provided* that the sale, conveyance or other disposition of all or substantially all of the assets of the Issuer and their Restricted Subsidiaries taken as a whole will be governed by Section 4.09 hereof and/or Section 5.01 hereof and not by Section 4.13 hereof; and

(2) the issuance by any of the Issuer’s Restricted Subsidiaries of any Equity Interest of such Restricted Subsidiary or the sale by the Issuer or any Restricted Subsidiary of Equity Interests in any Restricted Subsidiaries (other than in each case (x) directors’ qualifying shares or shares required by applicable law to be held by a Person other than the Issuer or any of its Subsidiaries or (y) preferred stock or Disqualified Stock issued in compliance with Section 4.10 hereof).

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) (A) other than in the case of any Collateral or the Equity Interests of any Mortgaged Guarantor or any parent or indirect parent of a Mortgaged Guarantor that is a subsidiary of the Issuer, any single transaction or series of related transactions that involves assets or the issuance of Equity Interests of any Restricted Subsidiary having a Fair Market Value of less than \$5.0 million; and (B) any single transaction or series of related transactions that involves Collateral (other than Equity Interests of any Mortgaged Guarantor or any parent or indirect parent of a Mortgaged Guarantor that is a subsidiary of the Issuer and Trust Monies) having a Fair Market Value of less than \$1.0 million;

(2) a sale, lease, conveyance, transfer or other disposition of assets between or among the Issuer and/or its Restricted Subsidiaries; *provided* that if such sale, lease, conveyance, transfer or other disposition involves Collateral, such exemption shall only be available if such transaction is between or among the Issuer and/or one or more Mortgaged Guarantors;

(3) an issuance, sale, transfer or other disposition of Equity Interests by a Restricted Subsidiary of the Issuer to the Issuer or to another Restricted Subsidiary of the Issuer;

(4) the sale or other disposition of damaged, worn-out, surplus or obsolete assets or property in the ordinary course of a Permitted Business or in connection with maintenance and equipment upgrades;

(5) the sale or other disposition of cash or Cash Equivalents (other than Trust Monies);

(6) (i) a Restricted Payment that does not violate Section 4.11 hereof or a Permitted Investment and (ii) any issuance, sale, transfer or other disposition of Capital Stock or Indebtedness or other securities of an Unrestricted Subsidiary;



(7) sales of accounts receivable inventory and other current assets (other than Vessels and Related Assets) in the ordinary course of a Permitted Business;

(8) a Permitted Asset Swap;

(9) sales and/or contributions of Securitization Assets to a Securitization Subsidiary in a Qualified Securitization Transaction for the Fair Market Value thereof including cash in an amount at least equal to 75% of the Fair Market Value thereof (for the purposes of this clause (9), Purchase Money Notes will be deemed to be cash);

(10) any transfer of Securitization Assets or a fractional undivided interest therein, by a Securitization Subsidiary in a Qualified Securitization Transaction;

(11) the unwinding of any Hedging Obligations;

(12) the lease, assignment or sublease of any real or personal property including, but not limited, to a Vessel or Container Asset, in the ordinary course of a Permitted Business;

(13) the grant in the ordinary course of a Permitted Business of any license or sublicense of patents, trademarks, know-how and any other intellectual property;

(14) any sale or disposition deemed to occur in connection with creating, granting or perfecting a Lien not otherwise prohibited by this Indenture;

(15) sale of assets received upon the foreclosure of a Lien;

(16) the surrender or waiver of contract rights or settlement, release or surrender of a contract, tort or other litigation claim in the ordinary course of a Permitted Business;

(17) foreclosures, condemnations or any similar actions on assets; and

(18) the disposition of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements.

**“Assigned Contracts”** means, in respect of any Mortgaged Vessel, (a) the Management Agreement, (b) the Charter and (c) the Charter Guarantee, relating to such Mortgaged Vessel.

**“Assigned Property”** means, in respect of any Mortgaged Vessel, (a) the Earnings, (b) the Obligatory Insurances, and (c) any Requisition Compensation, relating to such Mortgaged Vessel.

**“Assigned Rights”** means:

- (1) all amounts payable to the Issuer or any Mortgaged Guarantor in respect of the Assigned Property;
- (2) all of the Issuer’s or any Mortgaged Guarantor’s right, title and interest in connection with the Assigned Property;
- (3) all of the Issuer’s or any Mortgaged Guarantor’s right, title and interest in, and powers under, the Assigned Contracts including, without limitation:
  - (i) the right to terminate the Assigned Contracts in accordance with their terms and to make all elections, statements and presentations and give all notices and confirmations which may be made or given by the Issuer or the Mortgaged Guarantor thereunder;
  - (ii) the right of the Issuer or the Mortgaged Guarantor to perform and compel performance of the Assigned Contracts in accordance with their terms; and
  - (iii) the right to make all elections, statements and presentations and give all notices and confirmations which may be made or given by the Issuer or the Mortgaged Guarantor under the Assigned Contracts.

**“Assignment of Freights and Hires”** means each assignment, between either the Issuer or a Mortgaged Guarantor, as applicable, and the Security Agent, for the benefit of the Secured Parties under the Intercreditor Agreement, dated a Delivery Date (or such later date as permitted by this Indenture), as the case may be, as amended from time to time in accordance with the terms of this Indenture and substantially similar to the Assignment of Freights and Hires entered into on the Issue Date, together with the documents contemplated thereby, pursuant to which the Issuer or such Mortgaged Guarantor, as applicable, assigns its right, title and interest in, to and under all (i) Earnings, (ii) Requisition Compensation, (iii) the Assigned Contracts and (iv) the Assigned Rights in connection with the foregoing, in each case in respect of its Mortgaged Vessel.

**“Assignment of Insurance”** means each assignment, between either the Issuer or a Mortgaged Guarantor, as applicable, and the Security Agent, for the benefit of the Secured Parties under the Intercreditor Agreement, dated a Delivery Date (or such later date as permitted by this Indenture), as the case may be, as amended from time to time in accordance with the terms of this Indenture and substantially similar to the Assignment of Insurance entered into on the Issue Date, together with the documents contemplated thereby, pursuant to which the Issuer or Mortgaged Guarantor, as applicable, assigns its right, title and interest in, to and under all Obligatory Insurances and the Assigned Rights in connection therewith.

**“Attributable Indebtedness”** in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate equal to the rate implicit in such transaction for the relevant lease period, determined in accordance with GAAP) of the total obligations of the lessee for net rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended); *provided, however*, that if such Sale/Leaseback Transaction results in a Capital Lease Obligation, the amount of Indebtedness required thereby will be determined in accordance with the definition of *“Capital Lease Obligation.”*

**“Bankruptcy Law”** means Title 11 of the United States Code, as amended, or any applicable United States federal, state or foreign law for the relief of debtors, or bankruptcy, insolvency, reorganization or other similar law.

**“beneficial owner”** has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act. The terms *“beneficially owns,” “beneficially owned”* and *“beneficial ownership”* have correlative meanings.

**“Board of Directors”** means:

(1) with respect to a corporation, the board of directors of the corporation or, other than for purposes of the definition of *“Change of Control,”* any committee thereof duly authorized to act on behalf of such board; and

(2) with respect to any other Person, the functional equivalent of a board of directors of a corporation or, other than for purposes of the definition of *“Change of Control,”* any committee thereof duly authorized to act on behalf thereof.

**“Board Resolution”** means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary (or an individual with similar authority) of such Person, to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification, and delivered to the Trustee.

**“Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in London, the Netherlands, Ireland and New York and (in relation to any date for the payment or purchase of a currency other than U.S. Dollars) the principal financial center of the country of that currency.

**“Capital Lease Obligation”** means, at the time of determination, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP.

**“Capital Stock”** means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) in the equity of such association or entity;

(3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

**“Cash Equivalents”** means:

(1) United States dollars, pounds sterling or Euro or other currency of a member of the Organization for Economic Cooperation and Development (including such currencies as are held as overnight bank deposits and demand deposits with banks);

(2) securities issued or directly and fully guaranteed or insured by the government of the United States or any Member State of the European Union or any other country whose sovereign debt has a rating of at least “A3” from Moody’s and at least “A-” from S&P or any agency or instrumentality thereof having maturities of not more than one year from the date of acquisition;

(3) demand and time deposits and eurodollar time deposits and certificates of deposit or bankers’ acceptances with maturities of one year or less from the date of acquisition, in each case, with any financial institution organized under the laws of any country that is a member of the Organization for Economic Cooperation and Development (a) whose commercial paper is rated at least “A-2” or the equivalent thereof by S&P or at least “P-2” or the equivalent thereof by Moody’s (or if at the time neither is issuing comparable ratings, then a comparable rating of another Rating Agency) or (b) having capital and surplus and undivided profits in excess of \$250.0 million;

(4) repurchase obligations with a term of not more than 60 days for underlying securities of the types described in clause (2) of this definition entered into with any financial institution meeting the qualifications specified in clause (3) of this definition;

(5) commercial paper and variable or fixed rate notes rated “P-1” or higher by Moody’s or “A-1” or higher by S&P and, in each case, maturing within one year after the date of acquisition;

(6) money market funds that invest primarily in Cash Equivalents of the kinds described in clauses (1) through (5) of this definition; and

(7) instruments equivalent to those referred to in clauses (1) through (6) of this definition denominated in any other foreign currency and comparable in credit quality and tenor to those referred to above and customarily to the extent reasonably required in connection with (a) any business conducted by the Issuer or any of its Restricted Subsidiaries in such jurisdiction or (b) any Investment in the jurisdiction in which such Investment is made.

**“Change of Control”** means the occurrence of any of the following events:

(1) at any time, the Issuer becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act, or any successor provision), other than the Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership of a majority of the total voting power of the Voting Stock of the Issuer or any direct or indirect parent company of the Issuer; *provided* that (x) so long as the Issuer is a Subsidiary of a parent company, no Person shall be deemed to be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of the Issuer unless such Person shall be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of such parent company and (y) any Voting Stock of which any Permitted Holder is the beneficial owner shall not in any case be included in calculating the Voting Stock of which any such Person first referred to above in this clause (1) is the beneficial owner;

(2) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors (together with any new directors nominated for election to the Board of Directors by a Permitted Holder or whose election to such Board of Directors or whose nomination for election by the stockholders of the Issuer was approved by a vote of the majority of the directors of the Issuer then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Issuer;

(3) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Issuer and the Restricted Subsidiaries, taken as a whole, to any Person other than a Wholly Owned Restricted Subsidiary or one or more Permitted Holders in connection with which any Person other than one or more Permitted Holders, is or becomes the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), directly or indirectly, of a majority of the

total voting power of the Voting Stock of the transferee Person in such sale or transfer of assets, as the case may be; *provided* that (x) so long as such transferee Person is a Subsidiary of a Permitted Parent, no Person shall be deemed to be or become a beneficial owner of a majority of the total voting power of the Voting Stock of such transferee Person unless such Person shall be or become a beneficial owner of a majority of the total voting power of the Voting Stock of such Permitted Parent and (y) any Voting Stock of which any Permitted Holder is the beneficial owner shall not in any case be included in the calculation of any Voting Stock of which any such Person first referred to above in this clause (3) is the beneficial owner; or

(4) the Issuer shall adopt a plan of liquidation or dissolution or any such plan shall be approved by the stockholders of the Issuer.

**“Charter”** means each time charter party or bareboat charter party entered into with respect to a Mortgaged Vessel.

**“Charter Guarantee”** means the guarantee, if any, given to the Issuer or a Restricted Subsidiary by any Person guaranteeing the obligations of the charterer under the Charter.

**“CMA CGM”** means CMA CGM S.A. and its Subsidiaries.

**“CMA Ships”** means CMA Ships Management, a Subsidiary of CMA CGM.

**“Collateral”** means, collectively, all of the property and assets (including, without limitation, Trust Monies) that are from time to time subject to the Security Documents.

**“Commission”** means the U.S. Securities and Exchange Commission.

**“Consolidated Cash Flow”** means, for any period, for any Person, an amount determined for such Person and its Restricted Subsidiaries on a consolidated basis equal to:

(1) Consolidated Net Income for such period; *plus*

(2) the sum, without duplication, of the amounts for such Person and its Restricted Subsidiaries for such period (in each case to the extent reducing such Consolidated Net Income) of:

- (a) Fixed Charges;
- (b) provision for Taxes based on income;
- (c) total depreciation expenses;

(d) total amortization expenses (including, without limitation, the amortization of capitalized dry docking expenses);

(e) other non-cash items reducing such Consolidated Net Income (including those excluded from the definition of “Fixed Charges”) (excluding (x) any such non-cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period and (y) any such non-cash items resulting from the application of purchase accounting in connection with the merger of Global Ship Lease, Inc. and GSL Holdings, Inc. on August 14, 2008);

(f) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly-Owned Subsidiary deducted (and not added back) in such period in calculating Consolidated Net Income, except to the extent of dividends declared or paid on, or other cash payments in respect of, Equity Interests held by such parties; and

(g) to the extent any Attributable Indebtedness is outstanding and is not a Capital Lease Obligation, the amount of any payments therefor less the amount of interest implicit in such payments; *minus*

(3) the amount for such period (to the extent increasing such Consolidated Net Income) of non-cash items increasing such Consolidated Net Income (other than any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash items in any prior period);

*provided* that the items listed in clauses (2)(a) through (g) above of a Restricted Subsidiary will be included in Consolidated Cash Flow only to the extent (and in the same proportion) that the net income of such Subsidiary was included in calculating Consolidated Net Income for such period.

Notwithstanding the foregoing, for purposes of Consolidated Cash Flow, in the event that the Issuer or any of its Restricted Subsidiaries (i) receive (a) any advances for services rendered or to be rendered over multiple periods, (b) termination payments in connection with the termination of charter contracts which otherwise would have been in effect for multiple periods, (c) insurance payments in respect of Vessels which were subject to charters that would have been in effect for multiple periods and/or (ii) pays a termination payment in order to terminate a charter that would have been in effect over multiple periods, the Issuer may, in its good faith judgment, (without duplication) adjust Consolidated Cash Flow to amortize the receipt of such payments over the applicable periods and the effect of such expenses over the applicable period.

“**Consolidated Leverage**” means, as of any date of determination, the sum of the total amount of Indebtedness (excluding Indebtedness that is contractually subordinated in right of payment to the Notes or the Guarantees) and Disqualified Stock of the Issuer and its Restricted Subsidiaries on a consolidated basis.

**“Consolidated Leverage Ratio”** means with respect to any specified Person, the ratio of (x) the Consolidated Leverage of such Person as of the end of the most recently ended fiscal quarter for which internal financial statements are available immediately preceding the date of on which the event for which the calculation of the Consolidated Leverage Ratio is made shall occur or has occurred (the “*Calculation Date*”) minus cash and Cash Equivalents included on the consolidated balance sheet of the Issuer as of the end of the most recently ended fiscal quarter for which internal financial statements are available immediately preceding the date to (y) the Consolidated Cash Flow of such Person for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the Calculation Date, with such *pro forma* adjustments to Consolidated Leverage, cash, Cash Equivalents and Consolidated Cash Flow as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of “*Fixed Charge Coverage Ratio*.”

**“Consolidated Net Income”** means, for any period, the net income (or net loss) of the Issuer and its Restricted Subsidiaries for such period as determined on a consolidated basis in accordance with GAAP and without any reduction in respect of preferred stock dividends, adjusted to the extent included in calculating such net income or loss by excluding (without duplication):

- (1) any net after-tax extraordinary or nonrecurring gains or losses (less all fees and expenses relating thereto);
- (2) any net after-tax gains or losses (less all fees and expenses relating thereto) attributable to asset sales or dispositions of securities;

(3) the portion of net income (or loss) of any Person (other than the Issuer or a Restricted Subsidiary) in which the Issuer or any Restricted Subsidiary has an ownership interest, except to the extent of the amount of dividends or other distributions actually paid to the Issuer or any Restricted Subsidiary in cash (or to the extent converted into cash or Cash Equivalents) during such period;

(4) solely for purpose of calculating Consolidated Net Income to determine the amount of Restricted Payments permitted under Section 4.11 hereof, the net income (but not the net loss) of any Restricted Subsidiary (other than any Guarantor or Securitization Subsidiary) shall be excluded to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary is at the date of determination restricted, directly or indirectly, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived or otherwise released; *provided* that Consolidated Net Income of the Issuer will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) or Cash Equivalents to the Issuer or a Restricted Subsidiary in respect of such period, to the extent not already included therein;



(5) any non-cash expenses or charges resulting from stock, stock option or other equity-based awards;

(6) the cumulative effect of a change in accounting principles;

(7) any impairment charge or asset write-off or write-down, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(8) the net after-tax effects of adjustments in the inventory, property and equipment, goodwill, intangible assets, deferred revenue and debt line items in such Person's consolidated financial statements pursuant to GAAP resulting from the application of purchase accounting or the amortization or write-off of any amounts thereof, other than any such net after tax effects resulting from the application of purchase accounting in connection with the merger of Global Ship Lease, Inc., and GSL Holdings, Inc. on August 14, 2008;

(9) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, investment, recapitalization, asset sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (including without limitation any such transaction consummated prior to the Issue Date and any such transaction undertaken but not completed) and any non-recurring merger costs or charges incurred during such period as a result of any such transaction;

(10) any net operating losses arising as a result of the release of any valuation allowance made in respect of deferred tax assets, following a determination that any such deferred tax assets will not be realized;

(11) any unrealized gains or losses from derivative hedging instruments; and

(12) any non-cash expenses or charges resulting from the preferred stock (other than Disqualified Stock) outstanding (or committed to be issued) as of the Issue Date.

**"Container Assets"** means shipping containers and other container related assets (not classified as current assets under GAAP) used or useful in a Permitted Business.

**"Corporate Trust Office"** means (i) for Note transfer purposes and for purposes of presentment and surrender of the Notes for final distributions thereon, DB Services Americas, Inc., MS JCK01-0218, 5022 Gate Parkway, Suite 200, Jacksonville, Florida 32256, United States of America, Attention: Bond Transfer Unit, and (ii) for all other purposes, Deutsche Bank Trust Company Americas, Trust and Agency Services, 60 Wall Street, 16th Floor, Mail Stop: NYC60-1630, New York, New York 10005, United States of America, Attn: Corporate Team, Global Ship Lease, Inc., Facsimile: (732) 578-4635, with a copy to: Deutsche Bank Trust Company Americas, c/o Deutsche Bank National Trust Company, Trust and Agency Services, 100 Plaza

One – 6th Floor, Mail Stop: JCY03-0699, Jersey City, NJ 07311-3901, United States of America, Attn: Corporate Team, Global Ship Lease, Inc., Facsimile: (732) 578-4635, or at such other address as the Trustee or Security Agent, as applicable, may designate from time to time by notice to the parties to this Indenture, or the principal corporate trust office of any permitted successor Trustee or Security Agent, as applicable, under this Indenture.

**“Credit Facilities”** means one or more debt facilities (including the Revolving Credit Facility) or agreements or commercial paper facilities, in each case, with banks, other institutional lenders, commercial finance companies or other lenders providing for revolving credit loans, term loans, bonds, debentures, securitization financing (including through the transfer of Securitization Assets to special purpose entities formed to borrow from such lenders against, or sell undivided interests in, such assets in a Qualified Securitization Transaction) or letters of credit, pursuant to credit agreements, or indentures, in each case, as amended, restated, modified, renewed, refunded, replaced, increased or refinanced (including by means of sales of debt securities to institutional investors) in whole or in part from time to time (and without limitation as to amount, terms, conditions, covenants and other provisions, including increasing the amount of available borrowings thereunder, changing or replacing agent banks and lenders thereunder or adding, removing or reclassifying the Issuer and/or Subsidiaries of the Issuer as borrowers or guarantors thereunder).

**“Currency Exchange Protection Agreement”** means, in respect of any Person, any foreign exchange contract, currency swap agreement, currency option, cap, floor, ceiling or collar or agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates as to which such Person is a party.

**“Custodian”** means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

**“Debt Documents”** shall have the meaning assigned to such term in the Intercreditor Agreement.

**“Deed of Assignment”** means each deed of assignment, between either the Issuer or a Mortgaged Guarantor, as applicable, and the Security Agent, for the benefit of the Secured Parties under the Intercreditor Agreement, dated the Issue Date or a Delivery Date (or such later date as permitted by this Indenture), as the case may be, amended from time to time in accordance with the terms of this Indenture and substantially in the form required by this Indenture, together with the documents contemplated thereby, pursuant to which the Issuer or such Mortgaged Guarantor, as applicable, assigned its right, title, interest and benefit in, to and under the Assigned Rights, the Assigned Property and the Assigned Contracts.

**“Default”** means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

**“Depository”** means, with respect to the Global Notes, The Depository Trust Company, New York, New York, its nominees and any and all successors thereto appointed as depository hereunder and having become such pursuant to the applicable provisions of this Indenture.

**“Designated Additional Notes Contribution”** means, in respect of any Indebtedness incurred pursuant to the issuance of Additional Notes, any other cash, Cash Equivalents or other assets of the Issuer or any Restricted Subsidiary used as payment for a portion of the purchase price of Qualified Vessels or Qualified Container Assets (excluding any reasonable related fees or expenses incurred in connection therewith); *provided* that the aggregate amount of all such cash, Cash Equivalents and other assets used by the Issuer or any Restricted Subsidiary for such payment, together with the aggregate amount of all other Designated Additional Notes Contributions made in such fiscal year (in each case excluding the net proceeds of any Indebtedness incurred in connection with such transactions that is secured by a Permitted Lien) does not exceed \$10 million in such fiscal year plus the aggregate amount that could have been applied on the date that such Additional Notes are issued as Restricted Investments under Section 4.11(a)(3)(B) (and an equivalent amount of Restricted Payments shall be deemed to have been made under Section 4.11(a)(3)(B), in each case as designated in an Officer’s Certificate on the date such Additional Notes are issued. If any such Indebtedness is permanently discharged (other than with the proceeds of any Indebtedness), then the amount available under Section 4.11(a)(3)(B) shall be increased by the aggregate amount of any Designated Additional Notes Contribution attributable to such discharged Indebtedness as designated in an Officer’s Certificate.

**“Designated Appraiser”** means any of Howe Robinson Marine Evaluations Ltd.; Braemar Seascope Valuation Ltd.; Drewry Maritime Service (Asia) pte Ltd.; Maritime Strategies International Limited; Fearnleys A.S.; Oslo Shipbrokers A.S.; Clarkson Valuations Limited; Simpson Spence & Young Shipbrokers Ltd.; E.A. Gibson Shipbrokers Ltd.; Jacq. Pierot Jr. & Sons; Allied Shipbroking, Greece; RS Platou ASA; ICAP Shipping Limited; ACM Ltd., London; Island Shipbrokers PTE LTD, Singapore; Deloitte LLP; Ernst & Young LLP; KPMG LLP; Marsoft; Barry Rogliano Salles (BRS); Kontiki Shipbrokers and Maersk Broker, or, if none of the foregoing is at such time generally providing appraisals of vessels (as determined in good faith by the Issuer) then, another Independent Appraiser; *provided* that, at the time any such firm is to be utilized, such firm would qualify as an Independent Appraiser.

**“Designated Asset Finance Contribution”** means, in respect of any Indebtedness incurred pursuant to Section 4.10(b)(4) (“*Asset Finance Debt*”), any other cash, Cash Equivalents or other assets of the Issuer or any Restricted Subsidiary used as payment for a portion of the purchase price, charter expense, lease expense, rental payments or cost of design, construction, installation or improvement of Vessels or Container Assets used in the business of the Issuer or any of its Restricted Subsidiaries (excluding any reasonable related fees or expenses incurred in connection therewith), whether through the charter of, leasing of, or the direct purchase of, or of the Capital Stock of any Person owning, such Vessels or Container Assets (including any Indebtedness deemed to be incurred in connection with such purchase); *provided* that the aggregate amount of all such cash, Cash Equivalents and other assets used by the Issuer or any Restricted Subsidiary for such payment, together with the cost of all other unrealized Designated Asset Finance Contributions made on or prior to such date (in each case excluding

the net proceeds of any Indebtedness incurred in connection with such transactions that is secured by a Permitted Lien) does not exceed \$10 million in such fiscal year plus the aggregate amount that could have been applied on the date that such Indebtedness is incurred as Restricted Investments under Section 4.11(a)(3)(B) or as Permitted Investments under clauses (15) or (18) under the definition of “Permitted Investments” (the “Permitted Payment Baskets”) (and an equivalent amount of Restricted Payments or Permitted Investments shall be deemed to have been made under one or more of the Permitted Payment Baskets), in each case as designated in an Officer’s Certificate on the date such Indebtedness is incurred. If any Asset Finance Debt is permanently discharged (other than with the proceeds of any Permitted Refinancing Indebtedness or other Asset Finance Debt), then the amount available under one or more of the Permitted Payment Baskets shall be increased by the aggregate amount of any Designated Asset Finance Contribution attributable to such discharged Indebtedness as designated in an Officer’s Certificate.

“**Designated Non-cash Consideration**” means the Fair Market Value of non-cash consideration received by the Issuer or one of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer’s Certificate, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

“**Disqualified Stock**” means the Existing Mandatorily Redeemable Preference Shares and any other Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the issuer thereof to repurchase or redeem such Capital Stock upon the occurrence of a change of control or an asset sale prior to the stated maturity of the Notes will not constitute Disqualified Stock. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Indenture will be the maximum amount that the Issuer and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock.

“**DTC**” means The Depository Trust Company.

“**Earnings**” means all present and future moneys and claims which are earned by or become payable to or for the account of the Issuer or any Mortgaged Guarantor in connection with the operation or ownership of the Mortgaged Vessel and including but not limited to (i) freights, passage and hire moneys (howsoever earned); (ii) remuneration for salvage and towage services; (iii) demurrage and detention moneys; (iv) all moneys and claims in respect of the requisition for hire of the Mortgaged Vessel; (v) payments received in respect of any off-hire insurance; and (vi) payments received pursuant to any Charter Guarantee.

**“Earnings Account”** means, with respect to any Mortgaged Vessel, a deposit account into which all Earnings derived from any Charter with respect to such Mortgaged Vessel shall be deposited or forwarded that is subject to a lien in favor of the Security Agent, except to the extent prohibited by applicable law.

**“Eligible Jurisdiction”** means any of the Republic of the Marshall Islands, the United States of America, any State of the United States or the District of Columbia, the Commonwealth of the Bahamas, the Republic of Liberia, the Republic of Panama, the Commonwealth of Bermuda, the British Virgin Islands, the Cayman Islands, the Isle of Man, Cyprus, Norway, Greece, Hong Kong, the United Kingdom, Malta, any Member State of the European Union and Singapore and any other jurisdiction generally acceptable to institutional lenders in the shipping industry, as determined in good faith by the Issuer.

**“Equity Interests”** means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

**“Equity Offering”** means any issuance and sale by the Issuer of its Qualified Equity Interests.

**“Event of Loss”** means any of the following events: (a) the actual or constructive total loss of a Vessel or the agreed or compromised total loss of a Vessel, (b) the destruction of a Vessel, (c) damage to a Vessel to an extent, determined in good faith by the Issuer within 90 days after the occurrence of such damage (and evidenced by an Officer’s Certificate to such effect delivered to the Trustee and the Security Agent, within such 90-day period), as shall make repair thereof uneconomical or shall render such Vessel permanently unfit for normal use (other than obsolescence) or (d) the condemnation, confiscation, requisition for title, seizure, forfeiture or other taking of title to or use of a Vessel that shall not be revoked within six months. An Event of Loss shall be deemed to have occurred: (i) in the event of the destruction or other actual total loss of a Vessel, on the date of such loss, or if such date is unknown, on the date such Vessel was last reported; (ii) in the event of a constructive, agreed or compromised total loss of a Vessel, on the date of determination of such total loss; (iii) in the case of any event referred to in clause (c) of this definition, upon the delivery of the Issuer’s Officer’s Certificate to the Trustee and the Security Agent; or (iv) in the case of any event referred to in clause (d) of this definition, on the date that is six months after the occurrence of such event.

**“Event of Loss Proceeds”** means all compensation, damages and other payments (including insurance proceeds) received by the Issuer, any Mortgaged Guarantor, the Trustee or the Security Agent, jointly or severally, from any Person, including any governmental authority, with respect to or in connection with an Event of Loss.

**“Excess Cash Flow”** means, for any fiscal year of the Issuer, the excess, if any, of (a) the sum, without duplication, of:

- (i) Consolidated Net Income for such fiscal year;

- (ii) the amount of all non-cash expenses (including depreciation and amortization) deducted in arriving at such Consolidated Net Income for such fiscal year;
- (iii) decreases in consolidated working capital (excluding Cash Equivalents and the current portion of long-term Indebtedness) for such fiscal year;
- (iv) the aggregate net amount of non-cash loss on the disposition of assets by the Issuer and its Restricted Subsidiaries during such fiscal year (other than sales of inventory in the ordinary course of business), to the extent deducted in arriving at such Consolidated Net Income; and
- (v) the amount of all income Taxes expensed, but not paid in cash for such fiscal year;
- minus (b) the sum, without duplication, of:
- (i) the amount of all non-cash income included in arriving at such Consolidated Net Income for such fiscal year;
- (ii) the aggregate amount actually paid by the Issuer and its Restricted Subsidiaries in cash during such fiscal year on account of capital expenditures (excluding (A) capital expenditures funded from (x) the proceeds of Indebtedness incurred or Equity Interests issued after the Issue Date, (y) Net Proceeds of Asset Sales, (z) Event of Loss Proceeds and other insurance proceeds and (B) capital expenditures to purchase Vessels or Container Assets or improve or maintain such purchased Vessels or Container Assets in such fiscal year);
- (iii) the aggregate amount of all principal payments of any term loans or other funded Indebtedness during such fiscal year as contractually required by the terms of such instruments;
- (iv) increases in consolidated working capital (excluding Cash Equivalents and the current portion of long-term Indebtedness) for such fiscal year;
- (v) the aggregate net amount of non-cash gains on the disposition of assets by the Issuer and its Restricted Subsidiaries during such fiscal year (other than sales of inventory in the ordinary course of business), to the extent included in arriving at such Consolidated Net Income;
- (vi) payments for current Taxes payable in cash in such fiscal year to the extent they exceed the amount of Tax expense deducted in determining Consolidated Net Income for such fiscal year; and
- (vii) the aggregate principal amount of Notes redeemed in accordance with Section 3.07 in such fiscal year.

**“Exchange Act”** means the U.S. Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto and, in each case, the rules and regulations promulgated by the Commission thereunder.

**“Exercised Vessel Purchase Option Contract”** means any Vessel Purchase Option Contract which has been exercised by the Issuer or a Restricted Subsidiary, obligating the Issuer or such Restricted Subsidiary to purchase such Vessel and any Related Assets, subject only to customary conditions precedent.

**“Existing Charters”** means each of the time charters existing on the Issue Date with respect to the Existing Mortgaged Vessels, as each such time charter is amended through the Issue Date and as each such time charter may be amended, modified, supplemented, replaced, extended or renewed from time to time in compliance with Section 4.14(b)(7).

**“Existing Indebtedness”** means Indebtedness of the Issuer and its Subsidiaries in existence on the Issue Date after giving effect to the issuance of the Notes on the Issue Date and the use of proceeds therefrom, including the amount of undrawn commitments under any Credit Facilities in existence on the Issue Date and described in the Offering Memorandum.

**“Existing Management Agreements”** means the Management Agreements existing on the Issue Date and entered into between CMA Ships and the Issuer pursuant to which CMA Ships provides day-to-day technical ship management services, as each such agreement is amended through the Issue Date and as such agreement may be amended, modified, supplemented, replaced, extended or renewed from time to time in compliance with Section 4.14(b)(7).

**“Existing Mandatorily Redeemable Preference Shares”** means the Mandatorily Redeemable Preference Shares, Series A of the Issuer with the powers, designations preferences and rights and qualifications, limitations and restrictions as set forth in a Certificate of Designation filed with the Registrar of Corporations of the Republic of the Marshall Islands on August 14, 2008, as amended by the Agreement dated as of August 20, 2009, by and between the Issuer and CMA CGM, and as the same may be further amended, modified, supplemented, replaced, extended or renewed from time to time in compliance with the provisions of this Indenture.

**“Existing Mortgaged Vessels”** means the following Vessels owned by a Guarantor on the Issue Date: *Ville d’Orion*, *Ville d’Aquarius*, *CMA CGM Matisse*, *CMA CGM Utrillo*, *Delmas Keta*, *Julie Delmas*, *Kumasi*, *Marie Delmas*, *CMA CGM La Tour*, *CMA CGM Manet*, *CMA CGM Alcazar*, *CMA CGM Château d’If*, *CMA CGM Thalassa*, *CMA CGM Jamaica*, *CMA CGM Sambhar*, *CMA CGM America* and *CMA CGM Berlioz*.

**“Fair Market Value”** means, with respect to any asset or property, the value that would be paid by a willing buyer to an unaffiliated willing seller in an arm’s length transaction not involving distress or necessity of either party. Fair Market Value shall be determined in good

faith by (i) if the value of such property or asset is less than \$10.0 million, an officer of the Issuer and (ii) if the value of such property or asset equals or exceeds \$10.0 million, the Board of Directors of the Issuer; *provided, however*, that (w) subject to the definitions of “*Mortgaged Vessels*” and “*Qualified Vessels*,” the Fair Market Value of any Vessel shall be the greater of such Vessel’s “charter-free” and “charter-adjusted” values, as applicable, (x) if such determination is with respect to one or more Vessels with a value that equals or exceeds \$20.0 million (as determined by the Issuer in good faith), Fair Market Value shall be based on the Appraised Value of such Vessel and (y) if such determination relates to the determination by the Issuer of compliance with Section 4.10(b)(4) hereof, such determination shall comply with clause (x) above to the extent such determination relates to one or more Vessels and in all other cases to the extent Related Assets that have not been included in the calculation of the Appraised Value of a Vessel which Related Assets have a value in excess of \$20.0 million, such determination shall be based on the Appraised Value of such Related Assets or on the written opinion of an independent accounting, appraisal or investment banking firm of international standing qualified to perform the task for which such firm has been engaged (as determined by the Issuer in good faith).

“**Fixed Charge Coverage Ratio**” means with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems Disqualified Stock or preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made occurred (the “*Calculation Date*”), then the Fixed Charge Coverage Ratio will be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or preferred stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) acquisitions (including of Vessels and Related Assets including, without limitation, chartered-in Vessels) that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, of any other Person or any of its Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and any prior acquisitions by such other Person to the extent not fully reflected in the historical results of operations of such other Person, and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be given *pro forma* effect as if they had occurred on the first day of the four-quarter reference period;



(2) the Consolidated Cash Flow attributable to operations (including Vessels and Related Assets) or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(3) the Fixed Charges attributable to operations (including Vessels and Related Assets) or businesses (and ownership interests therein) disposed of prior to the Calculation Date will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) any Person that is a Restricted Subsidiary on the Calculation Date (or would become a Restricted Subsidiary on such Calculation Date in connection with the transaction requiring determination of such Consolidated Cash Flow) will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date (or would cease to be a Restricted Subsidiary on such Calculation Date in connection with the transaction requiring determination of such Consolidated Cash Flow) will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period;

(6) if any Indebtedness bears a floating rate of interest, the interest expense on such Indebtedness will be calculated at the actual rate that was in effect from time to time (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months); and

(7) if the Issuer or any Restricted Subsidiary shall have entered into an agreement to acquire a Vessel which at the time of calculation of the Fixed Charge Coverage Ratio is being constructed on behalf of the Issuer or such Restricted Subsidiary (each such Vessel, a "Pending Vessel") and if such Pending Vessel is scheduled to be delivered no later than 24 months from the date of such calculation of the Fixed Charge Coverage Ratio, *pro forma* effect will be given to the extent provided in the next paragraph below.

For purposes of this definition, whenever *pro forma* effect is to be given to an acquisition (including, without limitation, the charter-in of a Vessel) or construction of a Vessel or the Capital Stock of a Person that owns, or charters in, one or more Vessels or the financing thereof, such Person may (i) subject in the case of a Pending Vessel to clause (iii) below, if a relevant Vessel is or is to be subject to a time charter-out with a remaining term of twelve months or longer, apply for the period for which the Fixed Charge Coverage Ratio is being calculated *pro forma* earnings (losses) for such Vessel based upon such charter-out, (ii) subject in the case of a Pending Vessel to clause (iii) below, if a relevant Vessel is or is to be subject to a time charter-out with a remaining term of between six and twelve months, apply for the period for which the Fixed Charge Coverage Ratio is being calculated the annualized amount of *pro forma* earnings (losses) for such Vessel based upon such charter-out, or (iii) if such Vessel

is a Pending Vessel described in clause (7) of this definition then, include, to the extent that such Pending Vessel has not been delivered to the Issuer or a Restricted Subsidiary or if so delivered has not been deployed for the entire period for which the Fixed Charge Coverage Ratio is being calculated, for such period (or the portion of such period during which such Pending Vessel was not deployed if such Pending Vessel has been deployed but not for the entire period) the Proportionate Amount of earnings (losses) for such Pending Vessel with such earnings determined based upon the applicable provisions of clauses (i) and (ii) above (or the ratable amount of such Proportionate Amount of earnings (losses) to the extent the Pending Vessel has been deployed but for less than the entire period (with the actual earnings of such Pending Vessel being given effect to for the period deployed to the extent otherwise included in the calculation of Consolidated Cash Flow). If *pro forma* effect is given to the earnings (losses) of any Pending Vessel under this paragraph, *pro forma* effect shall also be given to any increase (decrease) in Fixed Charges to be incurred in connection with the acquisition, construction or Ready for Sea Cost of such Pending Vessel (which determination shall be made in good faith by a responsible accounting officer of the Issuer). As used herein, “*Proportionate Amount of earnings (losses)*” means the product of the earnings (losses) referred to above and the percentage of the aggregate purchase price for such Vessel that has been paid as of the relevant date of the determination of the Fixed Charge Coverage Ratio.

Additionally, any *pro forma* calculations may include the reduction or increase in costs for the applicable period resulting from, or in connection with, the acquisition of assets, an asset sale or other transaction or event which is being given *pro forma* effect that (a) would be permitted to be reflected on *pro forma* financial statements pursuant to Regulation S-X under the Securities Act or (b) has been realized at the time such *pro forma* calculation is made or is reasonably expected to be realized within twelve months following the consummation of the transaction to which such *pro forma* calculations relate, which actions shall be made in good faith by a responsible accounting officer of the Issuer.

“**Fixed Charges**” means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the consolidated interest expense net of consolidated interest income of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, (x) including, without limitation, amortization of original issue discount, non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Indebtedness or derivative instruments pursuant to GAAP), the interest component of any deferred payment obligations, the interest component of any Securitization Fees, the interest component of all payments associated with Capital Lease Obligations and the net payments made pursuant to Hedging Obligations in respect of interest rates and (y) excluding to the extent included in consolidated interest expense (A) breakage costs in connection with the termination of hedging agreements for interest rates or credit facilities on the Issue Date, (B) accretion or accrual of discounted liabilities not constituting Indebtedness, (C) any expense resulting from the discounting of Indebtedness in connection with the application of purchase accounting in connection with an acquisition, and (D) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses; *plus*

(2) the consolidated interest of such Person and its Restricted Subsidiaries that was capitalized during such period; *plus*

(3) any interest accruing on Indebtedness of another Person that is guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, but only to the extent that such interest is actually paid by such Person or such Restricted Subsidiary; *plus*

(4) all dividends accrued or paid on any series of Disqualified Stock of the Issuer or any Disqualified Stock or preferred stock of any Restricted Subsidiary (other than any such Disqualified Stock or preferred stock held by the Issuer or a Wholly Owned Restricted Subsidiary or to the extent paid in Qualified Equity Interests); *plus*

(5) to the extent any Attributable Indebtedness is outstanding and is not a Capital Lease Obligation, the amount of interest implicit in any payments related to such Attributable Indebtedness during such period.

**“Forward Freight Agreement”** means, with respect to any Person, any forward freight agreement or comparable swap, future or similar agreement or arrangement relating to derivative trading in freight or similar rates.

**“GAAP”** means generally accepted accounting principles in the United States of America as in effect on the Issue Date, as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, in each case, as in effect on the Issue Date, or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, in each case, as in effect on the Issue Date.

**“Global Expense Agreement”** means the amended and restated global expense agreement dated August 14, 2008, between the Issuer, CMA CGM and CMA Ships, as amended through the Issue Date and as such agreement may be amended, modified, supplemented, replaced, extended or renewed from time to time in compliance with Section 4.14(b)(7) hereof.

**“Government Securities”** means direct obligations of, or obligations guaranteed by, the United States of America, and the payment for which the United States pledges its full faith and credit.

**“guarantee”** means as to any Person, a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of a Permitted Business), direct or indirect, in any manner (including through letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness of another Person.

**“Guarantee”** means the guarantee by each Guarantor of the Issuer’s obligations under this Indenture and on the Notes, executed pursuant to the provisions of this Indenture.

**“Guarantor”** means each Subsidiary of the Issuer that executes a Guarantee in accordance with the provisions of this Indenture and its successors and assigns, until such Subsidiary is released from its Guarantee in accordance with the provisions of this Indenture.

**“Hedging Obligations”** means, with respect to any Person, the obligations of such Person under swap, cap, collar, forward purchase, Forward Freight Agreements or agreements or arrangements similar to any of the foregoing and dealing with interest rates, currency exchange rates, commodity prices or freight rates, either generally or under specific contingencies.

**“Heirs”** of any individual means such individual’s estate, spouse, lineal relatives (including adoptive descendants), administrator, committee or other personal representative or other estate planning vehicle and any custodian or trustee for the benefit of any spouse or lineal relatives (including adoptive descendants) of such individual.

**“Holder”** means a Person in whose name a Note is registered on the books maintained by the Registrar.

**“Indebtedness”** of any Person at any date means, without duplication:

- (1) all liabilities, contingent or otherwise, of such Person for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof);
- (2) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) all reimbursement obligations of such Person in respect of letters of credit, letters of guaranty, bankers’ acceptances and similar credit transactions;
- (4) all obligations of such Person representing the balance of the deferred and unpaid purchase price of any property or services due more than six months after such property is acquired or such services are completed and which is treated as indebtedness under GAAP, except any such balance that constitutes an accrued expense or trade payable, or similar obligations to trade creditors incurred in the ordinary course of a Permitted Business;
- (5) all Capital Lease Obligations of such Person;
- (6) all Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person;

(7) all Indebtedness of others guaranteed by such Person to the extent of such guarantee; *provided* that Indebtedness of the Issuer or its Subsidiaries that is guaranteed by the Issuer or the Issuer's Subsidiaries shall only be counted once in the calculation of the amount of Indebtedness of the Issuer and its Subsidiaries on a consolidated basis; *provided, further*, that Standard Securitization Undertakings in connection with a Qualified Securitization Transaction shall not be considered to be a guarantee of Indebtedness;

(8) all Attributable Indebtedness;

(9) to the extent not otherwise included in this definition, Hedging Obligations of such Person; and

(10) all obligations of such Person under conditional sale or other title retention agreements relating to assets purchased by such Person.

Notwithstanding the foregoing, Indebtedness shall be deemed not to include any operating leases as such an instrument would be determined in accordance with GAAP on the Issue Date.

Notwithstanding clause (4) of this definition, the obligation of the Issuer or any Restricted Subsidiary to pay the purchase price for an Exercised Vessel Purchase Option Contract entered into and exercised in the ordinary course of a Permitted Business and consistent with past practices of the Issuer and its Restricted Subsidiaries shall not constitute "Indebtedness" under clause (4) of this definition even though the purchase price therefor may be due more than six months after exercise thereof.

For purposes of calculating "*Consolidated Leverage*" the amount of Indebtedness in respect of a Hedging Obligation will be the liability, if any, included on the consolidated balance sheet of the Issuer as of the end of the most recently ended fiscal quarter for which internal financial statements are available immediately preceding the applicable calculation date in respect of such Hedging Obligation.

"*Indenture*" means this Indenture, as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"*Independent Appraiser*" means a Person:

(1) that is (a) engaged in the business of appraising Vessels who is generally acceptable to institutional lenders to the shipping industry or (b) if no Person described in clause (1)(a) of this definition is at such time generally providing appraisals of vessels (as determined in good faith by the Issuer) then, an independent investment banking firm of international standing qualified to perform such valuation (as determined in good faith by the Issuer); and

(2) who (a) is independent of the parties to the transaction in question and their Affiliates and (b) is not connected with the Issuer, any of the Restricted Subsidiaries or any of such Affiliates as an officer, director, employee, partner or person performing similar functions.

**“Intercreditor Agreement”** means the Intercreditor Agreement dated on or about the Issue Date, by and among, *inter alios*, the Issuer, the Security Agent, the Trustee and the agent under the Revolving Credit Facility, as amended from time to time.

**“interest”** means, with respect to the Notes, interest on the Notes (regardless of whether so stated).

**“Interest Payment Date”** means each April 1 and October 1, starting with October 1, 2014.

**“Investment Grade Rating”** means a rating equal to or higher than “Baa3” (with stable outlook or better) (or the equivalent) by Moody’s and “BBB-” (with stable outlook or better) (or the equivalent) by S&P or an equivalent rating by any other Rating Agency.

**“Investments”** means, with respect to any Person, all investments by such Person in other Persons in the forms of loans (including guarantees or other obligations), advances or capital contributions, purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP but excluding extensions of trade credit or advances, deposits and payments to or with suppliers, lessors or utilities or for workers’ compensation in the ordinary course of a Permitted Business or prepaid expenses or deposits on the balance sheet of such Person prepared in accordance with GAAP. If the Issuer or any Restricted Subsidiary of the Issuer sells or otherwise disposes of any Equity Interests of any Restricted Subsidiary of the Issuer such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Issuer, the Issuer will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Issuer’s Investments in such Subsidiary that were not sold or disposed of in an amount determined as provided in Section 4.11(c). The acquisition by the Issuer or any Restricted Subsidiary of the Issuer of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Issuer or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person in an amount determined as provided in Section 4.11(c). Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value.

**“Issue Date”** means March 19, 2014, the date of the original issuance of the Notes under this Indenture.

**“Issuer”** means Global Ship Lease, Inc., a Marshall Islands corporation.

**“Lien”** means, with respect to any asset, any mortgage, lien, pledge, charge, assignment, security interest or encumbrance of any kind on such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided* that in no event shall an operating lease that is not a Capital Lease Obligation be deemed to constitute a Lien.

**“Loan To Value Ratio”** means the ratio of (x) the aggregate principal amount of the Additional Notes to be issued at such time to (y) the sum of (I) the aggregate purchase price of all Qualified Collateral to be purchased by (or contributed to) one or more Mortgaged Guarantors with the proceeds of the issuance of such Additional Notes and other funds available to the Issuer on the date of issuance of such Additional Notes and (II) any cash proceeds from the issuance of such Additional Notes and any other funds, in each case, that the Issuer elects to deposit (and does in fact deposit) as Trust Monies with the Security Agent, for the benefit of the Secured Parties under the Intercreditor Agreement, in connection with the issuance of such Additional Notes.

**“Make-Whole Redemption”** has the meaning given in Section 5 of the Notes.

**“Make-Whole Redemption Date”** with respect to a Make-Whole Redemption, means the date such Make-Whole Redemption is effected.

**“Management Agreement”** means each management agreement entered into with respect to a Mortgaged Vessel between the Issuer or a Mortgaged Guarantor and the manager of the Mortgaged Vessel from time to time.

**“Maturity Date”** when used with respect to any Note, means the date on which the principal amount of such Notes becomes due and payable as therein or herein provided.

**“Moody’s”** means Moody’s Investors Service, Inc. and any successor to its rating agency business.

**“Mortgaged Container Assets”** means any Container Assets made subject to the Lien of the Security Documents in favor of the Security Agent, for the benefit of the Secured Parties under the Intercreditor Agreement, pursuant to Section 11.09.

**“Mortgaged Guarantor”** means a Guarantor that is a Wholly-Owned Restricted Subsidiary and that is the owner of one or more Mortgaged Vessels or Mortgaged Container Assets.

**“Mortgaged Vessels”** means (i) the Existing Mortgaged Vessels, and (ii) any other Vessels made subject to the Lien of the Security Documents in favor of the Security Agent, for the benefit of the Secured Parties under the Intercreditor Agreement, pursuant to Section 11.09.

**“Net Proceeds”** means the aggregate cash and Cash Equivalents proceeds received by the Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of fees, commissions, expenses and other direct costs relating to such Asset Sale, including, without limitation, (a) fees and expenses related to such Asset Sale (including legal, accounting and investment banking fees, title and recording Tax fees and sales and brokerage commissions, and any relocation expenses and severance or shutdown costs incurred as a result of such Asset Sale), (b) all federal, state, provincial, foreign and local Taxes paid or payable as a result of the Asset Sale, (c) amounts required to be applied to the repayment of Indebtedness, other than Indebtedness under a Credit Facility, (d) amounts required to be paid to any Person (other than the Issuer or any of its Restricted Subsidiaries) owning a beneficial interest in the assets which are subject to such Asset Sale and (e) any escrow or reserve for adjustment in respect of the sale price of such assets established in accordance with GAAP and any reserve in accordance with GAAP against any liabilities associated with such Asset Sale and retained by the seller after such Asset Sale, including pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale except to the extent that such proceeds are released from any such escrow or to the extent such reserve is reduced or eliminated.

**“Non-Recourse Debt”** means Indebtedness:

(1) as to which neither the Issuer nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness (other than the applicable debtor of such Indebtedness and, with respect to a Securitization Subsidiary, pursuant to Standard Securitization Undertakings in connection with a Qualified Securitization Transaction)), (b) is directly or indirectly liable as a guarantor or otherwise (other than the applicable debtor of such Indebtedness and, with respect to a Securitization Subsidiary, pursuant to Standard Securitization Undertakings in connection with a Qualified Securitization Transaction), or (c) constitutes the lender; and

(2) as to which the lenders have been notified in writing or have contractually agreed that they will not have any recourse to the stock or assets of the Issuer or any of its Restricted Subsidiaries (other than the assets of the applicable debtor of such Indebtedness and, in the case of a Qualified Securitization Transaction, the equity interests in, any Purchase Money Notes of and the assets of the applicable Securitization Subsidiary).

Indebtedness which is otherwise Non-Recourse Debt will not lose its character as Non-Recourse Debt because there is recourse to the borrower, any guarantor or any other Person for (i) environmental warranties and indemnities, or (ii) indemnities for and



liabilities arising from fraud, misrepresentation, misapplication or non-payment of rents, profits, insurance and condemnation proceeds and other sums actually received by the borrower from secured assets to be paid to the lender, waste and mechanics' liens.

**"Non-U.S. Person"** has the meaning assigned to such term in Regulation S.

**"Notes"** means, collectively, the Issuer's 10.000% First Priority Secured Notes due 2019 issued in accordance with Section 2.02 hereof (whether issued on the Issue Date, issued as Additional Notes or otherwise issued after the Issue Date) treated as a single class of securities under this Indenture, as amended and supplemented from time to time in accordance with the terms of this Indenture.

**"Obligations"** means any principal, interest, penalties, fees, costs and expenses, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

**"Obligatory Insurances"** means in respect of each Mortgaged Vessel:

(1) all contracts and policies of insurance which are from time to time required to be effected and maintained in accordance with this Indenture and the Security Documents in respect of such Mortgaged Vessel; and

(2) all benefits under the contracts, policies under paragraph (1) of this definition and all claims in respect of them and the return of premiums.

**"Offering Memorandum"** means the offering memorandum of the Issuer dated March 11, 2014 relating to the Notes.

**"Officer"** means, with respect to any Person, any of the following: the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the President, the Chief Operating Officer, the Chief Technical Officer, any Vice President, any Assistant Vice President, the Treasurer, any Assistant Treasurer, the Secretary, any Assistant Secretary, the Controller or any other officer designated by the relevant Board of Directors serving in a similar capacity.

**"Officer's Certificate"** means a certificate signed on behalf of the Issuer by any one Officer of the Issuer, who must be the principal executive officer, the principal financial officer, the treasurer, the controller, the general counsel or the principal accounting officer of the Issuer.

**"Opinion of Counsel"** means a written opinion from legal counsel that meets the requirements of this Indenture. The counsel may be an employee of, or counsel to, the Issuer or a Guarantor. Opinions of Counsel required to be delivered under this Indenture may have qualifications customary for opinions of the type required in the relevant jurisdiction or related to the items covered by the opinion and counsel delivering such Opinions of Counsel may rely on certificates of the Issuer or government or other officials customary for opinions of the type required, including certificates certifying as to matters of fact.

**“*pari passu Indebtedness*”** means any Indebtedness of the Issuer or any Guarantor that ranks *pari passu* in right of payment with the Notes or the Guarantees, as applicable.

**“*Permitted Asset Swap*”** means the exchange of property or assets of the Issuer or any Restricted Subsidiary (other than property or assets constituting Collateral) for assets to be used by the Issuer or a Restricted Subsidiary in a Permitted Business.

**“*Permitted Business*”** means any business engaged in by the Issuer, any Restricted Subsidiary of the Issuer, or any direct or indirect parent of the Issuer on the Issue Date and any business or other activities that are reasonably related, ancillary, supplemental or complementary thereto, or a reasonable extension, development or expansion of, the businesses in which the Issuer and the Restricted Subsidiaries are engaged on the Issue Date.

**“*Permitted Flag Jurisdiction*”** means any of the Republic of the Marshall Islands, the Republic of Liberia, the Republic of Panama, Greece, Malta, the Republic of Cyprus, the Commonwealth of the Bahamas, the British Virgin Islands, the Hong Kong Special Administrative Region of the People’s Republic of China, Bermuda, the Cayman Islands, the Isle of Man, the United Kingdom, Singapore, Gibraltar, the People’s Republic of China, France, Germany, Netherlands, Denmark and any other jurisdiction generally acceptable to institutional lenders in the shipping industry, as determined in good faith by the Board of Directors.

**“*Permitted Hedging Obligations*”** means at any time, Hedging Obligations designed to manage interest rates or interest rate risk or protect against fluctuations in currency exchange rates, commodity prices or present rates and not for speculative purposes (all as determined by the Issuer on the date of entering into such Hedging Obligation). Forward Freight Agreements entered into by the Issuer in its good faith determination for the purpose of hedging available days against fluctuations in freight rates (as so determined by the Issuer on the date of entering into such Forward Freight Agreement) shall be deemed to have been entered into not for speculative purposes and shall qualify as “Permitted Hedging Obligations” for all purposes under this Indenture.

**“*Permitted Holders*”** means each of: (a) CMA CGM or any Subsidiary of CMA CGM for so long as it remains a Subsidiary of CMA CGM and (b) (i) Michael S. Gross; (ii) each of his spouse, siblings, ancestors, descendants (whether by blood, marriage or adoption, and including stepchildren) and the spouses, siblings, ancestors and descendants thereof (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 Issuer or other Person in which any of the foregoing, individually or in the aggregate, own or control a majority in interest; and (iii) all Affiliates controlled by the Persons named in clauses (i) and (ii) above.

“Permitted Investments” means:

- (1) any Investment in cash or Cash Equivalents;
- (2) any Investment in the Issuer or in a Restricted Subsidiary;
- (3) any Investment by the Issuer or any Restricted Subsidiary of the Issuer in a Person, if as a result of such Investment:
  - (a) such Person becomes a Restricted Subsidiary; or
  - (b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Issuer or a Restricted Subsidiary;
- (4) any Investment made as a result of the receipt of non-cash consideration from an asset sale that was made pursuant to and in compliance with Section 4.13 hereof;
- (5) any Investment made for consideration consisting of Qualified Equity Interests of the Issuer;
- (6) any Investments received in compromise, settlement or resolution of (A) obligations of trade creditors or customers, including, without limitation, pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes with Persons who are not Affiliates;
- (7) Investments represented by Permitted Hedging Obligations;
- (8) Investments in existence on the Issue Date and any Investment consisting of an extension, modification or renewal of any Investment existing on, or made pursuant to a binding commitment existing on, the Issue Date; *provided* that the amount of any such Investment may only be increased (x) as required by the terms of such Investment as in existence on the Issue Date or (y) as otherwise permitted under this Indenture;
- (9) Investments in prepaid expenses, negotiable instruments held for collection and lease, endorsements for deposit or collection in the ordinary course of a Permitted Business, utility or workers’ compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of a Permitted Business;

- (10) loans and advances to, or guarantees of Indebtedness of, employees and officers of the Issuer and its Restricted Subsidiaries in the ordinary course of a Permitted Business not to exceed \$2.5 million at any one time outstanding;
- (11) loans and advances to officers, directors and employees for business related travel expenses, moving expenses, payroll expenses and other similar expenses, in each case incurred in the ordinary course of a Permitted Business or consistent with past practices;
- (12) payroll, travel and similar advances made in the ordinary course of a Permitted Business to cover matters that are expected at the time of such advances to be treated as expenses in accordance with GAAP;
- (13) Investments held by a Person at the time such Person becomes a Restricted Subsidiary of the Issuer or is merged into the Issuer or a Restricted Subsidiary of the Issuer and not made in contemplation of such Person becoming a Restricted Subsidiary or merger;
- (14) any Investment by the Issuer or any Restricted Subsidiary in a Securitization Subsidiary (including, without limitation, the payment of Securitization Fees in connection with a Qualified Securitization Transaction) or any Investment by a Securitization Subsidiary in any other Person in connection with a Qualified Securitization Transaction (including Investments of funds held in accounts required by customary arrangements governing such Qualified Securitization Transaction in the manner required by such arrangements), so long as any Investment in a Securitization Subsidiary is in the form of a Purchase Money Note, a contribution of additional Securitization Assets or an Equity Interest;
- (15) other Investments in any Person having an aggregate Fair Market Value, when taken together with all other Investments made pursuant to this clause (15) that are at the time outstanding (including Investments deemed to have been made under this clause (15) pursuant to the definition of “*Designated Asset Finance Contribution*”), not to exceed \$15.0 million (subject to Section 4.10(b)(1));
- (16) guarantees issued in accordance with Section 4.10 hereof;
- (17) the repurchase of the Notes and Guarantees and Additional Notes by the Issuer or any Restricted Subsidiary; and
- (18) Investments in joint ventures of the Issuer or any of its Restricted Subsidiaries, taken together with all other Investments made pursuant to this clause (18) that are at that time outstanding (including Investments deemed to have been made under this clause (18) pursuant to the definition of “*Designated Asset Finance Contribution*”), not to exceed \$15.0 million (subject to Section 4.10(b)(1) and in each case, determined on the date such Investment is made, with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value).

**“Permitted Liens”** means:

- (1) Liens securing Indebtedness and other related Obligations under Credit Facilities in an aggregate amount at any time outstanding pursuant Section 4.10(b)(1) hereof; *provided* that such Liens only extend to property or assets constituting Collateral (and may have super senior priority status on the Collateral not materially less favorable to the Holders of the Notes than that accorded to the Revolving Credit Facility on the Issue Date pursuant to the Intercreditor Agreement) to the extent such Liens do not secure Indebtedness in excess of \$40.0 million;
- (2) Liens in favor of the Issuer or any of its Restricted Subsidiaries (other than Liens on any assets or property constituting Collateral);
- (3) Liens on property of a Person existing at the time such Person is merged with or into or consolidated or amalgamated with the Issuer or any Restricted Subsidiary of the Issuer *provided* that such Liens were not created in connection with such merger, consolidation or amalgamation and do not extend to any assets other than those of the Person merged into or consolidated or amalgamated with the Issuer or the Restricted Subsidiary and *provided, further*, that no such Liens shall extend to any assets or property constituting Collateral;
- (4) Liens on property (including Capital Stock) existing at the time of acquisition of the property by the Issuer or any Restricted Subsidiary of the Issuer; *provided* that such Liens were not incurred in connection with such acquisition; *provided, further*, that no such Liens shall extend to any assets or property constituting Collateral;
- (5) Liens incurred or deposits in connection with workers’ compensation, employment insurance or other types of social security, including Liens securing letters of credit issued in the ordinary course of a Permitted Business or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations including those arising from regulatory, contractual or warranty requirements of the Issuer and its Subsidiaries, including rights of offset and setoff (in each case exclusive of obligations for the payment of borrowed money);
- (6) Liens securing (i) Indebtedness incurred pursuant to clause (4) of Section 4.10(b) hereof; *provided* that Liens securing Indebtedness incurred pursuant to Section 4.10(b)(4) hereof extend only to the assets so acquired, purchased, chartered, leased, constructed, installed or improved with the proceeds of such Indebtedness.
- (7) Liens arising from Uniform Commercial Code financing statements filings or other applicable similar filings regarding operating leases and vessel charters entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of a Permitted Business;

(8) Liens incurred in the ordinary course of a Permitted Business of the Issuer or any Restricted Subsidiary arising from Vessel chartering, dry docking, maintenance, repair, refurbishment or replacement, the furnishing of supplies and bunkers to Vessels and Related Assets, repairs and improvements to Vessels and Related Assets, masters', officers' or crews' wages and maritime Liens and any other Liens (other than Liens in respect of Indebtedness) incurred in the ordinary course of operations of a Vessel *provided* that in the case of a Charter of a Mortgaged Vessel, such Lien is subject to the Lien of the Security Documents;

(9) Liens for general average and salvage;

(10) Liens for Taxes, assessments or governmental charges or claims that are not yet due or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; *provided* that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(11) (x) Liens imposed by law, such as carriers', warehousemen's, landlord's, suppliers' and mechanics' Liens, in each case, incurred in the ordinary course of a Permitted Business and (y) other Liens arising by operation of law covered by insurance (including any deductibles thereon);

(12) survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that do not materially adversely affect the operation of the business of the Issuer and its Restricted Subsidiaries, taken as a whole;

(13) Liens on the Collateral securing:

(a) the Notes or the Guarantees issued on the Issue Date or payment obligations to the Trustee or the Security Agent;

(b) Additional Notes; *provided* that, in the case of this clause (b), (x) the Loan To Value Ratio is less than 0.65 to 1.0 and, after giving pro forma effect to the incurrence of such Additional Notes, the Consolidated Leverage Ratio of the Issuer does not exceed 4.5 to 1.0, in each case on the date of incurrence of such Additional Notes (and to the extent the Fair Market Value of Qualified Collateral is included in the calculation of the Loan To Value Ratio, such Qualified Collateral shall be added as Collateral in accordance with the provisions of Section 11.09) and (y) any contribution of cash, Cash Equivalents or other assets of the Issuer or any Restricted Subsidiary in connection with the issuance of such Additional Notes (excluding the net proceeds of any Indebtedness

incurred in connection with such transactions that is secured by a Permitted Lien) qualifies as a Designated Additional Notes Contribution; *provided further*, that in the case of an issuance of Additional Notes, the proceeds therefrom may only be used for (i) the acquisition of Mortgaged Vessels or Mortgaged Container Assets, (ii) the refinancing of Indebtedness incurred in connection with the acquisition of Qualified Vessels or Qualified Container Assets (provided such Qualified Vessels or Qualified Container Assets are secured as Collateral in compliance with Section 11.09) or (iii) the repayment or prepayment of obligations under the Revolving Credit Facility in an amount not to exceed the amount outstanding at the time of repayment or prepayment under such facility that has been used to acquire Mortgaged Vessels or Mortgaged Container Assets; and

(c) Indebtedness at any one time outstanding not exceeding \$15.0 million; *provided* that in the case of this clause (c), such Indebtedness shall not have any Liens over any property and assets of the Issuer and the Restricted Subsidiaries other than Liens on the Collateral that rank junior to the Liens securing the Notes, any Additional Notes and the Guarantees pursuant to the Intercreditor Agreement; *provided, further*, that each of the parties thereto will have entered into the Intercreditor Agreement as "Second Lien Note Creditors" (or the corresponding term in any Additional Intercreditor Agreement);

(14) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Indenture; *provided, however*, that such Liens (a) are not materially more favorable to the lienholders with respect to such Liens than the Liens in respect of the Indebtedness being refinanced, and (b) do not extend to or cover any property or assets of the Issuer or any of its Restricted Subsidiaries not securing the Indebtedness so refinanced (other than (x) any improvements or accessions to such property or assets or any items which constitute Related Assets with respect to such underlying property or assets securing the Indebtedness so refinanced or (y) any Lien on additional property or assets which Lien would have been permitted to be granted by Section 4.12 hereof in respect of the Indebtedness being refunded, refinanced, replaced, defeased or discharged by such Permitted Refinancing Indebtedness at the time such prior Indebtedness was initially incurred by the Issuer or such Restricted Subsidiary);

(15) Liens arising by reason of any judgment, decree or order of any court or other competent authority not giving rise to an Event of Default or Liens granted or incurred by the Issuer or any Restricted Subsidiary in connection with the release from arrest, detention, attachment or levy of any of its assets by any court or competent authority (including any governmental or regulatory agency);

(16) Liens and rights of setoff in favor of a bank imposed by law and incurred in the ordinary course of a Permitted Business on deposit accounts maintained with such bank and cash and Cash Equivalents in such accounts;

(17) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(18) Liens securing Permitted Hedging Obligations which Permitted Hedging Obligations relate to Indebtedness that is otherwise permitted under this Indenture; provided that no such Liens shall extend to any assets or property constituting Collateral;

(19) Liens arising under a contract over goods, documents of title to goods and related documents and insurances and their proceeds, in each case in respect of documentary credit transactions entered into in the ordinary course of a Permitted Business;

(20) Liens arising under any retention of title, hire, purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to the Issuer or a Restricted Subsidiary in the ordinary course of a Permitted Business;

(21) Liens on Securitization Assets transferred to a Securitization Subsidiary or on assets of a Securitization Subsidiary or pledges of the equity interests in or Purchase Money Notes of a Securitization Subsidiary, in each case, in connection with a Qualified Securitization Transaction;

(22) customary options, put and call arrangements, rights of first refusal and similar rights relating to Investments in joint ventures and partnerships;

(23) Liens on any portion of the proceeds from an issuance of Additional Notes (together with other funds not otherwise constituting Trust Monies available to the Issuer, if applicable) deposited with the Security Agent, for the benefit of the Trustee and the Holders of the Notes, to secure such Additional Notes;

(24) Liens on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings;

(25) Liens incurred in connection with a cash management program established in the ordinary course of business;

(26) leases, licenses, subleases and sublicenses of assets in the ordinary course of business;

(27) limited recourse Liens in respect of assets owned by any joint ventures which are not Restricted Subsidiaries securing obligations of such joint ventures;

(28) Liens on cash or Cash Equivalents (other than Trust Monies) arising in connection with defeasance, discharge or redemption of Indebtedness; and



(29) any extension, renewal or replacement, in whole or in part, of any Lien described in the clauses (1) through (28) above; *provided* that any such extension, renewal or replacement is no more restrictive in any material respect that the Lien so extended, renewed or replaced and does not extend to any additional property or assets.

For purposes of determining what category of Permitted Lien that any Lien shall be included in, the Issuer in its sole discretion may classify such Lien on the date of its incurrence and later reclassify all or a portion of such Lien in any manner that complies with this definition (including in part in one category and in part in another category).

**“Permitted Parent”** means any direct or indirect parent of the Issuer formed not in connection with, or in contemplation of, a transaction that, assuming such parent was not formed, after giving effect thereto would constitute a Change of Control.

**“Permitted Refinancing Indebtedness”** means any Indebtedness or Disqualified Stock of the Issuer or any Indebtedness, Disqualified Stock or preferred stock of any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to refund, refinance, replace, defease or discharge, other Indebtedness or Disqualified Stock of the Issuer or any Indebtedness, Disqualified Stock or preferred stock of any of its Restricted Subsidiaries; *provided* that, in the case of Indebtedness which is not being used to concurrently refinance or defease the Notes in full:

(1) the principal amount (or accreted value, if applicable) or mandatory redemption amount of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) or mandatory redemption amount, plus accrued interest or dividends in connection therewith, of the Indebtedness, Disqualified Stock or preferred stock extended, refinanced, renewed, replaced, defeased or refunded (plus all dividends and accrued interest on such Indebtedness, Disqualified Stock or preferred stock and the amount of all fees, expenses, premiums and other amounts incurred in connection therewith);

(2) such Permitted Refinancing Indebtedness has a final maturity or final redemption date either (i) no earlier than the final maturity or final redemption date of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded or (ii) after the Maturity Date;

(3) the portion, if any, of the Indebtedness, Disqualified Stock or preferred stock being extended, refinanced, renewed, replaced, defeased or refunded has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness, Disqualified Stock or preferred stock being extended, refinanced, renewed, replaced, defeased or refunded;

(4) if (i) the Indebtedness, Disqualified Stock or preferred stock being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of

payment to the Notes or a Guarantee, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Notes or a Guarantee on terms at least as favorable to the Holders of Notes as those contained in the documentation governing the Indebtedness, Disqualified Stock or preferred stock being extended, refinanced, renewed, replaced, defeased or refunded; and (ii) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is unsecured or secured by the Collateral on a basis entirely junior to that of the Notes, such Permitted Refinancing Indebtedness is unsecured or secured by the Collateral on a basis entirely junior to that of the Notes; and

(5) such Indebtedness is incurred either by (i) if a Restricted Subsidiary that is not a Guarantor is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, any Restricted Subsidiary that is not a Guarantor or (ii) the Issuer or Guarantor (or any Restricted Subsidiary that becomes a Guarantor in contemplation of or upon the incurrence of such Permitted Refinancing Indebtedness).

For all purposes of this Indenture, Indebtedness, Disqualified Stock or preferred stock of the Issuer or any of its Restricted Subsidiaries (collectively, the “*Replacement Indebtedness*”) may in the Issuer’s discretion be deemed to replace other Indebtedness, Disqualified Stock or preferred stock of the Issuer or any of its Restricted Subsidiaries (collectively, the “*Replaced Indebtedness*”) if such Replacement Indebtedness satisfies the requirements of clauses (1) through (5) above and is (x) incurred no later than 180 days of the date on which the Replaced Indebtedness was repaid, redeemed, defeased or discharged and (y) if the proceeds of the Replaced Indebtedness were primarily utilized to finance or refinance the acquisition of one or more Vessels or Container Assets, then substantially all of the net proceeds from such Replacement Indebtedness must be used to finance or refinance the acquisition of assets used or useful in a Permitted Business (including, without limitation, Container Assets, Vessels and Related Assets, which need not be the same Container Assets or Vessels or Related Assets which were financed or refinanced with the Replaced Indebtedness).

“*Permitted Repairs*” means, with respect to any newly acquired second-hand Vessel or Container Asset, repairs which, in the reasonable judgment of the Issuer, are required to be made to such Vessel or Container Asset upon acquisition and which are made within 120 days of the acquisition thereof.

“*Person*” means any natural person, corporation, limited partnership, general partnership, limited liability company, limited liability partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other entity, whether legal or not.

“*principal*” means, with respect to the Notes, the principal of and premium, if any, on the Notes.

“*Private Placement Legend*” means the legends in the form set forth in Exhibit B to be placed on the Notes except where otherwise permitted by the provisions of this Indenture.

“**Purchase Money Note**” means a promissory note of a Securitization Subsidiary to the Issuer or any Restricted Subsidiary of the Issuer, which note (a) must be repaid from cash available to the Securitization Subsidiary, other than amounts required to be established as reserves, amounts paid to investors in respect of interest, principal and other amounts owing to such investors and amounts paid in connection with the purchase of newly generated or newly acquired Securitization Assets and (b) may be subordinated to the payments described in clause (a).

“**Qualified Collateral**” means one or more completed Qualified Vessels, completed Qualified Container Assets and/or cash and Cash Equivalents; *provided* that, in the case of a substitution only, (i) the aggregate Fair Market Value of such Qualified Collateral shall be at least equal to the Appraised Value of the Mortgaged Vessel(s) or Mortgaged Container Asset(s) for which such Qualified Collateral is being substituted; and (ii) to the extent the applicable Mortgaged Vessel for which such Qualified Collateral is being substituted was employed by way of a Charter, the applicable Qualified Vessel is employed by way of a Charter with an Acceptable Charterer.

“**Qualified Container Assets**” means, as of any date, a Container Asset which (i) is not a Mortgaged Container Asset as of such date and (ii) is to be owned by the Issuer or a Mortgaged Guarantor.

“**Qualified Equity Interests**” means Equity Interests of the Issuer other than Disqualified Stock.

“**Qualified Institutional Buyer**” or “**QIB**” has the meaning specified in Rule 144A under the Securities Act.

“**Qualified Securitization Transaction**” means any transaction or series of transactions entered into by the Issuer or any of its Restricted Subsidiaries pursuant to which the Issuer or such Restricted Subsidiary sells, contributes, conveys or otherwise transfers to (a) a Securitization Subsidiary (in the case of a transfer by the Issuer or any of its Restricted Subsidiaries) and (b) any other Person (in the case of a transfer by a Securitization Subsidiary), or transfers an undivided interest in or grants a security interest in, any Securitization Assets (whether now existing or arising in the future) of the Issuer or any of its Restricted Subsidiaries, and any assets related thereto, including, without limitation, all collateral securing such Securitization Assets, all contracts and all guarantees or other obligations in respect of such Securitization Assets, proceeds of such Securitization Assets and all other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with a securitization transaction of such type; *provided* such transaction is on market terms at the time the Issuer or such Restricted Subsidiary enters into such transaction.

“**Qualified Vessel**” means, as of any date, a Vessel which (i) is not a Mortgaged Vessel as of such date and (ii) is to be owned by the Issuer or a Mortgaged Guarantor and (iii) is flagged in a Permitted Flag Jurisdiction.

**“Rating Agencies”** means Moody’s and S&P, or if Moody’s or S&P or both shall not make a rating on the Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Issuer which shall be substituted for Moody’s or S&P or both, as the case may be.

**“Ready for Sea Cost”** means, with respect to a Vessel to be acquired or leased by the Issuer or any Restricted Subsidiary, the aggregate amount of all expenditures incurred to acquire or construct and bring such Vessel to the condition and location necessary for its intended use, including any and all inspections, appraisals, repairs, modifications, additions, permits and licenses in connection with such acquisition or lease and the costs of any positioning voyage.

**“Record Date”** means the applicable Record Date specified in the Notes; provided that if any such date is not a Business Day, the Record Date shall be the first day immediately succeeding such specified day that is a Business Day.

**“Redemption Date”** means, when used with respect to any Note to be redeemed, the date fixed for such redemption pursuant to this Indenture and the Notes.

**“Redemption Price”** means, when used with respect to any Note to be redeemed on a Redemption Date, the price fixed for such redemption pursuant to and in accordance with this Indenture, exclusive of accrued and unpaid interest, if any, thereon to the Redemption Date, unless otherwise specifically provided herein.

**“Regulation S”** means Regulation S under the Securities Act.

**“Regulation S-X”** means Regulation S-X under the Securities Act.

**“Related Asset”** means (i) any insurance policies and contracts from time to time in force with respect to a Vessel, (ii) the Capital Stock of any Restricted Subsidiary of the Issuer owning a Vessel and related assets, (iii) any Requisition Compensation payable in respect of any compulsory acquisition of a Vessel, (iv) any earnings derived from the use or operation of a Vessel and/or any earnings account with respect to such earnings, (v) any charters, operating leases, contracts of affreightment, Vessel purchase options and related agreements entered and any security or guarantee in respect of the charterer’s or lessee’s obligations under such charter, lease, Vessel purchase option or agreement, (vi) any cash collateral account established with respect to a Vessel pursuant to the financing arrangement with respect thereto, (vii) any building, conversion or repair contracts relating to a Vessel and any security or guarantee in respect of the builder’s obligations under such contract and (viii) any security interest in, or agreement or assignment relating to, any of the foregoing or any mortgage in respect of a Vessel and any asset reasonably related, ancillary or complementary thereto.

**“Requisition Compensation”** means, in respect of each Mortgaged Vessel, all moneys or other compensation payable by reason of requisition of title to, or other compulsory acquisition of, such Mortgaged Vessel.

“**Responsible Officer**” means, when used with respect to the Trustee, any officer in the Corporate Trust Office of the Trustee, including any vice president, assistant vice president, trust officer, assistant trust officer or any other officer of the Trustee who currently performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such officer’s knowledge of and familiarity with the particular subject and shall also mean any officer who shall have direct responsibility for the administration of this Indenture.

“**Restricted Investment**” means an Investment other than a Permitted Investment.

“**Restricted Security**” means a Note that constitutes a “Restricted Security” within the meaning of Rule 144(a)(3) under the Securities Act; provided, however, that the Trustee shall be entitled to request and conclusively rely on an Opinion of Counsel with respect to whether any Note constitutes a Restricted Security.

“**Restricted Subsidiary**” of a Person means any Subsidiary of such Person that is not an Unrestricted Subsidiary.

“**Revolving Credit Facility**” means the revolving credit facility established pursuant to the super senior revolving facility agreement to be dated on or about the Issue Date, among, *inter alios*, the Issuer, the Guarantors, the senior lenders (as named therein) and Citibank International Plc, as agent, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended in whole or in part from time to time.

“**Rule 144A**” means Rule 144A under the Securities Act.

“**S&P**” means Standard & Poor’s Ratings Services and any successor to its rating agency business.

“**Sale/Leaseback Transaction**” means any arrangement with any Person or to which any such Person is a party, providing for the leasing to the Issuer or a Subsidiary of the Issuer of any property, whether owned by the Issuer or any of its Subsidiaries at the Issue Date or later acquired, which has been or is to be sold or transferred by the Issuer or any of its Subsidiaries to such Person or to any other Person from whom funds have been or are to be advanced by such Person on the security of such property.

“**Secured Indebtedness**” means any Indebtedness (other than Indebtedness that is contractually subordinated in right of payment to the Notes or the Guarantees) of the Issuer or a Restricted Subsidiary of the Issuer secured by a Lien on any of its assets.

“**Secured Parties**” shall have the meaning assigned to such term in the Intercreditor Agreement.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended, or any successor statute or statutes thereto and, in each case, the rules and regulations promulgated by the SEC thereunder.

“**Securitization Assets**” means any accounts receivable, instruments, chattel paper, contract rights, general intangibles or revenue streams (excluding any Existing Charters) subject to a Qualified Securitization Transaction and any assets related thereto (other than Vessels or Container Assets), including, without limitation, all collateral securing such assets, all contracts and all guarantees or other supporting obligations in respect of such assets and all proceeds of the foregoing.

“**Securitization Fees**” means all yield, interest or other payments made directly or by means of discounts with respect to any interest issued or sold in connection with, and other fees paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Transaction.

“**Securitization Repurchase Obligation**” means any obligation of a seller of Securitization Assets in a Qualified Securitization Transaction to repurchase Securitization Assets arising as a result of a breach of Standard Securitization Undertakings, including as a result of a Securitization Asset or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to, the seller.

“**Securitization Subsidiary**” means a Subsidiary of the Issuer (or another Person formed for the purposes of engaging in a Qualified Securitization Transaction in which the Issuer or any Subsidiary of the Issuer makes an Investment and to which the Issuer or any Subsidiary of the Issuer transfers Securitization Assets and related assets):

- (1) that is formed solely for the purpose of, and that engages in no activities other than activities in connection with, financing Securitization Assets of the Issuer and/or its Restricted Subsidiaries, and any activities incidental thereto;
- (2) that is designated by the Board of Directors of the Issuer or such other Person as a Securitization Subsidiary pursuant to a Board Resolution set forth in an Officer’s Certificate and delivered to the Trustee;
- (3) that has total assets, other than Securitization Assets, at the time of such creation and designation with a book value of \$10,000 or less;
- (4) has no Indebtedness other than Non-Recourse Debt;
- (5) with which neither the Issuer nor any Restricted Subsidiary of the Issuer has any material contract, agreement, arrangement or understanding other than contracts, agreements,

(6) arrangements and understandings on terms not materially less favorable to the Issuer or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Issuer in connection with a Qualified Securitization Transaction (as determined in good faith by the Issuer) and Securitization Fees payable in the ordinary course of a Permitted Business in connection with such a Qualified Securitization Transaction; and

(7) with respect to which neither the Issuer nor any Restricted Subsidiary of the Issuer has any obligation (a) to make any additional capital contribution (other than Securitization Assets) or similar payment or transfer thereto or (b) to maintain or preserve the solvency or any balance sheet term, financial condition, level of income or results of operations thereof.

**“Security Agent”** means Deutsche Bank Trust Company Americas, and its successors, as Security Agent for the Secured Parties.

**“Security Agreements”** means (i) each share pledge over the Equity Interests of each Mortgaged Guarantor, (ii) each Deed of Assignment, (iii) each Assignment of Freights and Hires, (iv) each Assignment of Insurance, (v) each agreement securing an Earnings Account and (vi) each agreement securing a Mortgaged Container Asset and its related insurance policies, hires, leases and earnings as required under Section 11.01 hereof.

**“Security Documents”** means the Ship Mortgages and the Security Agreements.

**“Security Interests”** means the Lien on the Collateral created by the Security Documents and this Indenture in favor of the Security Agent on behalf of the Secured Parties.

**“Ship Mortgage”** means either the first preferred ship mortgage or first priority statutory mortgage and related deed of covenants, in each case, on each of the Mortgaged Vessels granted by a Mortgaged Guarantor to the Security Agent, for the benefit of the Secured Parties under the Intercreditor Agreement, and dated on or within 30 calendar days of the Issue Date or on or before a Delivery Date, as the case may be, as amended from time to time in accordance with the terms of this Indenture and such Ship Mortgages, which in the case of (i) the Cypriot Ship Mortgage, shall be substantially similar to the Cypriot Ship Mortgages entered into on the Issue Date, (ii) the Panamanian Ship Mortgage, shall be substantially similar to the Panamanian Ship Mortgage entered into on the Issue Date, (iii) the Bahamian Ship Mortgage, shall be substantially similar to the Bahamian Ship Mortgages entered into on the Issue Date, and (iv) any other Ship Mortgage from time to time established under the terms of any other jurisdiction, including any Ship Mortgage in connection with the transfer or change of flag to a Permitted Flag Jurisdiction, shall be substantially consistent with the foregoing forms of Ship Mortgage, subject to requirements of applicable law and customary practice in such other jurisdiction.

“**Significant Subsidiary**” means any Restricted Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the Issue Date.

“**Standard Securitization Undertakings**” means representations, warranties, covenants and indemnities entered into by the Issuer or any Restricted Subsidiary of the Issuer which have been determined by the Issuer in good faith to be reasonably customary in Qualified Securitization Transactions, including, without limitation, those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

“**Stated Maturity**” means, with respect to any installment of principal on any series of Indebtedness, the date on which the payment of principal was scheduled to be paid in the documentation governing such Indebtedness as of the Issue Date (or, if incurred after the Issue Date, as of the date of the initial incurrence thereof) and will not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

“**Subordinated Indebtedness**” means Indebtedness that is (x) contractually subordinated in right of payment to the Notes or the Guarantees of such Guarantor, as the case may be, or (y) any Indebtedness that is unsecured or secured by a Lien on the Collateral on a basis entirely junior to that of the Notes.

“**Subsidiary**” means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of such Person (or a combination thereof); and

(2) any other Person of which at least a majority of the voting interest (without regard to the occurrence of any contingency) is at the time directly or indirectly owned by such Person or one or more Subsidiaries of such Person (or a combination thereof).

“**Tax**” means any tax, duty, levy, impost, assessment or other governmental charge (including penalties, interest and any other liabilities related thereto).

“**Taxing Authority**” means any government or political subdivision or territory or possession of any government or any authority or agency therein or thereof having power to tax.



“**Total Assets**” means the total consolidated assets of the Issuer and its Restricted Subsidiaries, as shown on the most recent balance sheet of the Issuer prepared in accordance with GAAP.

“**Trust Money Investments**” means:

(1) marketable direct obligations issued by, or unconditionally guaranteed by the government of the United States, the United Kingdom, Germany or the Netherlands, or issued by any agency thereof and backed by the full faith and credit of the United States, the United Kingdom, Germany or the Netherlands, as the case may be, in each case maturing within one year from the date of acquisition;

(2) any demand and time deposits, certificates of deposit, or overnight bank deposits, denominated in United States dollars, pounds sterling or Euro with maturities of one year or less from the date of acquisition issued by any commercial bank organized under the laws of the United States or any state thereof, the United Kingdom, Germany or the Netherlands, having combined capital and surplus of not less than \$250.0 million and whose commercial paper is rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody’s;

(3) repurchase obligations of any commercial bank satisfying the requirements of clause (2) above, having a term of not more than 60 days, with respect to securities issued or fully guaranteed or insured by the United States government;

(4) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody’s or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within one year from the date of acquisition;

(5) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory, the securities of which state, commonwealth, territory, political subdivision or taxing authority (as the case may be) are rated at least AA- by S&P or Aa3 by Moody’s;

(6) shares of any money market fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (1), (2), (3), (4) or (5) above with maturities as set forth in the proviso below, (ii) has net assets in excess of \$500,000,000 and (iii) has obtained from either S&P or Moody’s the highest rating obtainable for money market funds; provided, however, that the maturities of all obligations specified in any of clauses (1), (2), (3), (4) and (5) above shall not exceed 397 days.

“**Trust Monies**” means all cash or Cash Equivalents deposited with the Trustee and secured in favor of the Security Agent as or in respect of Collateral: (a) upon the release of property from the Lien of any of the Security Documents; (b) as compensation for, or proceeds

of the sale of all or any part of the Collateral taken by eminent domain or purchased by, or sold pursuant to any order of, a governmental authority or otherwise disposed of; (c) in connection with an Event of Loss or Asset Sale with respect to Collateral; (d) pursuant to certain provisions of the Security Documents; (e) as proceeds of any other sale or other disposition of all or any part of the Collateral by or on behalf of the Security Agent or any collection, recovery, receipt, appropriation or other realization of or from all or any part of the Collateral pursuant to the Security Documents or otherwise; (f) as part of Qualified Collateral; (g) for application under this Indenture as provided in this Indenture or any Security Document, or whose disposition is not otherwise specifically provided for in this Indenture or in any Security Document; or (h) which represent net proceeds from the issuance of Additional Notes, in each case required to be deposited with the Security Agent pending the acquisition of one or more Mortgaged Vessels or Mortgaged Container Assets (and to make Permitted Repairs, as applicable), *provided, however*, that Trust Monies shall in no event include any property deposited with the Trustee or the Security Agent for any Change of Control Offer, Asset Sale Offer, optional redemption or defeasance or discharge of any Notes.

“**Trustee**” means the party named as such in the preamble to this Indenture until a successor replaces it in accordance with the provisions of this Indenture and thereafter means such successor.

“**Unrestricted Subsidiary**” means any Subsidiary of the Issuer that is designated by the Board of Directors of the Issuer as an Unrestricted Subsidiary pursuant to a board resolution, but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Non-Recourse Debt;

(2) except as permitted by Section 4.14 hereof, is not party to any agreement, contract, arrangement or understanding with the Issuer or any Restricted Subsidiary of the Issuer unless the terms of any such agreement, contract, arrangement or understanding are not materially less favorable to the Issuer or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Issuer; and

(3) is a Person with respect to which neither the Issuer nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to make any additional capital contributions (other than, with respect to a Securitization Subsidiary, Securitization Assets transferred in connection with a Qualified Securitization Transaction) or similar payment or transfer thereto or (b) to maintain or preserve the solvency or any balance sheet term, financial condition, level of income or results of operations thereof.

“**U.S. Legal Tender**” means such coin or currency of the United States of America that at the time of payment shall be legal tender for the payment of public and private debts.

“**U.S. Dollar Equivalent**” means, with respect to any monetary amount in a currency other than U.S. dollars, at any time for the determination thereof, the amount of U.S. dollars obtained by converting such foreign currency involved in such computation into U.S. dollars at the spot rate for the purchase of U.S. dollars with the applicable foreign currency as quoted by Reuters at approximately 10:00 A.M. (New York time) on the date not more than two Business Days prior to such determination.

“**Vessel**” means one or more shipping vessels whose primary purpose is the maritime transportation of cargo or which are otherwise engaged, used or useful in any business activities of the Issuer and its Restricted Subsidiaries and which are owned by and registered (or to be owned by and registered) in the name of the Issuer or any of its Restricted Subsidiaries or operated or to be operated by the Issuer or any of its Restricted Subsidiaries pursuant to a lease or other operating agreement constituting a Capital Lease Obligation, in each case together with all related spares, equipment and any additions or improvements.

“**Vessel Construction Contract**” means any contract for the construction (or construction and acquisition) of a Vessel and any Related Assets entered into by the Issuer or any Restricted Subsidiary, including any amendments, supplements or modifications thereto or change orders in respect thereof.

“**Vessel Purchase Option Contract**” means any contract granting the Issuer or any Restricted Subsidiary the option to purchase one or more Vessels and any Related Assets, including any amendments, supplements or modifications thereto.

“**Voting Stock**” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness, Disqualified Stock or preferred stock at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of such Indebtedness or redemption or similar payment in respect of such Disqualified Stock or preferred stock, by (b) the number of years (calculated to the nearest one-twelfth) that shall elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness or the maximum amount payable upon maturity of, or pursuant to any mandatory redemption provisions of, amount of such Disqualified Stock or preferred stock.

“**Wholly Owned Restricted Subsidiary**” of any Person means a Restricted Subsidiary of such Person, all of the outstanding Equity Interests of which (other than directors’ qualifying shares or shares required by applicable law to be held by a Person other than the Issuer or any of its Subsidiaries) are at the time owned by such Person or another Wholly Owned Restricted Subsidiary of such Person.

SECTION 1.02. Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
<u>"144A Global Note"</u>	2.01
<u>"Additional Amounts"</u>	4.20(b)
<u>"Additional Notes"</u>	2.02
<u>"Affiliate Transaction"</u>	4.14(a)
<u>"Asset Sale Offer"</u>	4.13(I)(e)
<u>"Asset Sale Offered Price"</u>	4.13(I)(e)
<u>"Asset Sale Payment Date"</u>	4.13(I)(f)(2)
<u>"Authentication Order"</u>	2.02
<u>"Base Currency"</u>	13.16(b)(1)(A)
<u>"Change of Control Offer"</u>	4.09
<u>"Change of Control Payment"</u>	4.09
<u>"Change of Control Payment Date"</u>	4.09
<u>"Collateral Account"</u>	12.01
<u>"Collateral Proceeds Reinvestment Termination Date"</u>	4.13(II)(d)
<u>"Collateral Sale Offer"</u>	4.13(II)(e)
<u>"Collateral Sale Offered Price"</u>	4.13(II)(e)
<u>"Collateral Sale Payment Date"</u>	4.13(II)(g)(2)
<u>"Covenant Defeasance"</u>	8.04
<u>"Covenant Suspension Event"</u>	4.19(a)
<u>"Event of Default"</u>	6.01
<u>"Event of Loss Offer"</u>	4.21(e)
<u>"Event of Loss Offered Price"</u>	4.21(e)
<u>"Event of Loss Payment Date"</u>	4.21(f)(2)
<u>"Excess Collateral Proceeds"</u>	4.13(II)(e)
<u>"Excess Loss Proceeds"</u>	4.21(e)
<u>"Excess Loss Proceeds Payment Amount"</u>	4.21(e)
<u>"Excess Collateral Proceeds Payment Amount"</u>	4.13(II)(e)
<u>"Excess Proceeds"</u>	4.13(I)(e)
<u>"Excess Proceeds Payment Amount"</u>	4.13(I)(e)
<u>"Global Note"</u>	2.01
<u>"Guarantee Obligations"</u>	10.01
<u>"incur"</u>	4.10(a)
<u>"Initial Global Notes"</u>	2.01
<u>"Initial Notes"</u>	2.02
<u>"Issuer"</u>	Preamble
<u>"Judgment Currency"</u>	13.16(b)(1)(A)

<u>Term</u>	<u>Defined in Section</u>
“ <u>Legal Defeasance</u> ”	8.03
“ <u>Loss Proceeds Reinvestment Termination Date</u> ”	4.21(d)
“ <u>Loss Redemption Amount</u> ”	4.21(a)
“ <u>Lost Mortgaged Vessel</u> ”	4.21(a)
“ <u>Notice of Acceleration</u> ”	6.02
“ <u>Other Funds</u> ”	11.18
“ <u>Participants</u> ”	2.15(a)
“ <u>Paying Agent</u> ”	2.03
“ <u>Payment Default</u> ”	6.01(5)(a)
“ <u>Permitted Debt</u> ”	4.10(b)
“ <u>Physical Notes</u> ”	2.01
“ <u>Primary Lien</u> ”	4.12(a)(2)
“ <u>Process Agent</u> ”	13.15(a)
“ <u>rate of exchange</u> ”	13.16(d)
“ <u>Registrar</u> ”	2.03
“ <u>Regulation S Global Note</u> ”	2.01
“ <u>Related Agreements</u> ”	4.13(II)(a)(2)
“ <u>Release Notice</u> ”	11.04(a)
“ <u>Released Monies</u> ”	12.02
“ <u>Relevant Taxing Jurisdiction</u> ”	4.20(a)
“ <u>Reinvestment Termination Date</u> ”	4.13(I)(d)
“ <u>Restricted Payments</u> ”	4.11(a)
“ <u>Reversion Date</u> ”	4.19(b)
“ <u>Security Agent</u> ”	Preamble
“ <u>Segregated Trust Monies</u> ”	11.18
“ <u>Sold Mortgaged Asset</u> ”	4.13(II)(a)(2)
“ <u>Specified Courts</u> ”	13.08
“ <u>Supplemental Security Agent</u> ”	11.15(b)
“ <u>Suspended Covenants</u> ”	4.19(a)
“ <u>Suspension Period</u> ”	4.19(c)
“ <u>Surviving Entity</u> ”	2.02
“ <u>Tendered Vessel Owner</u> ”	11.09(a)
“ <u>Third Party Process Agent</u> ”	13.15(b)
“ <u>Total Loss</u> ”	4.10(b)(5)
“ <u>Vessel Tender Date</u> ”	11.09(a)

SECTION 1.03. [Reserved].

SECTION 1.04. Rules of Construction.

For all purposes under this Indenture and the Notes, except as otherwise provided and unless the context otherwise requires:

(1) a term has the meaning assigned to it;

- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP (for the avoidance of doubt, determinations of whether an action is for speculative purposes is not an accounting term);
- (3) words in the singular include the plural, and words in the plural include the singular;
- (4) “*herein*,” “*hereof*” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;
- (5) the words “*including*,” “*includes*” and similar words shall be deemed to be followed by “*without limitation*”;
- (6) references to “\$” or dollars are to United States dollars; and
- (7) references to Subsidiaries are to Subsidiaries of the Issuer.

## ARTICLE TWO THE NOTES

### SECTION 2.01. Form and Dating.

The Notes and the Trustee’s certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. The Issuer shall approve the form of the Notes and any notation, legend or endorsement on them. Each Note shall be dated the date of its issuance and show the date of its authentication.

The terms and provisions contained in the Notes and the Guarantees shall constitute, and are hereby expressly made, a part of this Indenture and, to the extent applicable, the Issuer, the Guarantors, the Trustee and the Security Agent, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

Notes offered and sold in reliance on Rule 144A shall be issued initially in the form of a single permanent global Note in registered form, substantially in the form set forth in Exhibit A (the “*144A Global Note*”), deposited with the Trustee, as custodian for the Depository, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided and shall bear the legends set forth in Exhibit B.

Notes offered and sold in offshore transactions in reliance on Regulation S shall be issued initially in the form of a single permanent global Note in registered form substantially in the form of Exhibit A (the “*Regulation S Global Note*”); and together with the 144A Global

Note, the “Initial Global Notes”), deposited with the Trustee, as custodian for the Depository, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided and shall bear the legends set forth in Exhibit B.

Notes issued after the Issue Date shall be issued initially in the form of one or more global Notes in registered form, substantially in the form set forth in Exhibit A, deposited with the Trustee, as custodian for the Depository, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided and shall bear any legends required by applicable law (together with the Initial Global Notes, the “Global Notes”) or as Physical Notes.

The aggregate principal amount of the Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depository, as hereinafter provided. Notes issued in exchange for interests in a Global Note pursuant to Section 2.16 may be issued in the form of permanent certificated Notes in registered form in substantially the form set forth in Exhibit A and bearing the applicable legends, if any, (the “Physical Notes”).

**SECTION 2.02. Execution, Authentication and Denomination; Additional Notes.**

One Officer of the Issuer (who shall have been duly authorized by all requisite corporate actions) shall sign the Notes for the Issuer by manual or facsimile signature.

If an Officer whose signature is on a Note was an Officer at the time of such execution but no longer holds that office at the time the Trustee authenticates the Note, the Note shall nevertheless be valid.

A Note shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Note. The signature shall be conclusive evidence that the Note has been duly and validly authenticated under this Indenture.

The Trustee shall authenticate (i) on the Issue Date, Notes for original issue in the aggregate principal amount not to exceed \$420.0 million (the “Initial Notes”) and (ii) additional Notes (the “Additional Notes”) having identical terms and conditions to the Initial Notes, other than with respect to the date of issuance, registration rights, issue price and amount of interest payable on the first Interest Payment Date applicable thereto, in an unlimited amount (so long as not otherwise prohibited by the terms of this Indenture, including, without limitation, Sections 4.10 and 4.12 hereof (and pursuant to clause (13) of the definition of “Permitted Liens,” the Issuer shall secure the additional Collateral required to satisfy this clause in compliance with Section 11.09 hereof)), in each case upon a written order of the Issuer in the form of a certificate of an Officer of the Issuer (an “Authentication Order”). Each such Authentication Order shall specify the amount of Notes to be authenticated and the date on which the Notes are to be authenticated, whether the Notes are to be Initial Notes or Additional Notes and whether the Notes are to be issued as certificated Notes or Global Notes or such other information as the Trustee may reasonably request.

Any Additional Notes shall be part of the same issue as the Notes being issued on the Issue Date and will vote and consent on all matters as one class with the Notes being issued on the Issue Date, including, without limitation, waivers, amendments, redemptions, Change of Control Offers and Asset Sale Offers, Collateral Sale Offers and Event of Loss Offers. None of the Initial Notes or any Additional Notes shall have the right to vote or consent as a separate class on any manner (it being understood that the foregoing shall in no way limit the rights of Holders pursuant to Section 9.02(b)). The Additional Notes shall bear any legend required by applicable law.

The Trustee may appoint an authenticating agent reasonably acceptable to the Issuer to authenticate Notes. Unless otherwise provided in the appointment, an authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Issuer and Affiliates of the Issuer. The Trustee shall have the right to decline to authenticate and deliver any Notes under this Indenture if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such action would expose the Trustee to personal liability.

The Notes shall be issuable only in registered form without coupons in denominations of \$200,000 and integral multiples of \$1,000 in excess thereof.

In case the Issuer, pursuant to and in accordance with Article Five, shall, in one or more related transactions, be consolidated or merged with or into any other Person or shall sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all the assets of such Issuer and its Restricted Subsidiaries taken as a whole to any Person, and the surviving Person resulting from such consolidation or surviving such merger or into which such Issuer shall have been merged, or the surviving Person which shall have participated in the sale, assignment, transfer, conveyance or other disposition as aforesaid, shall have assumed all of the obligations of such Issuer under the Notes and this Indenture pursuant to agreements reasonably satisfactory to the Trustee in accordance with Article Five (such Person, the "*Surviving Entity*"), any of the Global Notes authenticated or delivered prior to such consolidation, merger, sale, assignment, transfer, conveyance or other disposition may, from time to time, at the request of the surviving Person, be exchanged for other Global Notes executed in the name of the surviving Person with only such changes in phraseology as may be appropriate to reflect the identity of the surviving Person, but otherwise in substance of like tenor, terms and conditions in all respects as the Global Notes surrendered for such exchange and of like principal amount; and the Trustee, upon the request of the surviving Person, shall authenticate and deliver Global Notes as specified in such request for the purpose of such exchange. If Global Notes shall at any time be authenticated and delivered in any new name of a Surviving Entity pursuant to this Section 2.02 in exchange or substitution for or upon registration of transfer of any Notes, such Surviving Entity, at the option of the Holders but without expense to them, shall provide for the exchange of all Notes at the time outstanding for Notes authenticated and delivered in such new name.



SECTION 2.03. Registrar and Paying Agent.

The Issuer shall maintain one or more paying agents (each, a “*Paying Agent*”) for the Notes in the City of London and New York, where the Notes may, subject to Section 2 of the Notes, be presented or surrendered for payment. The Issuer shall also maintain a Paying Agent in a member state of the European Union that will not be obliged to withhold or deduct tax pursuant to the European Council Directive 2003/48/EC (as amended from time to time) or any other directive implementing the conclusion of the European Council of Economics and Finance Ministers (“*ECOFIN*”) meeting of November 26 and 27, 2000 or any law implementing or complying with, or introduced in order to conform to, such directive. The initial Paying Agents will be Deutsche Bank AG, London Branch in London and Deutsche Bank Trust Company Americas in New York. Deutsche Bank AG, London Branch and Deutsche Bank Trust Company Americas, respectively, each hereby accept such appointments. The Paying Agents shall act solely as agents of the Issuer and shall have no duty or obligation to any Holders in the performance of their duties hereunder.

The Issuer will also maintain a registrar (the “*Registrar*”) and a transfer agent (the “*Transfer Agent*”). The initial Registrar and Transfer Agent will be Deutsche Bank Trust Company Americas and Deutsche Bank Trust Company Americas hereby accepts such appointments. The Registrar will maintain a register reflecting ownership of definitive registered notes outstanding from time to time and will make payments on and facilitate transfer of definitive registered notes on the behalf of the Issuer. The Transfer Agent shall perform the functions of a transfer agent.

The Issuer or any Subsidiary of the Issuer may act as Paying Agent or Registrar, except that for the purposes of Article Eight, neither the Issuer nor any Affiliate of the Issuer shall act as Paying Agent. The Issuer, upon notice to the Trustee, may have one or more co-registrars and one or more additional paying agents reasonably acceptable to the Trustee. The term “*Registrar*” includes any co-registrar and the term “*Paying Agent*” includes any additional paying agent. To the extent necessary, the Issuer shall enter into an appropriate agency agreement with any Agent not a party to this Indenture, which agreement shall implement the provisions of this Indenture that relate to such Agent. The Issuer shall notify the Trustee, in advance, of the name and address of any such Agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee shall act as such.

The Issuer may change the Paying Agent, the Registrar or the Transfer Agent without prior notice to the Holders of the Notes. For so long as the Notes are listed on the Official List of the Irish Stock Exchange and admitted to trading on the Global Exchange Market and the rules and regulations of the Irish Stock Exchange so require, the Issuer will publish a notice of any change of Paying Agent, Registrar or Transfer Agent in a newspaper having a general circulation in Dublin (which is expected to be the *Irish Times*) or, to the extent and in the manner permitted by such rules and regulations, post such notice on the official website of the Irish Stock Exchange ([www.ise.ie](http://www.ise.ie)).

For so long as the Notes are held in book-entry form through DTC, the Issuer will make all payments of principal, interest and premium, if any, in same day funds to the Paying Agent in New York for further credit to DTC, which will, in turn, distribute such payments in accordance with its procedures.

SECTION 2.04. Paying Agent To Hold Assets in Trust.

Each Paying Agent other than the Trustee or the Issuer or any Subsidiary of the Issuer shall hold in trust for the benefit of Holders or the Trustee all assets held by the Paying Agent for the payment of principal of, premium, if any, or interest on, the Notes (whether such assets have been distributed to it by the Issuer or any other obligor on the Notes), and shall notify the Trustee of any Default by the Issuer (or any other obligor on the Notes) in making any such payment. The Issuer at any time may require a Paying Agent to distribute all assets held by it to the Trustee and account for any assets disbursed and the Trustee may at any time during the continuance of any Payment Default, upon written request to a Paying Agent, require such Paying Agent to distribute all assets held by it to the Trustee and to account for any assets distributed. Upon distribution to the Trustee of all assets that shall have been delivered by the Issuer to the Paying Agent, the Paying Agent (if other than the Issuer or a Subsidiary of the Issuer) shall have no further liability for such assets. If the Issuer or a Subsidiary of the Issuer acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee shall serve as Paying Agent for the Notes.

SECTION 2.05. Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Issuer shall furnish to the Trustee at least seven (7) Business Days prior to each Interest Payment Date and at such other times as the Trustee may request in writing a list, in such form and as of such date as the Trustee may reasonably require, of the names and addresses of Holders, which list may be conclusively relied upon by the Trustee.

SECTION 2.06. Transfer and Exchange.

Subject to Sections 2.15 and 2.16, when Notes are presented to the Registrar with a request to register the transfer of such Notes or to exchange such Notes for an equal principal amount of Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transaction are met; *provided, however*, that the Notes surrendered for transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Registrar, duly executed by the Holder thereof or his or her attorney duly authorized in writing. To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Notes at the Registrar's request. No service charge shall be made for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith.

The Issuer shall not be required and, without the prior written consent of the Issuer, the Registrar shall not be required to register the transfer of or exchange of any Note

(i) during a period beginning at the opening of business 15 days before the mailing of a notice of redemption of Notes and ending at the close of business on the day of such mailing, (ii) selected for redemption in whole or in part pursuant to Article Three, except the unredeemed portion of any Note being redeemed in part, (iii) that has been tendered (and not validly withdrawn) in a Change of Control Offer, and (iv) beginning at the opening of business on any Record Date and ending on the close of business on the related Interest Payment Date.

Any Holder of a beneficial interest in a Global Note shall, by acceptance of such beneficial interest, agree that transfers of beneficial interests in such Global Notes may be effected only through a book-entry system maintained by the Holder of such Global Note (or its agent) in accordance with the applicable legends thereon, and that ownership of a beneficial interest in the Note shall be required to be reflected in a book-entry system.

#### SECTION 2.07. Replacement Notes.

If a mutilated Note is surrendered to the Trustee or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee shall authenticate a replacement Note if the Trustee's requirements are met. Such Holder must provide evidence satisfactory to the Trustee of such loss, destruction or wrongful taking, and an indemnity bond, surety or other indemnity, sufficient in the judgment of both the Issuer and the Trustee, to protect the Issuer, the Trustee or any Agent from any loss which any of them may suffer if a Note is replaced. The Issuer and the Trustee may charge such Holder for their respective reasonable out-of-pocket expenses in replacing a Note pursuant to this Section 2.07, including reasonable fees and expenses of counsel.

Every replacement Note is an additional obligation of the Issuer.

#### SECTION 2.08. Outstanding Notes.

Notes outstanding at any time are all the Notes that have been authenticated by the Trustee except those cancelled by it, those delivered to it for cancellation and those described in this Section 2.08 as not outstanding. A Note does not cease to be outstanding because the Issuer, a Guarantor or any of their respective Affiliates holds the Note (subject to the provisions of Section 2.09).

If a Note is replaced pursuant to Section 2.07 (other than a mutilated Note surrendered for replacement), it ceases to be outstanding unless the Issuer and a Responsible Officer of the Trustee receive written proof satisfactory to them that the replaced Note is held by a bona fide purchaser. A mutilated Note ceases to be outstanding upon surrender of such Note and replacement thereof pursuant to Section 2.07.

If the principal amount of any Note is considered paid under Section 4.01, it ceases to be outstanding and interest ceases to accrue thereon. If on a Redemption Date or the Maturity Date the Trustee or Paying Agent (other than the Issuer or an Affiliate thereof) holds U.S. Legal Tender or non-callable U.S. Government Securities sufficient to pay all of the principal and interest due on the Notes payable on that date, then on and after that date such Notes cease to be outstanding and interest ceases to accrue thereon.

SECTION 2.09. Treasury Notes.

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuer or any of its Affiliates shall be disregarded, except that, for the purposes of determining whether the Trustee shall be protected in conclusively relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned shall be disregarded. Upon request of the Trustee, the Issuer shall promptly furnish to the Trustee an Officer's Certificate listing and identifying all Notes, if any, known by the Issuer to be owned or held by or for the account of the Issuer or any of its Affiliates, and the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are entitled to participate in any direction, waiver or consent for the purposes of any such determination.

SECTION 2.10. Temporary Notes.

Until definitive Notes are ready for delivery, the Issuer may prepare and the Trustee shall, upon receipt of an authentication order, authenticate and deliver temporary Notes. Temporary Notes shall be substantially in the form of definitive Notes but may have variations that the Issuer considers appropriate for temporary Notes. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate and deliver definitive Notes in exchange for temporary Notes in equal principal amounts. Until such exchange, temporary Notes shall be entitled to the same rights, benefits and privileges as definitive Notes. Notwithstanding the foregoing, so long as the Notes are represented by a Global Note, such Global Note may be in typewritten form.

SECTION 2.11. Cancellation.

The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Notes surrendered to them for transfer, exchange or payment. The Trustee, or at the direction of the Trustee, the Registrar or the Paying Agent (other than the Issuer or a Subsidiary), and no one else, shall cancel and, at the written direction of the Issuer, shall dispose of all Notes surrendered for transfer, exchange, payment or cancellation in accordance with its customary procedures. Subject to Section 2.07 hereof, the Issuer may not issue new Notes to replace Notes that it has paid or delivered to the Trustee for cancellation (which shall not prohibit the Issuer from issuing any Additional Notes in accordance with the terms of this Indenture). If the Issuer or any Guarantor shall acquire any of the Notes, such acquisition shall not operate as a redemption or satisfaction of the Indebtedness represented by such Notes unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 2.11.

SECTION 2.12. Defaulted Interest.

If the Issuer defaults in a payment of interest, if any, on the Notes, it shall pay the defaulted interest, plus (to the extent lawful) any interest payable on the defaulted interest, in any lawful manner, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Issuer may pay the defaulted interest to the persons who are Holders on a subsequent special record date, which date shall be the 15th day next preceding the date fixed by the Issuer for the payment of defaulted interest or the next succeeding Business Day if such date is not a Business Day. At least 15 days before any such subsequent special record date, the Issuer or, at the Issuer's request, the Trustee, shall deliver electronically or mail to each Holder, with a copy to the Trustee, a notice that states the subsequent special record date, the payment date and the amount of defaulted interest, and interest payable on such defaulted interest, if any, to be paid.

SECTION 2.13. CUSIP and ISIN Numbers.

The Issuer in issuing the Notes may use "CUSIP" or "ISIN" numbers, and if so, the Trustee shall use the "CUSIP" or "ISIN" numbers in notices of redemption or exchange as a convenience to Holders; provided, however, that any such notice may state that no representation is made as to the correctness or accuracy of the "CUSIP" or "ISIN" numbers printed in the notice or on the Notes, and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers; *provided, further*, that if any Additional Notes are not fungible with the Notes for U.S. federal income tax purposes, the Additional Notes will have a separate "CUSIP" number. The Issuer shall promptly notify the Trustee in writing of any change in the "CUSIP" or "ISIN" numbers.

SECTION 2.14. Deposit of Moneys.

Subject to Section 2 of the Notes, prior to 10:00 a.m. New York City time on each Interest Payment Date, Maturity Date, Redemption Date, Change of Control Payment Date, Asset Sale Payment Date, Collateral Sale Payment Date and Event of Loss Payment Date, the Issuer shall have deposited with the Paying Agent in immediately available funds money sufficient to make cash payments, if any, due on such Interest Payment Date, Maturity Date, Redemption Date, Change of Control Payment Date, Asset Sale Payment Date, Collateral Sale Payment Date and Event of Loss Payment Date, as the case may be, in a timely manner which permits the Paying Agent to remit payment to the Holders on such Interest Payment Date, Maturity Date, Redemption Date, Change of Control Payment Date, Asset Sale Payment Date, Collateral Sale Payment Date and Event of Loss Payment Date, as the case may be. No Paying Agent shall have any obligation to make payment of any funds to the Holders under this Indenture until such time as it has received such funds and has been able to identify or confirm receipt of such funds. The Issuer shall confirm payment to the London Paying Agent prior to any such payment by SWIFT or facsimile.

SECTION 2.15. Book-Entry Provisions for Global Notes.

(a) The Global Notes initially shall (i) be registered in the name of the Depository or the nominee of the Depository, (ii) be delivered to the Trustee as custodian for the Depository and (iii) bear legends as set forth in Exhibit B, as applicable.

Members of, or participants in, the Depository (“*Participants*”) shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Note, and the Depository may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of the Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and Participants, the operation of customary practices governing the exercise of the rights of a Holder of any Note.

(b) Transfers of Global Notes shall be limited to transfers in whole, but not in part, to the Depository, its successors and their respective nominees. Interests of beneficial owners in the Global Notes may be transferred or exchanged for Physical Notes in accordance with the rules and procedures of the Depository and the provisions of Section 2.16. In addition, Physical Notes shall be transferred to all beneficial owners in exchange for their beneficial interests in Global Notes if (i) (a) the Depository notifies the Issuer that it is unwilling or unable to act as Depository for any Global Note or (b) has ceased to be a clearing agency registered under the Exchange Act, and the Issuer so notifies the Trustee in writing and a successor Depository is not appointed by the Issuer within 90 days of such notice or (ii) an Event of Default has occurred and is continuing and the Registrar has received a request from Holders of a majority of the aggregate principal amount of outstanding Notes to issue Physical Notes. Upon any issuance of a Physical Note in accordance with this Section 2.15(b), the Trustee shall register such Physical Note in the name of, and shall cause the same to be delivered to, such person or persons (or the nominee of any thereof). All such Physical Notes shall bear the applicable legends, if any.

(c) In connection with any transfer or exchange of a portion of the beneficial interest in a Global Note to beneficial owners pursuant to Section 2.15(b) above, the Registrar shall (if one or more Physical Notes are to be issued) reflect on its books and records the date and a decrease in the principal amount of such Global Note in an amount equal to the principal amount of the beneficial interest in the Global Note to be transferred, and the Issuer shall execute, and the Trustee shall authenticate and deliver, one or more Physical Notes of authorized denominations in an aggregate principal amount equal to the principal amount of the beneficial interest in the Global Note so transferred.

(d) In connection with the transfer of a Global Note as an entirety to beneficial owners pursuant to Section 2.15(b) above, such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and (i) the Issuer shall execute and (ii) the Trustee shall upon written instructions from the Issuer authenticate and deliver, to each beneficial owner identified by the Depository in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Physical Notes of authorized denominations.

(e) Any Physical Note constituting a Restricted Security delivered in exchange for an interest in a Global Note pursuant to paragraph (b) or (c) of this Section 2.15 shall, except as otherwise provided by Section 2.16, bear the Private Placement Legend.

(f) The Holder of any Global Note may grant proxies and otherwise authorize any Person, including Participants and Persons that may hold interests through Participants, to take any action which a Holder is entitled to take under this Indenture or the Notes.

(g) None of the Trustee, the Registrar, the Paying Agents or Transfer Agents shall have any responsibility or obligation to any beneficial owner of an interest in a Global Note, any agent member or other member of, or a participant in, DTC (or any other applicable Depository) or other Person with respect to the accuracy of the records of DTC (or any other applicable Depository) or any nominee or participant or member thereof, with respect to an ownership interest in the Notes or with respect to the delivery to any agent member or other participant, member, beneficial owner or other Person (other than DTC (or any other applicable Depository)) of any notice or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to or upon the order of the registered Holders (which shall be DTC (or such other applicable Depository) or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through DTC (or such other applicable Depository), subject to its applicable rules and procedures. The Trustee, Registrar, Paying Agents and Transfer Agents may rely and shall be fully protected in relying upon information furnished by DTC (or such other applicable Depository) with respect to its agent members and other members, participants and any beneficial owners.

SECTION 2.16. Special Transfer and Exchange Provisions.

(a) Transfers to QIBs. The following provisions shall apply with respect to the registration of any proposed transfer of a Restricted Security to a QIB:

(i) the Registrar shall register the transfer of any Restricted Security, whether or not such Note bears the Private Placement Legend, if (x) the requested transfer is after the first anniversary of the Issue Date; *provided, however*, that neither the Issuer nor any Affiliate of the Issuer has held any beneficial interest in such Note, or portion thereof, at any time on or prior to the first anniversary of the Issue Date or (y) such transfer is being made by a proposed transferor who has checked the box provided for on the applicable Global Note stating, or has otherwise advised the Issuer and the Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed the certification provided for on the applicable Global Note stating, or has otherwise advised the Issuer and the Registrar in writing, that it is purchasing the Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a QIB within the

meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as it has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A;

(ii) if the proposed transferee is a Participant and the Notes to be transferred consist of Physical Notes which after transfer are to be evidenced by an interest in the 144A Global Note, upon receipt by the Registrar of the Physical Note and written instructions given in accordance with the Depository's and the Registrar's procedures, the Registrar shall register the transfer and reflect on its book and records the date and an increase in the principal amount of the 144A Global Note in an amount equal to the principal amount of Physical Notes to be transferred, and the Registrar shall cancel the Physical Notes so transferred; and

(iii) if the proposed transferor is a Participant seeking to transfer an interest in the Regulation S Global Note, upon receipt by the Registrar of written instructions given in accordance with the Depository's and the Registrar's procedures, the Registrar shall register the transfer and reflect on its books and records the date and (A) a decrease in the principal amount of the Regulation S Global Note in an amount equal to the principal amount of the Notes to be transferred and (B) an increase in the principal amount of the 144A Global Note in an amount equal to the principal amount of the Notes to be transferred.

(b) [Reserved].

(c) Transfers to Non-U.S. Persons. The following provisions shall apply with respect to any transfer of a Restricted Security to a Non-U.S. Person under Regulation S:

(i) the Registrar shall register any proposed transfer of a Restricted Security to a Non-U.S. Person upon receipt of a certificate substantially in the form of Exhibit C from the proposed transferor and such certifications, legal opinions and other information as the Trustee or the Issuer may reasonably request; and

(ii) (a) if the proposed transferor is a Participant holding a beneficial interest in the Rule 144A Global Note or the Note to be transferred consists of Physical Notes, upon receipt by the Registrar of (x) the documents required by paragraph (i) and (y) instructions in accordance with the Depository's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the Rule 144A Global Note, in an amount equal to the principal amount of the 144A Global Note to be transferred or cancel the Physical Notes to be transferred, as the case may be, and (b) if the proposed transferee is a Participant, upon receipt by the Registrar of instructions given in accordance with the Depository's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Regulation S Global Note in an amount equal to the principal amount of the Rule 144A Global Note or the Physical Notes, as the case may be, to be transferred.



(d) Note Delegating. Subject to the requirements of Section 2.16(f), at such time as the Issuer has arranged for the removal of the Private Placement Legend from the Notes in accordance with the Depository's applicable procedures, the Issuer shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02, the Trustee shall authenticate, one or more Global Notes and/or Physical Notes not bearing the Private Placement Legend in an aggregate principal amount equal to the principal amount of the beneficial interests in the Initial Global Notes or Physical Notes, as the case may be, delegated pursuant to the Depository's applicable procedures.

(e) Restrictions on Transfer and Exchange of Global Notes. Notwithstanding any other provisions of this Indenture, a Global Note may not be transferred as a whole except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

(f) Private Placement Legend. Upon the transfer, exchange or replacement of Notes not bearing the Private Placement Legend unless otherwise required by applicable law, the Registrar shall deliver Notes that do not bear the Private Placement Legend. Upon the transfer, exchange or replacement of Notes bearing the Private Placement Legend, the Registrar shall deliver only Notes that bear the Private Placement Legend unless (i) there is delivered to the Trustee an Opinion of Counsel reasonably satisfactory to the Issuer and the Trustee to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act or (ii) such Note has been offered and sold pursuant to an effective registration statement under the Securities Act.

(g) General. By its acceptance of any Note bearing the Private Placement Legend, each Holder of such a Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and in the Private Placement Legend and agrees that it shall transfer such Note only as provided in this Indenture.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.15 or Section 2.16. The Issuer shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

The Issuer and the Registrar are not required to transfer or exchange any Note selected for redemption, except the unredeemed portion of any Note being redeemed in part.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among the Depository, Participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly

required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

The Trustee shall have no responsibility for the actions or omissions of the Depository, or the accuracy of the books and records of the Depository.

(h) Cancellation and/or Adjustment of Global Note. At such time as all beneficial interests in a particular Global Note have been exchanged for Physical Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note or for Physical Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who shall take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

#### SECTION 2.17. Persons Deemed Owners.

Prior to due presentment of a Note for registration of transfer and subject to this Section 2.17, the Issuer, the Trustee, any Paying Agent, any co-registrar and any Registrar may deem and treat the person in whose name any Note shall be registered upon the register of Notes kept by the Registrar as the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of the ownership or other writing thereon made by anyone other than the Issuer, any co-registrar or any Registrar) for the purpose of receiving all payments with respect to such Note and for all other purposes, and none of the Issuer, the Trustee, any Paying Agent, any co-registrar or any Registrar shall be affected by any notice to the contrary.

### ARTICLE THREE REDEMPTION

#### SECTION 3.01. Notices to Trustee.

If the Issuer elects to redeem Notes pursuant to Section 5, Section 6 or Section 7 of the Notes, it shall notify the Trustee in writing of the Redemption Date, the Redemption Price and the principal amount of Notes to be redeemed. The Issuer shall give notice of redemption to the Trustee at least 35 days but not more than 60 days before the Redemption Date (except that a notice issued in connection with a redemption referred to in Article Eight may be more than 60 days before such Redemption Date), together with such documentation and records as shall enable the Trustee to select the Notes to be redeemed.

SECTION 3.02. Selection of Notes To Be Redeemed.

If less than all of the Notes are to be redeemed at any time, the Trustee shall select Notes for redemption as follows:

- (a) if the Notes are represented by global certificates, by lot or such other method in accordance with applicable procedures of DTC; or
- (b) if there are no such requirements of DTC or if the Notes are represented by definitive certificates, on a *pro rata* basis or by lot (as directed by the Issuer).

No Notes of \$200,000 or less shall be redeemed in part. The Trustee shall promptly notify the Issuer in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount at maturity thereof to be redeemed or purchased.

SECTION 3.03. Notice of Redemption.

(a) At least 30 days but not more than 60 days before a Redemption Date (except that a notice issued in connection with a redemption referred to in Article Eight may be more than 60 days before such Redemption Date), the Issuer shall deliver electronically or mail or cause to be delivered electronically or mailed a notice of redemption by first class mail, postage prepaid, to each Holder whose Notes are to be redeemed at its registered address. Each notice for redemption shall identify the Notes (including the CUSIP or ISIN number) to be redeemed and shall state:

- (1) the Redemption Date;
- (2) the Redemption Price and the amount of accrued interest, if any, to be paid;
- (3) the name and address of the Paying Agent;
- (4) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price plus accrued interest, if any;
- (5) that, unless the Issuer defaults in making the redemption payment, interest on Notes called for redemption ceases to accrue on and after the Redemption Date, and the only remaining right of the Holders of such Notes is to receive payment of the Redemption Price upon surrender to the Paying Agent of the Notes redeemed;
- (6) if any Note is being redeemed in part, the portion of the principal amount at maturity of such Note to be redeemed and that, after the Redemption Date, and upon surrender and cancellation of such Note, a new Note or Notes in aggregate principal amount equal to the unredeemed portion thereof shall be issued in the name of the Holder thereof; provided that each new Note will be in a principal amount of \$200,000 or an integral multiple of \$1,000 in excess thereof;

(7) if fewer than all the Notes are to be redeemed, the identification of the particular Notes (or portion thereof) to be redeemed, as well as the aggregate principal amount of Notes to be redeemed and the aggregate principal amount of Notes to be outstanding after such partial redemption; and

(8) the Section of the Notes or this Indenture, as applicable, pursuant to which the Notes are to be redeemed.

The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. In connection with any redemption of the Notes (including a redemption with funds in an amount not exceeding the net cash proceeds of one or more Equity Offerings), any such redemption may, at the Issuer's discretion, be subject to one or more conditions precedent, including the completion of such Equity Offering. In addition, if such redemption or notice of redemption is subject to one or more conditions precedent, such notice shall state that, in the Issuer's discretion, the Redemption Date may be delayed until such time as any or all of such conditions shall be satisfied, or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the Redemption Date, or by the Redemption Date so delayed.

(b) At the Issuer's request, the Trustee shall give the notice of redemption to each Holder in the Issuer's name and at its expense; *provided, however*, that the Issuer shall have delivered to the Trustee, at least 35 days prior to the Redemption Date (unless a shorter time period is agreed to by the Trustee), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in Section 3.03(a). The notice, if mailed in the manner provided herein, shall be presumed to have been given, whether or not the Holder receives such notice.

#### SECTION 3.04. Effect of Notice of Redemption.

Once notice of redemption is mailed in accordance with Section 3.03, Notes called for redemption become due and payable on the Redemption Date and at the Redemption Price plus accrued interest, if any. Upon surrender to the Trustee or Paying Agent, such Notes called for redemption shall be paid at the Redemption Price (which shall include accrued interest, if any, thereon to, but not including, the Redemption Date), but payments of interest on Interest Payment Dates on or prior to the Redemption Date, shall be payable to Holders of record at the close of business on the relevant Record Dates. On and after the Redemption Date, interest, if any, shall cease to accrue on Notes or portions thereof called for redemption unless the Issuer shall have not complied with its obligations pursuant to Section 3.05. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

SECTION 3.05. Deposit of Redemption Price.

On or before 10:00 a.m. New York time on the Redemption Date, the Issuer shall deposit with the Paying Agent U.S. Legal Tender sufficient to pay the Redemption Price plus accrued and unpaid interest, if any, of all Notes (or portions thereof) to be redeemed on that date. The Trustee or the Paying Agent shall promptly return to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the Redemption Price (including accrued and unpaid interest, if any) for all Notes to be redeemed. In addition, so long as no payment Default or Event of Default has occurred and is continuing, all money, if any, earned on funds held by the Paying Agent shall be remitted to the Issuer to the extent not applied to payments on the Notes.

SECTION 3.06. Notes Redeemed in Part.

If any Note is to be redeemed in part only, the notice of redemption that relates to such Note shall state the portion of the principal amount thereof to be redeemed. A new Note or Notes in principal amount equal to the unredeemed portion of the original Note or Notes shall be issued in the name of the Holder thereof upon surrender and cancellation of the original Note or Notes; provided that each new Note will be in a principal amount of \$200,000 or an integral multiple of \$1,000 in excess thereof.

SECTION 3.07. Optional Redemption.

The Notes shall be optionally redeemable as set forth in Section 5, Section 6 and Section 7 of the Notes. Any such redemption shall be made in accordance with the provisions of this Article Three.

SECTION 3.08. Open Market Purchases.

The Issuer and/or its affiliates may acquire Notes by means other than a redemption, whether pursuant to a tender offer, exchange offer, open market purchase, negotiated transaction or otherwise, upon such terms and at such prices as the Issuer or such affiliates may determine, so long as such acquisition does not otherwise violate the terms of this Indenture.

**ARTICLE FOUR  
COVENANTS**SECTION 4.01. Payment of Notes.

The Issuer shall pay the principal of (and premium, if any) and interest on the Notes in the manner provided in the Notes and this Indenture. An installment of principal of, or interest, if any, on, the Notes shall be considered paid on the date it is due if the Trustee or Paying Agent, other than the Issuer or a Subsidiary of the Issuer, (or if the Issuer or any of its Subsidiaries is the Paying Agent, the segregated account or separate trust fund maintained by the Issuer or such Subsidiary pursuant to Section 2.04) holds on that date as of 10:00 a.m. New York City time U.S. Legal Tender designated for and sufficient to pay the installment. Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Issuer shall pay interest on overdue principal (including, without limitation, post-petition interest in a proceeding under any Bankruptcy Law), and overdue interest, if any, to the extent lawful, at the same rate per annum borne by the Notes.

SECTION 4.02. Maintenance of Office or Agency.

The Issuer shall maintain the office required under Section 2.03 (which may be an office of the Trustee or an affiliate of the Trustee or Registrar). The Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 13.02.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented for payment or surrendered for any or all such purposes and may from time to time rescind such designations. The Issuer shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuer hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Issuer in accordance with Section 2.03 of this Indenture. Notwithstanding anything contained in this Section 4.02 to the contrary, in no event shall the Trustee serve as an agent or office for the purpose of service of process on behalf of the Issuer.

SECTION 4.03. Corporate Existence.

Except as otherwise permitted by Section 4.13 and Article Five, the Issuer shall do or cause to be done all things reasonably necessary to preserve and keep in full force and effect its corporate existence and the corporate, partnership or other existence of each Restricted Subsidiary in accordance with the respective organizational documents of each such Restricted Subsidiary and the material rights (charter and statutory) and material franchises of the Issuer and each Restricted Subsidiary; provided, however, that subject to Article Eleven hereof and the terms of the Security Documents, the Issuer shall not be required to preserve any such right, franchise or corporate existence with respect to itself or any Restricted Subsidiary, if the loss thereof would not, individually or in the aggregate, have a material adverse effect on the Issuer and the Restricted Subsidiaries, taken as a whole. For the avoidance of doubt, the Issuer and its Restricted Subsidiaries shall be permitted to change their organizational form; *provided, however*, that if the Issuer changes its organizational form to a partnership or a limited liability company, it will add a corporate co-issuer of the Notes if so requested by any Holder.

SECTION 4.04. Payment of Taxes.

The Issuer and the Guarantors shall, and shall cause each of the Restricted Subsidiaries to, pay or discharge or cause to be paid or discharged, before the same shall become delinquent, all material taxes, assessments and governmental charges levied or imposed upon them or any of the Restricted Subsidiaries or upon the income, profits or property of them or any of the Restricted Subsidiaries; *provided, however*, that subject to the terms of the applicable Security Documents, the Issuer and the Guarantors shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount the applicability or validity is being contested in good faith by appropriate actions and for which appropriate provision has been made, or any such tax, assessment, charge or claim that would not reasonably be expected to have a material adverse effect on the Issuer and the Guarantors taken as a whole.

SECTION 4.05. Further Assurances.

The Issuer and each Guarantor shall execute any and all further documents, financing statements, agreements and instruments, and take all further action that may be required under applicable law, or that the Trustee or the Security Agent may reasonably request, in order to grant, preserve, protect and perfect the validity and priority of the security interests and Liens created or intended to be created by this Indenture, the Intercreditor Agreement or the Security Documents on the Collateral. The Issuer shall deliver or cause to be delivered to the Trustee and the Security Agent all such instruments and documents (including Officer's Certificates, Opinions of Counsel and lien searches) as the Trustee or the Security Agent (without obligation on the part of the Trustee or Security Agent to do so) shall reasonably request to evidence compliance with this Section 4.05.

SECTION 4.06. Compliance Certificate; Notice of Default.

(a) The Issuer shall deliver to the Trustee, within 120 days after the close of each fiscal year, an Officer's Certificate signed by its chief executive officer, chief financial officer or chief accounting officer, stating that a review of the activities of the Issuer and the Guarantors, has been made under the supervision of the signing Officer with a view to determining whether the Issuer and the Guarantors have kept, observed, performed and fulfilled their obligations under this Indenture and the Security Documents to which they are a party and further stating, as to each such Officer signing such certificate, that to the best of such Officer's actual knowledge, the Issuer and the Guarantors during such preceding fiscal year have kept, observed, performed and fulfilled their respective obligations under this Indenture and the Security Documents to which they are a party in all material respects and as of the date of such certificate, there is no Default or Event of Default that has occurred and is (including, without limitation, a Default or Event of Default triggered by the failure of the Issuer and/or a Mortgaged Guarantor to maintain the Security Interests of each of the Security Documents required to be maintained on such date) or, if such signing Officers do know of such Default or Event of Default, the certificate shall specify such Default or Event of Default and what action, if any, the Issuer is taking or proposes to take with respect thereto. The Officer's Certificate shall also notify the Trustee should the Issuer elect to change the manner in which it fixes its fiscal year end.

(b) The Issuer shall deliver to the Trustee as promptly as practicable and in any event within 30 days after the Issuer (or any of its Officers) becomes aware of the occurrence of any Default an Officer's Certificate specifying the Default or Event of Default and what action, if any, the Issuer is taking or proposes to take with respect thereto.

SECTION 4.07. [Reserved].

SECTION 4.08. Waiver of Stay, Extension or Usury Laws.

The Issuer and each Guarantor covenants (to the extent permitted by applicable law) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law which may affect the covenants or the performance of this Indenture and the Security Documents, and (to the extent permitted by applicable law) each hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 4.09. Change of Control.

(a) If a Change of Control occurs, each Holder of Notes shall have the right to require the Issuer to repurchase all or any part (equal to \$200,000 or an integral multiple of \$1,000 in excess thereof) of that Holder's Notes pursuant to the offer described below (the "*Change of Control Offer*") on the terms set forth in this Indenture. In the Change of Control Offer, the Issuer shall offer a payment in cash (the "*Change of Control Payment*") equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased, to the date of purchase, subject to the rights of Holders of Notes on the relevant Record Date to receive interest due on the relevant Interest Payment Date. Within 30 days following any Change of Control or, at the Issuer's option, prior to such Change of Control but after it is publicly announced, the Issuer shall deliver electronically or mail a notice to each Holder (with a copy to the Trustee and the Paying Agent) describing the transaction or transactions that constitute the Change of Control and offering to repurchase Notes on the Change of Control Payment Date specified in the notice (the "*Change of Control Payment Date*"), which date shall be no earlier than 30 days and no later than 60 days from the date such notice is delivered electronically or mailed, other than as may be required by law, pursuant to the procedures required by this Indenture and described in such notice. If the notice is sent prior to the occurrence of the Change of Control, it may be conditioned upon the consummation of the Change of Control. Such notice, whether sent before or after the consummation of the Change of Control, shall state:

(1) that the Change of Control Offer is being made pursuant to this Section 4.09 and to the extent lawful that all Notes tendered and not withdrawn shall be accepted for payment;



(2) the purchase price (including the amount of accrued interest) and the Change of Control Payment Date;

(3) that any Note not tendered shall continue to accrue interest in accordance with the terms thereof;

(4) that, unless the Issuer defaults in making payment therefor, any Note accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest on and after the Change of Control Payment Date;

(5) that Holders electing to have a Note purchased pursuant to a Change of Control Offer shall be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Note completed, or transfer by book-entry transfer, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day prior to the Change of Control Payment Date;

(6) that Holders shall be entitled to withdraw their election if the Paying Agent receives, not later than two Business Days prior to the Change of Control Payment Date, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Notes the Holder delivered for purchase, certificate numbers, if applicable, and a statement that such Holder is withdrawing its election to have such Note purchased; and

(7) that Holders whose Notes are purchased only in part shall be issued new Notes in a principal amount equal to the unpurchased portion of the Notes surrendered (equal to \$200,000 or an integral multiple of \$1,000 in excess thereof).

On the Change of Control Payment Date, the Issuer shall, to the extent lawful:

(1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Issuer.

The Paying Agent shall promptly mail or pay by wire transfer to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee shall promptly authenticate pursuant to an Authentication Order and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided that* each new Note shall be in a principal amount of \$200,000 or an integral multiple of \$1,000 in excess thereof. So long as no payment Default or Event of Default has occurred and is continuing and to the extent not applied to make payments

on the Notes, the Paying Agent shall return to the Issuer any cash that remains unclaimed, together with interest, if any, thereon, held by them for the payment of the Redemption Price. However, if the Change of Control Payment Date is on or after an interest record date and on or before the related Interest Payment Date, any accrued and unpaid interest shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Change of Control offer.

The Issuer shall inform the Holders, the Paying Agent, the Security Agent and the Trustee of the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date. The Issuer shall be required to make a Change of Control Offer following a Change of Control whether or not the provisions of Section 5.01 hereof also apply in connection with the applicable Change of Control.

The Issuer shall not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption has been given in respect of all of the Notes then outstanding pursuant to Section 3.03 hereof, unless and until there is a default in payment of the applicable Redemption Price.

The Issuer shall comply with the requirements of any securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.09, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.09 by virtue of such compliance.

If and for so long as the Notes are listed on the Official List of the Irish Stock Exchange and admitted to trading on the Global Exchange Market and the rules and regulations of the Irish Stock Exchange so require, the Issuer will publish a public announcement with respect to the results of any Change of Control Offer in a leading daily newspaper of general circulation in Dublin (which is currently expected to be the *Irish Times*) or, to the extent and in the manner permitted by such rules, post such notice on the official website of the Irish Stock Exchange ([www.ise.ie](http://www.ise.ie)).

#### SECTION 4.10. Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "*incur*") any Indebtedness (including Acquired Debt), and the Issuer will not issue any shares of Disqualified Stock, and the Issuer will not permit any of its Restricted Subsidiaries to issue any shares of Disqualified Stock or preferred stock; provided, however, that the Issuer may incur Indebtedness

(including Acquired Debt) or issue Disqualified Stock, and any Guarantor may incur Indebtedness (including Acquired Debt), issue shares of Disqualified Stock or issue shares of preferred stock, if the Fixed Charge Coverage Ratio for the Issuer's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued, as the case may be, would have been at least 2.25 to 1.0, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Stock or the preferred stock had been issued, as the case may be, at the beginning of such four-quarter period;

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

(1) the incurrence by the Issuer or any Guarantor of Indebtedness and letters of credit under one or more Credit Facilities in an aggregate amount at any time outstanding under this clause (1) not to exceed \$40.0 million, *provided* however that any amounts outstanding under any Credit Facility that have been used to acquire Mortgaged Vessels or Mortgaged Container Assets can only be repaid or prepaid prior to its stated maturity with (i) the proceeds from Indebtedness that is secured by Permitted Liens incurred pursuant to clauses 6 and 13(b) of the definition of Permitted Liens, (ii) the net cash proceeds received by the Issuer after the Issue Date as a contribution to its equity capital or from the issue or sale (other than to a Restricted Subsidiary of the Issuer) of Qualified Equity Interests; (iii) the Net Proceeds of an Asset Sale involving Collateral or Event of Loss Proceeds, in each case, in accordance with the provisions set forth in Section 4.13 and Section 4.21; or (iv) cash or Cash Equivalents, provided that the amounts available under clauses (15) and (18) of the definition of "Permitted Investments" shall be reduced by any amount of cash or Cash Equivalents under this clause (iv) so used to repay or prepay any Credit Facility; *provided, further*, that if the Revolving Credit Facility is repaid at its stated maturity other than in one of the ways set forth in clauses (i) through (iv) of the preceding proviso, the amount of Indebtedness that the Issuer or any Guarantor may incur pursuant to this clause (1) shall be reduced to zero.;

(2) the incurrence by the Issuer and its Restricted Subsidiaries of the Existing Indebtedness and the issuance by the Issuer of the Existing Mandatorily Redeemable Preference Shares;

(3) the incurrence of the Notes and the Guarantees;

(4) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price, charter expense, lease expense, rental payments or cost of design, construction, installation or improvement of Vessels or Container Assets used in the business of the Issuer or any of its Restricted Subsidiaries (including any reasonable related fees or expenses incurred in connection therewith), whether through the charter

of, leasing of, or the direct purchase of, or of the Capital Stock of any Person owning, such Vessels or Container Assets (including any Indebtedness deemed to be incurred in connection with such purchase) (it being understood that any such Indebtedness may be incurred after the acquisition, purchase, charter or leasing or the construction, installation or the making of any improvement with respect to any such Vessel or Container Asset); *provided* that (x) the principal amount of Indebtedness incurred pursuant to this clause (4), including all Indebtedness incurred pursuant to this clause (4) to renew, refund, replace, refinance, defease or discharge any Indebtedness incurred pursuant to this clause (4), does not, at the time of incurrence, exceed (i) in the case of a completed Vessel, 65% of its Fair Market Value plus any other Ready for Sea Cost of such Vessel, (ii) in the case of an uncompleted Vessel, 65% of the contract price for the acquisition of such Vessel, as determined on the date on which the agreement for construction of such Vessel was entered into by the Issuer or any Restricted Subsidiary, plus any other Ready for Sea Cost of such Vessel, (iii) in the case of a completed Container Asset, 100% of its Fair Market Value and (iv) in the case of an uncompleted Container Asset, 100% of the contract price for the acquisition of such Container Asset, as determined on the date on which the agreement for construction of such Container Asset was entered into by the Issuer or any Restricted Subsidiary and (y) any contribution of cash, Cash Equivalents or assets of the Issuer or any Restricted Subsidiary in connection with such financing qualifies as a Designated Asset Finance Contribution;

(5) Indebtedness of the Issuer or any of its Restricted Subsidiaries incurred to finance the replacement (through construction, acquisition, lease or otherwise) of one or more Vessels and any assets that shall become Related Assets, upon a total loss, destruction, condemnation, confiscation, requisition, seizure, forfeiture or other taking of title to or use of such Vessel (collectively, a "Total Loss") in an aggregate amount no greater than the Ready For Sea Cost (as determined in good faith by the Issuer) for such replacement Vessel, in each case, less all compensation, damages and other payments (including insurance proceeds other than in respect of business interruption insurance) actually received by the Issuer or any of its Restricted Subsidiaries from any Person in connection with the Total Loss in excess of amounts actually used to repay Indebtedness secured by the Vessel subject to the Total Loss;

(6) Indebtedness of the Issuer or any Restricted Subsidiary incurred in relation to: (i) maintenance, repairs, refurbishments and replacements required to maintain the classification of any of the Vessels owned, leased, time chartered or bareboat chartered to or by the Issuer or any Restricted Subsidiary; (ii) dry docking of any of the Vessels owned or leased by the Issuer or any Restricted Subsidiary for maintenance, repair, refurbishment or replacement purposes in the ordinary course of a Permitted Business; (iii) any expenditures which will or may reasonably be expected to be recoverable from insurance on such Vessels; and (iv) the release from arrest, detention, attachment or levy of any of its assets (including Collateral) by any court or competent authority (including any governmental or regulatory agency);

(7) the incurrence by the Issuer or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in respect of Indebtedness (other than intercompany Indebtedness) that was permitted by this Indenture to be incurred under Section 4.10(a) or clauses (2), (3), (5), (6), (7) or (14) of this Section 4.10(b);

(8) the incurrence of Indebtedness by the Issuer owed to a Restricted Subsidiary and Indebtedness by any Restricted Subsidiary owed to the Issuer or any other Restricted Subsidiary; *provided, however*, that upon any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or such Indebtedness being owed to any Person other than the Issuer or a Restricted Subsidiary, the Issuer or such Restricted Subsidiary, as applicable, shall be deemed to have incurred Indebtedness not permitted by this clause (8);

(9) the issuance by any of the Issuer's Restricted Subsidiaries to the Issuer or to any of its Restricted Subsidiaries of shares of Disqualified Stock or preferred stock; *provided, however*, that:

(A) any subsequent issuance or transfer of Equity Interests that results in any such Disqualified Stock or preferred stock being held by a Person other than the Issuer or a Restricted Subsidiary of the Issuer; and

(B) any sale or other transfer of any such Disqualified Stock or preferred stock to a Person that is neither the Issuer nor a Restricted Subsidiary of the Issuer;

shall be deemed, in each case, to constitute an issuance of such Disqualified Stock or preferred stock by such Restricted Subsidiary that is not permitted by this clause (9);

(10) the incurrence by the Issuer or any of its Restricted Subsidiaries of Permitted Hedging Obligations;

(11) the guarantee by the Issuer or any Guarantor of Indebtedness of the Issuer or a Restricted Subsidiary of the Issuer that was permitted to be incurred by another provision of this Section 4.10; *provided that* if the Indebtedness being guaranteed is contractually subordinated to the Notes or a Guarantee, then the guarantee shall be contractually subordinated to the same extent as the Indebtedness guaranteed;

(12) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, unemployment insurance, health, disability and other employee benefits or property, casualty or liability insurance, self-insurance obligations, bankers' acceptances, or performance, completion, bid, appeal and surety bonds in the ordinary course of a Permitted Business;

(13) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within 30 business days;

(14) Indebtedness, Disqualified Stock or preferred stock of (x) the Issuer or a Restricted Subsidiary incurred or issued to finance an acquisition or (y) a Person acquired by the Issuer or a Restricted Subsidiary or merged, consolidated, amalgamated or liquidated with or into a Restricted Subsidiary or the Issuer; provided, however, that after giving effect to such incurrence or issuance (and the related acquisition, merger, consolidation, amalgamation or liquidation), either (A) the Fixed Charge Coverage Ratio for the Issuer's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued, as the case may be, would have been at least 2.25 to 1.0 or (B) the Fixed Charge Coverage Ratio for the Issuer's most recently four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued, as the case may be, would not be less than immediately prior to such transactions;

(15) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness consisting of guarantees, earn-outs, indemnities, contribution, obligations in respect of purchase price adjustments or, in each case, similar obligations, in connection with the disposition or acquisition of assets, including, without limitation, shares of Capital Stock;

(16) Non-Recourse Debt incurred by a Securitization Subsidiary in a Qualified Securitization Transaction;

(17) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness constituting reimbursement obligations with respect to letters of credit so long each such obligation is satisfied within 30 days of the incurrence thereof;

(18) the incurrence by the Issuer or any Restricted Subsidiary of Indebtedness through the provision of bonds, guarantees, letters of credit or similar instruments required by the United States Federal Maritime Commission or other governmental or regulatory agencies, including, without limitation, customs authorities; in each case, for Vessels owned, leased, time chartered or bareboat chartered to or by the Issuer or any Restricted Subsidiary;

(19) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness in the form of customer deposits and advance payments received in the ordinary course of a Permitted Business from customers for services purchased in the ordinary course of a Permitted Business;

(20) Indebtedness of the Issuer or any of its Restricted Subsidiaries arising from customary cash management services or in connection with any automated clearinghouse transfer of funds in the ordinary course of a Permitted Business; and

(21) the incurrence by the Issuer or any of its Restricted Subsidiaries of additional Indebtedness, Disqualified Stock or preferred stock in an aggregate amount at any time outstanding, including all Permitted Refinancing Indebtedness incurred pursuant to this clause (21), not to exceed \$15.0 million.

(c) For purposes of determining compliance with this Section 4.10, in the event that an item of proposed Indebtedness, Disqualified Stock or preferred stock meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (21) of Section 4.10(b) above, or is entitled to be incurred pursuant to Section 4.10(a), the Issuer, in its sole discretion, may divide and/or classify such item of Indebtedness, Disqualified Stock and preferred stock (or any portion thereof) on the date of its incurrence, or later redivide and/or reclassify, all or a portion of such item of Indebtedness, Disqualified Stock and preferred stock, in any manner that complies with this Section 4.10. Indebtedness under all Credit Facilities outstanding or committed to on the Issue Date will be deemed to have been incurred on such date in reliance on the exception provided by Section 4.10(b)(1) above (whether or not outstanding on the Issue Date) and thereafter may not be reclassified in any manner under this Section 4.10(c).

(d) The accrual of interest, the accrual of dividends, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Stock or preferred stock in the form of additional shares of the same class of Disqualified Stock or preferred stock, as the case may be, shall not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock or preferred stock for purposes of this Section 4.10; provided, in each such case, that the amount thereof is included in Fixed Charges of the Issuer as accrued.

(e) The amount of any Indebtedness outstanding as of any date will be:

(1) the accreted value of such Indebtedness, in the case of any Indebtedness issued with original issue discount;

(2) the principal amount of the Indebtedness, in the case of any other Indebtedness;

(3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

(A) the Fair Market Value of such assets at the date of determination; and

(B) the amount of the Indebtedness of the other Person that is secured by such assets; and

(4) in respect of the Indebtedness incurred by a Securitization Subsidiary, the amount of obligations outstanding under the legal documents entered into as part of a Qualified Securitization Transaction on any date of determination characterized as principal or that would be characterized as principal if such securitization were structured as a secured lending transaction rather than as a purchase.

(f) For purposes of determining compliance with this Section 4.10, (i) Acquired Debt shall be deemed to have been incurred by the Issuer or its Restricted Subsidiaries, as the case may be, at the time an acquired Person becomes such a Restricted Subsidiary of the Issuer (or is merged into the Issuer or such a Restricted Subsidiary) or at the time of the acquisition of assets, as the case may be, (ii) the maximum amount of Indebtedness, Disqualified Stock or preferred stock that the Issuer and its Restricted Subsidiaries may incur pursuant to this Section 4.10 shall not be deemed to be exceeded, with respect to any outstanding Indebtedness, Disqualified Stock or preferred stock due solely to the result of fluctuations in the exchange rates of currencies and (iii) the outstanding principal amount of any particular Indebtedness shall be counted only once and any obligations arising under any guarantee, Lien, letter of credit or similar instrument supporting such Indebtedness permitted to be incurred pursuant to this Section 4.10 shall not be double counted. In addition, in connection with the incurrence of any Indebtedness pursuant to Section 4.10(a), the Issuer may elect, pursuant to an Officer's Certificate delivered to the Trustee, to treat all or any portion of the commitment under any Indebtedness which is to be incurred, as being incurred as of the Calculation Date and any subsequent incurrence of Indebtedness under such commitment that was so treated shall not be deemed, for purposes of this calculation, to be an incurrence of additional Indebtedness.

(g) For purposes of determining compliance of any U.S. Dollar-denominated restriction with this Section 4.10, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a different currency shall be utilized, calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred; *provided, however*, that (i) if such Indebtedness denominated in non-dollar currency is subject to a Currency Exchange Protection Agreement with respect to U.S. dollars, the amount of such Indebtedness expressed in U.S. dollars will be calculated so as to take account of the effects of such Currency Exchange Protection Agreement; and (ii) the dollar-equivalent of the principal amount of any such Indebtedness outstanding on the Issue Date shall be calculated based on the relevant currency exchange rate in effect on the Issue Date. The principal amount of any refinancing Indebtedness incurred in the same currency as the Indebtedness being refinanced will be the dollar-equivalent of the Indebtedness refinanced determined on the date such Indebtedness was originally incurred, except that to the extent that:

(1) such dollar-equivalent was determined based on a Currency Exchange Protection Agreement, in which case the Permitted Refinancing Indebtedness will be determined in accordance with the preceding sentence; and

(2) the principal amount of the refinancing Indebtedness exceeds the principal amount of the Indebtedness being refinanced, in which case the dollar-equivalent of such excess will be determined on the date such refinancing Indebtedness is being incurred.

(h) The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be



calculated based on the currency exchange rate applicable to the currencies in which such Permitted Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

(i) Neither the Issuer nor any Guarantor shall incur any Indebtedness that is contractually subordinated in right of payment to any other Indebtedness of the Issuer or such Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Notes and the applicable Guarantee on substantially identical terms; *provided, however*, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Issuer or any Guarantor solely by virtue of being unsecured or by virtue of being secured with different collateral or by virtue of being secured on a junior priority basis or by virtue of the application of waterfall or other payment ordering provisions affecting different tranches of Indebtedness.

SECTION 4.11. Limitations on Restricted Payments.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(i) pay any dividend or make any other payment or distribution on account of the Issuer's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger, amalgamation or consolidation involving the Issuer or any of its Restricted Subsidiaries) or to the holders of the Issuer's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than (A) dividends or distributions payable in Qualified Equity Interests or (B) dividends or other payments or distributions payable to the Issuer or a Restricted Subsidiary of the Issuer);

(ii) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation) any Equity Interests of the Issuer or any direct or indirect parent of the Issuer;

(iii) make any voluntary or optional principal payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, any Subordinated Indebtedness of the Issuer or any Guarantor (excluding any Existing Indebtedness or any Indebtedness owed to and held by the Issuer or any of its Restricted Subsidiaries); or

(iv) make any Restricted Investment;

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

(1) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence of such Restricted Payment;

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

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer and its Restricted Subsidiaries since the Issue Date (including Restricted Payments deemed to have been made pursuant to the definitions of "Designated Additional Notes Contribution" or "Designated Asset Finance Contribution" but excluding Restricted Payments permitted by clauses (2), (3), (4), (5), (6), (7), (8), (9), (10) and (12) of Section 4.11(b)), is not greater than the sum, without duplication, of:

(A) 50% of the Consolidated Net Income of the Issuer for the period (taken as one accounting period) from January 1, 2014 to the end of the Issuer's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); *plus*

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

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

(D) to the extent that any Unrestricted Subsidiary of the Issuer is redesignated as a Restricted Subsidiary after the Issue Date or is merged into the Issuer or a Restricted Subsidiary or transfers all or substantially all its assets to the Issuer or a Restricted Subsidiary or an entity in which the Issuer or a Restricted Subsidiary has made a Restricted Investment becomes a Restricted Subsidiary, the Fair Market Value of the Investment of the Issuer and its Restricted Subsidiaries in such Subsidiary (or the assets so transferred, if applicable) as of the date of such redesignation (other than to the extent of such Investment in such Unrestricted Subsidiary that was made as a Permitted Investment), merger, transfer or other action, as the case may be; *plus*

(E) any amount previously treated as a Restricted Payment on account of any guarantee entered into by the Issuer or a Restricted Subsidiary upon the unconditional release of such guarantee; minus

(F) any amount of interest paid to service Indebtedness incurred pursuant to Section 4.10(a) and clause (21) of the definition of Permitted Debt.

(b) The preceding provisions will not prohibit:

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

(2) the making of any Restricted Payment in exchange for, or out of the net proceeds of the substantially concurrent sale or issuance (other than to a Restricted Subsidiary of the Issuer), including upon exercise of an option or warrant, of, Qualified Equity Interests or from the substantially concurrent contribution of equity capital with respect to Qualified Equity Interests to the Issuer received by the Issuer; provided that the amount of any such net proceeds that are utilized for any such Restricted Payment will be excluded from Section 4.11(a)(3)(B) and will not be considered to be net cash proceeds from an Equity Offering for the purposes of Section 3.07 hereof;

(3) the payment, defeasance, redemption, repurchase or other acquisition or retirement for value of Subordinated Indebtedness of the Issuer or any of its Restricted Subsidiaries with the net proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness or in exchange for Qualified Equity Interests;

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

(5) the repurchase, redemption or other acquisition or retirement for value of any Qualified Equity Interests of the Issuer or any of its Restricted Subsidiaries held by any current or former officer, director, consultant or employee of the Issuer or any of its Restricted Subsidiaries (or Heirs or other permitted transferees thereof); provided that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed \$1.0 million (determined as of the beginning of such calendar year) in any calendar year; provided, further, that such amount may be increased by an amount not to exceed:

(A) the cash proceeds from the sale of Qualified Equity Interests of the Issuer to directors, officers, employees or consultants of the Issuer or any of its Restricted Subsidiaries that occurs after the Issue Date (provided that the amount of such cash proceeds utilized for any such repurchase, redemption, acquisition or other retirement will not increase the amount available for Restricted Payments under Section 4.11(a)(3); *plus*

(B) the cash proceeds of key-man life insurance policies received by the Issuer or any Restricted Subsidiary after the Issue Date;

provided that to the extent that any portion of the unused amounts permitted to be paid pursuant to this clause is not utilized in any year, such unused portion may be carried forward and be utilized in one or more subsequent years;

(6) cancellation of Indebtedness owing to the Issuer from officers or directors of the Issuer in connection with a repurchase of Qualified Equity Interests of the Issuer pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement approved by the Board of Directors to the extent such Indebtedness was issued to such officers or directors as consideration for the purchase of the Qualified Equity Interests so repurchased;

(7) so long as no Default or Event of Default has occurred and is continuing or would result thereby, any dividend or distribution consisting of Equity Interests of an Unrestricted Subsidiary or the proceeds of the sale of Equity Interests of an Unrestricted Subsidiary;

(8) the repurchase of Equity Interests deemed to occur upon the exercise of options, warrants or other convertible securities to the extent such Equity Interests represent a portion of the exercise price of those options, warrants or other convertible securities and cash payments in lieu of the issuance of fractional shares in connection with the exercise of options, warrants or other convertible securities;

(9) so long as no Default or Event of Default has occurred and is continuing or would result thereby, the declaration and payment of cash dividends to holders of any class or series of Disqualified Stock of the Issuer or preferred stock of a Restricted Subsidiary (excluding the Existing Mandatorily Redeemable Preference Shares), in each case, issued after the Issue Date in accordance with Section 4.10;

(10) (A) the declaration and payment of quarterly cash dividends to holders of the Existing Mandatorily Redeemable Preference Shares in accordance with the terms of such instruments and dividends or distributions or interest on Permitted Refinancing Indebtedness or Qualified Equity Interests issued in exchange for, or to refinance, replace, or refund, Existing Mandatorily Redeemable Preference Shares; provided that the amount of cash dividends (or interest) paid in respect of such Permitted Refinancing Indebtedness or Qualified Equity Interests pursuant to this clause (10)(A)

shall not exceed an amount per annum equal to 6.0% of the applicable principal amount or liquidation preference (the "Applicable Cap") of such Existing Mandatorily Redeemable Preference Shares, Permitted Refinancing Indebtedness or Qualified Equity Interests; provided further that any cash dividends (or interest) paid in respect of such Permitted Refinancing Indebtedness or Qualified Equity Interests pursuant to this clause (10)(A) that would exceed the Applicable Cap will be included in subsequent calculations under Section 4.11(a) (3); and (B) the payment, redemption, repurchase or other acquisition or retirement for value or reduction of the outstanding liquidation preference of any Existing Mandatorily Redeemable Preference Shares of the Issuer or any of its Restricted Subsidiaries with the net proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness or in exchange for Qualified Equity Interests; provided that such payments pursuant to this clause (10)(B) shall not exceed \$50.0 million in the aggregate;

(11) payments made to purchase, redeem, defease or otherwise acquire or retire for value any Subordinated Indebtedness of the Issuer or any of its Restricted Subsidiaries (i) following the occurrence of a Change of Control, at a purchase price not greater than 101% of the outstanding principal amount (or accreted value, in the case of any debt issued at a discount from its principal amount at maturity) thereof, plus accrued and unpaid interest, if any, after the Issuer and its Restricted Subsidiaries have satisfied their obligations with respect to a Change of Control Offer set forth under Section 4.09 or (ii) with the Excess Proceeds of one or more Asset Sales not involving Collateral, at a purchase price not greater than 100% of the principal amount (or accreted value, in the case of any debt issued at a discount from its principal amount at maturity) thereof, plus accrued and unpaid interest, if any, after the Issuer and its Restricted Subsidiaries have satisfied their obligations with respect to such Excess Proceeds pursuant to Section 4.13(I) to the extent that such Subordinated Indebtedness is required to be repurchased or redeemed pursuant to the terms thereof as a result of such Change of Control or Asset Sale;

(12) payments pursuant to Section 4.14(b)(6) or (b)(7); and

(13) Restricted Payments (other than Restricted Investments) in an aggregate amount, when taken together with all Restricted Payments made pursuant to this clause (13) not to exceed \$7.5 million.

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

(d) For purposes of determining compliance with this Section 4.11, in the event that a Restricted Payment permitted pursuant to this Section 4.11 or a Permitted Investment meets the criteria of more than one of the categories of Restricted Payment described in clauses (1) through (13) of Section 4.11(b) or one or more clauses of the definition of "Permitted Investments," the Issuer shall be permitted to classify such Restricted Payment or

Permitted Investment (or any portion thereof) on the date it is made, or later reclassify, all or a portion of such Restricted Payment or Permitted Investment, in any manner that complies with this Section 4.11, and such Restricted Payment or Permitted Investment shall be treated as having been made pursuant to only one of such clauses of this Section 4.11 or of the definition of "Permitted Investment."

SECTION 4.12. Limitations on Liens.

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

(1) in the case of any Lien securing an obligation that ranks *pari passu* with the Notes or a Guarantee, effective provision is made to secure the Notes or such Guarantee, as the case may be, at least equally and ratably with or prior to such obligation with a Lien on the same collateral; and

(2) in the case of any Lien securing an obligation that is subordinated in right of payment to the Notes or a Guarantee, effective provision is made to secure the Notes or such Guarantee, as the case may be, with a Lien on the same collateral that is prior to the Lien securing such subordinated obligation,

in each case, for so long as such obligation is secured by such Lien (such Lien, the "Primary Lien").

Notwithstanding the foregoing, the Issuer shall not and shall not permit any Mortgaged Guarantor to create, incur or assume any Lien (other than in favor of the Security Agent for the benefit of the Holders of Notes and the other creditors specified in the Intercreditor Agreement) upon (i) any of the Collateral other than Permitted Liens and those Liens permitted by the Security Documents, (ii) any Assigned Contracts entered into after the Issue Date in respect of any Mortgaged Vessel (or any right, title, benefit or interest thereunder) and (iii) any intercompany Indebtedness owed by the Issuer or any Guarantor to the Issuer or any Restricted Subsidiary.

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

SECTION 4.13. Limitation on Asset Sales.

(I) With respect to all Asset Sales not involving Collateral:

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale involving assets or Equity Interests other than Collateral unless:

(1) the Issuer or any of its Restricted Subsidiaries receives consideration at the time of the Asset Sale at least equal to the Fair Market Value (for the avoidance of doubt, the Fair Market Value may be determined at the time a contract is entered into for an Asset Sale) of the assets or Equity Interests issued or sold or otherwise disposed of; and

(2) at least 75% of the consideration received in the Asset Sale by the Issuer or such Restricted Subsidiary is in the form of cash or Cash Equivalents.

(b) For purposes of Section 4.13(I)(a), each of the following shall be deemed to be cash:

(1) any Indebtedness or other liabilities, as shown on the Issuer's most recent consolidated balance sheet or the notes thereto, of the Issuer or any of its Restricted Subsidiaries (other than liabilities that are expressly subordinated to the Notes or any Guarantee) that are assumed, repaid or retired by the transferee (or a third party on behalf of the transferee) of any such assets;

(2) any securities, notes or other obligations received by the Issuer or any such Restricted Subsidiary from such transferee or any other Person on account of such Asset Sale that are, within 180 days of the Asset Sale, converted, sold or exchanged by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents, to the extent of the cash or Cash Equivalents received in that conversion, sale or exchange;

(3) the Fair Market Value of (i) any assets (other than securities and other than assets that are classified as current assets under GAAP) received by the Issuer or any Restricted Subsidiary to be used by it in a Permitted Business (including, without limitation, Vessels, Related Assets, and Container Assets), (ii) Capital Stock in a Person that is a Restricted Subsidiary or in a Person engaged in a Permitted Business that shall become a Restricted Subsidiary immediately upon the acquisition of such Person by the Issuer or (iii) a combination of (i) and (ii); and

(4) any Designated Non-cash Consideration received by the Issuer or any Restricted Subsidiary in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this Section 4.13(I)(b) that is at that time outstanding, not to exceed the greater of (x) \$25.0 million and (y) 3.0% of Total Assets of the Issuer at the time of the receipt of such Designated Non-cash Consideration, with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value.

(c) Within 365 days (subject to extensions as provided in Section 4.13(I)(d) below) after the receipt of any Net Proceeds from an Asset Sale involving assets other than Collateral, the Issuer or any of its Restricted Subsidiaries shall apply such Net Proceeds to:

(1) repay or prepay obligations under the Credit Facilities or any other Secured Indebtedness and, if the Indebtedness repaid is revolving credit Indebtedness, to correspondingly reduce commitments with respect thereto; provided, that commitments are not required to be reduced under the Revolving Credit Facility if Net Proceeds are applied to repay or prepay obligations under such facility in an amount not to exceed the amount outstanding at the time of repayment or prepayment under such facility that has been used to acquire Mortgaged Vessels or Mortgaged Container Assets but only to the extent such outstanding amount ranks super-senior to the Notes and any Additional Notes under the Intercreditor Agreement;

(2) acquire all or substantially all of the assets of, or any Capital Stock of, a Person engaged in a Permitted Business; provided that in the case of acquisition of Capital Stock of any Person, such Person is or becomes a Restricted Subsidiary of the Issuer;

(3) make a capital expenditure;

(4) acquire other assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business (including, without limitation, Vessels, Related Assets and Container Assets);

(5) repay unsecured senior Indebtedness of the Issuer or any Restricted Subsidiary; *provided* that if the Issuer or any Guarantor shall so reduce senior Indebtedness other than Indebtedness under the Notes, the Issuer or such Guarantor shall equally and ratably reduce obligations under the Notes (A) through open market purchases (to the extent such purchases are at or above 102% of the principal amount thereof), (B) by redeeming the Notes if the Notes are then redeemable as provided under Section 3.07 hereof or (C) by making an Asset Sale Offer in accordance with the provisions described below and in this Indenture; and/or

(6) any combination of the transactions permitted by the foregoing clauses (1) through (5).

(d) A (A) binding contract to apply Net Proceeds in accordance with clauses (c)(2) through (4) above shall toll the 365-day period in respect of such Net Proceeds or (B) determination by the Issuer to potentially apply all or a portion of such Net Proceeds



towards the exercise of an outstanding Vessel Purchase Option Contract shall toll the 365-day period in respect of such Net Proceeds, in each case, for a period not to exceed 365 days from the expiration of the aforementioned 365-day period; *provided* that such binding contract and such determination, in each case, shall be treated as a permitted application of Net Proceeds from the date of such binding contract until and only until the earlier of (x) the date on which such acquisition or expenditure is consummated and (y) (i) in the case of any Vessel Construction Contract or any Exercised Vessel Purchase Option Contract (including any outstanding Vessel Purchase Option Contract exercised during the 365-day period referenced in clause (B) above), the date of expiration or termination of such Vessel Construction Contract or Exercised Vessel Purchase Option Contract and (ii) otherwise, the 365th day following the expiration of the aforementioned 365-day period (clause (i) or clause (ii) as applicable, the "*Reinvestment Termination Date*"). If such acquisition or expenditure is not consummated on or before the Reinvestment Termination Date and the Issuer (or the applicable Restricted Subsidiary, as the case may be) shall not have applied such Net Proceeds pursuant to clauses (c) (1) through (6) above on or before the Reinvestment Termination Date, such Net Proceeds shall constitute Excess Proceeds.

Pending the final application of any Net Proceeds, the Issuer or any of its Restricted Subsidiaries may temporarily reduce outstanding Indebtedness or otherwise invest the Net Proceeds in any manner that is not prohibited by this Indenture.

(e) Any Net Proceeds from Asset Sales involving assets other than Collateral that are not applied or invested as provided in Section 4.13(I) (c) shall constitute "*Excess Proceeds*." When the aggregate amount of Excess Proceeds exceeds \$25.0 million, the Issuer will make an offer (an "*Asset Sale Offer*") to all Holders of Notes and all holders of other *pari passu* Indebtedness with the Notes containing provisions similar to those set forth in this Indenture with respect to offers to purchase or redeem with the proceeds of sales of assets to purchase the maximum principal amount of Notes and such other *pari passu* Indebtedness that may be required to be purchased out of the Excess Proceeds (the "*Excess Proceeds Payment Amount*"). The offer price for the Notes in any Asset Sale Offer will be equal to 102% of principal amount of the Notes plus accrued and unpaid interest thereon, if any, to the date of purchase (the "*Asset Sale Offered Price*"), and will be payable in cash, and the offer or redemption price for such *pari passu* Indebtedness shall be as set forth in the related documentation governing such Indebtedness. If any Excess Proceeds remain after consummation of an Asset Sale Offer, such Excess Proceeds may be used for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes and other *pari passu* Indebtedness described above tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds (as certified in an Officer's Certificate of the Issuer to the Trustee or the agent for such other *pari passu* Indebtedness), the Trustee shall select the Notes and the Issuer or the agent for such other *pari passu* Indebtedness shall select such other *pari passu* Indebtedness to be purchased (i) if the Notes are represented by global certificates, by lot or such other similar method in accordance with applicable procedures of DTC, or (ii) if there are no such requirements of DTC or if the Notes are represented by definitive certificates, on a

*pro rata* basis or by lot (as directed by the Issuer). Upon completion of each Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero (regardless of whether there are any remaining Excess Proceeds upon such completion). The Issuer may elect to satisfy its obligations to make an Asset Sale Offer prior to the expiration of the relevant period or with respect to Excess Proceeds of \$25.0 million or less. Upon consummation or expiration of any such Asset Sale Offer, any remaining Net Proceeds shall not be deemed Excess Proceeds and the Issuer may use such Net Proceeds for any purpose not otherwise prohibited under this Indenture.

(f) Upon the commencement of an Asset Sale Offer, the Issuer shall deliver electronically or send, or cause to be delivered electronically or sent, by first class mail, a notice to the Trustee and to each Holder at its registered address. The notice shall contain all instructions and materials necessary to enable such Holder to tender Notes pursuant to the Asset Sale Offer. Any Asset Sale Offer shall be made to all Holders. The notice, which shall govern the terms of the Asset Sale Offer, shall state:

- (1) that the Asset Sale Offer is being made pursuant to this Section 4.13(I) and that, to the extent lawful, all Notes tendered and not withdrawn shall be accepted for payment (unless prorated);
- (2) the Excess Proceeds Payment Amount, the Asset Sale Offered Price, and the date on which Notes tendered and accepted for payment shall be purchased, which date shall be at least 30 days and not later than 60 days from the date such notice is mailed or delivered electronically (the “*Asset Sale Payment Date*”);
- (3) that any Notes not tendered or accepted for payment shall continue to accrue interest in accordance with the terms thereof;
- (4) that, unless the Issuer defaults in making such payment, any Notes accepted for payment pursuant to the Asset Sale Offer shall cease to accrue interest on and after the Asset Sale Payment Date;
- (5) that Holders electing to have any Notes purchased pursuant to any Asset Sale Offer shall be required to surrender the Notes, with the form entitled “Option of Holder to Elect Purchase” on the reverse of the Note completed, or transfer by book-entry transfer, to the Issuer, a depository, if appointed by the Issuer, or the Paying Agent at the address specified in the notice at least three Business Days before the Asset Sale Payment Date;
- (6) that Holders shall be entitled to withdraw their election if the Issuer, the Depository or the Paying Agent, as the case may be, receives, not later than two Business Days prior to the Asset Sale Payment Date, a notice setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing its election to have such Note purchased;

(7) that if the aggregate principal amount of Notes surrendered by Holders exceeds the Excess Proceeds Payment Amount, the Issuer shall select the Notes to be purchased on a *pro rata* basis (with such adjustments as may be deemed appropriate by the Issuer so that only Notes in denominations of \$200,000 or integral multiples of \$1,000 in excess thereof, shall be purchased); and

(8) that Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry).

(g) On the Asset Sale Payment Date, the Issuer shall, to the extent lawful: (1) accept for payment all Notes or portions thereof properly tendered pursuant to the Asset Sale Offer, subject to *pro ration* if the aggregate Notes tendered exceed the Excess Proceeds Payment Amount allocable to the Notes; (2) deposit with the Paying Agent U.S. Legal Tender equal to the lesser of the Excess Proceeds Payment Amount allocable to the Notes and the amount sufficient to pay the Asset Sale Offered Price in respect of all Notes or portions thereof so tendered; and (3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being repurchased by the Issuer. The Issuer shall inform the Paying Agent, the Security Agent, the Trustee and the Holders of the results of the Asset Sale Offer on or as soon as practicable after the Asset Sale Payment Date.

(h) The Paying Agent shall promptly mail or pay by wire transfer to each Holder whose Notes have been properly tendered the Asset Sale Offered Price for such Notes, and the Trustee shall promptly authenticate pursuant to an Authentication Order and mail (or cause to be transferred by book-entry) to each Holder a new Note equal in principal amount to any unreurchased portion of the Notes surrendered, if any; provided that each such new Note shall be in principal amount of \$200,000 or an integral multiple of \$1,000 in excess thereof. So long as no payment Default or Event of Default has occurred and is continuing, and to the extent not applied to make payments on the Notes, the Paying Agent shall return to the Issuer any cash that remains unclaimed, together with interest, if any, thereon, held by it for the payment of the Asset Sale Offered Price.

However, if the Asset Sale Payment Date is on or after a Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

(i) The Issuer shall comply with the requirements of any securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.13, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.13(I) by virtue of such compliance.

(II) With respect to all Asset Sales involving Collateral:

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale involving Collateral unless:

(1) the Issuer or any of its Restricted Subsidiaries receives consideration at the time of the Asset Sale at least equal to the Fair Market Value (for the avoidance of doubt, the Fair Market Value may be determined at a time a contract is entered into for an Asset Sale) of the assets or Equity Interests sold or otherwise disposed of; and

(2) such Asset Sale is either of (i) the Issuer's or the relevant Restricted Subsidiary's entire interest in the applicable Mortgaged Vessel or Mortgaged Container Asset (the "*Sold Mortgaged Asset*") together with the applicable Assigned Contracts, Obligatory Insurances and, in the case of Mortgaged Container Assets, applicable hires, leases, insurance and related agreements (collectively, the "*Related Agreements*"); provided, further, that the Issuer may elect to sell only the Mortgaged Vessel or Mortgaged Container Asset and retain all or any portion of the Related Agreements, provided that if any such Related Agreements are transferred to a Subsidiary that is not a Mortgaged Guarantor, then the Issuer or such Mortgaged Guarantor shall receive either (x) Qualified Collateral having a Fair Market Value that is not less than the Fair Market Value of such Related Agreements or (y) cash in an amount equal to the Fair Market Value of such Related Agreement which it shall immediately deliver to the Security Agent, for the benefit of the Secured Parties under the Intercreditor Agreement, which amounts shall constitute Trust Monies hereunder or (ii) all the Capital Stock of the Restricted Subsidiary that owns such Mortgaged Vessel or Mortgaged Container Asset and related assets;

(3) the consideration received in the Asset Sale by the Issuer or such Restricted Subsidiary consists entirely (x) in the case of an Asset Sale involving Existing Mortgaged Vessels, of cash or Cash Equivalents and (y) in the case of any other Asset Sale involving Collateral, of cash or Cash Equivalents or Qualified Vessels or Qualified Container Assets. For purposes of this provision, any securities, notes or other obligations received by the Issuer or any such Restricted Subsidiary from such transferee or any other Person on account of such Asset Sale that are, within 90 days of the Asset Sale, converted, sold or exchanged by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents, will be deemed to be cash to the extent of the cash or Cash Equivalents received in that conversion, sale or exchange; *provided* that the Issuer secures such assets as Collateral in favor of the Security Agent on a first priority basis for the benefit of the Secured Parties under the Intercreditor Agreement promptly upon receipt thereof (and any such securities, notes or other obligations shall be deemed to be Trust Monies under this Indenture); and

(4) no Default or Event of Default shall have occurred and be continuing; and

(5) such Asset Sale is made in compliance with the provisions described under Section 11.04 hereof.

(b) In the event the Issuer receives Net Proceeds of at least \$2.0 million from an Asset Sale involving an Existing Mortgaged Vessel or the Equity Interests of a Mortgaged Guarantor that owns an Existing Mortgaged Vessel, the Issuer shall, within 90 days of the receipt of such Net Proceeds, apply such Net Proceeds to (A) make a Collateral Sale Offer in accordance with the provisions set forth below and in this Indenture to purchase a principal amount of Notes and (B) to repay or prepay any outstanding obligations under the Revolving Credit Facility, in each case by applying such Net Proceeds to each of the purposes described in the preceding clauses (A) and (B) in proportion to the aggregate principal amount of Notes then outstanding and aggregate obligations under the Revolving Credit Facility then outstanding, respectively, as percentages of the total amount of Notes and borrowings under the Revolving Credit Facility then outstanding.

(c) In respect of any other Asset Sale involving Collateral, within 365 days (subject to extension as provided in (d) below) after the receipt of any Net Proceeds from such Asset Sale, the Issuer or the applicable Restricted Subsidiary shall apply such Net Proceeds to:

(1) repay or prepay obligations under the Revolving Credit Facility in an amount not to exceed the amount outstanding at the time of repayment or prepayment under the Revolving Credit Facility that has been used to acquire Mortgaged Vessels or Mortgaged Container Assets to the extent such outstanding amount ranks super-senior to the Notes and any Additional Notes under the Intercreditor Agreement;

(2) provided that no Default or Event of Default shall have occurred and be continuing, acquire one or more Qualified Container Assets or Qualified Vessels (and to make any Permitted Repairs with respect thereto) and make such Qualified Vessel(s) or Qualified Container Asset(s) subject to the Lien of the applicable Security Documents in accordance with the provisions thereof described under Section 11.04 and Section 11.09(a);

(3) make capital expenditures relating to Mortgaged Vessels or Mortgaged Container Assets;

(4) make a Collateral Sale Offer in accordance with the provisions described below and in this Indenture or repay or prepay any other Indebtedness that ranks *pari passu* with the Notes or the Guarantees; and/or

(5) any combination of the transactions permitted by the foregoing clauses (1) through (4).

(d) A (A) binding contract to apply Net Proceeds in accordance with clause (2) above will toll the 365-day period in respect of such Net Proceeds or (B) determination by the Issuer to potentially apply all or a portion of such Net Proceeds towards the exercise of an outstanding Vessel Purchase Option Contract will toll the 365-day period in respect of such Net Proceeds, in each case, for a period not to exceed 365 days from the expiration of the aforementioned 365-day period, provided that such binding contract and such determination, in each case, shall be treated as a permitted application of Net Proceeds from the date of such binding contract until and only until the earlier of (x) the date on which such acquisition or expenditure is consummated and (y) (i) in the case of any Vessel Construction Contract or any Exercised Vessel Purchase Option Contract (including any outstanding Vessel Purchase Option Contract exercised during the 365-day period referenced in clause (B) above), the date of expiration or termination of such Vessel Construction Contract or Exercised Vessel Purchase Option Contract and (ii) otherwise, the 365th day following the expiration of the aforementioned 365-day period (clause (i) or clause (ii) as applicable, the "*Collateral Proceeds Reinvestment Termination Date*"). If such acquisition or expenditure is not consummated on or before the Collateral Proceeds Reinvestment Termination Date and the Issuer (or the applicable Mortgaged Guarantor, as the case may be) shall not have otherwise applied such Net Proceeds pursuant to clauses (c)(1) through (c)(5) above on or before the Collateral Proceeds Reinvestment Termination Date, such Net Proceeds shall constitute Excess Collateral Proceeds.

(e) Any Net Proceeds from Asset Sales involving Collateral that are not applied or invested as provided in Section 4.13(II)(c) will constitute "*Excess Collateral Proceeds*." When the aggregate amount of Excess Collateral Proceeds exceeds \$25.0 million, the Issuer will make an offer (a "*Collateral Sale Offer*") to all Holders of Notes to purchase the maximum principal amount of Notes that may be required to be purchased out of the Excess Collateral Proceeds (the "*Excess Collateral Proceeds Payment Amount*"). The offer price for the Notes in any Collateral Sale Offer will be equal to 102% of principal amount of the Notes plus accrued and unpaid interest thereon, if any, to the date of purchase, and will be payable in cash (the "*Collateral Sale Offered Price*"). If any Excess Collateral Proceeds remain after consummation of a Collateral Sale offer, those Excess Collateral Proceeds shall be retained as Trust Monies. If the aggregate principal amount of Notes tendered into such Collateral Sale Offer exceeds the amount of Excess Collateral Proceeds (as certified in an Officer's Certificate of the Issuer to the Trustee), the Trustee will select the Notes to be purchased (i) if the Notes are represented by global certificates, by lot or such other similar method in accordance with applicable procedures of DTC, or (ii) if there are no such requirements of DTC or if the

Notes are represented by definitive certificates, on a *pro rata* basis or by lot (as directed by the Issuer). Upon completion of each Collateral Sale Offer, the amount of Excess Collateral Proceeds will be reset at zero (regardless of whether there are any remaining Excess Collateral Proceeds upon such completion). The Issuer may elect to satisfy their obligations to make a Collateral Sale Offer prior to expiration of the relevant period or with respect to Excess Collateral Proceeds of \$25.0 million or less.

(f) Whenever Net Proceeds from any Asset Sale involving Collateral are received by the Issuer, such Net Proceeds shall be deposited with the Trustee and secured in favor of the Security Agent in the Collateral Account as Trust Monies constituting Collateral subject to disposition as provided in this Section 4.13(II) or as provided under Section 11.04 and Section 12.02.

(g) Upon the commencement of a Collateral Sale Offer, the Issuer shall deliver electronically or send, or cause to be delivered electronically or sent, by first class mail, a notice to the Trustee and to each Holder at its registered address. The notice shall contain all instructions and materials necessary to enable such Holder to tender Notes pursuant to the Collateral Sale Offer. Any Collateral Sale Offer shall be made to all Holders. The notice, which shall govern the terms of the Collateral Sale Offer, shall state:

(1) that the Collateral Sale Offer is being made pursuant to this Section 4.13(II) and that, to the extent lawful, all Notes tendered and not withdrawn shall be accepted for payment (unless prorated);

(2) the Excess Collateral Proceeds Payment Amount, the Collateral Sale Offered Price, and the date on which Notes tendered and accepted for payment shall be purchased, which date shall be at least 30 days and not later than 60 days from the date such notice is mailed or delivered electronically (the "*Collateral Sale Payment Date*");

(3) that any Notes not tendered or accepted for payment shall continue to accrue interest in accordance with the terms thereof;

(4) that, unless the Issuer default in making such payment, any Notes accepted for payment pursuant to the Collateral Sale Offer shall cease to accrue interest on and after the Collateral Sale Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to any Collateral Sale Offer shall be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Note completed, or transfer by book entry transfer, to the Issuer, a depository, if appointed by the Issuer, or the Paying Agent at the address specified in the notice at least three Business Days before the Collateral Sale Payment Date;

(6) that Holders shall be entitled to withdraw their election if the Issuer, the Depository or the Paying Agent, as the case may be, receives, not later than two Business Days prior to the Collateral Sale Payment Date, a notice setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing its election to have such Note purchased;

(7) that if the aggregate principal amount of Notes surrendered by Holders exceeds the Excess Collateral Proceeds Payment Amount, the Issuer shall select the Notes to be purchased on a *pro rata* basis (with such adjustments as may be deemed appropriate by the Issuer so that only Notes in denominations of \$200,000 or integral multiples of \$1,000 in excess thereof, shall be purchased); and

(8) that Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry).

(h) On the Collateral Sale Payment Date, the Issuer shall, to the extent lawful: (1) accept for payment all Notes or portions thereof properly tendered pursuant to the Collateral Sale Offer, subject to *pro ration* if the aggregate Notes tendered exceed the Excess Collateral Proceeds Payment Amount allocable to the Notes; (2) deposit with the Paying Agent U.S. Legal Tender equal to the lesser of the Excess Collateral Proceeds Payment Amount allocable to the Notes and the amount sufficient to pay the Collateral Sale Offered Price in respect of all Notes or portions thereof so tendered; and (3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being repurchased by the Issuer. The Issuer shall inform the Holders of the results of the Collateral Sale Offer on or as soon as practicable after the Collateral Sale Payment Date.

(i) The Paying Agent shall promptly mail or pay by wire transfer to each Holder whose Notes have been properly tendered the Collateral Sale Offered Price for such Notes, and the Trustee shall promptly authenticate pursuant to an Authentication Order and mail (or cause to be transferred by book-entry) to each Holder a new Note equal in principal amount to any unrepurchased portion of the Notes surrendered, if any; *provided* that each such new Note shall be in principal amount of \$200,000 or an integral multiple of \$1,000 in excess thereof. So long as no payment Default or Event of Default has occurred and is continuing, and to the extent not applied to make payments on the Notes, the Paying Agent shall return to the Issuer any cash that remains unclaimed, together with interest, if any, thereon, held by them for the payment of the Collateral Sale Offered Price.

However, if the Collateral Sale Payment Date is on or after a Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest shall be payable to Holders who tender Notes pursuant to the Collateral Sale Offer.



(j) The Issuer will comply with the requirements of any securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to a Collateral Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.13, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.13(II) by virtue of such compliance.

SECTION 4.14. Limitations on Transactions with Affiliates.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer (each, an "Affiliate Transaction") involving aggregate payments or consideration in excess of \$2.0 million, unless:

(1) the Affiliate Transaction is on terms that are not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person, with such determination to be made at the time such Affiliate Transaction is entered into or agreed to; and

(2) (a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$10.0 million, a Board Resolution of the Board of Directors of the Issuer set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with this Section 4.14 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors; and (b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$50.0 million or as to which there are no disinterested members of the Board of Directors, an opinion as to the fairness to the Issuer or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view is obtained from an independent accounting, appraisal or investment banking firm of international standing qualified to perform the task for which such firm has been engaged (as determined by the Issuer in good faith).

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, shall not be subject to Section 4.14(a):

(1) director, officer, employee and consultant compensation, benefit, reimbursement and indemnification agreements, plans and arrangements (and payment awards in connection therewith) entered into by the Issuer or any of its Restricted Subsidiaries in the ordinary course of a Permitted Business;

(2) transactions between or among the Issuer and/or its Restricted Subsidiaries;

(3) transactions with a Person (other than an Unrestricted Subsidiary of the Issuer) that is an Affiliate of the Issuer solely because either (x) the Issuer owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person or (y) a director of such Person is also a director of the Issuer; provided such director abstains from voting as a director of the Issuer on any matter involving such other person;

(4) (w) any issuance of Qualified Equity Interests of the Issuer to an Affiliate and the granting or performance of registration rights in respect of any Qualified Equity Interests of the Issuer, which rights have been approved by the Board of Directors of the Issuer; (x) any contribution to the Qualified Equity Interest capital of the Issuer by an Affiliate; (y) any cash dividend or redemption payment required by the terms of the Existing Mandatorily Redeemable Preference Shares as in effect on the Issue Date or (z) any incurrence or issuance by the Issuer or any Restricted Subsidiary of Indebtedness or Disqualified Stock owed to or held by an Affiliate on the same basis as Indebtedness or Disqualified Stock owed to or held by non-Affiliates as part of any underwritten securities offering or syndicated loan financing, and any payments in respect of such Indebtedness;

(5) Restricted Payments that do not violate Section 4.11 and Investments consisting of Permitted Investments (other than Permitted Investments made under clauses (3) or (15) of the definition thereof);

(6) the performance of obligations of the Issuer or any Restricted Subsidiary under the terms of any agreement that is in effect as of or on the Issue Date (other than the Existing Charters, the Existing Management Agreements or the Global Expense Agreement) and any amendment, modification, supplement, extension or renewal, from time to time, thereto or any transaction contemplated thereby (including pursuant to any amendment, modification, supplement, extension or renewal, from time to time, thereto) in any replacement agreement thereto, so long as any such amendment, modification, supplement, extension or renewal, or replacement agreement, is not materially more disadvantageous to the Holders of Notes taken as a whole than the original agreement as in effect on the Issue Date;

(7) the performance of obligations of the Issuer or any Restricted Subsidiary under the terms of the Existing Charters, the Existing Management Agreements and the Global Expense Agreement as in effect on the Issue Date or any amendment, modification, supplement, replacement, extension or renewal, from time to time, thereto or any transaction contemplated thereby (including pursuant to any amendment, modification, supplement, replacement, extension or renewal, from time to time, thereto); *provided that*

(A) any such amendment or modification that has the effect of modifying the rate of charter hire during the current term of the Existing Charters as in effect on the Issue Date is (x) not materially more disadvantageous to the Holders taken as a whole than the original agreement as in effect on the Issue Date, and (y) is on terms not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated person; and

(B) any other amendment, modification, supplement, replacement, extension or renewal (including, for the avoidance of doubt, any extension or renewal of an Existing Charter effective upon the expiration of its current term as in effect on the Issue Date) is either (x) not materially more disadvantageous to the Holders taken as a whole than the original agreement as in effect on the Issue Date, or (y) is on terms not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated person,

in each case, as reasonably determined by a resolution of the Board of Directors of the Issuer and approved by a majority of the disinterested members thereof;

(8) transactions effected as part of a Qualified Securitization Transaction;

(9) transactions in which the Issuer delivers to the Trustee an opinion as to the fairness to the Issuer or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view or that such Affiliate Transaction meets the requirements of Section 4.14(a)(1), in each case, issued by an independent accounting, appraisal or investment banking firm of international standing qualified to perform the task for which such firm has been engaged (as determined in good faith by the Issuer);

(10) payments, loans or advances to employees or consultants or guarantees in respect thereof (or cancellation of loans, advances or guarantees) for bona fide business purposes;

(11) other than with CMA CGM, transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods or services, in each case in the ordinary course of a Permitted Business and otherwise in compliance with the terms of this Indenture; provided such transactions are on terms that are not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person, as reasonably determined by the Issuer;

(12) any sale or disposition of a Vessel for an aggregate purchase price equal to or exceeding its Appraised Value; and

(13) transactions involving the purchase, redemption, exchange, acquisition or retirement of any Existing Mandatorily Redeemable Preference Shares and that (to the extent applicable, when considered together with any related transactions occurring in connection with such transactions) are in the best interests of the Issuer and the Restricted Subsidiaries as reasonably determined by a Board Resolution of the Issuer and approved by a majority of the disinterested members thereof.

Regardless of the amount of aggregate payments or consideration to be made thereunder, and without limiting Section 4.14(b)(7), the Issuer will not, and will not permit any of its Restricted Subsidiaries to, enter into any amendment, modification, supplement, replacement, extension or renewal, from time to time, of any Existing Charter or any transaction contemplated thereby (including pursuant to any amendment, modification, supplement, replacement, extension or renewal, from time to time, thereto) except in compliance with Section 4.14(b)(7).

SECTION 4.15. Dividend and Other Payment Restrictions Affecting Subsidiaries.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries that is not a Guarantor to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any of its Restricted Subsidiaries that is not a Guarantor to:

- (1) pay dividends or make any other distributions on its Capital Stock to the Issuer or any of its Restricted Subsidiaries, or pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;
- (2) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or
- (3) transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries.

(b) However, the restrictions set forth in Section 4.15(a) will not apply to encumbrances or restrictions existing under or by reason of:

- (1) agreements, including, without limitation, those governing Existing Indebtedness (including the Revolving Credit Facility), as in effect on the Issue Date and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of those agreements; provided that the amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in those agreements on the Issue Date;

- (2) this Indenture, the Notes, any Additional Notes and the related Guarantees and the Intercreditor Agreement or any Additional Intercreditor Agreement;
- (3) applicable law, rule, regulation or order or governmental license, permit or concession;
- (4) any instrument governing Indebtedness or Equity Interests of a Person acquired by the Issuer or any of its Restricted Subsidiaries as in effect at the time of such acquisition, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be incurred;
- (5) customary provisions restricting assignments, subletting or other similar transfers in contracts, licenses and other agreements (including, without limitation, leases and agreements relating to intellectual property) entered into in the ordinary course of a Permitted Business;
- (6) purchase money obligations and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in Section 4.15(a)(3);
- (7) any agreement for the sale or other disposition of a Restricted Subsidiary or an asset that restricts distributions by that Restricted Subsidiary or transfers of such asset pending the sale or other disposition;
- (8) Permitted Refinancing Indebtedness; *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;
- (9) Liens and agreements related thereto that were permitted to be incurred under Section 4.12 hereof that limit the right of the debtor to dispose of the assets subject to such Liens;
- (10) provisions limiting the disposition or distribution of assets or property (including Capital Stock of any Person in which the Issuer has an Investment) in joint venture agreements, stockholder agreements, partnership agreements, limited liability company operating agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, which limitation is applicable in all material respects only to the assets or property that are the subject of such agreements;

(11) restrictions on cash or other deposits or net worth imposed under contracts entered into in the ordinary course of a Permitted Business;

(12) customary provisions restricting the disposition of real property interests set forth in any easements or other similar agreements or arrangements of the Issuer or any Restricted Subsidiary;

(13) provisions restricting the transfer of any Capital Stock of an Unrestricted Subsidiary;

(14) provisions contained in agreements governing Indebtedness of the Issuer or Restricted Subsidiary incurred subsequent to the Issue Date pursuant to Section 4.10 (i) in respect of the subordination provisions, if any, of such Indebtedness, (ii) if the encumbrances and restrictions contained in any such Indebtedness taken as a whole are not materially less favorable to the Holders than the encumbrances and restrictions contained in this Indenture or that may be contained in the Intercreditor Agreement or in any Credit Facility in accordance with this covenant or (iii) if such encumbrance or restriction is customary in comparable financings (as determined in good faith by the Issuer) and the Issuer determines in good faith that such encumbrance or restriction shall not materially adversely affect the ability of the Issuer and its Restricted Subsidiaries, taken as a whole, to make principal or interest payments on the Notes; and

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

#### SECTION 4.16. Subsidiary Guarantees.

(a) If the Issuer or any of its Restricted Subsidiaries acquires or creates a Restricted Subsidiary (or redesignates an Unrestricted Subsidiary as a Restricted Subsidiary) and such Restricted Subsidiary shall at any time have total assets with a book value in excess of \$10.0 million, then such Restricted Subsidiary (unless such Subsidiary is a Securitization Subsidiary) must become a Guarantor and shall, within 45 Business Days of the date on which it was so acquired, created or redesignated or so capitalized:

(1) execute and deliver to the Trustee a supplemental indenture substantially in the form of Exhibit D hereto pursuant to which such Restricted Subsidiary shall unconditionally guarantee all of the Issuer's obligations under the Notes and this Indenture on the terms set forth in this Indenture and, if such

Restricted Subsidiary owns a Vessel required to become a Mortgaged Vessel or a Container Asset required to become a Mortgaged Container Asset, execute one or more Security Documents in favor of the Security Agent pursuant to which each such Vessel shall become a Mortgaged Vessel and each such Container Asset shall become a Mortgaged Container Asset for all purposes under this Indenture in each case as provided for under Section 11.09(a); and

(2) deliver to the Trustee one or more Opinions of Counsel that such supplemental indenture and Security Documents, if any, have been duly authorized, executed and delivered by such Restricted Subsidiary and constitutes a valid and legally binding and enforceable obligation of such Restricted Subsidiary, subject to customary exceptions.

Thereafter, such Restricted Subsidiary shall be a Guarantor for all purposes of this Indenture. For the avoidance of doubt, such Guarantor shall only be required to become a Mortgaged Guarantor to the extent required by Section 11.09 hereof.

(b) The Guarantee of a Guarantor shall automatically and unconditionally (without any further action on the part of any Person) be

released:

(1) in connection with any sale or other transfer of all or substantially all of the assets of that Guarantor (including by way of merger, consolidation or amalgamation) to a Person that is not (either before or after giving effect to such transaction) the Issuer or a Restricted Subsidiary of the Issuer, if the sale or other disposition does not violate Section 4.13 or Section 4.14;

(2) in connection with any sale or other transfer of a majority of the Capital Stock of that Guarantor to a Person that is not (either before or after giving effect to such transaction) the Issuer or a Subsidiary of the Issuer, if (x) such Guarantor would no longer constitute a "Subsidiary" under this Indenture and (y) the sale or other disposition does not violate Section 4.13;

(3) substantially concurrently with the substitution of Qualified Vessels or Qualified Container Assets of another Restricted Subsidiary for all of the Mortgaged Vessels or Mortgaged Container Assets of that Guarantor in accordance with Section 11.09 (unless such Guarantor would still be required to grant a Guarantee under Section 4.16(a));

(4) if the Issuer designates any Restricted Subsidiary that is a Guarantor to be an Unrestricted Subsidiary in accordance with the applicable provisions of this Indenture;

(5) in the case of a Restricted Subsidiary that has voluntarily issued a Guarantee of the Notes, upon notice to the Trustee by the Issuer of the

designation of such Guarantor as non-Guarantor Restricted Subsidiary if all transactions entered into by such Restricted Subsidiary while a Guarantor would be permitted under this Indenture at the time its Guarantee is released (and for such purpose all such transactions shall be deemed to have been entered into at the time of such release);

(6) upon Legal Defeasance or Covenant Defeasance or satisfaction and discharge of the Notes pursuant to Section 8.01, Section 8.03 and Section 8.04; and

(7) in accordance with an enforcement action pursuant to the provisions of the Intercreditor Agreement and any Additional Intercreditor Agreement.

(c) Upon receipt by the Trustee and the Security Agent of an Officer's Certificate and an Opinion of Counsel each stating that all conditions precedent provided in this Indenture, the Intercreditor Agreement and the Security Documents relating to the release of the Guarantee have been complied with, the Trustee and the Security Agent shall take all actions, reasonably requested by such Guarantor including the granting of releases or waivers under the Intercreditor Agreement or any Additional Intercreditor Agreement, that may be necessary to effectuate any release of a Guarantee in accordance with these provisions, subject to customary protections and indemnifications. Each of the releases set forth in Section 4.16(b) above shall be effected by the Trustee and the Security Agent without the consent of the Holders of the Notes or any other action or consent on the part of the Trustee or the Security Agent. For the avoidance of doubt, the foregoing provisions shall not permit the Security Agent to release or grant any waivers or otherwise take any action with respect to any guarantee given by the Issuer or any Guarantor to any Secured Party other than the Trustee and the Holders (and any such release, waiver or action shall be governed by the Debt Documents applicable to such Secured Parties, the Intercreditor Agreement and any Additional Intercreditor Agreement).

#### SECTION 4.17. Reports to Holders.

(a) Whether or not the Issuer is then subject to Section 13(a) or 15(d) of the Exchange Act, the Issuer will furnish to the Trustee and the Holders, so long as the Notes are outstanding:

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



(2) within 120 days after the end of each fiscal year, an annual report on Form 20-F (or any successor form) containing the information required to be contained therein for such fiscal year; and

(3) at or prior to such times as would be required to be filed or furnished to the Commission if the Issuer was then a “foreign private issuer” subject to Section 13(a) or 15(d) of the Exchange Act, all such other reports and information that the Issuer would have been required pursuant thereto;

*provided, however*, that to the extent that the Issuer ceases to qualify as a “foreign private issuer” within the meaning of the Exchange Act, whether or not the Issuer is then subject to Section 13(a) or 15(d) of the Exchange Act, the Issuer will furnish to the Trustee and the Holders, so long as any Notes are outstanding, within 30 days of the respective dates on which the Issuer would be required to file such documents with the Commission if it was required to file such documents under the Exchange Act, all reports and other information that would be required to be filed with (or furnished to) the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act.

(b) The Issuer will also make available copies of all reports required by Section 4.17(a)(1) through (3) above, if and so long as the Notes are listed on the Official List of the Irish Stock Exchange and admitted for trading on the Global Exchange Market and the rules and regulations of the Irish Stock Exchange so require, at the offices of the Paying Agent or, to the extent and in the manner permitted by such rules, post such reports on the official website of the Irish Stock Exchange ([www.ise.ie](http://www.ise.ie)).

(c) In addition, whether or not required by the rules and regulations of the Commission, the Issuer will electronically file or furnish, as the case may be, a copy of all such information and reports that it would be required to file as a foreign private issuer with the Commission for public availability within the time periods specified above (unless the Commission will not accept such a filing) and make such information available to securities analysts and prospective investors upon request. In addition, the Issuer agrees that, for so long as any Notes remain outstanding, it shall furnish to the Holders and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(d) Notwithstanding anything to the contrary in the foregoing provisions of this Section 4.17, the Issuer will be deemed to have furnished such reports referred to in Section 4.17(a) to the Trustee and the Holders of Notes if the Issuer has filed such reports with the Commission via the EDGAR filing system and such reports are publicly available. Furthermore, notwithstanding anything herein to the contrary, the Issuer will not be deemed to have failed to comply with any of its obligations hereunder for purposes of Section 6.01(3) until 120 days after the date any report hereunder is due, and any failure to comply with this Section 4.17 shall automatically be cured when the Issuer provides all required reports to the Holders.

(e) Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee’s receipt of such shall not constitute constructive

notice of any information contained therein or determinable from information contained therein, including the Issuer or the Guarantors' compliance with any of their covenants thereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

SECTION 4.18. Limitations on Designation of Restricted and Unrestricted Subsidiaries.

(a) The Board of Directors of the Issuer may designate any Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default or cause a Default to be continuing after such designation. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Issuer and its Restricted Subsidiaries in the Subsidiary designated as an Unrestricted Subsidiary shall be deemed to be an Investment made as of the time of the designation and shall reduce the amount available for Restricted Payments under Section 4.11 or under one or more clauses of the definition of "Permitted Investments", as determined by the Issuer. That designation shall be permitted only if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an "Unrestricted Subsidiary". The Board of Directors of the Issuer may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause a Default or cause a Default to be continuing after such redesignation.

(b) Any designation of a Subsidiary of the Issuer as an Unrestricted Subsidiary will be evidenced by a board resolution giving effect to such designation and an Officer's Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 4.11. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Issuer as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 4.10, the Issuer will be in default of such covenant. The Board of Directors of the Issuer may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Issuer of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if (1) such Indebtedness is permitted under Section 4.10, calculated on a *pro forma* basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence immediately following such designation. Any Subsidiary of an Unrestricted Subsidiary will automatically be designated as an Unrestricted Subsidiary.

SECTION 4.19. Suspension of Covenants.

(a) If on any date following the Issue Date (i) the Notes have Investment Grade Ratings from both Rating Agencies and (ii) no Default or Event of Default has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "Covenant Suspension Event"), the Issuer

and the Restricted Subsidiaries will not be subject to the following covenants (collectively, the “*Suspended Covenants*”): Section 4.10, Section 4.11, Section 4.13(I), Section 4.14, Section 4.15, Section 4.16, Section 4.23 and Section 5.01(a)(3).

(b) In the event that the Issuer and the Restricted Subsidiaries are not subject to the Suspended Covenants under this Indenture for any period of time as a result of the foregoing, and on any subsequent date (the “*Reversion Date*”) one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Notes below an Investment Grade Rating, then the Issuer and the Restricted Subsidiaries shall thereafter again be subject to the Suspended Covenants with respect to future events.

(c) The period of time between the Covenant Suspension Event and the Reversion Date is referred to as the “*Suspension Period*.” Upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds and the amount of Excess Cash Flow shall each be reset at zero. In the event of any such reinstatement, no action taken or omitted to be taken by the Issuer and the Restricted Subsidiaries prior to such reinstatement that would otherwise be a breach of any Suspended Covenant will give rise to a Default or Event of Default under this Indenture with respect to the Notes; *provided* that (i) with respect to Restricted Payments made after any such reinstatement, the amount of Restricted Payments made will be calculated as though Section 4.11 had been in effect since the Issue Date and throughout the Suspension Period, and (ii) all Indebtedness incurred, or Disqualified Stock or preferred stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to Section 4.10(b)(2). No Subsidiaries shall be designated as Unrestricted Subsidiaries during any Suspension Period. During the Suspension Period, any future obligations to grant further Guarantees of the Notes shall be suspended but such further obligation to grant Guarantees of the Notes shall be reinstated upon the Reversion Date.

(d) The Issuer will promptly deliver to the Trustee an Officer’s Certificate identifying any Covenant Suspension Event including the date thereof and any Reversion Date. The Trustee shall not (i) have any duty to notify the Holders of any Covenant Suspension Event or Reversion Date, or (ii) be deemed to have any knowledge of a Covenant Suspension Event or any Reversion Date unless it shall have received the Officer’s Certificate described in this Section 4.19(d).

#### SECTION 4.20. Payment of Additional Amounts.

(a) All payments made by or on behalf of the Issuer under or with respect to the Notes or by a Guarantor under or with respect to its Guarantee will be made free and clear of and without withholding or deduction for, or on account of, any present or future Taxes imposed or levied by or on behalf of any Taxing Authority in (1) any jurisdiction in which the Issuer or any Guarantor is organized, engaged in business for tax purposes or is otherwise resident for tax purposes or any political subdivision thereof or therein or (2) any jurisdiction from or through which payment is made by or on behalf of the Issuer or any Guarantor or any political subdivision thereof or therein (each, a “*Relevant Taxing Jurisdiction*”), unless the Issuer or Guarantor is required to withhold or deduct Taxes by law or by the official interpretation or administration thereof.

(b) If the Issuer or any Guarantor is required to withhold or deduct any amount for or on account of Taxes imposed by a Relevant Taxing Jurisdiction, from any payment made under or with respect to the Notes or the Guarantee of such Guarantor including, without limitation, payments of principal, redemption price, purchase price, interest or premium, the Issuer or the relevant Guarantor, as applicable, shall pay such additional amounts (“Additional Amounts”) as may be necessary so that the net amount received by each Holder of Notes (including Additional Amounts) after such withholding or deduction of Taxes shall equal the amount the Holder would have received if such Taxes had not been withheld or deducted; provided, however, that no Additional Amounts shall be payable with respect to any Tax:

(1) that would not have been imposed, payable or due but for the existence of any present or former connection between the Holder (or the beneficial owner of, or person ultimately entitled to obtain an interest in, such Notes) and the Relevant Taxing Jurisdiction (including being a citizen, resident or national of, or carrying on a business or maintaining a permanent establishment in, or being physically present in, the Relevant Taxing Jurisdiction) other than the mere holding of the Notes or enforcement of rights under such Note or under a Guarantee or the receipt of payments in respect of such Note or a Guarantee;

(2) that would not have been imposed, payable or due but for the failure to satisfy any certification, identification or other reporting requirements whether imposed by statute, treaty, regulation or administrative practice as a precondition to exemption from, or reduction in the rate of withholding of, Taxes imposed by the Relevant Taxing Jurisdiction (including a certification that the Holder or beneficial owner is not resident in the Relevant Taxing Jurisdiction), but in each case, only to the extent the Holder or beneficial owner is legally eligible to provide such certification or documentation; provided, however, that the Issuer has delivered a written request to the Holder to comply with such requirements at least 30 days prior to the date by which such compliance is required;

(3) that would not have been imposed, payable or due if the presentation of Notes (where presentation is required) for payment has occurred within 30 days after the date such payment was due and payable or was duly provided for, whichever is later (except to the extent the Holder would have been entitled to Additional Amounts if the Note had been presented on the last day of such 30-day period);

(4) that is imposed on a payment to a Holder pursuant to European Council Directive 2003/48/EC (as amended from time to time) or any other Directive implementing the conclusions of the ECOFIN Council meeting of November 26 and 27, 2000 on the taxation of savings income or any law implementing or complying with, or introduced in order to conform to, such Directive;

- (5) that is an estate, inheritance, gift, sales, transfer or personal property Tax; or
- (6) as a result of a combination of the foregoing clauses (1) through (5).

In addition, Additional Amounts shall not be paid with respect to a payment on any Notes to a Holder that is not the beneficial owner of such Notes to the extent that the beneficial owner thereof would not have been entitled to the payment of such Additional Amounts by reason of clause (1), (2), (3), (4), (5) or (6) above had such beneficial owner been the Holder of such Notes. In addition, Additional Amounts will not be payable with respect to any Tax which is payable otherwise than by withholding from any payment under or in respect of the Notes or any Guarantee.

(c) Whenever in this Indenture or in the Notes there is mentioned, in any context, the payment of amounts based on the principal amount of the Notes or any Guarantee or of principal, interest or of any other amount payable under or with respect to any of the Notes or any Guarantee, such mention shall be deemed to include mention of the payment of Additional Amounts to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

(d) The Issuer or relevant Guarantor will (i) make any required withholding or deduction and (ii) remit the full amount deducted or withheld to the Relevant Taxing Jurisdiction in accordance with applicable law. The Issuer or relevant Guarantor will provide documentation reasonably satisfactory to the Trustee evidencing the payment of any Taxes so deducted or withheld from each Relevant Taxing Jurisdiction imposing such Taxes, as soon as reasonably practicable to the Trustee. Such documentation shall be made available to the Holders by the Trustee upon reasonable request and will be made available at the offices of the Paying Agent.

(e) The Issuer and the Guarantors shall pay and indemnify the Trustee, the Security Agent and the Holders for any present or future stamp, issue, registration, court or documentary taxes, or any other excise or property taxes, charges or levies (including penalties, interest and any other reasonable expenses thereto) which arise in any Relevant Taxing Jurisdiction from the execution, delivery, issuance or registration of the Notes or any other document or instrument referred to therein, or the receipt of any payments with respect to or enforcement of, the Notes or any Guarantee.

(f) If the Issuer or relevant Guarantor is obligated to pay Additional Amounts under or with respect to any payment made on any Note or Guarantee, the Issuer or relevant Guarantor shall deliver to the Trustee, at least 30 days prior to the date of such payment, an Officer's Certificate stating the fact that Additional Amounts will be payable and the amount estimated to be so payable and such other information necessary to enable the Paying Agent to

pay Additional Amounts to Holders on the relevant payment date (unless such obligation to pay Additional Amounts arises less than 30 days prior to the relevant payment date, in which case the Issuer or relevant Guarantor may deliver such Officer's Certificate as promptly as practicable thereafter). The Trustee shall be entitled to rely solely on such Officer's Certificate as conclusive proof that such payments are necessary.

(g) Notwithstanding anything to the contrary contained in this Indenture, the Issuer and the Guarantors may, to the extent required to do so by law, deduct or withhold income or similar taxes imposed by the United States of America from any payments under this Indenture; provided that the foregoing shall not limit the obligation of the Issuer and the Guarantors to pay Additional Amounts as set forth in this Section 4.20.

(h) The provisions of this Section 4.20 shall survive any termination, defeasance or discharge of this Indenture and will apply *mutatis mutandis* to any jurisdiction in which any successor Person to the Issuer or any Guarantor is organized, engaged in business for tax purposes, resident for tax purposes and any jurisdiction from or through which such person makes any payment on the Note or Guarantee and or any political subdivision or taxing authority or agency thereof or therein.

#### SECTION 4.21. Loss of a Mortgaged Vessel.

(a) If an Event of Loss occurs at any time with respect to a Mortgaged Vessel or Mortgaged Container Asset (the Mortgaged Vessel or Mortgaged Container Asset suffering such Event of Loss being the "*Lost Mortgaged Asset*"), the Issuer or the relevant Restricted Subsidiary shall deposit all Event of Loss Proceeds with respect to such Event of Loss with the Security Agent as Trust Monies constituting Collateral subject to disposition as provided in this Section 4.21 or as provided in Section 11.04 and Section 12.02. Such amount is hereinafter called the "*Loss Redemption Amount.*"

(b) In the event the Issuer receives Event of Loss Proceeds of at least \$2.0 million from an Event of Loss involving an Existing Mortgaged Vessel, the Issuer shall, within 60 days of the receipt of such Event of Loss Proceeds, to apply such Event of Loss Proceeds to (A) make an Event of Loss Offer in accordance with the provisions described below and in this Indenture to purchase a principal amount of Notes and (B) to repay or prepay any outstanding obligations under the Revolving Credit Facility, in each case by applying such Event of Loss Proceeds to each of the purposes described in the preceding clauses (A) and (B) in proportion to the aggregate principal amount of Notes then outstanding and aggregate obligations under the Revolving Credit Facility then outstanding, respectively, as percentages of the total amount of Notes and borrowings under the Revolving Credit Facility then outstanding.

(c) In respect of any other Event of Loss within 365 days (subject to extension as provided in clause (c) below) after the receipt of any Event of Loss Proceeds, the Issuer or the applicable Restricted Subsidiary shall apply such Event of Loss Proceeds to:

- (1) repay or prepay obligations under the Revolving Credit Facility in an amount not to exceed the amount outstanding at the time of

repayment or prepayment under the Revolving Credit Facility that has been used to acquire Mortgaged Vessels or Mortgaged Container Assets to the extent such outstanding amount ranks super-senior to the Notes and any Additional Notes under the Intercreditor Agreement;

(2) provided that no Default or Event of Default shall have occurred and be continuing, acquire one or more Qualified Container Assets or Qualified Vessels (and to make any Permitted Repairs with respect thereto) and make such Qualified Vessel(s) or Qualified Container Asset(s) subject to the Lien of the applicable Security Documents in accordance with Section 11.04 and Section 11.09(a);

(3) make capital expenditures relating to Mortgaged Vessels or Mortgaged Container Assets;

(4) make an Event of Loss Offer in accordance with the provisions described below and in this Indenture or repay or prepay any other Indebtedness that ranks *pari passu* with the Notes or the Guarantees; and/or

(5) any combination of the transactions permitted by the foregoing clauses (1) through (4).

(d) A (A) binding contract to apply Event of Loss Proceeds in accordance with Section 4.21(c)(2) above shall toll the 365-day period in respect of such Event of Loss Proceeds or (B) determination by the Issuer to potentially apply all or a portion of such Event of Loss Proceeds towards the exercise of an outstanding Vessel Purchase Option Contract will toll the 365-day period in respect of such Event of Loss Proceeds, in each case, for a period not to exceed 365 days from the expiration of the aforementioned 365-day period, provided that such binding contract and such determination, in each case, shall be treated as a permitted application of Event of Loss Proceeds from the date of such binding contract until and only until the earlier of (x) the date on which such acquisition or expenditure is consummated and (y) (i) in the case of any Vessel Construction Contract or any Exercised Vessel Purchase Option Contract (including any outstanding Vessel Purchase Option Contract exercised during the 365-day period referenced in clause (B) above), the date of expiration or termination of such Vessel Construction Contract or Exercised Vessel Purchase Option Contract and (ii) otherwise, the 365th day following the expiration of the aforementioned 365-day period (clause (i) or clause (ii) as applicable, the “*Loss Proceeds Reinvestment Termination Date*”). If such acquisition or expenditure is not consummated on or before the Loss Proceeds Reinvestment Termination Date and the Issuer (or the applicable Mortgaged Guarantor, as the case may be) shall not have applied such Event of Loss Proceeds pursuant to clause (b)(1) above on or before the Loss Proceeds Reinvestment Termination Date, such Event of Loss Proceeds shall constitute Excess Loss Proceeds.

(e) Any Event of Loss Proceeds that are not applied or invested as provided in Section 4.21(c) will constitute “*Excess Loss Proceeds.*” When the aggregate amount of Excess

Loss Proceeds exceeds \$25.0 million, the Issuer will make an offer (an “*Event of Loss Offer*”) to all Holders of Notes to purchase the maximum principal amount of Notes that may be required to be purchased out of the Excess Loss Proceeds (the “*Excess Loss Proceeds Payment Amount*”). The offer price for the Notes in any Event of Loss Offer will be equal to 102% of the principal amount of the Notes plus accrued and unpaid interest thereon, if any, to the date of purchase (the “*Event of Loss Offered Price*”), and shall be payable in cash. If any Event of Loss Proceeds remain after consummation of an Event of Loss Offer, those Excess Loss Proceeds shall be retained as Trust Monies. If the aggregate principal amount of Notes tendered into such Event of Loss Offer exceeds the amount of Excess Loss Proceeds (as certified by an Officer’s Certificate of the Issuer delivered to the Trustee), the Trustee will select the Notes to be purchased (i) if the Notes are represented by global certificates, by lot or such other similar method in accordance with applicable procedures of DTC, or (ii) if there are no such requirements of DTC or if the Notes are represented by definitive certificates, on a *pro rata* basis or by lot (as directed by the Issuer). Upon completion of each Event of Loss Offer, the amount of Excess Loss Proceeds will be reset at zero (regardless of whether there are any remaining Event of Loss Proceeds upon such completion). The Issuer may elect to satisfy its obligations to make an Event of Loss Offer prior to expiration of the relevant period or with respect to Excess Loss Proceeds of \$25.0 million or less.

(f) Upon the commencement of an Event of Loss Offer, the Issuer shall deliver electronically or send, or cause to be delivered electronically or sent, by first class mail, a notice to the Trustee and to each Holder at its registered address. The notice shall contain all instructions and materials necessary to enable such Holder to tender Notes pursuant to the Event of Loss Offer. Any Event of Loss Offer shall be made to all Holders. The notice, which shall govern the terms of the Event of Loss Offer, shall state:

(1) that the Event of Loss Offer is being made pursuant to this Section 4.21 and that, to the extent lawful, all Notes tendered and not withdrawn shall be accepted for payment (unless prorated);

(2) the Excess Loss Proceeds Payment Amount, the Event of Loss Offered Price, and the date on which Notes tendered and accepted for payment shall be purchased, which date shall be at least 30 days and not later than 60 days from the date such notices is mailed or delivered electronically (the “*Event of Loss Payment Date*”);

(3) that any Notes not tendered or accepted for payment shall continue to accrue interest in accordance with the terms thereof;

(4) that, unless the Issuer defaults in making such payment, any Notes accepted for payment pursuant to the Event of Loss Offer shall cease to accrue interest on and after the Event of Loss Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to any Event of Loss Offer shall be required to surrender the Notes, with the form entitled “Option of Holder to Elect Purchase” on the reverse of the Note completed, or transfer by



book-entry transfer, to the Issuer, a depository, if appointed by the Issuer, or the Paying Agent at the address specified in the notice at least three Business Days before the Event of Loss Payment Date;

(6) that Holders shall be entitled to withdraw their election if the Issuer, the Depository or the Paying Agent, as the case may be, receives, not later than two Business Days prior to the Event of Loss Payment Date, a notice setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing its election to have such Note purchased;

(7) that if the aggregate principal amount of Notes surrendered by Holders exceeds the Excess Loss Proceeds Payment Amount, the Issuer shall select the Notes to be purchased on a *pro rata* basis (with such adjustments as may be deemed appropriate by the Issuer so that only Notes in denominations of \$200,000 or integral multiples of \$1,000 in excess thereof, shall be purchased); and

(8) that Holders whose Notes were purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry).

(g) On the Event of Loss Payment Date, the Issuer shall, to the extent lawful: (1) accept for payment all Notes or portions thereof properly tendered pursuant to the Event of Loss Offer, subject to *pro ration* if the aggregate Notes tendered exceed the Excess Loss Proceeds Payment Amount allocable to the Notes; (2) deposit with the Paying Agent U.S. Legal Tender equal to the lesser of the Excess Loss Proceeds Payment Amount allocable to the Notes and the amount sufficient to pay the Event of Loss Offered Price in respect of all Notes or portions thereof so tendered; and (3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being repurchased by the Issuer. The Issuer shall inform the Holders of the results of the Event of Loss Offer on or as soon as practicable after the Event of Loss Payment Date.

(h) The Paying Agent shall promptly mail or pay by wire transfer to each Holder whose Notes have been properly tendered the Event of Loss Offered Price for such Notes, and the Trustee shall promptly authenticate pursuant to an Authentication Order and mail (or cause to be transferred by book-entry) to each Holder a new Note equal in principal amount to any unrepurchased portion of the Notes surrendered, if any; provided that each such new Note shall be in principal amount of \$200,000 or an integral multiple of \$1,000 in excess thereof. So long as no payment Default or Event of Default has occurred and is continuing, and to the extent not applied to make payments on the Notes, the Paying Agent shall return to the Issuer any cash that remains unclaimed, together with interest, if any, thereon, held by it for the payment of the Event of Loss Offered Price.

However, if the Event of Loss Payment Date is on or after a Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest shall be paid to the Person in whose name a Note is registered at the close of business on such Record Date, and no additional interest shall be payable to Holders who tender Notes pursuant to an Event of Loss Offer.

(i) The Issuer shall comply with the requirements of any securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Event of Loss Offer. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.21, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.21 by virtue of such compliance.

#### SECTION 4.22. Maintenance of Listing.

Promptly following the Issue Date, the Issuer shall use all of its commercially reasonable efforts to list the Notes on the Official List of the Irish Stock Exchange, obtain the admission to trading of the Notes on the Global Exchange Market and to maintain such listing and admission for so long as such Notes are outstanding; *provided* that if at any time the Issuer determines that it is unable to list or if maintenance of such listing becomes unduly onerous, it will obtain, prior to the delisting of the Notes from the Official List of the Irish Stock Exchange, and thereafter use its commercially reasonable efforts to maintain, a listing of such Notes on such other “recognized stock exchange” as defined in Section 1005 of the Income Tax Act 2007 of the United Kingdom.

#### SECTION 4.23. Excess Cash Flow Offer

(a) Within 120 days following the end of each fiscal year, commencing in respect of the year ended December 31, 2014, the Issuer shall make an offer (the “*Excess Cash Flow Offer*”) to all Holders to repurchase the Notes in cash (the “*Excess Cash Flow Payment*”) up to a maximum amount per annum equal to the lesser of (i) Excess Cash Flow for such fiscal year and (ii) \$20.0 million, at a price equal to 102% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased, to the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date, and on the terms set forth in this Indenture; *provided* that no Excess Cash Flow Offer will need to be made in respect of any fiscal year in which Excess Cash Flow is less than \$1.0 million, in which case such amount shall be added to Excess Cash Flow in respect of the following fiscal year. To the extent that the aggregate amount of Notes so validly tendered and not properly withdrawn pursuant to an Excess Cash Flow Offer is less than the Excess Cash Flow, the Issuer may use any remaining Excess Cash Flow for general corporate purposes, subject to other covenants contained in this Indenture.

(b) If the aggregate principal amount of Notes surrendered by Holders thereof exceeds the amount of Excess Cash Flow (as certified in an Officer’s Certificate of the Issuer to the Trustee), the Trustee will select Notes for repurchase (i) if the Notes are represented by global certificates, by lot or such other similar method in accordance with applicable procedures of DTC, or (ii) if there are no such requirements of DTC or if the Notes are represented by definitive certificates, on a pro rata basis or by lot (as directed by the Issuer).

(c) In connection with the Excess Cash Flow Offer, the Issuer will deliver electronically or mail a notice to each Holder (with a copy to the Trustee and the Paying Agent) including the amount of Excess Cash Flow and offering to repurchase Notes on the payment date specified in the notice (the "Excess Cash Flow Payment Date"), which date will be no earlier than 30 days and no later than 60 days from the date such notice is delivered electronically or mailed, other than as may be required by law, pursuant to the procedures required by this Indenture and described in such notice.

(d) The Issuer will comply with the requirements of any securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes. To the extent that the provisions of any securities laws or regulations conflict with the Excess Cash Flow provisions of this Indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Excess Cash Flow provisions of this Indenture by virtue of such compliance.

(e) On the Excess Cash Flow Payment Date, the Issuer shall, to the extent lawful:

- (1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Excess Cash Flow Offer;
- (2) deposit with the Paying Agent an amount equal to the Excess Cash Flow Payment in respect of all Notes or portions of Notes properly tendered; and
- (3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Issuer.

(f) The Paying Agent shall promptly mail or pay by wire transfer to each Holder of Notes properly tendered the Excess Cash Flow Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; provided that each new Note will be in a principal amount of \$200,000 or an integral multiple of \$1,000 in excess thereof.

(g) The Issuer shall inform the Holders, the Trustee and the Paying Agent of the results of the Excess Cash Flow Offer on or as soon as practicable after the Excess Cash Flow Payment Date.

(h) The Issuer shall not be required to make an Excess Cash Flow Offer if a third party makes the Excess Cash Flow Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to an Excess Cash Flow Offer made by the Issuer and purchases all Notes properly tendered and not withdrawn under the Excess Cash Flow Offer, or notice of redemption has been given in respect of all of the Notes then outstanding pursuant to this Indenture as set forth in Section 3.07, unless and until there is a default in payment of the applicable Redemption Price.

**ARTICLE FIVE  
SUCCESSOR CORPORATION**

SECTION 5.01. Mergers, Consolidations, Etc.

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

(1) either: (a) the Issuer is the surviving Person; or (b) the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Issuer) or to which such sale, assignment, transfer, conveyance or other disposition has been made (x) is a corporation, limited liability company, trust or limited partnership organized or existing under the laws of an Eligible Jurisdiction, and (y) expressly assumes all the obligations of the Issuer under the Notes, this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreements and the Security Documents (as applicable);

(2) immediately after giving effect to such transaction, no Default or Event of Default exists;

(3) either (a) the Issuer or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Issuer), or to which such sale, assignment, transfer, conveyance or other disposition has been made, will, on the date of such transaction after giving *pro forma* effect thereto and to any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.10(a) or (b) the Fixed Charge Coverage Ratio for the Issuer or such surviving Person determined in accordance with Section 4.10(a) shall be greater than the Fixed Charge Coverage Ratio test for the Issuer and its Restricted Subsidiaries immediately prior to such transaction; and

(4) for as long as the Notes are listed on the Official List of the Irish Stock Exchange and admitted to trading on the Global Exchange Market and to the extent that the rules and regulations of the Irish Stock Exchange so require, notify such exchange or any such merger, consolidation, amalgamation or other combination or sale.

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

For purposes of this Section 5.01, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries, the Equity Interests of which constitute all or substantially all of the properties and assets of the Issuer, will be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer; *provided* that the foregoing shall not prohibit the chartering out of Vessels in the ordinary course of a Permitted Business.

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

(1) subject to the Guarantee release provisions of Section 4.16, such Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Issuer or a Guarantor) and expressly assumes all the obligations of such Guarantor under the Guarantee of such Guarantor, this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreements and the Security Documents; and

(2) immediately after such transaction, no Default or Event of Default exists.

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

#### SECTION 5.02. Release

(a) Upon any consolidation, amalgamation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Issuer or a Guarantor in accordance with Section 5.01, the successor Person formed by such consolidation or into or with which the Issuer or such Guarantor, as applicable, is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the Issuer or such Guarantor, as applicable, shall refer instead to the successor Person, as applicable, and not to the Issuer or such Guarantor, as applicable, and such predecessor Person will

automatically be released and discharged from its obligations under this Indenture, the Notes and the Guarantees, as the case may be), and may exercise every right and power of the Issuer or such Guarantor, as applicable, under this Indenture with the same effect as if such successor Person, as applicable, had been named as the Issuer or a Guarantor, as applicable, herein; *provided* that the predecessor Issuer shall not be relieved from the obligation to pay the principal of and interest on the Notes or its obligations under Section 7.07 except in the case of a sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the Issuer's assets that meets the requirements of Section 5.01.

## ARTICLE SIX DEFAULT AND REMEDIES

### SECTION 6.01. Events of Default.

Each of the following is an "Event of Default":

- (1) default by the Issuer or any Guarantor for 30 consecutive days in the payment when due and payable of interest, if any, with respect to, the Notes;
- (2) default by the Issuer or any Guarantor in payment when due and payable of the principal of or premium, if any, on the Notes;
- (3) failure by the Issuer or any of its Restricted Subsidiaries to comply with any other covenants in this Indenture for 60 consecutive days after notice has been given to the Issuer by the Trustee or to the Issuer and the Trustee by the Holders of at least 25% in aggregate principal amount of the Notes then outstanding specifying the default and demanding compliance with any of the other covenants in this Indenture;
- (4) failure by the Issuer or any of its Restricted Subsidiaries to comply with any term, covenant, condition or provision of the Security Documents, for 60 consecutive days after notice has been given to the Issuer by the Trustee or to the Issuer and the Trustee by the Holders of at least 25% in aggregate principal amount of the Notes then outstanding specifying the default and demanding compliance with the Security Documents;
- (5) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Issuer or any Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, whether such Indebtedness now exists or is created after the Issue Date, if that default:
  - (a) is caused by a failure to pay the principal amount of any such Indebtedness at its stated final maturity after giving effect to any applicable grace periods (a "*Payment Default*"); or
  - (b) results in the acceleration of such Indebtedness prior to its stated final maturity,

and, in the case of (a) and (b) above, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$25.0 million or more;

(6) failure by the Issuer or any Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary to pay final judgments aggregating in excess of \$25.0 million in excess of amounts that are covered by insurance or which have been bonded, which judgments are not paid, discharged or stayed for a period of 60 days after such judgment or judgments become final and non-appealable;

(7) except as permitted by this Indenture including upon the permitted release of the Guarantee, any Guarantee of a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Guarantor or any Person acting on behalf of any Guarantor shall deny or disaffirm in writing its obligations under its Guarantee and such Default continues for 21 days after notice of such Default has been given to the Issuer by the Trustee or to the Issuer and the Trustee by the Holders of at least 25% in aggregate principal amount of the Notes then outstanding (with a copy to the Trustee);

(8) the occurrence of any event of default under one or more Security Documents with respect to Collateral having a Fair Market Value in excess of \$10.0 million, including that such Security Document ceases to be in full force and effect or ceases to give the Security Agent, in any material respect, the Liens, rights, powers and privileges purported to be created thereby (other than by operation of the provisions of the Security Documents or the Intercreditor Agreement) and such event shall have continued uncured for a period of 15 days after the Issuer becomes aware of such event;

(9) either the Issuer or any of the Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary as debtor in an involuntary case, pursuant to or with the meaning of any Bankruptcy Law:

- (a) commences a voluntary case or proceeding,
- (b) consents to the entry of an order for relief or decree against it in an involuntary case or proceeding,
- (c) consents to the appointment of a Custodian of it or for all or substantially all of its assets, or

- (d) makes a general assignment for the benefit of its creditors;
- (e) admits in writing its inability to pay its debts generally as they become due; or
- (f) files a petition or answer or consent seeking reorganization or relief; and
- (10) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (a) is for relief against the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary as debtor in an involuntary case or proceeding;

- (b) appoints a Custodian of the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, or a Custodian for all or substantially all of the assets of the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary or adjudges any such entity or group a bankrupt or insolvent or approves as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of such entity or group; or

- (c) orders the winding up or liquidation of the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days.

#### SECTION 6.02. Acceleration.

In the case of an Event of Default specified in clause (9) or (10) of Section 6.01 with respect to the Issuer, all outstanding Notes shall become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee, by written notice to the Issuer, or the Holders of at least 25% in principal amount of the then outstanding Notes, by written notice to the Trustee and the Issuer, may declare all the Notes to be due and payable. Any such notice from the Trustee or Holders shall specify the applicable Event(s) of Default and state that such notice is a "Notice of Acceleration." Upon such declaration of acceleration pursuant to a Notice of Acceleration, the aggregate principal of and accrued and unpaid interest, if any, on the outstanding Notes shall become due and payable without further action or notice.



In the event of any Event of Default specified in clause (5) of Section 6.01, such Event of Default and its consequences (excluding, however, any resulting payment default) will be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if within 20 days after such Event of Default arose the Issuer delivers an Officer's Certificate to the Trustee stating that (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged or (y) the Holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has been cured, it being understood that in no event shall an acceleration of the principal amount of the Notes as described above be automatically annulled, waived or rescinded upon the happening of any such events.

No such rescission shall affect any subsequent Default or impair any right consequent thereto.

#### SECTION 6.03. Other Remedies.

If a Default occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of, or interest, if any, on, the Notes or to enforce the performance of any provision of the Notes or this Indenture and the Trustee may direct the Security Agent to enforce the performance of any provision of the Security Documents if any amount becomes due and payable pursuant to Section 6.02 (but not otherwise).

The Trustee and the Security Agent may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. All rights of action and claims under the Security Documents may be prosecuted or enforced under the Security Documents by the Security Agent (upon the direction of the Trustee, where appropriate). A delay or omission by the Trustee, the Security Agent or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

Each Holder, by accepting a Note, acknowledges that the exercise of remedies by the Security Agent with respect to the Collateral is subject to the terms and conditions of the Intercreditor Agreement and the Security Documents.

#### SECTION 6.04. Waiver of Past Defaults.

Subject to Sections 2.09, 6.07 and 9.02, the Holders of a majority in principal amount of the outstanding Notes (which may include consents obtained in connection with a tender offer or exchange offer of Notes) by notice to the Trustee may rescind an acceleration or waive an existing Default or Event of Default and its consequences, except a continuing Default or Event of Default in the payment of principal of, or interest or premium on, any Note as specified in Section 6.01(1) or (2). In case of any such rescission or waiver, the Issuer, the Trustee and the Holders shall be restored to their former positions and rights hereunder and under the Notes, respectively. Upon any such rescission or waiver, such Default shall cease to

exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such rescission or waiver shall extend to any subsequent or other Default or impair any right consequent thereto.

SECTION 6.05. Control by Majority.

The Holders of not less than a majority in principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. Subject to Section 7.01, however, the Trustee may refuse to follow any direction that conflicts with any law or this Indenture, that the Trustee determines in good faith may be unduly prejudicial to the rights of another Holder, or that may involve the Trustee in personal liability; *provided* that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

In the event the Trustee takes any action or follows any direction pursuant to this Indenture, the Trustee shall be entitled to indemnification satisfactory to it against any loss or expense that may be incurred by it by taking such action or following such direction.

SECTION 6.06. Limitation on Suits.

No Holder shall have any right to institute any proceeding with respect to this Indenture or the Notes or for any remedy hereunder or thereunder, unless:

- (1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;
- (2) Holders of at least 25% in aggregate principal amount of the outstanding Notes have requested in writing the Trustee to pursue the remedy;
- (3) such Holders have offered the Trustee security or indemnity satisfactory to it against any loss, liability or expense in complying with such request;
- (4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and
- (5) Holders of a majority in aggregate principal amount of the outstanding Notes have not given the Trustee a written direction inconsistent with such request within such 60-day period.

However, such limitations shall not apply to a suit instituted by a Holder of any Note for enforcement of payment of the principal of or interest or premium (if any) on, such Note on or after the due date therefor.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over such other Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

SECTION 6.07. Rights of Holders To Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of, and interest, if any, on, a Note, on or after the respective due dates therefor, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of the Holder except to the extent that the institution or prosecution of such suit or the entry of judgment therein would, under applicable law, result in the surrender, impairment or waiver of the Lien of this Indenture and the Security Documents upon the Collateral.

SECTION 6.08. Collection Suit by Trustee.

If an Event of Default in payment of principal, interest or premium specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer or any other obligor on the Notes for the whole amount of principal, premium and accrued interest (if any) and fees remaining unpaid, together with interest, if any, on overdue principal and, to the extent that payment of such interest is lawful, interest on overdue installments of interest, in each case at the rate per annum borne by the Notes and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 6.09. Trustee May File Proofs of Claim.

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relating to the Issuer, their creditors or their property and shall be entitled and empowered to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and any Custodian in any such judicial proceedings is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agent and counsel, and any other amounts due the Trustee under Section 7.07. To the extent that payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due to the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceedings whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes

or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding. The Trustee shall be entitled to participate as a member of any official committee of creditors in the matters as it deems necessary or advisable.

SECTION 6.10. Priorities.

If the Trustee receives any money pursuant to this Article Six, it shall pay out the money or property in the following order:

First: to the Security Agent for any amounts due under Clause 22 or Clause 23.1 of the Intercreditor Agreement and to the Trustee for amounts due under Section 7.07;

Second: to Holders for interest accrued on the Notes, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for interest;

Third: to Holders for principal amounts due and unpaid on the Notes and Additional Amounts, if any, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal and premium;

Fourth: without duplication, to the Holders, for any other obligations due to them hereunder or under the Notes, *pro rata* based on the amounts of such obligations; and

Fifth: to the Issuer, or, if applicable, the Guarantors, as their respective interests may appear.

The Trustee, upon prior written notice to the Issuer, may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

SECTION 6.11. Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee or the Security Agent for any action taken or omitted by it as Trustee or as Security Agent, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 shall not apply to a suit by the Trustee or the Security Agent, a suit by a Holder pursuant to Section 6.07, or a suit by a Holder or Holders of more than 10% in principal amount of the outstanding Notes.

**ARTICLE SEVEN  
TRUSTEE**

SECTION 7.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) Except during the continuance of an Event of Default of which a Responsible Officer of the Trustee has received written notice:

(1) the Trustee undertakes to perform only those duties as are specifically set forth herein and no duties, covenants, responsibilities or obligations shall be implied in this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates (including Officer's Certificates) or opinions (including Opinions of Counsel) furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other matters stated therein); and

(3) the Trustee shall not be liable, answerable or accountable under any circumstances, except for its own bad faith, willful misconduct or negligence, as conclusively determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review.

(c) Notwithstanding anything to the contrary herein, the Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of Section 7.01(b);

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be conclusively determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review, that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability (financial or otherwise) in the performance of any of its duties hereunder or to take or omit to take any action under this Indenture or take any action at the request or direction of Holders if it shall have grounds for believing in its sole determination that repayment of such funds or indemnity satisfactory to it is not assured to it.

(e) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to this Article Seven.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) In the absence of bad faith, negligence or willful misconduct on the part of the Trustee or the Security Agent, the Trustee and the Security Agent, as applicable, shall not be responsible for the application of any money by any Paying Agent other than the Trustee or the Security Agent.

#### SECTION 7.02. Rights of Trustee.

Subject to Section 7.01, but notwithstanding anything else contained herein to the contrary:

(a) The Trustee may conclusively rely, and shall be protected in acting or refraining from acting, upon any Board Resolution, certificate (including any Officer's Certificate), statement, instrument, opinion (including any Opinion of Counsel), notice, request, direction, consent, order, approval, bond, debenture, or other paper or document (including any of the foregoing delivered in electronic format) believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any statement, representation or warranty or any fact or matter stated in such document and may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein.

(b) Before the Trustee or the Security Agent acts or refrains from acting, it may require an Officer's Certificate and/or an Opinion of Counsel stating that all conditions precedent contained in this Indenture, the Notes and/or the Guarantees related to such act or omission have been satisfied (*provided* that no Officer's Certificate or Opinion of Counsel shall be required in connection with the initial issuance of Notes on the Issue Date). Neither the Trustee nor the Security Agent shall be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. As to any fact or matter the ascertainment of which is not specifically described herein, the Trustee shall be entitled to receive and may for all purposes hereof conclusively rely on a certificate, signed by an officer of any duly authorized Person, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

(c) The Trustee may act through its attorneys, custodians, nominees and agents and shall not be responsible for the misconduct or negligence of, or for the supervision of, any attorney, custodian, nominee or agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers under this Indenture; *provided, however*, that the Trustee's conduct does not constitute willful misconduct, bad faith or negligence.

(e) The Trustee may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture whether on its own motion or at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby.

(g) The Trustee shall not be bound to make any investigation into (i) the facts or matters stated in any Board Resolution, certificate (including any Officer's Certificate), statement, instrument, opinion (including any Opinion of Counsel), notice, request, direction, consent, order, bond, debenture, or other paper or document, (ii) the performance or observation by the Issuer or any other Person of any of the covenants, agreements or other terms or conditions set forth in this Indenture or in any related document, (iii) the occurrence of any default, or the validity, enforceability, effectiveness or genuineness of this Indenture, any Security Document, any other related document or any other agreement, instrument or document, (iv) the creation, perfection or priority of any lien purported to be created by this Indenture or any related document, (v) the value or the sufficiency of any Collateral or (vi) the satisfaction of any condition set forth in this Indenture or in any related document, but the Trustee may (without obligation) make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled, upon reasonable notice to the Issuer, to examine the books, records, and premises of the Issuer, personally or by agent or attorney at the sole cost of the Issuer.

(h) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(i) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as duties.

(j) Except with respect to Section 4.01 and 4.06(a), the Trustee shall have no duty to inquire as to the performance of the Issuer with respect to the covenants contained in this Indenture, including, without limitation, Article Four. In addition, the Trustee

shall not be deemed to have knowledge of a Default or Event of Default except (i) any Default or Event of Default occurring pursuant to Section 6.01(1) or 6.01(2) or (ii) any Default or Event of Default of which a Responsible Officer of the Trustee shall have received written notification at the Corporate Trust Office referencing the Notes and this Indenture.

(k) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by (i) the Trustee in each Debt Document to which it is a party or otherwise subject, whether or not specifically set forth therein, and (ii) the entity serving as the Registrar, Transfer Agent and Paying Agent, and to each agent, custodian and other Person employed to act hereunder (provided, however, that any reference to “negligence” with respect to the Trustee shall be deemed to be a reference to “gross negligence” with respect to the Registrar, the Transfer Agent, the Paying Agents and to each agent and custodian, and any reference to “willful misconduct” with respect to the Trustee shall be deemed to be a reference to a “willful default” with respect to the London Paying Agent).

(l) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(m) The Trustee and the Security Agent may request that the Issuer deliver a certificate in the form of Exhibit E setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(n) The Trustee shall not have any duty or responsibility in respect of (i) any recording, filing, or depositing of this Indenture or any other agreement or instrument, monitoring or filing any financing statement or continuation statement evidencing a security interest, the maintenance of any such recording, filing or depositing or any re-recording, re-filing or re-depositing of any thereof, or otherwise monitoring the perfection, continuation of perfection or the sufficiency or validity of any security interest in or related to the Collateral, (ii) the acquisition or maintenance of any insurance or (iii) the payment or discharge of any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Collateral. The Trustee shall be authorized to, but shall in no event have any duty or responsibility to, file any financing or continuation statements or record any documents or instruments in any public office at any time or times or otherwise perfect or maintain any security interest in the Collateral.

(o) The right of the Trustee to perform any discretionary act enumerated in this Indenture or any related document shall not be construed as a duty.

(p) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or to institute, conduct or defend any litigation.



hereunder or in relation hereto, at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture or any related document, unless such Holders shall have offered to the Trustee security, indemnity or pre-funding satisfactory to the Trustee, in its sole discretion, against the losses, costs, expenses (including the fees and expenses of its counsel and agents) and liabilities that might be incurred by the Trustee in compliance with such request, order or direction.

(q) Each Holder, by its acceptance of a Note hereunder, represents that it has, independently and without reliance upon the Trustee or any other Person, and based on such documents and information as it has deemed appropriate, made its own investment decision in respect of the Notes. Each Holder also represents that it will, independently and without reliance upon the Trustee or any other Person, and based on such documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under this Indenture and in connection with the Notes. Except for notices, reports and other documents expressly required to be furnished to the Holders by the Trustee hereunder, the Trustee shall not have any duty or responsibility to provide any Holder with any other information concerning the transactions contemplated hereby, the Issuer or any other parties to any related documents which may come into the possession of the Trustee or any of its officers, directors, employees, agents, representatives or attorneys-in-fact.

(r) The Trustee shall be fully justified in failing or refusing to take any action under this Indenture or any other related document if such action (A) would, in the reasonable opinion of the Trustee (which may be based on the advice or opinion of counsel), be contrary to applicable law, this Indenture or any Security Document or (B) is not contemplated by this Indenture or any Security Document.

(s) The Trustee shall not be required to take any action under this Indenture or any related document if taking such action (A) would subject the Trustee to a tax in any jurisdiction where it is not then subject to a tax or (B) would require the Trustee to qualify to do business in any jurisdiction where it is not then so qualified. The Issuer shall provide to the Trustee, the Security Agent, the Registrar and the Paying Agents a certified list of authorized signatories that are authorized to act on behalf of the Issuer hereunder.

#### SECTION 7.03. Individual Rights of Trustee and Security Agent.

The Trustee and the Security Agent, each in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer, its Subsidiaries or its respective Affiliates with the same rights it would have if it were not Trustee or Security Agent. However, in the event that the Trustee or the Security Agent acquires any conflicting interest it must eliminate such conflict within 90 days or resign. However, the Trustee and the Security Agent must comply with Section 7.10.

SECTION 7.04. Disclaimer of Trustee and Security Agent.

The Trustee and the Security Agent shall not be responsible for and make no representation as to the validity, legality, enforceability, sufficiency or adequacy of this Indenture, the Notes, the Guarantees or the Security Documents or the Collateral covered thereby, and they shall not be accountable for the Issuer's use of the Notes, the proceeds from the Notes or any money paid to the Issuer pursuant to the provisions hereof, and they shall not be responsible for any statement of the Issuer's in this Indenture, the Guarantees, the Security Documents or any document issued in connection with the sale of Notes or any statement in the Notes other than, with respect to the Trustee, the Trustee's certificate of authentication. Each of the Trustee and the Security Agent makes no representations with respect to the effectiveness or adequacy of this Indenture.

SECTION 7.05. Notice of Default.

If a Default or Event of Default occurs and is continuing of which a Responsible Officer of the Trustee shall have received written notification at the Trustee's Corporate Trust Office, the Trustee shall deliver electronically or mail to each Holder notice of the uncured Default or Event of Default within 90 days after its receipt of such notice of Default or Event of Default. Except in the case of a Default in payment of principal of, or interest, or premium on, any Note, including an accelerated payment and the failure to make a payment on the Change of Control Payment Date pursuant to a Change of Control Offer, the Asset Sale Payment Date pursuant to an Asset Sale Offer, the Collateral Sale Payment Date pursuant to a Collateral Sale Offer or on the Event of Loss Payment Date pursuant to an Event of Loss Offer, the Trustee may withhold the notice if and so long as the Trustee in good faith determines that withholding the notice is in the interest of the Holders.

SECTION 7.06. [Reserved].SECTION 7.07. Compensation and Indemnity.

The Issuer shall pay to the Trustee from time to time such compensation as the Issuer and the Trustee shall from time to time agree in writing for its services rendered by it hereunder and under the Intercreditor Agreement and the Security Documents. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee promptly upon request for all properly incurred disbursements, expenses and advances (including but not limited to reasonable fees and expenses of counsel, costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to Holders, in addition to the compensation for its services) incurred or made by it in addition to the compensation for its services, except any such disbursements, expenses and advances as may be attributable to the Trustee's negligence, bad faith or willful misconduct (as conclusively determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review). Such expenses shall include the reasonable fees and expenses of the Trustee's agents, counsel, accountants, experts, any co-trustee or any separate trustee.

The Issuer shall defend, indemnify and hold the Trustee and any predecessor Trustee and their respective officers, directors, employees and agents harmless against, any and all losses, damages, claims, liabilities, penalties, suits, causes of action, judgments expenses (including, but not limited to, attorneys' fees and expenses), actions, stamp or other taxes (other than taxes based upon, measured by or determined by the income of such Person), of whatever kind or nature regardless of their merit, demanded, asserted or claimed against any of them directly or indirectly relating to or arising out of or in connection with the acceptance or administration of this trust, the Intercreditor Agreement or the Security Documents including all properly incurred costs and expenses of enforcing this Indenture, defending themselves against or investigating any claim or liability in connection with the exercise or performance of any of the Trustee's rights, powers or duties hereunder or thereunder; provided however that the Issuer need not indemnify against any loss, liability or expense incurred by the Trustee as a result of its own willful misconduct, negligence or bad faith (as conclusively determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review). The Issuer need not pay for any settlement made without its written consent, which consent shall not be unreasonably withheld or delayed.

All indemnities to be paid under this Indenture to the Trustee or the Security Agent shall be payable immediately when due in U.S. dollars ("*Dollars*") in the full amount due, without deduction for any variation in any Rate of Exchange (as defined below). The Issuer hereby agrees to indemnify each of the Trustee and the Security Agent against any losses, damages, penalties, costs, expenses or disbursements of any kind or nature whatsoever, including, without limitation, attorney's fees and expenses, incurred by the Trustee or the Security Agent as a result of any judgment or order being given or made for the amount due hereunder and such judgment or order being expressed and paid in a currency (the "*Judgment Currency*") other than Dollars and as a result of any variation as between (i) the rate of exchange at which the dollar amount is converted into Judgment Currency for the purpose of such judgment or order, and (ii) the Rate of Exchange at which the Trustee or the Security Agent, as applicable, is then able to purchase Dollars with the amount of the Judgment Currency actually received by the Trustee or the Security Agent, as applicable. The indemnity set forth in this paragraph shall constitute a separate and independent obligation of the Issuer and shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "*Rate of Exchange*" means the rate at which the Trustee or the Security Agent, as applicable, is able to purchase Dollars with the Judgment Currency on the foreign exchange market on the relevant date and shall include any premiums and other reasonable costs of exchange payable in connection with the purchase or, or conversion into, the relevant currency.

To secure the Issuer's payment obligations in this Section 7.07, the Trustee shall have a Lien prior to the Notes against all money or property held or collected by the Trustee, in its capacity as Trustee, except money or property held in trust to pay principal and interest on particular Notes.

When the Trustee incurs expenses or renders services after a Default specified in Section 6.01(9) or (10) occurs, such expenses (including the fees and expenses of counsel) and the compensation for such services are intended to constitute expenses of administration under any Bankruptcy Law or any law relating to creditors' rights generally.

Notwithstanding any other provision in this Indenture, the foregoing provisions of this Section 7.07 shall survive the satisfaction and discharge of this Indenture or the appointment of a successor Trustee.

SECTION 7.08. Replacement of Trustee.

The Trustee may resign at any time upon 30 days' written notice to the Issuer in writing. The Holders of a majority in principal amount of the outstanding Notes may remove the Trustee upon 30 days written notice to the Issuer and the Issuer may appoint a successor Trustee. The Issuer may remove the Trustee at any time if:

- (1) the Trustee fails to comply with Section 7.10;
- (2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (3) a receiver or other public officer takes charge of the Trustee or its property; or
- (4) the Trustee becomes incapable of acting as Trustee hereunder.

If the Trustee resigns or is removed or if a vacancy exists in the office of the Trustee for any reason, the Issuer shall notify each Holder of such event and shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuer.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Immediately after that, the retiring Trustee shall transfer, after payment of all sums then owing to the Trustee pursuant to Section 7.07, all property held by it as Trustee hereunder and under the Security Documents to the successor Trustee, subject to the Lien provided in Section 7.07, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee shall deliver electronically or mail notice of its succession to each Holder. All costs incurred in connection with any resignation or removal hereunder shall be borne by the Issuer.

Any resignation or removal of the Trustee pursuant to this Indenture shall be deemed to be a resignation or removal of the Trustee under the Intercreditor Agreement and the Security Documents and any appointment of a successor Trustee pursuant to this Indenture shall be deemed to be an appointment of such person as a successor to the Trustee under the Intercreditor Agreement and the Security Documents and such successor shall assume all of the obligations of the Trustee under the Intercreditor Agreement and the Security Documents.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer or the Holders of at least 10% in principal amount of the outstanding Notes may petition, at the expense of the Issuer, any court of competent jurisdiction for the appointment of a successor Trustee at the expense of the Issuer.

If the Trustee fails to comply with Section 7.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Issuer's obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

**SECTION 7.09. Successor Trustee by Merger, Etc.**

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another Person, the successor Person, without any further act, shall, if such resulting, surviving or transferee Person is otherwise eligible hereunder, be the successor Trustee; *provided* that such Person shall be otherwise qualified and eligible under this Article Seven.

**SECTION 7.10. Eligibility; Disqualification.**

There will at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of England and Wales, or the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$50.0 million as set forth in its most recent published annual report of condition.

**ARTICLE EIGHT  
SATISFACTION OR DISCHARGE OF INDENTURE; DEFEASANCE**

**SECTION 8.01. Termination of the Issuer's Obligations.**

The Issuer may terminate its obligations under the Notes and this Indenture and the obligations of the Guarantors under the Guarantees and this Indenture and this Indenture shall be discharged and shall cease to be of further effect as to all Notes issued hereunder and then outstanding, except those obligations referred to in the penultimate paragraph of this Section 8.01, when:

(1) either:

(a) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment

money has been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from the trust, have been delivered to the Trustee for cancellation; or

(b) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year or have been called for redemption pursuant to Section 5, Section 6 or Section 7 of the Notes and the Issuer has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash or Cash Equivalents in U.S. dollars, non-callable Government Securities, or a combination thereof, in amounts as shall be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium and accrued interest, if any, to the date of maturity or redemption;

(2) no Default or Event of Default has occurred and is continuing on the date of the deposit (other than an Event of Default resulting from the borrowing of funds to be applied to such deposit including the incurrence of Liens in connection with such borrowings) and the deposit shall not result in a breach or violation of, or constitute a default under this Indenture;

(3) the Issuer or any Guarantor has paid or caused to be paid all sums payable by them under this Indenture; and

(4) the Issuer has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the Redemption Date, as the case may be.

In addition, the Issuer must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee and the Security Agent stating that all conditions precedent to satisfaction and discharge have been satisfied.

In the case of clause (1)(b) of this Section 8.01, and subject to the next sentence and notwithstanding the foregoing paragraph, the Issuer's obligations in Sections 2.03, 2.05, 2.06, 2.07, 2.08, 2.12, 4.01, 4.02, 4.03 (as to legal existence of the Issuer only), 7.07, 8.05, 8.06, 8.07 and 8.08 shall survive until the Notes are no longer outstanding pursuant to the last paragraph of Section 2.08. After the Notes are no longer outstanding, the Issuer's obligations in Sections 7.07, 8.06 and 8.07 shall survive.

After such delivery or irrevocable deposit, the Trustee upon request shall acknowledge in writing the discharge of the Issuer's obligations under the Notes and this Indenture except for those surviving obligations specified above.

SECTION 8.02. Option to Effect Legal Defeasance or Covenant Defeasance.

The Issuer may, at the option of its Boards of Directors evidenced by a Board Resolution set forth in an Officer's Certificate, and at any time, elect to have either Section 8.03 or 8.04 applied to all outstanding Notes and all obligations of any Guarantor upon compliance with the conditions set forth in this Article Eight.

SECTION 8.03. Legal Defeasance.

Upon the Issuer's exercise under Section 8.02 of the option applicable to this Section 8.03, the Issuer and each of the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.05, be deemed to have been discharged from their obligations with respect to all outstanding Notes (including the Guarantees) on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). Such Legal Defeasance means that the Issuer and the Guarantors shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Guarantees), which shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.06 and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all of their other obligations under such Notes, the Guarantees and this Indenture (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder:

- (1) the rights of Holders of outstanding Notes to receive payments in respect of the principal of or interest or premium, if any, on such Notes when such payments are due from the trust referred to in Section 8.06;
- (2) the Issuer's obligations with respect to the Notes under Article Two and Section 4.02;
- (3) the rights, powers, trusts, duties, indemnities and immunities of the Trustee and the Security Agent hereunder, and the Issuer's and the Guarantors' obligations in connection therewith; and
- (4) this Article Eight.

Subject to compliance with this Article Eight, the Issuer may exercise its option under this Section 8.03 notwithstanding the prior exercise of its option under Section 8.04.

SECTION 8.04. Covenant Defeasance.

Subject to the satisfaction of the conditions set forth in Section 8.05, upon the Issuer's exercise under Section 8.02 of the option applicable to this Section 8.04, (i) the Issuer and each of the Guarantors shall be released from each of their obligations under the covenants contained in Sections 4.03 (other than with respect to the legal existence of the Issuer), 4.04, 4.05, 4.09 through 4.19, 4.21, 4.22, 4.23 and 5.01 (except for the covenants contained in clauses

(a)(1) and (a)(2) thereof) with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.05 are satisfied (hereinafter, “Covenant Defeasance”), (ii) the Issuer and the Guarantors may without condition cause the release of any Guarantees and of any Liens securing the Notes or the Guarantees, and (iii) the Notes shall thereafter be deemed not “outstanding” for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed “outstanding” for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Guarantees, the Issuer and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply, and any release of the Guarantees or of Liens securing the Notes or the Guarantees, shall not constitute a Default or an Event of Default under Section 6.01, but, except as specified above, the remainder of this Indenture and such Notes and Guarantees shall be unaffected thereby. In addition, upon the Issuer’s exercise under Section 8.02 of the option applicable to this Section 8.04, subject to the satisfaction of the conditions set forth in Section 8.05, Sections 6.01(3) through 6.01(8) shall not constitute Events of Default.

**SECTION 8.05. Conditions to Legal or Covenant Defeasance.**

In order to exercise either Legal Defeasance or Covenant Defeasance under either Sections 8.03 or 8.04:

(1) the Issuer must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in amounts as shall be sufficient, without consideration of any reinvestment of interest, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of or interest and premium, if any, on the outstanding Notes on the Stated Maturity or on the applicable Redemption Date, as the case may be, and the Issuer must specify whether the Notes are being defeased to maturity or to a particular Redemption Date;

(2) in the case of an election under Section 8.03, the Issuer must deliver to the Trustee an Opinion of Counsel confirming that (a) the Issuer has received from, or there has been published by, the U.S. Internal Revenue Service a ruling or (b) since the Issue Date, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and shall be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of an election under Section 8.04, the Issuer must deliver to the Trustee an Opinion of Counsel confirming that the Holders of the



outstanding Notes shall not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and shall be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default has occurred and is continuing on the date of such deposit (other than a Default or Event of Default resulting from, or otherwise arising in connection with, the borrowing of funds to be applied to such deposit and the grant of any Lien securing such borrowing);

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound;

(6) the Issuer must deliver to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of preferring the Holders over the other creditors of the Issuer or any of its Subsidiaries or with the intent of defeating, hindering, delaying or defrauding creditors of the Issuer or any of its Subsidiaries or others; and

(7) the Issuer must deliver to the Trustee and the Security Agent an Officer's Certificate and an Opinion of Counsel, each to the effect that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Notwithstanding the foregoing, the opinion of counsel required by clause (2) above with respect to an election under Section 8.03 need not be delivered if all Notes not theretofore delivered to the Trustee for cancellation shall become due and payable within one year under arrangements reasonably satisfactory to the Trustee for the giving of a notice of redemption by the Trustee in the name and at the expense of the Issuer.

If the funds deposited with the Trustee to effect Covenant Defeasance are insufficient to pay the principal of and interest on the Notes when due, then the obligations of the Issuer and the Guarantors under this Indenture will be revived and no such defeasance will be deemed to have occurred.

#### SECTION 8.06. Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions.

Subject to Section 8.08, all cash, Cash Equivalents and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying Trustee, collectively for purposes of this Section 8.06, the "Trustee") pursuant to Article Eight in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.05 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Notwithstanding anything in this Article Eight to the contrary, the Trustee shall deliver or pay to the Issuer from time to time upon the request of the Issuer any money or non-callable Government Securities held by it as provided in Section 8.05 which, in the opinion of a firm of independent public accountants or any investment bank or appraisal firm, in each case nationally recognized in the United States expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.05(1)), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

SECTION 8.07. Repayment to the Issuer.

Any money deposited with the Trustee or any Paying Agent, in trust for the payment of the principal of, premium, if any, or interest on any Note and remaining unclaimed for two years after such principal, premium, if any, or interest has become due and payable shall promptly be paid to the Issuer on its written request or shall be discharged from such trust; and the Holder of such Note shall thereafter be permitted to look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease.

SECTION 8.08. Reinstatement.

If the Trustee or Paying Agent is unable to apply any United States dollars or non-callable Government Securities in accordance with this Article Eight, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's and the Guarantors' obligations under this Indenture, the Notes, the Guarantees and the Security Documents shall be revived and reinstated as though no deposit had occurred pursuant to this Article Eight until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with this Article Eight, as the case may be; provided, however, that (a) if the Issuer makes any payment of principal of, premium, if any, or interest on any Note following the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent and (b) so long as no payment Default or Event of Default has occurred and is continuing, unless otherwise required by any legal proceeding or any other order or judgment of any court or governmental authority, the Trustee or Paying Agent shall return all such money and U.S. Obligations (in each case to the extent remaining in their possession) to the Issuer promptly after receiving a written request therefore at any time, if such reinstatement of the Issuer's obligations has occurred and continues to be in effect other than such money as has been applied to payment on the Notes.

The Issuer shall be entitled to cure any event resulting in the reinstatement of its obligations hereunder.

**ARTICLE NINE  
AMENDMENTS, SUPPLEMENTS AND WAIVERS**

SECTION 9.01. Without Consent of Holders.

The Issuer, the Guarantors, the Trustee and the Security Agent, as applicable, may amend, waive, supplement or otherwise modify this Indenture, the Notes, the Guarantees, any Security Document or any other agreement or instrument entered into in connection with this Indenture without notice to or consent of any Holder:

- (1) to cure any ambiguity, omission, mistake, defect or inconsistency;
- (2) to provide for uncertificated Notes in addition to or in place of certificated Notes;
- (3) to provide for the assumption of the Issuer's or a Guarantor's obligations to Holders and Guarantees in the case of a merger, amalgamation or consolidation or sale of all or substantially all of such Issuer's or such Guarantor's assets, as applicable;
- (4) to make any change that would provide any additional rights or benefits to the Holders or that does not materially adversely affect the legal rights under this Indenture of any such Holder;
- (5) to allow any Guarantor to execute a supplemental indenture and a Guarantee with respect to the Notes or to release a Guarantee or a security interest under the Notes or a Guarantee in accordance with the terms of this Indenture or to accede to the Intercreditor Agreement or any Additional Intercreditor Agreement;
- (6) to provide for the issuance of Additional Notes in accordance with the terms of this Indenture;
- (7) to evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee or Security Agent;
- (8) to comply with the rules of any applicable securities depository;
- (9) to conform the text of this Indenture, the Guarantees, the Notes or the Security Documents to any provision of the "Description of Notes" in the Offering Memorandum to the extent that such provision in the "Description of Notes" was intended by the Issuer (as demonstrated by an Officer's Certificate) to be a substantially verbatim recitation of a provision of this Indenture, the Guarantees, the Notes or the Security Documents;

(10) to add to the covenants of the Issuer or any Restricted Subsidiary for the benefit of the Holders or surrender any rights or powers conferred upon the Issuer or any Restricted Subsidiary;

(11) to provide for a reduction in the minimum denomination of the Notes;

(12) to provide for the succession of any parties to the Security Documents, the Intercreditor Agreement or any Additional Intercreditor Agreement (and other amendments that are administrative or ministerial in nature) in connection with an amendment, renewal, extension, substitution, refinancing, restructuring, replacement, supplementing or other modification from time to time of the Revolving Credit Facility or any other agreement that is not prohibited by this Indenture;

(13) to provide for the release, substitution or addition of Collateral or Guarantees in accordance with the terms of this Indenture, the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement; or

(14) to enter into an Additional Intercreditor Agreement in accordance with the terms of this Indenture.

Upon the request of the Issuer accompanied by a Board Resolution of its Board of Directors authorizing the execution of any such amendment, waiver, supplement or other modification, and upon receipt by the Trustee and the Security Agent, of any documents required under Section 9.06, the Trustee and the Security Agent shall join with the Issuer and any Guarantors in the execution of such amendment, waiver, supplement or other modification. In connection with any such amendment, the Trustee and the Security Agent shall be entitled to receive and conclusively rely upon, an Officer's Certificate and an Opinion of Counsel each stating that such amendment is authorized or permitted by the terms of this Indenture, the Intercreditor Agreement, the Additional Intercreditor Agreement (if applicable) and the Security Documents, and that all conditions precedent provided in this Indenture, the Intercreditor Agreement, the Additional Intercreditor Agreement (if applicable) and the Security Documents relating to the execution and delivery of such amendment have been complied with.

Notwithstanding the foregoing, neither the Trustee nor the Security Agent shall have any obligation to enter into any amendment, waiver, supplement or other modification that affects its own rights, protections, duties, indemnities or immunities under this Indenture, the Notes, the Guarantees, the Intercreditor Agreement, any Additional Intercreditor Agreement, any Security Document or any other agreement.

SECTION 9.02. With Consent of Holders.

(a) Subject to Sections 9.01 and this 9.02, the Issuer, the Guarantors, the Trustee and the Security Agent, together, with the written consent of the Holder or Holders of at least a majority in aggregate principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), may amend or supplement this Indenture, the Notes, the Guarantees, and any Security Document, and any existing Default or Event of Default or compliance with any provision of this Indenture, the Notes, the Guarantees or the Security Documents may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes).

(b) Notwithstanding Section 9.02(a), without the consent of the Issuer and each Holder affected, an amendment, supplement or waiver may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to the redemption of the Notes (other than the number of days in advance of the redemption of Notes that notice of redemption has been given) (it being understood that this clause (2) does not apply to Section 4.09, Section 4.13(I) and Section 4.23);

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on the Notes (except a rescission of acceleration of the Notes by the holders of at least a majority in aggregate principal amount of the then outstanding Notes in accordance with the provisions of this Indenture and a waiver of the payment default that resulted from such acceleration);

(5) make any Note payable in money other than that stated in the Notes;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of, or interest or premium, if any, on the Notes, or Additional Amounts, if any;

(7) waive a redemption payment with respect to any Note (it being understood that this clause (7) does not apply to a payment required by Section 4.09, Section 4.13(I) and Section 4.23);

- (8) release any Guarantor from any of its obligations under its Guarantee or this Indenture, except in accordance with the terms of this Indenture, the Intercreditor Agreement or any applicable Additional Intercreditor Agreement;
- (9) release the Lien of the Security Agent for the benefit of the Trustee and Holders with respect to Collateral having a Fair Market Value in excess of \$10.0 million (other than by operation of the terms of this Indenture, the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreements);
- (10) expressly subordinate in right of payment the Notes or the Guarantees to any other Indebtedness of the Issuer or any Guarantor; or
- (11) make any change to this Section 9.02.

In addition, without the consent of the Issuer and Holders of at least 80% in principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) an amendment, supplement or waiver may not amend, change or modify in any material respect the obligation of the Issuer to make and consummate a Collateral Sale Offer or an Event of Loss Offer, as the case may be, or modify the provisions or definitions with respect thereto.

(c) It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed amendment, supplement or waiver but it shall be sufficient if such consent approves the substance thereof.

(d) A consent to any amendment, supplement or waiver under this Indenture by any Holder given in connection with an exchange (in the case of an exchange offer) or a tender (in the case of a tender offer) of such Holder's Notes shall not be rendered invalid by such tender or exchange.

(e) After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuer shall deliver electronically or mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuer to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

SECTION 9.03. [Reserved].

SECTION 9.04. Revocation and Effect of Consents.

Until an amendment, waiver or supplement becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder or subsequent Holder may revoke the consent as to his Note or portion of his Note by notice to the Trustee or the Issuer received before the date on which the Trustee and the Security Agent receives an Officer's Certificate certifying that the Holders of the requisite principal amount of Notes have consented (and not theretofore revoked such consent) to the amendment, supplement or waiver.

The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver, which record date shall be prior to the first solicitation of such consent. If a record date is fixed, then notwithstanding the last sentence of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 90 days after such record date. The Issuer shall inform the Trustee in writing of the fixed record date if applicable.

SECTION 9.05. Notation on or Exchange of Notes.

If an amendment, supplement or waiver changes the terms of a Note, the Issuer may require the Holder to deliver it to the Trustee. The Issuer shall provide the Trustee with an appropriate notation on the Note about the changed terms and cause the Trustee to return it to the Holder at the Issuer's expense. Alternatively, if the Issuer or the Trustee so determine, the Issuer in exchange for the Note shall issue, and the Trustee shall authenticate, a new Note that reflects the changed terms. Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

SECTION 9.06. Trustee and Security Agent To Sign Amendments, Etc.

The Trustee and the Security Agent shall execute any amendment, supplement or waiver authorized pursuant to this Article Nine; *provided* that neither the Trustee nor the Security Agent shall be obligated to, execute any such amendment, supplement or waiver which affects the Trustee's or the Security Agent's own rights, duties, indemnities or immunities under this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement or the Security Documents. The Trustee and the Security Agent shall each be entitled to receive, and, subject to Section 7.01 (solely with respect to the Trustee), shall be fully protected in conclusively relying upon, an Opinion of Counsel and an Officer's Certificate, each stating that the execution of any amendment, supplement or waiver authorized pursuant to this Article Nine is authorized or permitted by this Indenture, the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement. Such Opinion of Counsel shall be at the expense of the Issuer.

Upon the execution of any amended or supplemental indenture pursuant to and in accordance with this Article Nine, this Indenture shall be modified in accordance therewith, and such amended or supplemental Indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

**ARTICLE TEN**  
**NOTE GUARANTEE**

SECTION 10.01. Unconditional Guarantee.

Subject to the provisions of this Article Ten, each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes, the Intercreditor Agreement, any Additional Intercreditor Agreement or the Security Documents or the obligations of the Issuer to the Holders or the Trustee hereunder or thereunder: (a) (x) the due and punctual payment of the principal of, premium, if any, and interest, if any, on the Notes when and as the same shall become due and payable, whether at maturity, upon redemption or repurchase, by acceleration or otherwise, (y) the due and punctual payment of interest on the overdue principal and (to the extent permitted by law) interest, if any, on the Notes and (z) the due and punctual payment and performance of all other obligations of the Issuer, in each case, to the Holders, the Security Agent or the Trustee hereunder or thereunder (including amounts due the Trustee under Section 7.07), all in accordance with the terms hereof and thereof (collectively, the "*Guarantee Obligations*"); and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, the due and punctual payment and performance of the Guarantee Obligations in accordance with the terms of the extension or renewal, whether at maturity, upon redemption or repurchase, by acceleration or otherwise. Failing payment when due of any amount so guaranteed, or failing performance of any other obligation of the Issuer to the Holders under this Indenture, under the Notes or under any Security Document, for whatever reason, each Guarantor shall be obligated to pay, or to perform or cause the performance of, the same immediately. An Event of Default under this Indenture, the Notes or the Security Documents shall constitute an Event of Default under the Guarantees, and shall entitle the Holders to accelerate the obligations of the Guarantors thereunder in the same manner and to the same extent as the obligations of the Issuer.

Each of the Guarantors hereby agrees that (to the extent permitted by law) its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes, this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement or the Security Documents, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, any release of any other Guarantor, the recovery of any judgment against the Issuer, any action to enforce the same, whether or not a Guarantee is affixed to any particular Note, or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor (other than payment). To the fullest extent permitted by law and subject to Section 6.06, each of the Guarantors hereby waives the benefit of diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that its Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes, this Indenture, this Guarantee, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents.



This Guarantee is a guarantee of payment and not of collection. If any Holder, the Security Agent or the Trustee is required by any court or otherwise to return to the Issuer or to any Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Issuer or such Guarantor, any amount paid by the Issuer or such Guarantor to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect. Each Guarantor further agrees that, as between it, on the one hand, and the Holders, the Security Agent, and the Trustee, on the other hand, (a) subject to this Article Ten, the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Six for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (b) in the event of any acceleration of such obligations as provided in Article Six, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee.

SECTION 10.02. Limitation on Guarantor Liability.

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal, foreign, provincial or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Security Agent, the Holders and the Guarantors hereby irrevocably agree (to the extent required by such laws) that the obligations of such Guarantor under its Guarantee and this Article Ten shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article Ten, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent transfer or conveyance. Each Guarantor that makes a payment for distribution under its Guarantee is entitled to a contribution from each other Guarantor in a *pro rata* amount based on the respective net assets of each Guarantor at the time of such payment determined in accordance with GAAP.

SECTION 10.03. Notation not Required.

Neither the Issuer nor any Guarantor shall be required to make a notation on the Notes to reflect any Guarantee or any release, termination or discharge thereof.

Each Guarantor agrees that the Guarantees set forth in Section 10.01 will remain in full force notwithstanding any failure to endorse on each Note a notation of such Guarantee.

SECTION 10.04. Release of a Guarantor.

Notwithstanding Section 4.16(a), a Guarantor shall be automatically and unconditionally released from its obligations under its Guarantee and its obligations under this Indenture in accordance with Sections 4.16(b) and 4.16(c) or as otherwise expressly permitted by this Indenture, including Articles Five and Eight hereof.

The Trustee and the Security Agent, as applicable, shall execute an appropriate instrument prepared by the Issuer evidencing the release of a Guarantor from its obligations under its Guarantee upon receipt of a request by the Issuer or such Guarantor accompanied by an Officer's Certificate and an Opinion of Counsel each stating that all conditions precedent provided in the Debt Documents relating to the release of the Guarantee have been complied with; *provided, however*, that the legal counsel delivering such Opinion of Counsel may rely as to matters of fact on one or more Officer's Certificates of the Issuer.

Except as set forth in Articles Four and Five and this Section 10.04, nothing contained in this Indenture or in any of the Notes shall prevent any consolidation or merger of a Guarantor with or into the Issuer or another Guarantor or shall prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Issuer or another Guarantor.

SECTION 10.05. Waiver of Subrogation.

Until this Indenture is discharged and all of the Notes are discharged and paid in full, each Guarantor hereby irrevocably waives (to the extent it may lawfully do so) and agrees not to exercise any claim or other rights which it may now or hereafter acquire against the Issuer that arise from the existence, payment, performance or enforcement of the Issuer's obligations under the Notes or this Indenture and such Guarantor's obligations under this Guarantee and this Indenture, in any such instance including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, and any right to participate in any claim or remedy of the Holders against the Issuer, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including, without limitation, the right to take or receive from the Issuer, directly or indirectly, in cash or other assets or by set-off or in any other manner, payment or security on account of such claim or other rights. If any amount shall be paid to any Guarantor in violation of the preceding sentence and any amounts owing to the Trustee, the Security Agent or the Holders under the Notes, this Indenture, or any other document or instrument delivered under or in connection with such agreements or instruments, shall not have been paid in full, such amount shall have been deemed to have been paid to such Guarantor for the benefit of, and held in trust for the benefit of, the Trustee, the Security Agent or the Holders and shall forthwith be paid to the Trustee for the benefit of itself, the Security Agent or such Holders to be credited and applied to the obligations in favor of the Trustee, the Security Agent or the Holders, as the case may be, whether matured or unmatured, in accordance with the terms of this Indenture. Each Guarantor acknowledges that it shall receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the waiver set forth in this Section 10.05 is knowingly made in contemplation of such benefits.

SECTION 10.06. Immediate Payment.

Each Guarantor agrees to make immediate payment to the Trustee on behalf of the Holders of all Guarantee Obligations owing or payable to the respective Holders upon receipt of a demand for payment therefor by the Trustee to such Guarantor in writing.

SECTION 10.07. No Set-Off.

Each payment to be made by a Guarantor hereunder in respect of the Guarantee Obligations shall be payable in the currency or currencies in which such Guarantee Obligations are denominated, and, to the fullest extent permitted by law, shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

SECTION 10.08. Guarantee Obligations Absolute.

The obligations of each Guarantor hereunder are and shall be absolute and unconditional and any monies or amounts expressed to be owing or payable by each Guarantor hereunder which may not be recoverable from such Guarantor on the basis of a Guarantee shall be recoverable from such Guarantor as a primary obligor and principal debtor in respect thereof.

SECTION 10.09. Guarantee Obligations Continuing.

The obligations of each Guarantor hereunder shall be continuing and shall remain in full force and effect until all such obligations have been paid and satisfied in full. Each Guarantor agrees with the Trustee that it shall, upon request by the Trustee or the Security Agent, deliver to the Trustee and the Security Agent suitable acknowledgments of this continued liability hereunder and under any other instrument or instruments relating to this Indenture.

SECTION 10.10. [Reserved].SECTION 10.11. Guarantee Obligations Reinstated.

The obligations of each Guarantor hereunder shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment which would otherwise have reduced the obligations of any Guarantor hereunder (whether such payment shall have been made by or on behalf of the Issuer or by or on behalf of a Guarantor) is rescinded or reclaimed from any of the Holders upon the insolvency, bankruptcy, liquidation or reorganization of the Issuer or any Guarantor or otherwise, all as though such payment had not been made. If demand for, or acceleration of the time for, payment by the Issuer or any other Guarantor is stayed upon the insolvency, bankruptcy, liquidation or reorganization of the Issuer or such Guarantor, all such Indebtedness otherwise subject to demand for payment or acceleration shall nonetheless be payable by each Guarantor as provided herein.

SECTION 10.12. Guarantee Obligations Not Affected.

To the fullest extent permitted by law, the obligations of each Guarantor hereunder shall, subject to Section 10.04, not be affected, impaired or diminished in any way by any act, omission, matter or thing whatsoever, occurring before, upon or after any demand for payment hereunder (and whether or not known or consented to by any Guarantor or any of the Holders) which, but for this provision, might constitute a whole or partial defense to a claim against any Guarantor hereunder or might operate to release or otherwise exonerate any Guarantor from any of its obligations hereunder or otherwise affect such obligations, whether occasioned by default of any of the Holders or otherwise, including, without limitation:

(a) any limitation of status or power, disability, incapacity or other circumstance relating to the Issuer or any other Person, including any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, winding-up or other proceeding involving or affecting the Issuer or any other Person;

(b) any irregularity, defect, unenforceability or invalidity in respect of any indebtedness or other obligation of the Issuer or any other Person under this Indenture, the Notes or any other document or instrument;

(c) any failure of the Issuer or any other Guarantor, whether or not without fault on its part, to perform or comply with any of the provisions of this Indenture, the Notes or any Guarantee, or to give notice thereof to a Guarantor;

(d) the taking or enforcing or exercising or the refusal or neglect to take or enforce or exercise any right or remedy from or against the Issuer or any other Person or their respective assets or the release or discharge of any such right or remedy;

(e) the granting of time, renewals, extensions, compromises, concessions, waivers, releases, discharges and other indulgences to the Issuer or any other Person;

(f) any change in the time, manner or place of payment of, or in any other term of, any of the Notes, or any other amendment, variation, supplement, replacement or waiver of, or any consent to departure from, any of the Notes or this Indenture, including, without limitation, any increase or decrease in the principal amount of or premium, if any, or interest on any of the Notes;

(g) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Issuer or a Guarantor;

(h) any merger or amalgamation of the Issuer or a Guarantor with any Person or Persons other than as set forth in Article Five;

(i) the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction by any present or future action of any governmental authority or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the Guarantee Obligations or the obligations of a Guarantor under its Guarantee; and

(j) any other circumstance, other than release of a Guarantor pursuant to Section 10.04, that might otherwise constitute a legal or equitable discharge or defense of the Issuer under this Indenture or the Notes or of a Guarantor in respect of its Guarantee hereunder.

SECTION 10.13. Waiver.

Without in any way limiting the provisions of Section 10.01, each Guarantor (to the extent it may lawfully do so) hereby waives notice of acceptance hereof, notice of any liability of any Guarantor hereunder, notice or proof of reliance by the Holders upon the obligations of any Guarantor hereunder, and diligence, presentment, demand for payment on the Issuer, protest, notice of dishonor or non-payment of any of the Guarantee Obligations, or other notice or formalities to the Issuer or any Guarantor of any kind whatsoever.

SECTION 10.14. No Obligation To Take Action Against the Issuer.

None of the Trustee, the Security Agent or any other Person shall have any obligation to enforce or exhaust any rights or remedies against the Issuer or any other Person or any property of the Issuer or any other Person before the Trustee is entitled to demand payment and performance by any or all Guarantors of their liabilities and obligations under their Guarantees or under this Indenture.

SECTION 10.15. Dealing with the Issuer and Others.

The Holders, without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of any Guarantor hereunder and without the consent of or notice to any Guarantor, may

- (a) grant time, renewals, extensions, compromises, concessions, waivers, releases, discharges and other indulgences to the Issuer or any other Person;
- (b) take or abstain from taking security or collateral from the Issuer or from perfecting security or collateral of the Issuer;
- (c) release, discharge, compromise, realize, enforce or otherwise deal with or do any act or thing in respect of (with or without consideration) any and all collateral, mortgages or other security given by the Issuer or any third party with respect to the obligations or matters contemplated by this Indenture or the Notes;
- (d) accept compromises or arrangements from the Issuer;

(e) apply all monies at any time received from the Issuer or from any security upon such part of the Guarantee Obligations as the Holders may see fit or change any such application in whole or in part from time to time as the Holders may see fit; and

(f) otherwise deal with, or waive or modify their right to deal with, the Issuer and all other Persons and any security as the Holders may see fit.

SECTION 10.16. Default and Enforcement.

If any Guarantor fails to pay in accordance with Section 10.06 hereof, the Trustee may proceed in its name as trustee hereunder in the enforcement of the Guarantee of any such Guarantor and such Guarantor's obligations thereunder and hereunder by any remedy provided by law, whether by legal proceedings or otherwise, and to recover from such Guarantor the obligations.

SECTION 10.17. Acknowledgment.

Each Guarantor hereby acknowledges communication of the terms of this Indenture, the Notes and the Guarantees, consents to and approves of the same.

SECTION 10.18. Costs and Expenses.

Each Guarantor shall pay on demand by the Trustee or the Security Agent any and all properly incurred costs, fees and expenses (including, without limitation, reasonable legal fees of counsel) incurred by the Trustee, the Security Agent or their respective agents, advisors and counsel or any of the Holders in enforcing any of their rights under any Guarantee.

SECTION 10.19. Cumulative Remedies.

No failure to exercise and no delay in exercising, on the part of the Trustee, the Security Agent or the Holders, any right, remedy, power or privilege hereunder or under this Indenture or the Notes, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under this Indenture or the Notes preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges in the Guarantee and under this Indenture, the Notes and any other document or instrument between a Guarantor and/or the Issuer and the Trustee are cumulative and not exclusive of any rights, remedies, powers and privilege provided by law.

SECTION 10.20. Survival of Guarantee Obligations.

Without prejudice to the survival of any of the other obligations of each Guarantor hereunder, the obligations of each Guarantor under Section 10.01 shall survive the payment in full of the Guarantee Obligations and shall be enforceable against such Guarantor, to the fullest extent permitted by law, without regard to and without giving effect to any defense, right of offset or counterclaim available to or which may be asserted by the Issuer or any Guarantor.

SECTION 10.21. Guarantee in Addition to Other Guarantee Obligations.

The obligations of each Guarantor under its Guarantee and this Indenture are in addition to and not in substitution for any other obligations to the Trustee, the Security Agent or to any of the Holders in relation to this Indenture or the Notes and any guarantees or security at any time held by or for the benefit of any of them.

SECTION 10.22. Severability.

Any provision of this Article Ten which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction unless its removal would substantially defeat the basic intent, spirit and purpose of this Indenture and this Article Ten.

SECTION 10.23. Successors and Assigns.

Subject to the provisions herein relating to the release of Guarantees, each Guarantee shall be binding upon and inure to the benefit of each Guarantor and the Trustee, the Security Agent and the other Holders and their respective successors and permitted assigns.

**ARTICLE ELEVEN  
SECURITY DOCUMENTS**

SECTION 11.01. Collateral and Security Documents.

(a) In order to secure the due and punctual payment of the principal of, premium, if any, and interest on the Notes and all other amounts payable by the Issuer and the Guarantors under this Indenture, the Notes and the Guarantees when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes, the Guarantees and this Indenture, the Issuer and each of the Mortgaged Guarantors have granted security interests in and Liens on the Collateral owned by it to the Security Agent on behalf of the Secured Parties pursuant to this Indenture, the Intercreditor Agreement and the Security Documents.

(b) Each Holder, by accepting a Note, consents and agrees to all of the terms, conditions and provisions of the Security Documents (including without limitation, provisions providing for release of Collateral), the Intercreditor Agreement and this Indenture, as the same may be amended from time to time pursuant to the provisions of the Security Documents, the Intercreditor Agreement and this Indenture and directs the Security Agent to sign these documents.

(c) Unless an Event of Default shall have occurred and be continuing, the Issuer or the applicable Mortgaged Guarantor will have the right to remain in possession and retain exclusive control of the Collateral securing the Notes or the Guarantee of such Guarantor (other than the Equity Interests of the Mortgaged Guarantors and any Trust Monies and other than as set forth in the Security Documents), to freely operate or use the Collateral, to alter, maintain or repair the Collateral in the ordinary course, and to collect, invest and dispose of any income thereon. In addition, unless an Event of Default shall have occurred and be continuing, the Issuer may amend, modify, supplement, replace, extend, renew or waive any term of, or terminate, or take any other action with respect to any Assigned Right, Assigned Property and Assigned Contract comprising the Collateral to the extent not otherwise prohibited by the terms of this Indenture, including the provisions described under Section 4.14.

SECTION 11.02. Recording, Etc.

(a) The Issuer and the Mortgaged Guarantors shall take or cause to be taken, within the time period permitted in this Indenture or the Security Documents, all action reasonably necessary or required to perfect, maintain, preserve and protect the Security Interests in the Collateral granted by the Security Documents, including, but not limited to, causing all financing statements (it being understood that, as of the Issue Date, no financing statements are necessary or required to be filed in any state of the United States or the District of Columbia to perfect the Security Interests in the Collateral (as in existence on the Issue Date) granted by the Security Documents), Ship Mortgages, Security Agreements and other instruments of further assurance, including, without limitation, continuation statements covering security interests in personal property to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, and shall execute and file such financing statements and cause to be issued and filed such continuation statements, all in such manner and in such places as may be required by law fully to preserve and protect the rights of the Holders, the Trustee and the Security Agent under this Indenture and the Security Documents to all property comprising the Collateral.

The Issuer and the Mortgaged Guarantors shall from time to time, within the time period permitted in this Indenture or the Security Documents, promptly pay and discharge all mortgage and financing and continuation statement recording and/or filing fees, charges and taxes relating to this Indenture and the Security Documents, any amendments thereto and any other instruments of further assurance.

(b) The Issuer shall furnish to the Trustee and Security Agent (i) at the time of execution and delivery of this Indenture, Opinion(s) of Counsel to the effect that, in the opinion of such counsel, this Indenture and the grant of a Security Interest in the Collateral intended to be made by each Security Document (other than the Ship Mortgages) and all other instruments of further assurance or assignment have been properly recorded and filed to the extent necessary to perfect the Security Interests created by each such Security Document and reciting the details of such action; and (ii) within 30 calendar days of the Issue Date, Opinions of Counsel to the effect that, in the opinion of such counsel, the grant of a Security Interest in the Collateral intended to be made by each Ship Mortgage over each Existing Mortgaged Vessel and all other instruments



of further assurance or assignment have been properly recorded and filed to the extent necessary to perfect the Security Interests created by each such Security Document and reciting the details of such action. For the avoidance of doubt, such Opinion(s) of Counsel may contain qualifications and assumptions in respect of acknowledgements that are not required to be delivered in accordance with Section 11.09(a), in addition to customary assumptions and qualifications.

SECTION 11.03. Disposition of Collateral Without Release.

(a) Notwithstanding the provisions of Section 11.04, so long as no Event of Default shall have occurred and be continuing, the Issuer or any Mortgaged Guarantor may, in accordance with the provisions of this Indenture, without any release or consent by the Trustee or the Security Agent:

- (i) sell or otherwise dispose of any machinery, equipment, furniture, tools, materials or supplies or other similar property subject to the Lien of the Security Documents, which may have become worn out or obsolete;
- (ii) grant rights-of-way and easements over or in respect of any real property; provided, however, that such grant will not, in the reasonable opinion of the Board of Directors of the Issuer or the relevant Mortgaged Guarantor, as the case may be, materially impair the usefulness of such property in the conduct of the Issuer's business and will not be materially prejudicial to the interests of the Holders;
- (iii) abandon, terminate, cancel, release, extend, renew, replace, amend or modify any leases, contracts or rights-of-way subject to the Lien of any of the Security Documents or surrender or modify any franchise, license or permit subject to the Lien of any of the Security Documents which it may own or under which it may be operating;
- (iv) alter, repair, replace, change the location or position of and add to its plants, structures, machinery, systems, equipment, fixtures and appurtenances;
- (v) demolish, dismantle, tear down or scrap any Collateral (other than the Mortgaged Vessels or Mortgaged Container Assets), or abandon any thereof (other than the Mortgaged Vessels or Mortgaged Container Assets), if in the good faith opinion of the Issuer or the relevant Mortgaged Guarantor, as the case may be, such demolition, dismantling, tearing down, scrapping or abandonment is in the interests of the Issuer or the relevant Mortgaged Guarantor, as the case may be, and the Fair Market Value and utility of the Collateral as an entirety will not thereby be impaired in any material respect; or
- (vi) apply insurance proceeds received under such circumstances other than an Event of Loss to the repair of the Mortgaged Vessel or Mortgaged Container Asset to which such insurance proceeds related in accordance with the Security Documents.

(b) In the event that the Issuer or any Mortgaged Guarantor has sold, exchanged or otherwise disposed of or proposes to sell, exchange or otherwise dispose of any portion of the Collateral which under the provisions of this Section 11.03 may be sold, exchanged or otherwise disposed of by the Issuer or such Mortgaged Guarantor without any release or consent of the Trustee or the Security Agent, and the Issuer or such Mortgaged Guarantor, as the case may be, requests the Security Agent to furnish a written disclaimer, release or quitclaim of any interest in such property under any of the Security Documents, the Security Agent shall, at the cost and expense of the Issuer and the Mortgaged Guarantors, promptly execute such an instrument upon delivery to the Trustee and the Security Agent of (i) an Officer's Certificate by the Issuer or such Mortgaged Guarantor, as the case may be, (A) reciting the sale, exchange or other disposition made or proposed to be made and describing in reasonable detail the property affected thereby, and stating that such property is property which by the provisions of this Section 11.03 may be sold, exchanged or otherwise disposed of or dealt with by the Issuer or such Mortgaged Guarantor, as the case may be, without any release or consent of the Trustee or the Security Agent, and (B) that all conditions precedent provided in this Indenture, the Guarantees, the Notes and the Security Documents relating to the written disclaimer, release or quitclaim of any interest in such property have been complied with, and (ii) an Opinion of Counsel stating that (A) the sale, exchange or other disposition made or proposed to be made was duly taken by the Issuer or such Mortgaged Guarantor, as the case may be, in conformity with a designated subsection of Section 11.03(a) and that the execution of such written disclaimer, release or quitclaim is appropriate under this Section 11.03, and (B) that all conditions precedent provided in this Indenture, the Guarantees, the Notes and the Security Documents relating to the written disclaimer, release or quitclaim of any interest in any such property have been complied with.

Any disposition of Collateral made in compliance with the provisions of this Section 11.03 shall be deemed not to impair the Security Interests in contravention of the provisions of this Indenture.

Any such disclaimer, release or quitclaim shall be without recourse to, or any representation or warranty by, the Trustee or the Security Agent.

#### SECTION 11.04. Release of Collateral.

(a) The Issuer and each Mortgaged Guarantor shall have the right to sell, exchange or otherwise dispose of any of the Collateral owned by it (other than Trust Monies, which are subject to release from the Lien of this Indenture and the Security Documents as set forth in Section 12.02), upon compliance with the requirements and conditions of this Section 11.04(a), and the Security Agent shall release the same from the Lien of this Indenture and the Security Documents, as the case may be, upon receipt by the Trustee and the Security Agent of a direction from the Issuer and any applicable Mortgaged Guarantor directing such release (a "Release Notice") and describing the property to be so released, together with delivery of the following:

(i) if the property to be released has a Fair Market Value equal to or greater than \$10.0 million, a resolution of the Board of Directors of the Issuer or the relevant Mortgaged Guarantor, as the case may be, approving such release;

(ii) an Officer's Certificate of the Issuer or the relevant Mortgaged Guarantor (i.e. the relevant owner or owners of the Collateral in question), as the case may be, dated the date of the application for such release, in each case stating in substance the following:

(1) that the release complies with Section 4.12, Section 4.13, Section 11.09 and this Section 11.04;

(2) that no Default or Event of Default has occurred and is continuing;

(3) the Fair Market Value, as of a date no more than 30 days prior to the date of the application for such release, of the property (other than Trust Monies) to be released at the date of such application for release;

(4) that all conditions precedent in this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents relating to the release of the Collateral in question have been complied with;

(iii) One or more Opinions of Counsel which, when considered collectively, shall be substantially to the effect that all conditions precedent provided in this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents relating to the release of the Collateral have been complied with.

In connection with any release, the Issuer and the Mortgaged Guarantors shall (i) execute, deliver and record or file and obtain such instruments as may be required, including, without limitation, amendments to the Security Documents and (ii) deliver to the Trustee and the Security Agent evidence of the satisfaction of the applicable provisions of this Indenture, the Intercreditor Agreement and the Security Documents as set forth in this Indenture, the Intercreditor Agreement and the Security Documents.

(b) Notwithstanding any provision of this Section 11.04 to the contrary, any Collateral may be released in accordance with an enforcement action pursuant to the provisions of the Intercreditor Agreement or any Additional Intercreditor Agreement.

(c) In case a Default or an Event of Default shall have occurred and be continuing, the Issuer and the Restricted Subsidiaries, while in possession of the Collateral (other than the Equity Interests of the Mortgaged Guarantors and any Trust Monies and other than as set forth in the Security Documents), may do any of the things enumerated in this Section 11.04 only if the Holders of a majority in aggregate principal amount of the outstanding Notes shall consent to such action, in which event any certificate filed under this Section 11.04 shall omit the statement to the effect that no Default or Event of Default has occurred and is continuing.

(d) The Security Agent and the Trustee (but only if required) shall take all reasonable actions requested by the Issuer that are necessary to effectuate any release of Collateral securing the Notes and the Guarantees, in accordance with the provisions of this Indenture, the Intercreditor Agreement or any Additional Intercreditor Agreement and the relevant Security Document. Each of the releases set forth in this Section 11.04 shall be effected by the Security Agent without the consent of the Holders or any action on the part of the Trustee (unless action is required by it to effectuate release).

(e) Any releases of Collateral made in compliance with the provisions of this Section 11.04 shall be deemed not to impair the Security Interests created by this Indenture or the Security Documents, as the case may be, in favor of the Security Agent on behalf of the Trustee or the Holders of the Notes or any Additional Notes, in contravention of the provisions of this Indenture.

(f) For the avoidance of doubt, the foregoing provisions shall not permit the Security Agent to release or grant any waivers or otherwise take any action with respect to releasing the Liens of any Secured Party under the Intercreditor Agreement other than the Trustee and the Holders over any Collateral securing liabilities owed to any such Secured Parties (and any such release, waiver or action shall be governed by the Debt Documents applicable to such Secured Parties, the Intercreditor Agreement and any Additional Intercreditor Agreement).

SECTION 11.05. No Impairment of Security Interest.

(a) The Issuer shall not, and shall not permit any Restricted Subsidiary to, take or knowingly or negligently omit to take any action that would have the result of materially impairing the Security Interests with respect to the Collateral (it being understood, subject to the proviso below, that the incurrence of Permitted Liens shall under no circumstances be deemed to materially impair the security interest with respect to the Collateral) for the benefit of the Trustee, the Security Agent and the Holders, and the Issuer shall not, and shall not permit any Restricted Subsidiary to, grant to any Person other than the Security Agent for the benefit of the Trustee and the Holders and the other beneficiaries described in the Security Documents and the Intercreditor Agreement or any Additional Intercreditor Agreement, any interest whatsoever in any of the Collateral, except that:

(i) the Issuer and its Restricted Subsidiaries may incur Permitted Liens;

(ii) the Collateral may be discharged and released in accordance with this Indenture, the applicable Security Documents or the Intercreditor Agreement or any Additional Intercreditor Agreement;

(iii) the applicable Security Documents may be amended from time to time to cure any ambiguity, mistake, omission, defect, manifest error or inconsistency therein; and

(iv) the Issuer and its Restricted Subsidiaries may amend the Security Interests in any manner that does not adversely affect Holders in any material respect;

(b) For the avoidance of doubt, however, in each case of clauses (i), (iii) and (iv) above, in addition to any other requirements set forth in this Indenture, the Security Documents and/or the Intercreditor Agreement, the Security Documents may not be amended, extended, renewed, restated, supplemented, released or otherwise modified or replaced, unless contemporaneously with any such action, the Issuer delivers to the Trustee, (A) either (1) an Officer's Certificate of the relevant Person, which confirms the solvency of the Person granting such Security Interest, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, release, modification or replacement, or (2) an Opinion of Counsel, confirming that, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, release, modification or replacement, the Lien or Liens created under the Security Documents, so amended, extended, renewed, restated, supplemented, released, modified or replaced are valid Liens not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, that such Lien or Liens were not otherwise subject to immediately prior to such amendment, extension, renewal, restatement, supplement, release, modification or replacement, (B) an Officer's Certificate stating that all conditions precedent in this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents relating to any such action have been complied with and (C) an Opinion of Counsel stating that all conditions precedent in this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents relating to any such action have been complied with. In the event that the Issuer complies with the requirements of this Section 11.05, the Trustee and the Security Agent shall (subject to customary protections and indemnifications each of the Trustee and the Security Agent being indemnified and secured to its satisfaction) consent to such amendments without the need for instructions from the Holders.

#### SECTION 11.06. Suits To Protect the Collateral.

Following an Event of Default, subject to the provisions of the Intercreditor Agreement and the Security Documents, the Security Agent shall have the power but not the obligation (upon notice to the Trustee) to institute and to maintain such suits and proceedings to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of any of the Security Documents or this Indenture, and such suits and proceedings to preserve or protect its interests and the interests of the Holders in the Collateral (including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Security Interests or be prejudicial to the interests of the Holders, the Trustee or the Security Agent).

SECTION 11.07. Purchaser Protected.

In no event shall any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Security Agent to execute the release or to inquire as to the existence or satisfaction of any conditions required by the provisions hereof for the exercise of such authority; nor shall any purchaser or other transferee of any property or rights permitted by this Article Eleven to be sold or otherwise disposed of by the Issuer or a Mortgaged Guarantor be under obligation to ascertain or inquire into the authority of the Issuer or any applicable Mortgaged Guarantor to make any such sale or other transfer.

SECTION 11.08. Powers Exercisable by Receiver or Trustee.

In case the Collateral owned by the Issuer or any Mortgaged Guarantor shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article Eleven, the Intercreditor Agreement and the Security Documents upon the Issuer and the Mortgaged Guarantors with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or the relevant Mortgaged Guarantor, as the case may be, or of any officer or officers thereof required by the provisions of this Article Eleven.

SECTION 11.09. Addition and Substitution of Qualified Collateral; Designation as a Mortgaged Vessel.

(a) If the Issuer or any Restricted Subsidiary:

(i) adds any Qualified Collateral in accordance with Section 4.12 or pursuant to clause (13) of the definition of “*Permitted Liens*”,

(ii) (x) receives Qualified Collateral as consideration under Section 4.13(II)(a)(3) or (y) elects to apply any Trust Monies comprising Net Proceeds from Asset Sales involving Collateral to acquire Qualified Collateral in accordance with 4.13(II)(c)(2) or (z) elects to apply any Trust Monies comprising Excess Collateral Proceeds remaining after a Collateral Sale Offer to acquire Qualified Collateral; or

(iii) (x) elects to apply any Trust Monies comprising Event of Loss Proceeds to acquire Qualified Collateral pursuant to Section 4.21(c)(2) or (y) elects to apply any Trust Monies comprising Excess Loss Proceeds remaining after an Event of Loss Offer to acquire Qualified Collateral;

then within 30 calendar days of the date on which Qualified Collateral is received, acquired, added or substituted, the Issuer or the Restricted Subsidiary that is the owner of such Qualified Collateral (the “*Tendered Asset Owner*”), shall, if it is not already a Mortgaged Guarantor, execute a Guarantee of the Notes and become a Mortgaged Guarantor under this Indenture (and must be or become a Wholly Owned Restricted Subsidiary of the Issuer at such time) and it shall provide security over such Qualified Collateral substantially similar to the Security Interests

created on or about the Issue Date securing Collateral and it shall deliver to the Trustee the documents and certificates required by this Indenture and the Security Documents (the date of such delivery being the “*Delivery Date*”), including, among other things: (A) in the case of a Qualified Vessel, (i) deliver a Ship Mortgage with respect to such Vessel dated the Delivery Date, which in the case of (w) a Cypriot Ship Mortgage, shall be substantially similar to the Cypriot Ship Mortgages entered into on the Issue Date, (x) a Panamanian Ship Mortgage, shall be substantially similar to the Panamanian Ship Mortgage entered into on the Issue Date, (y) a Bahamian Ship Mortgage, shall be substantially similar to the Bahamian Ship Mortgages entered into on the Issue Date, and (z) any other Ship Mortgage from time to time established under the terms of any other jurisdiction, including any Ship Mortgage in connection with the transfer or change of flag to a Permitted Flag Jurisdiction, shall be substantially consistent with the foregoing forms of Ship Mortgage, subject to requirements of applicable law and customary practice in such other jurisdiction (such Ship Mortgage having been duly received for recording in the appropriate registry office); (ii) deliver a share pledge (a “*Share Pledge*”) (entered into by the Issuer or the Restricted Subsidiary that is the parent of such Mortgaged Guarantor) granting security in all of the Equity Interests of such Mortgaged Guarantor, dated the Delivery Date, which in the case of (y) a Cypriot Share Pledge, shall be substantially similar to the Cypriot Share Pledges entered into on the Issue Date, and (z) an English Share Pledge, shall be substantially similar to the English Share Pledge entered into on the Issue Date, each such Share Pledge otherwise in a customary form for the relevant jurisdiction; (iii) deliver, to the extent required to be obtained by this Indenture, the certificate of a Designated Appraiser dated not more than 30 calendar days prior to the Delivery Date setting forth its determination of the Appraised Value of such Vessel; (iv) deliver an Assignment of Freights and Hires with respect to such Vessel dated the Delivery Date substantially similar to the Assignment of Freights and Hires entered into on the Issue Date and, unless the Issuer reasonably determines that to do so would impede the commercial ability of the Issuer to execute the applicable Charter, deliver an acknowledgement by the applicable charterer (in the case of any assigned Charter), manager (in the case of any assigned Management Agreement) and Charter guarantor (in the case of any assigned Charter Guarantee) of that Assignment of Freights and Hires; (v) deliver an Assignment of Insurance with respect to such Vessel dated the Delivery Date substantially similar to the Assignment of Insurance hereto; (vi) deliver a report of an insurance broker with respect to insurance policies maintained by the Tendered Asset Owner with respect to such Vessel; (vii) deliver a current certificate from Bureau Veritas, Lloyds Register of Shipping, or any member of the International Association of Classification Societies or other classification society of recognized international standing agreeable to the Trustee for such Vessel, which shall be free from any overdue material recommendations; (viii) deliver a certificate of ownership and encumbrances from the official registry of such Vessel; and (ix) deliver a pledge over the applicable Earnings Account dated the Delivery Date and substantially similar to the pledges over Earnings Accounts entered into on the Issue Date or otherwise in a customary form for the relevant jurisdictions or (B) in the case of a Qualified Container Asset, deliver Security Documents securing such asset and comparable insurance policies, leases, hires and earnings providing for Security Interests, substantially similar to those created on or about the Issue Date securing Collateral and securing the Equity Interests of such Mortgaged Guarantor, and, under either (A) or (B), deliver (x) evidence to the effect that all Indebtedness outstanding with respect to such Qualified Container Asset has been repaid and that all security granted by, or covering

assets or property of, the Issuer or any of the Restricted Subsidiaries with respect to such Indebtedness shall have been released; (y) a certificate of an officer of the Issuer certifying as to the ownership of such Qualified Vessel or Qualified Collateral and as to the compliance with the terms of this Indenture, the Intercreditor Agreement, the Security Documents and any Additional Intercreditor Agreement and (z) an Opinion of Counsel as to the compliance with the terms of this Indenture, the Security Documents, the Intercreditor Agreement and any Additional Intercreditor Agreement and with respect to perfection of security interest in such Qualified Collateral and general customary corporate matters.

(b) The Issuer or any Mortgaged Guarantor may, at its option, at any time and from time to time, substitute Qualified Collateral for Mortgaged Vessels (other than Existing Mortgaged Vessels), Mortgaged Container Assets and/or Trust Monies of an equivalent or greater Appraised Value or Fair Market Value (including without limitation in connection with any refinancing transaction) or add further Mortgaged Vessels or Mortgaged Container Assets to the Collateral; *provided* that (i) in the case of a substitution only, at the time of such substitution no Default shall have occurred and be continuing and (ii) such substitution or addition shall comply with Section 11.09(a).

(c) Notwithstanding the foregoing, unless an Event of Default shall have occurred and be continuing, the Issuer may amend, modify, supplement, replace, extend, renew or waive any term of, or terminate, or take any other action with respect to any Assigned Right, Assigned Property and Assigned Contract comprising the Collateral to the extent not otherwise prohibited by the terms of this Indenture, including the provisions described under Section 4.14.

#### SECTION 11.10. Determinations Relating to Collateral.

In the event (i) the Trustee or the Security Agent shall receive any written request from the Issuer or any Mortgaged Guarantor under any Security Document for consent or approval with respect to any matter or thing relating to any Collateral or the obligations of the Issuer or such Mortgaged Guarantor with respect thereto or (ii) there shall be required from the Security Agent under the provisions of any Security Document any performance or the delivery of any instrument or (iii) the Trustee or the Security Agent shall become aware of any nonperformance by the Issuer or any Mortgaged Guarantor of any covenant or any breach of any representation or warranty of the Issuer or such Mortgaged Guarantor set forth in any Security Document, then, in each such event, the Security Agent shall be entitled (but not obligated) (upon notice to the Trustee) at the expense of the Issuer to hire experts, consultants, agents and attorneys (including, without limitation, those with appropriate experience and qualifications in all aspects of shipping, including operations and finance) to advise the Security Agent on the manner in which the Security Agent should respond to such request or render any requested performance or response to such nonperformance or breach or to act on its behalf, including without limitation, in connection with Collateral located outside the United States. The Security Agent shall be fully protected in the taking of any action recommended or approved by any such expert, consultant, agent or attorney or agreed to by a majority of Holders pursuant to Section 6.05 and for any action taken by such consultant, agent or attorney.



SECTION 11.11. Release upon Termination of the Issuer's Obligations.

In the event that the Issuer delivers an Officer's Certificate certifying that all of their obligations under this Indenture have been satisfied and discharged by complying with the provisions of Article Eight and the Intercreditor Agreement, the Security Interests in favor of the Trustee and the Holders shall automatically terminate, be released and have no further force and effect and the Security Agent shall not be deemed to hold the Security Interests for the benefit of the Trustee and the Holders and shall, at the expense of the Issuer and the Mortgaged Guarantors, promptly deliver such releases of the Security Interest as may be reasonably requested by the Issuer.

SECTION 11.12. [Reserved].SECTION 11.13. [Reserved].SECTION 11.14. Change of Flag.

Notwithstanding anything to the contrary in this Indenture, the Issuer or a Mortgaged Guarantor may transfer or change the flag of any of its Mortgaged Vessels to the flag of a Permitted Flag Jurisdiction and in connection therewith the Security Agent shall release the existing Ship Mortgage and related Security Documents (for the benefit of the Trustee and the Holders) to which any Mortgaged Vessel is subject in connection with the transfer or change of the flag of such Mortgaged Vessel to another Permitted Flag Jurisdiction if (i) the owner of the Mortgaged Vessel has executed (A) a new Ship Mortgage (granting the Security Agent a Security Interest in such Mortgaged Vessel subject only to Permitted Liens) and (B) the related Security Documents with respect to such Mortgaged Vessel, dated the date such Mortgaged Vessel shall be released from the existing Ship Mortgage and related Security Documents to which it is subject, which Ship Mortgage and related Security Documents shall be in appropriate form for recording or registration in the appropriate governmental offices of the Permitted Flag Jurisdiction under which it is being reflagged and the appropriate governmental offices in the jurisdiction of incorporation and/or domicile of the applicable Issuer or Mortgaged Guarantor if required by applicable law in order to perfect the Security Interests therein created, as to which the Trustee and the Security Agent will be entitled to rely on an Opinion of Counsel to the Issuer with respect thereto; and (ii) the Mortgaged Guarantor has made all necessary arrangements for recording the Ship Mortgage referred to in clause (i) above in the appropriate registry office of the Permitted Flag Jurisdiction under which the Mortgaged Vessel is being reflagged as soon as reasonably practicable and to make any other filing necessary to perfect the security therein. In addition to the Opinion of Counsel referenced in clause (i)(B) above, prior to the Security Agent providing any such release, the Security Agent shall be entitled to receive an Officer's Certificate and an Opinion of Counsel each stating that such release is authorized or permitted by the terms of this Indenture, the Intercreditor Agreement, any Additional Intercreditor Agreement and the Security Documents, and that all conditions precedent provided in this Indenture, the Intercreditor Agreement, any such Additional Intercreditor Agreement and the Security Documents relating to the execution and delivery of such release have been complied with.

For the avoidance of doubt, the foregoing provisions shall not permit the Security Agent to release or grant any waivers or otherwise take any action with respect to releasing the Liens of any Secured Party other than the Trustee and the Holders over any Collateral securing liabilities owed to any such Secured Parties (and any such release, waiver or action shall be governed by the Debt Documents applicable to such Secured Parties, the Intercreditor Agreement and any Additional Intercreditor Agreement).

SECTION 11.15. Appointment of Security Agent and Supplemental Security Agents.

The parties hereto acknowledge and agree, and each Holder by accepting the Notes, hereby appoints Deutsche Bank Trust Company Americas to act as Security Agent hereunder, and Deutsche Bank Trust Company Americas accepts such appointment. The Trustee and the Holders acknowledge that the Security Agent will be acting in respect to the Security Documents and the security granted thereunder on the terms outlined therein and in the Intercreditor Agreement. Notwithstanding anything to the contrary in any Security Document, in the event of any conflict between any provision set forth in any Security Document and any provision of this Indenture that affects any rights, privileges, protections and indemnities in favor of the Security Agent, such provision set forth in this Indenture shall prevail.

It is recognized that among other things, in case of litigation under this Indenture or the Security Documents, and in particular in case of the enforcement thereof on default, or in the case the Security Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Security Agent or hold title to the properties, in trust, as herein granted or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Security Agent appoint an individual or institution as a separate or co-agent. The following provisions of this Section 11.15 and Section 11.17 are adopted therefor.

(a) The Security Agent may perform any of its duties and exercise any of its rights and powers through one or more sub-agents or co-agents appointed by it. The Security Agent and any such sub-agent or co-agent may perform any of its duties and exercise any of its rights and powers through its affiliates. All of the provisions of this Indenture applicable to the Security Agent, including, without limitation, its rights to be indemnified, shall apply to and be enforceable by any such sub-agent and Affiliates of a Security Agent and any such sub-agent or co-agent. All references herein to a "Security Agent" shall include any such sub-agent or co-agent and Affiliates of a Security Agent or any such sub-agent or co-agent.

(b) It is the purpose of this Indenture and the Security Documents that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. Without limiting paragraph Section 11.15(a) hereof, it is recognized that in case of litigation under, or enforcement of, this Indenture or any of the Security Documents, or in case the Security Agent deems that by reason of any present or future law of any jurisdiction or its internal policies, it may not exercise any of the rights, powers or remedies granted herein or in any of the Security Documents or take any other action which may be desirable or necessary in connection therewith, the Security Agent is hereby authorized to appoint an additional individual or

institution selected by the Security Agent in its sole discretion as a separate agent, co-agent, administrative agent, security agent, sub-agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a "Supplemental Security Agent" and collectively as "Supplemental Security Agents").

(c) In the event that the Security Agent appoints a Supplemental Security Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Indenture or any of the other Security Documents to be exercised by or vested in or conveyed to such Security Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Security Agent to the extent, and only to the extent, necessary to enable such Supplemental Security Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Security Documents and necessary to the exercise or performance thereof by such Supplemental Security Agent shall run to and be enforceable by either such Security Agent or such Supplemental Security Agent, and (ii) the provisions of this Indenture (and, in particular, this Article Eleven) that refer to the Security Agent shall inure to the benefit of such Supplemental Security Agent and all references therein to the Security Agent shall be deemed to be references to a Security Agent and/or such Supplemental Security Agent, as the context may require.

(d) Should any instrument in writing from the Issuer or any other obligor be required by any Supplemental Security Agent so appointed by the Security Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Issuer and relevant Guarantor shall execute, acknowledge and deliver any and all such instruments promptly upon request by the Security Agent. In case any Supplemental Security Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Security Agent, to the extent permitted by law, shall vest in and be exercised by the Security Agent until the appointment of a new Supplemental Security Agent.

#### SECTION 11.16. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Security Agent and, where it is hereby expressly required, to the Issuer. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "act" of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Article Eleven.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a

notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to such officer the execution thereof. Where such execution is by a signer acting in a capacity other than such signer's individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer's authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Security Agent deems sufficient.

SECTION 11.17. Rights and Protections of the Security Agent.

(a) The Security Agent shall be entitled to: (i) the same rights and protections in this Indenture as are afforded to the Trustee under this Indenture (provided, however, that any reference to "negligence" with respect to the Trustee shall be deemed to be a reference to "gross negligence" with respect to the Security Agent) and (ii) the same rights, protections, indemnities and immunities in this Indenture as are afforded to the Security Agent in the Intercreditor Agreement as if such rights, protections, indemnities and immunities were specifically set forth herein.

(b) To secure the Issuer's payment obligations in Clause 22 and Clause 23.1 of the Intercreditor Agreement, the Security Agent shall have a Lien prior to the Notes against all money or property held or collected by the Security Agent, in its capacity as Security Agent, except money or property held in trust to pay principal and interest on particular Notes.

(c) In no event shall the Security Agent have any fiduciary relationship with the Holders or the Trustee and no implied covenants, obligations or responsibilities shall be read into this Indenture, the Intercreditor Agreement or the Security Documents against the Security Agent.

SECTION 11.18. Resignation or Replacement of Security Agent.

(a) Any resignation or replacement of the Security Agent shall be made in accordance with the Intercreditor Agreement.

SECTION 11.19. Intercreditor Agreement and Additional Intercreditor Agreement(s).

(a) The Issuer, the Trustee and the Security Agent are authorized (without any further consent of the Holders) to enter into the Intercreditor Agreement and, if applicable, any Additional Intercreditor Agreement to give effect to the provisions of this Indenture. Each Holder of Notes and any Additional Notes, by accepting such Note, will be deemed to have:

(1) appointed and authorized the Security Agent and the Trustee to give effect to the provisions in the Intercreditor Agreement, any Additional Intercreditor Agreements and the Security Documents;

(2) agreed to be bound by the provisions of the Intercreditor Agreement, any Additional Intercreditor Agreements and the Security Documents; and

(3) irrevocably appointed the Security Agent and the Trustee to act on its behalf to enter into and comply with the provisions of the Intercreditor Agreement, any Additional Intercreditor Agreements and the Security Documents.

(b) At the request of the Issuer, in connection with the incurrence by the Issuer or its Restricted Subsidiaries of any (x) Indebtedness permitted pursuant to Section 4.10(a) or clauses (1), (2), (3), (4) (other than with respect to Capital Lease Obligations), (5), (6), (8), (9), (10), (11), (14), (16), or (21) of Section 4.10(b) and (y) any Permitted Refinancing Indebtedness in respect of Indebtedness referred to in the foregoing clause (x), the Issuer, the relevant Restricted Subsidiaries, the facility agent under the Revolving Credit Facility, the Trustee and the Security Agent shall enter into with the holders of such Indebtedness (or their duly authorized representatives) an intercreditor agreement (an “*Additional Intercreditor Agreement*”) or a restatement, amendment or other modification of the existing Intercreditor Agreement on substantially the same terms as the Intercreditor Agreement (or terms not materially less favorable to the Holders), including containing substantially the same terms with respect to release of Guarantees and priority and release of the Security Interests under the Security Documents; *provided* that such Additional Intercreditor Agreement will not impose any personal obligations on the Trustee or Security Agent or, in the opinion of the Trustee or Security Agent, as applicable, adversely affect the rights, duties, liabilities or immunities of the Trustee or Security Agent under this Indenture or the Intercreditor Agreement.

(c) In addition, at the direction of the Issuer and without the consent of Holders, the Trustee and the Security Agent shall from time to time enter into one or more amendments to any Intercreditor Agreement or Additional Intercreditor Agreement to:

(1) cure any ambiguity, omission, defect, manifest error or inconsistency of any such agreement;

(2) increase the amount or types of Indebtedness covered by any such agreement that may be incurred by the Issuer or any Restricted Subsidiary that is subject to any such agreement (including with respect to any Intercreditor Agreement or Additional Intercreditor Agreement, the addition of provisions relating to new Indebtedness ranking junior in right of payment to the Notes);

(3) add Restricted Subsidiaries to the Intercreditor Agreement or an Additional Intercreditor Agreement;

(4) further secure the Notes (including Additional Notes);

(5) make provision for equal and ratable pledges of the Collateral to secure Additional Notes;

(6) implement any Permitted Liens;

(7) amend the Intercreditor Agreement or any Additional Intercreditor Agreement in accordance with the terms thereof; or

(8) make any other change to any such agreement that does not adversely affect the Holders in any material respect,

making all necessary provisions to ensure that the Notes and the Guarantees are secured by first-ranking Liens over the Collateral, that Indebtedness not exceeding \$40.0 million is senior to the Notes and the Guarantees from the proceeds of the enforcement of the Collateral and all other necessary provisions regarding voting, enforcement or other matters that are based on the Intercreditor Agreement and with such further modifications as would not be materially prejudicial to the interests of the Holders.

(d) The Issuer shall not otherwise direct the Trustee or the Security Agent to enter into any amendment to any Intercreditor Agreement or Additional Intercreditor Agreement without the consent of the Holders of the majority in aggregate principal amount of the Notes then outstanding, except as otherwise permitted under Article Nine, and the Issuer may only direct the Trustee and the Security Agent to enter into any amendment to the extent such amendment does not impose any personal obligations on the Trustee or Security Agent or, in the opinion of the Trustee or Security Agent, adversely affect their respective rights, duties, liabilities or immunities under this Indenture or the Intercreditor Agreement or any Additional Intercreditor Agreement. In connection with any such amendment to the Intercreditor Agreement or Additional Intercreditor Agreement, the Trustee and the Security Agent shall be entitled to receive and conclusively rely upon, an Officer's Certificate and an Opinion of Counsel each stating that such amendment is authorized or permitted by the terms of this Indenture, the Intercreditor Agreement, the Additional Intercreditor Agreement (if applicable) and the Security Documents, and that all conditions precedent provided in this Indenture, the Intercreditor Agreement, the Additional Intercreditor Agreement (if applicable) and the Security Documents relating to the execution and delivery of such amendment have been complied with.

(e) In relation to any Intercreditor Agreement or Additional Intercreditor Agreement, the Trustee (and Security Agent, if applicable) shall consent on behalf of the Holders to the payment, repayment, purchase, repurchase, defeasance, acquisition, retirement or redemption of any obligations subordinated to the Notes thereby; *provided, however*, that such transaction would otherwise comply with Section 4.11. In connection with providing any such consent, the Trustee and the Security Agent shall be entitled to receive and may conclusively rely upon, an Officer's Certificate and an Opinion of Counsel each stating that all conditions precedent provided in this Indenture, the Intercreditor Agreement, the Additional Intercreditor Agreement (if applicable) and the Security Documents relating to such consent have been complied with.

(f) The Issuer shall make copies of the Intercreditor Agreement or any Additional Intercreditor Agreement available for inspection during normal business hours on any Business Day upon prior written request at the Issuer's offices.

**ARTICLE TWELVE  
APPLICATION OF TRUST MONIES**

SECTION 12.01. “Trust Monies” Defined.

All cash or Cash Equivalents deposited by the Issuer or any Restricted Subsidiary with the Trustee as, or in respect of, Collateral:

- (a) upon the release of property from the Lien of any of the Security Documents;
- (b) as compensation for, or proceeds of the sale of all or any part of the Collateral taken by eminent domain or purchased by, or sold pursuant to any order of, a governmental authority or otherwise disposed of;
- (c) in connection with an Event of Loss or Asset Sale with respect to Collateral;
- (d) pursuant to certain provisions of the Security Documents;
- (e) as proceeds of any other sale or other disposition of all or any part of the Collateral by or on behalf of the Security Agent or any collection, recovery, receipt, appropriation or other realization of or from all or any part of the Collateral pursuant to the Security Documents or otherwise;
- (f) as part of Qualified Collateral;
- (g) for application under this Indenture as provided in this Indenture or any Security Document, or whose disposition is not otherwise specifically provided for in this Indenture or in any Security Document; or
- (h) which represent net proceeds from the issuance of Additional Notes, in each case required to be deposited with the Security Agent pending the acquisition of one or more Mortgaged Vessels or Mortgaged Container Assets (and to make Permitted Repairs, as applicable),

all such moneys being herein sometimes called “Trust Monies”; *provided, however*, that Trust Monies shall not include (a) any property (i) deposited with the Trustee or the Security Agent pursuant to Sections 4.09, 4.13, 4.21, 4.23 or Articles Three or Eight or held by it as Paying Agent or (ii) delivered to or received by the Trustee pursuant to Section 6.10 hereof or (b) any investment earnings on Trust Monies deposited with the Trustee, which investment earnings shall be paid over to the Issuer upon its direction and shall be held by the Trustee as a part of the Collateral and, upon any entry upon or sale or other disposition of the Collateral or any part thereof pursuant to the Intercreditor Agreement, any Additional Intercreditor Agreement or any of the Security Documents, said Trust Monies shall be applied in accordance with the Intercreditor Agreement and any Additional Intercreditor Agreement, and if the Trustee for the

benefit of itself and the Holders receives any such funds pursuant to the Intercreditor Agreement or any Additional Intercreditor Agreement, then such amounts shall be applied by the Trustee pursuant to Section 6.10; but, prior to any such entry, sale or other disposition, all or any part of the Trust Monies may be withdrawn, and shall be released, paid or applied by the Security Agent, from time to time as provided in Sections 12.02 through 12.04, inclusive. It is understood and agreed that any amounts received by the Security Agent or the Trustee in respect of expenses, fees or indemnity amounts owed to the Security Agent or the Trustee shall not be deemed to be Trust Monies.

Within 90 calendar days of the Issue Date, or such earlier date that there are Trust Monies, there shall be established and, at all times hereafter until this Indenture shall have terminated, there shall be maintained an account or accounts (for different currencies) which shall be entitled the "Collateral Account" (the "*Collateral Account*"). The Collateral Account shall be established and maintained by the Issuer in its own name with the Trustee. All Trust Monies which are received by the Trustee shall be deposited in the Collateral Account and thereafter shall be held, applied and/or disbursed by the Security Agent or the Trustee in accordance with the terms of this Article Twelve. The Issuer and each Mortgaged Guarantor hereby pledges and grants a security interest to the Security Agent in, and the Security Agent shall have a Lien on and security interest in, the Collateral Account and all cash and Cash Equivalents therein from time to time, and any proceeds thereof, for the benefit of the Holders as part of the Collateral.

SECTION 12.02. Use of Trust Monies.

The Security Agent shall direct that Trust Monies be released (A) as permitted under Section 11.09 and this Section 12.02 in connection with the addition or substitution of Collateral, (B) to the Trustee for application from time to time to the payment of the principal of (at a purchase price of not less than 100% of the principal amount of the relevant Notes), any Notes, on any Maturity Date or to the redemption thereof or the purchase thereof upon tender or in the open market or at private sale or upon any exchange or in any one or more of such ways, including, without limitation, pursuant to an offer to purchase, redemption or defeasance under Sections 4.09, 4.13, 4.21, 4.23 or Article Eight (including, in each case, each related required interest payment), or (C) to the agent under the Revolving Credit Facility, to repay or prepay obligations under the Revolving Credit Facility in an amount not to exceed the amount outstanding at the time of repayment or prepayment under the Revolving Credit Facility that has been used to acquire Mortgaged Vessels or Mortgaged Container Assets (to the extent such outstanding amount ranks super-senior to the Notes and any Additional Notes under the Intercreditor Agreement), as the Issuer shall direct in writing, upon receipt by the Security Agent and the Trustee of the following:

(a) an Officer's Certificate of the Issuer directing the application pursuant to this Section 12.02 of a specified amount of Trust Monies and, in case any such moneys are to be applied to payment of the Notes, designating the Notes so to be paid and, in case any such moneys are to be applied to the purchase of Notes, prescribing the method of purchase, the price or prices to be paid and the maximum aggregate principal amount of Notes to be purchased and any other provisions of this Indenture governing such purchase;



(b) cash in the maximum amount of the accrued interest, if any, required to be paid in connection with any such purchase, repayment or prepayment, which cash shall be deposited with the Trustee or the agent for the Revolving Credit Facility (as applicable) for such purpose; and

(c) an Officer's Certificate stating:

(i) (i) that no Default exists unless such Default would be cured thereby; and

(ii) that all conditions precedent and covenants therein provided for in this Indenture, the Intercreditor Agreement and any Additional Intercreditor Agreements relating to such application of Trust Monies have been complied with; and

(d) an Opinion of Counsel stating that all conditions precedent provided for in this Indenture, the Intercreditor Agreement and any Additional Intercreditor Agreements relating to such application of Trust Monies have been complied with.

Upon compliance with the foregoing provisions of this Section 12.02, the Security Agent shall apply Trust Monies as directed and specified by the Officer's Certificate specified in clause (a) above.

An Officer's Certificate expressed to be irrevocably directing the application of Trust Monies under this Section 12.02 to the payment of the principal of Notes or repayment or prepayment of obligations under the Revolving Credit Facility shall for all purposes of this Indenture be deemed the equivalent of the deposit of money with the Trustee for such purpose. Such Trust Monies and any cash deposited with the Trustee or the agent under the Revolving Credit Facility, as applicable, pursuant to clause (b) of this Section 12.02 for the payment of accrued interest shall not, after compliance with the foregoing provisions of this Section, be deemed to be part of the Collateral or Trust Monies.

In connection with any release of Trust Monies by the Security Agent, at the written direction of the Issuer, to the Issuer in connection with any addition or substitution of Collateral, such Trust Monies may be released to the Issuer not more than 10 days before the expected delivery date of the applicable additional or substitute Qualified Vessel or Qualified Container Assets (whether such Qualified Vessel or Qualified Container Assets have been or will be acquired through the direct purchase of such Qualified Vessel or Qualified Container Assets or the equity interests of any person owning such Qualified Vessel or Qualified Container Assets and which may include a Qualified Vessel or Qualified Container Assets owned by a Subsidiary (including a Subsidiary Guarantor) that is not a Mortgaged Guarantor) and will be deposited in an Issuer bank account and will then be remitted by the Issuer to the seller (or as the seller may direct) in the form of a conditional payment to the seller's bank (or as the seller may direct) in accordance with the terms of the acquisition contract and in a manner consistent with customary

market practice. During such 10 day period before the expected delivery date, the funds will be held until remitted to the applicable seller in a bank account in the name of the Issuer or a Mortgaged Guarantor on an unsecured basis and none of the Security Agent, the Trustee or Holders of Notes and holders of Additional Notes will have any security interest or lien on such funds. In the event that the Issuer or the applicable Mortgaged Guarantor shall not have delivered and/or filed the Security Documents required by this Indenture and the Security Documents to perfect the Security Interest of the Security Agent, the Trustee and the Holders of Notes and holders of Additional Notes in such Qualified Container Asset or Qualified Vessel and Related Assets or as required by this Indenture on or prior to the 30th calendar day following the day on which the relevant Trust Monies were released to the Issuer as described above, then, on or before such 30th calendar day, the Issuer shall return to the Security Agent an amount equal to the full amount of such Trust Monies that were released in connection with such proposed delivery of the applicable Qualified Vessel or such Qualified Container Assets and if the Issuer shall fail to deliver either such Security Documents and perfect such security interests or fail to deliver such funds then a Default shall have occurred for all purposes under this Indenture. At the written direction of the Issuer, Trust Monies may be invested by the Trustee in Trust Money Investments in which the Issuer determines that the Security Agent can maintain a perfected security interest in such Collateral.

SECTION 12.03. Powers Exercisable Notwithstanding Event of Default.

In case a Default or an Event of Default shall have occurred and shall be continuing, the Trustee or the Security Agent, as the case may be, while in possession of the Collateral (including the Trust Monies held by, or required to be deposited or pledged with, the Security Agent hereunder or under the Security Documents), may, subject to the Intercreditor Agreement, do any of the things enumerated in Section 12.02 at the request of the Issuer and/or the applicable Mortgaged Guarantor, if the Holders of a majority in aggregate principal amount of the Notes outstanding, by appropriate action of such Holders, shall consent to such action, in which event any certificate filed under any of such Sections shall omit the statement to the effect that no Default or Event of Default has occurred and is continuing.

SECTION 12.04. Powers Exercisable by Trustee or Receiver.

In case the Collateral (other than any cash, Cash Equivalents, securities and other personal property held by, or required to be deposited or pledged with, the Security Agent hereunder or under the Security Documents) shall be in the possession of a receiver or trustee lawfully appointed, the powers hereinbefore in this Article Twelve conferred upon the Issuer and the Mortgaged Guarantors with respect to the withdrawal or application of Trust Monies may be exercised by such receiver or trustee, in which case a certificate signed by such receiver or trustee shall be deemed the equivalent of any Officer's Certificate required by this Article Twelve. If the Security Agent shall be in possession of any of the Collateral hereunder or under any of the Security Documents, such powers may be exercised by the Security Agent, as directed by the Trustee, acting on the instructions of the Holders of a majority in aggregate principal amount of the Notes outstanding.

SECTION 12.05. Disposition of Notes Retired.

All Notes received by the Trustee and for whose purchase Trust Monies are applied under this Article Twelve, if not otherwise cancelled, shall be promptly delivered to the Trustee for cancellation and destruction unless the Trustee shall be otherwise directed by the Issuer. Upon destruction of any Notes, the Trustee shall issue a certificate of destruction to the Issuer upon its request.

SECTION 12.06. Investment of Trust Monies.

(a) The Issuer hereby irrevocably grants a security interest in and pledge, assign and set over to the Security Agent for the benefit of the Secured Parties all of the Issuer's right, title and interest in the Trust Monies, and all property now or hereafter placed or deposited in, or delivered to the Trustee or the Security Agent for placement or deposit in, the Collateral Account held by (or otherwise maintained in the name of) the Security Agent pursuant to this Article 12, and, subject to Section 12.01, all distributions relating thereto and proceeds thereof, in order to secure all obligations and indebtedness of the Issuer under the Notes and any other obligation, now or hereafter arising, of every kind and nature, owed by the Issuer to the Secured Parties. The Issuer shall take all actions and shall direct the Security Agent to take all actions necessary on its part to ensure the continuance of a Security Interest in the Trust Monies in favor of the Security Agent for the benefit of the Secured Parties in order to secure all such obligations and indebtedness. The Issuer shall not grant another Security Interest, encumbrance, lien or other claim, direct or indirect, in the Issuer's right, title or interest in the Collateral Account or any other Collateral which is Trust Monies.

(b) The Issuer shall (A) ensure that the Security Agent maintains sole dominion and control over funds in the Collateral Account and all other Collateral which is Trust Monies for the benefit of the Security Agent on behalf of the Secured Parties, (B) take all steps necessary to cause the Security Agent to enjoy a continuous perfected security interest under applicable statutory or case law or regulations in such Trust Monies and (C) maintain such Trust Monies free and clear of all liens, security interests, safekeeping or other charges, demands and claims against the Security Agent of any nature now or hereafter existing in favor of anyone other than the Security Agent.

(c) All Trust Monies deposited or held in the Collateral Account at any time shall be invested by the Trustee in Trust Money Investments in accordance with the Issuer's written instructions in the form of an Officer's Certificate to the Trustee. Any such written instruction shall specify the particular investment to be made and shall state that such investment is authorized to be made hereby.

(d) The Trustee shall have no obligation to invest or reinvest the funds held in the Collateral Account if deposited with the Trustee after 11:00 a.m. (New York time) on such day of deposit. Instructions received after 11:00 a.m. (New York time) will be treated as if received on the following Business Day. The Trustee shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the funds. Any interest or other income received on such investment and reinvestment of the funds shall become

part of the Collateral Account and any losses incurred on such investment and reinvestment of the funds shall be debited against the Collateral Account. It is agreed and understood that the entity serving as the Trustee may earn fees associated with the investments outlined above in accordance with the terms of such investments. In no event shall the Trustee be deemed an investment manager or adviser in respect of any selection of investments hereunder. It is understood and agreed that the Trustee or its affiliates are permitted to receive additional compensation that could be deemed to be in the Trustee's economic self-interest for (1) serving as investment adviser, administrator, shareholder servicing agent, custodian or sub-custodian with respect to certain of the investments, (2) using affiliates to effect transactions in certain investments and (3) effecting transactions in investments.

(e) The Issuer shall pay or reimburse the Trustee upon request for any transfer taxes or other taxes relating to the funds held in the Collateral Account incurred in connection herewith and shall indemnify and hold harmless the Trustee any amounts that it is obligated to pay in the way of such taxes. Any payments of income from the Collateral Account shall be subject to withholding regulations then in force with respect to United States taxes. The Issuer will provide the Trustee with appropriate W-9 forms for tax identification number certifications, or W-8 forms for nonresident alien certifications. It is understood that the Trustee shall only be responsible for income reporting with respect to income earned on the Collateral Account and will not be responsible for any other reporting. This paragraph shall survive notwithstanding any termination of this Indenture or the resignation or removal of the Trustee.

## ARTICLE THIRTEEN MISCELLANEOUS

SECTION 13.01. [Reserved].

SECTION 13.02. Notices.

Any notices or other communications required or permitted hereunder shall be in English and in writing, and shall be sufficiently given if made by hand delivery, by nationally recognized overnight courier service, by telecopies or registered or certified mail, postage prepaid, return receipt requested or by electronic delivery, addressed as follows:

if to the Issuer or a Guarantor:

c/o Global Ship Lease, Inc.  
Portland House  
Stag Place  
London SW1E 5RS  
United Kingdom  
Attn: Chief Financial Officer  
Telephone: +44 (0) 20 7869 5104

with a copy to:

Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017  
United States of America  
Attn: Lesley Peng  
Telephone: +1 (212) 455 2000  
Facsimile: +1 (212) 455 2502

if to the Trustee or Security Agent:

Deutsche Bank Trust Company Americas  
Trust and Agency Services  
60 Wall Street, 16<sup>th</sup> Floor  
Mail Stop: NYC60-1630  
New York, New York 10005  
United States of America  
Attn: Corporate Team, Global Ship Lease, Inc.  
Facsimile: +1 (732) 578 4635

with a copy to:

Deutsche Bank Trust Company Americas  
c/o Deutsche Bank National Trust Company  
Trust and Agency Services  
100 Plaza One – 6<sup>th</sup> Floor  
Mail Stop: JCY03-0699  
Jersey City, New Jersey 07311-3901  
United States of America  
Attn: Corporate Team, Global Ship Lease, Inc.  
Facsimile: +1 (732) 578 4635

if to the Paying Agent (London):

Deutsche Bank AG London Branch  
Winchester House  
1 Great Winchester Street  
London EC2N 2DB  
United Kingdom  
Attn: Debt and Agency Services  
Telephone: +44 (0) 20 7545 8000  
Fax: +44 (0) 20 7547 6149

Each of the Issuer, each Guarantor, the Trustee and the Security Agent by written notice to each other such Person may designate additional or different addresses for notices to such Person. Any notice or communication to the Issuer, the Trustee and the Security Agent, shall be deemed to have been given or made as of the date so delivered if personally delivered or delivered electronically when replied to; when receipt is acknowledged, if telecopied; five (5) calendar days after mailing if sent by registered or certified mail, postage prepaid (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee); and next Business Day if by nationally recognized overnight courier service.

Any notice or communication mailed to a Holder shall be mailed to him or her by first class mail or other equivalent means at his or her address as it appears on the registration books of the Registrar and shall be sufficiently given to him or her if so mailed within the time prescribed.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance on such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

SECTION 13.03. [Reserved].

SECTION 13.04. Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Issuer to the Trustee or the Security Agent to take any action under this Indenture, the Issuer shall furnish to the Trustee or the Security Agent, as applicable (unless otherwise agreed by the Trustee or the Security Agent, as the case may be):

(1) an Officer's Certificate, in form and substance reasonably satisfactory to the Trustee or the Security Agent, as applicable, stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel stating that, in the opinion of such counsel (who may rely upon Officer's Certificates as to matters of fact), all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; *provided, however,* that such opinion shall not be required in connection with the initial issuance of the Notes hereunder.

SECTION 13.05. Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture, other than the Officer's Certificate required by Section 4.06, shall include, to the extent requested by the Trustee or the Security Agent:

- (1) a statement that the Person making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such Person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with or satisfied; and
- (4) a statement as to whether or not, in the opinion of each such Person, such condition or covenant has been satisfied or complied with; provided, however, that with respect to matters of fact, an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

SECTION 13.06. Rules by Paying Agent or Registrar.

The Paying Agent or Registrar may make reasonable rules and set reasonable requirements for their functions.

SECTION 13.07. Legal Holidays.

If a payment date is not a Business Day, payment may be made on the next succeeding day that is a Business Day without the accrual of additional interest in the intervening period.

SECTION 13.08. Governing Law; Waiver of Jury Trial; Submission to Jurisdiction.

THIS INDENTURE, THE NOTES AND THE NOTE GUARANTEES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. EACH OF THE ISSUER, THE GUARANTORS, THE TRUSTEE AND THE SECURITY AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Any legal suit, action or proceeding arising out of or based upon this Indenture, the Notes, the Guarantees or the transactions contemplated hereby may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan (collectively, the “*Specified Courts*”), and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail (to the extent allowed under any applicable statute or rule of court) to such party’s address set forth in Section 13.02 shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any suit, action or other proceeding has been brought in an inconvenient forum.

SECTION 13.09. No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret another indenture, loan or debt agreement of any of the Issuer or any of their Subsidiaries. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 13.10. No Personal Liability of Directors, Officers, Employees and Stockholders.

No past, future or present director, Officer, employee, incorporator, member, manager, agent or shareholder of the Issuer or any Guarantor, as such, shall have any liability for any obligations of the Issuer or any Guarantors under the Notes, this Indenture, the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability to the fullest extent permitted by law. Such waiver and release are part of the consideration for issuance of the Notes and the Guarantees.

SECTION 13.11. Successors.

All agreements of the Issuer and the Guarantors in this Indenture, the Notes and the Guarantees shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successor.

SECTION 13.12. Duplicate Originals.

All parties may sign any number of copies of this Indenture. Each signed copy or counterpart shall be an original, but all of them together shall represent the same agreement.



SECTION 13.13. Severability.

To the extent permitted by applicable law, in case any one or more of the provisions in this Indenture, in the Notes or in the Guarantees shall be held invalid, illegal or unenforceable, in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions shall not in any way be affected or impaired thereby, it being intended that all of the provisions hereof shall be enforceable to the full extent permitted by law.

SECTION 13.14. Force Majeure.

In no event shall the Trustee or the Security Agent be liable for any failure or delay in the performance of its obligations under this Indenture, the Notes, the Guarantees, the Security Documents, the Intercreditor Agreement, any Additional Intercreditor Agreement or any related documents because of circumstances beyond the Trustee's or the Security Agent's control, including, but not limited to, a failure, termination, or suspension of a clearing house, securities depository, settlement system or central payment system in any applicable part of the world or acts of God, flood, war (whether declared or undeclared), civil or military disturbances or hostilities, nuclear or natural catastrophes, political unrest, explosion, severe weather or accident, earthquake, terrorism, fire, riot, labor disturbances, strikes or work stoppages for any reason, embargo, government action, including any laws, ordinances, regulations or the like (whether domestic, federal, state, county or municipal or foreign) which delay, restrict or prohibit the providing of the services contemplated by this Indenture, the Notes, the Guarantees, the Security Documents, the Intercreditor Agreement, any Additional Intercreditor Agreement or any related documents, or the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, or any other causes beyond the Trustee's or the Security Agent's control whether or not of the same class or kind as specified above.

SECTION 13.15. Agent for Service; Submission to Jurisdiction; Waiver of Immunities.

(a) The Issuer and the Guarantors shall promptly (and in any event within 10 days) irrevocably designate, appoint and empower Puglisi & Associates, 850 Library Avenue, Suite 204, Newark, Delaware 19711 (or another third party corporate service provider of national standing), as their designee, appointee and agent to receive, accept and acknowledge for and on their behalf service of any and all legal process, summons, notices and documents that may be served in any action, suit or proceeding brought against them in any such United States or state court located in the County of New York with respect to their obligations, liabilities or any other matter arising out of or in connection with this Indenture and that may be made on such designee, appointee and agent in accordance with legal procedures prescribed for such courts (the "Process Agent") and pay all fees and expenses required by the Process Agent in connection therewith. If for any reason such Process Agent hereunder shall cease to be available to act as such, each of the Issuer and the Guarantors agrees to designate a new Process Agent in the County of New York on the terms and for the purposes of this Section 13.15.

(b) Each of the Issuer and the Guarantors further hereby irrevocably consents and agrees to the service of any and all legal process, summons, notices and documents in any such action, suit or proceeding against them by (i) serving a copy thereof upon the Process Agent specified in clause (a) above, or (ii) or by mailing copies thereof by registered or certified air mail, postage prepaid, to the Issuer, at its address specified in or designated pursuant to this Indenture. Each of the Issuer and the Guarantors agrees that the failure of any Process Agent to give any notice of such service to it shall not impair or affect in any way the validity of such service or any judgment rendered in any action or proceeding based thereon.

(c) The Issuer and each Guarantor agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing herein shall in any way be deemed to limit the ability of the Trustee or any Holder to serve any such legal process, summons, notices and documents in any other manner permitted by applicable law or to obtain jurisdiction over the Issuer or the Guarantors or bring actions, suits or proceedings against them in such other jurisdictions, and in such manner, as may be permitted by applicable law.

(d) The provisions of this Section 13.15 shall survive any termination of this Indenture, in whole or in part.

The Issuer and each of the Guarantors hereby irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the United States federal courts located in the County of New York or the courts of the State of New York located in the County of New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. The Issuer and the Guarantors, and their obligations under this Indenture, the Notes and the Guarantees, are subject to civil and commercial law and to suit and none of the Issuer, the Guarantors or any of their respective properties, assets or revenues have any right of immunity, on the grounds of sovereignty, from any legal action, suit or proceeding, from the giving of any relief in any such legal action, suit or proceeding, from setoff or counterclaim, from the jurisdiction of New York State or U.S. federal court, as the case may be, from service of process, attachment upon or prior to judgment, or attachment in aid of execution of judgment, or from execution or enforcement of a judgment, or other legal process or proceeding for the giving of any relief or for the enforcement of a judgment, in any such court, with respect to its obligations or liabilities or any other matter under or arising out of or in connection with this Indenture, the Notes and the Guarantees; and, to the extent that the Issuer, any Guarantor or any of their respective properties, assets or revenues may have or may hereafter become entitled to any such right of immunity in any such court in which proceedings may at any time be commenced, each of the Issuer and the Guarantors waived or will waive such right to the extent permitted by law and has consented to such relief and enforcement as provided in this Indenture, the Notes and the Guarantees.

SECTION 13.16. Currency of Account; Conversion of Currency; Foreign Exchange Restrictions.

(a) U.S. dollars are the sole currency of account and payment for all sums payable by the Issuer and the Guarantors under or in connection with the Notes, the Guarantees or this Indenture, including damages related thereto. Any amount received or recovered in a currency other than U.S. dollars by a Holder (whether as a result of, or of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuer or otherwise) in respect of any sum expressed to be due to it from the Issuer shall only constitute a discharge to the Issuer to the extent of the U.S. dollar amount which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that U.S. dollar amount is less than the U.S. dollar amount expressed to be due to the recipient under the Notes, the Issuer shall indemnify it against any loss sustained by it as a result as set forth in Section 13.16(b). In any event, the Issuer and the Guarantors shall indemnify the recipient against the cost of making any such purchase. For the purposes of this Section 13.16, it shall be sufficient for the Holder to certify in a satisfactory manner (indicating sources of information used) that it would have suffered a loss had an actual purchase of U.S. dollars been made with the amount so received in that other currency on the date of receipt or recovery (or, if a purchase of U.S. dollars on such date had not been practicable, on the first date on which it would have been practicable, it being required that the need for a change of date be certified in the manner mentioned above). The indemnities set forth in this Section 13.16 constitute separate and independent obligations from other obligations of the Issuer and the Guarantors, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by any Holder and shall continue in full force and effect despite any other judgment, order, claim or proof for a liquidated amount in respect of any sum due under the Notes.

(b) The Issuer and the Guarantors, jointly and severally, covenant and agree that the following provisions shall apply to conversion of currency in the case of the Notes, the Guarantees and this Indenture:

- (1) (A) If for the purpose of obtaining judgment in, or enforcing the judgment of, any court in any country, it becomes necessary to convert into a currency (the "*Judgment Currency*") an amount due in any other currency (the "*Base Currency*"), then the conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which the judgment is given or the order of enforcement is made, as the case may be (unless a court shall otherwise determine).
- (B) If there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given or an order of enforcement is made, as

the case may be (or such other date as a court shall determine), and the date of receipt of the amount due, the Issuer and the Guarantors shall pay such additional (or, as the case may be, such lesser) amount, if any, as may be necessary so that the amount paid in the Judgment Currency when converted at the rate of exchange prevailing on the date of receipt shall produce the amount in the Base Currency originally due.

(2) In the event of the winding-up of the Issuer or any Guarantor at any time while any amount or damages owing under the Notes, the Guarantees and this Indenture, or any judgment or order rendered in respect thereof, shall remain outstanding, the Issuer and the Guarantors shall indemnify and hold the Holders and the Trustee harmless against any deficiency arising or resulting from any variation in rates of exchange between (i) the date as of which the U.S. Dollar Equivalent of the amount due or contingently due under the Notes, the Guarantees and this Indenture (other than under this subsection (b)(2)) is calculated for the purposes of such winding-up and (ii) the final date for the filing of proofs of claim in such winding-up. For the purpose of this subsection (b)(2), the final date for the filing of proofs of claim in the winding-up of the Issuer or any Guarantor shall be the date fixed by the liquidator or otherwise in accordance with the relevant provisions of applicable law as being the latest practicable date as at which liabilities of such Issuer or such Guarantor may be ascertained for such winding-up prior to payment by the liquidator or otherwise in respect thereto.

(c) The obligations contained in subsections (a), (b)(1)(B) and (b)(2) of this Section 13.16 shall constitute separate and independent obligations from the other obligations of the Issuer and the Guarantors under this Indenture, shall give rise to separate and independent causes of action against the Issuer and the Guarantors, shall apply irrespective of any waiver or extension granted by any Holder or the Trustee or either of them from time to time and shall continue in full force and effect notwithstanding any judgment or order or the filing of any proof of claim in the winding-up of the Issuer or any Guarantor for a liquidated sum in respect of amounts due hereunder (other than under subsection (b)(2) above) or under any such judgment or order. Any such deficiency as aforesaid shall be deemed to constitute a loss suffered by the Holders or the Trustee, as the case may be, and no proof or evidence of any actual loss shall be required by the Issuer or any Guarantor or the liquidator or otherwise or any of them. In the case of subsection (b)(2) above, the amount of such deficiency shall not be deemed to be reduced by any variation in rates of exchange occurring between the said final date and the date of any liquidating distribution.

(d) The term “*rate of exchange*” shall mean the rate of exchange quoted by Reuters at 10:00 a.m. (New York time) for spot purchases of the Base Currency with the Judgment Currency other than the Base Currency referred to in subsections (b)(1) and (b)(2) above and includes any premiums and costs of exchange payable.

SECTION 13.17. Patriot Act.

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, each of the Trustee and the Security Agent, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee or the Security Agent. The parties to this Indenture agree that they will provide the Trustee or the Security Agent, as applicable, with such information as it may request in order for the Trustee or the Security Agent, as applicable, to satisfy the requirements of the U.S.A. Patriot Act.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed all as of the date first written above.

**GLOBAL SHIP LEASE, INC.**

as Issuer

By: /s/ Ian Webber

Name: Ian Webber

Title: Chief Executive Officer

By: /s/ Susan Cook

Name: Susan Cook

Title: Chief Financial Officer

*[Signature Page to the Indenture]*

**GLOBAL SHIP LEASE SERVICES LIMITED**  
as a Guarantor

By: /s/ Ian Webber

Name: Ian Webber

Title: Director

By: /s/ Susan Cook

Name: Susan Cook

Title: Director

**GLOBAL SHIP LEASE 1 LIMITED**  
**GLOBAL SHIP LEASE 2 LIMITED**  
**GLOBAL SHIP LEASE 3 LIMITED**  
**GLOBAL SHIP LEASE 4 LIMITED**  
**GLOBAL SHIP LEASE 5 LIMITED**  
**GLOBAL SHIP LEASE 6 LIMITED**  
**GLOBAL SHIP LEASE 7 LIMITED**  
**GLOBAL SHIP LEASE 8 LIMITED**  
**GLOBAL SHIP LEASE 9 LIMITED**  
**GLOBAL SHIP LEASE 10 LIMITED**  
**GLOBAL SHIP LEASE 12 LIMITED**  
**GLOBAL SHIP LEASE 13 LIMITED**  
**GLOBAL SHIP LEASE 14 LIMITED**  
**GLOBAL SHIP LEASE 15 LIMITED**  
**GLOBAL SHIP LEASE 16 LIMITED**  
**GLOBAL SHIP LEASE 17 LIMITED**  
**GSL ALCAZAR INC.**

as Guarantors

By: /s/ Ian Webber

Name: Ian Webber

Title: Authorized Signatory

By: /s/ Susan Cook

Name: Susan Cook

Title: Authorized Signatory

[Signature Page to the Indenture]

**DEUTSCHE BANK TRUST COMPANY AMERICAS, as  
Trustee**

By: Deutsche Bank National Trust Company

By: /s/ Jacqueline Bartnick

Name: Jacqueline Bartnick  
Title: Director

By: /s/ Robert S. Preschler

Name: Robert S. Preschler  
Title: Vice President

**DEUTSCHE BANK TRUST COMPANY AMERICAS, as  
Security Agent**

By: Deutsche Bank National Trust Company

By: /s/ Jacqueline Bartnick

Name: Jacqueline Bartnick  
Title: Director

By: /s/ Robert S. Preschler

Name: Robert S. Preschler  
Title: Vice President

*[Signature Page to the Indenture]*



**DEUTSCHE BANK AG, LONDON BRANCH,**  
as Paying Agent (London)

By: /s/ Miriam Keeler

Name: Miriam Keeler

Title: Director

By: /s/ Angeline Garvey

Name: Angeline Garvey

Title: Director

**DEUTSCHE BANK TRUST COMPANY AMERICAS,** as  
Paying Agent (New York), Registrar and Transfer Agent

By: Deutsche Bank National Trust Company

By: /s/ Jacqueline Bartnick

Name: Jacqueline Bartnick

Title: Director

By: /s/ Robert S. Preschler

Name: Robert S. Preschler

Title: Vice President

*[Signature Page to the Indenture]*

FORM OF NOTE

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

GLOBAL SHIP LEASE, INC.

10.000% First Priority Secured Notes due 2019

CUSIP No.  
ISIN No.

No. \$

GLOBAL SHIP LEASE, INC., a Marshall Islands corporation, as issuer (the "Issuer"), for value received, jointly and severally, promise to pay to or its registered assigns, the principal sum of U.S. dollars [or such other amount as is provided in a schedule attached hereto]<sup>1</sup> on April 1, 2019.

Interest Payment Dates: April 1 and October 1, commencing October 1, 2014.

Record Dates: March 15 and September 15.

Reference is made to the further provisions of this Note contained herein, which shall for all purposes have the same effect as if set forth at this place.

<sup>1</sup> This language should be included only if the Note is issued in global form

IN WITNESS WHEREOF, the Issuer has caused this Note to be signed manually or by facsimile by its duly authorized Officer.

Dated:

**GLOBAL SHIP LEASE, INC.,**  
as Issuer

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

Name:

Title:

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

Name:

Title:

FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the 10.000% First Priority Secured Notes due 2019 described in the within-mentioned Indenture.

Dated:

**DEUTSCHE BANK TRUST COMPANY AMERICAS,**  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

10.000% First Priority Secured Notes due 2019

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

SECTION 1. Interest. Global Ship Lease, Inc. (the “Issuer”), a Marshall Islands corporation, promises to pay interest on the principal amount of this Note at 10.000% per annum from [March 19, 2014]<sup>2</sup>, until maturity. The Issuer shall pay interest semi-annually in arrears on April 1 and October 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each an “Interest Payment Date”), commencing [October 1, 2014]<sup>3</sup>. Interest on the Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of original issuance. The Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand to the extent lawful at the interest rate applicable to the Notes; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest, if any (in each case without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 2. Method of Payment. The Issuer shall pay interest, if any, on the Notes to the Persons who are registered Holders at the close of business on the March 15 or September 15 immediately preceding the Interest Payment Date, even if such Notes are canceled after such Record Date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes shall be issued in denominations of \$200,000 and integral multiples of \$1,000 in excess thereof. The Issuer shall pay principal, premium, if any, and interest on the Notes in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

SECTION 3. Paying Agent and Registrar. Initially, Deutsche Bank Trust Company Americas, the Trustee under the Indenture, shall act as Paying Agent in New York and Registrar, and Deutsche Bank AG, London Branch shall act as Paying Agent in London. The Issuer may change any Paying Agent or Registrar without prior notice to any Holder. Except as provided in the Indenture, the Issuer or any of its Subsidiaries may act in any such capacity.

SECTION 4. Indenture. The Issuer issued the Notes under an Indenture dated as of March 19, 2014 (the “Indenture”) by and among the Issuer, the Guarantors (as defined therein), Deutsche Bank Trust Company Americas, as Trustee and Security Agent. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

<sup>2</sup> With respect to the Notes issued on the Issue Date.

<sup>3</sup> With respect to the Notes issued on the Issue Date.

SECTION 5. Optional Redemption.

(a) On or after April 1, 2016, the Issuer may redeem all or a part of the Notes upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest, if any, on the Notes redeemed, to the applicable Redemption Date, if redeemed during the twelve-month period beginning on April 1 of the years indicated below, subject to the rights of Holders on the relevant Record Date to receive interest on the relevant Interest Payment Date:

<u>Year</u>	<u>Percentage</u>
2016	105.000%
2017	102.500%
2018 and thereafter	100.000%

(b) Prior to April 1, 2016, the Issuer may, at its option, redeem all or a part of the Notes upon not less than 30 nor more than 60 days' notice at a redemption price equal to the sum of:

- (i) 100% of the principal amount of the Notes to be redeemed, plus
- (ii) the Applicable Premium, plus

accrued and unpaid interest, if any, on the Notes redeemed, to the applicable Redemption Date, subject to the right of Holders on the relevant Record Date to receive interest due on the relevant interest payment date (a "Make-Whole Redemption").

SECTION 6. Redemption With Proceeds of Equity Offerings.

At any time prior to April 1, 2016, the Issuer may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture (including any Additional Notes) at a Redemption Price of 110.000% of the principal amount, plus accrued and unpaid interest, if any, to (but excluding) the Redemption Date, with an amount not exceeding the net cash proceeds of one or more Equity Offerings; provided that:

- (1) at least 65% of the aggregate principal amount of Notes originally issued under the Indenture (excluding Notes held by the Issuer and its Restricted Subsidiaries) remains outstanding immediately after the occurrence of such redemption; and
- (2) such redemption occurs not more than 180 days after the date of the closing of the relevant such Equity Offering.

## SECTION 7. Redemption for Changes in Withholding Tax.

The Issuer may redeem the Notes, in whole but not in part, at its discretion at any time upon giving not less than 30 nor more than 60 days' prior notice to the Holders (which notice will be irrevocable and given in accordance with the procedures described in Section 8 below, at a redemption price equal to 100% of the aggregate principal amount thereof, together with accrued and unpaid interest, if any, to the date fixed by the Issuer for redemption (a "Tax Redemption Date") and all Additional Amounts (if any) then due and which will become due on the Tax Redemption Date as a result of the redemption or otherwise (subject to the right of holders of the Notes on the relevant record date to receive interest due on the relevant interest payment date and Additional Amounts (if any) in respect thereof), if on the next date on which any amount would be payable in respect of the Notes or any Guarantee, the Issuer of the Notes or any of the Guarantors with respect to any Guarantee is or would be required to pay Additional Amounts, and the Issuer or Guarantor, as applicable, cannot avoid any such payment obligation by taking reasonable measures available to it (including making payment through a Paying Agent located in another jurisdiction or, in the case of a Guarantor, having another Guarantor make payment, in each case to the extent such measure is reasonable), and the requirement arises as a result of:

(1) any amendment to, or change in, the laws or any regulations or rulings promulgated thereunder of a Relevant Taxing Jurisdiction which change or amendment has not been publicly announced as formally proposed before and which becomes effective on or after the date of the Offering Memorandum (or, if the applicable Relevant Taxing Jurisdiction became a Relevant Taxing Jurisdiction on a date after the date of the Offering Memorandum, such later date); or

(2) any amendment to, or change in, an official written interpretation or application of such laws, regulations or rulings (including by virtue of a holding, judgment, order by a court of competent jurisdiction or a change in published administrative practice) which amendment or change has not been publicly announced, as formally proposed before and which becomes effective on or after the date of the Offering Memorandum (or, if the applicable Relevant Taxing Jurisdiction became a Relevant Taxing Jurisdiction on a date after the date of the Offering Memorandum, such later date) (each of the foregoing clauses (1) and (2), a "Change in Tax Law").

No such notice of redemption may be given earlier than 60 days prior to the earliest date on which the Issuer or Guarantor (as the case may be) would be obligated to pay such Additional Amounts were a payment in respect of the Notes then due and payable. Prior to the publication or delivery of any notice of redemption of the Notes pursuant to the foregoing, the Issuer will deliver to the Trustee (i) an Officer's Certificate stating that obligation to pay such Additional Amounts cannot be avoided by the Issuer or the relevant Guarantor taking reasonable measures available to it; and (b) a written opinion of independent tax counsel to the Issuer of recognized standing qualified under the laws of the Relevant Taxing Jurisdiction to the effect that the Issuer or the relevant Guarantor has or will become obligated to pay such Additional Amounts as a result of the Change in Tax Law. The Trustee shall be entitled to conclusively rely on such Officer's Certificate and opinion of independent tax counsel as sufficient evidence of the existence and satisfaction of the conditions precedent as described above, in which event it will be conclusive and binding on the Holders.

The foregoing provisions shall apply (a) to a Guarantor only on or after such time as such Guarantor is obligated to make at least one payment on the Notes; and (b) *mutatis mutandis* to any successor Person, after such successor Person becomes a party to the Indenture, with respect to a Change in Tax Law occurring after the time such successor Person becomes a party to the Indenture.

SECTION 8. Selection and Notice of Redemption. Notes in denominations larger than \$200,000 may be redeemed in part; provided that Notes shall be redeemed only in integral multiples of \$1,000 unless all Notes held by a Holder are to be redeemed. Notice of redemption shall be delivered electronically or mailed by first class mail at least 30 days but not more than 60 days before the Redemption Date to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be delivered electronically or mailed more than 60 days prior to a Redemption Date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture. If any Note is to be redeemed in part only, the notice of redemption that relates to such Note shall state the portion of the principal amount thereof to be redeemed. A new Note in principal amount equal to the unredeemed portion of the original Note shall be issued in the name of the Holder upon cancellation of the original Note. Notes called for redemption become due on the date fixed for redemption. On and after the Redemption Date, interest, if any, ceases to accrue on Notes or portions thereof called for redemption, unless the Issuer defaults in the payment of the Redemption Price.

SECTION 9. Mandatory Redemption. The Issuer shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes (it being understood that the foregoing shall not limit Section 10 below).

SECTION 10. Repurchase at Option of Holder.

(a) Upon the occurrence of a Change of Control, and subject to certain conditions set forth in the Indenture, the Issuer shall be required to offer to purchase all or any part (equal to \$200,000 or an integral multiple of \$1,000 in excess thereof) of the outstanding Notes at a purchase price equal to 101% of the aggregate principal amount thereof, plus accrued and unpaid interest, if any, thereon to the date of repurchase, subject to the rights of Holders on the relevant Record Date to receive interest due on the relevant interest payment date.

(b) The Issuer is, subject to certain conditions and exceptions, obligated to make an offer to purchase Notes and certain other *pari passu* Indebtedness at 102% of their principal amount, plus accrued and unpaid interest, if any, thereon to the date of repurchase, with certain Excess Proceeds, Excess Collateral Proceeds, Excess Cash Flow and Excess Loss Proceeds, in each case in accordance with the Indenture.

SECTION 11. Denominations, Transfer, Exchange. The Notes are in registered form without coupons in minimum denominations of \$200,000 and integral multiples of \$1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuer may require a Holder to pay any taxes and fees required by law or permitted by the Indenture.



The Issuer shall not be required and, without the prior written consent of the Issuer, the Registrar shall not be required to register the transfer of or exchange of any Note (i) during a period beginning at the opening of business 15 days before the mailing of a notice of redemption of Notes and ending at the close of business on the day of such mailing, (ii) selected for redemption in whole or in part pursuant to Article Three of the Indenture, except the unredeemed portion of any Note being redeemed in part, (iii) that has been tendered (and not validly withdrawn) in a Change of Control Offer, and (iv) beginning at the opening of business on any Record Date and ending on the close of business on the related Interest Payment Date.

SECTION 12. Persons Deemed Owners. The registered Holder of a Note may be treated as its owner for all purposes.

SECTION 13. Amendment, Supplement and Waiver. The Indenture, the Notes, the Guarantees, the Intercreditor Agreement, any Additional Intercreditor Agreement or the Security Documents and the Notes may be amended, supplemented or waived as set forth in, and subject to the terms and conditions of, the Indenture.

SECTION 14. Defaults and Remedies. The Events of Default relating to the Notes are set forth in Section 6.01 of the Indenture. If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes generally may declare all the Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency as set forth in the Indenture, all outstanding Notes shall become due and payable without further action or notice. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Holders of a majority in aggregate principal amount of the Notes then outstanding, by notice to the Trustee, may on behalf of the Holders of all of the Notes rescind an acceleration or waive any existing Default and its consequences under the Indenture except a continuing Default in the payment of interest on, or the principal of, or the premium on, the Notes, subject to certain conditions being met. The Issuer shall deliver to the Trustee a statement specifying any Default or Event of Default within 30 days of becoming aware thereof.

SECTION 15. Additional Amounts. All payments made by the Issuer under or with respect to this Note or by a Guarantor under or with respect to its Guarantee shall be made free and clear of and without withholding or deduction for or on account of any present or future Taxes, to the extent provided in Section 4.20 of the Indenture.

SECTION 16. Security Documents

In order to secure the due and punctual payment of the principal of, premium, if any, and interest on the Notes and all other amounts payable by the Issuer and the Guarantors under the Indenture, the Notes and the Guarantees when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes, the Guarantees and the Indenture, each of the Mortgaged Guarantors have granted security interests in and Liens on the Collateral owned by it to the Security Agent on behalf of the Secured Parties pursuant to the Indenture, the Intercreditor Agreement and the Security Documents. The Notes will be secured by Liens and security interests in the Collateral that are subject only to Permitted Liens.

Each Holder, by accepting a Note, consents and agrees to all of the terms and provisions of the Security Documents, as the same may be amended from time to time pursuant to the respective provisions thereof, of the Intercreditor Agreement and of the Indenture.

Each Holder acknowledges that any releases of Collateral made in compliance with the provisions of the Section 11.04 of the Indenture shall be deemed not to impair the Security Interests created by the Indenture or the Security Documents, as the case may be, in favor of the Security Agent on behalf of the Secured Parties.

SECTION 17. No Recourse Against Others.

No past, future or present director, Officer, employee, incorporator, member, manager, agent or shareholder of any Issuer or any Guarantor, as such, shall have any liability for any obligations of any Issuer or any Guarantors under the Notes, the Indenture, the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. The Holder by accepting this Note and the Guarantees waives and releases all such liability. Such waiver and release are part of the consideration for issuance of this Note and the Guarantees.

SECTION 18. Guarantees. This Note shall be entitled to the benefits of certain Guarantees made for the benefit of the Holders. Reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and obligations thereunder of the Guarantors, the Trustee and the Holders.

SECTION 19. Trustee Dealings with the Issuer. Subject to certain terms set forth in the Indenture, the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Issuer, the Guarantors their Subsidiaries or their respective Affiliates as if it were not the Trustee.

SECTION 20. Authentication. This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

SECTION 21. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

SECTION 22. CUSIP and ISIN Numbers. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer has caused CUSIP and ISIN numbers to be printed on the Notes and the Trustee may use CUSIP or ISIN numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

SECTION 23 GOVERNING LAW. THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Issuer shall furnish to any Holder upon written request and without charge a copy of the Indenture.

ASSIGNMENT FORM

I or we assign and transfer this Note to

\_\_\_\_\_  
(Print or type name, address and zip code of assignee or transferee)

\_\_\_\_\_  
(Insert Social Security or other identifying number of assignee or transferee)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Note on the books of the Issuer. The agent may substitute another to act for him or her.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_  
(Sign exactly as name appears on the other side of this Note)

Signature Guarantee:

\_\_\_\_\_  
Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor program reasonably acceptable to the Trustee)

In connection with any transfer of this Note occurring prior to the date which is the date following the anniversary of the original issuance of this Note, the undersigned confirms that it is making the transfer pursuant to one of the following:

[Check One]

- (1) \_\_\_\_\_ to the Issuer or a subsidiary thereof; or
- (2) \_\_\_\_\_ to a person who the transferor reasonably believes is a “qualified institutional buyer” pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”); or
- (3) \_\_\_\_\_ outside the United States to a non-“U.S. person” as defined in Rule 902 of Regulation S under the Securities Act in compliance with Rule 904 of Regulation S under the Securities Act; or
- (4) \_\_\_\_\_ pursuant to the exemption from registration provided by Rule 144 under the Securities Act or pursuant to another exemption available under the Securities Act; or
- (5) \_\_\_\_\_ pursuant to an effective registration statement under the Securities Act.

and unless the box below is checked, the undersigned confirms that such Note is not being transferred to an “affiliate” of the Issuer as defined in Rule 144 under the Securities Act (an “Affiliate”):

transferee is an Affiliate of the Issuer.

Unless one of the foregoing items (1) through (5) is checked, the Trustee shall refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered Holder thereof; provided, however, that if item (3) or (4) is checked, the Issuer or the Trustee may require, prior to registering any such transfer of the Notes, in their sole discretion, such written legal opinions, certifications (including an investment letter in the case of box (3)) and other information as the Trustee or the Issuer has reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

If none of the foregoing items (1) through (5) are checked, the Trustee or Registrar shall not be obligated to register this Note in the name of any person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 2.16 of the Indenture shall have been satisfied.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_  
(Sign exactly as name appears on the other side of this Note)

Signature Guarantee:

\_\_\_\_\_  
Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor program reasonably acceptable to the Trustee)

TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: To be executed by an executive officer

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuer pursuant to Section 4.09, Section 4.13(I), Section 4.13(II), Section 4.21 or Section 4.23 of the Indenture, check the appropriate box:

- Section 4.09
- Section 4.13(I)
- Section 4.13(II)
- Section 4.21
- Section 4.23

If you want to elect to have only part of this Note purchased by the Issuer pursuant to Section 4.09, Section 4.13(I), Section 4.13(II), Section 4.21 or Section 4.23 of the Indenture, state the amount (in denominations of \$200,000 and integral multiples of \$1,000 in excess thereof): \$

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_  
(Sign exactly as name appears on the other side of this Note)

Signature Guarantee: \_\_\_\_\_ Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor program reasonably acceptable to the Trustee)

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE<sup>4</sup>

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Physical Note, or exchanges of a part of another Global Note or Physical Note for an interest in this Global Note, have been made:

<u>Date of Exchange</u>	<u>Amount of decrease in Principal Amount of this Global Note</u>	<u>Amount of increase in Principal Amount of this Global Note</u>	<u>Principal Amount of this Global Note following such decrease (or increase)</u>	<u>Signature of authorized signatory of Trustee or Note Custodian</u>
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<sup>4</sup> This schedule should be included only if the Note is issued in global form.

## FORM OF LEGENDS

Each Global Note and Physical Note that constitutes a Restricted Security shall bear the following legend (the "Private Placement Legend") on the face thereof until after the second anniversary of the Issue Date, unless otherwise agreed by the Issuer and the Holder thereof or if such legend is no longer required by Section 2.16(f) of the Indenture:

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS NOTE NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT.

THE HOLDER OF THIS NOTE BY ITS ACCEPTANCE HEREOF AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR FOR WHICH IT HAS PURCHASED SECURITIES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH NOTE PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") WHICH IS ONE [IN THE CASE OF 144A NOTES: YEAR AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY)] [IN THE CASE OF REGULATION S NOTES: 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE DATE ON WHICH THE NOTES OR ANY PREDECESSOR OF THE NOTES WERE FIRST OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN RULE 902 OF REGULATION S) IN RELIANCE ON REGULATION S] ONLY (A) TO THE ISSUER, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE U.S. SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES IN COMPLIANCE WITH REGULATION S UNDER THE U.S. SECURITIES ACT OR (E) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT, SUBJECT IN EACH OF THE FOREGOING CASES TO ANY REQUIREMENT OF LAW THAT THE DISPOSITION OF ITS PROPERTY OR THE PROPERTY OF SUCH INVESTOR ACCOUNT OR ACCOUNTS BE AT ALL TIMES WITHIN ITS OR THEIR CONTROL AND IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS AND ANY APPLICABLE LOCAL LAWS AND REGULATIONS AND FURTHER SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHTS PRIOR TO ANY SUCH



OFFER, SALE OR TRANSFER (I) PURSUANT TO CLAUSE (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM AND (II) IN EACH OF THE FOREGOING CASES, TO REQUIRE THAT A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS NOTE IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE.

Each Global Note authenticated and delivered hereunder shall also bear the following legend:

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITORY OR A NOMINEE OF A DEPOSITORY OR A SUCCESSOR DEPOSITORY. THIS NOTE IS NOT EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY OR BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

FORM OF CERTIFICATE TO BE DELIVERED  
IN CONNECTION WITH TRANSFERS  
PURSUANT TO REGULATION S

[            ], [    ]

Deutsche Bank Trust Company Americas  
Trust and Agency Services  
60 Wall Street, 16th Floor  
Mail Stop: NYC60-1630  
New York, New York 10005  
United States of America  
Attn: Corporate Team, Global Ship Lease, Inc.  
Facsimile: +1 (732) 578-4635

Re:

Global Ship Lease, Inc.'s (the "Issuer") 10.000% First Priority Secured Notes due 2019 (the "Notes")

Ladies and Gentlemen:

In connection with our proposed sale of \$420,000,000 aggregate principal amount of the Notes, we confirm that such sale has been effected pursuant to and in accordance with Regulation S under the U.S. Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, we represent that:

- (1) we are not an affiliate of the Issuer and/or the Guarantors;
- (2) the offer of the Notes was not made to a person in the United States;

(3) either (a) at the time the buy offer was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States, or (b) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither we nor any person acting on our behalf knows that the transaction has been prearranged with a buyer in the United States;

(4) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable;

(5) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act; and

(6) we have advised the transferee of the transfer restrictions applicable to the Notes.

You, as Trustee, the Issuer, counsel for the Issuer and others are entitled to conclusively rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby. Terms used in this certificate have the meanings set forth in Regulation S under the Securities Act.

Very truly yours,

[Name of Transferor]

By: \_\_\_\_\_  
Authorized Signatory

FORM OF SUPPLEMENTAL INDENTURE  
FOR ADDITIONAL GUARANTOR(S)

SUPPLEMENTAL INDENTURE (this "Supplemental Indenture"), dated as of \_\_\_\_\_, 20\_\_\_\_, among (the "Guaranteeing Subsidiary"), a subsidiary of Global Ship Lease, Inc. (or its permitted successor), a Marshall Islands corporation, (the "Issuer"), the other Guarantors (as defined in the Indenture referred to herein) and Deutsche Bank Trust Company Americas, as trustee (or its permitted successor) under the Indenture referred to below (the "Trustee") and as security agent (or its permitted successor) under the Indenture referred to below (the "Security Agent").

WITNESSETH

WHEREAS, the Issuer and the other Guarantors have heretofore executed and delivered to the Trustee an indenture (the "Indenture"), dated as of March 19, 2014 providing for the issuance of 10.000% First Priority Secured Notes due 2019 (the "Notes");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuer's obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "Guarantee"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, each of the Trustee and the Security Agent is authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. AGREEMENT TO GUARANTEE. The Guaranteeing Subsidiary hereby agrees to provide an unconditional Guarantee, on and subject to the terms, conditions and limitations set forth in the Indenture, including, but not limited, to Article Ten thereof.

3. NEW YORK LAW TO GOVERN. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

4. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

5. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

6. THE TRUSTEE AND THE SECURITY AGENT. Neither the Trustee nor the Security Agent shall be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Issuer.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: \_\_\_\_\_, 20[ ]

[GUARANTEEING SUBSIDIARY]

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

Name:

Title:

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

Name:

Title:

GLOBAL SHIP LEASE, INC.

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

Name:

Title:

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

Name:

Title:

DEUTSCHE BANK TRUST COMPANY AMERICAS, as  
Trustee

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

Authorized Signatory

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

Authorized Signatory

---

DEUTSCHE BANK TRUST COMPANY AMERICAS, as  
Security Agent

By: \_\_\_\_\_  
Authorized Signatory

By: \_\_\_\_\_  
Authorized Signatory

FORM OF INCUMBENCY CERTIFICATE

The undersigned, , being the of (the "Issuer"), does hereby certify that the individuals listed below are qualified and acting officers of the Issuer as set forth in the right column opposite their respective names and the signatures appearing in the extreme right column opposite the name of each such officer is a true specimen of the genuine signature of such officer and such individuals have the authority to execute documents to be delivered to, or upon the request of, Deutsche Bank Trust Company Americas, as Trustee under the Indenture dated as of March 19, 2014, by and between the Issuer, the guarantors party thereto, the Trustee and the other parties signatory thereto.

Name

Title

Signature

_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Certificate as of the day of , 20 .

Name:

Title:



SHEARMAN & STERLING LLP

Dated 19 March 2014

US\$ 40,000,000

GLOBAL SHIP LEASE, INC.

as the Parent

- with -

CITIBANK N.A., LONDON BRANCH  
as Arranger and Bookrunner

CITIBANK INTERNATIONAL PLC  
as Facility Agent

DEUTSCHE BANK TRUST COMPANY AMERICAS  
as Security Agent

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CREDIT AGREEMENT

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ABU DHABI | BEIJING | BRUSSELS | FRANKFURT | HONG KONG | LONDON | MILAN | NEW YORK | PALO ALTO  
PARIS | ROME | SAN FRANCISCO | SÃO PAULO | SHANGHAI | SINGAPORE | TOKYO | TORONTO | WASHINGTON, DC

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**THIS AGREEMENT** is dated 19 March 2014 and is made **BETWEEN**:

- (1) **GLOBAL SHIP LEASE, INC.**, a corporation incorporated according to the laws of the Republic of the Marshall Islands with its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960 (the **Parent**);
- (2) **THE COMPANIES** listed in Part 1 of Schedule 1 (*Original Obligors*) each of which is a corporation or a company formed according to the law of the country indicated against its name in Part 1 of Schedule 1 (*Original Obligors*) (the **Original Borrowers**);
- (3) **THE COMPANIES** listed in Part 1 of Schedule 1 (*Original Obligors*) each of which is a corporation or a company formed according to the law of the country indicated against its name in Part 1 of Schedule 1 (*Original Obligors*) (the **Original Guarantors**);
- (4) **CITIBANK N.A., LONDON BRANCH** as mandated lead arranger (in this capacity the **Arranger**);
- (5) **CITIBANK N.A., LONDON BRANCH** as bookrunner (the **Bookrunner**);
- (6) **CITIBANK N.A., LONDON BRANCH** as lender (the **Original Lender**);
- (7) **CITIBANK INTERNATIONAL PLC** as facility agent (the **Facility Agent**); and
- (8) **DEUTSCHE BANK TRUST COMPANY AMERICAS** as security trustee (the **Security Agent**).

**IT IS AGREED** as follows:

## 1. **INTERPRETATION**

### 1.1 **Definitions**

In this Agreement:

**Acceptable Bank** means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa2 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency; or
- (b) any other bank or financial institution approved by the Facility Agent.

**Acceptable Charter** means:

- (a) in respect of an Identified Vessel, the relevant Time Charter listed in Schedule 3 (*Identified Vessels*) relating to such Identified Vessel, with charter periods and charter rates detailed therein; or
- (b) in respect of an Additional Vessel, at the time such time charter is entered into or, as the case may be, at the time the Parent notifies the Facility Agent the Vessel is to be designated an Additional Vessel, a time charter with an Acceptable Charterer; or
- (c) any other time charter with an Acceptable Charterer as the Facility Agent may agree (acting reasonably);

provided that no time charter will be an Acceptable Charter unless it is in full force and effect and such time charter does not impose any obligations such that:

- (a) the Facility Agent is under any obligation or liability under any such time charter or liable to make any payment under that time charter; or
- (b) the Facility Agent is obliged to enforce against any charterer any term of any such time charter, or to make any enquiries as to the nature or sufficiency of any payment received by the Facility Agent.

**Acceptable Charterer** means CMA CGM, any CMA CGM Charterer whose obligations under the relevant Time Charter are unconditionally and irrevocably guaranteed by CMA CGM or any of the other charterers set out in Schedule 9 (*Acceptable Charterers*) or such other person as may be approved by the Facility Agent (acting in accordance with the instructions of the Majority Lenders) from time to time.

**Accession Deed** means a document substantially in the form set out in Schedule 11 (*Form of Accession Deed*).

**Accounting Principles** means U.S. GAAP.

**Additional Borrower** means a company which becomes an Additional Borrower in accordance with Clause 26 (*Changes to the Obligors*).

**Additional Guarantor** means a company which becomes an Additional Guarantor in accordance with Clause 26 (*Changes to the Obligors*).

**Additional Obligor** means an Additional Borrower or an Additional Guarantor.

**Additional Vessel** means any new or used container vessel which:

- (a) is a container vessel of standard design with a cargo capacity of at least 750 TEU;
- (b) will be from its Delivery Date, employed by way of Acceptable Charter, and

in respect of which the Parent has notified the Facility Agent that it wishes such vessel be designated as an Additional Vessel.

**Administrative Party** means the Arranger, the Bookrunner, the Facility Agent and the Security Agent.

**Affiliate** means a Subsidiary or a Holding Company of a person or any other Subsidiary of that Holding Company.

**Agreement** means this credit agreement, including any schedules or appendices hereto, as amended from time to time.

**Applicable Law** means any or all applicable law (whether civil, criminal or administrative), common law, statute, statutory instrument, treaty, convention, regulation, directive, by-law, demand, decree, ordinance, injunction, resolution, order, judgment, rule, permit, licence or restriction (in each case having the force of law) and codes of practice or conduct, circulars and guidance notes generally accepted and applied by the global container shipping industry, in each case of any government, quasi-government, supranational, federal, state or local government, statutory or regulatory body, court, agency or association relating to all laws, rules, directives and regulations, national or international, public or private in any applicable jurisdiction from time to time.

**Applicable Time** means in respect of any Additional Vessel, the date upon which the Facility Agent receives all of the documents and evidence set out in Part 2 of Schedule 2 (*Additional Vessel Conditions Precedent*) in relation to that Additional Vessel (save to the extent any such documents or evidence have been waived by the Facility Agent in relation to that Additional Vessel).

**Appraised Value** means, as of a specific date, in respect of an Additional Vessel, the fair market value that would be obtained for that Additional Vessel in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined by an Approved Valuer.

**Approved Flag States** means any of the flag states set out in Schedule 10 (*Approved Flag States*) or such other flag state as may be approved by the Facility Agent (acting in accordance with the instructions of the Majority Lenders).

**Approved Manager** means any of Columbia, Bernard Schulte, Anglo Eastern, Wallem, V-Ships, Univan and Wilhelmsen.

**Approved Valuer** means any of Howe Robinson Marine Evaluations Ltd., Braemar Seascope Valuation Ltd., Drewry Maritime Service (Asia) pte Ltd., Maritime Strategies International Limited, Fearnleys A.S., Oslo Shipbrokers A.S., Clarkson Valuations Limited, Simpson Spence & Young Shipbrokers Ltd., E.A. Gibson Shipbrokers Ltd., Jacq. Pierot Jr. & Sons, Allied Shipbroking, Greece, RS Platou ASA, ICAP Shipping Limited, ACM Ltd., London, Island Shipbrokers PTE LTD, Singapore, Deloitte LLP, Ernst & Young LLP, KPMG LLP, Marsoft, Barry Rogliano Salles (BRS), Kontiki Shipbrokers and Maersk Broker, provided that, at the time any such firm is to be utilised, such firm would qualify as an Independent Appraiser.

**Asset Sale** has the meaning given to that term in Schedule 14 (*Notes Restrictive Covenants*).

**Auditors** means one of PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte & Touche or any of their successors or local affiliates or other independent public accountants of international standing or any other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).

**Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

**Available Commitment** means a Lender's Commitment minus (subject as set out below):

- (a) the amount of its participation in any outstanding Loan; and
- (a) in relation to any proposed Loan, the amount of its participation in any other Loans that are due to be made on or before the proposed Utilisation Date.

For the purposes of calculating a Lender's Available Commitment in relation to any proposed Loan, that Lender's participation in any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date shall not be deducted from that Lender's Commitment.

**Available Facility** means the aggregate for the time being of each Lender's Available Commitment.

**Availability Period** means the period from and including the date when the Parent provides to the Facility Agent evidence reasonably satisfactory to the Facility Agent that all amounts outstanding under or in connection with the Existing Facility Agreement have been irrevocably repaid in full and all commitments thereunder have been cancelled and that no member of the Group has any liabilities outstanding under or in connection with the Existing Facility Agreement, to and including the Business Day falling one month prior to the Termination Date.

**Borrower** means an Original Borrower or an Additional Borrower.

**Borrower DTTP Filing** means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the relevant Borrower, which:

- (a) where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in Part 2 of Schedule 1 (*Original Lender*), and
  - (i) where the Borrower is incorporated in the United Kingdom and is an Original Borrower, is filed with HM Revenue & Customs within 30 days of the Signing Date; or
  - (ii) where the Borrower is incorporated in the United Kingdom and is an Additional Borrower, is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower; or
- (b) where it relates to a Treaty Lender that is a New Lender or an Increase Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Transfer Certificate or Increase Confirmation, and
  - (i) where the Borrower is incorporated in the United Kingdom and is a Borrower as at the relevant Transfer Date (or date on which the increase in Commitments described in the relevant Increase Confirmation takes effect) is filed with HM Revenue & Customs within 30 days of that Transfer Date (or date on which the increase in Commitments described in the relevant Increase Confirmation takes effect); or
  - (ii) where the Borrower is incorporated in the United Kingdom and is not a Borrower as at the relevant Transfer Date (or date on which the increase in Commitments described in the relevant Increase Confirmation takes effect), is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower.

**Break Costs** means the amount (if any) which a Lender is entitled to receive under Clause 22.3(b) (*Break Costs*).

**Business Day** means a day (other than a Saturday or a Sunday) on which banks are open for general business in London, England, Amsterdam, the Netherlands and New York, the United States of America.

**Cash Balance** has the meaning given to that term in Clause 17.1 (*Definitions*).

**Change of Control** means a "Change of Control" as defined in the Notes Restrictive Covenants.

**Charter Guarantee** means in relation to any Additional Vessel, the guarantee (if any) in form and substance satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders, in turn acting reasonably).

**Charterers** means, in respect of a Vessel, CMA CGM, any CMA CGM Charterer and any Acceptable Charterer from time to time of such Vessel, and **Charterer** means any of them.

**CMA CGM** means CMA CGM S.A.

**CMA CGM Charterer** means any wholly-owned Subsidiary of CMA CGM.

**Code** means the US Internal Revenue Code of 1986.

**Collateral** has the meaning given to that term in Schedule 14 (*Notes Restrictive Covenants*).



**Commitment** means:

- (a) for an Original Lender, the aggregate amount set opposite its name in Part 2 of Schedule 1 (*Original Lender*) under the heading **Commitments** and the amount of any other commitment to advance funds under this Agreement it acquires; and
- (b) for any other Lender, the amount of any commitment to advance funds under this Agreement it acquires, to the extent not cancelled, transferred or reduced under this Agreement.

**Compliance Certificate** means a certificate substantially in the form set out in Schedule 7 (*Compliance Certificate*).

**Confidentiality Undertaking** means a confidentiality undertaking substantially in the form set out in Schedule 12 (*LMA form of Confidentiality Undertaking*) or in any other form agreed between the Parent and the Facility Agent.

**Constitutional Documents** means the constitutional documents of the Obligor.

**CTA** means the Corporation Tax Act 2009.

**Debt Purchase Transaction** means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of, any Commitment or amount outstanding under this Agreement.

**Debt Service** means, for the Parent, on a consolidated basis, the sum of:

- (a) Net Interest Expense;
- (b) scheduled repayments of borrowings and principal repayments of finance leases (but excluding amounts applied in redemption of the Senior Secured Notes pursuant to section 4.23 of the Senior Secured Note Indenture); and
- (c) payments in respect of Disqualified Stock.

**Debt Service Coverage Ratio** means the ratio of EBITDA to Debt Service.

**Default** means:

- (a) an Event of Default; or
- (b) an event which would be (with the expiry of a grace period, the giving of notice or the making of any determination under the Finance Documents or any combination of them) an Event of Default.

**Defaulting Lender** means any Lender:

- (a) which has failed to make its participation in a Loan available or has notified the Facility Agent or the Parent (which has notified the Facility Agent) that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with Clause 4.3(d) (*Advance of Loans*);

- (b) which has otherwise rescinded or repudiated a Finance Document;
  - (c) with respect to which an Insolvency Event has occurred and is continuing,
- unless, in the case of paragraphs (a) above:

- (i) its failure to pay is caused by:
  - (A) administrative or technical error; or
  - (B) a Disruption Event; andpayment is made within three Business Days of its due date; or
- (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

**Delegate** means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

**Delivery Date** means, in respect of an Additional Vessel, the date of actual delivery of that Additional Vessel to the relevant Borrower.

**Disqualified Stock** has the meaning given to that term in Schedule 14 (*Notes Restrictive Covenants*).

**Disruption Event** means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
  - (i) from performing its payment obligations under the Finance Documents; or
  - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

**Dollars** or **US\$** means the lawful currency for the time being of the United States of America.

**DSCR Test Date** has the meaning given to that term in Clause 6.4 (*Mandatory prepayment and cancellation – Debt Service Coverage Ratio*).

**Earnings** means, in respect of a Vessel, all present and future moneys and claims which are earned by or become payable to or for the account of the Parent or other relevant Obligor in connection with the operation or ownership of that Vessel and including but not limited to:

- (a) freights, passage and hire moneys (howsoever earned);

- (b) remuneration for salvage and towage services;
- (c) demurrage and detention moneys;
- (d) all moneys and claims in respect of the requisition for hire of that Vessel;
- (e) payments received in respect of any off-hire insurance; and
- (f) payments received pursuant to any Charter Guarantee relating to that Vessel.

**Earnings Account** means, with respect to any Vessel, a bank account into which all Earnings with respect to such Vessel shall be deposited.

**Earnings Account Security Agreement** means a Security Interest granted with respect to an Earnings Account, as more particularly described at paragraph 2(c) of Part 2 of Schedule 2 (*Additional Vessel Conditions Precedent*).

**EBITDA** means, for the Parent, on a consolidated basis, the sum of:

- (a) revenue;
- (b) less operating expenses.

For the avoidance of doubt, depreciation and amortization, gains or losses on disposal of property and equipment, impairment of assets, amortization of government subsidies, income from associates and jointly controlled entities, and any other non operating income or expenses shall not be included in the calculation of EBITDA.

**Environment** means:

- (a) any land including, without limitation, surface land and sub-surface strata, sea bed or river bed under any water (as referred to below) and any natural or man-made structures;
- (b) water including, without limitation, coastal and inland waters, surface waters, ground waters and water in drains and sewers; and
- (c) air including, without limitation, air within buildings and other natural or man-made structures above or below ground.

**Environmental Affiliate** means the members of the Restricted Group and any Manager of a Vessel together with their respective employees and all of those persons for whom the members of the Restricted Group or the Manager is responsible under any Applicable Law in respect of any activities undertaken in relation to any of the Vessels.

**Environmental Approvals** means any permit, licence, approval, ruling, variance, exemption or other authorisation required under applicable Environmental Laws.

**Environmental Claim** means any claim by any person or persons or any governmental, judicial or regulatory authority which arises out of any breach, contravention or violation of Environmental Law or of the existence of any liability or potential liability arising from such breach, contravention or violation or the presence of Hazardous Material in contravention of Environmental Laws. In this context, 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 by any governmental, judicial or regulatory authority; and any form of enforcement or regulatory action.

**Environmental Laws** means any or all Applicable Law relating to or concerning:

- (a) pollution or contamination of the Environment, any ecological system or any living organisms which inhabit the Environment or any ecological system;
- (b) the generation, manufacture, processing, distribution, use (including abuse), treatment, storage, disposal, transport or handling of Hazardous Materials; and
- (c) the emission, leak, release, spill or discharge into the Environment of noise, vibration, dust, fumes, gas, odours, smoke, steam, effluvia, heat, light, radiation (of any kind), infection, electricity or any Hazardous Material and any matter or thing capable of constituting a nuisance or an actionable tort or breach of statutory duty of any kind in respect of such matters,

including, without limitation, the following laws of the United States of America: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, as amended, the Oil Pollution Act of 1990, as amended, the Resource Conservation and Recovery Act, as amended, and the Toxic Substances Control Act, as amended, together, in each case, with the regulations promulgated and the guidance issued pursuant thereto.

**Event of Default** means an event specified as such in Clause 18 (*Default*) of this Agreement.

**Event of Loss** has the meaning given to that term in Schedule 14 (*Restrictive Covenants*).

**Event of Loss Proceeds** has the meaning given to that term in Schedule 14 (*Notes Restrictive Covenants*).

**Existing Facility Agreement** means the US\$800,000,000 credit facility agreement dated 10 December 2007 between, amongst others, Global Ship Lease, Inc. as original borrower and ABN AMRO Bank N.V. (formerly Fortis Bank (Nederland) N.V.) as facility agent (as amended).

**Facility** means the revolving facility made available under this Agreement.

**Facility Office** means in respect of a Lender, the office through which that Lender will perform its obligations under this Agreement from time to time, which at the date of this Agreement is the address shown for such Lender in Part 2 of Schedule 1 (*Original Lender*) or such other address as a Lender may notify to the Facility Agent from time to time.

**Facility Reduction** has the meaning given to that term in paragraph (a) of Clause 6.4 (*Mandatory prepayment and cancellation – Debt Service Coverage Ratio*).

**Fee Letter** means any letter entered into by reference to this Agreement between one or more Administrative Parties and the Parent setting out the amount of certain fees referred to in this Agreement.

**Finance Document** means this Agreement, any Accession Deed, any Compliance Certificate, any Fee Letter, the Intercreditor Agreement, any Security Document, any Request and any other document designated as a “Finance Document” by the Facility Agent and the Parent.

**Finance Party** means a Lender or an Administrative Party.

**Financial Indebtedness** means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any acceptance credit;

- (c) any bond, note, debenture, loan stock or other similar instrument;
- (d) any redeemable preference share;
- (e) any agreement treated as a finance or capital lease in accordance with U.S. GAAP;
- (f) receivables sold or discounted (otherwise than on a non-recourse basis);
- (g) the acquisition cost of any asset to the extent payable after its acquisition or possession by the party liable where the deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset;
- (h) any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount);
- (i) any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing;
- (j) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; or
- (k) any guarantee, indemnity or similar assurance against financial loss of any person.

**Financial Year** means the annual accounting period of the Parent and each Borrower ending on or about 31 December in each year.

**General Assignment** means, in respect of a Vessel, the English law governed deed of assignment of the Time Charter, the Earnings, the Ship Management Agreement, any Charter Guarantee, the Requisition Compensation and the Obligatory Insurances granted or to be granted in favour of the Security Agent by the relevant Obligor substantially in the form of Appendix 1 (*Form of General Assignment*) together with any and all notices and acknowledgements entered into in connection therewith.

**Group** means the Parent and each of its Restricted Subsidiaries for the time being.

**Group Structure Chart** means the group structure chart in the agreed form.

**GSLs** means Global Ship Lease Services Limited (Company No. 06285694) a company incorporated in England and Wales, whose registered address is 150 Aldersgate Street, London, EC1A 4AB.

**Guarantor** means an Original Guarantor or an Additional Guarantor.

**Hazardous Material** means any element or substance, whether natural or artificial, and whether consisting of gas, liquid, solid or vapour, whether on its own or in any combination with any other element or substance, which is listed, identified, defined or determined by any Environmental Law or other Applicable Law to be, to have been, or to be capable of being or becoming harmful to mankind or any living organism or damaging to the Environment, including, without limitation, oil (as defined in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended).

**Holding Company** means:

- (a) in relation to a company incorporated in England and Wales, a holding company within the meaning of section 736 of the Companies Act 1985; and
- (b) in relation to a company or other person incorporated or formed outside England and Wales, a company or other person of which such company is the Subsidiary.

**Identified Vessel** means each of the Vessels listed under the heading “**Identified Vessels**” in Schedule 3 (*Identified Vessels*).

**Impaired Agent** means the Facility Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
  - (b) the Facility Agent otherwise rescinds or repudiates a Finance Document;
  - (c) (if the Facility Agent is also a Lender) it is a Defaulting Lender under paragraph (a), (b) or (c) of the definition of “Defaulting Lender”; or
  - (d) an Insolvency Event has occurred and is continuing with respect to the Facility Agent;
- unless, in the case of paragraph (a) above:
- (i) its failure to pay is caused by:
    - (A) administrative or technical error; or
    - (B) a Disruption Event; andpayment is made within three Business Days of its due date; or
  - (ii) the Facility Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

**Increase Confirmation** means a confirmation substantially in the form set out in Schedule 13 (*Form of Increase Confirmation*).

**Increase Lender** has the meaning given to that term in Clause 2.2 (*Increase*).

**Independent Appraiser** has the meaning given to that term in Schedule 14 (*Notes Restrictive Covenants*).

**Insolvency Event** in relation to an entity means that the entity:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official.

**Insurers** means the underwriters or insurance companies with whom any Obligatory Insurances are effected and the managers of any protection and indemnity or war risks association in which any of the Vessels may at any time be entered.

**Intercreditor Agreement** means the intercreditor agreement dated the same date as this Agreement and made between, among others, the Parent, the Original Debtors (as defined in the Intercreditor Agreement), Deutsche Bank Trust Company Americas as Security Agent, the Facility Agent (as Revolving Agent), the Lenders (as Revolving Lenders), the Arranger, the note trustee in respect of the Senior Secured Notes and the Intra-Group Lenders (as defined in the Intercreditor Agreement).

**Interest Expense** means, for any Measurement Period, the aggregate amount of:

- (a) the accrued interest, commission, fees (excluding any upfront fees or costs), discounts, prepayment fees, premiums or charges and other finance payments (excluding any payments of principal) and including the interest (but not the capital) element of payments in respect of finance leases, whether paid or payable by any member of the Group (calculated on a consolidated basis for the Group); and
- (b) all dividends accrued or paid on any series of Disqualified Stock of the Parent or any Disqualified Stock or preferred stock of any Restricted Subsidiary (other than any such Disqualified Stock or preferred stock held by the Parent or a Wholly Owned Restricted Subsidiary or to the extent paid in Qualified Equity Interests),

in respect of that Measurement Period.

**Interest Payment Date** has the meaning given to that term in Clause 7.2 (*Payment of interest*).

**Interpolated Screen Rate** means, in relation to LIBOR for any 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 Term of that Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Term of that Loan,

each as of 11:00 a.m. on the Rate Fixing Day.

**ISM Code** means the International Safety Management Code (including the guidelines on its implementation), adopted by the International Maritime Organization Assembly as Resolutions A.741(18) and A.788(19), as the same may have been or may be amended or supplemented from time to time. The terms “safety management system”, “Safety Management Certificate”, “Document of Compliance” and “major non-conformity” shall have the same meanings as are given to them in the ISM Code.

**ISPS Code** means the International Ship and Port Facility Security Code adopted by the International Maritime Organization Assembly as the same may have been or may be amended or supplemented from time to time.

**ITA** means the Income Tax Act 2007.

**Legal Opinion** means any legal opinion delivered to the Facility Agent under Clause 3.1 (*Conditions precedent*) or Clause 27 (*Changes to the Lenders*).

**Lender** means:

- (a) an Original Lender; or
- (b) any person which becomes a party to this Agreement as a Lender after the date of this Agreement in accordance with Clause 2.2 (*Increase*) and Clause 27.1 (*Assignments and transfers by Lenders*);

and **Lenders** means all of them.

**LIBOR** means for a Term of any Loan or overdue amount:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Term of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) if:
  - (i) no Screen Rate is available for the currency of that Loan; or
  - (ii) no Screen Rate is available for the Term of that Loan or overdue amount and it is not possible to calculate the Interpolated Screen Rate for that Loan,  
the Reference Bank Rate.

as of 11.00 a.m. on the Rate Fixing Day for the offering of deposits in the currency of that Loan or overdue amount for a period comparable to that Term, and if that rate is less than zero, LIBOR shall be deemed to be zero.

**Loan** means, unless otherwise stated in this Agreement, the principal amount of each borrowing under this Agreement or the principal amount outstanding of that borrowing.

**London Business Day** means a day (other than a Saturday or a Sunday) on which banks are open for business in London.

**Majority Lenders** means Lenders:

- (a) whose share in the outstanding Loans and whose undrawn Commitments then aggregate 66 2/3 per cent. or more of the aggregate of all the outstanding Loans and the undrawn Commitments of all the Lenders;
- (b) if there is no Loan then outstanding, whose undrawn Commitments then aggregate 66 2/3 per cent. or more of the Total Commitments; or
- (c) if there is no Loan then outstanding and the Total Commitments have been reduced to zero, whose Commitments aggregated 66 2/3 per cent. or more of the Total Commitments immediately before the reduction.

**Manager** means CMA CGM, or any of its wholly owned Subsidiaries, any Approved Manager, or such other professional manager or managers as may be approved by the Facility Agent (acting in accordance with the instructions of the Majority Lenders) from time to time.

**Margin** means 3.25 % per annum.



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

- (a) the business, prospects or financial condition of the Obligors as a group;
- (b) the ability of the Obligors as a group to perform all of their payment obligations under any Finance Document;
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security Interest granted or purported to be granted pursuant to, any Finance Document other than illegality such that the Finance Parties would not have entered into this Agreement had such illegality been prevailing at that time; or
- (d) any material right or remedy of a Finance Party in respect of a Finance Document of such significance that the Finance Parties would not have entered into this Agreement had such material adverse effect been prevailing at the date of this Agreement.

**Maximum Available Facility Amount** means at any time the Total Commitments at such time.

**Measurement Period** means, in respect of any testing date, the immediately preceding semi-annual period of the Financial Year of the Parent ending on that testing date.

**Mortgage** means, in respect of a Vessel, a first priority ship mortgage and, if relevant, deed of covenants granted by the relevant Obligor in favour of the Security Agent, in form and substance satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) having regard to the legal requirements in the relevant Approved Flag State.

**Net Interest Expense** means, in respect of the Parent, on a consolidated basis, the sum of:

- (a) Interest Expense on Total Financial Debt,
- (b) less interest income from Cash and Cash Equivalents.

**Net Proceeds** has the meaning given to that term in Schedule 14 (*Notes Restrictive Covenants*).

**New Lender** has the meaning given to that term in Clause 27 (*Changes to the Lenders*).

**Note Finance Documents** means:

- (a) in respect of the Senior Secured Notes, the Senior Secured Note Documents; and
- (b) in respect of the Second Lien Notes, the Second Lien Note Documents.

**Note Repurchase** has the meaning given to that term in Clause 16.17 (*Note Purchase Condition*).

**Notes Liabilities** means the Senior Secured Note Liabilities and the Second Lien Note Liabilities, each as defined in the Intercreditor Agreement.

**Notes Restrictive Covenants** means the covenants and related provisions contained in Schedule 14 (*Notes Restrictive Covenants*).

**Notifiable Debt Purchase Transaction** has the meaning given to that term in paragraph (b) of Clause 28.1 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*).

**Obligatory Insurances** has the meaning given to that term in Schedule 14 (*Notes Restrictive Covenants*).

**Obligor** means a Borrower or a Guarantor.

**Obligor's Agent** means the Parent, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.3 (*Obligor's Agent*).

**Original Financial Statements** means:

- (a) in relation to the Parent, its audited consolidated financial statements for the Financial Year ending 31 December 2013;
- (b) in relation to each Original Borrower other than the Parent, its audited financial statements for its Financial Year ended 31 December 2012; and
- (c) in relation to any other Obligor, its audited financial statements delivered to the Facility Agent as required by Clause 26 (*Changes to the Obligors*).

**Original Jurisdiction** means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement or, in the case of an Additional Obligor, as at the date on which that Additional Obligor becomes Party as a Borrower or a Guarantor (as the case may be).

**Original Security Documents** means each of the documents listed in Schedule 8 (*Original Security Documents*).

**Party** means a party to this Agreement or any Finance Document.

**Permitted Security Interests** has the meaning given to the term "Permitted Lien" in Schedule 14 (*Notes Restrictive Covenants*).

**Pledge of Shares** means a first priority pledge of all of the issued share capital of GSLS (as and when required to be granted under paragraph (e) of Clause 3.1 (*Conditions precedent*)) and each other Obligor (other than the Parent) granted in favour of the Security Agent, together with any and all notice and acknowledgements and other ancillary documents entered into in connection therewith.

**Pro Rata Share** means:

- (a) for the purpose of determining a Lender's share in a utilisation of the Facility, the proportion which its Commitment bears to the Total Commitments; and
- (b) for any other purpose on a particular date:
  - (i) the proportion which a Lender's share of the Loans (if any) bears to all the Loans;
  - (ii) if there is no Loan outstanding on that date, the proportion which its Commitment bears to the Total Commitments on that date; or

if the Total Commitments have been cancelled, the proportion which its Commitment bore to the Total Commitments immediately before being cancelled.

**Qualified Equity Interests** has the meaning given to that term in Schedule 14 (*Notes Restrictive Covenants*).

**Qualifying Lender** means:

- (a) in respect of a Borrower incorporated in the United Kingdom:
  - (i) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
    - (A) a Lender:
      - (1) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payment apart from section 18A of the CTA; or
      - (2) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or
    - (B) a Lender which is:
      - (1) a company resident in the United Kingdom for United Kingdom tax purposes;
      - (2) a partnership each member of which is:
        - (aa) a company so resident in the United Kingdom; or
        - (bb) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;
      - (3) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
    - (C) a Treaty Lender; or
  - (ii) a Lender which is a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document; and
- (b) in respect of a Borrower incorporated in any other jurisdiction, any Lender.

**Rate Fixing Day** means two London Business Days before the first day of a Term, or unless market practice differs in the London interbank market for Dollars, in which case the Rate Fixing Day will be determined by the Facility 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 Rate Fixing Day will be the last of those days).

**Receiver** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

**Reference Bank 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, at which the relevant Reference Bank could borrow funds in the London interbank market in the relevant currency and for

the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period (save that, in the event that all of the Reference Banks have provided a rate, such arithmetic mean shall be calculated excluding the highest rate provided and the lowest rate provided).

**Reference Banks** means in relation to LIBOR, the principal London offices of HSBC Bank PLC, Deutsche Bank AG, London Branch and JPMorgan Chase Bank N.A., London Branch, BNP Paribas and Société Générale and any other bank or financial institution appointed as such by the Facility Agent (acting on the instructions of the Majority Lenders) under this Agreement.

**Related Assets** has the meaning given to that term in Schedule 14 (*Notes Restrictive Covenants*).

**Related Contracts** means any or all of the following (as the context requires):

- (a) the Time Charters;
- (b) the Ship Management Agreements; and
- (c) the Charter Guarantees.

**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.

**Release** means an emission, spill, release or discharge into or upon the air, surface water, groundwater, or soils of any Hazardous Materials for which any Obligor or the Manager has any liability under Environmental Law, except in accordance with a valid Environmental Approval.

**Relevant Jurisdiction** means, in relation to an Obligor:

- (a) its Original Jurisdiction; and
- (b) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

**Request** means a request made by a Borrower for a Loan, substantially in the form of Part 1 of Schedule 5 (*Form of Request*).

**Requisition Compensation** means, in respect of a Vessel, all moneys or other compensation payable by reason of requisition for title to, or other compulsory acquisition of, that Vessel.

**Restricted Group** means the Group excluding the Unrestricted Subsidiaries.

**Restricted Party** means any individual or entity that is:

- (a) listed on, or owned or controlled by an individual or entity listed on, or acting on behalf of an individual or entity listed on a Sanctions List;
- (b) the Government of a Sanctioned Country;
- (c) located in or incorporated under the laws of any Sanctioned Country; or
- (d) to the best knowledge of any member of the Group (acting with all due care and enquiry), otherwise a target of Sanctions.

**Restricted Subsidiary** means a Subsidiary of the Parent other than an Unrestricted Subsidiary.

**Rollover Loan** means one or more Loans:

- (a) made or to be made on the same day that a maturing Loan is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the amount of the maturing Loan;
- (c) in the same currency as the maturing Loan; and
- (d) made or to be made to the same Borrower for the purpose of refinancing that maturing Loan.

**Sanctioned Country** means a country or territory which is the subject of Sanctions.

**Sanctions** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by: (i) the US government, including the US Department of the Treasury (including OFAC), the US Department of State, or the US Department of Commerce, (ii) the United Nations Security Council, (iii) the European Union or (iv) Her Majesty's Treasury of the United Kingdom.

**Sanctions List** means any of the lists of specifically designated nationals or blocked individuals, vessels or entities (or equivalent) administered by (a) the US government, including the US Department of the Treasury (including OFAC), the US Department of State or the US Department of Commerce, (b) the United Nations Security Council, (c) the European Union or (d) Her Majesty's Treasury of the United Kingdom, each as amended, supplemented or substituted from time to time.

**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 Reuters screen (or any replacement Reuters page which displays that rate).

**Second Lien Note Documents** has the meaning given to that term in the Intercreditor Agreement.

**Second Lien Notes** has the meaning given to that term in the Intercreditor Agreement.

**Secured Liabilities** means all present and future obligations and liabilities (actual or contingent) of the Obligors to the Finance Parties or any of them under or in connection with any Finance Document.

**Secured Parties** has the meaning given to that term in the Intercreditor Agreement.

**Security Assets** means any asset which is the subject of a Security Interest created by a Security Document.

**Security Documents** means each of the Original Security Documents and any document required to be delivered to the Facility Agent under paragraphs 2(a) to 2(c) (inclusive) of Part 2 of Schedule 2 (*Additional Vessel Conditions Precedent*) together with any other document entered into by an Obligor or any other person creating or expressed to create any Security Interest over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents or the Senior Secured Note Documents.

**Security Interest** means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a similar effect.

**Senior Secured Note Documents** has the meaning given to that term in the Intercreditor Agreement.

**Senior Secured Note Indenture** has the meaning given to that term in the Intercreditor Agreement.

**Senior Secured Notes** has the meaning given to that term in the Intercreditor Agreement.

**Separate Loans** has the meaning given to that term in Clause 5.1(c) (*Repayment of Loans*).

**Ship Management Agreement** means, in respect of a Vessel, the management agreement dated on or prior to the Delivery Date of such Vessel between the relevant Obligor being the owner of such Vessel and the Manager or such other management agreement entered into from time to time between the Manager and the such Obligor.

**S&P** means Standard & Poor's Ratings Group and any successor thereto.

**Sponsor Affiliate** means CMA CGM and any of its affiliates.

**Subsidiary** has the meaning given to that term in Schedule 14 (*Notes Restrictive Covenants*).

**Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including, without limitation, any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**Tax Confirmation** means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
- (b) a partnership each member of which is:
  - (i) a company so resident in the United Kingdom; or
  - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.

**Tax Deduction** means a deduction or withholding for or on account of Tax made from a payment under a Finance Document.

**Tax Payment** means either the increase in a payment made by an Obligor to a Finance Party under Clause 10.1 (*Tax gross-up*) or a payment under Clause 10.2 (*Tax Indemnity*).

**Term** means each period determined under this Agreement by reference to which interest payable on a Loan or an overdue amount is calculated.

**Termination Date** means the date falling 5 years after the earlier of:

- (a) the first Utilisation Date; and
- (b) the date falling 6 months after the date of this Agreement,

but in any event not later than the date falling six months prior to the maturity date in respect of the Senior Secured Notes.

**Test Date** has the meaning given to that term in Clause 17.3 (*Cash Balance*).

**TEU** means twenty-foot equivalent units.

**Time Charter** means, in relation to a Vessel, such Acceptable Charter entered into from time to time in respect of that Vessel in accordance with this Agreement.

**Total Commitments** means the aggregate of the Commitments of all the Lenders.

**Total Financial Debt** means, in respect of the Parent, on a consolidated basis, the sum of:

- (a) all interest-bearing liabilities, being the sum of non-current financial debt and current financial debt; for the avoidance of doubt, obligations under finance leases shall be included and derivative financial instruments shall not be included in the calculation of interest-bearing liabilities, and
- (b) the total amount of financial commitments in relation to operating leases which are not recognised in the balance sheet.

**Transaction Documents** means the Finance Documents and the Note Finance Documents.

**Transaction Security** means any Security Interest created or expressed to be created in favour of the Security Agent pursuant to the Security Documents.

**Transfer Certificate** means a certificate, substantially in the form of Schedule 6 (*Form of Transfer Certificate*), with such amendments as the Facility Agent and the Parent may approve or reasonably require or any other form agreed between the Facility Agent and the Parent.

**Treaty Lender** means a Lender which:

- (a) is treated as a resident of a Treaty State for the purposes of the Treaty; and
- (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected.

**Treaty State** means a jurisdiction having a double taxation agreement (a Treaty) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

**UK Non-Bank Lender** means where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Transfer Certificate which it executes on becoming a Party.

**Unrestricted Subsidiary** has the meaning given to that term in Schedule 14 (*Notes Restrictive Covenants*).

**U.S. GAAP** means generally accepted accounting principles adopted and accepted in the United States of America (i) on the date of this Agreement when used in the context of calculating the financial covenants set out in Clause 17 (*Financial Covenant*) and (ii) otherwise, from time to time.

**Utilisation Date** means each date on which the Facility or any part thereof is utilised.

**Valuation** means, in respect of an Additional Vessel, a certificate of an Approved Valuer dated not more than 30 days prior to the Delivery Date in respect of that Additional Vessel setting forth the Appraised Value of that Additional Vessel as of the date of that certificate.

**Vessels** means, together, the Identified Vessels and, from the Applicable Time, each Additional Vessel and **Vessel** means any of them.

**Wholly Owned Restricted Subsidiary** has the meaning given to that term in Schedule 14 (*Notes Restrictive Covenants*).

## 1.2 Construction

- (a) In this Agreement, unless the contrary intention appears, a reference to:
- (i) the **Facility Agent**, the **Arranger**, any **Finance Party**, any **Lender**, any **Obligor**, any **Party**, any **Secured Party**, the **Security Agent** 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 and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
  - (ii) an **amendment** includes a supplement, novation, restatement or re-enactment and **amended** will be construed accordingly;
  - (iii) **assets** includes present and future properties, revenues and rights of every description;
  - (iv) an **authorisation** includes an authorisation, consent, approval, resolution, permit, licence, exemption, variance, filing, registration or notarisation;
  - (v) **disposal** means a sale, transfer, grant, lease (other than a bareboat charter entered into on commercial terms) declaration of trust or other disposal, whether voluntary or involuntary, and **dispose** will be construed accordingly;
  - (vi) **indebtedness** includes any obligation (whether incurred as principal or as surety and whether present or future, actual or contingent) for the payment or repayment of money;
  - (vii) a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality and their successors in title, permitted assigns and permitted transferees;
  - (viii) a **regulation** includes any regulation, rule, official directive, request, code or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (ix) a currency is a reference to the lawful currency for the time being of the relevant country;
  - (x) a Default being **outstanding** means that it has not been cured, remedied or waived;
  - (xi) a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
  - (xii) a Clause, a Subclause, a Schedule or an Appendix is a reference to a clause or subclause of, or a schedule to or appendix of, this Agreement;
  - (xiii) a Finance Document or a Transaction Document or another document is a reference to that Finance Document, Transaction Document or other document as amended;



- (xiv) a time of day is a reference to London time; and
  - (xv) words importing the plural shall include the singular and vice versa.
- (b) Unless the contrary intention appears, a reference to a **month** or months is a reference to a period starting on (and including) one day in a calendar month and ending on (but excluding) the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:
- (i) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
  - (ii) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and
  - (iii) notwithstanding subparagraph (i) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.
- (c) Unless expressly provided to the contrary in a Finance Document, a person who is not a party to a Finance Document may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any term of any Finance Document, the consent of any third party is not required for any variation (including any release or compromise of any liability) or termination of that Finance Document.
- (d) Unless the contrary intention appears or unless the context otherwise permits:
- (i) a reference to a Party will not include that Party if it has ceased to be a Party under this Agreement;
  - (ii) a word or expression used in any other Finance Document or in any notice given in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement;
  - (iii) any obligation of any Obligor under the Finance Documents which is not a payment obligation remains in force in accordance with its terms for so long as any payment obligation of that Obligor is, may be or is capable of becoming outstanding under the Finance Documents;
- (e) Each of the Obligors agrees that any rights which it may have at any time during the term of the Facility by reason of the performance of its obligations under the Finance Documents to be indemnified by any other Obligor and/or to take the benefit of any security taken by the Facility Agent pursuant to the Finance Documents shall be exercised in such manner and on such terms as the Facility Agent may require or as provided in this Agreement. Each of the Guarantors agrees to hold any sums received by it as a result of its having exercised any such right on trust for the Facility Agent absolutely;
- (f) Each of the Obligors agrees that it will not at any time during the term of the Facility claim any set-off or counterclaim against any other Obligors in respect of any liability owed to it by that other Obligor under or in connection with the Finance Documents, nor prove in competition with any of the Finance Parties in any liquidation of (or analogous proceeding in respect of) any other Obligor in respect of any payment made under the Finance Documents or in respect of any sum which includes the proceeds of realisation of any security held by the Facility Agent for the repayment of the Loans; and

- (g) Any notices given by the Parent or statements made by it, instructions given by it to any Finance Party or decisions made by it, will be conclusive and binding on all of the Obligors.
- (h) The headings in this Agreement do not affect its interpretation.

## 2. FACILITY AND PURPOSE

### 2.1 Facility

- (a) Subject to the terms of this Agreement, the Lenders make available a Dollar revolving credit facility in an aggregate amount equal to the Total Commitments.
- (b) The Facility will be available to all the Borrowers.

### 2.2 Increase

- (a) The Parent may by giving prior notice to the Facility Agent by no later than the date falling 10 Business Days after the effective date of a cancellation of:
  - (i) the Available Commitments of a Defaulting Lender in accordance with Clause 6.9 (*Right of cancellation in relation to a Defaulting Lender*); or
  - (ii) the Commitments of a Lender in accordance with:
    - (A) Clause 6.1 (*Illegality*); or
    - (B) Clause 6.7 (*Voluntary prepayment of Loans*),

request that the Commitments relating to any Facility be increased (and the Commitments relating to that Facility shall be so increased) in an aggregate amount in Dollars of up to the amount of the Commitments relating to that Facility so cancelled as follows:

- (iii) the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an **Increase Lender**) selected by the Parent (each of which shall not be a Sponsor Affiliate or a member of the Group) and each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;
- (iv) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender;
- (v) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;
- (vi) the Commitments of the other Lenders shall continue in full force and effect; and
- (vii) any increase in the Commitments relating to a Facility shall take effect on the date specified by the Parent in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.

- (b) An increase in the Commitments relating to a Facility will only be effective on:
  - (i) the execution by the Facility Agent of an Increase Confirmation from the relevant Increase Lender;
  - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase:
    - (A) the Increase Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
    - (B) the Facility Agent being satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender. The Facility Agent shall promptly notify the Parent and the Increase Lender upon being so satisfied.
- (c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Facility Agent 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 increase becomes effective.
- (d) The Parent shall promptly on demand pay the Facility Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.
- (e) The Parent may pay to the Increase Lender a fee in the amount and at the times agreed between the Parent and the Increase Lender in a Fee Letter.
- (f) Clause 27.3 (*Limitation of responsibility of Existing Lender*) shall apply mutatis mutandis in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
  - (i) an “Existing Lender” were references to all the Lenders immediately prior to the relevant increase;
  - (ii) the “New Lender” were references to that “Increase Lender”; and
  - (iii) a “re-transfer” and “re-assignment” were references to respectively a “transfer” and “assignment”.

### 2.3 **Obligors’ Agent**

- (a) Each Obligor (other than the Parent) by its execution of this Agreement or an Accession Deed irrevocably appoints the Parent (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
  - (i) the Parent on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Requests), to execute on its behalf any Accession Deed, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
  - (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Parent,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including, without limitation, any Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

#### 2.4 **Purpose**

Each Loan may be used only in or towards:

- (a) financing or refinancing the cost of acquiring Additional Vessels (save that not more than US\$15,000,000 in aggregate may be outstanding at any time in respect of Loans that were drawn for the purpose of financing or refinancing the cost of acquiring an Additional Vessel where such Additional Vessel was older than 10 years as at the Utilisation Date in respect of the relevant Loan); or
- (b) the general corporate purposes of the Restricted Group (save that (i) the aggregate amount outstanding in respect of any Loans drawn for such general corporate purposes shall not exceed US\$5,000,000 at any time; and (ii) for the avoidance of doubt, "general corporate purposes" shall not include the financing or refinancing the cost of acquiring any vessel or any related asset, the acquisition of any company, business or undertakings or any Note Repurchase),

provided that GSLS may only borrow a Loan for the purposes specified in paragraph (b) above.

#### 2.5 **No obligation to monitor**

No Finance Party is obliged to monitor or verify the utilisation of any Loan.

#### 2.6 **Nature of a Finance Party's rights and obligations**

Unless otherwise agreed by all the Finance Parties:

- (a) the obligations of a Finance Party under the Finance Documents are several;
- (b) failure by a Finance Party to perform its obligations does not affect the obligations of any other Party under the Finance Documents;
- (c) no Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents;
- (d) the rights of a Finance Party under the Finance Documents are separate and independent rights;

- (e) a Finance Party may, except as otherwise stated in the Finance Documents, separately enforce those rights, provided always that no Finance Party shall act separately unless (i) the Facility Agent has failed to act and the Facility Agent has not been replaced in accordance with Clause 19.12 (*Resignation of the Facility Agent*) or (ii) as a matter of law, the Facility Agent cannot represent them; and
- (f) a debt arising under the Finance Documents to a Finance Party is a separate and independent debt.

### 3. CONDITIONS PRECEDENT

#### 3.1 Conditions precedent

- (a) A Request for a Loan to be used in and towards the cost of acquiring a vessel which a Borrower wishes to become an Additional Vessel may not be given until the Facility Agent has notified that Borrower and the Lenders that it has received satisfactory evidence that the vessel to be acquired will become an Additional Vessel at the Applicable Time (being not more than five Business Days after the date of the Request or such shorter period as the Facility Agent may agree), in form and substance satisfactory to the Facility Agent. The Facility Agent must give this notification promptly upon being so satisfied.
- (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.
- (c) A Loan shall be drawn down when and only when, the Facility Agent has received all of the documents and evidence set out in Part 1 of Schedule 2 (*Initial Conditions Precedent Documents*) in form and substance satisfactory to the Facility Agent.
- (d) A Loan to be used in and towards financing or refinancing the cost of acquiring an Additional Vessel shall not be drawn down until:
  - (i) the owner (or the person to become the owner) of the relevant Additional Vessel (if not already a Borrower and a Guarantor) has become a Borrower and a Guarantor in accordance with Clause 26 (*Changes to the Obligors*) and the Facility Agent has received all of the documents and evidence set out in Part 3 of Schedule 2 (*Additional Obligor Conditions Precedent*) in form and substance satisfactory to the Facility Agent;
  - (ii) the Facility Agent has received all of the documents and evidence set out in Paragraph 1 (*Borrowers*) of Part 2 of Schedule 2 (*Additional Vessel Conditions Precedent*) in form and substance satisfactory to the Facility Agent;
  - (iii) in relation to that Additional Vessel, the Facility Agent's confirmation to the Lenders that it has received evidence reasonably satisfactory to it that it will receive, on the Utilisation Date or the Delivery Date (whichever is the later), all of the documents and evidence set out in Part 2 of Schedule 2 (*Additional Vessel Conditions Precedent*) (other than as already delivered under paragraph (ii) above) in form and substance satisfactory to the Facility Agent; and
  - (iv) in relation to that Additional Vessel, the Facility Agent's confirmation to the Lenders that it has received evidence reasonably satisfactory to it that it will receive, promptly following the Delivery Date, all of the documents and evidence set out in Schedule 4 (*Conditions subsequent to drawing*).
- (e) A Loan may not be drawn by GSLS as Borrower until the Parent has granted security over the entire issued share capital of GSLS pursuant to a share charge in form and substance satisfactory to the Facility Agent.

### 3.2 Further conditions precedent

The obligations of each Lender to advance any Loan are subject to the further conditions precedent that on both the date of the Request and the Utilisation Date for that Loan:

- (a) other than in the case of a Rollover Loan, the representations made under Clause 14 (*Representations*) are correct in all material respects; and
- (b) in the case of a Rollover Loan, no Event of Default is outstanding or would result from the Loan, and in the case of any other Loan, no Default is outstanding or would result from that Loan.

### 3.3 Waiver of conditions precedent

- (a) The conditions in this Clause 3 are inserted solely for the benefit of the Finance Parties and, subject to paragraph (b) of this Clause 3.3, may be waived in whole or in part and with or without conditions by the Facility Agent (acting on the instructions of the Majority Lenders).
- (b) A waiver of any of the following conditions shall not be given without the prior consent of all of the Lenders:
  - (i) the conditions set out in paragraph 1 (*Obligors*) of Part 1 of Schedule 2 (*Initial Conditions Precedent Documents*);
  - (ii) the conditions set out in paragraph 3 (*Finance Documents and Related Contracts*) of Part 1 of Schedule 2 (*Initial Conditions Precedent Documents*) (other than those at sub-paragraph (e));
  - (iii) the conditions set out in sub-paragraphs (f) and (g) of paragraph 4 (*Other documents and evidence*) of Part 1 of Schedule 2 (*Initial Conditions Precedent Documents*);
  - (iv) the conditions set out in paragraph 1 (*Borrower*) of Part 2 of Schedule 2 (*Additional Vessel Conditions Precedent*);
  - (v) the conditions set out in sub-paragraphs (a), (b), (c) and (d) of paragraph 2 (*Finance Documents and Related Contracts*) of Part 2 of Schedule 2 (*Additional Vessel Conditions Precedent*); and
  - (vi) the conditions set out in Part 3 of Schedule 2 (*Additional Obligor Conditions Precedent*) other than at paragraphs 9, 10, 11, 12 and 13.

## 4. UTILISATION

### 4.1 Giving of Requests

- (a) A Borrower may borrow a Loan by giving to the Facility Agent a duly completed Request.
- (b) Unless the Facility Agent otherwise agrees acting on the instructions of the Majority Lenders, the latest time for receipt by the Facility Agent of a duly completed Request is 11.00 a.m. not more than seven and not less than five Business Days prior to the date of the proposed borrowing (or such shorter period as the Facility Agent shall agree).
- (c) Each Request is irrevocable.

#### 4.2 **Completion of Requests**

A Request for a Loan will only be regarded as having been duly completed if:

- (a) the Utilisation Date is a Business Day falling within the Availability Period;
- (b) the Utilisation Date for a Loan to be used in or towards the financing or refinancing of the cost of acquiring an Additional Vessel falls not more than 5 Business Days before the Delivery Date of any Vessel;
- (c) the currency specified in the Request is Dollars;
- (d) it sets out whether that Loan is to be applied in and towards the cost of the acquisition of an Additional Vessel;
- (e) the amount requested for the Loan is a minimum amount of US\$2,000,000 or, if less, the aggregate unutilised amount of the Facility (or such other lesser amount to which the Facility Agent has given prior approval);
- (f) the amount requested for the Loan does not exceed, when aggregated with the amounts outstanding under the Facility and amounts to be drawn down under any other Requests which have been submitted, the Maximum Available Facility Amount; and
- (g) the initial proposed Term for the Loan complies with this Agreement. Only one Loan may be requested in a Request.

#### 4.3 **Advance of Loans**

- (a) The Facility Agent must promptly notify each Lender of the details of the requested Loan and the amount of its share in that Loan.
- (b) The amount of each Lender's share of the Loan will be its Pro Rata Share on the proposed Utilisation Date.
- (c) No Lender is obliged to participate in a Loan if, as a result, its share in the Loans would exceed its Commitment or the Loans would exceed the Total Commitments.
- (d) If the conditions set out in this Agreement have been met, each Lender must make its share in the requested Loan available by the Utilisation Date through its Facility Office.

### 5. **REPAYMENT**

#### 5.1 **Repayment of Loans**

- (a) Subject to paragraph (c) below, each Borrower which has drawn a Loan shall repay that Loan on the last day of its Term.
- (b) Without prejudice to each Borrower's obligation under paragraph (a) above, if:
  - (i) one or more Loans are to be made available to a Borrower:
    - (A) on the same day that a maturing Loan is due to be repaid by that Borrower;
    - (B) in the same currency as the maturing Loan; and
    - (C) in whole or in part for the purpose of refinancing the maturing Loan; and

- (ii) each Lender's Pro Rata Share of the maturing Loan is the same as that Lender's Pro Rata Share of the new Loans, the aggregate amount of the new Loans shall, unless the relevant Borrower or the Parent notifies the Facility Agent to the contrary in the relevant Request, be treated as if applied in or towards repayment of the maturing Loan so that:
- (A) if the amount of the maturing Loan exceeds the aggregate amount of the new Loans:
    - (1) the relevant Borrower will only be required to make a payment under Clause 12 (*Payments*) in an amount in the relevant currency equal to that excess; and
    - (2) each Lender's participation in the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Loan and that Lender will not be required to make a payment under Clause 12 (*Payments*) in respect of its participation in the new Loans; and
  - (B) if the amount of the maturing Loan is equal to or less than the aggregate amount of the new Loans:
    - (1) the relevant Borrower will not be required to make a payment under Clause 12 (*Payments*); and
    - (2) each Lender will be required to make a payment under Clause 12 (*Payments*) in respect of its participation in the new Loans only to the extent that its participation in the new Loans exceeds that Lender's participation in the maturing Loan and the remainder of that Lender's participation in the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Loan.
- (c) At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Loans then outstanding will be automatically extended to the Termination Date and will be treated as separate Loans (the **Separate Loans**) denominated in the currency in which the relevant participations are outstanding.
- (d) A Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving not less than three Business Days' prior notice to the Facility Agent. The Facility Agent will forward a copy of a prepayment notice received in accordance with this paragraph (d) to the Defaulting Lender concerned as soon as practicable on receipt.
- (e) Interest in respect of a Separate Loan will accrue for successive Terms selected by the Borrower by the time and date specified by the Facility Agent (acting reasonably) and will be payable by that Borrower to the Facility Agent (for the account of that Defaulting Lender) on the last day of each Term of that Loan.
- (f) The terms of this Agreement relating to Loans generally shall continue to apply to Separate Loans other than to the extent inconsistent with paragraphs (c) to (e) above, in which case those paragraphs shall prevail in respect of any Separate Loan.



## 6. PREPAYMENT AND CANCELLATION

### 6.1 Illegality

- (a) If it becomes, or to the knowledge of any Lender is to become, unlawful in any jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or a Finance Document or to fund or maintain its share in one or more of the Loans (the **Event of Illegality**), that Lender shall notify the Facility Agent and the Parent.
- (b) After notification under paragraph (a) above, the Facility Agent shall notify the Parent promptly and:
  - (i) the Borrowers shall repay or prepay the share of that Lender in the relevant Loan or Loans on the date specified in paragraph (c) below; and
  - (ii) the Commitment of that Lender will be immediately cancelled.
- (c) The date for repayment or prepayment of a Lender's share in a Loan or Loans will be the date specified by that Lender in the notice delivered to the Parent (being no earlier than the last day of any applicable grace period permitted by Applicable Law or, if earlier, and the Borrower so desires, the last day of the current Term).

### 6.2 Change of Control

Upon the occurrence of a Change of Control the Facility will be cancelled and all outstanding Loans, together with accrued interest and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

### 6.3 Disposal Proceeds

- (a) Subject to paragraph (b) below and to paragraph 3.2 of Schedule 14 (*Notes Restrictive Covenants*), the Parent shall ensure that, in respect of:
  - (i) the Net Proceeds from an Asset Sale involving Collateral; and
  - (ii) any Event of Loss Proceeds involving Collateral,it shall promptly pay or shall direct the Security Agent to pay such amounts firstly to the Facility Agent in prepayment of all amounts then outstanding under the Loans drawn for the purpose described in Clause 2.4(a) (*Purpose*) (other than Separate Loans) and thereafter in accordance with paragraph 6 or paragraph 7 (as applicable) of Schedule 14 (*Notes Restrictive Covenants*).
- (b) The Parent shall ensure that (i) the Net Proceeds from an Asset Sale involving an Identified Vessel, to the extent in the amount of \$2,000,000 or more, shall be applied in accordance with paragraph 6.2 of Schedule 14 (*Notes Restrictive Covenants*); and (ii) the Event of Loss Proceeds from an Event of Loss involving an Identified Vessel, to the extent in the amount of \$2,000,000 or more, shall be applied in accordance with paragraph 7.2 of Schedule 14 (*Notes Restrictive Covenants*).

### 6.4 Mandatory prepayment and cancellation – Debt Service Coverage Ratio

If:

- (a) in respect of a Measurement Period ending on any one of 31 December 2016, 30 June 2017 or 31 December 2017 (each a **DSCR Test Date**), the Debt Service Coverage Ratio is less than 1.0:1, then, immediately upon delivery of the relevant Compliance Certificate in accordance

with Clause 15.4(a) (*Compliance Certificate*) the Total Commitments shall be reduced to US\$25,000,000 and the Parent shall ensure that any Loans in excess of the Total Commitments after such reduction are prepaid on such date (a **Facility Reduction**);

- (b) for the avoidance of doubt, not more than one Facility Reduction shall take place pursuant to paragraph (a) of this Clause 6.4 and following that Facility Reduction, the Debt Service Coverage Ratio will not be required to be set out in any Compliance Certificate.

**6.5 Automatic cancellation**

The Commitments shall be automatically cancelled if Senior Secured Notes in an aggregate principal amount giving rise to gross proceeds of not less than US\$420,000,000 have not been issued within 30 days of the date of this Agreement.

**6.6 Voluntary cancellation**

The Parent may, if it gives the Facility Agent not less than three 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 US\$5,000,000 and in integral multiples of US\$1,000,000 if in excess of US\$5,000,000) of the Available Facility. Any cancellation under this Clause 6.6 shall reduce the Commitments of the Lenders rateably.

**6.7 Voluntary prepayment of Loans**

A Borrower to which a Loan has been made may, if it or the Parent gives the Facility Agent not less than three Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Loan (but, if in part, being an amount that reduces the Loan by a minimum amount of US\$1,000,000).

**6.8 Voluntary cancellation in relation to a single Lender**

- (a) If an Obligor is, or will be, required to pay to a Lender a Tax Payment or an Increased Cost, the Parent may, while the requirement continues, give notice to the Facility Agent requesting prepayment and cancellation in respect of that Lender.
- (b) After notification under paragraph (a) above:
- (i) that Borrower must repay or prepay that Lender's share in each Loan made to it on the date specified in paragraph (c) below; and
  - (ii) the Commitment of that Lender will be immediately cancelled.
- (c) The date for repayment or prepayment of a Lender's share in a Loan(s) will be the last day of the current Term for the relevant Loan or, if earlier, the date specified by the relevant Borrower in the notice delivered to the Facility Agent.

**6.9 Right of cancellation in relation to a Defaulting Lender**

- (a) If any Lender becomes a Defaulting Lender, the Parent may, at any time whilst the Lender continues to be a Defaulting Lender, give the Facility Agent three Business Days' notice of cancellation of each Available Commitment of that Lender.
- (b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Facility Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

## 6.10 Miscellaneous provisions

- (a) Any notice of prepayment and/or cancellation under this Agreement is irrevocable and must specify the relevant date(s). The Facility Agent must notify the Lenders promptly of receipt of any such notice.
- (b) All prepayments under this Agreement must be made with accrued interest on the amount prepaid. No premium or penalty is payable in respect of any prepayment except for Break Costs.
- (c) No prepayment or cancellation is allowed except in accordance with the express terms of this Agreement.
- (d) Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may subsequently be reinstated.
- (e) Unless a contrary indication appears in this Agreement, any part of the Facility which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement.
- (f) If all or part of any Lender's participation in a Loan is repaid or prepaid and is not available for redrawing (other than by operation of Clause 3.2 (*Further conditions precedent*)), 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.
- (g) Any prepayment of a Loan (other than a prepayment pursuant to Clause 6.1 (*Illegality*) or Clause 6.8 (*Voluntary cancellation in relation to a single Lender*)) shall be applied pro rata to each Lender's participation in that Loan.
- (h) On the last day of the Availability Period all of the Available Commitments shall be cancelled.

## 7. INTEREST

### 7.1 Calculation of interest

- (a) The rate of interest on each Loan for each Term is the percentage rate per annum equal to the aggregate of:
  - (i) the applicable Margin from time to time; and
  - (ii) LIBOR(together, the **Interest Rate**).
- (b) Interest shall be calculated by reference to the actual number of days elapsed and on the basis of a year of 360 days. Interest shall accrue from and including the first day of each Term to but excluding the last day of such Term.

### 7.2 Payment of interest

Except where it is provided to the contrary in this Agreement, the Borrowers must pay accrued interest on each Loan on the last day of each Term and also, if the Term is longer than three months, on the dates falling at quarterly intervals after the first day of that Term (each an **Interest Payment Date**).

### 7.3 **Interest on overdue amounts**

- (a) If an Obligor fails to pay any amount payable by it under the Finance Documents, the Obligors must immediately on demand by the Facility Agent pay interest on the overdue amount from its due date up to the date of actual payment, both before, on and after judgment.
- (b) If the overdue amount is a principal amount of a Loan or is an amount accruing in respect of interest on a Loan and becomes due and payable prior to the last day of its current Term, then:
  - (i) the first Term for that overdue amount will be the unexpired portion of that Term and the rate of interest on the overdue amount for that first Term will be two per cent. per annum above the Interest Rate; and
  - (ii) thereafter, any subsequent Term for that overdue amount shall be selected by the Facility Agent (acting on the instructions of the Majority Lenders, acting reasonably) who may select successive Terms of any duration up to three months, and the rate of interest on the overdue amount will be two per cent. per annum above the Interest Rate.

After the expiry of the first Term for that overdue amount, the rate on the overdue amount will be calculated in accordance with paragraph (c) below.

- (c) In respect of any amounts outstanding other than in accordance with paragraph (b) above, interest on such overdue amount is payable at a rate determined by the Facility Agent to be two (2) per cent. per annum above the Interest Rate. For this purpose, the Facility Agent may (acting on the instructions of the Majority Lenders, acting reasonably) select successive Terms of any duration of up to six months.
- (d) Interest (if unpaid) on an overdue amount will be compounded with that overdue amount at the end of each of its Terms but will remain immediately due and payable.

### 7.4 **Notification of rates of interest**

The Facility Agent must promptly notify each Finance Party and the relevant Borrower of the determination of a rate of interest under this Agreement.

## 8. **TERMS**

### 8.1 **Selection**

- (a) A Borrower (or the Parent on behalf of a Borrower) may select a Term for a Loan in the Request for that Loan.
- (b) Subject to this Clause 8, a Borrower (or the Parent) may select a Term of 1, 2, 3 or 6 months or any other period agreed between the Parent and the Facility Agent (acting on the instructions of all the Lenders).
- (c) A Term for a Loan shall not extend beyond the Termination Date.
- (d) Each Term for a Loan shall start on the Utilisation Date.
- (e) A Loan has one Term only.

## 8.2 **Non-Business Days**

If a Term would otherwise end on a day which is not a Business Day, that Term 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).

## 9. **MARKET DISRUPTION**

### 9.1 **Failure of the Reference Bank to supply a rate**

If LIBOR is to be calculated by reference to the Reference Banks but a Reference Bank does not supply a rate by 11.00 a.m. on the Rate Fixing Day, the applicable LIBOR will be determined on the basis of the remaining Reference Banks.

### 9.2 **Market disruption**

- (a) A market disruption event shall arise where:
  - (i) no, or only one, Reference Bank supplies a rate by 11.00 a.m. on the Rate Fixing Day; or
  - (ii) the Facility Agent receives by close of business on the Rate Fixing Day notification from any Lender or Lenders (the **Affected Lenders**) whose aggregate shares in the relevant Loan exceed fifty per cent. of that Loan that the cost to them of obtaining matching deposits in the relevant interbank market is in excess of LIBOR for the relevant Term.
- (b) The Facility Agent must promptly notify the Parent and the Lenders of a market disruption event.
- (c) After notification under paragraph (b) above, the rate of interest for the Affected Lenders on the affected Loan for the relevant Term will be the aggregate of the applicable:
  - (i) Margin; and
  - (ii) the rate notified to the Facility Agent by those Affected Lenders as soon as practicable, and in any event before interest is due to be paid in respect of that Term, to be that which expresses as a percentage rate per annum the cost to those Affected Lenders of funding the Loan from whatever source each of them may reasonably select.

### 9.3 **Alternative basis of interest or funding**

- (a) If a market disruption event occurs and the Facility Agent or the Parent so require, the Parent and the Facility Agent must enter into negotiations for a period of not more than thirty days with a view to agreeing to an alternative basis for determining the rate of interest and/or funding for the affected Loan and any future Loan.
- (b) Any alternative basis agreed between the Parent and the Facility Agent will be, with the prior written consent of all the Lenders, binding on all the Parties hereto.

## 10. **TAXES**

### 10.1 **Tax gross-up**

- (a) Each Obligor must make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by an Applicable Law.

- (b) If the Parent or a Lender is aware that an Obligor must make a Tax Deduction (or that there is a change in the rate or the basis of a Tax Deduction), it must promptly notify the Facility Agent. The Facility Agent must then promptly notify the affected Parties.
- (c) If a Tax Deduction is required by an Applicable Law to be made by an Obligor or, as the case may be, the Facility Agent, the amount of the payment due from that Obligor will be increased so that the amount (after making the Tax Deduction) received by the recipient is equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
  - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
  - (ii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(i)(B) of the definition of “Qualifying Lender” and:
    - (A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a Direction) under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Company a certified copy of that Direction; and
    - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
  - (iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(i)(B) of the definition of “Qualifying Lender” and:
    - (A) the relevant Lender has not given a Tax Confirmation to the Company; and
    - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Company, on the basis that the Tax Confirmation would have enabled the Company to have formed a reasonable belief that the payment was an “excepted payment” for the purpose of section 930 of the ITA; or
  - (iv) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) or (h) (as applicable) below.
- (e) If an Obligor is required to make a Tax Deduction, that Obligor must make the minimum Tax Deduction allowed by Applicable Law and must make any payment required in connection with that Tax Deduction within the time allowed by the Applicable Law.
- (f) Within fifteen days of making either a Tax Deduction or a payment required in connection with a Tax Deduction the Obligor making the Tax Deduction must deliver to the Facility Agent for the relevant Finance Party, documents or other information (or certified copies thereof) evidencing satisfactorily to that Finance Party (acting reasonably) that the Tax Deduction has been made or (as applicable) the appropriate payment has been paid to the relevant taxing authority.

- (g)
- (i) Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled, and each other Lender (to the extent that the Lender considers that it is reasonably able to do so) and each Obligor which makes a payment to which that Lender is entitled, shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
  - (ii)
    - (A) A Treaty Lender which becomes a Party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Part 2 of Schedule 1 (*Original Lender*); and
    - (B) a New Lender or an Increase Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Certificate or Increase Confirmation which it executes,and, having done so, that Lender shall be under no obligation pursuant to paragraph (i) above.
- (h) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and:
- (i) a Borrower incorporated in the United Kingdom making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or
  - (ii) a Borrower incorporated in the United Kingdom making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:
    - (A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or
    - (B) HM Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,and in each case, the Borrower has notified that Lender in writing, that Lender and the Borrower shall co-operate in completing any additional procedural formalities necessary for that Borrower to obtain authorisation to make that payment without a Tax Deduction.
- (i) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (g)(ii) above, no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Loan unless the Lender otherwise agrees.
- (j) A Borrower incorporated in the United Kingdom shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Facility Agent for delivery to the relevant Lender.
- (k) A UK Non-Bank Lender which becomes a Party on the day on which this Agreement is entered into gives a Tax Confirmation to the Parent by entering into this Agreement.
- (l) A UK Non-Bank Lender shall promptly notify the Parent and the Facility Agent if there is any change in the position from that set out in the Tax Confirmation.

## 10.2 Tax Indemnity

- (a) Without prejudice to the provisions of Clause 10.1 (*Tax gross-up*), if any Lender is required to make any payment on account of Tax in respect of any Finance Document (not being a Tax imposed on the net income of a Lender or its Facility Office by the jurisdiction in which it is incorporated (or, if different, the jurisdiction in which it is treated as resident for tax purposes), or the jurisdiction in which its Facility Office is located or on the capital of that Lender employed in such jurisdiction or jurisdictions) on any sum received or receivable under the Finance Documents (including, without limitation, any sum received or receivable under this Clause 10.2) or any liability in respect of any such payment is imposed, levied or finally assessed against a Lender, the Obligors shall (within three Business Days of demand on the Parent by the Facility Agent) indemnify that Lender against such payment or liability, together with any interest, penalties and expenses payable or incurred in connection therewith.
- (b) Clause 10.2(a) (*Tax Indemnity*) above shall not apply to the extent a loss, liability or cost:
  - (i) is compensated for by an increased payment under Clause 10.1 (*Tax gross-up*); or
  - (ii) would have been compensated for by an increased payment under Clause 10.1 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in Clause 10.1(d) (*Tax gross-up*) applied.

## 10.3 Tax Credit

If a Lender or, as the case may be, the Facility Agent determines in its absolute discretion, acting in good faith, that it has received, realised utilised and retained a Tax benefit by reason of any deduction or withholding in respect of which a Borrower has made an interest payment or paid a compensating sum under this Clause 10 (*Taxes*), that Lender or, as the case may be, the Facility Agent shall, provided it has received all amounts which are then due and payable by the Obligors under any of the provisions of this Agreement and the other Finance Documents, pay to the relevant Borrower (to the extent that that Lender or, as the case may be, the Facility Agent can do so without prejudicing the amount of that benefit and the right of that Lender, or as the case may be, the Facility Agent to obtain any other benefit, relief or allowance which may be available to it), such amount, if any, as that Lender, or as the case may be, the Facility Agent shall determine in its absolute discretion acting in good faith, will leave that Lender, or as the case may be, the Facility Agent in no better and no worse position than it would have been in if the deduction or withholding had not been required and so that it retains no benefit as a result of the receipt of such deduction.

## 10.4 Lender Status Confirmation

Each Lender in respect of a Borrower incorporated in the United Kingdom which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Increase Confirmation which it executes on becoming a Party, and for the benefit of the Facility Agent and without liability to any Obligor, which of the following categories it falls in:

- (a) not a Qualifying Lender;
- (b) a Qualifying Lender (other than a Treaty Lender); or
- (c) a Treaty Lender.

If a New Lender or an Increase Lender in respect of a Borrower incorporated in the United Kingdom fails to indicate its status in accordance with this Clause 10.4 then such New Lender or Increase Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a



Qualifying Lender until such time as it notifies the Facility Agent which category applies (and the Facility Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, a Transfer Certificate or Increase Confirmation shall not be invalidated by any failure of a Lender to comply with this Clause 10.4.

#### 10.5 **Notification of Claim**

A Lender making, or intending to make, a claim under Clause 10.2 (*Tax Indemnity*) 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 Parent.

#### 10.6 **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.

#### 10.7 **Stamp taxes**

Each Obligor must pay and, within three Business Days of demand, indemnify each Finance Party against any stamp duty, registration or other similar Tax payable by a Finance Party in connection with the entry into, performance or enforcement of any Finance Document.

#### 10.8 **Value added taxes**

- (a) Any amount (including costs and expenses) payable under a Finance Document by an Obligor is exclusive of any value added tax or any other Tax of a similar nature which might be chargeable in connection with that amount. If any such Tax is chargeable, the Obligors must pay to the relevant Finance Party (in addition to and at the same time as paying that amount) an amount equal to the amount of that Tax.
- (b) Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party must also at the same time pay and indemnify the Finance Party against all value added tax or any other Tax of a similar nature incurred by the Finance Party in respect of these costs or expenses but only to the extent that the Finance Party (acting reasonably) determines that neither it nor any other member of any group of which it is a member for value added tax purposes is entitled to credit or repayment from the relevant tax authority in respect of the Tax.

### 11. **INCREASED COSTS**

#### 11.1 **Increased Costs**

- (a) Subject to Clause 11.3 (*Exceptions*) the Parent 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 after the date of this Agreement.

(b) In this Agreement:

**Increased Costs** means:

- (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment.

**Basel III** means:

- (i) 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;
- (ii) 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
- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "**Basel III**".

#### 11.2 **Increased cost claims**

- (a) A Finance Party intending to make a claim pursuant to Clause 11.1 (*Increased Costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Parent.
- (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.

#### 11.3 **Exceptions**

- (a) Clause 11.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) compensated for by Clause 10.2 (*Tax indemnity*) (or would have been compensated for under Clause 10.2 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 10.2 (*Tax indemnity*) applied);
  - (iii) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
  - (iv) attributable to 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 (but excluding any

amendment arising out of Basel III) (“**Basel II**”) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).

(b) In this Clause 11.3 reference to a “**Tax Deduction**” has the same meaning given to the term in Clause 1.1 (*Definitions*).

## 12. **PAYMENTS**

### 12.1 **Place**

Unless a Finance Document specifies that payments under it are to be made in another manner, all payments by a Party (other than the Facility Agent) under the Finance Documents must be made to the Facility Agent to its account with such office or bank in London as it may notify to that Party for this purpose by not less than five Business Days’ prior notice.

### 12.2 **Funds**

Payments under the Finance Documents to the Facility Agent must be made for value on the due date at such times and in such funds as the Facility Agent may specify to the Party concerned as being customary at the time for the settlement of transactions in the relevant currency in the place for payment.

### 12.3 **Distribution**

- (a) Each payment received by the Facility Agent under the Finance Documents for another Party must, except as provided below, be made available by the Facility Agent to that Party by payment (as soon as practicable after receipt) to its account with such office or bank as it may notify to the Facility Agent for this purpose by not less than five Business Days’ prior notice.
- (b) The Facility Agent may apply any amount received by it from any of the Obligors in or towards payment (as soon as practicable) of any amount due from the Obligors under the Finance Documents or in or towards the purchase of any amount of any currency to be so applied.
- (c) Where a sum is paid to the Facility Agent under this Agreement for another Party, the Facility Agent is not obliged to pay that sum to that Party until it has established that it has actually received it. However, the Facility Agent may assume that the sum has been paid to it, and, in reliance on that assumption, make available to that Party a corresponding amount. If it transpires that the sum has not been received by the Facility Agent, that Party must immediately on demand by the Facility Agent refund any corresponding amount made available to it together with interest on that amount from the date of payment to the date of receipt by the Facility Agent at a rate calculated by the Facility Agent to reflect its cost of funds.

### 12.4 **Currency**

All amounts payable under the Finance Documents are payable in Dollars provided always that amounts payable in respect of costs and expenses are payable in the currency in which those costs and expenses are incurred.

### 12.5 **No set-off or counterclaim**

All payments made by any Obligor under the Finance Documents must be made without set-off or counterclaim.

## 12.6 Business Days

- (a) If a payment under the Finance Documents is due on a day which is not a Business Day, the due date for that payment will instead be 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 under this Agreement interest is payable on that principal at the rate payable on the original due date.

## 12.7 Partial payments

- (a) Subject to the terms of the Intercreditor Agreement, if any Administrative Party receives a payment insufficient to discharge all the amounts then due and payable by the Obligors under the Finance Documents, then, except to the extent otherwise provided in any Finance Document, the Administrative Party must apply that payment towards the obligations of the Obligors under the Finance Documents in the following order:
  - (i) **first**, in or towards payment or satisfaction *pro rata* of all costs, charges, sales taxes, expenses and liabilities incurred and payments made by the Finance Parties or any receiver and all remuneration payable to the Finance Parties or any receiver under or pursuant to the Security Documents including, without limitation, legal expenses, re-instatement costs and any costs incurred in recovering possession of the Security Assets;
  - (ii) **second**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Finance Parties to the extent not recovered under paragraph (i) above under this Agreement and the Finance Documents;
  - (iii) **third**, in or towards payment *pro rata* of any accrued but unpaid interest payable to the Finance Parties under this Agreement and the Finance Documents;
  - (iv) **fourth**, in or towards payment *pro rata* of any Break Costs of the Lenders due but unpaid and payable to the Finance Parties under this Agreement and the Finance Documents;
  - (v) **fifth**, in or towards payment *pro rata* of any principal in respect of this Agreement and the Finance Documents due but unpaid;
  - (vi) **sixth**, in or towards payment *pro rata* to the Finance Parties of any other amounts which are due but unpaid by the Obligors to any of the Finance Parties under the Finance Documents in such order as the Finance Parties shall in their absolute discretion determine; and
  - (vii) **seventh**, after all amounts payable or which may become payable under the Finance Documents have been paid in full and the Finance Documents have been discharged in payment of the surplus, if any, to the Parent or other persons entitled thereto.
- (b) Subject to the terms of the Intercreditor Agreement, the Facility Agent must, if so directed by all the Lenders, vary the order set out at paragraphs (a)(ii) to (a)(vi) above.
- (c) This Clause 12.7 will override any appropriation made by an Obligor.

## 12.8 Timing of payments

If a Finance Document does not provide for when a particular payment is due, that payment will be due within three Business Days of demand by the relevant Finance Party.

## 12.9 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 Parent that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent 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 Parent in relation to any changes mentioned in paragraph (a) 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) 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 Parent shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 25 (*Amendments and Waivers*);
- (e) Subject to the terms of the Intercreditor Agreement, 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 12.9; and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

## 12.10 Impaired Agent

- (a) If, at any time, the Facility Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Facility Agent in accordance with Clause 12.1 (*Place*) may instead either:
  - (i) pay that amount direct to the required recipient(s); or
  - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the **Paying Party**) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the **Recipient Party** or **Recipient Parties**).

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.

- (c) A Party which has made a payment in accordance with this Clause 12.10 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Facility Agent in accordance with Clause 19.13 (*Replacement of the Facility Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below )give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 12.3 (*Distribution*).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
  - (i) that it has not given an instruction pursuant to paragraph (d) above; and
  - (ii) that it has been provided with the necessary information by that Recipient Party,give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

## 13. GUARANTEE AND INDEMNITY

### 13.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was 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 an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 13 if the amount claimed had been recoverable on the basis of a guarantee.

### 13.2 Continuing Guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

### 13.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 13 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### 13.4 **Waiver of defences**

The obligations of each Guarantor under this Clause 13 will not be affected by an act, omission, matter or thing which, but for this Clause 13, would reduce, release or prejudice any of its obligations under this Clause 13 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or 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.

#### 13.5 **Guarantor Intent**

Without prejudice to the generality of Clause 13.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents 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.

#### 13.6 **Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 13. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### 13.7 **Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 13.

### 13.8 **Deferral of Guarantors' rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Facility Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 13:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any 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 Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 13.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

Until such time as all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, to the extent a Guarantor receives any benefit, payment or distribution in relation to such rights it will hold that benefit, payment or distribution on trust for the Finance Parties and will promptly pay an amount equal to that benefit, payment or distribution, to the Facility Agent, for application in accordance with Clause 12 (*Payments*).

### 13.9 **Release of Guarantors' right of contribution**

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and
- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.



### 13.10 **Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

### 13.11 **Guarantee Limitations**

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 or any equivalent and applicable provisions under the laws of the Original Jurisdiction of the relevant Guarantor and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.

## 14. **REPRESENTATIONS**

### 14.1 **Representations**

The representations set out in this Clause 14 are made, unless otherwise stated, by each Obligor in respect of itself or (if the relevant provision so states) one or more of them each in respect of itself to the Finance Parties.

### 14.2 **Status**

- (a) It is a limited liability company, duly incorporated and validly existing under the laws of its Original Jurisdiction.
- (b) It and each of its Subsidiaries, if any, has the power to own its assets and carry on its business as it is being conducted.
- (c) The Parent is the legal and beneficial owner of all the share capital of each of the other Obligors.

### 14.3 **Powers and authority**

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

### 14.4 **Legal validity**

Subject to any general principles of law limiting its obligations and referred to in any legal opinion required under this Agreement, each Transaction Document to which it is a party is its legally binding, valid and enforceable obligation.

### 14.5 **Non-conflict**

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is a party do not conflict in any material respect with:

- (a) any law or regulation applicable to it;
- (b) its or any of its Subsidiaries' constitutional documents; or
- (c) any document which is binding upon it or any of its Subsidiaries or any of its or its Subsidiaries' assets.

**14.6 No Default**

- (a) No Default is outstanding or will result from the entry into, or the performance of any transaction contemplated by, any Transaction Document.
- (b) No other event is outstanding which constitutes a default under any document which is binding on it or any of its Subsidiaries or any of its or its Subsidiaries' assets to an extent or in a manner which is reasonably likely to have a Material Adverse Effect.

**14.7 Authorisations**

Except for registration of (i) the Mortgages and the relevant Vessels at the registry of the Approved Flag State, (ii) any Security Document creating a charge over Security Assets of the Obligors with the Registrar of Companies in the jurisdiction of incorporation of the relevant Obligor or (iii) any relevant Security Document under the Companies Act 2006, and (iv) in the case of the Pledges of Shares in respect of the share capital of each Cypriot Guarantor, the delivery of the original share certificates in respect of the shares being pledged to the Security Agent and the giving of notice to each Cypriot Guarantor accompanied by a certified copy of the relevant Pledge of Shares and the issue of a certificate by the secretary of each Cypriot Guarantor confirming that a memorandum was made in its register of members against all the share certificates pledged thereby, all authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Transaction Documents have been obtained or effected (as appropriate) and are in full force and effect.

**14.8 Financial statements**

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
- (b) The unaudited Original Financial Statements of the Parent fairly represent its financial condition and results of operations for the relevant half-year period.
- (c) Its audited Original Financial Statements give a true and fair view of (or fairly represent) its financial condition and results of operations during the relevant financial year unless expressly disclosed to the Facility Agent in writing to the contrary prior to the date of this Agreement.
- (d) There has been no material adverse change in the assets, business or consolidated financial condition of the Restricted Group since the date of the Original Financial Statements.
- (e) There has been no material adverse change in the assets, business or consolidated financial condition of the Restricted Group since the date of delivery of the most recent financial statements pursuant to Clause 15.1 (*Financial statements*).
- (f) Its most recent financial statements delivered pursuant to Clause 15.1 (*Financial statements*):
  - (i) have been prepared in accordance with the Accounting Principles; and
  - (ii) give a true and fair view of or fairly represent its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.

**14.9 No material adverse change**

There has been no material adverse change in the ability of the Obligors to make all the required payments under this Agreement or the validity or enforceability of this Agreement since the date of this Agreement or following the receipt by the Facility Agent of a Compliance Certificate, since the date of the then latest Compliance Certificate.

#### 14.10 **Litigation**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency (including, but not limited to, investigative proceedings) which, if on the balance of probabilities is likely to be adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started against it or any of its Subsidiaries.

#### 14.11 **No breach of laws**

It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

#### 14.12 **Pari passu ranking**

Its payment obligations under the Finance Documents rank at least *pari passu* with all its other present and future unsecured and unsubordinated payment obligations, except for obligations mandatorily preferred by law applying to companies generally.

#### 14.13 **Ranking of security**

The Transaction Security has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security Interest (other than Permitted Security Interests).

#### 14.14 **Good title to assets**

It and each of its Subsidiaries has a 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.

#### 14.15 **Group Structure Chart**

The Group Structure Chart delivered to the Facility Agent pursuant to Part 1 of Schedule 2 (*Initial Conditions Precedent Documents*) is true, complete and accurate in all material respects and shows the following information:

- (a) each member of the Group, including current name and company registration number, its Original Jurisdiction (in the case of an Obligor), its jurisdiction of incorporation (in the case of a member of the Group which is not an Obligor) and/or its jurisdiction of establishment, a list of shareholders and indicating whether a company is an Unrestricted Subsidiary or is not a company with limited liability; and
- (b) all minority interests in any member of the Group and any person in which any member of the Group holds shares in its issued share capital or equivalent ownership interest of such person.

#### 14.16 **No filings or Stamp taxes**

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except any filing, recording or enrolling or any tax or fee payable in relation to the Transaction Documents which is referred to in any Legal Opinion and which will be made or paid promptly after the date of the relevant Finance Document.

#### 14.17 **Taxation**

- (a) It is not (and, so far as it is aware, none of its Subsidiaries is) overdue in the filing of any Tax returns and it is not (and, so far as it is aware, none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax, in each case, to an extent which could reasonably be expected to have a Material Adverse Effect.

- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes.
- (c) Save where such Obligor has, upon giving prior notice to the Facility Agent, caused its residency for tax to be moved to any of the U.K., Cyprus, the Bahamas or the Marshall Islands:
  - (i) each Original Obligor (other than GSL Alcazar Inc.) and each Additional Obligor, is resident for Tax purposes only in its Original Jurisdiction; and
  - (ii) GSL Alcazar Inc., is resident for Tax purposes only in Cyprus.

#### 14.18 Environment

Except as may already have been disclosed by the Parent in writing to the Facility Agent:

- (a) each of the members of the Restricted Group and their respective Environmental Affiliates has, without limitation, complied with the provisions of all applicable Environmental Laws in relation to each Vessel or other vessel owned by it;
- (b) each of the members of the Restricted Group and their respective Environmental Affiliates has obtained all requisite Environmental Approvals in relation to each Vessel or other vessel owned by it and are in compliance with such Environmental Approvals;
- (c) no member of the Restricted Group nor any of their respective Environmental Affiliates has received notice of any Environmental Claim in relation to a Vessel or other vessel owned by it which alleges that any of the Obligors or any of their respective Environmental Affiliates is not in compliance with applicable Environmental Laws in relation to such Vessel or vessel or Environmental Approvals in relation to such Vessel or vessel;
- (d) there is no Environmental Claim in relation to any Vessel or other vessel owned by any member of the Restricted Group pending or threatened which is such that a first class owner or operator of vessels such as the Vessels, making all due enquiries and complying in all respects with its obligations under the ISM Code, ought to have known about; and
- (e) there has been no Release of Hazardous Materials by or in respect of any Vessel or other vessel owned by any member of the Restricted Group about which a first class owner or operator of vessels such as the Vessels making all due enquiries and complying in all respects with its obligations under the ISM Code ought to have known about.

#### 14.19 Security Assets

Each Obligor is or will on the creation of the relevant Security Interest be solely and absolutely entitled to the Security Assets over which it has or will create any Security Interest pursuant to the Security Documents to which it is, or will be, a party and there is no agreement or arrangement under which it is obliged to share any proceeds of or derived from such Security Assets with any third party.

#### 14.20 ISM Code compliance

In respect of any Additional Vessel, on the Delivery Date in respect of the relevant Vessel, the relevant Borrower is in full compliance with the ISM Code in respect of that Vessel.

#### 14.21 ISPS Code Compliance

In respect of any Additional Vessel, on the Delivery Date in respect of the relevant Vessel, the relevant Borrower is in full compliance with the ISPS Code in respect of that Vessel.

#### 14.22 No amendments to Related Contracts

Other than as notified to the Facility Agent in writing, there have been no amendments to any of the Related Contracts.

#### 14.23 Anti-corruption law

Each member of the Group has conducted its business in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

#### 14.24 Insolvency

- (a) No member of the Restricted Group is unable, nor admits or has admitted its inability, to pay its debts or has suspended making payments on any of its debts.
- (b) No member of the Restricted Group has commenced, or intends to commence, negotiations with one or more of its creditors with a view to rescheduling any of its Financial Indebtedness.
- (c) The value of the assets of each member of the Restricted Group is not less than its liabilities (taking into account contingent and prospective liabilities).
- (d) No moratorium has been, or may, in the reasonably foreseeable future be, declared in respect of any indebtedness of any member of the Restricted Group.
- (e) No reorganisation or liquidation of any member of the Restricted Group has occurred (other than a voluntary reorganisation of a member that is not insolvent or subject to any creditors' process at the time of such reorganisation and which has been approved by the Facility Agent (acting reasonably)).

#### 14.25 Sanctions

No Obligor nor any of its Subsidiaries, nor to the best knowledge of the Obligors or any of their Subsidiaries, any director, officer, employee, agent, affiliate, or person associated with or acting on behalf of the Obligors or any of their Subsidiaries is directly owned or controlled by, or is acting on behalf of an individual or entity that: (i) is or has been a Restricted Party; (ii) is or has been engaged in any transaction, activity or conduct that could reasonably be expected to result in it becoming a Restricted Party; and/or (iii) has received notice of, or has become otherwise aware of, any claim, action, suit, proceedings or investigation involving it with respect to Sanctions. None of the proceeds of any loan will be directly applied, lent, contributed or otherwise made available to fund or finance any activities or business of or with a Restricted Party or in a Sanctioned Country.

#### 14.26 Immunity

- (a) The execution by it of each Transaction Document to which it is a party constitutes, and the exercise by it of its rights and performance of its obligations under each such Transaction Document will constitute, private and commercial acts performed for private and commercial purposes.
- (b) It will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to any Transaction Document.

#### 14.27 **No adverse consequences**

- (a) It is not necessary under the laws of its jurisdiction of incorporation:
  - (i) in order to enable any Finance Party to enforce its rights under any Finance Document; or
  - (ii) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document, that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in its Original Jurisdiction; and
- (b) No Finance Party will be deemed to be resident, domiciled or carrying on business in its Relevant Jurisdiction by reason only of the execution, performance and/or enforcement of any Finance Document.

#### 14.28 **Governing law and enforcement**

- (a) The choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
- (b) Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

#### 14.29 **Accounting Reference Date**

The financial year end of each member of the Restricted Group is 31 December in each year or such other date as has been approved by the Facility Agent in writing.

#### 14.30 **Centre of main interests and establishments**

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the **Regulation**), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its Original Jurisdiction and it has no “establishment” (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction.

#### 14.31 **Times for making representations**

- (a) The representations set out in this Clause 14 (*Representations*) are made by the Parent and each Original Obligor on the date of this Agreement.
- (b) Unless a representation is expressed to be given at a specific date (in which event it shall be deemed to be given on that date), the representations in Clauses:
  - (i) 14.2 (*Status*), 14.3 (*Powers and authority*), 14.4 (*Legal validity*), 14.5 (*Non-conflict*), 14.6 (*No Default*) 14.7 (*Authorisations*), 14.8 (*Financial statements*) (other than paragraph (d) thereof), 14.12 (*Pari passu ranking*), 14.13 (*Ranking of security*), 14.14 (*Good title to assets*), 14.24 (*Insolvency*), 14.25 (*Sanctions*), 14.26 (*Immunity*), 14.27 (*No adverse consequences*), 14.28 (*Governing law and enforcement*) and 14.29 (*Accounting Reference Date*) are deemed to be repeated by each Obligor on the date of each Request, on each Utilisation Date and the first day of each Term;
  - (ii) 14.9 (*No material adverse change*) and 14.10 (*Litigation*), are deemed to be repeated by each Obligor on each Utilisation Date;

- (iii) 14.18 (*Environment*), 14.19 (*Security Assets*) and 14.22 (*No amendments to Related Contracts*) are deemed to be repeated on each Utilisation Date in respect of, the Vessel being delivered/financed on that date, the Related Contracts relating to that Vessel (in the case of 14.18 (*Environment*)) and the borrowing being made on that date (in the case of 14.22 (*No amendments to Related Contracts*)); and
  - (iv) all the representations and warranties in this Clause 14 except Clause 14.15 (*Group Structure Chart*) are deemed to be made by each Additional Obligor on the day on which it becomes (or it is proposed that it becomes) an Additional Obligor.
- (c) When a representation is repeated, it is applied to the circumstances existing at the time of repetition.

## 15. INFORMATION COVENANTS

### 15.1 Financial statements

- (a) The Parent must supply to the Facility Agent in sufficient copies (which may take the form of an electronic copy) for all the Lenders:
  - (i) as soon as they are available, but in any event within 120 days after the end of each Financial Year, its audited consolidated financial statements for that Financial Year commencing with the Financial Year ending after the date hereof; and
  - (ii) as soon as they are available, but in any event within 60 days after the end of each half-year of each Financial Year, its unaudited consolidated financial statements for that half-year commencing with the half-year ending after the date hereof.
- (b) The Facility Agent shall send to each Lender all of the financial statements received by it under this Clause 15.1 within fifteen days of receipt of such financial statements.

### 15.2 Form of financial statements

- (a) Each Obligor must ensure that each set of its financial statements supplied under this Agreement fairly represents the financial condition (consolidated or otherwise) of the relevant person as at the date to which those financial statements were drawn up and that each set of audited financial statements required to be delivered by an Obligor pursuant to Clause 15.1 (*Financial Statements*) have been audited by the Auditors of that Obligor.
- (b) The Parent must notify the Facility Agent of any change to the basis on which its audited financial statements are prepared.
- (c) If requested by the Facility Agent, the Parent must supply or procure that the following are supplied to the Facility Agent:
  - (i) a full description of any change notified under paragraph (b) above; and
  - (ii) sufficient information to enable the Facility Agent to make a proper comparison between the financial position shown by the set of financial statements prepared on the changed basis and its most recent audited consolidated financial statements delivered to the Facility Agent under this Agreement.
- (d) If requested by the Facility Agent, the Parent must enter into discussions for a period of not more than thirty days with a view to agreeing to any amendments required to be made to this Agreement to place the Facility Agent in the same position as it would have been in if the change had not happened. Any agreement between the Parent and the Facility Agent will be, with the prior consent of the Majority Lenders, binding on all parties.
- (e) If no agreement is reached under paragraph (d) above on the required amendments to this Agreement, the Parent must ensure that its Auditors certify those amendments; the certificate of the Auditors will be, in the absence of manifest error, binding on all the Parties.

### 15.3 **Unrestricted Subsidiaries**

If any Subsidiaries of the Parent have been designated as Unrestricted Subsidiaries, the information delivered under Clauses 15.1 (*Financial Statements*) and 15.4 (*Compliance Certificate*) will include information as to the financial condition of the Restricted Group separate from that of the Unrestricted Subsidiaries, in such detail as the Facility Agent shall reasonably require.

### 15.4 **Compliance Certificate**

- (a) The Parent must supply to the Facility Agent a Compliance Certificate with each set of its consolidated financial statements required to be delivered by it pursuant to Clause 15.1 (*Financial statements*) setting out, amongst other things, the Cash Balance on the most recent Test Date.
- (b) Subject to Clause 6.4(b) (*Mandatory prepayment and cancellation – Debt Service Coverage Ratio*), the Parent must supply to the Facility Agent, within 60 days of each DSCR Test Date, a Compliance Certificate setting out, amongst other things, the Debt Service Coverage Ratio on that DSCR Test Date (including computations in reasonable detail based on its unaudited consolidated financial statements for the Measurement Period ending on that DSCR Test Date).
- (c) Each Compliance Certificate supplied by the Parent must be signed by its chief financial officer or chief executive officer.

### 15.5 **Information - miscellaneous**

The Parent must supply to the Facility Agent in sufficient copies (which may take the form of an electronic copy) for all the Lenders:

- (a) copies of all documents despatched by it to its creditors generally or any class of them or, as the case may be, by any Obligor to its creditors or any class of them at the same time as they are despatched;
- (b) copies of all notices and minutes relating to any extraordinary general meeting of its or any Obligor's shareholders at the same time as they are despatched; and
- (c) promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, or to the knowledge of an Obligor threatened or pending against it or any Obligor and which might, if adversely determined, have a Material Adverse Effect.

### 15.6 **Notification of Default**

Unless the Facility Agent has already been so notified, the Parent must notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

### 15.7 **Know your customer requirements**

- (a) If:
  - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;



- (ii) any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or
- (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Facility Agent, the Security Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Facility Agent, the Security Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender), the Security Agent or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Facility Agent, the Security Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Facility Agent or the Security Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent or the Security Agent (for itself) in order for the Facility Agent or the Security Agent 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.
- (c) The Parent shall, by not less than ten Business Days’ prior written notice to the Facility Agent, notify the Facility Agent (which shall promptly notify the Lenders) of its intention to request that one of its Restricted Subsidiaries becomes an Additional Obligor pursuant to Clause 26 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Facility Agent or the Security Agent or any Lender to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Parent shall promptly upon the request of the Facility Agent, the Security Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender), the Security Agent or any Lender (for itself or on behalf of any prospective new Lender) in order for the Facility Agent, the Security Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the accession of such Restricted Subsidiary to this Agreement as an Additional Obligor.

## 16. GENERAL COVENANTS

### 16.1 General

Each Obligor agrees to be bound by the covenants set out in this Clause 16 relating to it. To the extent that a Vessel ceases to be a Vessel in accordance with the terms of this Agreement, the relevant Obligor shall no longer be bound by the covenants set out in this Clause 16 in so far as these covenants relate to that Vessel.

## 16.2 Notes Restrictive Covenants

Each Obligor shall comply with the Notes Restrictive Covenants.

## 16.3 Authorisations

Each Obligor must promptly obtain, maintain and comply, in all material respects, with the terms of any authorisation required under any Applicable Law to enable it to perform its obligations under, or for the validity or enforceability of, any Finance Document.

## 16.4 Compliance with laws

Each Obligor must comply and procure that each member of the Group complies in all respects with all Applicable Laws to which it is subject where failure to do so is reasonably likely to have a Material Adverse Effect.

## 16.5 Pari passu ranking

Each Obligor must ensure that its payment obligations under the Finance Documents rank at least *pari passu* with all its other present and future unsecured and unsubordinated payment obligations, except for obligations mandatorily preferred by law applying to companies generally.

## 16.6 Anti-corruption law

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Group will) directly or indirectly use the proceeds of any Loan 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 Obligor shall (and the Parent shall ensure that each other member of the Group will):
  - (i) conduct its businesses in compliance with applicable anti-corruption laws; and
  - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

## 16.7 Taxation

- (a) Each Obligor shall (and the Parent shall ensure that each member of the Group 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 being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Facility Agent under Clause 15.1 (*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 member of the Group may change its residence for Tax purposes without the consent of the Facility Agent (not to be unreasonably withheld).

**16.8 Changes to ownership**

Subject to each Pledge of Shares, the Parent shall, at all times, remain the legal and beneficial owner of all of the issued shares in each other Obligor.

**16.9 No other business assets or Financial Indebtedness**

- (a) The Obligors shall not engage in any business other than the direct or indirect ownership, operation, management and chartering of container vessels, shipping containers and other container related assets and any business incidental thereto and (in connection with any Financial Indebtedness permitted to be incurred under this Agreement) the operation of a finance company, nor shall any Obligor incur any Financial Indebtedness secured or to be secured in any way on the Vessels, or any of them, or any other Security Asset other than the Financial Indebtedness contemplated by or otherwise permitted to be incurred under the terms of this Agreement, in each case to the extent secured by any Permitted Security Interest.
- (b) Any inter-company debt owed by the Parent or by GSLS to a company which is not an Obligor shall be fully subordinated to any Financial Indebtedness under the Finance Documents.

**16.10 Change of business**

- (a) Unless otherwise agreed with the Facility Agent (acting on the instruction of all of the Lenders), the Parent must maintain its place of business, and keep its corporate documents and records, at the address stated in the definition of Parent on the first page, and the Parent will not establish, or do anything as a result of which it would be deemed to have, a place of business in any country other than the Republic of the Marshall Islands or Bermuda unless otherwise agreed with and notified to the Facility Agent such agreement not to be unreasonably withheld.
- (b) Unless otherwise agreed with the Facility Agent, each Obligor must maintain its place of business, and keep its corporate documents and records (i) in the case of an Original Guarantor at its registered address as at the date of this Agreement (save that, in the case of GSL Alcazar Inc., its corporate documents and records shall be maintained in Cyprus) or at another address in its jurisdiction of incorporation as at the date of this Agreement and (ii) in the case of any other Obligor, at an address in Cyprus, the Marshall Islands or the United Kingdom stated in the Accession Deed pursuant to which such person becomes an Obligor (or at another address in such jurisdiction).
- (c) No Obligor will establish, or do anything as a result of which it would be deemed to have, a place of business in any country other than (i) in the case of an Original Guarantor, its jurisdiction of incorporation as at the date of this Agreement and (ii) in the case of any other Obligor, Cyprus, the Marshall Islands or the United Kingdom unless otherwise agreed with and notified to the Facility Agent such agreement not to be unreasonably withheld.
- (d) Any change in the place of business of:
  - (i) the Parent from the Marshall Islands to Bermuda or vice versa shall be promptly notified in writing to the Facility Agent; or
  - (ii) any other Borrower (other than the Parent) from one in Cyprus, the Marshall Islands or the United Kingdom to another in Cyprus, the Marshall Islands or the United Kingdom,shall be promptly notified in writing to the Facility Agent.

#### 16.11 Security

The relevant Obligor:

- (a) will procure, at the Applicable Time, that the relevant Mortgage is submitted for registration with the registry of the relevant Approved Flag State and that upon registration the relevant Mortgage will, and will continue to be, registered as a first priority mortgage with the registry of the relevant Approved Flag State;
- (b) without prejudice to paragraph (a) above will procure that the Mortgages and any other security conferred by it under any Security Document are registered as a first priority interest with the relevant authorities within the period prescribed by the Applicable Laws and is maintained and perfected with the relevant authorities;
- (c) will at its own cost, use best efforts to ensure that any Finance Document validly creates the obligations and Security Interests which it purports to create; and
- (d) without limiting the generality of paragraph (a) above, will at its own cost, promptly register, file, record or enrol any Finance Document with any court or authority, pay any stamp, registration or similar tax payable in respect of any Finance Document, give any notice or take any other step which, in the reasonable opinion of the Facility Agent, is or has become necessary or desirable for any Finance Document to be valid, enforceable or admissible in evidence in its jurisdiction of incorporation, any jurisdiction where the relevant Obligor has a place of business and the jurisdiction which is the relevant Vessel's Approved Flag State or to ensure or protect the priority of any Security Interest which it creates.

#### 16.12 Access

If the Facility Agent reasonably suspects a Default is continuing or may occur and after consulting with the Parent for not more than three Business Days it maintains that suspicion, each Obligor shall, and the Parent shall ensure that each member of the Group will, permit the Facility Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Facility Agent or Security Agent free access at all reasonable times and on reasonable notice at the risk and cost of the Obligor to (i) the premises, assets, books, accounts and records of each member of the Group and (ii) meet and discuss matters with senior management of the Parent.

#### 16.13 Financial assistance

Each Obligor shall (and the Parent shall procure each other member of the Restricted Group will) comply in all respects with sections 678 and 679 of the Companies Act 2006 and any equivalent legislation in other jurisdictions including in relation to the execution of the Transaction Documents and payment of amounts due under this Agreement.

#### 16.14 Amendments

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Restricted Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Transaction Document or any other document delivered to the Facility Agent pursuant to Clause 3.1 (*Conditions precedent*) or Clause 26 (*Changes to the Obligors*) (other than, and without prejudice to any other provision of this Agreement, any Time Charter, any Charter Guarantee or Ship Management Agreement) or enter into any agreement with any shareholders of the Parent or any of their Affiliates which is not a member of the Restricted Group except in writing:
  - (i) in accordance with Clause 25 (*Amendments and Waivers*);

- (ii) to the extent that that amendment, variation, novation, supplement, superseding, waiver or termination is permitted by paragraph 12 (*Transactions with Affiliates*) of Schedule 14 (*Notes Restrictive Covenants*) by the Intercreditor Agreement; and
  - (iii) in a way which could not be reasonably expected materially and adversely to affect the interests of the Lenders (as a whole).
- (b) The Parent shall promptly supply to the Facility Agent a copy of any document relating to any of the matters referred to in paragraphs (i) to (iii) above.

**16.15 Related Contracts**

Save as agreed to the contrary in or permitted by the Finance Documents, none of the Obligor shall take any action, enter into any document or agreement or omit to take any action or to enter into any document or agreement which would, or could reasonably be expected to, cause any Related Contract to cease to remain in full force and effect and shall use all reasonable endeavours to procure that each other party to any Related Contract does not take any action, enter into any document or agreement or omit to take any action or to enter into any document or agreement which would, or could reasonably be expected to, cause any Related Contract to cease to remain in full force and effect.

**16.16 Environment**

The relevant Obligor shall, and shall procure that the Manager shall, at all times after the Applicable Time:

- (a) comply with all applicable Environmental Laws including, without limitation, requirements relating to the establishment of financial responsibility (and shall require that all Environmental Affiliates of the Obligor comply with all applicable Environmental Laws) and obtain and comply with all required Environmental Approvals, which Environmental Laws and Environmental Approvals relate to its Vessel or her operation or her carriage of cargo; and
- (b) promptly upon the occurrence of any of the following events, provide to the Facility Agent a certificate of an officer of that member of the Restricted Group or of that member of the Restricted Group's agents specifying in detail the nature of the event concerned:
  - (i) the receipt by that member of the Restricted Group or any Environmental Affiliate (where that member of the Restricted Group has knowledge of the receipt) of any Environmental Claim in relation to its Vessel or any other vessel actually delivered to it; or
  - (ii) any Release of Hazardous Materials by its Vessel or any other vessel actually delivered to it.

**16.17 Note Purchase Condition**

- (a) No member of the Restricted Group may repay, prepay, purchase, defease or redeem (or otherwise retire for value) any Notes Liabilities (or offer to do so) (a "**Note Repurchase**") unless:
  - (i) the aggregate principal amount outstanding of the Notes Liabilities immediately prior to any Note Repurchase is greater than the Note Repurchase Threshold; or

- (ii) (subject to paragraph (e) of this Clause 16.17) if the aggregate principal amount outstanding of the Notes Liabilities immediately prior to any Note Repurchase is equal to or less than the Note Repurchase Threshold:
  - (A) the Facility shall, at the time the Note Repurchase is completed, be cancelled in such an amount that the Total Commitments immediately following such cancellation do not exceed an amount equal to the Relevant Proportion of the Total Outstanding Amount immediately after the Note Repurchase; and
  - (B) immediately upon the occurrence of such cancellation, the relevant Borrowers shall make such prepayment necessary to ensure that the aggregate amount of all Loans does not exceed the Total Commitments.
- (b) For the purposes of paragraph (a)(i) above:
  - (i) “**Relevant Proportion**” means, in relation to a Notes Repurchase, the proportion (expressed as a percentage) which the Total Commitments represent of the Total Outstanding Amount immediately prior to that Notes Repurchase;
  - (ii) “**Note Repurchase Threshold**” means the amount representing 50 per cent. of the aggregate principal amount of the Notes Liabilities outstanding on the first Utilisation Date; and
  - (iii) “**Total Outstanding Amount**” means, at any time, the Total Commitments plus the aggregate principal amount outstanding of the Notes Liabilities.
- (c) If a Note Repurchase occurs, or an offer to make a Note Repurchase has been made, the Parent will promptly notify the Facility Agent of the details of the event, including the amount of the Note Repurchase.
- (d) Paragraph (a) of this Clause 16.17 shall not apply to the extent the Note Repurchase occurs pursuant to section 4.23 or section 4.13(I) of the Senior Secured Note Indenture.
- (e) For the avoidance of doubt, to the extent that the Note Repurchase occurs pursuant to either paragraph 6.2 or 7.2 of Schedule 14 (*Notes Restrictive Covenants*), the amount of the Facility that is to be prepaid under sub-paragraph (a)(ii)(B) above shall not exceed the amount of the Loan to be prepaid pursuant to paragraph 6.2 or 7.2 (as the case may be) of Schedule 14 (*Notes Restrictive Covenants*) at the time the Note Repurchase referred to in that sub-paragraph is completed.

#### 16.18 **Obligatory Insurances**

The Parent shall notify the Facility Agent of any claim made by it or by any other Obligor under the Obligatory Insurances in respect of any Vessel, to the extent that such claim is in an amount greater than US\$2,000,000, and shall consult with the Facility Agent prior to settling, compromising or abandoning any such claim.

### 17. **FINANCIAL COVENANT**

#### 17.1 **Definitions**

In this Clause 17:

**Cash and Cash Equivalents** means, as at any date of determination:

- (a) cash in hand or on deposit with a bank or financial institution and which is freely transferable into Dollars and immediately available to be applied in repayment or prepayment of the Facility;

- (b) any investment in marketable obligations issued or guaranteed by the government of the United States of America, Canada or the United Kingdom or by an instrumentality or agency of the government of the United States of America, Canada or the United Kingdom, maturing within one year after the relevant date of calculation;
- (c) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having, a credit rating of either A by S&P or Fitch or A2 by Moody's which time deposits and certificates of deposit mature within one year after the relevant date of calculation;
- (d) repurchase obligations with a term of not more than ninety days for underlying securities of the type referred to in paragraph (b) above entered into with any bank meeting the qualifications specified in paragraph (c);
- (e) open market commercial paper:
  - (i) for which a recognised trading market exists;
  - (ii) issued in the United States of America, Canada or the United Kingdom;
  - (iii) which matures within one year after the relevant date of calculation; and
  - (iv) which has a credit rating of either A-1 by S&P or Fitch or P-1 by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term debt obligations, an equivalent rating;
- (f) any other instrument, security or investment approved by the Majority Lenders,  
in each case, to which each of the Obligors is beneficially entitled at that time and, which is unencumbered (other than by any of the Security Documents).

**Cash Balance** means the sum of Cash and Cash Equivalents.

## 17.2 Interpretation

- (a) Except as provided to the contrary in this Agreement, an accounting term used in this Clause is to be construed in accordance with U.S. GAAP.
- (b) Any amount in a currency other than Dollars is to be taken into account at its Dollar equivalent calculated on the basis of:
  - (i) the Facility Agent's spot rate of exchange for the purchase of the relevant currency in the London foreign exchange market with Dollars at or about 11.00 a.m. on the day the relevant amount falls to be calculated; or
  - (ii) if the amount is to be calculated on the last day of a financial period of the Obligor, the relevant rates of exchange used by the Obligor in, or in connection with, its financial statements for that period.
- (c) No item must be credited or deducted more than once in any calculation under this Clause.

### 17.3 Cash Balance

The Parent must ensure that on each of the dates specified below the Cash Balance is equal to or exceeds the amount set opposite such date below (each a “**Test Date**”):

<u>DATE</u>	<u>AMOUNT</u>
30 June 2014	US\$15,000,000
31 December 2014	US\$15,000,000
30 June 2015	US\$15,000,000
31 December 2015	US\$15,000,000
30 June 2016	US\$20,000,000
31 December 2016	US\$20,000,000
30 June 2017	US\$20,000,000
31 December 2017	US\$20,000,000
30 June 2018	US\$20,000,000
31 December 2018	US\$20,000,000
30 June 2019	US\$20,000,000

provided that, where a Facility Reduction has occurred, the minimum Cash Balance required to be maintained on each subsequent Test Date shall be US\$15,000,000.

### 18. DEFAULT

#### 18.1 Events of Default

Each of the events set out in this Clause 18 is an Event of Default (save for Clause 18.14 (*Acceleration*)).

#### 18.2 Non-payment

An Obligor does not pay on the due date any amount payable by it under the Finance Documents in the manner required under the Finance Documents and such non-payment is not remedied within four Business Days of the due date.

#### 18.3 Breach of other obligations

Each Obligor does not comply with any term of the Finance Documents, unless the non-compliance:

- (a) is capable of remedy; and
- (b) is remedied within seven Business Days of the Facility Agent giving notice to the Parent.

The Obligors acknowledge that for the purposes of paragraph (a) above, non-compliance with the following shall not be capable of remedy:

- (i) Clause 16.11(a) and 16.11(b) (*Security*); and
- (ii) Clause 17 (*Financial Covenant*).



#### 18.4 **Misrepresentation**

A representation made or repeated by an Obligor (or by any other Party other than a Finance Party) in any Finance Document or in any document delivered by or on behalf of an Obligor under any Finance Document is incorrect in any material respect when made or deemed to be repeated.

#### 18.5 **Cross-default**

Any of the following occurs in respect of any member of the Restricted Group:

- (a) any of its Financial Indebtedness is not paid when due (after the expiry of any originally applicable grace period);
- (b) any of its Financial Indebtedness:
  - (i) becomes prematurely due and payable; or
  - (ii) is placed on demand; or
  - (iii) is capable of being declared by a creditor to be prematurely due and payable or being placed on demand,

in each case, as a result of an event of default (howsoever described) and after the expiry of any applicable grace period, or any commitment for its Financial Indebtedness is cancelled or suspended as a result of an event of default (howsoever described), unless the aggregate amount of Financial Indebtedness falling within paragraphs (a) and (b) above is less than US\$25,000,000 or its equivalent.

#### 18.6 **Insolvency**

Any of the following occurs in respect of a member of the Restricted Group:

- (a) it is, or is deemed for the purposes of any Applicable Law to be, unable to pay its debts as they fall due or insolvent;
- (b) it admits its inability to pay its debts as they fall due;
- (c) it suspends making payments on any of its debts or announces an intention to do so;
- (d) by reason of actual or anticipated financial difficulties, it begins negotiations with any creditor for the rescheduling of any of its indebtedness; or
- (e) a moratorium is declared in respect of any of its indebtedness.

If a moratorium occurs in respect of a member of the Restricted Group, the ending of the moratorium will not remedy any Event of Default caused by the moratorium.

#### 18.7 **Insolvency proceedings**

- (a) Except as provided in paragraph (b) below, any of the following occurs in respect of a member of the Restricted Group:
  - (i) any step is taken with a view to a moratorium, a composition, assignment or similar arrangement with any of its creditors;
  - (ii) a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution to petition for or to file documents with a court for its winding-up, administration or dissolution and any such resolution is passed;

- (iii) any person presents a petition, or files documents with a court for its winding-up, administration or dissolution;
  - (iv) an order for its winding-up, administration or dissolution is made;
  - (v) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its material assets;
  - (vi) its directors, shareholders or other officers request the appointment of, or give notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer; or
  - (vii) any other analogous step or procedure is taken in any jurisdiction.
- (b) Paragraph (a) above does not apply to a frivolous or vexatious petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and is discharged or struck out within fourteen days or other action is taken with the prior consent of the Facility Agent.

**18.8 Creditors' process**

Any attachment, sequestration, distress, execution or analogous event affects any asset(s) of a member of the Restricted Group, having an aggregate value of (US\$15,000,000) or its equivalent and is not discharged within fourteen days.

**18.9 Cessation of business**

A member of the Restricted Group ceases, or threatens to cease, to carry on business except as a result of any disposal not prohibited under this Agreement.

**18.10 Failure to pay final judgment**

Any member of the Restricted Group fails to comply with or pay any sum due from it under any final judgment or any final order made or given by any court of competent jurisdiction within the time given for payment.

**18.11 Effectiveness of Finance Documents**

- (a) It is or becomes unlawful for an Obligor or any other Party (other than a Finance Party) to perform any of its material obligations under the Finance Documents.
- (b) Any Finance Document is not effective or is alleged by an Obligor to be ineffective for any reason.
- (c) Any material provision of a Finance Document is not effective or is alleged by any Party (other than a Finance Party or an Obligor) to be ineffective for any reason.
- (d) An Obligor repudiates any material provision of a Finance Document or evidences an intention to repudiate any material provision of a Finance Document.
- (e) Any Party (other than a Finance Party) repudiates any material provision of a Finance Document or evidences an intention to repudiate any material provision of a Finance Document.

#### 18.12 **Unlawfulness and invalidity**

- (a) It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents or any Security Interest created or expressed to be created or evidenced by the Security Documents ceases to be effective or any subordination created under the Intercreditor Agreement is or becomes unlawful.
- (b) Any obligation or obligations of any Obligor under any Finance Documents are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or any Security Interest over any Security Asset or any subordination created under the Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

#### 18.13 **Intercreditor Agreement**

- (a) Any Intra-Group Lender (as defined in the Intercreditor Agreement) or any Obligor fails to comply with the provisions of, or does not perform its obligations under, the Intercreditor Agreement; or
  - (b) a representation or warranty given by that party in the Intercreditor Agreement is incorrect in any material respect,
- and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within seven Business Days of the earlier of the Facility Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

#### 18.14 **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Facility Agent may, and shall if so directed by the Majority Lenders, by notice to the Parent:

- (a) cancel the Total Commitments at which time they shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
- (c) declare that all or part of the Loans be payable on demand, at which time they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders;
- (d) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

### 19. **THE ADMINISTRATIVE PARTIES**

#### 19.1 **Appointment and duties of the Facility Agent**

- (a) Each of the Arranger, the Bookrunner and the Lenders irrevocably appoints the Facility Agent to act as its agent under the Finance Documents.

- (b) Each Finance Party irrevocably authorises the Facility Agent on its behalf to:
  - (i) perform the duties and to exercise the rights, powers and discretions that are specifically given to it under the Finance Documents, together with any other incidental rights, powers and discretions; and
  - (ii) execute each Finance Document expressed to be executed by the Facility Agent on that Party's behalf.
- (c) The Facility Agent has only those duties which are expressly specified in the Finance Documents. Those duties are solely of a mechanical and administrative nature.

## 19.2 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;
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (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 Lender or group of Lenders, from that Lender or group of Lenders) 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 those instructions or that clarification.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders 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 save for the Security Agent.
- (d) The Facility Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders 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 which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) 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.

### 19.3 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) Paragraph (b) above shall not apply to any Transfer Certificate or any Increase Confirmation.
- (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 this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent, the Arranger or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

### 19.4 Role of the Arranger and Bookrunner

Except as specifically provided in the Finance Documents, the Arranger and the Bookrunner (in their respective capacities as Arranger and Bookrunner) have no obligations of any kind to any other Party under or in connection with any Finance Document.

### 19.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Facility Agent, the Arranger or the Bookrunner as a trustee or fiduciary of any other person.
- (b) None of the Facility Agent, the Arranger or the Bookrunner shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

### 19.6 Business with the Group

The Facility Agent, the Arranger or the Bookrunner may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

### 19.7 Rights and discretions

- (a) The Facility Agent may:
  - (i) rely on any representation, communication, notice or document (including, without limitation, any notice given by a Lender pursuant to paragraphs (b) or (c) of Clause 28.1 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*)) believed by it to be genuine, correct and appropriately authorised;

- (ii) assume that:
  - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders 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 is the case and, in the case of paragraph (iii)(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 Lenders) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 18.2 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised;
  - (iii) any notice or request made by the Parent (other than a Request) is made on behalf of and with the consent and knowledge of all the Obligors; and
  - (iv) no Notifiable Debt Purchase Transaction:
    - (A) has been entered into;
    - (B) has been terminated; or
    - (C) has ceased to be with a Sponsor Affiliate.
- (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 through its officers, employees and agents and the Facility Agent 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 this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Facility Agent:
  - (i) may disclose; and
  - (ii) on the written request of the Parent or the Majority Lenders shall, as soon as reasonably practicable, disclose, the identity of a Defaulting Lender to the Parent and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, none of the Facility Agent, the Arranger or the Bookrunner is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) The Facility Agent is not obliged to disclose to any Finance Party any details of the rate notified to the Facility Agent by any Lender or the identity of any such Lender for the purpose of paragraph (a)(ii) of Clause 9.2 (*Market Disruption*).
- (k) 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.

#### 19.8 **Responsibility for documentation**

None of the Facility Agent, the Arranger or the Bookrunner is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, an Arranger, a Bookrunner, an Obligor or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

#### 19.9 **No duty to monitor**

The Facility Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;

- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

#### 19.10 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 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 Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security; or
  - (iii) without prejudice to the generality of paragraphs (i) and (ii) 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 Finance Document and any officer, employee or agent of the Facility Agent may rely on this Clause.
- (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 Arranger or the Bookrunner 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 Lender,



on behalf of any Lender and each Lender confirms to the Facility Agent, the Arranger and the Bookrunner 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 Arranger or the Bookrunner.

- (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 Finance Document or the Transaction Security 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.

#### 19.11 Lenders' indemnity to the Facility Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Facility Agent has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Parent 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.

#### 19.12 Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Parent.
- (b) Alternatively the Facility Agent may resign by giving thirty days' notice to the Lenders and the Parent, in which case the Majority Lenders (after consultation with the Parent) 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 twenty days after notice of resignation was given, the retiring Facility Agent (after consultation with the Parent) 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 19 and any other term of this Agreement

dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Facility Agent's normal fee rates and those amendments will bind the Parties.

- (e) The retiring Facility Agent shall make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Facility Agent (unless the retiring Facility Agent is an Impaired 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 22 (*Indemnities and Break Costs*) and this Clause 19 (and any agency 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.

#### 19.13 Replacement of the Facility Agent

- (a) After consultation with the Parent, the Majority Lenders may, by giving thirty (30) days' notice to the Facility Agent (or, at any time the Facility Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Facility Agent by appointing a successor Facility Agent.
- (b) The retiring Facility Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor 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.
- (c) The appointment of the successor Facility Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Facility Agent. As from this date, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 22 (*Indemnities and Break Costs*) and this Clause 19 (and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Facility Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

#### 19.14 Confidentiality

- (a) In acting as 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 another division or department of the Facility Agent, it may be treated as confidential to that division or department and the Facility Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent, the Arranger nor the Bookrunner 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.

#### 19.15 Relationship with the Lenders

- (a) 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) 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.

#### 19.16 Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Facility Agent and each Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (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 Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (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 Interest affecting the Security Assets.

#### 19.17 **Deduction from amounts payable by the Facility Agent**

If any Party owes an amount to the Facility Agent under the Finance Documents the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

#### 19.18 **Reliance and engagement letters**

Each Finance Party and Secured Party confirms that the Arranger and the Facility Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger or Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants 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.

#### 19.19 **Role of the Security Agent**

- (a) In acting or otherwise exercising its rights or performing its duties under any of the Finance Documents, the Security Agent shall act in accordance with the provisions of this Agreement and the Intercreditor Agreement and shall seek any necessary instruction or direction from the Facility Agent. In so acting, the Security Agent shall have the rights, duties, benefits, obligations, protections, indemnities and immunities set out in this Agreement and the Intercreditor Agreement (the “**Security Agent Provisions**”) and shall not incur any liability to any Party. For the avoidance of doubt, the Security Agent shall have no duty to monitor the amount of any Loans due to any of the Lenders under this Agreement.
- (b) The Security Agent Provisions (other than the duties and obligations referenced in such definition (with the exception of the duties and obligations referenced in paragraph (f) of Clause 18.13 of the Intercreditor Agreement)) contained in the Intercreditor Agreement are for the benefit of the Security Agent and shall survive the discharge or termination of the Intercreditor Agreement and the resignation of the Security Agent.

### 20. **EVIDENCE AND CALCULATIONS**

#### 20.1 **Accounts**

Accounts maintained by the Facility Agent in connection with this Agreement are conclusive (save for manifest error) evidence of the matters to which they relate for the purpose of any litigation or arbitration proceedings and shall provide a reasonably detailed breakdown.

#### 20.2 **Certificates and determinations**

Any certification or determination by the Facility Agent of a rate or amount under the Finance Documents (including any demand under an indemnity or with respect to costs and expenses to be reimbursed) will be, in the absence of manifest error, conclusive evidence of the matters to which it relates and shall include a reasonably detailed breakdown (and, if reasonably requested by the Parent, relevant supporting documentation, if any).

### 20.3 **Calculations**

Any interest or fee accruing under this Agreement accrues from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty days or otherwise, depending on what the Facility Agent determines is market practice.

## 21. **FEES**

### 21.1 **Commitment fee**

- (a) The Parent shall pay to the Facility Agent (for the account of each Lender) a fee in Dollars computed at the rate of 1.30 per cent. per annum on that Lender's Available Commitment for the Availability Period.
- (b) The accrued commitment fee is payable on (i) the last day of each successive period of three months which ends during the relevant Availability Period, (ii) on the last day of the relevant Availability Period and (iii) on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

### 21.2 **Arrangement fee**

The Parent must pay to the Arranger an arrangement fee in the manner agreed in the Fee Letter between the Arranger and the Parent.

### 21.3 **Facility Agent's fee**

The Parent must pay to the Facility Agent (for its own account) an agency fee in the manner agreed in the Fee Letter between the Facility Agent and the Parent.

### 21.4 **Security Agent fee**

The Parent shall pay to the Security Agent (for its own account) a security agent fee in the amount and at the times agreed in a Fee Letter between the Security Agent and the Parent.

### 21.5 **Refund of fees**

The fees referred to in this Clause 21 and the Fee Letter shall not be refunded under any circumstances whatsoever once they have been paid.

## 22. **INDEMNITIES AND BREAK COSTS**

### 22.1 **Currency indemnity**

- (a) The Parent shall (or shall procure that an Obligor will), as an independent obligation and within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability which that Finance Party incurs as a consequence of:
  - (i) the Finance Party receiving an amount in respect of any Obligor's liability under the Finance Documents; or
  - (ii) that liability being converted into a claim, proof, judgment or order,in a currency other than the currency in which the amount is expressed to be payable under the relevant Finance Document.
- (b) Each Obligor 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.

## 22.2 Other indemnities

- (a) The Parent shall (or shall procure that an Obligor will), as an independent obligation and within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability which that Finance Party incurs as a consequence of:
- (i) the occurrence of any Event of Default;
  - (ii) any failure by the Obligors to pay any amount due under a Finance Document on its due date;
  - (iii) (other than by reason of negligence or default by that Finance Party) a Loan (or part of a Loan) not being made after a Request has been delivered for that Loan; or
  - (iv) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment.

The liability of the Obligors in each case includes any cost, loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document, any amount repaid or prepaid or any Loan.

- (b) Each Obligor must indemnify against any cost, loss or liability incurred by any Finance Party as a result of:
- (i) investigating any event which that Finance Party reasonably believes to be a Default; or
  - (ii) acting or relying on any notice of that Obligor which that Finance Party reasonably believes to be genuine, correct and appropriately authorised.
- (c) The Obligors must indemnify and agree to hold harmless the Finance Parties and in each case, each of its and their Affiliates and each of their respective officers, directors, employees, agents, advisors and representatives (each, an **Indemnified Party** in whatever capacity) from and against any and all claims, damages, losses, liabilities, costs, legal expenses and expenses (altogether **Losses**), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any claim, investigation, litigation or proceeding (or the preparation of any defence with respect thereto) commenced or threatened in relation to the Finance Documents or the Related Contracts (or the transactions contemplated hereby or thereby) or any use made or proposed to be made with the proceeds of the Facility. This indemnity shall apply whether or not such claims, investigation, litigation or proceeding is brought by the Obligors, the shareholders of the Obligors or the creditors of the Obligors, an Indemnified Party or any other person, or an Indemnified Party is otherwise a party thereto, except to the extent such Losses are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or wilful misconduct.
- (d) No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Obligors or any shareholders or creditors of the Obligors for or in connection with the transactions referred to in paragraph (c) above, except for direct (as opposed to indirect or consequential) damages or losses to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or wilful misconduct.

- (e) The Obligors must indemnify and hold each Finance Party harmless on a full indemnity basis, from and against each and every Loss:
  - (i) arising directly or indirectly out of or in any way connected with the ownership, possession, performance, transportation, management, sale, import to or export from any jurisdiction, control, use or operation, registration, navigation, certification, classification, management, manning, provisioning, the provision of bunkers and lubricating oils, testing, design, condition, delivery, acceptance, leasing, subleasing, chartering, insurance, maintenance, repair, service, modification, refurbishment, dry docking, survey, conversion, overhaul, replacement, removal, repossession, return, redelivery, storage, sale, disposal, the complete or partial removal, decommissioning, making safe, destruction, abandonment or loss by the Obligors, or any other person of any of the Vessels or caused by any of the Vessels becoming a wreck or an obstruction to navigation, whether or not such liability may be attributable to any defect in any of the Vessels or to the design, construction or use thereof or from any maintenance, service, repair, dry docking, overhaul, inspection or for any other reason whatsoever (whether similar to any of the foregoing or not), and regardless of when the same shall arise and whether or not any of the Vessels (or any part thereof) is in possession or control of the Obligors, or the Manager or any other person and whether or not the same is in United Kingdom waters or abroad;
  - (ii) arising directly or indirectly out of or in any way connected with any Release of Hazardous Material, any Environmental Claim in respect of a Vessel, or any breach of an Environmental Law or the terms and conditions of an Environmental Approval;
  - (iii) as a consequence of any claim that any design, article or material in any of the Vessels or any part thereof or relating thereto or the operation or use thereof constitutes an infringement of patent, copyright, design or other proprietary right; or
  - (iv) in preventing or attempting to prevent the arrest, seizure, taking in execution, requisition, impounding, forfeiture or detention of any of the Vessels or in securing or attempting to secure the release of any of the Vessels.
- (f) Clause 22.2(e) shall not extend to any Loss incurred by the Finance Parties to the extent that such Loss is a result of the gross negligence or wilful misconduct of any of the Finance Parties.

### 22.3 Break Costs

- (a) Each Obligor must pay to each Lender, its Break Costs in accordance with this Agreement.
- (b) In respect of a Lender, Break Costs are the amount (if any) determined by the relevant Lender by which:
  - (i) the interest which that Lender would have received for the period from the date of receipt of payment of a Loan or an overdue amount to the last day of the current Term for that Loan or overdue amount if the principal or overdue amount received had been paid on the last day of that Term;  
exceeds
  - (ii) the amount which that Lender would be able to obtain by placing an amount equal to the amount received by it on deposit with a leading bank in the appropriate interbank market for a period starting on the Business Day following receipt and ending on the last day of the applicable Term.
- (c) Each Lender must supply to the Parent details of the amount of any Break Costs claimed by it under this Clause 22.

23. **EXPENSES**

23.1 **Initial costs**

The Parent must pay to each Finance Party the amount of all costs and expenses (including legal fees) properly incurred by it in connection with (but not limited to) the negotiation, preparation, printing and execution of the Finance Documents.

23.2 **Subsequent costs**

The Parent must pay to each Finance Party the amount of all costs and expenses (including reasonable or otherwise capped legal fees) incurred by it in connection with:

- (a) the negotiation, preparation, printing and execution of any Finance Document (other than a Transfer Certificate) executed after the date of this Agreement; and
- (b) any amendment, waiver or consent requested by or on behalf of the Obligors or specifically allowed by this Agreement.

The Parent shall not be required to bear the amount of any costs and expenses (including reasonable or otherwise capped legal fees) incurred by a Lender or a New Lender (as that term is defined in Clause 27.1 (*Assignments and transfers by Lenders*)) in connection with any voluntary transfer made by a Lender under this Agreement or any of the Security Documents.

23.3 **Enforcement costs**

The Parent must pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement or attempted enforcement of, or the preservation or attempted preservation of any rights under, any Finance Document.

24. **WAIVER OF CONSEQUENTIAL DAMAGES**

In no event shall any Finance Party be liable on any theory of liability for any special, indirect, consequential or punitive damages and each Obligor hereby waives, releases and agrees (for itself and on behalf of its Subsidiaries) not to sue upon any such claim for any such damages, unless caused by the fraud, wilful default or gross negligence of the relevant Finance Party in performance of any of its obligations under this Agreement or any of the Finance Documents.

25. **AMENDMENTS AND WAIVERS**

25.1 **Procedure**

- (a) Except as provided in this Clause 25, no term of the Finance Documents may be amended or waived without the agreement of the Parent and the Majority Lenders. The Facility Agent may effect, on behalf of any Finance Party, an amendment or waiver allowed under this Clause 25.
- (b) The Facility Agent must promptly notify the other Parties of any amendment or waiver effected by it under paragraph (a) above. Any such amendment or waiver is binding on all the Parties.



## 25.2 Exceptions

- (a) An amendment or waiver which relates to:
- (i) the definition of **Majority Lenders** in Clause 1.1 (*Definitions*);
  - (ii) an extension of the date of payment of any amount under the Finance Documents;
  - (iii) a reduction in the amount of any payment of principal, interest, fee or other amount payable under the Finance Documents;
  - (iv) an increase in, or an extension of, 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;
  - (v) a release of an Obligor (other than as required by the terms of the Intercreditor Agreement);
  - (vi) a term of a Finance Document which expressly requires the consent of each Lender;
  - (vii) the right of a Lender to assign or transfer its rights or obligations under the Finance Documents;
  - (viii) a reduction in the Margin;
  - (ix) the release of any Security Document other than in accordance with the terms of this Agreement; or
  - (x) Clause 2.6 (*Nature of a Finance Party's rights and obligations*), Clause 6.1 (*Illegality*), Clause 6.3 (*Disposal Proceeds*), Clause 6.4 (*Mandatory prepayment and cancellation – Debt Service Coverage Ratio*), Clause 6.5 (*Automatic Cancellation*), paragraph (g) of Clause 6.10 (*Miscellaneous provisions*), Clause 16.17 (*Note Purchase Condition*) or this Clause 25;
  - (xi) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
    - (A) the guarantee and indemnity granted under Clause 13 (*Guarantee and Indemnity*);
    - (B) the Security Assets; or
    - (C) the manner in which the proceeds of enforcement of the Transaction Security are distributed,  
(except in the case of paragraphs (B) and (C) 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);
  - (xii) the release of any guarantee and indemnity granted under Clause 13 (*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; or
  - (xiii) any amendment to the order of priority or subordination under the Intercreditor Agreement,

may only be made with the consent of all the Lenders and the Parent such consent not to be unreasonably withheld or delayed.

- (b) An amendment or waiver which relates to the rights or obligations of an Administrative Party may only be made with the consent of that Administrative Party.

### 25.3 Replacement of Lender

- (a) If:
  - (i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (d) below); or
  - (ii) an Obligor becomes obliged to repay any amount in accordance with Clause 6.1 (*Illegality*) or to pay additional amounts pursuant to Clause 11.1 (*Increased Costs*), Clause 10.1 (*Tax gross-up*) or Clause 10.2 (*Tax indemnity*) to any Lender,then the Parent may, on 10 Business Days' prior written notice to the Facility Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 27 (*Changes to the Lenders*) all (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 (a "**Replacement Lender**") selected by the Parent which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 27 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents.
- (b) The replacement of a Lender pursuant to this Clause 25.3 shall be subject to the following conditions:
  - (i) the Parent shall have no right to replace the Facility Agent or Security Agent;
  - (ii) neither the Facility Agent nor the Lender shall have any obligation to the Parent to find a Replacement Lender;
  - (iii) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than 45 days after the date on which that Lender is deemed a Non-Consenting Lender;
  - (iv) in no event shall the Lender replaced under this Clause 25.3 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (v) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) A Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Facility Agent and the Parent when it is satisfied that it has complied with those checks.

- (d) In the event that:
- (i) (the Parent or the Facility Agent (at the request of the Parent) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;
  - (ii) the consent, waiver or amendment in question requires the approval of all the Lenders; and
  - (iii) Lenders whose Commitments aggregate more than 75 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 75 per cent. of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment,
- then any Lender who does not and continues not to consent or agree to such waiver or amendment shall be deemed a “**Non-Consenting Lender**”.

#### 25.4 **Disenfranchisement of Defaulting Lenders**

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments or Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, that Defaulting Lender’s Commitments will be reduced by the amount of its Available Commitments.
- (b) For the purposes of this Clause 25.4, the Facility Agent may assume that the following Lenders are Defaulting Lenders:
  - (i) any Lender which has notified the Facility Agent that it has become a Defaulting Lender;
  - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of “Defaulting Lender” has occurred,unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Facility Agent) or the Facility Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.
- (c) This Clause 25.4 (*Disenfranchisement of Defaulting Lenders*) shall not apply to any Defaulting Lender who is a Sponsor Affiliate, where the provisions of Clause 28.1 (*Restriction on Debt Purchase Transactions entered into by Sponsor Affiliates*) shall instead apply.

#### 25.5 **Replacement of a Defaulting Lender**

- (a) The Parent may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 10 Business Days’ prior written notice to the Facility Agent and such Lender:
  - (i) replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 27 (*Changes to the Lenders*) all or part of its rights and obligations under this Agreement;
  - (ii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 27 (*Changes to the Lenders*) all or part of the undrawn Commitment of the Lender; or
  - (iii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 27 (*Changes to the Lenders*) all or part of its rights and obligations in respect of the Facility,

to one or more Lenders or other bank, financial institution, trust, fund or other entity (each a “**Replacement Lender**”) selected by the Parent and which confirms its willingness to assume and does assume all the obligations, or all the relevant obligations, of the transferring Lender in accordance with Clause 27 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

- (i) in an amount equal in aggregate to that portion of the outstanding principal amount of such Lender’s participation in the outstanding Loans to be transferred and all accrued interest and/or Break Costs and other amounts payable in relation thereto under the Finance Documents; or
  - (ii) in an amount agreed between that Defaulting Lender, each Replacement Lender and the Parent and which does not exceed in aggregate the amount described in paragraph (i) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 25.5 shall be subject to the following conditions:
- (i) the Parent shall have no right to replace the Facility Agent or Security Agent;
  - (ii) neither the Facility Agent nor the Defaulting Lender shall have any obligation to the Parent to find a Replacement Lender;
  - (iii) the transfer must take place no later than 45 days after the notice referred to in paragraph (a) above;
  - (iv) in no event shall the Defaulting Lender be required to pay or surrender to a Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
  - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that transfer to a Replacement Lender
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Facility Agent and the Parent when it is satisfied that it has complied with those checks.

#### 25.6 **Change of currency**

If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognised at the same time as the lawful currency of a country), the Finance Documents will be amended to the extent the Facility Agent (acting reasonably and on the instructions of the Majority Lenders and after consultation with the Parent) determines is necessary to reflect the change.

#### 25.7 **Waivers and remedies cumulative**

The rights of each Finance Party under the Finance Documents:

- (a) may be exercised as often as necessary;

- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

## 26. CHANGES TO THE OBLIGORS

### 26.1 Assignment and transfers by Obligors

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents without the prior consent of all the Lenders.

### 26.2 Additional Borrowers

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 15.7 (*Know your customer requirements*), the Parent may request that any of its wholly owned Restricted Subsidiaries becomes a Borrower. That Subsidiary shall become a Borrower if:
  - (i) it is registered in Cyprus, the Marshall Islands or the United Kingdom or otherwise if all of the Lenders approve the addition of that Restricted Subsidiary (such consent not to be unreasonably withheld or delayed);
  - (ii) the Parent and that Restricted Subsidiary deliver to the Facility Agent a duly completed and executed Accession Deed;
  - (iii) the Restricted Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;
  - (iv) the Parent confirms that no Default is continuing or would occur as a result of that Restricted Subsidiary becoming an Additional Borrower; and
  - (v) the Facility Agent has received all of the documents and other evidence listed in Part 3 of Schedule 2 (*Additional Obligor Conditions Precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Facility Agent.
- (b) The Facility Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 3 of Schedule 2 (*Additional Obligor Conditions Precedent*).
- (c) 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 (b) 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.

### 26.3 Accession of a Borrower

If a drawdown is proposed under this Agreement in respect of an Additional Vessel or any other vessel and such vessel is, or is to be, owned by a person other than an Original Borrower, the Parent shall procure that such person is a wholly owned Subsidiary of the Parent registered in Cyprus, the Marshall Islands or the United Kingdom or any other jurisdiction acceptable to the Facility Agent acting on the instructions of all of the Lenders (such consent not to be unreasonably withheld or delayed), and on or prior to the Utilisation Date in respect of the relevant drawdown, such person becomes bound by this Agreement as a Borrower by executing and delivering to the Facility Agent an Accession Deed.

#### 26.4 Additional Guarantors

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 15.7 (*Know your customer requirements*), the Parent may request that any of its Subsidiaries become a Guarantor.
- (b) To the extent required by paragraph 15 (*Subsidiary Guarantees*) of Schedule 14 (*Notes Restrictive Covenants*) or by Clause 3.1 (*Conditions precedent*) the Parent shall ensure that each member of the Restricted Group shall promptly become an Additional Guarantor.
- (c) A member of the Restricted Group shall become an Additional Guarantor if:
  - (i) the Parent and the proposed Additional Guarantor deliver to the Facility Agent and the Security Agent a duly completed and executed Accession Deed; and
  - (ii) the Facility Agent has received all of the documents and other evidence listed in Part 3 of Schedule 2 (*Additional Obligor conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Facility Agent.
- (d) The Facility Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 3 of Schedule 2 (*Additional Obligor conditions precedent*).
- (e) 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 (d) 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.

#### 26.5 Repetition of Representations

Delivery of an Accession Deed constitutes confirmation by the relevant Restricted Subsidiary that the representations and warranties referred to in paragraph (b)(iv) of Clause 14.31 (*Times for making representations*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

### 27. CHANGES TO THE LENDERS

#### 27.1 Assignments and transfers by Lenders

- (a) A Lender (the **Existing Lender**) may, subject to the following provisions of this Clause 27.1, at any time assign or transfer (including by way of novation) any of its rights and obligations under this Agreement to another bank, financial institution or to a trust, fund or other entity which is regularly engaged or established for the purpose of making, purchasing or otherwise investing in loans, securities or other financial assets (the **New Lender**).
- (b) The prior written consent of the Parent is required for an assignment or transfer unless that 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 of the Existing Lender; or
  - (iii) made at a time when an Event of Default is continuing.

The consent of the Parent to an assignment or transfer must not be unreasonably withheld or delayed. It will not be unreasonable for the Parent to withhold its consent to an assignment or transfer to a “loan-to-own” fund, or any person known to buy distressed debt and/or non-performing loans with intent to pursue active enforcement policies or to follow an investment strategy that is characterised by short-term position taking in relation to corporate, project or asset finance debt (or any Affiliate of such person).

- (c) A transfer of obligations will be effective only if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement and either:
  - (i) the obligations are novated in accordance with the following provisions of this Clause 27; or
  - (ii) the New Lender confirms to the Facility Agent and the Parent in form and substance reasonably satisfactory to the Facility Agent and the Parent that it is bound by the terms of this Agreement.
- (d) On the transfer becoming effective in this manner, the relevant Lender will be released from its obligations under this Agreement to the extent that they are transferred to the New Lender.
- (e) Any reference in this Agreement to a Lender includes a New Lender but excludes a Lender if no amount is or may be owed to or by it under this Agreement.
- (f) Where the Parent’s consent to a transfer or assignment is not required pursuant to paragraph (b) above, the Facility Agent shall notify the Parent of the identity of the New Lender.

#### 27.2 Procedure for transfer by way of novations

- (a) In this Clause 27.2:
  - Transfer Date** means, for a Transfer Certificate, the later of:
    - (i) the proposed Transfer Date specified in that Transfer Certificate; and
    - (ii) the date on which the Facility Agent executes that Transfer Certificate.
- (b) A novation is effected if:
  - (i) the Existing Lender and the New Lender deliver to the Facility Agent a duly completed Transfer Certificate; and
  - (ii) the Facility Agent executes it.
- (c) On the Transfer Date:
  - (i) the New Lender will assume the rights and obligations of the Existing Lender expressed to be the subject of the novation in the Transfer Certificate in substitution for the Lender; and
  - (ii) the Existing Lender will be released from those obligations and cease to have those rights.
- (d) Each Party (other than the Existing Lender and the New Lender) irrevocably authorises the Facility Agent to execute any duly completed Transfer Certificate on its behalf.
- (e) 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 similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

**27.3 Limitation of responsibility of Existing Lender**

- (a) Unless expressly agreed to the contrary, an Existing Lender is not responsible to a New Lender for:
- (i) the legality, validity, effectiveness, completeness, accuracy, adequacy or enforceability of any Finance Document or any other document;
  - (ii) the financial condition of any Obligor;
  - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
  - (iv) the accuracy of any statement or information (whether written or oral) made in or supplied in connection with any Finance Document,
- and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender that it:
- (i) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Finance Documents (including the financial condition and affairs of each Obligor and its related entities and the nature and extent of any recourse against any Party or its assets) in connection with its participation in this Agreement; and
  - (ii) has not relied exclusively on any information supplied to it by the Existing Lender in connection with any Finance Document.
- (c) Nothing in any Finance Document requires an Existing Lender to:
- (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause 27; or
  - (ii) support any losses incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under any Finance Document or otherwise.

**27.4 Costs resulting from change of Lender or Facility Office**

If:

- (a) a Lender assigns or transfers any of its rights and obligations under the Finance Documents or changes its Facility Office; and
- (b) as a result of circumstances existing at the date on which the assignment, transfer or change occurs, an Obligor would be obliged to pay a Tax Payment, an Increased Cost or any payment under Clause 10.7 (*Stamp taxes*),

then, (i) if it changes its Facility Office, the relevant Lender (directly or through the Facility Agent) shall inform the Parent of such change of Facility Office and (ii) unless the assignment, transfer or change is made by a Lender to mitigate any circumstances giving rise to a Tax Payment, Increased Cost or a right to be prepaid and/or cancelled by reason of illegality or is after the occurrence of a Default



which is continuing, the relevant Obligor need only pay that Tax Payment or Increased Cost or payment under Clause 10.7 (*Stamp taxes*) to the same extent that it would have been obliged to if no assignment, transfer or change had occurred.

27.5 **Changes to the 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 Facility Agent must (in consultation with the Parent) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

28. **RESTRICTION ON DEBT PURCHASE TRANSACTIONS**

28.1 **Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates**

- (a) For so long as a Sponsor Affiliate:
- (i) beneficially owns a Commitment; or
  - (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated, in ascertaining,
    - (A) the Majority Lenders; or
    - (B) whether:
      - (1) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments; or
      - (2) the agreement of any specified group of Lenders,has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero and such Sponsor Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender for the purposes of paragraphs (A) and (B) above (unless in the case of a person not being a Sponsor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).
- (b) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Facility Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate (a “**Notifiable Debt Purchase Transaction**”), such notification to be substantially in the form set out in Part I of Schedule 15 (*Forms of Notifiable Debt Purchase Transaction Notice*).
- (c) A Lender shall promptly notify the Facility Agent if a Notifiable Debt Purchase Transaction to which it is a party:
- (i) is terminated; or
  - (ii) ceases to be with a Sponsor Affiliate,
- such notification to be substantially in the form set out in Part II of Schedule 15 (*Forms of Notifiable Debt Purchase Transaction Notice*).

- (d) Each Sponsor Affiliate that is a Lender agrees that:
  - (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Facility Agent or, unless the Facility Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
  - (ii) in its capacity as Lender, unless the Facility Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Facility Agent or one or more of the Lenders.

29. **DISCLOSURE OF INFORMATION**

For two years from the date of signing of this Agreement, no Finance Party may disclose any information supplied to it, by or on behalf of the Obligors, the Charterers or the Finance Documents relating to this Facility, save that each Finance Party may disclose such information as that Finance Party shall consider appropriate in respect of information supplied to it, by or on behalf of the Obligors, the Charterers or the Finance Documents to:

- (a) in the case of any other Finance Party, any of its Affiliates or Related Funds; or
- (b) any other person to (or through) whom an Existing Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement or with (or through) whom a 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 by reference to, this Agreement or the Obligors; or
- (c) any person to whom, and to the extent that, information is required to be disclosed by any Applicable Law; or
- (d) any other Finance Party; or
- (e) to its and the Obligors' professional advisors,

PROVIDED ALWAYS that, in relation to paragraph (b) above, the person to whom the information is to be given has entered into a Confidentiality Undertaking which includes the express prohibition on sharing information relating to this Facility. Except as provided in this Clause 29, a Lender may not disclose any information about any Obligor, the Charterers or the Finance Documents to any person.

30. **SET-OFF**

A Finance Party may set off any matured obligation owed to it by an Obligor under the Finance Documents against any obligation (whether or not matured) owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation, provided always that if a Finance Party intends to effect a set-off at a time when there is no continuing Event of Default, it shall give the Parent notice of its intention so to do. If the obligations are in different currencies, that 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.

## 31. PRO RATA SHARING

### 31.1 Redistribution

If any amount owing by an Obligor under this Agreement to a Lender (the **recovering Lender**) is discharged by payment, set-off or any other manner other than through the Facility Agent under this Agreement (a **recovery**), then:

- (a) the recovering Lender must, within three Business Days, supply details of the recovery to the Facility Agent;
- (b) the Facility Agent must calculate whether the recovery is in excess of the amount which the recovering Lender would have received if the recovery had been received by the Facility Agent under this Agreement; and
- (c) the recovering Lender must pay to the Facility Agent an amount equal to such excess (the redistribution).

### 31.2 Effect of redistribution

- (a) The Facility Agent must treat a redistribution as if it were a payment by the relevant Obligor under this Agreement and distribute it among the Lenders, other than the recovering Lender, accordingly.
- (b) When the Facility Agent makes a distribution under paragraph (a) above, the recovering Lender will be subrogated to the rights of the Finance Parties which have shared in that redistribution.
- (c) If and to the extent that the recovering Lender is not able to rely on any rights of subrogation under paragraph (b) above, the relevant Obligor will owe the recovering Lender a debt which is equal to the redistribution, immediately payable and of the type originally discharged.

If:

- (a) a recovering Lender must subsequently return a recovery, or an amount measured by reference to a recovery, to any Obligor; and
- (b) the recovering Lender has paid a redistribution in relation to that recovery,

each Finance Party must reimburse the recovering Lender all or the appropriate portion of the redistribution paid to that Finance Party, together with interest for the period while it held the re-distribution. In this event, the subrogation in paragraph (b) above will operate in reverse to the extent of the reimbursement.

### 31.3 Exceptions

Notwithstanding any other term of this Clause 31, a recovering Lender need not pay a redistribution to the extent that:

- (a) it would not, after the payment, have a valid claim against the relevant Obligor in the amount of the redistribution; or
- (b) it would be sharing with another Finance Party any amount which the recovering Lender has received or recovered as a result of legal or arbitration proceedings, where:
  - (i) the recovering Lender notified the Facility Agent of those proceedings; and
  - (ii) the other Finance Party had an opportunity to participate in those proceedings but did not do so or did not take separate legal or arbitration proceedings as soon as reasonably practicable after receiving notice of them.

32. **SEVERABILITY**

If a term of a Finance Document is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of the Finance Documents; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of the Finance Documents.

33. **COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts and by facsimile provided that original signed copies are provided within a reasonable period of time thereafter. This has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

34. **NOTICES**

34.1 **In writing**

- (a) Any communication in connection with a Finance Document must be in writing and, unless otherwise stated, may be given in person, by post, fax, e-mail or by any other electronic communication approved by the Facility Agent.
- (b) For the purpose of the Finance Documents, an electronic communication will be treated as being in writing.
- (c) Unless it is agreed to the contrary, any consent or agreement required under a Finance Document must be given in writing.

34.2 **Contact details**

- (a) Except as provided below, the contact details of each Party for all communications in connection with the Finance Documents are those notified by that Party for this purpose to the Facility Agent on or before the date it becomes a Party. The Facility Agent shall distribute the details which it holds on request.
- (b) The contact details of the Parent for this purpose are:

Address:                Global Ship Lease, Inc.  
                              c/o Global Ship Lease Services Limited  
                              Portland House  
                              Stag Place  
                              London  
                              SW1E 5RS

Fax number:            +44 (0) 20 7869 8119

Attention:             CFO

(c) The contact details of the Facility Agent for this purpose are:

Address: Citibank International plc  
5th Floor, Citigroup Centre  
25 Canada Square  
London  
E14 5LB

Fax number: +44 (0) 20 8636 3824

Attention: European Loans Agency, EMEA

(d) The contact details of the Arranger, the Bookrunner and the Original Lender for this purpose are:

Address: Citibank N.A., London Branch  
5th Floor, Citigroup Centre  
25 Canada Square  
London  
E14 5LB

Fax number: +44 (0) 20 8043 0390

Attention: Shreyas Chipalkatty

(e) The contact details for the Security Agent for this purpose are:

Address: Deutsche Bank Trust Company Americas  
Trust and Agency Services  
60 Wall Street, 16th Floor  
Mail Stop: NYC60-1630  
New York, New York 10005  
USA

Fax Number: +1 (732) 578-4635

Attention: Corporate Team, Global Ship Lease, Inc.

With a copy to:

Address: Deutsche Bank Trust Company Americas  
c/o Deutsche Bank National Trust Company  
Trust and Agency Services  
100 Plaza One – 6th Floor  
Mail Stop: JCY03-0699  
Jersey City, NJ 07311-3901  
USA

Fax Number: +1 (732) 578-4635

Attention: Corporate Team, Global Ship Lease, Inc.

(f) A Party may change its contact details by giving five Business Days' notice to the Facility Agent or (in the case of the Facility Agent) to the other Parties.

(g) Where a Party nominates a particular department or officer to receive a communication, a communication will not be effective if it fails to specify that department or officer.

(h) Any communication for an Obligor shall be sent to the Parent with the contact details set out in Clause 34.2(b) (or such substitute contact details as the Parent may notify the Facility Agent by not less than five Business Days' notice) and service on the Parent in accordance with Clause 34.3 (*Effectiveness*) shall be deemed good service on the relevant Obligor.

### 34.3 Effectiveness

- (a) Except as provided below, any communication in connection with a Finance Document will be deemed to be given as follows:
  - (i) if delivered in person, at the time of delivery;
  - (ii) if posted, five (5) days after being deposited in the post, postage prepaid, in a correctly addressed envelope;
  - (iii) if by fax, when received in legible form; and
  - (iv) if by e-mail or any other electronic communication, when received in legible form.
- (b) A communication given under paragraph (a) above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.
- (c) A communication or document to be made or delivered to the Facility Agent will be effective only when received by the Facility Agent and then only if it is expressly marked for the attention of the department or officer identified with the Facility Agent's signature below (or any substitute department or officer as the Facility Agent shall specify for this purpose on giving the other Parties at least five Business Days' notice in writing).

### 34.4 Obligors

All communications under the Finance Documents to or from an Obligor must be sent through the Facility Agent or with a copy to the Facility Agent.

### 34.5 Communication when Agent is Impaired Agent

If the Facility Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Facility Agent, communicate with each other directly and (while the Facility Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Facility Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Facility Agent has been appointed.

### 34.6 Entire Agreement

This Agreement and the other Finance Documents entered into pursuant to this Agreement contain the whole agreement between the parties relating to the transactions contemplated by this Agreement and supersede all previous agreements between the parties relating to such transactions.

## 35. LANGUAGE

- (a) Any notice given in connection with a Finance Document must be in English.
- (b) Any other document provided in connection with a Finance Document must be:
  - (i) in English; or
  - (ii) (unless the Facility Agent otherwise agrees) accompanied by a certified English translation. In this case, the English translation prevails unless the document is a statutory or other official document.

36. **GOVERNING LAW**

- (a) This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- (b) Without prejudice to paragraph (a) above, Schedule 14 (*Notes Restrictive Covenants*) of this Agreement and any non contractual obligations arising out of or in connection with it will be interpreted in accordance with the laws of the State of New York.

37. **ENFORCEMENT**

37.1 **Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (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) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 37.1 is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party or 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 Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

37.2 **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 GSLS as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document (and GSLS by its execution of this Agreement, accepts that appointment); and
  - (ii) agrees that failure by an agent for service of process 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 Parent (on behalf of all the Obligors) must immediately (and in any event within 3 days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.
- (c) GSLS expressly agrees and consents to the provisions of this Clause 37 and Clause 36 (*Governing law*).

37.3 **Waiver of immunity**

Each Obligor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by a Finance Party against it in relation to a Finance Document and to ensure that no such claim is made on its behalf;

- 
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
  - (c) waives all rights of immunity in respect of it or its assets.

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



**SCHEDULE 1**

**PART 1**

**ORIGINAL OBLIGORS**

<b><u>Name of Original Borrower</u></b>	<b><u>Jurisdiction of Incorporation</u></b>	<b><u>Registered Number</u></b>
Global Ship Lease, Inc.	Marshall Islands	28891
Global Ship Lease Services Limited	England	06285694

<b><u>Name of Original Guarantor</u></b>	<b><u>Jurisdiction of Incorporation</u></b>	<b><u>Registered Number</u></b>
Global Ship Lease, Inc.	Marshall Islands	28891
GSL Alcazar Inc.	Marshall Islands	26711
Global Ship Lease Services Limited	England	06285694
Global Ship Lease 1 Limited	Cyprus	211531
Global Ship Lease 2 Limited	Cyprus	211533
Global Ship Lease 3 Limited	Cyprus	211552
Global Ship Lease 4 Limited	Cyprus	211532
Global Ship Lease 5 Limited	Cyprus	211540
Global Ship Lease 6 Limited	Cyprus	211526
Global Ship Lease 7 Limited	Cyprus	211528
Global Ship Lease 8 Limited	Cyprus	211539
Global Ship Lease 9 Limited	Cyprus	211530
Global Ship Lease 10 Limited	Cyprus	211534
Global Ship Lease 12 Limited	Cyprus	211709
Global Ship Lease 13 Limited	Cyprus	212727
Global Ship Lease 14 Limited	Cyprus	212734
Global Ship Lease 15 Limited	Cyprus	212735
Global Ship Lease 16 Limited	Cyprus	212729
Global Ship Lease 17 Limited	Cyprus	212742

**PART 2**

**ORIGINAL LENDER**

As at the date of this Agreement, the Lender and its Commitment are as follows:

Name of Original Lender	Commitments
CITIBANK N.A., LONDON BRANCH	US\$40,000,000

**SCHEDULE 2**

**CONDITIONS PRECEDENT**

**PART 1**

**INITIAL CONDITIONS PRECEDENT DOCUMENTS**

**1. Obligors**

- (a) A copy of the Constitutional Documents of each Original Obligor.
- (b) A copy of a resolution of the board or, if applicable, a committee of the board of directors of each Original Obligor:
  - (i) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) If applicable, a copy of a resolution of the board of directors of the relevant company, establishing the committee referred to in paragraph (b) above.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents and related documents.
- (e) A certificate of the Parent (signed by an authorised officer (being either a CEO, CFO, COO or CTO)) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Original Obligor to be exceeded.
- (f) A certificate of an authorised signatory of the Parent or other relevant Original Obligor certifying that each copy document relating to it specified in this Part I of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.
- (g) In respect of an Obligor incorporated in Cyprus:
  - (i) a certificate of good standing issued by the Registrar of Companies in Cyprus (dated no earlier than five days prior to the date of this Agreement);
  - (ii) a certificate of no winding up issued by the Registrar of Companies in Cyprus (dated no earlier than five days prior to the date of this Agreement);
  - (iii) a certificate of share capital issued by the Registrar of Companies in Cyprus;
  - (iv) its memorandum and articles of association in Greek and English language; and
  - (v) An original certificate of incumbency from the secretary of that Obligor dated one day before the date of execution of the Finance Documents in form and substance satisfactory to the Lenders' Cypriot counsel.

**2. Transaction Documents**

- (a) A certified copy of all other resolutions, consents, licences, exemptions, filings, corporate, official or otherwise which the Facility Agent may reasonably require in connection with this Agreement or any other Finance Document.
- (b) A copy of each of the Transaction Documents, other than the Finance Documents.

**3. Finance Documents and Related Contracts**

- (a) The Intercreditor Agreement executed by the members of the Group party to that Agreement and the Senior Secured Notes Trustee.
- (b) This Agreement executed by the members of the Group which are Parties.
- (c) The Fee Letters executed by the Parent.
- (d) At least two originals of each of the Original Security Documents in each case executed by the relevant Original Obligor or Original Obligors.
- (e) A copy of each of the Related Contracts in relation to each Identified Vessel.
- (f) Duly executed originals of all notices of assignment required to be served under each Original Security Document referred to above and duly executed originals of the acknowledgements thereof (or, where it is not possible to provide originals of the same, faxed copies with such originals to follow as soon as practicable after the date of this Agreement), duly executed by each relevant counterparty.
- (g) A copy of all share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Security Documents.

**4. Other documents and evidence**

- (a) A copy of the bill of sale in respect of each Identified Vessel.
- (b) An appraised valuation in respect of each Identified Vessel as at 31 October 2013 as evidenced from the valuation certificates from Howe Robinson Marine Evaluations Limited.
- (c) The Group Structure Chart.
- (d) Confirmation from the Lenders that they have satisfied all of their “know your customer” requirements.
- (e) Evidence that the Senior Secured Notes have been issued in an aggregate principal amount giving rise to gross proceeds of at least US\$420,000,000 and that those net proceeds have been made available to the Parent and have been applied, amongst other things, in repayment of all amounts outstanding under or in connection with the Existing Facility Agreement.
- (f) The Original Financial Statements.

**5. Legal opinions**

- (a) A legal opinion of Shearman & Sterling (London) LLP, English legal advisors to the Lenders, substantially in the form distributed to the Original Lender prior to the signing of this Agreement.
- (b) A legal opinion of Reeder & Simpson P.C., Marshall Islands legal advisors to the Lenders, substantially in the form distributed to the Original Lender prior to the signing of this Agreement.
- (c) A legal opinion of Montanios & Montanios, Cypriot legal advisors to the Obligors, substantially in the form distributed to the Original Lender prior to the signing of this Agreement.
- (d) A legal opinion of Higgs & Johnson, Bahamian legal advisors to the Lenders, substantially in the form distributed to the Original Lender prior to the signing of this Agreement.
- (e) A legal opinion of Patton, Moreno & Asvat, Panamanian legal advisors to the Obligors, substantially in the form distributed to the Original Lender prior to the signing of this Agreement.
- (f) A legal opinion of Nauta Dutilh, Dutch legal advisors to the Lenders, substantially in the form distributed to the Original Lender prior to the signing of this Agreement.

**6. Other Requirements**

Each certified copy document must be certified by a director, officer or duly authorised attorney of the Obligor as being true and complete as at a date no earlier than the date falling three Business Days prior to the date of this Agreement.

ADDITIONAL VESSEL CONDITIONS PRECEDENT

On the Delivery Date of each Additional Vessel or, as the case may be, the date of designation in accordance with Clause 3 (*Conditions precedent*), the Facility Agent shall require the following documentation:

1. **Borrower**

- (a) A certified copy of the Constitutional Documents of the Borrower or, if previously provided to the Facility Agent, a certificate of the relevant Borrower certifying that such documents remain in full force and effect and have not been amended since the date of such provision.
- (b) A certified copy of a resolution of the board of directors of the relevant Borrower:
  - (i) approving the terms of, and the transactions contemplated by, each Related Contract relating to the Additional Vessel to which the relevant Borrower is a party and resolving that it executes each such Related Contract, then to be executed;
  - (ii) authorising a specified person or persons to execute each Related Contract on its behalf to which it is a party, then to be executed; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with and each Related Contract to which it is a party, then to be executed.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b).
- (d) A certified copy of all other resolutions, consents, licences, exemptions and filings, corporate, official or otherwise which the Lender may reasonably require in connection with the acquisition of the Additional Vessel or any of the Related Contracts.

2. **Finance Documents and Related Contracts**

- (a) A duly executed original of a General Assignment relating to the Additional Vessel.
- (b) A duly executed original of the Mortgage relating to the Additional Vessel.
- (c) A duly executed original document granting a Security Interest in favour of the Security Agent, over the Earning Account with respect to the Additional Vessel, together with all notices and acknowledgements in connection therewith.
- (d) To the extent not previously delivered to the Security Agent, a duly executed original of the pledge of the shares relating to the relevant Borrower of each relevant Additional Vessel.
- (e) A certified copy of each relevant Ship Management Agreement, duly executed.
- (f) A certified copy of the relevant Acceptable Charter, duly executed.
- (g) A certified copy of the documentation pursuant to which the Additional Vessel has been sold to the relevant Borrower.
- (h) Duly executed originals of all notices of assignment required to be served under each Security Document referred to above.

**3. Other documents**

A copy of any other authorisation or other document, opinion or assurance which the Facility Agent reasonably considers to be necessary in connection with the entry into and performance of, and the transactions contemplated by, any Related Contract or for the validity and enforceability of any Related Contract.

**4. The Vessel to be delivered**

- (a) In respect of the Additional Vessel, a current certificate from Bureau Veritas, Lloyds Register of Shipping, or any other member of the International Association of Classification Societies or other classification society of recognized international standing acceptable to the Facility Agent, which shall be free from any overdue material recommendations.
- (b) A copy of the bill of sale and the protocol of delivery and acceptance in respect of the Additional Vessel.

**5. Insurance**

- (a) A copy of all current insurance policies in respect of Obligatory Insurances, in respect of the Additional Vessel or sufficient information so as to enable Marsh, London to prepare the insurance report referred to in paragraph 5(d) below.
- (b) A duly executed and, where necessary, notarised notice of assignment (and acknowledgement of the same) of the Obligatory Insurances in respect of the Additional Vessel duly executed by the Borrower substantially in the form provided for in the General Assignment.
- (c) Fax confirmation (or an e-mail confirmation to such e-mail address as may be advised by the Facility Agent) from each broker and club concerned with the Obligatory Insurances of the Additional Vessel that:
  - (i) the relevant cover is in effect;
  - (ii) they will accept notice of assignment of the Obligatory Insurances in favour of the Facility Agent;
  - (iii) they will issue a letter of undertaking addressed to the Security Agent in the form set out in schedule 2 to the General Assignment in the case of London brokers, in their standard form in the case of London clubs, substantially in the form set out in schedule 2 or schedule 3 of the General Assignment (as appropriate) in any other case or such other form as is permitted under the General Assignment relating to the Additional Vessel;
  - (iv) they will accept endorsement of a loss payable clause on the policies in the form provided for in the General Assignment (in the case of brokers and insurers other than clubs) or will note the interest of the Security Agent in the entry for the Additional Vessel by way of a loss payable clause in their current standard form (in the case of clubs); and
  - (v) they are not aware of any mortgage, charge, assignment or other encumbrance affecting the Obligatory Insurances with which they are concerned (other than any previously disclosed by the Borrower to the Facility Agent in writing).
- (d) Confirmation from the Facility Agent of its satisfaction with a final insurance report with regard to the Additional Vessel as prepared by an insurance broker satisfactory to the Facility Agent.
- (e) Confirmation from the Facility Agent of its receipt of a Valuation of the Additional Vessel.

**6. Other Requirements**

Evidence satisfactory to the Facility Agent (acting on behalf of the Majority Lenders) that the Parent continues to be listed on the NYSE or NASDAQ.

**7. Legal opinions**

- (a) A legal opinion of English legal advisors to the Lenders, addressed to the Facility Agent, the Security Agent and the Lenders.
- (b) A legal opinion of the legal advisors to the Lenders in the jurisdiction of the relevant Borrower and (if applicable) the Charter Guarantor, addressed to the Facility Agent, the Security Agent and the Lenders.
- (c) A legal opinion of the legal advisors to the Lenders in the jurisdiction of the relevant Approved Flag State, addressed to the Facility Agent, the Security Agent and the Lenders.
- (d) A legal opinion of the legal advisors to the Lenders in the appropriate jurisdiction as to the enforceability of the Time Charter entered into in respect of that Additional Vessel, addressed to the Facility Agent, the Security Agent and the Lenders.
- (e) A legal opinion of the legal advisors to the Lenders in the appropriate jurisdiction as to the enforceability of the relevant Earnings Account Security Agreement and such other matters relating to the Security Agent in connection with the Earnings Account Security Agreement as the Security Agent may reasonably request, addressed to the Facility Agent, the Security Agent and the Lenders.

**8. Other Requirements**

Each certified copy document must be certified by a director, officer or duly authorised attorney of the Borrower as being true and complete as at a date no earlier than the date falling three Business Days prior to the Delivery Date of the Additional Vessel.



## PART 3

### ADDITIONAL OBLIGOR CONDITIONS PRECEDENT

1. An Accession Deed executed by the Additional Obligor and the Parent.
2. A copy of the Constitutional Documents of the Additional Obligor.
3. A copy of a resolution of the board or, if applicable, a committee of the board of directors of the Additional Obligor:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is party;
  - (b) authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
  - (d) authorising the Parent to act as its agent in connection with the Finance Documents
4. If applicable, a copy of a resolution of the board of directors of the Additional Obligor, establishing the committee referred to in paragraph 3 above.
5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
6. A copy of a resolution signed by all the holders of the issued shares of the Additional Obligor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Obligor is a party.
7. A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
8. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part 3 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Deed.
9. A copy of any other authorisation or other document, opinion or assurance which the Facility Agent considers to be necessary in connection with the entry into and performance of the transactions contemplated by the Accession Deed or for the validity and enforceability of any Finance Document.
10. In respect of an Additional Obligor incorporated in Cyprus:
  - (a) a certificate of good standing issued by the Registrar of Companies in Cyprus (dated no earlier than five days prior to the date of the Accession Deed);
  - (b) a certificate of no winding up issued by the Registrar of Companies in Cyprus (dated no earlier than five days prior to the date of the Accession Deed);
  - (c) a certificate of share capital issued by the Registrar of Companies in Cyprus;

- (d) its memorandum and articles of association in Greek (with the Registrar stamp appearing on the same) and English language; and
  - (e) an original certificate of incumbency from the secretary of that Additional Obligor dated on the same day of execution of the Accession Deed in form and substance satisfactory to the Lenders' Cypriot counsel.
11. If available, the latest audited financial statements of the Additional Obligor.
  12. The following legal opinions, each addressed to the Facility Agent, the Security Agent and the Lenders:
    - (a) A legal opinion of the legal advisers to the Facility Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Deed.
    - (b) If the Additional Obligor is incorporated in or has its "centre of main interest" or "establishment" (as referred to in Clause 14.30 (*Centre of main interests and establishments*)) in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Facility Agent in the jurisdiction of its incorporation, "centre of main interest" or "establishment" (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Deed.
  13. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 37.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.

**SCHEDULE 3**

**IDENTIFIED VESSELS**

<b>Vessel Name</b>	<b>Name of Original Guarantor</b>	<b>Jurisdiction of incorporation of the Borrower</b>	<b>Size (teu)</b>	<b>Charter Period</b>	<b>Charter Rate (USD per day)</b>	<b>Charterer</b>
Ville d'Aquarius	Global Ship Lease 2 Limited	Cyprus	4,113	1 year	7,000	CMA CGM
Ville d'Orion	Global Ship Lease 1 Limited	Cyprus	4,113	1 year	7,000	CMA CGM
Julie Delmas	Global Ship Lease 6 Limited	Cyprus	2,207	10 years	18,465	CMA CGM
Kumasi	Global Ship Lease 7 Limited	Cyprus	2,207	10 years	18,465	CMA CGM
Marie Delmas	Global Ship Lease 8 Limited	Cyprus	2,207	10 years	18,465	CMA CGM
Delmas Keta	Global Ship Lease 5 Limited	Cyprus	2,207	10 years	18,465	CMA CGM
CMA CGM Matisse	Global Ship Lease 3 Limited	Cyprus	2,262	12 years	15,300	CMA CGM
CMA CGM Utrillo	Global Ship Lease 4 Limited	Cyprus	2,262	12 years	15,300	CMA CGM
CMA CGM Chateau D'If	Global Ship Lease 12 Limited	Cyprus	5,089	13 years	33,750	CMA CGM

Vessel Name	Name of Original Guarantor	Jurisdiction of incorporation of the Borrower	Size (teu)	Charter Period	Charter Rate (USD per day)	Charterer
CMA CGM Thalassa	Global Ship Lease 13 Limited	Cyprus	11,040	17 years	47,200	CMA CGM
CMA CGM America	Global Ship Lease 16 Limited	Cyprus	4,045	14 years	25,350	CMA CGM
CMA CGM Sambhar	Global Ship Lease 15 Limited	Cyprus	4,045	14 years	25,350	CMA CGM
CMA CGM Jamaica	Global Ship Lease 14 Limited	Cyprus	4,298	14 years	25,350	CMA CGM
CMA CGM Berlioz	Global Ship Lease 17 Limited	Cyprus	6,621	12 years	34,000	CMA CGM
CMA CGM La Tour	Global Ship Lease 9 Limited	Cyprus	2,272	12 years	15,300	CMA CGM
CMA CGM Manet	Global Ship Lease 10 Limited	Cyprus	2,272	12 years	15,300	CMA CGM
CMA CGM Alcazar	GSL Alcazar Inc.	Marshall Islands	5,089	13 years	33,750	CMA CGM

## SCHEDULE 4

### CONDITIONS SUBSEQUENT TO DRAWING

The Facility Agent shall require the following documentation and evidence from the Borrower, in respect of an Additional Vessel at the time provided for in Clause 3.1(d) (*Conditions precedent*), as applicable.

- (a) Evidence that:
  - (i) the Mortgage in respect of the Additional Vessel has been duly recorded in the Shipping Register of the Approved Flag State and constitutes a first priority security interest over the Additional Vessel and that all taxes and fees payable to the Shipping Register of the Approved Flag State in respect of that Additional Vessel have been paid in full;
  - (ii) the title to the Additional Vessel is held by the relevant Borrower free of all Security Interests other than Permitted Security Interests; and
  - (iii) the Additional Vessel is provisionally registered in the name of the relevant Borrower, in the Approved Flag State.
- (b) Confirmation acceptable to the Facility Agent that the relevant Charterer has accepted the Vessel pursuant to the terms of the relevant Time Charter.
- (c) To the extent required under and at the time specified in the relevant Security Document, duly and executed originals of the acknowledgements of each notice of assignment required to be served under each Security Document required to be delivered in respect of that Additional Vessel (or, where it is not possible to provide originals of the same, faxed copies with such originals to follow as soon as practicable after the relevant Utilisation Date), duly executed by each relevant counterparty.

**SCHEDULE 5**

**PAYMENTS**

**PART 1**

**FORM OF REQUEST**

To: [—] as Facility Agent

From: [*The Borrower*] Date: [ ]

**US\$[—] Facility Agreement dated [—] 2014 (the Facility Agreement)**

1. We wish to borrow a Loan from you as follows:
  - (a) Utilisation Date: [ ]
  - (b) Amount/currency: [ ]
  - (c) Term: [ ]
2. The relevant Additional Vessel details are as follows:
  - (a) Vessel Name: [ ]
  - (b) TEU: [ ]
3. [The Loan shall be used towards general corporate purposes.]
4. Payment Instructions:  
To include provisions that: [—].
5. [*We confirm that each condition specified in the Facility Agreement which must be satisfied on or before the date of this Request is satisfied on the date of this Request.*]

By:

---

**BORROWER**

Authorised Signatory

**PART 2**

**PAYMENT ADVICE**

To: [The Borrower]

From: [—] as Facility Agent

Date: [ ]

US\$[—] Facility Agreement dated [—] 2014 (the Facility Agreement)

Further to receipt of your request dated [ ] and attached hereto requesting the advance of a Loan, we confirm that all amounts have been advanced in accordance with the requirements of the attached Request.

**SCHEDULE 6**

**FORM OF TRANSFER CERTIFICATE**

To: [—] as Facility Agent and [—] as Security Agent

From: [THE EXISTING BANK] and [THE NEW BANK] Date: [ ]

**US\$[—] Facility Agreement dated [—] 2014 (the Facility Agreement)**

We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This agreement (the “**Agreement**”) shall take effect as a Transfer Certificate for the purpose of the Facility Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.

1. We [ ] (the Existing Bank) and [ ] (the New Bank) agree to the Existing Bank and the New Bank novating all the Existing Bank’s rights and obligations under the Facility Agreement and the other Finance Documents which relate to that portion of the Existing Lender’s Commitment(s) and participations in Utilisations under the Facility Agreement specified in the Schedule in accordance with Clause 27.2 (*Procedure for transfer by way of novations*).
2. The specified date for the purposes of Clause 27.2 (*Procedure for transfer by way of novations*) is [date of novation].
3. The Facility Office and address for notices of the New Bank for the purposes of Clause 34.2 (*Contact details*) are set out in the Schedule attached to this Certificate.
4. This Novation Certificate is governed by English law.
5. The New Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender].<sup>1</sup>
6. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
  - (a) a company resident in the United Kingdom for United Kingdom tax purposes;
  - (b) a partnership each member of which is:
    - (i) a company so resident in the United Kingdom; or
    - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
    - (iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.<sup>2</sup>

<sup>1</sup> Delete as applicable - each New Lender to a Borrower incorporated in the United Kingdom is required to confirm which of these three categories it falls within.

<sup>2</sup> Include if New Lender to a Borrower incorporated in the United Kingdom comes within paragraph (a)(i)(B) of the definition of Qualifying Lender in Clause 1.1 (*Definitions*)



7. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ]<sup>3</sup>, so that interest payable to it by borrowers incorporated in the United Kingdom is generally subject to full exemption from UK withholding tax, and requests that the Company notify:
- (a) each Borrower which is a Party as a Borrower as at the Transfer Date; and
  - (b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date,
    - (i) that it wishes that scheme to apply to the Agreement.]<sup>4</sup>
8. The New Bank confirm that it [is]/[is not] a Sponsor Affiliate.<sup>5</sup>
9. We refer to clause [21.2] (*Change of Credit Facility Lender*) of the Intercreditor Agreement.
- In consideration of the New Lender being accepted as a Credit Facility Lender for the purposes of the Intercreditor Agreement (and as defined therein), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Credit Facility Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Credit Facility Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.
10. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
11. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
12. This Agreement has been entered into on the date stated at the beginning of this Agreement.

<sup>3</sup> Insert jurisdiction of tax residence.

<sup>4</sup> Include if New Lender to a Borrower incorporated in the United Kingdom holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

<sup>5</sup> Delete as appropriate.

**THE SCHEDULE**

**Rights and obligations to be novated**

[Choose one of the following options (a) to (c):]

- (a) all of the rights and obligations of the Existing Lender in respect of the Facility - principal amount US\$[     ].
- (b) the principal amount of US\$[     ] in respect of each of the Loans and all the rights and obligations attached to the same-total principal amount US\$[     ].
- (c) the principal amount of US\$[     ] in respect of [*each of*] Loan [     ] [*and Loan* [     ] *and* [     ]] and all the rights and obligations attached to the same. [**New Bank**]

[*Facility Office Address for notices*]

[*Existing Bank*] [*New Bank*]

This Agreement is accepted as a Transfer Certificate for the purposes of the Facility Agreement by the Agent, and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as [     ].

[Agent]

By:

[Security Agent]

By:

SCHEDULE 7

COMPLIANCE CERTIFICATE

To: [—] as Facility Agent

From: Global Ship Lease, Inc.

**US\$[—] Facility Agreement dated [—] 2014 (the Facility Agreement)**

1. Terms defined in the Facility Agreement have the same meaning in this Certificate.
2. [I/We hereby certify that [no Default has occurred and is continuing or is outstanding] [a Default under Clause [ ] of [specify document] is outstanding and the following steps are being taken to remedy it [ ]].
3. [I/We hereby certify that the ratio of EBITDA to Debt Service (each as defined in Clause 1.1 (Definitions)) as at [31 December 2016]/[30 June 2017]/[31 December 2017] was [—]:1][I/We hereby certify that in relation to the financial covenant set out in Clause 17.3 (Cash Balance) of the Facility Agreement the Cash Balance on [—] was [—]:

Yours faithfully,

[\_\_\_\_\_]

Chief Executive Officer

[or]

Chief Financial Officer

## SCHEDULE 8

### ORIGINAL SECURITY DOCUMENTS

- (i) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 1 Limited;
- (ii) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 2 Limited;
- (iii) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 3 Limited;
- (iv) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 4 Limited;
- (v) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 5 Limited;
- (vi) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 6 Limited;
- (vii) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 7 Limited;
- (viii) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 8 Limited;
- (ix) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 9 Limited;
- (x) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 10 Limited;
- (xi) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 12 Limited;
- (xii) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 13 Limited;
- (xiii) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 14 Limited;
- (xiv) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 15 Limited;

- (xv) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 16 Limited;
- (xvi) a Cypriot law governed pledge and charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in Global Ship Lease 17 Limited;
- (xvii) a Cypriot law governed ship mortgage and deed of covenant between Global Ship Lease 1 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “Ville D’Orion”;
- (xviii) a Cypriot law governed ship mortgage and deed of covenant between Global Ship Lease 2 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “Ville D’Aquarius”;
- (xix) a Cypriot law governed ship mortgage and deed of covenant between Global Ship Lease 3 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “CMA CGM Matisse”;
- (xx) a Cypriot law governed ship mortgage and deed of covenant between Global Ship Lease 4 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “CMA CGM Utrillo”;
- (xxi) a Cypriot law governed ship mortgage and deed of covenant between Global Ship Lease 10 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “CMA CGM Manet”;
- (xxii) a Cypriot law governed ship mortgage and deed of covenant between Global Ship Lease 12 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “CMA CGM Chateau D’If”;
- (xxiii) a Cypriot law governed ship mortgage and deed of covenant between Global Ship Lease 13 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “CMA CGM Thalassa”;
- (xxiv) a Cypriot law governed ship mortgage and deed of covenant between Global Ship Lease 14 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “CMA CGM Jamaica”;
- (xxv) a Cypriot law governed ship mortgage and deed of covenant between Global Ship Lease 15 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “CMA CGM Sambhar”;
- (xxvi) a Cypriot law governed ship mortgage and deed of covenant between Global Ship Lease 16 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “CMA CGM America”;
- (xxvii) a Cypriot law governed ship mortgage and deed of covenant between Global Ship Lease 17 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “CMA CGM Berlioz”;
- (xxviii) a Bahamian law governed ship mortgage and deed of covenant between Global Ship Lease 5 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “Delmas Keta”;
- (xxix) a Bahamian law governed ship mortgage and deed of covenant between Global Ship Lease 6 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “Julie Delmas”;

- (xxx) a Bahamian law governed ship mortgage and deed of covenant between Global Ship Lease 7 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “Kumasi”;
- (xxxi) a Bahamian law governed ship mortgage and deed of covenant between Global Ship Lease 8 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “Marie Delmas”;
- (xxxii) a Bahamian law governed ship mortgage and deed of covenant between Global Ship Lease 9 Limited as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “CMA CGM La Tour”;
- (xxxiii) a Panamanian law governed ship mortgage between GSL Alcazar Inc. as mortgagor and Deutsche Bank Trust Company Americas as mortgagee in respect of vessel “CMA CGM Alcazar”;
- (xxxiv) an English law governed deed of assignment between Global Ship Lease 1 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “Ville D’Orion”;
- (xxxv) an English law governed deed of assignment between Global Ship Lease 2 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “Ville D’Aquarius”;
- (xxxvi) an English law governed deed of assignment between Global Ship Lease 3 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “CMA CGM Matisse”;
- (xxxvii) an English law governed deed of assignment between Global Ship Lease 4 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “CMA CGM Utrillo”;
- (xxxviii) an English law governed deed of assignment between Global Ship Lease 5 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “Delmas Keta”;
- (xxxix) an English law governed deed of assignment between Global Ship Lease 6 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “Julie Delmas”;
- (xl) an English law governed deed of assignment between Global Ship Lease 7 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “Kumasi”;
- (xli) an English law governed deed of assignment between Global Ship Lease 8 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “Marie Delmas”;
- (xlii) an English law governed deed of assignment between Global Ship Lease 9 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “CMA CGM La Tour”;
- (xliii) an English law governed deed of assignment between Global Ship Lease 10 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “CMA CGM Manet”;
- (xliv) an English law governed deed of assignment between Global Ship Lease 12 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “CMA CGM Chateau D’IF”;
- (xlv) an English law governed deed of assignment between Global Ship Lease 13 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “CMA CGM Thalassa”;

- (xlvi) an English law governed deed of assignment between Global Ship Lease 14 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “CMA CGM Jamaica”;
- (xlvii) an English law governed deed of assignment between Global Ship Lease 15 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “CMA CGM Sambhar”;
- (xlviii) an English law governed deed of assignment between Global Ship Lease 16 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “CMA CGM America”;
- (xlix) an English law governed deed of assignment between Global Ship Lease 17 Limited as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “CMA CGM Berlioz”;
- (l) an English law governed deed of assignment between GSL Alcazar Inc. as assignor and Deutsche Bank Trust Company Americas as security agent in respect of insurance, charters, freights and hires relating to vessel “CMA CGM Alcazar”; and
- (li) an English law governed charge over shares between Global Ship Lease, Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee in respect of shares in GSL Alcazar Inc.
- (lii) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between GSL Alcazar Inc. as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (liii) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 1 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (liv) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 2 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (lv) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 3 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (lvi) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 4 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (lvii) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 5 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (lviii) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 6 Limited as pledgor and DVB Bank S.E. as pledgee;
- (lix) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 7 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (lx) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 8 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (lxi) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 9 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;

- (lxii) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 10 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (lxiii) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 12 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (lxiv) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 13 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (lxv) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 14 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (lxvi) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 15 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee;
- (lxvii) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 16 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee; and
- (lxviii) a Dutch law governed deed of disclosed pledge of receivables (bank accounts) dated 19 March 2014, between Global Ship Lease 17 Limited as pledgor and Deutsche Bank Trust Company Americas as pledgee.



**SCHEDULE 9**

**ACCEPTABLE CHARTERERS**

APM-Maersk (including MCC transport)

Mediterranean Shg Co

CMA CGM Group

CSAV

Evergreen Group

Hapag-Lloyd

CSCCL

COSCO Container L.

APL

NYK

Hanjin / Senator

OOCL

K Line

Yang Ming Line

Wan Hai

PIL

Hamburg Sud

Hyundai

CCNI

UASC

MOL

Hub Lines

Regional Container Lines (RCL)

Simatech

KMTC

TS Lines

Emirates Lines

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SITC

X-Press Feeders (formerly Sea Consortium)

Nile Dutch

Samudera

Sinotrans

Eimskip

Samskip

Unifeeder

**SCHEDULE 10**

**APPROVED FLAG STATES**

United Kingdom

France

Germany

Italy

Netherlands

Denmark

Norway

Sweden

Greece

Republic of Cyprus (excluding the Turkish Republic of Northern Cyprus)

Ireland

Belgium

Channel Islands

Malta

Gibraltar

Hong Kong

Panama

Bahamas

Liberia

Singapore

Isle of Man

Bermuda

Marshall Islands

British Virgin Islands

Cayman Islands

SCHEDULE 11

FORM OF ACCESSION DEED

To: [ ] as Facility Agent and [ ] as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below

From: [Restricted Subsidiary] and [Parent]

Dated:

Dear Sirs

**[Parent] – [ ] Revolving Facility Agreement  
dated [ ] (the “Facility Agreement”)**

1. We refer to the Facility Agreement and to the Intercreditor Agreement. This deed (the “**Accession Deed**”) shall take effect as an Accession Deed for the purposes of the Facility Agreement and as a Debtor Accession Deed for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in paragraphs 1-3 of this Accession Deed unless given a different meaning in this Accession Deed.
2. [Restricted Subsidiary] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facility Agreement and the other Finance Documents (other than the Intercreditor Agreement) as an Additional [Borrower]/[Guarantor] pursuant to Clause [26.2 (*Additional Borrowers*)]/[Clause 26.4 (*Additional Guarantors*)] of the Facility Agreement. [*Restricted Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*] and is a limited liability company and registered number [ ].
3. [The Parent confirms that no Default is continuing or would occur as a result of [*Subsidiary*] becoming an Additional Borrower. <sup>6</sup>
4. [*Restricted Subsidiary*’s] administrative details for the purposes of the Facility Agreement and the Intercreditor Agreement are as follows:  
Address:  
Fax No.:  
Attention:
5. [*Restricted Subsidiary*] (for the purposes of this paragraph [4]/[5], the “**Acceding Debtor**”) intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:  
[*Insert details (date, parties and description) of relevant documents*]  
the “**Relevant Documents**”.

<sup>6</sup> Include in the case of an Additional Borrower.

IT IS AGREED as follows:

- (a) Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Deed, bear the same meaning when used in this paragraph [4]/[5].
- (b) The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
  - (i) any Security Interest in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
  - (ii) all proceeds of that Security Interest ; and
  - (iii) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,

on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

- (c) The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
- (d) *[In consideration of the Acceding Debtor being accepted as an Intra Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].<sup>7</sup>*

6. This Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

**THIS ACCESSION DEED** has been signed on behalf of the Security Agent (for the purposes of paragraph [4]/[5] above only), signed on behalf of the Parent and executed as a deed by *[Restricted Subsidiary]* and is delivered on the date stated above.

***[Restricted Subsidiary]***

[EXECUTED AS A DEED )  
By: *[Restricted Subsidiary]* )

\_\_\_\_\_ Director

\_\_\_\_\_ Director/Secretary

<sup>7</sup> Include this paragraph in this Accession Deed if the Subsidiary is also to accede as an Intra Group Lender to the Intercreditor Agreement.

**OR**

[EXECUTED AS A DEED )  
By: [*Restricted Subsidiary*] )

\_\_\_\_\_  
Signature of Director  
\_\_\_\_\_  
Name of Director

in the presence of

\_\_\_\_\_  
Signature of witness  
\_\_\_\_\_  
Name of witness  
\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Occupation of witness]

**The Parent**

\_\_\_\_\_  
By: [Parent]

**The Security Agent**

[Full name of current Security Agent]

By:

Date:

## LMA FORM OF CONFIDENTIALITY UNDERTAKING

[Letterhead of Seller]

Date: [            ]

To: [insert name of Potential Purchaser]

Re: US\$[40,000,000] Super Senior Facility Agreement dated [—] 2014 (the “Agreement”)

Company: Global Ship Lease, Inc. (the “Company”)

Date:

Amount:

Agent:

Dear Sirs

We understand that you are considering acquiring an interest in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation or any other transaction under which payments are to be made or may be made by reference to one or more Finance Documents and/or one or more Obligors or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (the “Acquisition”). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

## 1. CONFIDENTIALITY UNDERTAKING

You undertake (a) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information, and (b) until the Acquisition is completed to use the Confidential Information only for the Permitted Purpose.

## 2. PERMITTED DISCLOSURE

We agree that you may disclose:

- 2.1 to any of your Affiliates and any of your or their officers, directors, employees, professional advisers and auditors such Confidential Information as you shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph 2.1 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;
- 2.2 subject to the requirements of the Agreement, to any person:
- (a) to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of your rights and/or obligations which you may acquire under the Agreement such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (a) of paragraph 2.2 has delivered a letter to you in equivalent form to this letter;



- (b) with (or through) whom you enter 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 the Agreement or any Obligor such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (b) of paragraph 2.2 has delivered a letter to you in equivalent form to this letter;
  - (c) to whom information is required or requested to be disclosed by 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 such Confidential Information as you shall consider appropriate; and
- 2.3 notwithstanding paragraphs 2.1 and 2.2 above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose Confidential Information under the Agreement, as if such permissions were set out in full in this letter and as if references in those permissions to Finance Party were references to you.

### 3. NOTIFICATION OF DISCLOSURE

You agree (to the extent permitted by law and regulation) to inform us:

- 3.1 of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (c) of paragraph 2.2 above 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
- 3.2 upon becoming aware that Confidential Information has been disclosed in breach of this letter.

### 4. RETURN OF COPIES

If you do not enter into the Acquisition and we so request in writing, you shall return or destroy all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use your reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under sub-paragraph (c) of paragraph 2.2 above.

### 5. CONTINUING OBLIGATIONS

The obligations in this letter are continuing and, in particular, shall survive and remain binding on you until (a) if you become a party to the Agreement as a lender of record, the date on which you become such a party to the Agreement; (b) if you enter into the Acquisition but it does not result in you becoming a party to the Agreement as a lender of record, the date falling [twelve] months after the date on which all of your rights and obligations contained in the documentation entered into to implement that Acquisition have terminated; or (c) in any other case the date falling [twelve] months after the date of your final receipt (in whatever manner) of any Confidential Information.

6. NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC

You acknowledge and agree that:

- 6.1 neither we, nor any member of the Group nor any of our or their respective officers, employees or advisers (each a “**Relevant Person**”) (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and
- 6.2 we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

7. ENTIRE AGREEMENT: NO WAIVER; AMENDMENTS, ETC

- 7.1 This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- 7.2 No failure to exercise, nor any delay in exercising, any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.
- 7.3 The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

8. INSIDE INFORMATION

You 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 you undertake not to use any Confidential Information for any unlawful purpose.

9. NATURE OF UNDERTAKINGS

The undertakings given by you under this letter are given to us and are also given for the benefit of the Company and each other member of the Group.

## 10. THIRD PARTY RIGHTS

- 10.1 Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter 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 letter.
- 10.2 The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
- 10.3 Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.

## 11. GOVERNING LAW AND JURISDICTION

- 11.1 This letter (including the agreement constituted by your acknowledgement of its terms) (the “**Letter**”) and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.
- 11.2 The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

## 12. DEFINITIONS

In this letter (including the acknowledgement set out below) terms defined in the Agreement shall, unless the context otherwise requires, have the same meaning and:

“**Confidential Information**” means all information relating to the Company, any Obligor, the Group, the Finance Documents, the Facility and/or the Acquisition which is provided to you in relation to the Finance Documents or the Facility by us or any of our affiliates or 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 you of this letter; or
- (b) is identified in writing at the time of delivery as non-confidential by us or our advisers; or
- (c) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, from a source which is, as far as you are aware, unconnected with the Group and which, in either case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

“**Group**” means the Company and its subsidiaries for the time being (as such term is defined in the Companies Act 2006).

“**Permitted Purpose**” means considering and evaluating whether to enter into the Acquisition.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

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For and on behalf of

[Seller]

To: [Seller]

The Company and each other member of the Group

We acknowledge and agree to the above:

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For and on behalf of

**[Potential Purchaser]**

## FORM OF INCREASE CONFIRMATION

To: Citibank International PLC as Facility Agent, [Deutsche Bank Trust Company Americas] as Security Agent, Citibank N.A., London Branch as Bookrunner and Global Ship Lease, Inc. as Parent, for and on behalf of each Obligor

From: [the Increase Lender] (the “**Increase Lender**”)

Dated:

**Global Ship Lease, Inc. – US\$[40,000,000] Super Senior Revolving Facility Agreement  
dated [—] 2014 (the “Facility Agreement”)**

1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This agreement (the “**Agreement**”) shall take effect as an Increase Confirmation for the purpose of the Facility Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 2.2 (*Increase*) of the Facility Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the “**Relevant Commitment**”) as if it was an Original Lender under the Facility Agreement.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the “**Increase Date**”) is [            ].
5. On the Increase Date, the Increase Lender becomes:
  - (a) party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
  - (b) party to the Intercreditor Agreement as a Credit Facility Lender (as defined in the Intercreditor Agreement).
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 34.2 (*Contact details*) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders’ obligations referred to in paragraph (f) of Clause 2.2 (*Increase*).
8. The Increase Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender].<sup>8</sup>

<sup>8</sup> Delete as applicable - each Increase Lender is required to confirm which of these three categories it falls within.

9. [The Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
  - (b) a partnership each member of which is:
    - (i) a company so resident in the United Kingdom; or
    - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
  - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]<sup>9</sup>
10. [The Increase Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ]\*, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Parent notify:
- (a) each Borrower which is a Party as a Borrower as at the Increase Date; and
  - (b) each Additional Borrower which becomes an Additional Borrower after the Increase Date, that it wishes the scheme to apply to the Facility Agreement.]\*\*

[9/10] The Increase Lender confirms that it is not a Sponsor Affiliate.

[10/11] We refer to clause [21.10] (*Creditor/Creditor Representative Accession Undertaking*) of the Intercreditor Agreement:

- \* Insert jurisdiction of tax residence.
- \*\* This confirmation must be included if the Increase Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Facility Agreement.
- \*\*\* Delete as applicable.
- \*\*\*\* Include only if the increase involves the assumption of a Commitment.

In consideration of the Increase Lender being accepted as a Credit Facility Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the Increase Lender confirms that, as from the Increase Date, it intends to be party to the Intercreditor Agreement as a Credit Facility Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Credit Facility Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

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<sup>9</sup> Include only if New Lender is a UK Non-Bank Lender i.e. falls within paragraph (i)(B) of the definition of Qualifying Lender in Clause 1.1 (*Definitions*).

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[12/13] This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[13/14] This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

[14/15] This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Note:** The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

## SCHEDULE 14

### NOTES RESTRICTIVE COVENANTS

Terms used in this Schedule 14 shall, if not otherwise defined in this Schedule 14, have the meaning given to them elsewhere in this Agreement. A reference in this Schedule 14 to a "paragraph" is to a paragraph contained in this Schedule 14.

#### 1. **Possession, Use and Release of Collateral**

1.1 Unless an Event of Default shall have occurred and be continuing, the Parent or the applicable Mortgaged Guarantor will have the right to remain in possession and retain exclusive control of the Collateral securing the Indebtedness under the Finance Documents (other than the Equity Interests of the Mortgaged Vessel Guarantors and any Trust Monies and other than as set forth in the Security Documents), to freely operate or use the Collateral, to alter, maintain or repair the Collateral in the ordinary course, and to collect, invest and dispose of any income thereon. In addition, unless an Event of Default shall have occurred and be continuing, the Parent may amend, modify, supplement, replace, extend, renew or waive any term of, or terminate, or take any other action with respect to any Assigned Right, Assigned Property and Assigned Contract comprising the Collateral to the extent not otherwise prohibited by the terms of this Agreement, including the provisions described under paragraph 12.

1.2 *Release of Collateral.* Subject to Clause 6.3 (*Disposal proceeds*), the Parent and each Mortgaged Guarantor will have the right to sell, exchange or otherwise dispose of any of the Collateral owned by it (other than Trust Monies, which are subject to release from the Lien of the Security Documents as provided under paragraph 2 below, upon compliance with the requirements and conditions of the provisions described below, and the Security Agent shall release the same from the Lien of the Security Documents, upon direction by the Facility Agent following receipt by the Facility Agent and the Security Agent of a direction from the Parent and each applicable Mortgaged Guarantor directing such release and describing the property to be so released, together with delivery of the following, among other matters:

- (a) If the property to be released has a Fair Market Value equal to or greater than \$10,000,000, a resolution of the Board of Directors of the Parent or the relevant Mortgaged Guarantor, as the case may be, approving such release;
- (b) An Officer's Certificate of the Parent or the relevant Mortgaged Guarantor, as the case may be, dated the date of the application for such release, in each case stating in substance as to certain matters, including the following:
  - (i) the release complies with the provisions of paragraphs 3, 6, 7 and 10;
  - (ii) that no Default or Event of Default has occurred and is continuing;
  - (iii) the Fair Market Value of the property (other than Trust Monies) to be released at a date not more than 30 days prior to the date of such application for release;
  - (iv) that all conditions precedent in the Finance Documents relating to the release of the Collateral in question have been complied with; and
- (c) One or more opinions of counsel which, when considered collectively, shall be substantially to the effect that all conditions precedent provided in the Finance Documents relating to the release of the Collateral have been complied with.

1.3 In connection with any release, the Parent and the Mortgaged Guarantors shall (i) execute, deliver and record or file and obtain such instruments as may be required, including, without limitation, amendments to the Security Documents and (ii) deliver to the Facility Agent and the Security Agent evidence of the satisfaction of the applicable provisions of the Finance Documents.

1.4 Notwithstanding the foregoing, any Collateral may be released in accordance with an enforcement action pursuant to the provisions of the Intercreditor Agreement or any Additional Intercreditor Agreement.



1.5 In case a Default or an Event of Default shall have occurred and be continuing, the Parent and the Restricted Subsidiaries, while in possession of the Collateral (other than the Equity Interests of the Mortgaged Vessel Guarantors and any Trust Monies and other than as set forth in the Security Documents) may do any of the things enumerated in this paragraph 1 only if the Facility Agent, in its discretion, or the Majority Lenders shall consent to such action, in which event any certificate filed under this paragraph 1, shall omit the statement to the effect that no Default or Event of Default has occurred and is continuing.

1.6 The Security Agent and the Facility Agent (but only if required) will take all reasonable actions requested by the Parent that are necessary to effectuate any release of Collateral securing the Indebtedness under the Finance Documents, in accordance with the provisions of the Finance Documents. Each of the releases set forth above shall be effected by the Security Agent without the consent of the Lenders or any action on the part of the Facility Agent (unless action is required by it to effect such release). Any releases of Collateral made in compliance with this paragraph 1 shall be deemed not to impair the Security Interests created by the Security Documents. For the avoidance of doubt, the foregoing provisions shall not permit the Security Agent to release or grant any waivers or otherwise take any action with respect to releasing the Transaction Security to the extent in favour of any Secured Party other than the Finance Parties (and any such release, waiver or action with respect to any such other Secured Party shall be governed by the Debt Documents applicable to such secured parties, the Intercreditor Agreement and any Additional Intercreditor Agreement).

*1.7 Disposition of Collateral Without Release.*

- (a) Notwithstanding the provisions of paragraphs 1.1 to 1.6 above, so long as no Event of Default shall have occurred and be continuing, the Parent or any Mortgaged Guarantor may, in accordance with the provisions of this Agreement, without any release or consent by the Facility Agent or the Security Agent:
- (i) sell or otherwise dispose of any machinery, equipment, furniture, tools, materials or supplies or other similar property subject to the Lien of the Security Documents, which may have become worn out or obsolete;
  - (ii) grant rights-of-way and easements over or in respect of any real property; provided, however, that such grant will not, in the reasonable opinion of the Board of Directors of the Parent or the relevant Mortgaged Guarantor, as the case may be, materially impair the usefulness of such property in the conduct of the Parent's business and will not be materially prejudicial to the interests of the Finance Parties;
  - (iii) abandon, terminate, cancel, release, extend, renew, replace, amend or modify any leases, contracts or rights-of-way subject to the Lien of any of the Security Documents or surrender or modify any franchise, license or permit subject to the Lien of any of the Security Documents which it may own or under which it may be operating;
  - (iv) alter, repair, replace, change the location or position of and add to its plants, structures, machinery, systems, equipment, fixtures and appurtenances;
  - (v) demolish, dismantle, tear down or scrap any Collateral (other than the Mortgaged Vessels or Mortgaged Container Assets), or abandon any thereof (other than the Mortgaged Vessels or Mortgaged Container Assets), if in the good faith opinion of the Parent or the relevant Mortgaged Guarantor, as the case may be, such demolition, dismantling, tearing down, scrapping or abandonment is in the interests of the Parent or the relevant Mortgaged Guarantor, as the case may be, and the Fair Market Value and utility of the Collateral as an entirety will not thereby be impaired in any material respect; or
  - (vi) apply insurance proceeds received under such circumstances other than an Event of Loss to the repair of the Mortgaged Vessel or Mortgaged Container Asset to which such insurance proceeds related in accordance with the Security Documents.
- (b) In the event that the Parent or any Mortgaged Guarantor has sold, exchanged or otherwise disposed of or proposes to sell, exchange or otherwise dispose of any portion of the Collateral which under the provisions of this paragraph 1.7 may be sold, exchanged or otherwise

disposed of by the Parent or such Mortgaged Guarantor without any release or consent of the Facility Agent or the Security Agent, and the Parent or such Mortgaged Guarantor, as the case may be, requests the Security Agent to furnish a written disclaimer, release or quitclaim of any interest in such property under any of the Security Documents, the Security Agent shall, at the cost and expense of the Parent and the Mortgaged Guarantors, promptly execute such an instrument upon delivery to the Facility Agent and the Security Agent of (i) an Officer's Certificate by the Parent or such Mortgaged Guarantor, as the case may be, (A) reciting the sale, exchange or other disposition made or proposed to be made and describing in reasonable detail the property affected thereby, and stating that such property is property which by the provisions of this paragraph 1.7 may be sold, exchanged or otherwise disposed of or dealt with by the Parent or such Mortgaged Guarantor, as the case may be, without any release or consent of the Facility Agent or the Security Agent, and (B) that all conditions precedent provided in the Finance Documents and the Senior Secured Note Documents relating to the written disclaimer, release or quitclaim or any interest in such property have been complied with, and (ii) an Opinion of Counsel stating that (A) the sale, exchange or other disposition made or proposed to be made was duly taken by the Parent or such Mortgaged Guarantor, as the case may be, in conformity with a designated subsection of paragraph 1.7(a) and that the execution of such written disclaimer, release or quitclaim is appropriate under this paragraph 1.7, and (B) that, for the avoidance of doubt, all conditions precedent provided in the Finance Documents and the Senior Secured Note Documents relating to the written disclaimer, release or quitclaim of any interest in any such property have been complied with.

Any disposition of Collateral made in compliance with the provisions of this paragraph 1.7 shall be deemed not to impair the Security Interests in contravention of the provisions of this Agreement.

Any such disclaimer, release or quitclaim shall be without recourse to, or any representation or warranty by, the Facility Agent or the Security Agent.

## **2. Use and Investment of Trust Monies**

Subject to Clause 6.3 (*Disposal proceeds*) and Clause 16.17 (*Note Purchase Condition*), the Security Agent shall direct that Trust Monies be released (A) as permitted under paragraph 3 and this paragraph 2 in connection with the addition or substitution of Collateral, (B) to the trustee of the Senior Secured Notes for application from time to time to the payment of the principal of (at a purchase price of not less than 100% of the principal amount of the relevant Senior Secured Notes), any Senior Secured Notes, on any maturity date or to the redemption thereof or the purchase thereof upon the terms and in any manner not prohibited by the Senior Secured Note Indenture (including, in each case, each related required interest payment), or (C) to the Facility Agent, to repay or prepay obligations under this Agreement in an amount not to exceed the amount outstanding at the time of repayment or prepayment of Loans under this Agreement that have been used to acquire Mortgaged Vessels or Mortgaged Container Assets (to the extent such outstanding amount ranks super-senior to the Senior Secured Notes and any additional Senior Secured Notes under the Intercreditor Agreement), as the Parent shall direct in writing, upon receipt by the Security Agent and the Facility Agent of the following:

- (a) an Officer's Certificate of the Parent directing the application pursuant to this paragraph 2 of a specified amount of Trust Monies and, in case any such moneys are to be applied to payment of the Senior Secured Notes, designating the Senior Secured Notes so to be paid and, in case any such moneys are to be applied to the purchase of Senior Secured Notes, prescribing the method of purchase, the price or prices to be paid and the maximum aggregate principal amount of Senior Secured Notes to be purchased and any other provisions of the Senior Secured Note Indenture governing such purchase;
- (b) cash in the maximum amount of the accrued interest, if any, required to be paid in connection with any such purchase, repayment or prepayment, which cash shall be deposited with the trustee in respect of the Senior Secured Notes or the Facility Agent (as applicable) for such purpose; and

- (c) an Officer's Certificate stating:
  - (i) that no Default exists unless such Default would be cured thereby; and
  - (ii) that all conditions precedent and covenants therein provided for in the Finance Documents and the Senior Secured Note Documents relating to such application of Trust Monies have been complied with; and
- (d) an Opinion of Counsel stating that all conditions precedent provided for in the Finance Documents and the Senior Secured Note Documents relating to such application of Trust Monies have been complied with.

Upon compliance with the foregoing provisions of this paragraph 2 the Security Agent shall apply Trust Monies as directed and specified by the Officer's Certificate specified in clause (a) above.

An Officer's Certificate expressed to be irrevocably directing the application of Trust Monies under this paragraph 2 to the payment of the principal of the Senior Secured Notes or repayment or prepayment of obligations under this Agreement shall for all purposes of this Agreement be deemed the equivalent of the deposit of money with the Facility Agent for such purpose. Such Trust Monies and any cash deposited with the trustee of the Senior Secured Notes or the Facility Agent, as applicable, pursuant to clause (b) above for the payment of accrued interest shall not, after compliance with the foregoing provisions of this section, be deemed to be part of the Collateral or Trust Monies.

In connection with any release of Trust Monies by the Security Agent at the written direction of the Parent to the Parent in connection with any addition or substitution of Collateral, such Trust Monies may be released to the Parent not more than 10 days before the expected delivery date of the applicable additional or substitute Qualified Vessel or Qualified Container Assets (whether such Qualified Vessel or Qualified Container Assets have been or will be acquired through the direct purchase of such Qualified Vessel or Qualified Container Assets or the equity interests of any person owning such Qualified Vessel or Qualified Container Assets and which may include a Qualified Vessel or Qualified Container Assets owned by a Subsidiary (including a Subsidiary Guarantor) that is not a Mortgaged Guarantor) and will be deposited in a Parent bank account and will then be remitted by the Parent to the seller (or as the seller may direct) in the form of a conditional payment to the seller's bank (or as the seller may direct) in accordance with the terms of the acquisition contract and in a manner consistent with customary market practice. During such 10 day period before the expected delivery date, the funds will be held until remitted to the applicable seller in a bank account in the name of the Parent or a Mortgaged Guarantor on an unsecured basis and the Finance Parties will have no Security Interest or lien on such funds. In the event that the Parent or the applicable Mortgaged Guarantor shall not have delivered and/or filed the Security Documents required by this Agreement and the Security Documents to perfect the Security Interest of the Secured Parties in such Qualified Container Asset or Qualified Vessel and Related Assets or as required by this Agreement on or prior to the 30th calendar day following the day on which the relevant Trust Monies were released to the Parent as described above, then, on or before such 30th calendar day, the Parent shall return to the Security Agent an amount equal to the full amount of such Trust Monies that were released in connection with such proposed delivery of the applicable Qualified Vessel or such Qualified Container Assets and if the Parent shall fail to deliver either such Security Documents and perfect such Security Interests or fail to deliver such funds then a Default shall have occurred for all purposes under this Agreement.

### 3. **Addition and Substitution of Qualified Collateral**

3.1 If the Parent or any Restricted Subsidiary (in each case subject to the provisions of Clause 6.3 (*Disposal proceeds*) and Clause 16.17 (*Note purchase condition*):

- (a) adds any Qualified Collateral in accordance with the provisions of paragraph 10 or pursuant to part (11) of the definition of "Permitted Liens";
- (b) (i) receives Qualified Collateral as consideration under paragraph 6.1(3) or (ii) elects to apply any Trust Monies comprising Net Proceeds from Asset Sales involving Collateral to acquire Qualified Collateral in accordance with the provisions of paragraph 6.3(2) or (iii) elects to apply any Trust Monies comprising Excess Collateral Proceeds remaining after a Collateral Sale Offer to acquire Qualified Collateral; or
- (c) (i) elects to apply any Trust Monies comprising Event of Loss Proceeds to acquire Qualified Collateral in accordance with the provisions of paragraph 7.3(2) or (ii) elects to apply any Trust Monies comprising Excess Loss Proceeds remaining after an Event of Loss Offer to acquire Qualified Collateral in accordance with paragraph 7,

then within 30 calendar days of the date on which Qualified Collateral is received, acquired, added or substituted, the Parent or the Restricted Subsidiary that is the owner of such Qualified Collateral (the "Tendered Asset Owner"), shall, if it is not already a Guarantor, become a Guarantor in accordance with Clause 27.4 (*Additional Guarantors*) (and must be or become a Wholly Owned Restricted Subsidiary of the Parent at such time) and it shall (A) deliver to the Facility Agent each of the documents and evidence (in form and substance reasonably satisfactory to the Facility Agent) set out in Part 2 of Schedule 2 (*Additional Vessel Conditions Precedent*) or (B) in the case of a Qualified Container Asset, deliver Security Documents securing such asset and comparable insurance policies, leases, hires and earnings securing the Equity Interests of such Mortgaged Guarantor, and in either case, deliver (x) evidence to the effect that all Indebtedness outstanding with respect to such Asset has been repaid and that all security granted by, or covering assets or property of, the Parent or any of the Restricted Subsidiaries with respect to such Indebtedness shall have been released; (y) a certificate of an officer of the Parent certifying as to the ownership of such Qualified Vessel or such Qualified Collateral and as to compliance with the terms of the Finance Documents; and (z) an opinion of counsel with respect to perfection of security interest in such Qualified Collateral and compliance with the terms of the Finance Documents and the Senior Secured Note Documents.

3.2 The Parent or any Mortgaged Guarantor may at its option, at any time and from time to time, substitute Qualified Collateral for Mortgaged Vessels (other than Existing Mortgaged Vessels), Mortgaged Container Assets and/or Trust Monies of an equivalent or greater Appraised Value or Fair Market Value (including without limitation in connection with any refinancing transaction) or add further Mortgaged Vessels or Mortgaged Container Assets to the Collateral; *provided* that (i) in the case of a substitution only, at the time of such substitution no Default shall have occurred and be continuing and (ii) such substitution or addition shall comply with the provisions described under paragraph 3.1.

3.3 Notwithstanding the foregoing, unless an Event of Default shall have occurred and be continuing, the Parent may amend, modify, supplement, replace, extend, renew or waive any term of, or terminate, or take any other action with respect to any Assigned Right, Assigned Property and Assigned Contract comprising the Collateral to the extent not otherwise prohibited by the terms of this Agreement, including the provisions described under paragraph 12.

#### 4. ***Change of Flag***

The Parent or a Mortgaged Guarantor may transfer or change the flag of any of its Mortgaged Vessels to the flag of a Permitted Flag Jurisdiction and in connection therewith the Facility Agent shall instruct the Security Agent to release the existing Mortgage and related Security Documents (insofar as they secure any obligations under the Finance Documents) to which any Mortgaged Vessel is subject in connection with the transfer or change of the flag of such Mortgaged Vessel to another Permitted Flag Jurisdiction if (i) the owner of the Mortgaged Vessel has executed (A) a new Mortgage (granting the Security Agent a security interest in such Mortgaged Vessel subject only to Permitted Liens) and (B) the related Security Documents with respect to such Mortgaged Vessel, dated the date such Mortgaged Vessel shall be released from the existing Mortgage and related Security Documents to which it is subject, which Mortgage and related Security Documents shall be in appropriate form for recording or registration in the appropriate governmental offices of the Permitted Flag Jurisdiction under which it is being reflagged and the appropriate governmental offices in the jurisdiction of incorporation and/or domicile of the Parent or the applicable Mortgaged Guarantor if required by applicable law in order to perfect the security interests therein created, as to which the Facility Agent and the Security Agent will be entitled to rely on an Opinion of Counsel to the Parent with respect thereto; and (ii) the Mortgaged Guarantor has made all necessary arrangements for recording the Mortgage referred to in clause (i) above in the appropriate registry office of the Permitted Flag Jurisdiction under which the Mortgaged Vessel is being reflagged as soon as reasonably practicable and to make any other filing necessary to perfect the security therein. In addition to the Opinion of Counsel referenced in (i)(B) above, prior to the Security Agent providing any such release, it shall be entitled to receive an Officer's Certificate and an Opinion of Counsel each stating that such release is authorized or permitted by the terms of the Finance Documents and that all conditions precedent provided in the Finance Documents relating to the execution and delivery of such release have been complied with. For the avoidance of doubt, the foregoing provisions shall not permit the Security Agent to release or grant any waivers or otherwise take any action with respect to releasing the Transaction Security to

the extent in favour of any Secured Party other than the Finance Parties (and any such release, waiver or action with respect to any such other Secured Party shall be governed by the Debt Documents applicable to such secured parties, the Intercreditor Agreement and any Additional Intercreditor Agreement).

### ***Asset Sales and Events of Loss***

#### **5. *Asset Sales Not Involving Collateral***

5.1 The Parent will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale involving assets or Equity Interests other than Collateral unless:

- (1) the Parent or any of its Restricted Subsidiaries receives consideration at the time of the Asset Sale at least equal to the Fair Market Value (for the avoidance of doubt, the Fair Market Value may be determined at the time a contract is entered into for an Asset Sale) of the assets or Equity Interests issued or sold or otherwise disposed of; and
- (2) at least 75% of the consideration received in the Asset Sale by the Parent or such Restricted Subsidiary is in the form of cash or Cash Equivalents. For purposes of this provision, each of the following will be deemed to be cash:
  - (a) any Indebtedness or other liabilities, as shown on the Parent's most recent consolidated balance sheet or the notes thereto, of the Parent or any of its Restricted Subsidiaries (other than liabilities that are expressly subordinated to the Indebtedness under the Finance Documents) that are assumed, repaid or retired by the transferee (or a third party on behalf of the transferee) of any such assets;
  - (b) any securities, notes or other obligations received by the Parent or any such Restricted Subsidiary from such transferee or any other Person on account of such Asset Sale that are, within 180 days of the Asset Sale, converted, sold or exchanged by the Parent or such Restricted Subsidiary into cash or Cash Equivalents, to the extent of the cash or Cash Equivalents received in that conversion, sale or exchange;
  - (c) the Fair Market Value of (i) any assets (other than securities and other than assets that are classified as current assets under GAAP) received by the Parent or any Restricted Subsidiary to be used by it in a Permitted Business (including, without limitation, Vessels, Related Assets, and Container Assets), (ii) Capital Stock in a Person that is a Restricted Subsidiary or in a Person engaged in a Permitted Business that shall become a Restricted Subsidiary immediately upon the acquisition of such Person by the Parent or (iii) a combination of (i) and (ii); and
  - (d) any Designated Non-cash Consideration received by the Parent or any Restricted Subsidiary in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this paragraph (2) that is at that time outstanding, not to exceed the greater of (x) \$25,000,000 and (y) 3.0% of Total Assets of the Parent at the time of the receipt of such Designated Non-cash Consideration, with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value.

5.2 Subject to Clause 6.3 (*Disposal proceeds*) and Clause 16.17 (*Note Purchase Condition*), within 365 days (subject to extensions as provided in the immediately succeeding paragraph) after the receipt of any Net Proceeds from an Asset Sale involving assets other than Collateral, the Parent or any of its Restricted Subsidiaries shall apply such Net Proceeds to:

- (1) repay or prepay obligations under the Credit Facilities or any other Secured Indebtedness and, if the Indebtedness repaid is Indebtedness under this Agreement, to correspondingly reduce the Total Commitments; *provided*, that the Total Commitments are not required to be reduced under this Agreement if Net Proceeds are applied to repay or prepay obligations under the Finance Documents in an amount not to exceed the amount outstanding at the time of repayment or prepayment under the Facility that has been used to acquire Mortgaged Vessels;

- (2) acquire all or substantially all of the assets of, or any Capital Stock of, a Person engaged in a Permitted Business; *provided* that in the case of acquisition of Capital Stock of any Person, such Person is or becomes a Restricted Subsidiary of the Parent;
- (3) make a capital expenditure;
- (4) acquire other assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business (including, without limitation, Vessels, Related Assets and Container Assets);
- (5) repay unsecured senior Indebtedness of the Parent or any Restricted Subsidiary; *provided* that if the Parent or any Guarantor shall so reduce senior Indebtedness other than Indebtedness under the Senior Secured Notes, the Parent or such Obligor shall equally and ratably reduce obligations under the Senior Secured Notes; and/or
- (6) any combination of the transactions permitted by paragraphs 5.2(1) through (5),

5.3 A (A) binding contract to apply Net Proceeds in accordance with paragraphs 5.2(2) through (4) above will toll the 365-day period in respect of such Net Proceeds or (B) determination by the Parent to potentially apply all or a portion of such Net Proceeds towards the exercise of an outstanding Vessel Purchase Option Contract will toll the 365-day period in respect of such Net Proceeds, in each case, for a period not to exceed 365 days from the expiration of the aforementioned 365-day period; *provided* that such binding contract and such determination, in each case, shall be treated as a permitted application of Net Proceeds from the date of such binding contract until and only until the earlier of (x) the date on which such acquisition or expenditure is consummated and (y) (i) in the case of any Vessel Construction Contract or any Exercised Vessel Purchase Option Contract (including any outstanding Vessel Purchase Option Contract exercised during the 365-day period referenced in paragraph (B) above), the date of expiration or termination of such Vessel Construction Contract or Exercised Vessel Purchase Option Contract and (ii) otherwise, the 365th day following the expiration of the aforementioned 365 day period (paragraph (i) or paragraph (ii) as applicable, the "Reinvestment Termination Date"). If such acquisition or expenditure is not consummated on or before the Reinvestment Termination Date and the Parent (or the applicable Restricted Subsidiary, as the case may be) shall not have applied such Net Proceeds pursuant to paragraphs (1) through (6) above on or before the Reinvestment Termination Date, such Net Proceeds shall constitute Excess Proceeds (as defined below).

5.4 Pending the final application of any Net Proceeds, the Parent or any of its Restricted Subsidiaries may temporarily reduce outstanding Indebtedness or otherwise invest the Net Proceeds in any manner that is not prohibited by this Agreement.

5.5 Any Net Proceeds from Asset Sales involving assets other than Collateral that are not applied or invested as provided in paragraph 5.2 above will constitute "Excess Proceeds" and, subject to Clause 16.17 (*Note Purchase Condition*), when the aggregate amount of Excess Proceeds exceeds \$25,000,000, the amount of such Excess Proceeds shall be applied in accordance with Section 4.13(I)(f) through (i) of the Senior Secured Note Indenture.

## 6. ***Asset Sales Involving Collateral***

6.1 The Parent will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale involving Collateral unless:

- (1) the Parent or any of its Restricted Subsidiaries receives consideration at the time of the Asset Sale at least equal to the Fair Market Value (for the avoidance of doubt, the Fair Market Value may be determined at a time a contract is entered into for an Asset Sale) of the assets or Equity Interests sold or otherwise disposed of; and
- (2) such Asset Sale is either of (i) the Parent's or the relevant Restricted Subsidiary's entire interest in the applicable Mortgaged Vessel or Mortgaged Container Asset (the "Sold Mortgaged Asset") together with the applicable Assigned Contracts, Obligatory Insurances and, in the case of Mortgaged Container Assets, applicable hires, leases, insurance and related agreements (collectively, the "Related Agreements"); *provided* that the Parent may elect to sell only the Mortgaged Vessel or Mortgaged Container Asset and retain all or any portion of the Related Agreements, *provided, further*, that if any such Related Agreements are

transferred to a Subsidiary that is not a Mortgaged Guarantor, then the Parent or such Mortgaged Guarantor shall receive either (x) Qualified Collateral having a Fair Market Value that is not less than the Fair Market Value of such Related Agreements or (y) cash in an amount equal to the Fair Market Value of such Related Agreement which it shall immediately deliver to the Security Agent, for the benefit of the Secured Parties, which amounts shall constitute Trust Monies hereunder or (ii) all the Capital Stock of the Restricted Subsidiary that owns such Mortgaged Vessel or Mortgaged Container Asset and related assets;

- (3) the consideration received in the Asset Sale by the Parent or such Restricted Subsidiary consists entirely (x) in the case of an Asset Sale involving Existing Mortgaged Vessels, of cash or Cash Equivalents and (y) in the case of any other Asset Sale involving Collateral, of cash or Cash Equivalents or Qualified Vessels or Qualified Container Assets. For purposes of this provision, any securities, notes or other obligations received by the Parent or any such Restricted Subsidiary from such transferee or any other Person on account of such Asset Sale that are, within 90 days of the Asset Sale, converted, sold or exchanged by the Parent or such Restricted Subsidiary into cash or Cash Equivalents, will be deemed to be cash to the extent of the cash or Cash Equivalents received in that conversion, sale or exchange; *provided* that the Parent secures such assets as Collateral in favor of the Security Agent on a first priority basis for the benefit of the Secured Parties promptly upon receipt thereof (and any such securities, notes or other obligations shall be deemed to be Trust Monies); and
- (4) no Default or Event of Default shall have occurred and be continuing; and
- (5) such Asset Sale is made in compliance with the provisions described under paragraph 1 above.

6.2 In the event the Parent receives Net Proceeds of at least \$2,000,000 from an Asset Sale involving an Existing Mortgaged Vessel or the Equity Interests of a Mortgaged Guarantor that owns an Existing Mortgaged Vessel, the Parent will be required, within 90 days of the receipt of such Net Proceeds, to apply such Net Proceeds to (A) make a Collateral Sale Offer in accordance with the applicable provisions of the Senior Secured Note Indenture to purchase a principal amount of Senior Secured Notes and (B) to repay or prepay any outstanding obligations under this Agreement, in each case by applying such Net Proceeds to each of the purposes described the preceding clauses (A) and (B) in proportion to the aggregate principal amount of Senior Secured Notes then outstanding and aggregate obligations under this Agreement then outstanding, respectively, as percentages of the total amount of Senior Secured Notes and borrowings under this Agreement then outstanding.

6.3 Subject to Clause 6.3 (*Disposal proceeds*) and Clause 16.17 (*Note Purchase Condition*) in respect of any Asset Sale involving Collateral other than as described in paragraph 6.2 above, within 365 days (subject to extension as provided in paragraph 6.4) after the receipt of any Net Proceeds from such Asset Sale, the Parent or the applicable Restricted Subsidiary shall apply such Net Proceeds to:

- (1) repay or prepay obligations under this Agreement in an amount not to exceed the amount outstanding at the time of repayment or prepayment under this Agreement that has been used to acquire Mortgaged Vessels or Mortgaged Container Assets to the extent such outstanding amount ranks super-senior to the Senior Secured Notes and any additional Senior Secured Notes under the Intercreditor Agreement;
- (2) *provided* that no Default or Event of Default shall have occurred and be continuing, acquire one or more Qualified Container Assets or Qualified Vessels (and to make any Permitted Repairs with respect thereto) and make such Qualified Vessel(s) or Qualified Container Asset(s) subject to the Security Documents in accordance with the provisions thereof described under paragraph 1 and paragraph 3 above;
- (3) make capital expenditures relating to Mortgaged Vessels or Mortgaged Container Assets;
- (4) make a Collateral Sale Offer or repay or prepay any other Indebtedness that ranks *pari passu* with the Senior Secured Notes; and/or
- (5) any combination of the transactions permitted by paragraphs 6.3(1) through (4).

6.4 A (A) binding contract to apply Net Proceeds in accordance with paragraph 6.2(2) above will toll the 365-day period in respect of such Net Proceeds or (B) determination by the Parent to potentially apply

all or a portion of such Net Proceeds towards the exercise of an outstanding Vessel Purchase Option Contract will toll the 365-day period in respect of such Net Proceeds, in each case, for a period not to exceed 365 days from the expiration of the aforementioned 365-day period, *provided* that such binding contract and such determination, in each case, shall be treated as a permitted application of Net Proceeds from the date of such binding contract until and only until the earlier of (x) the date on which such acquisition or expenditure is consummated and (y) (i) in the case of any Vessel Construction Contract or any Exercised Vessel Purchase Option Contract (including any outstanding Vessel Purchase Option Contract exercised during the 365-day period referenced in paragraph (B) above), the date of expiration or termination of such Vessel Construction Contract or Exercised Vessel Purchase Option Contract and (ii) otherwise, the 365th day following the expiration of the aforementioned 365-day period (paragraph (i) or paragraph (ii) as applicable, the “Collateral Proceeds Reinvestment Termination Date”). If such acquisition or expenditure is not consummated on or before the Collateral Proceeds Reinvestment Termination Date and the Parent (or the applicable Mortgaged Guarantor, as the case may be) shall not have otherwise applied such Net Proceeds pursuant to paragraphs (1) through (5) above on or before the Collateral Proceeds Reinvestment Termination Date, such Net Proceeds shall constitute Excess Collateral Proceeds (as defined below).

6.5 Any Net Proceeds from Asset Sales involving Collateral that are not applied or invested as provided in paragraph 6.3 will constitute “Excess Collateral Proceeds,” and, subject to Clause 6.3 (*Disposal Proceeds*) and Clause 16.17 (*Note Purchase Condition*) when the aggregate amount of Excess Collateral Proceeds exceeds \$25,000,000, the amount of such Excess Collateral Proceeds shall be applied to make a Collateral Sale Offer in accordance with section 4.3(II)(g) through (i) of the Senior Secured Note Indenture.

6.6 Whenever Net Proceeds from any Asset Sale involving Collateral are received by the Parent, such Net Proceeds shall be deposited with the trustee in respect of the Senior Secured Notes and secured in favor of the Security Agent as Trust Monies constituting Collateral subject to disposition as provided in this paragraph 6 or as provided under paragraph 1 and paragraph 2.

## 7. **Events of Loss**

7.1 If an Event of Loss occurs at any time with respect to a Mortgaged Vessel or Mortgaged Container Asset (the Mortgaged Vessel or Mortgaged Container Asset suffering such Event of Loss being the “Lost Mortgaged Asset”), the Parent or the relevant Restricted Subsidiary shall, subject to Clause 6.3 (*Disposal Proceeds*), deposit all Event of Loss Proceeds with respect to such Event of Loss with the Security Agent as Trust Monies constituting Collateral subject to disposition as provided in this paragraph 7 or as provided under paragraph 1 and paragraph 2 above. Such amount is hereinafter called the “Loss Redemption Amount.”

7.2 In the event the Parent receives Event of Loss Proceeds of at least \$2,000,000 from an Event of Loss involving an Existing Mortgaged Vessel, the Parent will be required, within 60 days of the receipt of such Event of Loss Proceeds, to apply such Event of Loss Proceeds to (A) make an Event of Loss Offer in accordance with the applicable provisions of the Senior Secured Note Indenture to purchase a principal amount of Senior Secured Notes and (B) to repay or prepay any outstanding obligations under this Agreement, in each case by applying such Event of Loss Proceeds to each of the purposes described the preceding clauses (A) and (B) in proportion to the aggregate principal amount of Senior Secured Notes then outstanding and aggregate obligations under this Agreement then outstanding, respectively, as percentages of the total amount of Senior Secured Notes and borrowings under this Agreement then outstanding.

7.3 Subject to Clause 6.3 (*Disposal proceeds*) and Clause 16.17 (*Note Purchase Condition*) in respect of any Event of Loss other than as described in paragraph 7.2 above, within 365 days (subject to extension as provided in the immediately succeeding paragraph) after the receipt of any Event of Loss Proceeds, the Parent or the applicable Restricted Subsidiary shall apply such Event of Loss Proceeds to:

- (1) repay or prepay obligations under this Agreement in an amount not to exceed the amount outstanding at the time of repayment or prepayment under this Agreement that has been used to acquire Mortgaged Vessels or Mortgaged Container Assets to the extent such outstanding amount ranks super-senior to the Senior Secured Notes and any additional Senior Secured Notes under the Intercreditor Agreement;
- (2) provided that no Default or Event of Default shall have occurred and be continuing, acquire one or more Qualified Container Assets or Qualified Vessels (and to make any Permitted Repairs with respect thereto) and make such Qualified Vessel(s) or Qualified Container Asset(s) subject to the applicable Security Documents in accordance with paragraph 1 and paragraph 3 above;



- (3) make capital expenditures relating to Mortgaged Vessels or Mortgaged Container Assets;
- (4) make an Event of Loss Offer in accordance with the applicable provisions of the Senior Secured Note Indenture or repay or prepay any other Indebtedness that ranks pari passu with the Senior Secured Notes; and/or
- (5) any combination of the transactions permitted by paragraphs 7.3(1) through (4).

7.4 A (A) binding contract to apply Event of Loss Proceeds in accordance with paragraph 7.3(2) above will toll the 365-day period in respect of such Event of Loss Proceeds or (B) determination by the Parent to potentially apply all or a portion of such Event of Loss Proceeds towards the exercise of an outstanding Vessel Purchase Option Contract will toll the 365-day period in respect of such Event of Loss Proceeds, in each case, for a period not to exceed 365 days from the expiration of the aforementioned 365-day period, provided that such binding contract and such determination, in each case, shall be treated as a permitted application of Event of Loss Proceeds from the date of such binding contract until and only until the earlier of (x) the date on which such acquisition or expenditure is consummated and (y) (i) in the case of any Vessel Construction Contract or any Exercised Vessel Purchase Option Contract (including any outstanding Vessel Purchase Option Contract exercised during the 365-day period referenced in paragraph (B) above), the date of expiration or termination of such Vessel Construction Contract or Exercised Vessel Purchase Option Contract and (ii) otherwise, the 365th day following the expiration of the aforementioned 365-day period (paragraph (i) or paragraph (ii) as applicable, the "Loss Proceeds Reinvestment Termination Date"). If such acquisition or expenditure is not consummated on or before the Loss Proceeds Reinvestment Termination Date and the Parent (or the applicable Mortgaged Guarantor, as the case may be) shall not have applied such Event of Loss Proceeds pursuant to paragraph (1) above on or before the Loss Proceeds Reinvestment Termination Date, such Event of Loss Proceeds shall constitute Excess Loss Proceeds.

7.5 Any Event of Loss Proceeds that are not applied or invested as provided in paragraph 7.3 above will constitute "Excess Loss Proceeds" and, subject to Clause 16.17 (*Note Purchase Condition*), the aggregate amount of Excess Loss Proceeds exceeds \$25,000,000, the amount of such Excess Collateral Proceeds shall be applied in accordance with section 4.21(e) through (h) of the Senior Secured Note Indenture.

## 8. ***Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock***

8.1 The Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness (including Acquired Debt), and the Parent will not issue any shares of Disqualified Stock, and the Parent will not permit any of its Restricted Subsidiaries to issue any shares of Disqualified Stock or preferred stock; *provided, however*, that the Parent may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, and any Obligor may incur Indebtedness (including Acquired Debt), issue shares of Disqualified Stock or issue shares of preferred stock, if the Fixed Charge Coverage Ratio for the Parent's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued, as the case may be, would have been at least 2.25 to 1.0, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Stock or the preferred stock had been issued, as the case may be, at the beginning of such four-quarter period:

8.2 Paragraph 8.1 will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "Permitted Debt"):

- (1) the incurrence by the Parent or any other Obligor of Indebtedness and letters of credit under one or more Credit Facilities (including this Agreement) in an aggregate amount at any time outstanding under this paragraph (1) not to exceed \$40,000,000, *provided* however that any amounts outstanding under any Credit Facility that have been used to acquire Mortgaged Vessels or Mortgaged Container Assets can only be repaid or prepaid prior to its stated maturity with (i) the proceeds from Indebtedness that is secured by Permitted Liens incurred pursuant to parts (4) and (11)(b) of the definition of Permitted Liens, (ii) the net cash proceeds received by the Parent after the date of this Agreement as a contribution to its equity capital or

from the issue or sale (other than to a Restricted Subsidiary of the Parent) of Qualified Equity Interests; (iii) the Net Proceeds of an Asset Sale involving Collateral or Event of Loss Proceeds, in each case, in accordance with the provisions described under paragraphs 5, 6 and 7; or (iv) cash or Cash Equivalents, provided that the amounts available under parts (15) and (18) of the definition of "Permitted Investments" shall be reduced by any amount of cash or Cash Equivalents under this clause (iv) so used to repay or prepay any Credit Facility;

- (2) the incurrence by the Parent and its Restricted Subsidiaries of the Existing Indebtedness and the issuance by the Parent of the Existing Mandatorily Redeemable Preference Shares;
- (3) the incurrence of Indebtedness under the Senior Secured Note Documents;
- (4) the incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price, charter expense, lease expense, rental payments or cost of design, construction, installation or improvement of Vessels or Container Assets used in the business of the Parent or any of its Restricted Subsidiaries (including any reasonable related fees or expenses incurred in connection therewith), whether through the charter of, leasing of, or the direct purchase of, or of the Capital Stock of any Person owning, such Vessels or Container Assets (including any Indebtedness deemed to be incurred in connection with such purchase) (it being understood that any such Indebtedness may be incurred after the acquisition, purchase, charter or leasing or the construction, installation or the making of any improvement with respect to any such Vessel or Container Asset); *provided* that (x) the principal amount of Indebtedness incurred pursuant to this paragraph 8.2(4), including all Indebtedness incurred pursuant to this paragraph 8.2(4) to renew, refund, replace, refinance, defease or discharge any Indebtedness incurred pursuant to this paragraph 8.2(4), does not, at the time of incurrence, exceed (i) in the case of a completed Vessel, 65% of its Fair Market Value plus any other Ready for Sea Cost of such Vessel, (ii) in the case of an uncompleted Vessel, 65% of the contract price for the acquisition of such Vessel, as determined on the date on which the agreement for construction of such Vessel was entered into by the Parent or any Restricted Subsidiary, plus any other Ready for Sea Cost of such Vessel, (iii) in the case of a completed Container Asset, 100% of its Fair Market Value and (iv) in the case of an uncompleted Container Asset, 100% of the contract price for the acquisition of such Container Asset, as determined on the date on which the agreement for construction of such Container Asset was entered into by the Parent or any Restricted Subsidiary and (y) any contribution of cash, Cash Equivalents or assets of the Parent or any Restricted Subsidiary in connection with such financing qualifies as a Designated Asset Finance Contribution;
- (5) Indebtedness of the Parent or any of its Restricted Subsidiaries incurred to finance the replacement (through construction, acquisition, lease or otherwise) of one or more Vessels and any assets that shall become Related Assets, upon a total loss, destruction, condemnation, confiscation, requisition, seizure, forfeiture or other taking of title to or use of such Vessel (collectively, a "Total Loss") in an aggregate amount no greater than the Ready For Sea Cost (as determined in good faith by the Parent) for such replacement Vessel, in each case, less all compensation, damages and other payments (including insurance proceeds other than in respect of business interruption insurance) actually received by the Parent or any of its Restricted Subsidiaries from any Person in connection with the Total Loss in excess of amounts actually used to repay Indebtedness secured by the Vessel subject to the Total Loss;
- (6) Indebtedness of the Parent or any Restricted Subsidiary incurred in relation to: (i) maintenance, repairs, refurbishments and replacements required to maintain the classification of any of the Vessels owned, leased, time chartered or bareboat chartered to or by the Parent or any Restricted Subsidiary; (ii) drydocking of any of the Vessels owned or leased by the Parent or any Restricted Subsidiary for maintenance, repair, refurbishment or replacement purposes in the ordinary course of a Permitted Business; (iii) any expenditures which will or may reasonably be expected to be recoverable from insurance on such Vessels; and (iv) the release from arrest, detention, attachment or levy of any of its assets (including Collateral) by any court or competent authority (including any governmental or regulatory agency);

- (7) the incurrence by the Parent or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in respect of Indebtedness (other than intercompany Indebtedness) that was permitted to be incurred under paragraph 8.1 or paragraphs 8.2(2), (3), (5), (6), (7) or (14);
- (8) subject to Clause 16.9(b) (*No other business assets or Financial Indebtedness*), the incurrence of Indebtedness by the Parent owed to a Restricted Subsidiary and Indebtedness by any Restricted Subsidiary owed to the Parent or any other Restricted Subsidiary; *provided, however*, that upon any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or such Indebtedness being owed to any Person other than the Parent or a Restricted Subsidiary, the Parent or such Restricted Subsidiary, as applicable, shall be deemed to have incurred Indebtedness not permitted by this paragraph 8.2(8);<sup>10</sup>
- (9) the issuance by any of the Parent's Restricted Subsidiaries to the Parent or to any of its Restricted Subsidiaries of shares of Disqualified Stock or preferred stock; *provided, however*, that:
- (a) any subsequent issuance or transfer of Equity Interests that results in any such Disqualified Stock or preferred stock being held by a Person other than the Parent or a Restricted Subsidiary of the Parent; and
  - (b) any sale or other transfer of any such Disqualified Stock or preferred stock to a Person that is neither the Parent nor a Restricted Subsidiary of the Parent;
- will be deemed, in each case, to constitute an issuance of such Disqualified Stock or preferred stock by such Restricted Subsidiary that is not permitted by this paragraph 8.2(9);
- (10) the incurrence by the Parent or any of its Restricted Subsidiaries of Permitted Hedging Obligations;
- (11) the guarantee by the Parent or any other Obligor of Indebtedness of the Parent or a Restricted Subsidiary of the Parent that was permitted to be incurred by another provision of this paragraph 8.2; *provided* that if the Indebtedness being guaranteed is contractually subordinated to any Indebtedness under the Finance Documents, then the guarantee shall be contractually subordinated to the same extent as the Indebtedness guaranteed;
- (12) the incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, unemployment insurance, health, disability and other employee benefits or property, casualty or liability insurance, self-insurance obligations, bankers' acceptances, or performance, completion, bid, appeal and surety bonds in the ordinary course of a Permitted Business;
- (13) the incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within 30 business days;
- (14) Indebtedness, Disqualified Stock or preferred stock of (x) the Parent or a Restricted Subsidiary incurred or issued to finance an acquisition or (y) a Person acquired by the Parent or a Restricted Subsidiary or merged, consolidated, amalgamated or liquidated with or into a Restricted Subsidiary or the Parent; *provided, however*, that after giving effect to such incurrence or issuance (and the related acquisition, merger, consolidation, amalgamation or liquidation), either (A) the Fixed Charge Coverage Ratio for the Parent's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued, as the case may be, would have been at least 2.25 to 1.0 or (B) the Fixed Charge Coverage Ratio for the Parent's most recently four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued, as the case may be, would not be less than immediately prior to such transactions;

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<sup>10</sup> Citi to confirm any requirement to subordinate any intercompany debt owned by Parent or GSLS to a non-Obligor (see Clause 16.9(b) of RCF).

- (15) the incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness consisting of guarantees, earn-outs, indemnities, contribution, obligations in respect of purchase price adjustments or, in each case, similar obligations, in connection with the disposition or acquisition of assets, including, without limitation, shares of Capital Stock;
- (16) Non-Recourse Debt incurred by a Securitization Subsidiary in a Qualified Securitization Transaction;
- (17) the incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness constituting reimbursement obligations with respect to letters of credit so long each such obligation is satisfied within 30 days of the incurrence thereof;
- (18) the incurrence by the Parent or any Restricted Subsidiary of Indebtedness through the provision of bonds, guarantees, letters of credit or similar instruments required by the United States Federal Maritime Commission or other governmental or regulatory agencies, including, without limitation, customs authorities; in each case, for Vessels owned, leased, time chartered or bareboat chartered to or by the Parent or any Restricted Subsidiary;
- (19) the incurrence by the Parent or any of its Restricted Subsidiaries of Indebtedness in the form of customer deposits and advance payments received in the ordinary course of a Permitted Business from customers for services purchased in the ordinary course of a Permitted Business;
- (20) Indebtedness of the Parent or any of its Restricted Subsidiaries arising from customary cash management services or in connection with any automated clearinghouse transfer of funds in the ordinary course of a Permitted Business; and
- (21) the incurrence by the Parent or any of its Restricted Subsidiaries of additional Indebtedness, Disqualified Stock or preferred stock in an aggregate amount at any time outstanding, including all Permitted Refinancing Indebtedness incurred pursuant to this paragraph 8.2(21), not to exceed \$15,000,000.

8.3 For purposes of determining compliance with this paragraph 8, in the event that an item of proposed Indebtedness, Disqualified Stock or preferred stock meets the criteria of more than one of the categories of Permitted Debt described in paragraphs 8.2(1) through (22) above, or is entitled to be incurred pursuant to paragraph 8.1, the Parent, in its sole discretion, may divide and/or classify such item of Indebtedness, Disqualified Stock and preferred stock (or any portion thereof) on the date of its incurrence, or later redivide and/or reclassify, all or a portion of such item of Indebtedness, Disqualified Stock and preferred stock, in any manner that complies with this paragraph 8. Indebtedness under all Credit Facilities outstanding or committed to on the date of this Agreement will be deemed to have been incurred on such date in reliance on the exception provided by paragraph 8.2(1) above (whether or not outstanding on the date of this Agreement) and thereafter may not be reclassified in any manner under this paragraph 8.

8.4 The accrual of interest, the accrual of dividends, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Stock or preferred stock in the form of additional shares of the same class of Disqualified Stock or preferred stock, as the case may be, will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock or preferred stock for purposes of this paragraph 8; provided, in each such case, that the amount thereof is included in Fixed Charges of the Parent as accrued.

8.5 The amount of any Indebtedness outstanding as of any date will be:

- (1) the accreted value of such Indebtedness, in the case of any Indebtedness issued with original issue discount;
- (2) the principal amount of the Indebtedness, in the case of any other Indebtedness;

- (3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:
  - (A) the Fair Market Value of such assets at the date of determination; and
  - (B) the amount of the Indebtedness of the other Person that is secured by such assets; and
- (4) in respect of the Indebtedness incurred by a Securitization Subsidiary, the amount of obligations outstanding under the legal documents entered into as part of a Qualified Securitization Transaction on any date of determination characterized as principal or that would be characterized as principal if such securitization were structured as a secured lending transaction rather than as a purchase.

8.6 For purposes of determining compliance with this paragraph 8, (i) Acquired Debt shall be deemed to have been incurred by the Parent or its Restricted Subsidiaries, as the case may be, at the time an acquired Person becomes such a Restricted Subsidiary of the Parent (or is merged into the Parent or such a Restricted Subsidiary) or at the time of the acquisition of assets, as the case may be, (ii) the maximum amount of Indebtedness, Disqualified Stock or preferred stock that the Parent and its Restricted Subsidiaries may incur pursuant to this paragraph 8 shall not be deemed to be exceeded, with respect to any outstanding Indebtedness, Disqualified Stock or preferred stock due solely to the result of fluctuations in the exchange rates of currencies and (iii) the outstanding principal amount of any particular Indebtedness shall be counted only once and any other obligations arising under any guarantee, Lien, letter of credit or similar instrument supporting such Indebtedness permitted to be incurred under this paragraph 8 shall not be double counted. In addition, in connection with the incurrence of any Indebtedness pursuant to paragraph 8.1, the Parent may elect, pursuant to an Officer's Certificate delivered to the Facility Agent, to treat all or any portion of the commitment under any Indebtedness which is to be incurred, as being incurred as of the Calculation Date and any subsequent incurrence of Indebtedness under such commitment that was so treated shall not be deemed, for purposes of this calculation, to be an incurrence of additional Indebtedness.

8.7 For purposes of determining compliance with any U.S. Dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a different currency shall be utilized, calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred; *provided, however*, that (i) if such Indebtedness denominated in non-dollar currency is subject to a Currency Exchange Protection Agreement with respect to U.S. dollars, the amount of such Indebtedness expressed in U.S. dollars will be calculated so as to take account of the effects of such Currency Exchange Protection Agreement; and (ii) the dollar-equivalent of the principal amount of any such Indebtedness outstanding on the date of this Agreement shall be calculated based on the relevant currency exchange rate in effect on the date of this Agreement. The principal amount of any refinancing Indebtedness incurred in the same currency as the Indebtedness being refinanced will be the dollar-equivalent of the Indebtedness refinanced determined on the date such Indebtedness was originally incurred, except that to the extent that:

- (1) such dollar-equivalent was determined based on a Currency Exchange Protection Agreement, in which case the Permitted Refinancing Indebtedness will be determined in accordance with the preceding sentence; and
- (2) the principal amount of the refinancing Indebtedness exceeds the principal amount of the Indebtedness being refinanced, in which case the dollar-equivalent of such excess will be determined on the date such refinancing Indebtedness is being incurred.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Permitted Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

8.8 Neither the Parent nor any other Obligor will incur any Indebtedness that is contractually subordinated in right of payment to any other Indebtedness of the Parent or such Obligor unless such Indebtedness is also contractually subordinated in right of payment to the Indebtedness under the Finance Documents on substantially identical terms; *provided, however*, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Parent or any other Obligor solely by virtue of being unsecured or by virtue of being secured with different collateral or by virtue of being secured on a junior priority basis or by virtue of the application of waterfall or other payment ordering provisions affecting different tranches of Indebtedness.

9. **Restricted Payments**

9.1 The Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

- (i) pay any dividend or make any other payment or distribution on account of the Parent's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger, amalgamation or consolidation involving the Parent or any of its Restricted Subsidiaries) or to the holders of the Parent's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than (A) dividends or distributions payable in Qualified Equity Interests or (B) dividends or other payments or distributions payable to the Parent or a Restricted Subsidiary of the Parent);
- (ii) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation) any Equity Interests of the Parent or any direct or indirect parent of the Parent;
- (iii) make any voluntary or optional principal payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, any Subordinated Indebtedness of the Parent or any other Obligor (excluding any Existing Indebtedness or any Indebtedness owed to and held by the Parent or any of its Restricted Subsidiaries); or
- (iv) make any Restricted Investment

(all such payments and other actions set forth in paragraphs (i) through (iv) above being collectively referred to as "Restricted Payments"), unless, at the time of and after giving effect to such Restricted Payment:

- (1) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence of such Restricted Payment;
- (2) the Parent would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in paragraph 8.1; and
- (3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Parent and its Restricted Subsidiaries since the date of this Agreement (including Restricted Payments deemed to have been made pursuant to the definition of "Designated Additional Notes Contribution" or "Designated Asset Finance Contribution" but excluding Restricted Payments permitted by paragraphs 9.2(2), (3), (4), (5), (6), (7), (8), (9), (10) and (12)), is not greater than the sum, without duplication, of:
  - (a) 50% of the Consolidated Net Income of the Parent for the period (taken as one accounting period) from January 1, 2014 to the end of the Parent's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); plus
  - (b) (i) 100% of the aggregate net cash proceeds and (ii) 100% of the Fair Market Value of the property and assets other than cash, in each case, received by the Parent after the date of this Agreement as a contribution to its equity capital or from the issue or sale (other than to a Restricted Subsidiary of the Parent) of Qualified Equity Interests, including upon the exercise of options or warrants, or from the issue or sale (other than to a Restricted Subsidiary of the Parent) of Disqualified Stock or Indebtedness of the Parent that have been converted into or exchanged for Qualified Equity Interests, together with the aggregate cash and Cash Equivalents received by the Parent or any of its Restricted Subsidiaries at the time of such conversion or exchange; plus

- (c) to the extent that any Restricted Investment that was made after the date of this Agreement is sold or otherwise liquidated or repaid for cash or Cash Equivalents, the return of capital in cash or Cash Equivalents with respect to such Restricted Investment (less the cost of disposition, if any); plus
- (d) to the extent that any Unrestricted Subsidiary of the Parent is redesignated as a Restricted Subsidiary after the date of this Agreement or is merged into the Parent or a Restricted Subsidiary or transfers all or substantially all its assets to the Parent or a Restricted Subsidiary or an entity in which the Parent or a Restricted Subsidiary has made a Restricted Investment becomes a Restricted Subsidiary, the Fair Market Value of the Investment of the Parent and its Restricted Subsidiaries in such Subsidiary (or the assets so transferred, if applicable) as of the date of such redesignation (other than to the extent of such Investment in such Unrestricted Subsidiary that was made as a Permitted Investment), merger, transfer or other action, as the case may be; plus
- (e) any amount previously treated as a Restricted Payment on account of any guarantee entered into by the Parent or a Restricted Subsidiary upon the unconditional release of such guarantee; minus
- (f) any amount of interest paid to service Indebtedness incurred pursuant to paragraph 8.1 and part (21) of the definition of Permitted Debt.

9.2 The preceding provisions will not prohibit:

- (1) the payment of any dividend or other distribution within 60 days after the date of declaration of the dividend or other distribution, if at the date of declaration of such payment would have complied with the provisions of this Agreement;
- (2) the making of any Restricted Payment in exchange for, or out of the net proceeds of the substantially concurrent sale or issuance (other than to a Restricted Subsidiary of the Parent), including upon exercise of an option or warrant, of, Qualified Equity Interests or from the substantially concurrent contribution of equity capital with respect to Qualified Equity Interests to the Parent received by the Parent; *provided* that the amount of any such net proceeds that are utilized for any such Restricted Payment will be excluded from paragraph 9.1(3)(b);
- (3) the payment, defeasance, redemption, repurchase or other acquisition or retirement for value of Subordinated Indebtedness of the Parent or any of its Restricted Subsidiaries with the net proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness or in exchange for Qualified Equity Interests;
- (4) the payment of any dividend or other distribution (or, in the case of any partnership, limited liability company or similar entity, any similar distribution) by a Restricted Subsidiary of the Parent to the holders of its Equity Interests on a pro rata basis taking into account the relative preferences, if any, of the various classes of Equity Interests in such Restricted Subsidiary;
- (5) the repurchase, redemption or other acquisition or retirement for value of any Qualified Equity Interests of the Parent or any of its Restricted Subsidiaries held by any current or former officer, director, consultant or employee of the Parent or any of its Restricted Subsidiaries (or Heirs or other permitted transferees thereof); *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed \$1,000,000 (determined as of the beginning of such calendar year) in any calendar year; *provided, further*, that such amount may be increased by an amount not to exceed:
  - (A) the cash proceeds from the sale of Qualified Equity Interests of the Parent to directors, officers, employees or consultants of the Parent or any of its Restricted Subsidiaries that occurs after the date of this Agreement (*provided* that the amount of such cash proceeds utilized for any such repurchase, redemption, acquisition or other retirement will not increase the amount available for Restricted Payments under paragraph 9.1(3); plus
  - (B) the cash proceeds of key-man life insurance policies received by the Parent or any Restricted Subsidiary after the date of this Agreement;

*provided* that to the extent that any portion of the unused amounts permitted to be paid pursuant to this paragraph is not utilized in any year, such unused portion may be carried forward and be utilized in one or more subsequent years;

- (6) cancellation of Indebtedness owing to the Parent from officers or directors of the Parent in connection with a repurchase of Qualified Equity Interests of the Parent pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement approved by the Board of Directors to the extent such Indebtedness was issued to such officers or directors as consideration for the purchase of the Qualified Equity Interests so repurchased;
- (7) so long as no Default or Event of Default has occurred and is continuing or would result thereby, any dividend or distribution consisting of Equity Interests of an Unrestricted Subsidiary or the proceeds of the sale of Equity Interests of an Unrestricted Subsidiary;
- (8) the repurchase of Equity Interests deemed to occur upon the exercise of options, warrants or other convertible securities to the extent such Equity Interests represent a portion of the exercise price of those options, warrants or other convertible securities and cash payments in lieu of the issuance of fractional shares in connection with the exercise of options, warrants or other convertible securities;
- (9) so long as no Default or Event of Default has occurred and is continuing or would result thereby, the declaration and payment of cash dividends to holders of any class or series of Disqualified Stock of the Parent or preferred stock of a Restricted Subsidiary (excluding the Existing Mandatorily Redeemable Preference Shares), in each case, issued after the date of this Agreement in accordance with paragraph 8;
- (10) (A) the declaration and payment of quarterly cash dividends to holders of the Existing Mandatorily Redeemable Preference Shares in accordance with the terms of such instruments and dividends or distributions or interest on Permitted Refinancing Indebtedness or Qualified Equity Interests issued in exchange for, or to refinance, replace, or refund, Existing Mandatorily Redeemable Preference Shares; *provided* that the amount of cash dividends (or interest) paid in respect of such Permitted Refinancing Indebtedness or Qualified Equity Interests pursuant to this paragraph 9.2(10)(A) shall not exceed an amount per annum equal to 6.0% of the applicable principal amount or liquidation preference (the "Applicable Cap") of such Existing Mandatorily Redeemable Preference Shares, Permitted Refinancing Indebtedness or Qualified Equity Interests; *provided* further that any cash dividends (or interest) paid in respect of such Permitted Refinancing Indebtedness or Qualified Equity Interests pursuant to the this paragraph 9.2(10)(A) that would exceed the Applicable Cap will be included in subsequent calculations under paragraph 9.1(3); and (B) the payment, redemption, repurchase or other acquisition or retirement for value or reduction of the outstanding liquidation preference of any Existing Mandatorily Redeemable Preference Shares of the Parent or any of its Restricted Subsidiaries with the net proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness or in exchange for Qualified Equity Interests; *provided* that such payments pursuant to this paragraph 9.2(10)(B) shall not exceed \$50,000,000 in the aggregate; and;
- (11) payments made to purchase, redeem, defease or otherwise acquire or retire for value any Subordinated Indebtedness of the Parent or any of its Restricted Subsidiaries with the Excess Proceeds of one or more Asset Sales not involving Collateral, at a purchase price not greater than 100% of the principal amount (or accreted value, in the case of any debt issued at a discount from its principal amount at maturity) thereof, plus accrued and unpaid interest, if any, after the Parent and its Restricted Subsidiaries have satisfied their obligations with respect to such Excess Proceeds set forth under paragraph 5 to the extent that such Subordinated Indebtedness is required to be repurchased or redeemed pursuant to the terms thereof as a result of such Asset Sale;
- (12) payments pursuant to paragraphs 12.2(6) or (7); and
- (13) Restricted Payments (other than Restricted Investments) in an aggregate amount, when taken together with all Restricted Payments made pursuant to this paragraph 9.2(13) not to exceed \$7,500,000.



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

9.4 For purposes of determining compliance with this paragraph 9, in the event that a Restricted Payment permitted pursuant to this paragraph 9 or a Permitted Investment meets the criteria of more than one of the categories of Restricted Payment described in paragraphs 9.2(1) through (13) above or one or more paragraphs of the definition of "Permitted Investments," the Parent shall be permitted to classify such Restricted Payment or Permitted Investment (or any portion thereof) on the date it is made, or later reclassify, all or a portion of such Restricted Payment or Permitted Investment, in any manner that complies with this paragraph 9, and such Restricted Payment or Permitted Investment shall be treated as having been made pursuant to only one of such paragraphs of this paragraph 9 or of the definition of "Permitted Investment."

## 10. *Liens*

10.1 The Parent will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, incur or assume any Lien that secures obligations under any Indebtedness or any related guarantee, on any asset of the Parent or any Restricted Subsidiary, whether owned on the date of this Agreement or thereafter acquired, except Permitted Liens, unless contemporaneously therewith:

- (1) in the case of any Lien securing an obligation that ranks *pari passu* with the Indebtedness under the Finance Documents, effective provision is made to secure the Indebtedness under the Finance Documents, at least equally and ratably with or prior to such obligation with a Lien on the same collateral; and
- (2) in the case of any Lien securing an obligation that is subordinated in right of payment to the Indebtedness under the Finance Documents, effective provision is made to secure the Indebtedness under the Finance Documents, with a Lien on the same collateral that is prior to the Lien securing such subordinated obligation,

in each case, for so long as such obligation is secured by such Lien (such Lien, the "Primary Lien").

10.2 Notwithstanding the foregoing, the Parent will not and will not permit any Mortgaged Guarantor to create, incur or assume any Lien (other than in favor of the Security Agent for the benefit of the Finance Parties and the other creditors specified in the Intercreditor Agreement) upon (i) any of the Collateral other than Permitted Liens and those Liens permitted by the Security Documents; (ii) any Assigned Contracts entered into after the date of this Agreement in respect of any Mortgaged Vessel (or any right, title, benefit or interest thereunder) and (iii) any intercompany Indebtedness owed by the Parent or any Obligor to the Parent or any Restricted Subsidiary.

10.3 Any Lien created for the benefit of the Finance Parties pursuant to the first paragraph above shall automatically and unconditionally be released and discharged upon the release and discharge of the Primary Lien, without any further action on the part of any Person.

## 11. *Dividend and Other Payment Restrictions Affecting Subsidiaries*

11.1 The Parent will not, and will not permit any of its Restricted Subsidiaries that is not a Guarantor to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any of its Restricted Subsidiaries that is not a Guarantor to:

- (1) pay dividends or make any other distributions on its Capital Stock to the Parent or any of its Restricted Subsidiaries, or pay any Indebtedness owed to the Parent or any of its Restricted Subsidiaries;
- (2) make loans or advances to the Parent or any of its Restricted Subsidiaries; or
- (3) transfer any of its properties or assets to the Parent or any of its Restricted Subsidiaries.

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

- (1) agreements, including, without limitation, those governing Existing Indebtedness (including under the Finance Documents), as in effect on the date of this Agreement and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of those agreements; *provided* that the amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in those agreements on the date of this Agreement;
- (2) the Senior Secured Note Indenture, the Senior Secured Notes, the Senior Secured Note Guarantees and any Additional Intercreditor Agreement;
- (3) applicable law, rule, regulation or order or governmental license, permit or concession;
- (4) any instrument governing Indebtedness or Equity Interests of a Person acquired by the Parent or any of its Restricted Subsidiaries as in effect at the time of such acquisition, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; *provided* that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Agreement to be incurred;
- (5) customary provisions restricting assignments, subletting or other similar transfers in contracts, licenses and other agreements (including, without limitation, leases and agreements relating to intellectual property) entered into in the ordinary course of a Permitted Business;
- (6) purchase money obligations and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in paragraph 11.1(3);
- (7) any agreement for the sale or other disposition of a Restricted Subsidiary or an asset that restricts distributions by that Restricted Subsidiary or transfers of such asset pending the sale or other disposition;
- (8) Permitted Refinancing Indebtedness; *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;
- (9) Liens and agreements related thereto that were permitted to be incurred under the provisions of paragraph 10 that limit the right of the debtor to dispose of the assets subject to such Liens;
- (10) provisions limiting the disposition or distribution of assets or property (including Capital Stock of any Person in which the Parent has an Investment) in joint venture agreements, stockholder agreements, partnership agreements, limited liability company operating agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, which limitation is applicable in all material respects only to the assets or property that are the subject of such agreements;
- (11) restrictions on cash or other deposits or net worth imposed under contracts entered into in the ordinary course of a Permitted Business;
- (12) customary provisions restricting the disposition of real property interests set forth in any easements or other similar agreements or arrangements of the Parent or any Restricted Subsidiary;
- (13) provisions restricting the transfer of any Capital Stock of an Unrestricted Subsidiary;
- (14) provisions contained in agreements governing Indebtedness of the Parent or Restricted Subsidiary incurred subsequent to the date of this Agreement pursuant to the provisions of paragraph 8 (i) in respect of the subordination provisions, if any, of such Indebtedness, (ii) if

the encumbrances and restrictions contained in any such Indebtedness taken as a whole are not materially less favorable to the Finance Parties than the encumbrances and restrictions contained in this Agreement or that may be contained in the Intercreditor Agreement or in any Credit Facility in accordance with this paragraph 11 or (iii) if such encumbrance or restriction is customary in comparable financings (as determined in good faith by the Parent) and the Parent determines in good faith that such encumbrance or restriction will not materially adversely affect the ability of the Parent and its Restricted Subsidiaries, taken as a whole, to make principal or interest payments under the Finance Documents; and

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

## 12. **Transactions with Affiliates**

12.1 The Parent will not, and will not permit any of its Restricted Subsidiaries to, enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Parent (each, an "Affiliate Transaction") involving aggregate payments or consideration in excess of \$2,000,000, unless:

- (1) the Affiliate Transaction is on terms that are not materially less favorable to the Parent or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Parent or such Restricted Subsidiary with an unrelated Person, with such determination to be made at the time such Affiliate Transaction is entered into or agreed to; and
- (2) (a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$10,000,000, a resolution of the Board of Directors of the Parent set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with this paragraph 12 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors; and (b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$50,000,000 or as to which there are no disinterested members of the Board of Directors, an opinion as to the fairness to the Parent or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view is obtained from an independent accounting, appraisal or investment banking firm of international standing qualified to perform the task for which such firm has been engaged (as determined by the Parent in good faith).

12.2 The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of paragraph 12.1:

- (1) director, officer, employee and consultant compensation, benefit, reimbursement and indemnification agreements, plans and arrangements (and payment awards in connection therewith) entered into by the Parent or any of its Restricted Subsidiaries in the ordinary course of a Permitted Business;
- (2) transactions between or among the Parent and/or its Restricted Subsidiaries;
- (3) transactions with a Person (other than an Unrestricted Subsidiary of the Parent) that is an Affiliate of the Parent solely because either (x) the Parent owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person or (y) a director of such Person is also a director of the Parent; *provided* such director abstains from voting as a director of the Parent on any matter involving such other person;
- (4) (w) any issuance of Qualified Equity Interests of the Parent to an Affiliate and the granting or performance of registration rights in respect of any Qualified Equity Interests of the Parent, which rights have been approved by the Board of Directors of the Parent; (x) any contribution to the Qualified Equity Interest capital of the Parent by an Affiliate; (y) any cash dividend or redemption payment required by the terms of the Existing Mandatorily Redeemable

Preference Shares as in effect on the date of this Agreement or (z) any incurrence or issuance by the Parent or any Restricted Subsidiary of Indebtedness or Disqualified Stock owed to or held by an Affiliate on the same basis as Indebtedness or Disqualified Stock owed to or held by non-Affiliates as part of any underwritten securities offering or syndicated loan financing, and any payments in respect of such Indebtedness;

- (5) Restricted Payments that do not violate the provisions of paragraph 9 and Investments consisting of Permitted Investments (other than Permitted Investments made under paragraphs (3) or (15) of the definition thereof);
- (6) the performance of obligations of the Parent or any Restricted Subsidiary under the terms of any agreement that is in effect as of or on the date of this Agreement (other than the Existing Charters, the Existing Management Agreements or the Global Expense Agreement) and any amendment, modification, supplement, extension or renewal, from time to time, thereto or any transaction contemplated thereby (including pursuant to any amendment, modification, supplement, extension or renewal, from time to time, thereto) in any replacement agreement thereto, so long as any such amendment, modification, supplement, extension or renewal, or replacement agreement, is not materially more disadvantageous to the Finance Parties taken as a whole than the original agreement as in effect on the date of this Agreement;
- (7) the performance of obligations of the Parent or any Restricted Subsidiary under the terms of the Existing Charters, the Existing Management Agreements and the Global Expense Agreement as in effect on the date of this Agreement or any amendment, modification, supplement, replacement, extension or renewal, from time to time, thereto or any transaction contemplated thereby (including pursuant to any amendment, modification, supplement, replacement, extension or renewal, from time to time, thereto); *provided*, that
  - (A) any such amendment or modification that has the effect of modifying the rate of charter hire during the current term of the Existing Charters as in effect on the date of this Agreement is (x) not materially more disadvantageous to the Finance Parties taken as a whole than the original agreement as in effect on the date of this Agreement, and (y) is on terms not materially less favorable to the Parent or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Parent or such Restricted Subsidiary with an unrelated person; and
  - (B) any other amendment, modification, supplement, replacement, extension or renewal (including, for the avoidance of doubt, any extension or renewal of an Existing Charter effective upon the expiration of its current term as in effect on the date of this Agreement) is either (x) not materially more disadvantageous to the Finance Parties taken as a whole than the original agreement as in effect on the date of this Agreement, or (y) is on terms not materially less favorable to the Parent or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Parent or such Restricted Subsidiary with an unrelated person.

in each case, as reasonably determined by a resolution of the Board of Directors of the Parent and approved by a majority of the disinterested members thereof;

- (8) transactions effected as part of a Qualified Securitization Transaction;
- (9) transactions in which the Parent delivers to the Facility Agent an opinion as to the fairness to the Parent or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view or that such Affiliate Transaction meets the requirements of paragraph (1) of the preceding paragraph, in each case, issued by an independent accounting, appraisal or investment banking firm of international standing qualified to perform the task for which such firm has been engaged (as determined in good faith by the Parent);
- (10) payments, loans or advances to employees or consultants or guarantees in respect thereof (or cancellation of loans, advances or guarantees) for bona fide business purposes;

- (11) other than with CMA CGM, transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods or services, in each case in the ordinary course of a Permitted Business and otherwise in compliance with the terms of this Agreement; *provided* such transactions are on terms that are not materially less favorable to the Parent or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Parent or such Restricted Subsidiary with an unrelated Person, as reasonably determined by the Parent;
- (12) any sale or disposition of a Vessel for an aggregate purchase price equal to or exceeding its Appraised Value; and
- (13) transactions involving the purchase, redemption, exchange, acquisition or retirement of any Existing Mandatorily Redeemable Preference Shares and that (to the extent applicable, when considered together with any related transactions occurring in connection with such transactions) are in the best interests of the Parent and the Restricted Subsidiaries as reasonably determined by a resolution of the Board of Directors of the Parent and approved by a majority of the disinterested members thereof.

Regardless of the amount of aggregate payments or consideration to be made thereunder, and without limiting paragraph 12.2(7) above, the Parent will not, and will not permit any of its Restricted Subsidiaries to, enter into any amendment, modification, supplement, replacement, extension or renewal, from time to time, of any Existing Charter or any transaction contemplated thereby (including pursuant to any amendment, modification, supplement, replacement, extension or renewal, from time to time, thereto) except in compliance with paragraph 12.2(7) above.

### 13. ***Merger, Consolidation or Sale of Assets***

- (a) The Parent may not, directly or indirectly: (1) consolidate, amalgamate or merge with or into another Person (whether or not the Parent is the surviving Person); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Parent and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless (subject, in the case of (1) of this part (a), to Clause 14.24(e) (*Insolvency*):
  - (1) either: (a) the Parent is the surviving Person; or (b) the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Parent) or to which such sale, assignment, transfer, conveyance or other disposition has been made (x) is a corporation, limited liability company, trust or limited partnership organized or existing under the laws of an Eligible Jurisdiction, and (y) expressly assumes all the obligations of the Parent under the Finance Documents;
  - (2) immediately after giving effect to such transaction, no Default or Event of Default exists;
  - (3) either (a) the Parent or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Parent), or to which such sale, assignment, transfer, conveyance or other disposition has been made, will, on the date of such transaction, after giving pro forma effect thereto and to any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in paragraph 8.1 or (b) the Fixed Charge Coverage Ratio for the Parent or such surviving Person determined in accordance with paragraph 8.1 shall be greater than the Fixed Charge Coverage Ratio test for the Parent and its Restricted Subsidiaries immediately prior to such transaction; and
  - (4) for as long as the Senior Secured Notes are listed on the Official List of the Irish Stock Exchange and admitted to trading on the Global Exchange Market and to the extent that the rules and regulations of the Irish Stock Exchange so require, notify such exchange or any such merger, consolidation, amalgamation or other combination or sale.

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

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

- (b) Subject to Clause 14.24(e) (*Insolvency*) the Parent will not permit any other Obligor to, directly or indirectly, consolidate, amalgamate or merge with or into another Person (whether or not the Parent or such Obligor is the surviving Person) unless:
- (1) subject to the guarantee release provisions described under paragraph 15 below, such Obligor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Parent or an Obligor) and expressly assumes all the obligations of such Obligor under the Finance Documents; and
  - (2) immediately after such transaction, no Default or Event of Default exists.
- (c) Subject to Clause 14.24(e) (*Insolvency*), this paragraph 13 will not apply to any such consolidation, amalgamation or merger of, or any such sale, assignment, transfer, conveyance or other disposition of all or substantially all of the properties or assets of an Obligor other than the Parent or a Wholly Owned Restricted Subsidiary of such Person with or to an Affiliate (not being the Parent) solely for the purpose, and with the effect, of reorganizing such an Obligor or a Wholly Owned Restricted Subsidiary, as the case may be, in an Eligible Jurisdiction. In addition, nothing in this paragraph 13 will prohibit any Restricted Subsidiary from consolidating or amalgamating with, merging with or into or conveying, transferring or leasing, in one transaction or a series of transactions, all or substantially all of its assets to another Restricted Subsidiary or reconstituting itself in another jurisdiction for the purpose of reflagging a vessel.
- (d) Upon any consolidation, amalgamation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Parent or another Obligor in accordance with this paragraph 13, the successor Person formed by such consolidation or into or with which the Parent or such other Obligor, as applicable, is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall, subject to Clause 26 (*Changes to the Obligors*) of this Agreement, succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Agreement referring to the Parent or such other Obligor, as applicable, shall refer instead to the successor Person, as applicable, and not to the Parent or such other Obligor, as applicable, and such predecessor Person will automatically be released and discharged from its obligations under the Finance Documents), and may exercise every right and power of the Parent or such other Obligor, as applicable, under the Finance Documents with the same effect as if such successor Person, as applicable, had been named as the Parent or an Obligor, as applicable, herein; *provided* that the predecessor Parent shall not be relieved from the obligation to pay the principal of and interest on borrowings incurred under this Agreement or its obligations under Clause 22 (*Indemnities and Break Costs*), except in the case of a sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the Parent's assets that meets the requirements of this paragraph 13.

#### 14. ***Designation of Restricted and Unrestricted Subsidiaries***

- 14.1 The Board of Directors of the Parent may designate any Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default or cause a Default to be continuing after such designation. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary,

the aggregate Fair Market Value of all outstanding Investments owned by the Parent and its Restricted Subsidiaries in the Subsidiary designated as an Unrestricted Subsidiary will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under paragraph 9 above or under one or more paragraphs of the definition of Permitted Investments, as determined by the Parent. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors of the Parent may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause a Default or cause a Default to be continuing after such redesignation.

- 14.2 Any designation of a Subsidiary of the Parent as an Unrestricted Subsidiary will be evidenced by a board resolution giving effect to such designation and an Officer's Certificate certifying that such designation complied with the preceding conditions and was permitted by paragraph 9 above. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Parent as of such date and, if such Indebtedness is not permitted to be incurred as of such date under paragraph 8, the Parent will be in default of such covenant. The Board of Directors of the Parent may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Parent of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if (1) such Indebtedness is permitted under paragraph 8, calculated on a pro forma basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence immediately following such designation. Any Subsidiary of an Unrestricted Subsidiary will automatically be designated as an Unrestricted Subsidiary.

## 15. *Subsidiary Guarantees*

15.1 If the Parent or any of its Restricted Subsidiaries acquires or creates a Restricted Subsidiary (or redesignates an Unrestricted Subsidiary as a Restricted Subsidiary) and such Restricted Subsidiary shall at any time have total assets with a book value in excess of \$10,000,000, then such Restricted Subsidiary (unless such Subsidiary is a Securitization Subsidiary) must become a Guarantor and shall, within 45 business days of the date on which it was so acquired, created or redesignated or so capitalized:

- (1) execute and deliver to the Facility Agent and the Security Agent an Accession Deed (as contemplated by Clause 26.4 (*Additional Guarantors*)) pursuant to which such Restricted Subsidiary shall unconditionally guarantee all of the Parent's obligations under the Finance Documents and the Senior Secured Note Indenture and, if such Restricted Subsidiary owns a Vessel required to become a Mortgaged Vessel or a Container Asset required to become a Mortgaged Container Asset, execute one or more Security Documents in favor of the Security Agent pursuant to which each such Vessel shall become a Mortgaged Vessel and each such Container Asset shall become a Mortgaged Container Asset for all purposes under this Agreement in each case as provided for under paragraph 3.1 above; and
- (2) deliver to the Facility Agent and the Security Agent one or more opinions of counsel that such Accession Deed and Security Documents, if any, have been duly authorized, executed and delivered by such Restricted Subsidiary and constitutes a valid and legally binding and enforceable obligation of such Restricted Subsidiary, subject to customary exceptions.

15.2 Thereafter, such Restricted Subsidiary shall be a Guarantor for all purposes of this Agreement. For the avoidance of doubt, such Guarantor shall only be required to become a Mortgaged Guarantor to the extent required by paragraph 3.

15.3 The guarantee of a Guarantor will automatically and unconditionally (without any further action on the part of any Person) be released:

- (1) in connection with any sale or other transfer of all or substantially all of the assets of that Guarantor (including by way of merger, consolidation or amalgamation) to a Person that is not (either before or after giving effect to such transaction) the Parent or a Restricted Subsidiary of the Parent, if the sale or other disposition does not violate paragraphs 5, 6, 7 or 12 above;

- (2) in connection with any sale or other transfer of a majority of the Capital Stock of that Guarantor to a Person that is not (either before or after giving effect to such transaction) the Parent or a Subsidiary of the Parent, if (x) such Guarantor would no longer constitute a "Subsidiary" under this Agreement and (y) the sale or other disposition does not violate paragraphs 5, 6 and 7 above;
- (3) substantially concurrently with the substitution of Qualified Vessels or Qualified Container Assets of another Restricted Subsidiary for all of the Mortgaged Vessels or Mortgaged Container Assets of that Guarantor in accordance with paragraph 3 (unless such Guarantor would still be required to grant a guarantee under paragraph 15.1);
- (4) if the Parent designates any Restricted Subsidiary that is a Guarantor to be an Unrestricted Subsidiary in accordance with the applicable provisions of this Agreement;
- (5) in the case of a Restricted Subsidiary that has voluntarily acceded to the Finance Documents as a Guarantor, upon notice to the Facility Agent by the Parent of the designation of such Guarantor as non-Guarantor Restricted Subsidiary if all transactions entered into by such Restricted Subsidiary while a Guarantor would be permitted under this Agreement at the time its obligations under the Finance Documents are released (and for such purpose all such transactions shall be deemed to have been entered into at the time of such release);
- (6) upon satisfaction and discharge or the Indebtedness under the Finance Documents; and
- (7) in accordance with an enforcement action pursuant to the provisions of the Intercreditor Agreement and any Additional Intercreditor Agreement.

15.4 Upon receipt by the Security Agent and the Facility Agent of an Officer's Certificate and an Opinion of Counsel each stating that all conditions precedent provided in the Finance Documents relating to the release of the guarantee have been complied with, the Facility Agent and the Security Agent shall take all actions, reasonably requested by such Guarantor including the granting of releases or waivers under the Intercreditor Agreement or any Additional Intercreditor Agreement, that may be necessary to effectuate any release of a guarantee in accordance with these provisions, subject to customary protections and indemnifications. Each of the releases set forth above shall be effected by trustee and the Security Agent without the consent of the Finance Parties or any other action or consent on the part of the Facility Agent or the Security Agent. For the avoidance of doubt, the foregoing provisions shall not permit the Security Agent to release or grant any waivers or otherwise take any action with respect to releasing any guarantees or the Transaction Security to the extent in favour of any Secured Party other than the Finance Parties (and any such release, waiver or action with respect to any such other Secured Party shall be governed by the Debt Documents applicable to such secured parties, the Intercreditor Agreement and any Additional Intercreditor Agreement).

#### 16. ***Impairment of security interest***

The Parent shall not, and shall not permit any Restricted Subsidiary to, take or knowingly or negligently omit to take any action that would have the result of materially impairing the Security Interests with respect to the Collateral (it being understood, subject to the proviso below, that the incurrence of Permitted Liens shall under no circumstances be deemed to materially impair the Security Interest with respect to the Collateral) for the benefit of the Finance Parties, and the Parent shall not, and shall not permit any Restricted Subsidiary to, grant to any Person other than the Security Agent for the benefit of the Finance Parties and the other beneficiaries described in the Security Documents and the Intercreditor Agreement or any Additional Intercreditor Agreement, any interest whatsoever in any of the Collateral, except that (i) the Parent and its Restricted Subsidiaries may incur Permitted Liens, (ii) the Collateral may be discharged and released in accordance with the Finance Documents or any Additional Intercreditor Agreement, (iii) the applicable Security Documents may be amended from time to time to cure any ambiguity, mistake, omission, defect, manifest error or inconsistency therein and (iv) the Parent and its Restricted Subsidiaries may amend the security interests in any manner that does not adversely affect the Finance Parties in any material respect; *provided, however*, that in the case of paragraphs (i), (iii) and (iv) above, in addition to any other requirements set forth in the Finance Documents, the Security Documents may not be amended, extended, renewed, restated, supplemented, released



or otherwise modified or replaced, unless contemporaneously with any such action, the Parent delivers to the Facility Agent, (A) either (1) an Officer's Certificate of the relevant Person, which confirms the solvency of the Person granting such security interest, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, release, modification or replacement, or (2) an Opinion of Counsel, confirming that, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, release, modification or replacement, the Security Interests created under the Security Documents, so amended, extended, renewed, restated, supplemented, released, modified or replaced are valid Security Interests not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, that such Security Interests were not otherwise subject to immediately prior to such amendment, extension, renewal, restatement, supplement, release, modification or replacement, (B) an Officer's Certificate stating that all conditions precedent in the Finance Documents and the Senior Secured Note Finance Documents relating to any such action have been complied with and (C) an Opinion of Counsel stating that all conditions precedent in the Finance Documents and the Senior Secured Note Finance Documents relating to any such action have been complied with. In the event that the Parent complies with the requirements of this paragraph 16, the Facility Agent and the Security Agent shall (subject to customary protections and indemnifications each of the Facility Agent and the Security Agent being indemnified and secured to its satisfaction) consent to such amendments without the need for instructions from the Finance Parties.

#### 17 **Additional Intercreditor Agreements**

At the request of the Parent, in connection with the incurrence by the Parent or its Restricted Subsidiaries of any (x) Indebtedness permitted pursuant to paragraph 8.1 or paragraphs 8.2 (1), (2), (3), (4) (other than with respect to Capital Lease Obligations), (5), (6), (8), (9), (10), (11), (14), (16) or (21) and (y) any Permitted Refinancing Indebtedness in respect of Indebtedness referred to in the foregoing clause (x), the Parent, the relevant Restricted Subsidiaries, the Facility Agent and the Security Agent shall enter into with the holders of such Indebtedness (or their duly authorized representatives) an intercreditor agreement (an "Additional Intercreditor Agreement") or a restatement, amendment or other modification of the existing Intercreditor Agreement on substantially the same terms as the Intercreditor Agreement (or terms not materially less favorable to the Finance Parties), including containing substantially the same terms with respect to release of guarantees and priority and release of the Security Interests under the Security Documents; provided that such Additional Intercreditor Agreement will not impose any personal obligations on the Facility Agent or Security Agent or, in the opinion of the Facility Agent or Security Agent, as applicable, adversely affect the rights, duties, liabilities or immunities of the Facility Agent or Security Agent under the Intercreditor Agreement.

To the extent required under any Intercreditor Agreement or Additional Intercreditor Agreement, the Facility Agent (and Security Agent, if applicable) shall consent on behalf of the Finance Parties to the payment, repayment, purchase, repurchase, defeasance, acquisition, retirement or redemption of any obligations subordinated to the Finance Documents thereby; *provided, however*, that such transaction would comply with paragraph 9. In connection with providing any such consent, the Facility Agent and the Security Agent shall be entitled to receive and may conclusively rely upon, an Officer's Certificate and an Opinion of Counsel each stating that all conditions precedent provided in the Additional Intercreditor Agreement (if applicable) and the Finance Documents relating to such consent have been complied with.

#### 18. **Certain Covenants**

If on any date following the date of this Agreement (i) the Senior Secured Notes have Investment Grade Ratings from both Rating Agencies and (ii) no Default or Event of Default has occurred and is continuing under this Agreement (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "Covenant Suspension Event"), the Parent and the Restricted Subsidiaries will not be subject to the covenants set out at paragraphs 5, 8, 9, 11, 12, 13(a)(3) and 15 (collectively, the "Suspended Covenants").

In the event that the Parent and the Restricted Subsidiaries are not subject to the Suspended Covenants under the Senior Secured Note Indenture for any period of time as a result of the foregoing, and on any subsequent date (the "Reversion Date") one or both of the Rating Agencies withdraw their Investment Grade Rating or downgrade the rating assigned to the Senior Secured Notes below an Investment Grade Rating, then the Parent and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants with respect to future events.

The period of time between the Covenant Suspension Event and the Reversion Date is referred to in this description as the “Suspension Period.” Upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds and the amount of Excess Cash Flow shall each be reset at zero. In the event of any such reinstatement, no action taken or omitted to be taken by the Parent and the Restricted Subsidiaries prior to such reinstatement that would otherwise be a breach of any Suspended Covenant will give rise to a Default or Event of Default under this Agreement; *provided* that (1) with respect to Restricted Payments made after any such reinstatement, the amount of Restricted Payments made will be calculated as though paragraph 9 had been in effect since the date of this Agreement and throughout the Suspension Period, and (2) all Indebtedness incurred, or Disqualified Stock or preferred stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to paragraph 8.2(2). No Subsidiaries shall be designated as Unrestricted Subsidiaries during any Suspension Period. During the Suspension Period, any future obligations to grant further guarantees under this Agreement shall be suspended but such further obligation to grant guarantees under this Agreement shall be reinstated upon the Reversion Date.

The Parent will promptly deliver to the Facility Agent an Officer’s Certificate identifying any Covenant Suspension Event including the date thereof and any Reversion Date.

#### 19. **Certain Definitions**

Set forth below are certain defined terms used in this Schedule 14 (*Notes Restrictive Covenants*).

“**Acquired Debt**” means, with respect to any specified Person:

- (1) Indebtedness of any other Person existing at the time such other Person is merged with or into or becomes a Restricted Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and
- (2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“**Additional Intercreditor Agreement**” means any intercreditor agreement entered into by, amongst others, the Parent and the Facility Agent in respect of certain Indebtedness permitted to be incurred under this Agreement (as more particularly described in the Senior Secured Note Indenture).

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control,” as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms “controlling,” “controlled by” and “under common control with” have correlative meanings.

“**Appraised Value**” means the fair market value as of a specified date of a specified Vessel (including the value of the Charter, if any, associated with such Vessel) that would be obtained in an arm’s-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined by a Designated Appraiser selected by the Parent.

“**Asset Sale**” means:

- (1) the sale, lease, conveyance or other disposition of any assets (other than, in the case of Collateral, an Event of Loss) *provided* that the sale, conveyance or other disposition of all or substantially all of the assets of the Parent and their Restricted Subsidiaries taken as a whole will be governed by the provisions of Clause 6.2 (*Change of Control*) and/or the provisions described above under paragraph 13 and not by the provisions of paragraphs 5, 6 and 7; and
- (2) the issuance by any of the Parent’s Restricted Subsidiaries of any Equity Interest of such Restricted Subsidiary or the sale by the Parent or any Restricted Subsidiary of Equity Interests in any Restricted Subsidiaries (other than in each case (x) directors’ qualifying shares or shares required by applicable law to be held by a Person other than the Parent or any of its Subsidiaries or (y) preferred stock or Disqualified Stock issued in compliance with paragraph 8.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

- (1) (A) other than in the case of any Collateral or the Equity Interests of any Mortgaged Guarantor or any parent or indirect parent of a Mortgaged Guarantor that is a subsidiary of the Parent, any single transaction or series of related transactions that involves assets or the issuance of Equity Interests of any Restricted Subsidiary having a Fair Market Value of less than \$5,000,000; and (B) any single transaction or series of related transactions that involves Collateral (other than Equity Interests of any Mortgaged Guarantor or any parent or indirect parent of a Mortgaged Guarantor that is a subsidiary of the Parent and Trust Monies) having a Fair Market Value of less than \$1,000,000;
- (2) a sale, lease, conveyance, transfer or other disposition of assets between or among the Parent and/or its Restricted Subsidiaries; *provided* that if such sale, lease, conveyance, transfer or other disposition involves Collateral, such exemption shall only be available if such transaction is between or among the Parent and/or one or more Mortgaged Guarantors;
- (3) an issuance, sale, transfer or other disposition of Equity Interests by a Restricted Subsidiary of the Parent to the Parent or to another Restricted Subsidiary of the Parent;
- (4) the sale or other disposition of damaged, worn-out, surplus or obsolete assets or property in the ordinary course of a Permitted Business or in connection with maintenance and equipment upgrades;
- (5) the sale or other disposition of cash or Cash Equivalents (other than Trust Monies);
- (6) (i) a Restricted Payment that does not violate the covenant described above under paragraph 9 or a Permitted Investment and (ii) any issuance, sale, transfer or other disposition of Capital Stock or Indebtedness or other securities of an Unrestricted Subsidiary;
- (7) sales of accounts receivable inventory and other current assets (other than Vessels and Related Assets) in the ordinary course of a Permitted Business;
- (8) a Permitted Asset Swap;
- (9) sales and/or contributions of Securitization Assets to a Securitization Subsidiary in a Qualified Securitization Transaction for the Fair Market Value thereof including cash in an amount at least equal to 75% of the Fair Market Value thereof (for the purposes of this paragraph (9), Purchase Money Notes will be deemed to be cash);
- (10) any transfer of Securitization Assets or a fractional undivided interest therein, by a Securitization Subsidiary in a Qualified Securitization Transaction;
- (11) the unwinding of any Hedging Obligations;
- (12) the lease, assignment or sublease of any real or personal property including, but not limited, to a Vessel or Container Asset, in the ordinary course of a Permitted Business;
- (13) the grant in the ordinary course of a Permitted Business of any license or sublicense of patents, trademarks, know how and any other intellectual property;
- (14) any sale or disposition deemed to occur in connection with creating, granting or perfecting a Lien not otherwise prohibited by this Agreement;
- (15) sale of assets received upon the foreclosure of a Lien;

- (16) the surrender or waiver of contract rights or settlement, release or surrender of a contract, tort or other litigation claim in the ordinary course of a Permitted Business;
- (17) foreclosures, condemnations or any similar actions on assets; and
- (18) the disposition of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements.

“**Assigned Contracts**” means, in respect of any Mortgaged Vessel, (a) the Management Agreement, (b) the Charter, and (c) the Charter Guarantee, relating to such Mortgaged Vessel.

“**Assigned Property**” means, in respect of any Mortgaged Vessel, (a) the Earnings, (b) the Obligatory Insurances, and (c) any Requisition Compensation, relating to such Mortgaged Vessel.

“**Assigned Rights**” means:

- (1) all amounts payable to the Parent or any Mortgaged Guarantor in respect of the Assigned Property;
- (2) all of the Parent’s or any Mortgaged Guarantor’s right, title and interest in connection with the Assigned Property;
- (3) all of the Parent’s or any Mortgaged Guarantor’s right, title and interest in, and powers under, the Assigned Contracts including, without limitation:
  - (i) the right to terminate the Assigned Contracts in accordance with their terms and to make all elections, statements and presentations and give all notices and confirmations which may be made or given by the Parent or the Mortgaged Guarantor thereunder;
  - (ii) the right of the Parent or the Mortgaged Guarantor to perform and compel performance of the Assigned Contracts in accordance with their terms; and
  - (iii) the right to make all elections, statements and presentations and give all notices and confirmations which may be made or given by the Parent or the Mortgaged Guarantor under the Assigned Contracts.

“**Attributable Indebtedness**” in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate equal to the rate implicit in such transaction for the relevant lease period, determined in accordance with GAAP) of the total obligations of the lessee for net rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended); *provided, however*, that if such Sale/Leaseback Transaction results in a Capital Lease Obligation, the amount of Indebtedness required thereby will be determined in accordance with the definition of “Capital Lease Obligation.”

“**beneficial owner**” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act. The terms “Beneficially Owns,” “Beneficially Owned” and “Beneficial Ownership” have correlative meanings.

“**Board of Directors**” means:

- (1) with respect to a corporation, the board of directors of the corporation or, other than for purposes of the definition of “Change of Control,” any committee thereof duly authorized to act on behalf of such board; and
- (2) with respect to any other Person, the functional equivalent of a board of directors of a corporation or, other than for purposes of the definition of “Change of Control,” any committee thereof duly authorized to act on behalf thereof.

**“Capital Lease Obligation”** means, at the time of determination, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP.

**“Capital Stock”** means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) in the equity of such association or entity;
- (3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

**“Cash Equivalents”** means:

- (1) United States dollars, pounds sterling or Euro or other currency of a member of the Organization for Economic Cooperation and Development (including such currencies as are held as overnight bank deposits and demand deposits with banks);
- (2) securities issued or directly and fully guaranteed or insured by the government of the United States or any Member State of the European Union or any other country whose sovereign debt has a rating of at least A3 from Moody’s and at least A from S&P or any agency or instrumentality thereof having maturities of not more than one year from the date of acquisition;
- (3) demand and time deposits and eurodollar time deposits and certificates of deposit or bankers’ acceptances with maturities of one year or less from the date of acquisition, in each case, with any financial institution organized under the laws of any country that is a member of the Organization for Economic Cooperation and Development (a) whose commercial paper is rated at least “A-2” or the equivalent thereof by S&P or at least “P-2” or the equivalent thereof by Moody’s (or if at the time neither is issuing comparable ratings, then a comparable rating of another Rating Agency) or (b) having capital and surplus and undivided profits in excess of \$250,000,000;
- (4) repurchase obligations with a term of not more than 60 days for underlying securities of the types described in paragraph (2) above entered into with any financial institution meeting the qualifications specified in paragraph (3) above;
- (5) commercial paper and variable or fixed rate notes rated P-1 or higher by Moody’s Investors Service, Inc. or A-1 or higher by Standard & Poor’s Rating Services and, in each case, maturing within one year after the date of acquisition;
- (6) money market funds that invest primarily in Cash Equivalents of the kinds described in paragraphs (1) through (5) of this definition; and
- (7) instruments equivalent to those referred to in paragraphs (1) through (6) above denominated in any other foreign currency and comparable in credit quality and tenor to those referred to above and customarily to the extent reasonably required in connection with (a) any business conducted by the Parent or any of its Restricted Subsidiaries in such jurisdiction or (b) any Investment in the jurisdiction in which such Investment is made.

**“Change of Control”** means the occurrence of any of the following events:

- (1) at any time, the Parent becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by

any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act, or any successor provision), other than the Permitted Holders, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership of a majority of the total voting power of the Voting Stock of the Parent or any direct or indirect parent company of the Parent; *provided* that (x) so long as the Parent is a Subsidiary of a parent company, no Person shall be deemed to be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of the Parent unless such Person shall be or become a beneficial owner of more than 50% of the total voting power of the Voting Stock of such parent company and (y) any Voting Stock of which any Permitted Holder is the beneficial owner shall not in any case be included in calculating the Voting Stock of which any such Person first referred to above in this paragraph (1) is the beneficial owner;

- (2) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors (together with any new directors nominated for election to the Board of Directors by a Permitted Holder or whose election to such Board of Directors or whose nomination for election by the stockholders of the Parent was approved by a vote of the majority of the directors of the Parent then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Parent;
- (3) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Parent and the Restricted Subsidiaries, taken as a whole, to any Person other than a Wholly Owned Restricted Subsidiary or one or more Permitted Holders in connection with which any Person other than one or more Permitted Holders, is or becomes the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), directly or indirectly, of a majority of the total voting power of the Voting Stock of the transferee Person in such sale or transfer of assets, as the case may be, *provided* that (x) so long as such transferee Person is a Subsidiary of a Permitted Parent, no Person shall be deemed to be or become a beneficial owner of a majority of the total voting power of the Voting Stock of such transferee Person unless such Person shall be or become a beneficial owner of a majority of the total voting power of the Voting Stock of such Permitted Parent and (y) any Voting Stock of which any Permitted Holder is the beneficial owner shall not in any case be included in the calculation of any Voting Stock of which any such Person first referred to above in this paragraph (3) is the beneficial owner; or
- (4) the Parent shall adopt a plan of liquidation or dissolution or any such plan shall be approved by the stockholders of the Parent.

“**Charter**” means each time charter party or bareboat charter party entered into with respect to a Mortgaged Vessel.

“**Charter Guarantee**” means the guarantee, if any, given to the Parent or a Restricted Subsidiary by any Person guaranteeing the obligations of the charterer under the Charter.

“**CMA CGM**” means CMA CGM S.A. and its Subsidiaries.

“**CMA Ships**” means CMA Ships Management, a Subsidiary of CMA CGM.

“**Collateral**” means, collectively, all of the property and assets (including, without limitation, Trust Monies) that are from time to time subject to the Security Documents.

“**Collateral Account**” has the meaning given to that term in the Intercreditor Agreement.

“**Collateral Sale Offer**” means an offer by the Parent to all holders of the Senior Secured Notes to purchase the maximum principal amount of Senior Secured Notes that may be required to be purchased out of the Excess Collateral Proceeds in accordance with the terms of Section 4.13(II)(d) through (i) of the Senior Secured Note Indenture.

**“Consolidated Cash Flow”** means, for any period, for any Person, an amount determined for such Person and its Restricted Subsidiaries on a consolidated basis equal to:

- (1) Consolidated Net Income for such period; *plus*
- (2) the sum, without duplication, of the amounts for such Person and its Restricted Subsidiaries for such period (in each case to the extent reducing such Consolidated Net Income) of:
  - (a) Fixed Charges;
  - (b) provision for Taxes based on income;
  - (c) total depreciation expenses;
  - (d) total amortization expenses (including, without limitation, the amortization of capitalized drydocking expenses);
  - (e) other non-cash items reducing such Consolidated Net Income (including those excluded from the definition of “Fixed Charges”) (excluding (x) any such non cash item to the extent that it represents an accrual or reserve for potential cash items in any future period or amortization of a prepaid cash item that was paid in a prior period and (y) any such non-cash items resulting from the application of purchase accounting in connection with the merger of Global Ship Lease, Inc., and GSL Holdings, Inc.; on August 14, 2008);
  - (f) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly-Owned Subsidiary deducted (and not added back) in such period in calculating Consolidated Net Income, except to the extent of dividends declared or paid on, or other cash payments in respect of, Equity Interests held by such parties; and
  - (g) to the extent any Attributable Indebtedness is outstanding and is not a Capital Lease Obligation, the amount of any payments therefor less the amount of interest implicit in such payments; *minus*
- (3) the amount for such period (to the extent increasing such Consolidated Net Income) of non-cash items increasing such Consolidated Net Income (other than any such non-cash item to the extent it represents the reversal of an accrual or reserve for potential cash items in any prior period);

*provided* that the items listed in paragraphs (2)(a) through (g) of a Restricted Subsidiary will be included in Consolidated Cash Flow only to the extent (and in the same proportion) that the net income of such Subsidiary was included in calculating Consolidated Net Income for such period.

Notwithstanding the foregoing, for purposes of Consolidated Cash Flow, in the event that the Parent or any of its Restricted Subsidiaries (i) receive (a) any advances for services rendered or to be rendered over multiple periods, (b) termination payments in connection with the termination of charter contracts which otherwise would have been in effect for multiple periods, (c) insurance payments in respect of Vessels which were subject to charters that would have been in effect for multiple periods and/or (ii) pays a termination payment in order to terminate a charter that would have been in effect over multiple periods, the Parent may, in its good faith judgment, (without duplication) adjust Consolidated Cash Flow to amortize the receipt of such payments over the applicable periods and the effect of such expenses over the applicable period.

**“Consolidated Leverage”** means, as of any date of determination, the sum of the total amount of Indebtedness (excluding Indebtedness that is contractually subordinated in right of payment to the Senior Secured Notes and the obligations under the Finance Documents) and Disqualified Stock of the Parent and its Restricted Subsidiaries on a consolidated basis.

**“Consolidated Leverage Ratio”** means with respect to any specified Person, the ratio of (x) the Consolidated Leverage of such Person as of the end of the most recently ended fiscal quarter for which internal financial statements are available immediately preceding the date of on which the event for which the calculation of the Consolidated Leverage Ratio is made shall occur or has occurred (the “Calculation Date”) minus cash and Cash Equivalents included on the consolidated balance sheet of the Parent as of the end of the most recently ended fiscal quarter for which internal financial statements are available immediately preceding the date to (y) the Consolidated Cash Flow of such Person for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the Calculation Date, with such *pro forma* adjustments to Consolidated Leverage, cash, Cash Equivalents and Consolidated Cash Flow as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of “Fixed Charge Coverage Ratio.”

**“Consolidated Net Income”** means, for any period, the net income (or net loss) of the Parent and its Restricted Subsidiaries for such period as determined on a consolidated basis in accordance with GAAP and without any reduction in respect of preferred stock dividends, adjusted to the extent included in calculating such net income or loss by excluding (without duplication):

- (1) any net after-tax extraordinary or nonrecurring gains or losses (less all fees and expenses relating thereto);
- (2) any net after-tax gains or losses (less all fees and expenses relating thereto) attributable to asset sales or dispositions of securities;
- (3) the portion of net income (or loss) of any Person (other than the Parent or a Restricted Subsidiary) in which the Parent or any Restricted Subsidiary has an ownership interest, except to the extent of the amount of dividends or other distributions actually paid to the Parent or any Restricted Subsidiary in cash (or to the extent converted into cash or Cash Equivalents) during such period;
- (4) solely for purpose of calculating Consolidated Net Income to determine the amount of Restricted Payments permitted under paragraph 9, the net income (but not the net loss) of any Restricted Subsidiary (other than any Guarantor or Securitization Subsidiary) shall be excluded to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary is at the date of determination restricted, directly or indirectly, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived or otherwise released; *provided* that Consolidated Net Income of the Parent will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) or Cash Equivalents to the Parent or a Restricted Subsidiary in respect of such period, to the extent not already included therein;
- (5) any non-cash expenses or charges resulting from stock, stock option or other equity-based awards;
- (6) the cumulative effect of a change in accounting principles;
- (7) any impairment charge or asset write-off or write-down, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;
- (8) the net after-tax effects of adjustments in the inventory, property and equipment, goodwill, intangible assets, deferred revenue and debt line items in such Person’s consolidated financial statements pursuant to GAAP resulting from the application of purchase accounting or the amortization or write off of any amounts thereof, other than any such net after tax effects resulting from the application of purchase accounting in connection with the merger of Global Ship Lease, Inc., and GSL Holdings, Inc. on August 14, 2008;
- (9) any fees and expenses incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, recapitalization, asset sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (including without limitation any such transaction consummated prior to the date of this Agreement and any such transaction undertaken but not completed) and any non-recurring merger costs or charges incurred during such period as a result of any such transaction;



- (10) any net operating losses arising as a result of the release of any valuation allowance made in respect of deferred tax assets, following a determination that any such deferred tax assets will not be realized;
- (11) any unrealized gains or losses from derivative hedging instruments; and
- (12) any non-cash expenses or charges resulting from the preferred stock (other than Disqualified Stock) outstanding (or committed to be issued) as of the date of this Agreement.

“**Container Assets**” means shipping containers and other container related assets (not classified as current assets under GAAP) used or useful in a Permitted Business.

“**Credit Facilities**” means one or more debt facilities (including this Agreement) or agreements or commercial paper facilities, in each case, with banks, other institutional lenders, commercial finance companies or other lenders providing for revolving credit loans, term loans, bonds, debentures, securitization financing (including through the transfer of Securitization Assets to special purpose entities formed to borrow from such lenders against, or sell undivided interests in, such assets in a Qualified Securitization Transaction) or letters of credit, pursuant to agreements or indentures, in each case, as amended, restated, modified, renewed, refunded, replaced, increased or refinanced (including by means of sales of debt securities to institutional investors) in whole or in part from time to time (and without limitation as to amount, terms, conditions, covenants and other provisions, including increasing the amount of available borrowings thereunder, changing or replacing agent banks and lenders thereunder or adding, removing or reclassifying the Parent and/or Subsidiaries of the Parent as borrowers or guarantors thereunder).

“**Currency Exchange Protection Agreement**” means, in respect of any Person, any foreign exchange contract, currency swap agreement, currency option, cap, floor, ceiling or collar or agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates as to which such Person is a party.

“**Debt Documents**” shall have the meaning assigned to such term in the Intercreditor Agreement.

“**Designated Additional Notes Contribution**” means, in respect of any Indebtedness incurred pursuant to the issuance of additional Senior Secured Notes, any other cash, Cash Equivalents or other assets of the Parent or any Restricted Subsidiary used as payment for a portion of the purchase price of Qualified Vessels or Qualified Container Assets (excluding any reasonable related fees or expenses incurred in connection therewith); *provided* that the aggregate amount of all such cash, Cash Equivalents and other assets used by the Parent or any Restricted Subsidiary for such payment, together with the aggregate amount of all other Designated Additional Notes Contributions made in such fiscal year (in each case excluding the net proceeds of any Indebtedness incurred in connection with such transactions that is secured by a Permitted Lien) does not exceed \$10,000,000 in such fiscal year plus the aggregate amount that could have been applied on the date that such additional Senior Secured Notes are issued as Restricted Investments under paragraph 9.1(3)(b) (and an equivalent amount of Restricted Payments shall be deemed to have been made under paragraph 9.1(3)(b)), in each case as designated in an Officer’s Certificate on the date such additional Senior Secured Notes are issued. If any such Indebtedness is permanently discharged (other than with the proceeds of any Indebtedness), then the amount available under paragraph 9.1(3)(b) shall be increased by the aggregate amount of any Designated Additional Notes Contribution attributable to such discharged Indebtedness as designated in an Officer’s Certificate.

“**Designated Appraiser**” means any of Howe Robinson Marine Evaluations Ltd.; Braemar Seascope Valuation Ltd.; Drewry Maritime Service (Asia) pte Ltd.; Maritime Strategies International Limited; Fearnleys A.S.; Oslo Shipbrokers A.S.; Clarkson Valuations Limited; Simpson Spence & Young Shipbrokers Ltd.; E.A. Gibson Shipbrokers Ltd.; Jacq. Pierot Jr. & Sons; Allied Shipbroking, Greece; RS Platou ASA; ICAP Shipping Limited; ACM Ltd., London; Island Shipbrokers PTE LTD, Singapore; Deloitte LLP; Ernst & Young LLP; KPMG LLP; Marsoft; Barry Rogliano Salles (BRS); Kontiki Shipbrokers and Maersk Broker, or, if none of the foregoing is at such time generally providing appraisals of vessels (as determined in good faith by the Parent)

then, an Independent Appraiser or an independent investment banking firm of international standing qualified to perform such valuation (as determined in good faith by the Parent); *provided* that, at the time any such firm is to be utilized, such firm would qualify as an Independent Appraiser.

**“Designated Asset Finance Contribution”** means, in respect of any Indebtedness incurred pursuant to paragraph 8.2(4) (“Asset Finance Debt”), any other cash, Cash Equivalents or other assets of the Parent or any Restricted Subsidiary used as payment for a portion of the purchase price, charter expense, lease expense, rental payments or cost of design, construction, installation or improvement of Vessels or Container Assets used in the business of the Parent or any of its Restricted Subsidiaries (excluding any reasonable related fees or expenses incurred in connection therewith), whether through the charter of, leasing of, or the direct purchase of, or of the Capital Stock of any Person owning, such Vessels or Container Assets (including any Indebtedness deemed to be incurred in connection with such purchase); *provided* that the aggregate amount of all such cash, Cash Equivalents and other assets used by the Parent or any Restricted Subsidiary for such payment, together with the cost of all other unrealized Designated Asset Finance Contributions made on or prior to such date (in each case excluding the net proceeds of any Indebtedness incurred in connection with such transactions that is secured by a Permitted Lien) does not exceed \$10,000,000 in such fiscal year plus the aggregate amount that could have been applied on the date that such Indebtedness is incurred as Restricted Investments under paragraph 9.1(3) or paragraph 9.2(13) or as Permitted Investments under clauses (15) or (18) under the definition of “Permitted Investments” (the “*Permitted Payment Baskets*”) (and an equivalent amount of Restricted Payments or Permitted Investments shall be deemed to have been made under one or more of the Permitted Payment Baskets), in each case as designated in an Officer’s Certificate on the date such Indebtedness is incurred. If any Asset Finance Debt is permanently discharged (other than with the proceeds of any Permitted Refinancing Indebtedness or other Asset Finance Debt), then the amount available under one or more of the Permitted Payment Baskets shall be increased by the aggregate amount of any Designated Asset Finance Contribution attributable to such discharged Indebtedness as designated in an Officer’s Certificate.

**“Designated Non-cash Consideration”** means the Fair Market Value of non-cash consideration received by the Parent or one of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer’s Certificate, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

**“Disqualified Stock”** means the Existing Mandatorily Redeemable Preference Shares and any other Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the Termination Date. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the issuer thereof to repurchase or redeem such Capital Stock upon the occurrence of a change of control or an asset sale prior to the Termination Date will not constitute Disqualified Stock. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Parent and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock.

**“Earnings”** means all present and future moneys and claims which are earned by or become payable to or for the account of the Parent or any Mortgaged Guarantor in connection with the operation or ownership of the Mortgaged Vessel and including but not limited to (i) freights, passage and hire moneys (howsoever earned); (ii) remuneration for salvage and towage services; (iii) demurrage and detention moneys; (iv) all moneys and claims in respect of the requisition for hire of the Mortgaged Vessel; (v) payments received in respect of any off-hire insurance; and (vi) payments received pursuant to any Charter Guarantee.

**“Earnings Account”** means, with respect to any Mortgaged Vessel, a deposit account into which all Earnings derived from any Charter with respect to such Mortgaged Vessel shall be deposited or forwarded that is subject to a lien in favor of the Security Agent, except to the extent prohibited by applicable law.

**“Eligible Jurisdiction”** means any of the Republic of the Marshall Islands, the United States of America, any State of the United States or the District of Columbia, the Commonwealth of the Bahamas, the

Republic of Liberia, the Republic of Panama, the Commonwealth of Bermuda, the British Virgin Islands, the Cayman Islands, the Isle of Man, Cyprus, Norway, Greece, Hong Kong, the United Kingdom, Malta, any Member State of the European Union and Singapore and any other jurisdiction generally acceptable to institutional lenders in the shipping industry, as determined in good faith by the Parent.

“**Equity Interests**” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“**Equity Offering**” means any issuance and sale by the Parent of its Qualified Equity Interests.

“**Event of Loss**” means any of the following events: (a) the actual or constructive total loss of a Vessel or the agreed or compromised total loss of a Vessel, (b) the destruction of a Vessel, (c) damage to a Vessel to an extent, determined in good faith by the Parent within 90 days after the occurrence of such damage (and evidenced by an Officer’s Certificate to such effect delivered to the Facility Agent and the Security Agent, within such 90-day period), as shall make repair thereof uneconomical or shall render such Vessel permanently unfit for normal use (other than obsolescence) or (d) the condemnation, confiscation, requisition for title, seizure, forfeiture or other taking of title to or use of a Vessel that shall not be revoked within six months. An Event of Loss shall be deemed to have occurred: (i) in the event of the destruction or other actual total loss of a Vessel, on the date of such loss, or if such date is unknown, on the date such Vessel was last reported; (ii) in the event of a constructive, agreed or compromised total loss of a Vessel, on the date of determination of such total loss; (iii) in the case of any event referred to in paragraph (c) above, upon the delivery of the Parent’s Officer’s Certificate to the Facility Agent and the Security Agent ; or (iv) in the case of any event referred to in paragraph (d) above, on the date that is six months after the occurrence of such event.

“**Event of Loss Proceeds**” means all compensation, damages and other payments (including insurance proceeds) received by the Parent, any Mortgaged Guarantor, the Facility Agent or the Security Agent, jointly or severally, from any Person, including any governmental authority, with respect to or in connection with an Event of Loss.

“**Excess Cash Flow**” means, for any fiscal year of the Parent, the excess, if any, of (a) the sum, without duplication, of:

- (i) Consolidated Net Income for such fiscal year;
- (ii) the amount of all non-cash expenses (including depreciation and amortization) deducted in arriving at such Consolidated Net Income for such fiscal year;
- (iii) decreases in consolidated working capital (excluding Cash Equivalents and the current portion of long term Indebtedness) for such fiscal year;
- (iv) the aggregate net amount of non-cash loss on the disposition of assets by the Parent and its Restricted Subsidiaries during such fiscal year (other than sales of inventory in the ordinary course of business), to the extent deducted in arriving at such Consolidated Net Income; and
- (v) the amount of all income Taxes expensed, but not paid in cash for such fiscal year;

minus (b) the sum, without duplication, of:

- (i) the amount of all non-cash income included in arriving at such Consolidated Net Income for such fiscal year;
- (ii) the aggregate amount actually paid by the Parent and its Restricted Subsidiaries in cash during such fiscal year on account of capital expenditures (excluding (A) capital expenditures funded from (x) the proceeds of Indebtedness incurred or Equity Interests issued after the date of this Agreement, (y) Net Proceeds of Asset Sales, (z) Event of Loss Proceeds and other insurance proceeds and (B) capital expenditures to purchase Vessels or Container Assets or improve or maintain such purchased Vessels or Container Assets in such fiscal year);

- (iii) the aggregate amount of all principal payments of any term loans or other funded Indebtedness during such fiscal year as contractually required by the terms of such instruments;
- (iv) increases in consolidated working capital (excluding Cash Equivalents and the current portion of long term Indebtedness) for such fiscal year;
- (v) the aggregate net amount of non-cash gains on the disposition of assets by the Parent and its Restricted Subsidiaries during such fiscal year (other than sales of inventory in the ordinary course of business), to the extent included in arriving at such Consolidated Net Income;
- (vi) payments for current Taxes payable in cash in such fiscal year to the extent they exceed the amount of Tax expense deducted in determining Consolidated Net Income for such fiscal year; and
- (vii) the aggregate principal amount of Senior Secured Notes redeemed in accordance with the provisions of section [3.07] of the Senior Secured Indenture in such fiscal year.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended.

“**Exercised Vessel Purchase Option Contract**” means any Vessel Purchase Option Contract which has been exercised by the Parent or a Restricted Subsidiary, obligating the Parent or such Restricted Subsidiary to purchase such Vessel and any Related Assets, subject only to customary conditions precedent.

“**Existing Charters**” means each of the time charters existing on the date of this Agreement with respect to the Existing Mortgaged Vessels, as each such time charter is amended through the date of this Agreement and as each such time charter may be amended, modified, supplemented, replaced, extended or renewed from time to time in compliance with paragraph 12.2(7).

“**Existing Indebtedness**” means Indebtedness of the Parent and its Subsidiaries in existence on the date of this Agreement after giving effect to the issuance of the Senior Secured Notes and the use of proceeds therefrom, including the amount of undrawn commitments under any Credit Facilities (including under this Agreement) in existence on the date of this Agreement.

“**Existing Management Agreements**” means the Management Agreements existing on the date of this Agreement and entered into between CMA Ships and the Parent pursuant to which CMA Ships provides day-to-day technical ship management services, as each such agreement is amended through the date of this Agreement and as such agreement may be amended, modified, supplemented, replaced, extended or renewed from time to time in compliance with paragraph 12.2(7).

“**Existing Mandatorily Redeemable Preference Shares**” means the Mandatorily Redeemable Preference Shares, Series A of the Parent with the powers, designations preferences and rights and qualifications, limitations and restrictions as set forth in a Certificate of Designation filed with the Registrar of Corporations of the Republic of the Marshall Islands on August 14, 2008, as amended by the Agreement dated as of August 20, 2009, by and between the Parent and CMA CGM, and as the same may be further amended, modified, supplemented, replaced, extended or renewed from time to time in compliance with the provisions of this Agreement.

“**Existing Mortgaged Vessels**” means the following Vessels owned by a Guarantor on the date of this Agreement: Ville d’Orion, Ville d’Aquarius, CMA CGM Matisse, CMA CGM Utrillo, Delmas Keta, Julie Delmas, Kumasi, Marie Delmas, CMA CGM La Tour, CMA CGM Manet, CMA CGM Alcazar, CMA CGM Château d’If, CMA CGM Thalassa, CMA CGM Jamaica, CMA CGM Sambhar, CMA CGM America and CMA CGM Berlioz.

“**Fair Market Value**” means, with respect to any asset or property, the value that would be paid by a willing buyer to an unaffiliated willing seller in an arm’s length transaction not involving distress or necessity of either party. Fair Market Value shall be determined in good faith by (i) if the value of such property or asset is less than \$10,000,000, an officer of the Parent and (ii) if the value of such property or asset equals or exceeds \$10,000,000, the Board of Directors of the Parent; *provided, however,* that (w) subject to the definitions of

“Mortgaged Vessels” and “Qualified Vessels”, the Fair Market Value of any Vessel shall be the greater of such Vessel’s “charter-free” and “charter-adjusted” values, as applicable, (x) if such determination is with respect to one or more Vessels with a value that equals or exceeds \$20,000,000 (as determined by the Parent in good faith), Fair Market Value shall be based on the Appraised Value of such Vessel and (y) if such determination relates to the determination by the Parent of compliance with paragraph 8.2(4) such determination shall comply with paragraph (x) to the extent such determination relates to one or more Vessels and in all other cases to the extent Related Assets that have not been included in the calculation of the Appraised Value of a Vessel which Related Assets have a value in excess of \$20,000,000, such determination shall be based on the Appraised Value of such Related Assets or on the written opinion of an independent accounting, appraisal or investment banking firm of international standing qualified to perform the task for which such firm has been engaged (as determined by the Parent in good faith).

“**Fixed Charge Coverage Ratio**” means with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems Disqualified Stock or preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made occurred (the “Calculation Date”), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or preferred stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

- (1) acquisitions (including of Vessels and Related Assets including, without limitation, chartered-in Vessels) that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, of any other Person or any of its Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and any prior acquisitions by such other Person to the extent not fully reflected in the historical results of operations of such other Person, and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be given pro forma effect as if they had occurred on the first day of the four quarter reference period;
- (2) the Consolidated Cash Flow attributable to operations (including Vessels and Related Assets) or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;
- (3) the Fixed Charges attributable to operations (including Vessels and Related Assets) or businesses (and ownership interests therein) disposed of prior to the Calculation Date will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;
- (4) any Person that is a Restricted Subsidiary on the Calculation Date (or would become a Restricted Subsidiary on such Calculation Date in connection with the transaction requiring determination of such Consolidated Cash Flow) will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;
- (5) any Person that is not a Restricted Subsidiary on the Calculation Date (or would cease to be a Restricted Subsidiary on such Calculation Date in connection with the transaction requiring determination of such Consolidated Cash Flow) will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period;

- (6) if any Indebtedness bears a floating rate of interest, the interest expense on such Indebtedness will be calculated at the actual rate that was in effect from time to time (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months); and
- (7) if the Parent or any Restricted Subsidiary shall have entered into an agreement to acquire a Vessel which at the time of calculation of the Fixed Charge Coverage Ratio is being constructed on behalf of the Parent or such Restricted Subsidiary (each such Vessel, a “Pending Vessel”) and if such Pending Vessel is scheduled to be delivered no later than 24 months from the date of such calculation of the Fixed Charge Coverage Ratio, pro forma effect will be given to the extent provided in the next paragraph below.

For purposes of this definition, whenever pro forma effect is to be given to an acquisition (including, without limitation, the charter-in of a Vessel) or construction of a Vessel or the Capital Stock of a Person that owns, or charters in, one or more Vessels or the financing thereof, such Person may (i) subject in the case of a Pending Vessel to paragraph (iii) below, if a relevant Vessel is or is to be subject to a time charter-out with a remaining term of twelve months or longer, apply for the period for which the Fixed Charge Coverage Ratio is being calculated pro forma earnings (losses) for such Vessel based upon such charter-out, (ii) subject in the case of a Pending Vessel to paragraph (iii) below, if a relevant Vessel is or is to be subject to a time charter-out with a remaining term of between six and twelve months, apply for the period for which the Fixed Charge Coverage Ratio is being calculated the annualized amount of pro forma earnings (losses) for such Vessel based upon such charter-out, or (iii) if such Vessel is a Pending Vessel described in paragraph (7) of this definition then, include, to the extent that such Pending Vessel has not been delivered to the Parent or a Restricted Subsidiary or if so delivered has not been deployed for the entire period for which the Fixed Charge Coverage Ratio is being calculated, for such period (or the portion of such period during which such Pending Vessel was not deployed if such Pending Vessel has been deployed but not for the entire period) the Proportionate Amount of earnings (losses) for such Pending Vessel with such earnings determined based upon the applicable provisions of paragraphs (i) and (ii) above (or the ratable amount of such Proportionate Amount of earnings (losses) to the extent the Pending Vessel has been deployed but for less than the entire period (with the actual earnings of such Pending Vessel being given effect to for the period deployed to the extent otherwise included in the calculation of Consolidated Cash Flow). If pro forma effect is given to the earnings (losses) of any Pending Vessel under this paragraph, pro forma effect shall also be given to any increase (decrease) in Fixed Charges to be incurred in connection with the acquisition, construction or Ready for Sea Cost of such Pending Vessel (which determination shall be made in good faith by a responsible accounting officer of the Parent). As used herein, “Proportionate Amount of earnings (losses)” means the product of the earnings (losses) referred to above and the percentage of the aggregate purchase price for such Vessel that has been paid as of the relevant date of the determination of the Fixed Charge Coverage Ratio.

Additionally, any pro forma calculations may include the reduction or increase in costs for the applicable period resulting from, or in connection with, the acquisition of assets, an asset sale or other transaction or event which is being given pro forma effect that (a) would be permitted to be reflected on pro forma financial statements pursuant to Regulation S-X under the Securities Act or (b) has been realized at the time such pro forma calculation is made or is reasonably expected to be realized within twelve months following the consummation of the transaction to which such pro forma calculations relate, which actions shall be made in good faith by a responsible accounting officer of the Parent.

“**Fixed Charges**” means, with respect to any specified Person for any period, the sum, without duplication, of:

- (1) the consolidated interest expense net of consolidated interest income of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, (x) including, without limitation, amortization of original issue discount, non cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Indebtedness or derivative instruments pursuant to GAAP), the interest component of any deferred payment obligations, the interest component of any Securitization Fees, the interest component of all payments associated with Capital Lease Obligations and the net payments made pursuant to Hedging Obligations in respect of interest rates and (y) excluding to the extent included in consolidated interest expense (A) breakage costs in connection with the

termination of hedging agreements for interest rates or credit facilities on the date of this Agreement, (B) accretion or accrual of discounted liabilities not constituting Indebtedness, (C) any expense resulting from the discounting of Indebtedness in connection with the application of purchase accounting in connection with an acquisition, and (D) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses; plus

- (2) the consolidated interest of such Person and its Restricted Subsidiaries that was capitalized during such period; plus
- (3) any interest accruing on Indebtedness of another Person that is guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, but only to the extent that such interest is actually paid by such Person or such Restricted Subsidiary; plus
- (4) all dividends accrued or paid on any series of Disqualified Stock of the Parent or any Disqualified Stock or preferred stock of any Restricted Subsidiary (other than any such Disqualified Stock or preferred stock held by the Parent or a Wholly Owned Restricted Subsidiary or to the extent paid in Qualified Equity Interests); plus
- (5) to the extent any Attributable Indebtedness is outstanding and is not a Capital Lease Obligation, the amount of interest implicit in any payments related to such Attributable Indebtedness during such period.

**“Forward Freight Agreement”** means, with respect to any Person, any forward freight agreement or comparable swap, future or similar agreement or arrangement relating to derivative trading in freight or similar rates.

**“GAAP”** means generally accepted accounting principles in the United States of America as in effect on the date of this Agreement, as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, in each case, as in effect on the date of this Agreement, or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, in each case, as in effect on the date of this Agreement.

**“Global Expense Agreement”** means the amended and restated global expense agreement dated August 14, 2008, between the Parent, CMA CGM and CMA Ships, as amended through the date of this Agreement and as such agreement may be amended, modified, supplemented, replaced, extended or renewed from time to time in compliance with paragraph 12.2(7).

**“Government Securities”** means direct obligations of, or obligations guaranteed by, the United States of America, and the payment for which the United States pledges its full faith and credit.

**“Hedging Obligations”** means, with respect to any Person, the obligations of such Person under swap, cap, collar, forward purchase, Forward Freight Agreements or agreements or arrangements similar to any of the foregoing and dealing with interest rates, currency exchange rates, commodity prices or freight rates, either generally or under specific contingencies.

**“Heirs”** of any individual means such individual’s estate, spouse, lineal relatives (including adoptive descendants), administrator, committee or other personal representative or other estate planning vehicle and any custodian or trustee for the benefit of any spouse or lineal relatives (including adoptive descendants) of such individual.

**“Indebtedness”** of any Person at any date means, without duplication:

- (1) all liabilities, contingent or otherwise, of such Person for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof);
- (2) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

- (3) all reimbursement obligations of such Person in respect of letters of credit, letters of guaranty, bankers' acceptances and similar credit transactions;
- (4) all obligations of such Person representing the balance of the deferred and unpaid purchase price of any property or services due more than six months after such property is acquired or such services are completed and which is treated as indebtedness under GAAP, except any such balance that constitutes an accrued expense or trade payable, or similar obligations to trade creditors incurred in the ordinary course of a Permitted Business;
- (5) all Capital Lease Obligations of such Person;
- (6) all Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person;
- (7) all Indebtedness of others guaranteed by such Person to the extent of such guarantee; *provided* that Indebtedness of the Parent or its Subsidiaries that is guaranteed by the Parent or the Parent's Subsidiaries shall only be counted once in the calculation of the amount of Indebtedness of the Parent and its Subsidiaries on a consolidated basis; *provided, further*, that Standard Securitization Undertakings in connection with a Qualified Securitization Transaction shall not be considered to be a guarantee of Indebtedness;
- (8) all Attributable Indebtedness;
- (9) to the extent not otherwise included in this definition, Hedging Obligations of such Person; and
- (10) all obligations of such Person under conditional sale or other title retention agreements relating to assets purchased by such Person.

Notwithstanding the foregoing, Indebtedness shall be deemed not to include any operating leases as such an instrument would be determined in accordance with GAAP on the date of this Agreement.

Notwithstanding paragraph (4) above, the obligation of the Parent or any Restricted Subsidiary to pay the purchase price for an Exercised Vessel Purchase Option Contract entered into and exercised in the ordinary course of a Permitted Business and consistent with past practices of the Parent and its Restricted Subsidiaries shall not constitute "Indebtedness" under paragraph (4) above even though the purchase price therefor may be due more than six months after exercise thereof.

For purposes of calculating "Consolidated Leverage" the amount of Indebtedness in respect of a Hedging Obligation will be the liability, if any, included on the consolidated balance sheet of the Parent as of the end of the most recently ended fiscal quarter for which internal financial statements are available immediately preceding the applicable calculation date in respect of such Hedging Obligation.

**"Independent Appraiser"** means a Person:

- (1) that is (a) engaged in the business of appraising Vessels who is generally acceptable to institutional lenders to the shipping industry or (b) if no Person described in paragraph (1)(a) is at such time generally providing appraisals of vessels (as determined in good faith by the Parent) then, an independent investment banking firm of international standing qualified to perform such valuation (as determined in good faith by the Parent); and
- (2) who (a) is independent of the parties to the transaction in question and their Affiliates and (b) is not connected with the Parent, any of the Restricted Subsidiaries or any of such Affiliates as an officer, director, employee, partner or person performing similar functions.

**"Investment Grade Rating"** means a rating equal to or higher than Baa3 (with stable outlook or better) (or the equivalent) by Moody's and BBB (with stable outlook or better) (or the equivalent) by S&P or an equivalent rating by any other Rating Agency.



**“Investments”** means, with respect to any Person, all investments by such Person in other Persons in the forms of loans (including guarantees or other obligations), advances or capital contributions, purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP but excluding extensions of trade credit or advances, deposits and payments to or with suppliers, lessors or utilities or for workers’ compensation in the ordinary course of a Permitted Business or prepaid expenses or deposits on the balance sheet of such Person prepared in accordance with GAAP. If the Parent or any Restricted Subsidiary of the Parent sells or otherwise disposes of any Equity Interests of any Restricted Subsidiary of the Parent such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Parent, the Parent will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Parent’s Investments in such Subsidiary that were not sold or disposed of in an amount determined as provided in paragraph 9.4. The acquisition by the Parent or any Restricted Subsidiary of the Parent of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Parent or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person in an amount determined as provided in paragraph 9.4. Except as otherwise provided in this Agreement, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value.

**“Lien”** means, with respect to any asset, any mortgage, lien, pledge, charge, assignment, security interest or encumbrance of any kind on such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided* that in no event shall an operating lease that is not a Capital Lease Obligation be deemed to constitute a Lien.

**“Loan To Value Ratio”** means the ratio of (x) the aggregate principal amount of the additional Senior Secured Notes to be issued at such time to (y) the sum of (I) the aggregate purchase price of all Qualified Collateral to be purchased by (or contributed to) one or more Mortgaged Guarantors with the proceeds of the issuance of such additional Senior Secured Notes and other funds available to the Parent on the date of issuance of such additional Senior Secured Notes and (II) any cash proceeds from the issuance of such additional Senior Secured Notes and any other funds, in each case, that the Parent elects to deposit (and does in fact deposit) as Trust Monies with the Security Agent, for the benefit of the Secured Parties, in connection with the issuance of such additional Senior Secured Notes.

**“Management Agreement”** means each management agreement entered into with respect to a Mortgaged Vessel between the Parent or a Mortgaged Guarantor and the manager of the Mortgaged Vessel from time to time.

**“Moody’s”** means Moody’s Investors Service, Inc. and any successor to its rating agency business.

**“Mortgaged Container Assets”** means any Container Assets made subject to the Lien of the Security Documents in favor of the Security Agent, for the benefit of the secured parties under the Intercreditor Agreement, pursuant to the provisions described under paragraph 3.

**“Mortgaged Guarantor”** means an Obligor that is a Wholly-Owned Restricted Subsidiary and that is the owner of one or more Mortgaged Vessels or Mortgaged Container Assets.

**“Mortgaged Vessels”** means (i) the Existing Mortgaged Vessels, and (ii) any other Vessels made subject to the Lien of the Security Documents in favor of the Security Agent, for the benefit of the Secured Parties pursuant to paragraph 3.

**“Net Proceeds”** means the aggregate cash and Cash Equivalents proceeds received by the Parent or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of fees, commissions, expenses and other direct costs relating to such Asset Sale, including, without limitation, (a) fees and expenses related to such Asset Sale (including legal, accounting and investment banking fees, title and recording Tax fees

and sales and brokerage commissions, and any relocation expenses and severance or shutdown costs incurred as a result of such Asset Sale), (b) all federal, state, provincial, foreign and local Taxes paid or payable as a result of the Asset Sale, (c) amounts required to be applied to the repayment of Indebtedness, other than Indebtedness under a Credit Facility, (d) amounts required to be paid to any Person (other than the Parent or any of its Restricted Subsidiaries) owning a beneficial interest in the assets which are subject to such Asset Sale and (e) any escrow or reserve for adjustment in respect of the sale price of such assets established in accordance with GAAP and any reserve in accordance with GAAP against any liabilities associated with such Asset Sale and retained by the seller after such Asset Sale, including pension and other post employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale except to the extent that such proceeds are released from any such escrow or to the extent such reserve is reduced or eliminated.

**“Non-Recourse Debt”** means Indebtedness:

- (1) as to which neither the Parent nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness (other than the applicable debtor of such Indebtedness and, with respect to a Securitization Subsidiary, pursuant to Standard Securitization Undertakings in connection with a Qualified Securitization Transaction)), (b) is directly or indirectly liable as a guarantor or otherwise (other than the applicable debtor of such Indebtedness and, with respect to a Securitization Subsidiary, pursuant to Standard Securitization Undertakings in connection with a Qualified Securitization Transaction), or (c) constitutes the lender; and
- (2) as to which the lenders have been notified in writing or have contractually agreed that they will not have any recourse to the stock or assets of the Parent or any of its Restricted Subsidiaries (other than the assets of the applicable debtor of such Indebtedness and, in the case of a Qualified Securitization Transaction, the equity interests in, any Purchase Money Notes of and the assets of the applicable Securitization Subsidiary).

Indebtedness which is otherwise Non-Recourse Debt will not lose its character as Non-Recourse Debt because there is recourse to the borrower, any guarantor or any other Person for (i) environmental warranties and indemnities, or (ii) indemnities for and liabilities arising from fraud, misrepresentation, misapplication or non-payment of rents, profits, insurance and condemnation proceeds and other sums actually received by the borrower from secured assets to be paid to the lender, waste and mechanics' liens.

**“Obligations”** means any principal, interest, penalties, fees, costs and expenses, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

**“Obligatory Insurances”** means in respect of each Mortgaged Vessel:

- (1) all contracts and policies of insurance which are from time to time required to be effected and maintained in accordance with this Agreement and the Security Documents in respect of such Mortgaged Vessel; and
- (2) all benefits under the contracts, policies under paragraph (1) above and all claims in respect of them and the return of premiums.

**“Officer”** means, with respect to any Person, any of the following: the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the President, the Chief Operating Officer, the Chief Technical Officer, any Vice President, any Assistant Vice President, the Treasurer, any Assistant Treasurer, the Secretary, any Assistant Secretary, the Controller or any other officer designated by the relevant Board of Directors serving in a similar capacity.

**“Officer’s Certificate”** means a certificate signed on behalf of the Parent by any one Officer of the Parent, who must be the principal executive officer, the principal financial officer, the treasurer, the controller, the general counsel or the principal accounting officer of the Parent.

**“Opinion of Counsel”** means a written opinion from legal counsel that meets the requirements of this Agreement. The counsel may be an employee of, or counsel to, the Parent or a Guarantor. Opinions of Counsel required to be delivered under this Agreement may have qualifications customary for opinions of the type required in the relevant jurisdiction or related to the items covered by the opinion and counsel delivering such Opinions of Counsel may rely on certificates of the Parent or government or other officials customary for opinions of the type required, including certificates certifying as to matters of fact.

**“Permitted Asset Swap”** means the exchange of property or assets of the Parent or any Restricted Subsidiary (other than property or assets constituting Collateral) for assets to be used by the Parent or a Restricted Subsidiary in a Permitted Business.

**“Permitted Business”** means any business engaged in by the Parent, any Restricted Subsidiary of the Parent, or any direct or indirect parent of the Parent on the date of this Agreement and any business or other activities that are reasonably related, ancillary, supplemental or complementary thereto, or a reasonable extension, development or expansion of, the businesses in which the Parent and the Restricted Subsidiaries are engaged on the date of this Agreement.

**“Permitted Flag Jurisdiction”** means any of the Republic of the Marshall Islands, the Republic of Liberia, the Republic of Panama, Greece, Malta, the Republic of Cyprus, the Commonwealth of the Bahamas, the British Virgin Islands, the Hong Kong Special Administrative Region of the People’s Republic of China, Bermuda, the Cayman Islands, the Isle of Man, the United Kingdom, Singapore, Gibraltar, the People’s Republic of China, France, Germany, Netherlands, Denmark and any other jurisdiction generally acceptable to institutional lenders in the shipping industry, as determined in good faith by the Board of Directors.

**“Permitted Hedging Obligations”** means at any time, Hedging Obligations designed to manage interest rates or interest rate risk or protect against fluctuations in currency exchange rates, commodity prices or present rates and not for speculative purposes (all as determined by the Parent on the date of entering into such Hedging Obligation). Forward Freight Agreements entered into by the Parent in its good faith determination for the purpose of hedging available days against fluctuations in freight rates (as so determined by the Parent on the date of entering into such Forward Freight Agreement) shall be deemed to have been entered into not for speculative purposes and shall qualify as “Permitted Hedging Obligations” for all purposes under this Agreement.

**“Permitted Holders”** means each of: (a) CMA CGM or any Subsidiary of CMA CGM for so long as it remains a Subsidiary of CMA CGM and (b) (i) Michael S. Gross; (ii) each of his spouse, siblings, ancestors, descendants (whether by blood, marriage or adoption, and including stepchildren) and the spouses, siblings, ancestors and descendants thereof (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 Facility Agent 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; and (iii) all Affiliates controlled by the Persons named in paragraphs (i) and (ii) above.

**“Permitted Investments”** means:

- (1) any Investment in cash or Cash Equivalents;
- (2) any Investment in the Parent or in a Restricted Subsidiary;
- (3) any Investment by the Parent or any Restricted Subsidiary of the Parent in a Person, if as a result of such Investment:
  - (a) such Person becomes a Restricted Subsidiary; or
  - (b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Parent or a Restricted Subsidiary;

- (4) any Investment made as a result of the receipt of non-cash consideration from an asset sale that was made pursuant to and in compliance with paragraphs 5, 6 and 7 above;
- (5) any Investment made for consideration consisting of Qualified Equity Interests of the Parent;
- (6) any Investments received in compromise, settlement or resolution of (A) obligations of trade creditors or customers, including, without limitation, pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes with Persons who are not Affiliates;
- (7) Investments represented by Permitted Hedging Obligations;
- (8) Investments in existence on the date of this Agreement and any Investment consisting of an extension, modification or renewal of any Investment existing on, or made pursuant to a binding commitment existing on, the date of this Agreement; *provided* that the amount of any such Investment may only be increased (x) as required by the terms of such Investment as in existence on the date of this Agreement or (y) as otherwise permitted under this Agreement;
- (9) Investments in prepaid expenses, negotiable instruments held for collection and lease, endorsements for deposit or collection in the ordinary course of a Permitted Business, utility or workers' compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of a Permitted Business;
- (10) loans and advances to, or guarantees of Indebtedness of, employees and officers of the Parent and its Restricted Subsidiaries in the ordinary course of a Permitted Business not to exceed \$2,500,000 at any one time outstanding;
- (11) loans and advances to officers, directors and employees for business related travel expenses, moving expenses, payroll expenses and other similar expenses, in each case incurred in the ordinary course of a Permitted Business or consistent with past practices;
- (12) payroll, travel and similar advances made in the ordinary course of a Permitted Business to cover matters that are expected at the time of such advances to be treated as expenses in accordance with GAAP;
- (13) Investments held by a Person at the time such Person becomes a Restricted Subsidiary of the Parent or is merged into the Parent or a Restricted Subsidiary of the Parent and not made in contemplation of such Person becoming a Restricted Subsidiary or merger;
- (14) any Investment by the Parent or any Restricted Subsidiary in a Securitization Subsidiary (including, without limitation, the payment of Securitization Fees in connection with a Qualified Securitization Transaction) or any Investment by a Securitization Subsidiary in any other Person in connection with a Qualified Securitization Transaction (including Investments of funds held in accounts required by customary arrangements governing such Qualified Securitization Transaction in the manner required by such arrangements), so long as any Investment in a Securitization Subsidiary is in the form of a Purchase Money Note, a contribution of additional Securitization Assets or an Equity Interest;
- (15) other Investments in any Person having an aggregate Fair Market Value, when taken together with all other Investments made pursuant to this part (15) that are at the time outstanding (including Investments deemed to have been made under this part pursuant to the definition of Designated Asset Finance Contribution), not to exceed \$15,000,000 (subject to part (1) of the definition of Permitted Debt);
- (16) guarantees issued in accordance with paragraph 8;
- (17) subject to Clause 16.17 (*Note Purchase Condition*) the repurchase of the Senior Secured Notes and additional Senior Secured Notes by the Parent or any Restricted Subsidiary; and
- (18) Investments in joint ventures of the Parent or any of its Restricted Subsidiaries, taken together with all other Investments made pursuant to this part (18) that are at that time outstanding (including Investments deemed to have been made under this part pursuant to the definition of

Designated Asset Finance Contribution), not to exceed \$15,000,000 (subject to part (1) of the definition of Permitted Debt and in each case, determined on the date such Investment is made, with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value).

“**Permitted Liens**” means:

- (1) Liens created under the Security Documents;
- (2) Liens on property of a Person existing at the time such Person is merged with or into or consolidated or amalgamated with the Parent or any Restricted Subsidiary of the Parent *provided* that such Liens were not created in connection with such merger, consolidation or amalgamation and do not extend to any assets other than those of the Person merged into or consolidated or amalgamated with the Parent or the Restricted Subsidiary and *provided, further*, that no such Liens shall extend to any assets or property constituting Collateral;
- (3) Liens on property (including Capital Stock) existing at the time of acquisition of the property by the Parent or any Restricted Subsidiary of the Parent; *provided* that such Liens were not incurred in connection with such acquisition; *provided, further*, that no such Liens shall extend to any assets or property constituting Collateral;
- (4) Liens securing (i) Indebtedness incurred pursuant to paragraph 8.2(4) *provided* that Liens securing Indebtedness incurred pursuant to paragraph 8.2(4) extend only to the assets so acquired, purchased, chartered, leased, constructed, installed or improved with the proceeds of such Indebtedness.
- (5) Liens incurred in the ordinary course of a Permitted Business of the Parent or any Restricted Subsidiary arising from Vessel chartering, drydocking, maintenance, repair, refurbishment or replacement, the furnishing of supplies and bunkers to Vessels and Related Assets, repairs and improvements to Vessels and Related Assets, masters’, officers’ or crews’ wages and maritime Liens and any other Liens (other than Liens in respect of Indebtedness) incurred in the ordinary course of operations of a Vessel provided that in the case of a Charter of a Mortgaged Vessel, such Lien is subject to the Lien of the Senior Secured Note Indenture and the Security Documents;
- (6) Liens for general average and salvage;
- (7) Liens for Taxes, assessments or governmental charges or claims that are not yet due or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; *provided* that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;
- (8) (x) Liens imposed by law, such as carriers’, warehousemen’s, landlord’s, suppliers’ and mechanics’ Liens, in each case, incurred in the ordinary course of a Permitted Business and (y) other Liens arising by operation of law covered by insurance (including any deductibles thereon);
- (9) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Agreement; provided, however, that such Liens (a) are not materially more favorable to the lienholders with respect to such Liens than the Liens in respect of the Indebtedness being refinanced, and (b) do not extend to or cover any property or assets of the Parent or any of its Restricted Subsidiaries not securing the Indebtedness so refinanced (other than (x) any improvements or accessions to such property or assets or any items which constitute Related Assets with respect to such underlying property or assets securing the Indebtedness so refinanced or (y) any Lien on additional property or assets which Lien would have been permitted to be granted by the covenant under paragraph 10 in respect of the Indebtedness being refunded, refinanced, replaced, defeased or discharged by such Permitted Refinancing Indebtedness at the time such prior Indebtedness was initially incurred by the Parent or such Restricted Subsidiary);

- (10) Liens on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings;
- (11) Liens on the Collateral securing: (a) Senior Secured Notes or payment obligations under the Finance Documents; (b) additional Senior Secured Notes; *provided* that, in the case of this clause (b), (x) the Loan To Value Ratio is less than 0.65 to 1.0 and, after giving pro forma effect to the incurrence of such additional Senior Secured Notes, the Consolidated Leverage Ratio of the Parent does not exceed 4.5 to 1.0, in each case on the date of incurrence of such additional Senior Secured Notes (and to the extent the Fair Market Value of Qualified Collateral is included in the calculation of the Loan To Value Ratio, such Qualified Collateral shall be added as Collateral in accordance with the provisions of paragraph 3) and (y) any contribution of cash, Cash Equivalents or other assets of the Parent or any Restricted Subsidiary in connection with the issuance of such additional Senior Secured Notes (excluding the net proceeds of any Indebtedness incurred in connection with such transactions that is secured by a Permitted Lien) qualifies as a Designated Additional Notes Contribution; *provided further*, that in the case of an issuance of additional Senior Secured Notes the proceeds therefrom may only be used for (i) the acquisition of Mortgaged Vessels or Mortgaged Container Assets, (ii) the refinancing of Indebtedness incurred in connection with the acquisition of Qualified Vessels or Qualified Container Assets (provided such Qualified Vessels or Qualified Container Assets are secured as Collateral in compliance with paragraph 3) or (iii) the repayment or prepayment of obligations under this Agreement in an amount not to exceed the amount outstanding at the time of repayment or prepayment under this Agreement that has been used to acquire Mortgaged Vessels or Mortgaged Container Assets; and (c) Indebtedness at any one time outstanding not exceeding \$15,000,000; *provided*, that in the case of this clause (c) such Indebtedness shall not have any Liens over any property and assets of the Parent and the Restricted Subsidiaries other than Liens on the Collateral that rank junior to the Liens under the Security Documents, any additional Senior Secured Notes and the guarantee obligations under the Finance Documents; *provided, further*, that each of the parties thereto will have entered into the Intercreditor Agreement as “Second Lien Note Creditors” (or the corresponding term in any additional intercreditor agreement); and
- (12) any extension, renewal or replacement, in whole or in part, of any Lien described in the clauses (1) through (11) above; *provided* that any such extension, renewal or replacement is no more restrictive in any material respect that the Lien so extended, renewed or replaced and does not extend to any additional property or assets.

For purposes of determining what category of Permitted Lien that any Lien shall be included in, the Parent in its sole discretion may classify such Lien on the date of its incurrence and later reclassify all or a portion of such Lien in any manner that complies with this definition (including in part in one category and in part in another category).

“**Permitted Parent**” means any direct or indirect parent of the Parent formed not in connection with, or in contemplation of, a transaction that, assuming such parent was not formed, after giving effect thereto would constitute a Change of Control.

“**Permitted Refinancing Indebtedness**” means any Indebtedness or Disqualified Stock of the Parent or any Indebtedness, Disqualified Stock or preferred stock of any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to refund, refinance, replace, defease or discharge, other Indebtedness or Disqualified Stock of the Parent or any Indebtedness, Disqualified Stock or preferred stock of any of its Restricted Subsidiaries; *provided* that, in the case of Indebtedness which is not being used to concurrently refinance or repay the Indebtedness under the Finance Documents in full:

- (1) the principal amount (or accreted value, if applicable) or mandatory redemption amount of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) or mandatory redemption amount, plus accrued interest or dividends in connection therewith, of the Indebtedness, Disqualified Stock or preferred stock extended, refinanced, renewed, replaced, defeased or refunded (plus all dividends and accrued interest on such Indebtedness, Disqualified Stock or preferred stock and the amount of all fees, expenses, premiums and other amounts incurred in connection therewith);

- (2) such Permitted Refinancing Indebtedness has a final maturity or final redemption date either (i) no earlier than the final maturity or final redemption date of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded or (ii) after the Termination Date;
- (3) the portion, if any, of the Indebtedness, Disqualified Stock or preferred stock being extended, refinanced, renewed, replaced, defeased or refunded has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness, Disqualified Stock or preferred stock being extended, refinanced, renewed, replaced, defeased or refunded;
- (4) if (i) the Indebtedness, Disqualified Stock or preferred stock being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Indebtedness under the Finance Documents, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Indebtedness under the Finance Documents on terms at least as favorable to the Finance Parties as those contained in the documentation governing the Indebtedness, Disqualified Stock or preferred stock being extended, refinanced, renewed, replaced, defeased or refunded; and (ii) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is unsecured or secured by the Collateral on a basis entirely junior to that of the Senior Secured Notes, such Permitted Refinancing Indebtedness is unsecured or secured by the Collateral on a basis entirely junior to that of the Senior Secured Notes; and.
- (5) such Indebtedness is incurred either by (i) if a Restricted Subsidiary that is not a Guarantor is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, any Restricted Subsidiary that is not a Guarantor or (ii) the Parent or Guarantor (or any Restricted Subsidiary that becomes a Guarantor in contemplation of or upon the incurrence of such Permitted Refinancing Indebtedness).

For all purposes of this Agreement, Indebtedness, Disqualified Stock or preferred stock of the Parent or any of its Restricted Subsidiaries (collectively, the “Replacement Indebtedness”) may in the Parent’s discretion be deemed to replace other Indebtedness, Disqualified Stock or preferred stock of the Parent or any of its Restricted Subsidiaries (collectively, the “Replaced Indebtedness”) if such Replacement Indebtedness satisfies the requirements of paragraphs (1) through (5) above and is (x) incurred no later than 180 days of the date on which the Replaced Indebtedness was repaid, redeemed, defeased or discharged and (y) if the proceeds of the Replaced Indebtedness were primarily utilized to finance or refinance the acquisition of one or more Vessels or Container Assets, then substantially all of the net proceeds from such Replacement Indebtedness must be used to finance or refinance the acquisition of assets used or useful in a Permitted Business (including, without limitation, Container Assets, Vessels and Related Assets, which need not be the same Container Assets or Vessels or Related Assets which were financed or refinanced with the Replaced Indebtedness).

“**Permitted Repairs**” means, with respect to any newly acquired second-hand Vessel or Container Asset, repairs which, in the reasonable judgment of the Parent, are required to be made to such Vessel or Container Asset upon acquisition and which are made within 120 days of the acquisition thereof.

“**Person**” means any natural person, corporation, limited partnership, general partnership, limited liability company, limited liability partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other entity, whether legal or not.

“**Purchase Money Note**” means a promissory note of a Securitization Subsidiary to the Parent or any Restricted Subsidiary of the Parent, which note (a) must be repaid from cash available to the Securitization Subsidiary, other than amounts required to be established as reserves, amounts paid to investors in respect of interest, principal and other amounts owing to such investors and amounts paid in connection with the purchase of newly generated or newly acquired Securitization Assets and (b) may be subordinated to the payments described in paragraph (a).

**“Qualified Collateral”** means one or more completed Qualified Vessels, completed Qualified Container Assets and/or cash and Cash Equivalents; *provided that*, in the case of a substitution only, (i) the aggregate Fair Market Value of such Qualified Collateral shall be at least equal to the Appraised Value of the Mortgaged Vessel(s) or Mortgaged Container Asset(s) for which such Qualified Collateral is being substituted; and (ii) to the extent the applicable Mortgaged Vessel for which such Qualified Collateral is being substituted was employed by way of a Charter, the applicable Qualified Vessel is employed by way of a Charter with an Acceptable Charterer.

**“Qualified Container Assets”** means, as of any date, a Container Asset which (i) is not a Mortgaged Container Asset as of such date and (ii) is to be owned by the Parent or a Mortgaged Guarantor.

**“Qualified Equity Interests”** means Equity Interests of the Parent other than Disqualified Stock.

**“Qualified Securitization Transaction”** means any transaction or series of transactions entered into by the Parent or any of its Restricted Subsidiaries pursuant to which the Parent or such Restricted Subsidiary sells, contributes, conveys or otherwise transfers to (a) a Securitization Subsidiary (in the case of a transfer by the Parent or any of its Restricted Subsidiaries) and (b) any other Person (in the case of a transfer by a Securitization Subsidiary), or transfers an undivided interest in or grants a security interest in, any Securitization Assets (whether now existing or arising in the future) of the Parent or any of its Restricted Subsidiaries, and any assets related thereto, including, without limitation, all collateral securing such Securitization Assets, all contracts and all guarantees or other obligations in respect of such Securitization Assets, proceeds of such Securitization Assets and all other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with a securitization transaction of such type; *provided* such transaction is on market terms at the time the Parent or such Restricted Subsidiary enters into such transaction.

**“Qualified Vessel”** means, as of any date, a Vessel which (i) is not a Mortgaged Vessel as of such date and (ii) is to be owned by the Parent or a Mortgaged Guarantor and (iii) is flagged in a Permitted Flag Jurisdiction.

**“Rating Agencies”** means Moody’s and S&P, or if Moody’s or S&P or both shall not make a rating on the Senior Secured Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Parent which shall be substituted for Moody’s or S&P or both, as the case may be.

**“Ready for Sea Cost”** means with respect to a Vessel to be acquired or leased by the Parent or any Restricted Subsidiary, the aggregate amount of all expenditures incurred to acquire or construct and bring such Vessel to the condition and location necessary for its intended use, including any and all inspections, appraisals, repairs, modifications, additions, permits and licenses in connection with such acquisition or lease and the costs of any positioning voyage.

**“Requisition Compensation”** means, in respect of each Mortgaged Vessel, all moneys or other compensation payable by reason of requisition of title to, or other compulsory acquisition of, such Mortgaged Vessel.

**“Related Asset”** means (i) any insurance policies and contracts from time to time in force with respect to a Vessel, (ii) the Capital Stock of any Restricted Subsidiary of the Parent owning a Vessel and related assets, (iii) any Requisition Compensation payable in respect of any compulsory acquisition of a Vessel, (iv) any earnings derived from the use or operation of a Vessel and/or any earnings account with respect to such earnings, (v) any charters, operating leases, contracts of affreightment, Vessel purchase options and related agreements entered and any security or guarantee in respect of the charterer’s or lessee’s obligations under such charter, lease, Vessel purchase option or agreement, (vi) any cash collateral account established with respect to a Vessel pursuant to the financing arrangement with respect thereto, (vii) any building, conversion or repair contracts relating to a Vessel and any security or guarantee in respect of the builder’s obligations under such contract and (viii) any security interest in, or agreement or assignment relating to, any of the foregoing or any mortgage in respect of a Vessel and any asset reasonably related, ancillary or complementary thereto.

**“Restricted Investment”** means an Investment other than a Permitted Investment.



“**Restricted Subsidiary**” of a Person means any Subsidiary of such Person that is not an Unrestricted Subsidiary.

“**S&P**” means Standard & Poor’s Ratings Services and any successor to its rating agency business.

“**Sale/Leaseback Transaction**” means any arrangement with any Person or to which any such Person is a party, providing for the leasing to the Parent or a Subsidiary of the Parent of any property, whether owned by the Parent or any of its Subsidiaries at the date of this Agreement or later acquired, which has been or is to be sold or transferred by the Parent or any of its Subsidiaries to such Person or to any other Person from whom funds have been or are to be advanced by such Person on the security of such property.

“**Secured Indebtedness**” means any Indebtedness (other than Indebtedness that is contractually subordinated in right of payment to the Senior Secured Notes and the obligations under the Finance Documents) of the Parent or a Restricted Subsidiary of the Parent secured by a Lien on any of its assets.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended.

“**Securitization Assets**” means any accounts receivable, instruments, chattel paper, contract rights, general intangibles or revenue streams (excluding any Existing Charters) subject to a Qualified Securitization Transaction and any assets related thereto (other than Vessels or Container Assets), including, without limitation, all collateral securing such assets, all contracts and all guarantees or other supporting obligations in respect of such assets and all proceeds of the foregoing.

“**Securitization Fees**” means all yield, interest or other payments made directly or by means of discounts with respect to any interest issued or sold in connection with, and other fees paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Transaction.

“**Securitization Repurchase Obligation**” means any obligation of a seller of Securitization Assets in a Qualified Securitization Transaction to repurchase Securitization Assets arising as a result of a breach of Standard Securitization Undertakings, including as a result of a Securitization Asset or portion thereof becoming subject to any asserted defense, dispute, offset or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to, the seller.

“**Securitization Subsidiary**” means a Subsidiary of the Parent (or another Person formed for the purposes of engaging in a Qualified Securitization Transaction in which the Parent or any Subsidiary of the Parent makes an Investment and to which the Parent or any Subsidiary of the Parent transfers Securitization Assets and related assets):

- (1) that is formed solely for the purpose of, and that engages in no activities other than activities in connection with, financing Securitization Assets of the Parent and/or its Restricted Subsidiaries, and any activities incidental thereto;
- (2) that is designated by the Board of Directors of the Parent or such other Person as a Securitization Subsidiary pursuant to resolution set forth in an Officer’s Certificate and delivered to the Facility Agent;
- (3) that has total assets, other than Securitization Assets, at the time of such creation and designation with a book value of \$10,000 or less;
- (4) has no Indebtedness other than Non-Recourse Debt;
- (5) with which neither the Parent nor any Restricted Subsidiary of the Parent has any material contract, agreement, arrangement or understanding other than contracts, agreements,
- (6) arrangements and understandings on terms not materially less favorable to the Parent or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Parent in connection with a Qualified Securitization Transaction (as determined in good faith by the Parent) and Securitization Fees payable in the ordinary course of a Permitted Business in connection with such a Qualified Securitization Transaction; and
- (7) with respect to which neither the Parent nor any Restricted Subsidiary of the Parent has any obligation (a) to make any additional capital contribution (other than Securitization Assets) or similar payment or transfer thereto or (b) to maintain or preserve the solvency or any balance sheet term, financial condition, level of income or results of operations thereof.

“**Senior Secured Note Guarantee**” means the guarantee by each Guarantor of the Parent’s obligations as issuer under the Senior Secured Note Indenture and on the Senior Secured Notes, executed pursuant to the provisions of the Senior Secured Note Indenture.

“**Standard Securitization Undertakings**” means representations, warranties, covenants and indemnities entered into by the Parent or any Restricted Subsidiary of the Parent which have been determined by the Parent in good faith to be reasonably customary in Qualified Securitization Transactions, including, without limitation, those relating to the servicing of the assets of a Securitization Subsidiary, it being understood that any Securitization Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

“**Stated Maturity**” means, with respect to any installment of principal on any series of Indebtedness, the date on which the payment of principal was scheduled to be paid in the documentation governing such Indebtedness as of the date of this Agreement (or, if incurred after the date of this Agreement, as of the date of the initial incurrence thereof) and will not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

“**Subordinated Indebtedness**” means Indebtedness that is (x) contractually subordinated in right of payment to liabilities under the Finance Documents, as the case may be, or (y) any Indebtedness that is unsecured or secured by a Lien on the Collateral on a basis entirely junior to that of the Senior Secured Notes or any additional Senior Secured Notes or the obligations under the Finance Documents.

“**Subsidiary**” means, with respect to any specified Person:

- (1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of such Person (or a combination thereof); and
- (2) any other Person of which at least a majority of the voting interest (without regard to the occurrence of any contingency) is at the time directly or indirectly owned by such Person or one or more Subsidiaries of such Person (or a combination thereof).

“**Total Assets**” means the total consolidated assets of the Parent and its Restricted Subsidiaries, as shown on the most recent balance sheet of the Parent prepared in accordance with GAAP.

“**Trust Money Investments**” means:

- (1) marketable direct obligations issued by, or unconditionally guaranteed by the government of the United States, the United Kingdom, Germany or the Netherlands, or issued by any agency thereof and backed by the full faith and credit of the United States, the United Kingdom, Germany or the Netherlands, as the case may be, in each case maturing within one year from the date of acquisition;
- (2) any demand and time deposits, certificates of deposit, or overnight bank deposits, denominated in United States dollars, pounds sterling or Euro with maturities of one year or less from the date of acquisition issued by any commercial bank organized under the laws of the United States or any state thereof, the United Kingdom, Germany or the Netherlands, having combined capital and surplus of not less than \$250,000,000 and whose commercial paper is rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody’s;

- (3) repurchase obligations of any commercial bank satisfying the requirements of clause (2) above, having a term of not more than 60 days, with respect to securities issued or fully guaranteed or insured by the United States government;
- (4) commercial paper of an issuer rated at least A-1 by S&P or P-1 by Moody's or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within one year from the date of acquisition;
- (5) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory, the securities of which state, commonwealth, territory, political subdivision or taxing authority (as the case may be) are rated at least AA- by S&P or Aa3 by Moody's;
- (6) shares of any money market fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (1), (2), (3), (4) or (5) above with maturities as set forth in the proviso below, (ii) has net assets in excess of \$500,000,000 and (iii) has obtained from either S&P or Moody's the highest rating obtainable for money market funds; provided, however, that the maturities of all obligations specified in any of clauses (1), (2), (3), (4) and (5) above shall not exceed 397 days.

**"Trust Monies"** means all cash or Cash Equivalents deposited with the trustee under the Senior Secured Notes Indenture and secured in favor of the Security Agent as or in respect of Collateral: (a) upon the release of property from the Lien of any of the Security Documents; (b) as compensation for, or proceeds of the sale of all or any part of the Collateral taken by eminent domain or purchased by, or sold pursuant to any order of, a governmental authority or otherwise disposed of; (c) in connection with an Event of Loss or Asset Sale with respect to Collateral; (d) pursuant to certain provisions of the Security Documents; (e) as proceeds of any other sale or other disposition of all or any part of the Collateral by or on behalf of the Security Agent or any collection, recovery, receipt, appropriation or other realization of or from all or any part of the Collateral pursuant to the Security Documents or otherwise; (f) as part of Qualified Collateral; (g) for application under the this Agreement as provided in the this Agreement or any Security Document, or whose disposition is not otherwise specifically provided for in this Agreement or in any Security Document; or (h) which represent net proceeds from the issuance of additional Senior Secured Notes, in each case required to be deposited with the Security Agent pending the acquisition of one or more Mortgaged Vessels or Mortgaged Container Assets (and to make Permitted Repairs, as applicable), *provided, however*, that Trust Monies shall in no event include any property deposited with the trustee in respect of the Senior Secured Notes or the Security Agent for any optional redemption or defeasance or discharge of any Senior Secured Notes as may be permitted under this Agreement.

**"Unrestricted Subsidiary"** means any Subsidiary of the Parent that is designated by the Board of Directors of the Parent as an Unrestricted Subsidiary pursuant to a board resolution, but only to the extent that such Subsidiary:

- (1) has no Indebtedness other than Non-Recourse Debt;
- (2) except as permitted by paragraph 12, is not party to any agreement, contract, arrangement or understanding with the Parent or any Restricted Subsidiary of the Parent unless the terms of any such agreement, contract, arrangement or understanding are not materially less favorable to the Parent or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Parent; and
- (3) is a Person with respect to which neither the Parent nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to make any additional capital contributions (other than, with respect to a Securitization Subsidiary, Securitization Assets transferred in connection with a Qualified Securitization Transaction) or similar payment or transfer thereto or (b) to maintain or preserve the solvency or any balance sheet term, financial condition, level of income or results of operations thereof.

“**Vessel Construction Contract**” means any contract for the construction (or construction and acquisition) of a Vessel and any Related Assets entered into by the Parent or any Restricted Subsidiary, including any amendments, supplements or modifications thereto or change orders in respect thereof.

“**Vessel Purchase Option Contract**” means any contract granting the Parent or any Restricted Subsidiary the option to purchase one or more Vessels and any Related Assets, including any amendments, supplements or modifications thereto.

“**Voting Stock**” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness, Disqualified Stock or preferred stock at any date, the number of years obtained by dividing:

- (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of such Indebtedness or redemption or similar payment in respect of such Disqualified Stock or preferred stock, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by
- (2) the then outstanding principal amount of such Indebtedness or the maximum amount payable upon maturity of, or pursuant to any mandatory redemption provisions of, amount of such Disqualified Stock or preferred stock.

“**Wholly Owned Restricted Subsidiary**” of any Person means a Restricted Subsidiary of such Person, all of the outstanding Equity Interests of which (other than directors’ qualifying shares or shares required by applicable law to be held by a Person other than the Parent or any of its Subsidiaries) are at the time owned by such Person or another Wholly Owned Restricted Subsidiary of such Person.

FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE

PART 1

FORM OF NOTICE ON ENTERING INTO NOTIFIABLE DEBT PURCHASE TRANSACTION

To: [ ] as Facility Agent

From: [The Lender]

Dated:

[Parent] - [ ] Revolving Facility Agreement  
dated [ ] (the "Facility Agreement")

1. We refer to paragraph (b) of Clause 28.1 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. We have entered into a Notifiable Debt Purchase Transaction.
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

Commitment	Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (US Dollars)

[Lender]

By:

PART 2

FORM OF NOTICE ON TERMINATION OF NOTIFIABLE DEBT PURCHASE TRANSACTION/  
NOTIFIABLE DEBT PURCHASE TRANSACTION CEASING TO BE WITH SPONSOR AFFILIATE

To: [ ] as Facility Agent  
From: [The Lender]  
Dated:

[Parent] - [ ] Revolving Facilities Agreement  
dated [ ] (the "Facility Agreement")

1. We refer to paragraph (c) of Clause 29.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [ ] has [terminated]/[ceased to be with a Sponsor Affiliate].<sup>11</sup>
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

Commitment	Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (US Dollars)

[Lender]

By:

<sup>11</sup> Delete as applicable.

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**APPENDIX 1**

**FORM OF GENERAL ASSIGNMENT**

**SIGNATORIES**

**Parent**

**GLOBAL SHIP LEASE, INC.**

By: /s/ Ian Webber                      /s/ Susan Cook

*[Credit Agreement – Execution Pages]*



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**Original Borrowers**

**GLOBAL SHIP LEASE, INC.**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE SERVICES LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

*[Credit Agreement – Execution Pages]*

**The Arranger**

**CITIBANK N.A., LONDON BRANCH**

By: /s/ Shreyas Chipalkatty

Shreyas Chipalkatty

Director

Citibank N.A.

London Branch

*[Credit Agreement – Execution Pages]*

**The Bookrunner**

**CITIBANK N.A., LONDON BRANCH**

By: /s/ Shreyas Chipalkatty

Shreyas Chipalkatty

Director

Citibank N.A.

London Branch

*[Credit Agreement – Execution Pages]*

**The Original Lender**

**CITIBANK N.A., LONDON BRANCH**

By: /s/ Shreyas Chipalkatty

Shreyas Chipalkatty

Director

Citibank N.A.

London Branch

*[Credit Agreement – Execution Pages]*

**The Facility Agent**

**CITIBANK INTERNATIONAL PLC**

By: /s/ Raya Brody

Raya Brody  
VP

[Credit Agreement – Execution Pages]

**The Security Agent**

**DEUTSCHE BANK TRUST COMPANY AMERICAS**

acting by **DEUTSCHE BANK NATIONAL TRUST COMPANY**

By: /s/ Jacqueline Bartnick  
Name: Jacqueline Bartnick  
Title: Director

By: /s/ Robert S. Peschler  
Name: Robert S. Peschler  
Title: Vice President

*[Credit Agreement – Execution Pages]*

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**Original Guarantors**

**GLOBAL SHIP LEASE, INC.**

By: /s/ Ian Webber                      /s/ Susan Cook

**GSL ALCAZAR INC.**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE SERVICES LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 1 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 2 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 3 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 4 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

[Credit Agreement – Execution Pages]

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**GLOBAL SHIP LEASE 5 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 6 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 7 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 8 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 9 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 10 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 12 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

*[Credit Agreement – Execution Pages]*



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**GLOBAL SHIP LEASE 13 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 14 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 15 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 16 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

**GLOBAL SHIP LEASE 17 LIMITED**

By: /s/ Ian Webber                      /s/ Susan Cook

[Credit Agreement – Execution Pages]

**SHEARMAN & STERLING LLP**

**INTERCREDITOR AGREEMENT**

**Dated 19 March 2014**

**CITIBANK INTERNATIONAL PLC**

as Revolving Agent

The Revolving Lenders

**DEUTSCHE BANK TRUST COMPANY AMERICAS**

as Senior Secured Note Trustee

**GLOBAL SHIP LEASE, INC.**

as the Parent

**THE ORIGINAL DEBTORS**

**DEUTSCHE BANK TRUST COMPANY AMERICAS**

acting as Security Agent

and others

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**INTERCREDITOR AGREEMENT**

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ABU DHABI | BEIJING | BRUSSELS | FRANKFURT | HONG KONG | LONDON | MILAN |  
NEW YORK | PALO ALTO | PARIS | ROME | SAN FRANCISCO | SÃO PAULO | SHANGHAI | SINGAPORE  
| TOKYO | TORONTO | WASHINGTON, DC

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**THIS AGREEMENT** is dated 19 March 2014 and made between:

- (1) **CITIBANK INTERNATIONAL PLC** as Revolving Agent;
- (2) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Revolving Lenders;
- (3) **CITIBANK, N.A., LONDON BRANCH** as Revolving Arranger;
- (4) **DEUTSCHE BANK TRUST COMPANY AMERICAS** as Senior Secured Note Trustee;
- (5) **GLOBAL SHIP LEASE, INC.** (the “**Parent**”);
- (6) **THE COMPANIES** named on the signing pages as Intra-Group Lenders whose details are set out at Part A of Schedule 5;
- (7) **THE SUBSIDIARIES** of the Parent named on the signing pages as Debtors (together with the Parent, the “**Original Debtors**”) whose details are set out at Part B of Schedule 5; and
- (8) **DEUTSCHE BANK TRUST COMPANY AMERICAS** as security trustee for the Secured Parties (the “**Security Agent**”).

**IT IS AGREED** as follows:

## 1. **DEFINITIONS AND INTERPRETATION**

### 1.1 **Definitions**

In this Agreement:

“**Acceleration Event**” means a Credit Facility Acceleration Event, a Senior Secured Note Acceleration Event or a Second Lien Note Acceleration Event.

“**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.

“**Arranger**” means each Credit Facility Arranger, in each case, which is a Party as a Revolving Arranger or becomes a Party as an Arranger pursuant to Clause 21.7 (*Accession of Credit Facility Creditors under new Credit Facilities*).

“**Available Commitment**”:

- (a) in relation to a Revolving Lender, has the meaning given to the term “Available Commitment” in the Initial Revolving Facility Agreement; and
- (b) in relation to any other Credit Facility Lender, has the meaning given to the term “Available Commitment” in the relevant Credit Facility Agreement.

“**Borrowing Liabilities**” means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to an Arranger or a Creditor Representative) or a Debtor in respect of Liabilities arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a borrower under the Credit Facility Documents and liabilities and obligations as a borrower or issuer under the Senior Secured Note Documents or Second Lien Note Documents).

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London, England; Amsterdam, The Netherlands; and New York, the United States of America.

**“Cash Proceeds”** means:

- (a) proceeds of the Security Property which are in the form of cash; and
- (a) any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any proceeds of the Security Property which are in the form of Non-Cash Consideration.

**“Charged Property”** means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security.

**“Collateral Account”** has the meaning given to that expression in the Senior Secured Note Indenture.

**“Common Assurance”** means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible, given to all the Secured Parties in respect of their Liabilities.

**“Common Currency”** means the lawful currency for the time being of the United States of America.

**“Common Currency Amount”** means, in relation to an amount, that amount converted (to the extent not already denominated in the Common Currency) into the Common Currency at the Security Agent’s Spot Rate of Exchange on the Business Day prior to the relevant calculation.

**“Common Transaction Security”** means any Transaction Security which to the extent legally possible:

- (a) is created in favour of the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
- (b) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties is created in favour of:
  - (i) all the Secured Parties in respect of their Liabilities; or
  - (ii) the Security Agent under a parallel debt structure for the benefit of all the Secured Parties,

and which (subject to the terms of this Agreement) ranks in the order of priority contemplated in Clause 2.2 (*Transaction Security*).

**“Consent”** means any consent, approval, release or waiver or agreement to any amendment.

**“Credit Facility”** means:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Facility; and
- (b) after the Revolving Lender Discharge Date, any credit facility made available to a member of the Group where any:
  - (i) agent of the lenders in respect of the credit facility becomes a Party as a Creditor Representative in respect of that credit facility pursuant to Clause 21.7 (*Accession of Credit Facility Creditors under new Credit Facilities*);
  - (ii) arranger of the credit facility has become a Party as a Credit Facility Arranger in respect of that credit facility pursuant to Clause 21.7 (*Accession of Credit Facility Creditors under new Credit Facilities*);

- (iii) lender in respect of the credit facility has become a Party as a Credit Facility Lender in respect of that credit facility pursuant to Clause 21.7 (*Accession of Credit Facility Creditors under new Credit Facilities*); and
- (iv) the aggregate of the maximum principal amount outstanding under the credit facilities including capitalised interest, fees, charges or other amounts at any time is equal to or less than US\$40,000,000,

**“Credit Facility Acceleration Event”** means:

- (a) on or prior to the Revolving Lender Discharge Date, the Revolving Agent exercising any of its rights under Clause 18.14 (*Acceleration*) of the Initial Revolving Facility Agreement or any acceleration provisions being automatically invoked under the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, the Creditor Representative in relation to any Credit Facility exercising any of its rights under any Equivalent Provision(s) of the relevant Credit Facility Agreement or any acceleration provisions being automatically invoked under the relevant Credit Facility Agreement,

other than the right to declare any amount payable on demand.

**“Credit Facility Agreement”** means:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, in relation to a Credit Facility, the facility agreement documenting that Credit Facility.

**“Credit Facility Arranger”** means:

- (a) on or prior to the Revolving Lender Discharge Date, the Revolving Arranger; and
- (b) after the Revolving Lender Discharge Date, any arranger of any other Credit Facility which becomes a Party pursuant to Clause 21.7 (*Accession of Credit Facility Creditors under new Credit Facilities*).

**“Credit Facility Borrower”** means a “Borrower” under and as defined in:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, the relevant Credit Facility Agreement.

**“Credit Facility Commitment”** means “Commitment” under and as defined in:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, the relevant Credit Facility Agreement.

**“Credit Facility Creditors”** means each Creditor Representative in relation to a Credit Facility, each Credit Facility Arranger and each Credit Facility Lender.

**“Credit Facility Documents”** means:

- (a) on or prior to the Revolving Lender Discharge Date, the Initial Revolving Finance Documents; and
- (b) after the Revolving Lender Discharge Date, if applicable, each document or instrument entered into between a member of the Group and a Credit Facility Creditor setting out the terms of any credit facility which creates or evidences any Credit Facility Liabilities.

**“Credit Facility Guarantor”** means:

- (a) on or prior to the Revolving Lender Discharge Date, a “Guarantor” under, and as defined, in the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, any member of the Group that provides a guarantee in favour of any Credit Facility Creditor in connection with any Credit Facility.

**“Credit Facility Lender Discharge Date”** means the first date on which all Credit Facility Liabilities have been fully and finally discharged to the satisfaction of the relevant Creditor Representative(s), whether or not as the result of an enforcement, and the Credit Facility Lenders are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

**“Credit Facility Lenders”** means:

- (a) on or prior to the Revolving Lender Discharge Date, the Revolving Lenders; and
- (b) after the Revolving Lender Discharge Date, each “Lender” (under, and as defined in the relevant Credit Facility Agreement).

**“Credit Facility Liabilities”** means the Liabilities owed by any Debtor to the Credit Facility Creditors under or in connection with the Credit Facility Documents.

**“Credit Facility Participations”** means in relation to a Credit Facility Lender its aggregate Credit Facility Commitments.

**“Creditor/Creditor Representative Accession Undertaking”** means:

- (a) an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor/Creditor Representative Accession Undertaking*); or
- (b) a Transfer Certificate (as defined in the relevant Credit Facility Agreement) *provided that* it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Creditor/Creditor Representative Accession Undertaking*); or
- (c) an Increase Confirmation (as defined in the relevant Credit Facility Agreement) *provided that* it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Creditor/Creditor Representative Accession Undertaking*), as the context may require; or
- (d) in the case of an acceding Debtor which is expressed to accede as an Intra Group Lender in the relevant Debtor Accession Deed, that Debtor Accession Deed.

**“Creditor Representative”** means:

- (a) in relation to the Revolving Lenders, the Revolving Agent;



- (b) in relation to the Credit Facility Lenders under any other Credit Facility, the facility agent in respect of that Credit Facility which has acceded to this Agreement as the Creditor Representative of those Credit Facility Lenders pursuant to Clause 21.7 (*Accession of Credit Facility Creditors under new Credit Facilities*);
- (c) in relation to the Senior Secured Noteholders, the Senior Secured Note Trustee; and
- (d) in relation to the Second Lien Noteholders the Second Lien Note Trustee which has acceded to this Agreement as the Creditor Representative of those Second Lien Noteholders pursuant to Clause 21.9 (*Accession of Second Lien Note Creditors*).

“**Creditor Representative Amounts**” means fees, costs and expenses of a Creditor Representative payable to a Creditor Representative for its own account pursuant to the relevant Debt Documents or any engagement letter between a Creditor Representative and a Debtor (including any amount payable to a Creditor Representative by way of indemnity, remuneration or reimbursement for expenses incurred), and the costs incurred by a Creditor Representative in connection with any actual or attempted Enforcement Action which is permitted by this Agreement which are recoverable pursuant to the terms of the Debt Documents together with any VAT payable on any of the foregoing but shall not include (a) any amount of principal or interest payable in respect of any Debt Document or (b) the costs of bringing any claims, suit or proceeding against any First Lien Creditor.

“**Creditors**” means the Primary Creditors and the Intra-Group Lenders.

“**Debt Disposal**” means any disposal of any Liabilities or Debtors’ Intra-Group Receivables pursuant to paragraphs (d) or (e) of Clause 13.1 (*Facilitation of Distressed Disposals*).

“**Debt Document**” means each of this Agreement, the Credit Facility Documents, the Senior Secured Note Documents, the Second Lien Note Documents, the Security Documents, any agreement evidencing the terms of the Intra-Group Liabilities and any other document designated as such by the Security Agent and the Parent.

“**Debtor**” means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 21 (*Changes to the Parties*).

“**Debtor Accession Deed**” means:

- (a) a deed substantially in the form set out in Schedule 1 (*Form of Debtor Accession Deed*); or
- (b) (only in the case of a member of the Group which is acceding as a borrower, issuer or guarantor under a Credit Facility Document or Senior Secured Note Document) an accession document in the form required by the relevant Credit Facility Document or Senior Secured Note Document or Second Lien Note Document (*provided in each case that it contains an accession to this Agreement which is substantially in the form set out in Schedule 1 (Form of Debtor Accession Deed)*).

“**Debtor Resignation Request**” means a notice substantially in the form set out in Schedule 3 (*Form of Debtor Resignation Request*).

“**Debtors’ Intra-Group Receivables**” means, in relation to a member of the Group, any liabilities and obligations owed to any Debtor (whether actual or contingent and whether incurred solely or jointly) by that member of the Group.

“**Default**” means an Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Debt Documents or any combination of any of the foregoing) be an Event of Default.

**“Defaulting Lender”** means:

- (a) on or prior to the Revolving Lender Discharge Date, a Revolving Lender which is a “Defaulting Lender” under, and as defined in, the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, a Credit Facility Lender which is a “Defaulting Lender” under, and as defined in, the relevant Credit Facility Documents.

**“Delegate”** means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

**“Distress Event”** means any of:

- (a) an Acceleration Event; or
- (b) the enforcement of any Transaction Security.

**“Distressed Disposal”** means a disposal of any Charged Property which is:

- (a) being effected at the request of the Instructing Group in circumstances where the Transaction Security has become enforceable;
- (b) being effected by enforcement of the Transaction Security; or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is, or are, not a member, or members, of the Group.

**“Dollars”** or **“US\$”** means the lawful currency for the time being of the United States of America.

**“Enforcement”** means the enforcement or disposal of any Transaction Security, the requesting of a Distressed Disposal and/or the release or disposal of claims and/or Transaction Security on a Distressed Disposal under Clause 13 (*Distressed Disposals*), the giving of instructions as to actions with respect to the Transaction Security and/or the Charged Property following an Insolvency Event under Clause 8.7 (*Security Agent instructions*) and the taking of any other actions consequential on (or necessary to effect) any of those actions (but excluding the delivery of an Initial Enforcement Notice).

**“Enforcement Action”** means:

- (a) in relation to any Liabilities:
  - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Primary Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
  - (ii) the making of any declaration that any Liabilities are payable on demand;
  - (iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent (A) that the demand is made in the ordinary course of dealings between the relevant Debtor and Intra-Group Lender and (B) that any resulting Payment would be a Permitted Intra-Group Payment);
  - (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
  - (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability other than in connection with an asset sale

offer, an event of loss offer, a change of control offer or an excess cash flow offer (however defined) as set out in the Credit Facility Documents or Senior Secured Note Documents or Second Lien Note Documents) and excluding any open market purchases of, or any voluntary tender offer or exchange offer for, Senior Secured Notes or Second Lien Notes at a time at which no Default is continuing;

- (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right which is otherwise expressly permitted under the Credit Facility Documents and not prohibited under the Senior Secured Notes Documents to the extent that the exercise of that right gives effect to a Permitted Payment; and
- (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;
- (b) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (c) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 21 (*Changes to the Parties*), or any such right which arises as a result of any open market purchases of, or voluntary tender offer or exchange offer for, Senior Secured Notes or Second Lien Notes at a time at which no Default is continuing); or
- (d) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(ii), (iii), (iv) or (vii) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (ii) a Primary Creditor bringing legal proceedings against any person solely for the purpose of:
  - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
  - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
  - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages; or
- (iii) bringing legal proceedings against any person in connection with any fraud, securities violation or securities or listing regulations; or

- (iv) allegations of material misstatements or omissions made in connection with the offering materials relating to any Senior Secured Notes or Second Lien Notes or in reports furnished to the Senior Secured Noteholders or Second Lien Noteholders or any exchange on which the Senior Secured Notes or Second Lien Notes are listed by a member of the Group pursuant to the information and reporting requirements under the Senior Secured Note Documents or Second Lien Note Documents; or
- (v) to the extent entitled by law, the taking of action against any creditor (or any agent, trustee or receiver acting on behalf of such creditor) to challenge the basis on which any sale or disposal is to take place pursuant to powers granted to such persons under any security documentation.

“**Enforcement Instructions**” means instructions as to Enforcement (including the manner and timing of Enforcement) given by the Creditor Representative acting on the instructions of the Instructing Group to the Security Agent pursuant to the terms of this Agreement.

“**Enforcement Objective**” has the meaning given to that term in Schedule 4 (*Enforcement Principles*).

“**Enforcement Principles**” means the principles set out in Schedule 4 (*Enforcement Principles*).

“**Enforcement Proceeds**” means any amount paid to or otherwise realised by a Secured Party under or in connection with any Enforcement and, following the occurrence of a Distress Event, any other proceeds of, or arising from, any of the Charged Property.

“**Equivalent Provision**” means with respect to a Credit Facility Agreement, in relation to a provision or term of the Initial Revolving Facility Agreement, any equivalent provision or term in the Credit Facility Agreement which is similar in meaning and effect.

“**Event of Default**” means any event or circumstance specified as such in a Credit Facility Agreement, the Senior Secured Note Indenture or a Second Lien Note Indenture.

“**Exposure**” has the meaning given to that term in Clause 17.1 (*Equalisation Definitions*).

“**Fairness Opinion**” has the meaning given to that term in Schedule 4 (*Enforcement Principles*).

“**Final Discharge Date**” means the later to occur of the Credit Facility Lender Discharge Date, the Senior Secured Note Discharge Date and the Second Lien Note Discharge Date.

“**Financial Adviser**” has the meaning given to that term in Schedule 4 (*Enforcement Principles*).

“**First Lien Creditors**” means the Credit Facility Creditors and the Senior Secured Note Creditors.

“**First Lien Documents**” means the Credit Facility Documents and the Senior Secured Note Documents.

“**First Lien Discharge Date**” means the later to occur of the Credit Facility Lender Discharge Date and the Senior Secured Note Discharge Date.

“**First Lien Event of Default**” means any event or circumstance specified as an “event of default” in a Credit Facility Agreement or the Senior Secured Note Indenture.

“**First Lien Payment Default**” means a Default under a First Lien Document that arises by reason of any non-payment under such First Lien Document.

“**Group**” means the Parent and each of its Restricted Subsidiaries for the time being.

**“Guarantee Liabilities”** means, in relation to a member of the Group, the liabilities and obligations under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (other than to an Arranger or a Creditor Representative) or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Credit Facility Documents, the Senior Secured Note Documents or the Second Lien Note Documents).

**“Holding Company”** means, in relation to a person, any other person in respect of which it is a Subsidiary.

**“Initial Enforcement Notice”** has the meaning given to such term in Clause 11.1 (*Instructions to enforce*).

**“Initial Revolving Facility”** means the “Facility” under and as defined in the Initial Revolving Facility Agreement.

**“Initial Revolving Facility Agreement”** means the revolving facility agreement made between the Parent, the Revolving Lenders and others dated on or about the date of this Agreement.

**“Initial Revolving Facility Liabilities”** means the Liabilities owed by the Debtors to the Credit Facility Creditors under the Initial Revolving Finance Documents.

**“Initial Revolving Finance Documents”** means the “Finance Documents” under and as defined in the Initial Revolving Facility Agreement.

**“Insolvency Event”** means, in relation to any member of the Group:

- (a) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of that member of the Group, a moratorium is declared in relation to any indebtedness of that member of the Group or an administrator is appointed to that member of the Group;
- (b) any composition, compromise, assignment or arrangement is made with any of its creditors;
- (c) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that member of the Group or any of its assets; or
- (d) any analogous procedure or step is taken in any jurisdiction.

**“Instructing Group”** means

- (a) on or prior to the First Lien Discharge Date:
  - (i) subject to paragraph (ii) below, the Revolving Agent or the facility agent, as applicable, acting upon instructions from the Majority Credit Facility Lenders and the Senior Secured Note Trustee acting upon the instruction of the Majority Senior Secured Note Creditors; and
  - (ii) in relation to instructions as to Enforcement, the group of Creditors entitled to give instructions as to Enforcement under Clause 11.1 (*Instructions to enforce*); and
- (b) after the First Lien Discharge Date, means the Second Lien Note Trustee acting upon instructions from the Majority Second Lien Note Creditors.

**“Intercreditor Amendment”** means any amendment or waiver which is subject to Clause 27 (*Consents, Amendments and Override*).

**“Intra-Group Lenders”** means each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which is named on the signing pages as an Intra-Group Lender or which becomes a Party as an Intra-Group Lender in accordance with the terms of Clause 21 (*Changes to the Parties*).

**“Intra-Group Liabilities”** means the Liabilities owed by any member of the Group to any of the Intra-Group Lenders.

**“Liabilities”** means all present and future liabilities and obligations at any time of any member of the Group to any Creditor under the Debt Documents, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**“Liabilities Acquisition”** means, in relation to a person and to any Liabilities, a transaction where that person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of, the rights in respect of those Liabilities.

**“Liabilities Sale”** means a Debt Disposal pursuant to paragraph (e) of Clause 13.1 (*Facilitation of Distressed Disposals*).

**“Majority Credit Facility Lenders”** means:

- (a) on or prior to the Revolving Lender Discharge Date, the “Majority Lenders” under, and as defined in, the Initial Revolving Facility Agreement after the application of:
  - (i) paragraph (a) of Clause 28.1 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*); and
  - (ii) Clause 25.4 (*Disenfranchisement of Defaulting Lenders*),of the Initial Revolving Facility Agreement; and
- (b) after the Revolving Lender Discharge Date, at any time, those Credit Facility Lenders whose Credit Facility Participations at that time aggregate more than 66.67 per cent. of the total Credit Facility Participations of all Credit Facility Lenders at that time.

**“Majority Senior Secured Note Creditors”** means, at any time, those Senior Secured Noteholders whose Senior Secured Note Credit Participations at that time aggregate more than 50 per cent. of the total Senior Secured Note Credit Participations at that time.

**“Majority Second Lien Note Creditors”** means at any time those Second Lien Note Creditors whose Second Lien Note Credit Participations at that time aggregate more than 50 per cent. of the total Second Lien Note Credit Participations at that time.

**“Non-Cash Consideration”** means consideration in a form other than cash.

**“Non-Cash Recoveries”** means:

- (a) any proceeds of a Distressed Disposal or a Debt Disposal; or
- (b) any amount distributed to the Security Agent pursuant to Clause 9.2 (*Turnover by the Primary Creditors*),

which are, or is, in the form of Non-Cash Consideration.

**“Non-Distressed Disposal”** has the meaning given to that term in Clause 12 (*Non-Distressed Disposals*).

**“Officers”** means the principal executive officer, the principal financial officer, the principal operating officer, the principal technical officer, the treasurer, the controller, the general counsel or the principal accounting officer of the Parent.

**“Other Liabilities”** means, in relation to a member of the Group, any trading and other liabilities and obligations (not being Borrowing Liabilities or Guarantee Liabilities) it may have to an Intra-Group Lender or Debtor.

**“Party”** means a party to this Agreement.

**“Payment”** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations).

**“Permitted Credit Facility Payments”** means the Payments permitted by Clause 3.1 (*Payment of Credit Facility Liabilities*).

**“Permitted Intra-Group Payments”** means the Payments permitted by Clause 6.2 (*Permitted Payments: Intra-Group Liabilities*).

**“Permitted Payment”** means a Permitted Intra-Group Payment, a Permitted Senior Secured Note Payment, a Permitted Credit Facility Payment or a Permitted Second Lien Note Payment.

**“Permitted Reorganisation”** means a solvent liquidation, reorganisation, merger, amalgamation or consolidation involving a Debtor and one or more other entities (or in the case of a solvent reorganization only no other entity) that results in the same person, a different person or in the case of a solvent reorganization only no person owning the relevant assets and where such solvent liquidation, reorganisation, merger, amalgamation or consolidation is expressly permitted under the Credit Facility Documents, the Senior Secured Note Documents, and the Second Lien Note Documents and the Security Agent has received an opinion of counsel and a certificate signed by a director of the Parent (without personal liability) each confirming that such solvent liquidation, reorganisation, merger, amalgamation or consolidation, in each case, is expressly permitted under the Credit Facility Documents, the Senior Secured Note Documents, and the Second Lien Note Documents.

**“Permitted Second Lien Note Payments”** means the Payments permitted by Clause 7.2 (*Permitted Payments: Second Lien Note Liabilities*).

**“Permitted Senior Secured Note Payments”** means the Payments permitted by Clause 4.1 (*Payment of Senior Secured Note Liabilities*).

**“Primary Creditors”** means the Credit Facility Creditors, the Senior Secured Note Creditors and the Second Lien Note Creditors.

**“Primary Finance Documents”** means the Credit Facility Documents, the Senior Secured Note Documents and the Second Lien Note Documents.

**“Property”** of a member of the Group or of a Debtor means:

- (a) any asset of that member of the Group or of that Debtor;
- (b) any Subsidiary of that member of the Group or of that Debtor; and
- (c) any asset of any such Subsidiary.

**“Public Auction”** means an auction in which more than one bidder participates or is invited to participate and which is conducted in accordance with the advice of an internationally recognised bank or firm of accountants or (in respect of an auction of vessels only) an internationally recognised ship broker.

**“Purchasing Second Lien Note Creditor”** has the meaning given to that expression in Clause 5.2 (*Option to purchase: Second Lien Note Creditors*).

**“Purchasing Senior Secured Note Creditors”** has the meaning given to that expression in Clause 5.1 (*Option to purchase: Senior Secured Note Creditors*).

**“Receiver”** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

**“Recoveries”** has the meaning given to that term in Clause 16.1 (*Order of Application*).

**“Relevant Liabilities”** means:

- (a) in the case of a Creditor:
  - (i) the Liabilities owed to Creditors ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to that Creditor (as the case may be); and
  - (ii) all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agent; and
- (b) in the case of a Debtor, the Liabilities owed to the Creditors together with all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agent.

**“Restricted Subsidiary”** means a Subsidiary of the Parent other than an Unrestricted Subsidiary.

**“Revolving Agent”** means the facility agent under and as defined in the Initial Revolving Facility Agreement.

**“Revolving Arranger”** means any arranger under and as defined in the Initial Revolving Facility Agreement.



**“Revolving Lender Discharge Date”** means the first date on which all Initial Revolving Facility Liabilities have been fully and finally discharged to the satisfaction of the Revolving Agent, whether or not as the result of an enforcement, and the Revolving Lenders are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

**“Revolving Lenders”** means each Lender (as defined in the Initial Revolving Facility Agreement).

**“Second Lien Note Acceleration Event”** means the Creditor Representative in relation to any Second Lien Note Liabilities exercising any of its rights under any Second Lien Note Document to accelerate the payment of the Second Lien Note Liabilities or any acceleration provisions being automatically invoked under the relevant Second Lien Note Document other than the right to declare any amount payable on demand.

**“Second Lien Note Credit Participation”** means:

- (a) the aggregate outstanding principal amount of the Second Lien Notes held by it, if any (as determined in accordance with the Second Lien Note Indenture); and
- (b) to the extent not falling within paragraph (a), above, the aggregate outstanding principal amount of any Second Lien Note Liabilities in respect of which it is the creditor, if any.

**“Second Lien Note Creditors”** means:

- (a) each Creditor Representative in relation to any Second Lien Note Liabilities; and
- (b) and each Second Lien Noteholder.

**“Second Lien Note Discharge Date”** means the first date on which all Second Lien Note Liabilities have been fully and finally discharged to the satisfaction of the Creditor Representative(s) in relation to any Second Lien Note Liabilities, whether or not as the result of an enforcement, and the Second Lien Note Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Second Lien Note Documents.

**“Second Lien Note Documents”** means any Second Lien Note Indenture, Second Lien Notes and any other document or instrument entered into between any member of the Group and a Second Lien Note Creditor setting out the terms of any credit facility, notes, indenture or debt security which creates or evidences any Second Lien Note Liabilities.

**“Second Lien Note Guarantee Liabilities”** means the Liabilities due, owing or incurred by any Debtor to any Second Lien Note Creditor under or in connection with the Second Lien Note Documents (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently, and whether as principal, surety or otherwise).

**“Second Lien Note Indenture”** means any note indenture setting out the terms of any debt security which creates or evidences any Second Lien Note Liabilities.

**“Second Lien Note Issuer”** means the issuer of the Second Lien Note Liabilities, being the Parent or a special purpose finance Subsidiary of the Parent, and which is a “Guarantor” as defined in each of the Credit Facilities and a “Guarantor” or “Issuer” as defined in the Second Lien Note Indenture.

**“Second Lien Note Liabilities”** means the Liabilities due, owing or incurred by the Debtors to any Second Lien Note Creditor under or in connection with any Second Lien Note Documents and includes any Second Lien Note Guarantee Liabilities.

**“Second Lien Note Payment Stop Notice”** has the meaning given to that expression in Clause 7.3 (*Issue of Second Lien Note Payment Stop Notice*).

“**Second Lien Note Trustee**” means any entity acting as trustee, agent or representative under any issue or borrowing of Second Lien Notes and which accedes to this Agreement pursuant to Clause 21.9 (*Accession of Second Lien Note Creditors*).

“**Second Lien Note Trustee Amounts**” means fees, costs and expenses of the Second Lien Note Trustee (including any amount payable to the Second Lien Note Trustee by way of indemnity, remuneration or reimbursement for expenses incurred) payable to the Second Lien Note Trustee for its own account pursuant to the relevant Debt Documents or any engagement letter between the Second Lien Note Trustee and the relevant member of the Group, and the costs of any actual or attempted Enforcement Action which is permitted by this Agreement which are recoverable pursuant to the terms of the relevant Debt Documents, together with any VAT payable on any of the foregoing, but shall not include (a) any amount of principal or interest payable in respect of any Debt Document or (b) the costs of bringing any claims, suit or proceeding against any First Lien Creditor.

“**Second Lien Noteholder**” means any other holder from time to time of any Second Lien Notes.

“**Second Lien Notes**” means any second lien notes issued or to be issued by the Second Lien Note Issuer under a Second Lien Note Indenture.

“**Secured Obligations**” means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

“**Secured Parties**” means the Security Agent, any Receiver or Delegate and each of the Primary Creditors from time to time but, in the case of each Primary Creditor, only if it (or, in the case of a Senior Secured Noteholder or Second Lien Note Creditor, its Creditor Representative) is a Party or has acceded to this Agreement in the appropriate capacity pursuant to Clause 21.10 (*Creditor/Creditor Representative Accession Undertaking*).

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Security Agent’s Spot Rate of Exchange**” means, in respect of the conversion of one currency (the “**First Currency**”) into another currency (the “**Second Currency**”) the Security Agent’s or its agent’s then-prevailing rate of exchange for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11:00 am (London time) on a particular day, which shall be notified by the Security Agent in accordance with paragraph (e) of Clause 18.4 (*Duties of the Security Agent*) to the extent available.

“**Security Documents**” means:

- (a) each of the Transaction Security Documents;
- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured Obligations; and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b) above.

“**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 Debtor to pay amounts in respect of the 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 Debtor in favour of the Security Agent as trustee for the Secured Parties;
- (c) the Security Agent's interest in any trust fund created pursuant to Clause 9 (*Turnover of Receipts*); and
- (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 Debt Documents to hold as trustee on trust for the benefit of the Secured Parties.

**"Senior Secured Note Acceleration Event"** means the Senior Secured Note Trustee (or the requisite Senior Secured Noteholders under the Senior Secured Note Indenture) exercising any of its or their rights under section 6.02 of the Senior Secured Note Indenture or any acceleration provisions being automatically invoked in each case under Section 6.02 of the Senior Secured Note Indenture other than the right to declare any amount payable on demand.

**"Senior Secured Note Credit Participation"** means:

- (a) the aggregate outstanding principal amount of the Senior Secured Notes held by it, if any (as determined in accordance with the Senior Secured Note Indenture); and
- (b) to the extent not falling within paragraph (a) above, the aggregate outstanding principal amount of any Senior Secured Note Liabilities in respect of which it is the creditor, if any.

**"Senior Secured Note Creditors"** means the Senior Secured Noteholders and the Senior Secured Note Trustee.

**"Senior Secured Note Discharge Date"** means the first date on which all Senior Secured Note Liabilities have been fully and finally discharged to the satisfaction of the Creditor Representative(s) in relation to any Senior Secured Note Liabilities, whether or not as the result of an enforcement, and the Senior Secured Note Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Senior Secured Note Documents.

**"Senior Secured Note Documents"** means the Senior Secured Note Indenture, the Senior Secured Notes, the Security Documents, the Senior Secured Note Guarantees (whether contained in the Senior Secured Note Indenture, as a notation of guarantee attached to the Senior Secured Notes or otherwise) and this Agreement.

**"Senior Secured Note Guarantees"** means the "Guarantees" as defined in the Senior Secured Note Indenture.

**"Senior Secured Note Guarantors"** means the "Guarantors" as defined in the Senior Secured Note Indenture.

**"Senior Secured Note Indenture"** means the indenture governing the Senior Secured Notes dated on or about the date of this Agreement and made between, among others, the Senior Secured Note Trustee, the Security Agent, the Senior Secured Note Issuer and the Senior Secured Note Guarantors.

**"Senior Secured Note Issuer"** means the Parent.

**"Senior Secured Note Liabilities"** means the Liabilities owed by the Debtors to the Senior Secured Note Creditors under or in connection with the Senior Secured Note Documents.

**"Senior Secured Noteholders"** means the holders from time to time of the Senior Secured Notes.

“**Senior Secured Notes**” means:

- (a) the 10.000% First Priority Secured Notes due 2019 issued or to be issued by the Senior Secured Note Issuer pursuant to the Senior Secured Note Indenture; and
- (b) any other senior secured notes issued by the Senior Secured Note Issuer pursuant to the Senior Secured Note Indenture *provided that* the Parent has confirmed in writing that the incurrence of those notes will not breach the terms of any of its existing Credit Facility Documents or Senior Secured Note Documents.

“**Senior Secured Note Trustee**” means the note trustee in respect of the Senior Secured Notes.

“**Sponsor Affiliate**” means CMA CGM S.A. and any of its affiliates.

“**Subsidiary**” has the meaning given to that expression in the Initial Revolving Facility as at the date of this Agreement.

“**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).

“**Transaction Security**” means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Security Documents.

“**Transaction Security Documents**” means:

- (a) the “ Security Documents” as defined in the Initial Revolving Facility Agreement; and
- (b) any other document entered into by any Debtor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Debtors under any of the Debt Documents.

“**Unrestricted Subsidiary**” means a Subsidiary of the Parent which has been designated an “Unrestricted Subsidiary” for the purpose of (and in accordance with) all of the Credit Facility Documents and Senior Secured Note Documents.

“**VAT**” means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
  - (i) any “**Credit Facility Arranger**”, “**Creditor Representative**”, “**Arranger**”, “**Creditor**”, “**Debtor**”, “**First Lien Creditor**”, “**Intra-Group Lender**”, “**Second Lien Note Trustee**”, “**Second Lien Note Creditor**”, “**Second Lien Noteholder**”, “**Senior Secured Note Trustee**”, “**Senior Secured Noteholder**”, “**Senior Secured Note Creditor**”, “**Parent**”, “**Party**”, “**Primary Creditor**”, “**Security Agent**”, “**Revolving Agent**”, “**Credit Facility Borrower**”, “**Credit Facility Guarantor**”, “**Revolving Lender**” or “**Credit Facility Lender**”, shall be construed to be a reference to it in its capacity as such and not in any other capacity;

- (ii) any “**Creditor Representative**”, “**Arranger**”, “**Creditor**”, “**Debtor**”, any “**Party**” or the “**Security Agent**” 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 Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
  - (iii) “**assets**” includes present and future properties, revenues and rights of every description;
  - (iv) a “**Debt Document**” or any other agreement or instrument is (other than a reference to a “**Debt Document**” or any other agreement or instrument in “**original form**”) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
  - (v) “**enforcing**” (or any derivation) the Transaction Security includes:
    - (A) the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor by the Security Agent; and
    - (B) the making of a demand under Clause 18.2 (*Parallel debt*) by the Security Agent;
  - (vi) a “**group of Creditors**” includes all the Creditors and a “**group of Primary Creditors**” includes all the Primary Creditors;
  - (vii) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (viii) the “**original form**” of a “**Debt Document**” or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
  - (ix) 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);
  - (x) “**proceeds**” of a Distressed Disposal or of a Debt Disposal includes proceeds in cash;
  - (xi) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
  - (xii) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, Clause and Schedule headings are for ease of reference only.
  - (c) A Default is “**continuing**” if it has not been remedied or waived.
  - (d) References to a Creditor Representative acting on behalf of the Credit Facility Creditors of which it is the Creditor Representative means such Creditor Representative acting on behalf of the Credit Facility Creditors of which it is the Creditor Representative with the consent of the proportion of such Credit Facility Creditors required under and in accordance with the applicable Credit Facility Documents (*provided that* if the relevant Credit Facility Documents do not specify a voting threshold for a particular matter, the threshold will be the Majority Credit Facility Lenders). A Creditor Representative will be entitled to seek instructions from

the Credit Facility Creditors of which it is the Creditor Representative to the extent required by the applicable Credit Facility Documents, as the case may be, as to any action to be taken by it under this Agreement. To the extent that the Creditor Representative acting on behalf of the Credit Facility Creditors is acting in accordance with the terms of the Credit Facility Documents then the Creditor Representative acting on behalf of the Credit Facility Creditors will not be required to obtain any further consent from the Credit Facility Creditors in respect of such decision if such consent is not required pursuant to the Credit Facility Documents.

- (e) References to a Creditor Representative acting on behalf of the Senior Secured Note Creditors of which it is the Creditor Representative means such Creditor Representative acting on behalf of the Senior Secured Note Creditors of which it is the Creditor Representative with the consent of the proportion of such Senior Secured Note Creditors required under and in accordance with the applicable Senior Secured Note Documents (*provided that* if the relevant Senior Secured Note Documents do not specify a voting threshold for a particular matter, the threshold will be a simple majority of the outstanding principal amount under those Senior Secured Note Documents (excluding any Senior Secured Note Liabilities owned by a member of the Group or a Sponsor Affiliate)). A Creditor Representative will be entitled to seek instructions from the Senior Secured Note Creditors of which it is the Creditor Representative to the extent required by the applicable Senior Secured Note Documents, as the case may be, as to any action to be taken by it under this Agreement. To the extent that the Senior Secured Note Trustee is acting in accordance with the terms of the Senior Secured Note Documents then the Senior Secured Note Trustee will not be required to obtain any further consent from the Senior Secured Noteholders in respect of such decision if such consent is not required pursuant to the Senior Secured Note Documents.
- (f) References to a Creditor Representative acting on behalf of the Second Lien Note Creditors of which it is the Creditor Representative means such Creditor Representative acting on behalf of the Second Lien Note Creditors of which it is the Creditor Representative with the consent of the proportion of such Second Lien Note Creditors required under and in accordance with the applicable Second Lien Note Documents (*provided that* if the relevant Second Lien Note Documents do not specify a voting threshold for a particular matter, the threshold will be a simple majority of the outstanding principal amount under those Second Lien Note Documents (excluding any Second Lien Note Liabilities owned by a member of the Group or a Sponsor Affiliate)). A Creditor Representative will be entitled to seek instructions from the Second Lien Note Creditors of which it is the Creditor Representative to the extent required by the applicable Second Lien Note Documents, as the case may be, as to any action to be taken by it under this Agreement. To the extent that the Second Lien Note Trustee is acting in accordance with the terms of the Second Lien Notes Documents then the Second Lien Note Trustee will not be required to obtain any further consent from the Second Lien Noteholders in respect of such decision if such consent is not required pursuant to the Second Lien Note Documents.
- (g) Any certifications required to be given by a Creditor Representative under this Agreement shall be given by that Creditor Representative without incurring any liability.

### 1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Agreement, 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) Notwithstanding any term of this Agreement, 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 or any other person described in paragraph (b) of Clause 18.11 (*Exclusion of liability*) may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.
- (d) The Third Parties Act shall apply to this Agreement in respect of any Senior Secured Noteholder or Second Lien Noteholder. For the purposes of paragraph (b) above and this paragraph (d), upon any person becoming a Senior Secured Noteholder or Second Lien Noteholder, such person shall be deemed to be a Party to this Agreement and shall be bound by the provisions of this Agreement and be deemed to receive the benefits of this Agreement, and be subject to the terms and conditions hereof, as if such person were a Party hereto.

## 2. RANKING AND PRIORITY

### 2.1 Primary Creditor Liabilities

Each of the Parties agrees that the Liabilities of the Primary Creditors shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:

- (a) **first**, the Credit Facility Liabilities and the Senior Secured Note Liabilities *pari passu* and without any preference between them; and
- (b) **second**, the Second Lien Note Liabilities.

### 2.2 Transaction Security

Each of the Parties agrees that the Transaction Security shall rank and secure the Credit Facility Liabilities, the Senior Secured Note Liabilities and the Second Lien Note Liabilities (but only to the extent that such Transaction Security is expressed to secure those Liabilities) in the following order:

- (a) **first**, the Credit Facility Liabilities;
- (b) **second**, the Senior Secured Note Liabilities; and
- (c) **third**, the Second Lien Note Liabilities.

### 2.3 Intra-Group Liabilities

Each of the Parties agrees that the Intra-Group Liabilities are postponed and subordinated in accordance with the terms of this Agreement to the Liabilities owed by the Debtors to the Primary Creditors.

### 2.4 Creditor Representative Amounts

Subject to Clause 16 (*Application of Proceeds*) where applicable, nothing in this Agreement will prevent payment by the Parent or any Debtor of the Creditor Representative Amounts or the receipt and retention of such Creditor Representative Amounts by the relevant Creditor Representative(s).

## 3. CREDIT FACILITY CREDITORS AND CREDIT FACILITY LIABILITIES

### 3.1 Payment of Credit Facility Liabilities

The Debtors may make Payments of the Credit Facility Liabilities at any time in accordance with, and subject to the provisions of, the relevant Credit Facility Documents.

### 3.2 **Security: Credit Facility Creditors**

The Credit Facility Creditors may take, accept or receive the benefit of:

- (a) any Security in respect of the Credit Facility Liabilities from any member of the Group in addition to the Common Transaction Security which to the extent legally possible is, at the same time, also offered either:
  - (i) to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
  - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties:
    - (A) to the other Secured Parties in respect of their Liabilities; or
    - (B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties, and ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*); and
- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Credit Facility Liabilities in addition to those in:
  - (i) the original form of the Initial Revolving Facility Agreement or any Equivalent Provision in any other Credit Facility Agreement;
  - (ii) this Agreement; or
  - (iii) any Common Assurance,if and to the extent legally possible, at the same time it is also offered to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

## 4. **SENIOR SECURED NOTE CREDITORS AND SENIOR SECURED NOTE LIABILITIES**

### 4.1 **Payment of Senior Secured Note Liabilities**

The Debtors may make Payments of the Senior Secured Note Liabilities at any time in accordance with, and subject to the provisions of, the Senior Secured Note Documents and Clause 16.17 (*Note Purchase Condition*) of the Initial Revolving Facility Agreement and any Equivalent Provision of any other Credit Facility Agreement.

### 4.2 **Security: Senior Secured Note Creditors**

The Senior Secured Note Creditors may take, accept or receive the benefit of:

- (a) any Security in respect of the Senior Secured Note Liabilities from any member of the Group in addition to the Common Transaction Security which to the extent legally possible is, at the same time, also offered either:
  - (i) to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or



- (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties:
  - (A) to the other Secured Parties in respect of their Liabilities; or
  - (B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties,and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*); and
- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Senior Secured Note Liabilities in addition to those in:
  - (i) the original form of the Senior Secured Note Indenture and Senior Secured Note Guarantees; or
  - (ii) this Agreement; or
  - (iii) any Common Assurance,if and to the extent legally possible at the same time it also offered to the other Secured Parties in respect of their respective Liabilities and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

## 5. OPTION TO PURCHASE

### 5.1 Option to purchase: Senior Secured Note Creditors

- (a) Subject to paragraph (b) below some or all of the Senior Secured Noteholders (the “**Purchasing Senior Secured Note Creditors**”) may after a Distress Event, after having given all Senior Secured Noteholders the opportunity to participate in such purchase, by giving not less than ten days’ notice to the Security Agent, require the transfer to them (or to a nominee or nominees), in accordance with Clause 21.2 (*Change of Credit Facility Lender under an existing Credit Facility*), of all, but not part, of the rights, benefits and obligations in respect of the Credit Facility Liabilities (“**Senior Secured Note Option to Purchase Notice**”) if:
  - (i) that transfer is lawful and, subject to paragraph (ii) below, otherwise permitted by the terms of the relevant Credit Facility Agreement;
  - (ii) any conditions relating to such a transfer contained in the relevant Credit Facility Agreement are complied with, other than:
    - (A) any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required; and
    - (B) any condition more onerous than those contained in Clause 27.1 (*Assignments and transfers by Lenders*) of the original form of the Initial Revolving Facility Agreement;
  - (iii) the relevant Creditor Representative, on behalf of the Credit Facility Lenders, is paid an amount by the Purchasing Senior Secured Note Creditors equal to the aggregate of:
    - (A) all of the Credit Facility Liabilities at that time (whether or not due), including all amounts that would have been payable under the Credit Facility Documents if the Credit Facility Liabilities were being prepaid by the relevant Debtors on the date of that payment; and
    - (B) all costs and expenses (including legal fees) incurred by the relevant Creditor Representative for the Credit Facility Lenders and/or the Credit Facility Lenders as a consequence of giving effect to that transfer;

- (iv) as a result of that transfer the Credit Facility Lenders have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
  - (v) an indemnity is provided from the Purchasing Senior Secured Note Creditors (or from another third party acceptable to all the Credit Facility Lenders) in a form satisfactory to each Credit Facility Lender in respect of all losses which may be sustained or incurred by any Credit Facility Lender in consequence of any sum received or recovered by any Credit Facility Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Credit Facility Lender for any reason; and
  - (vi) the transfer is made without recourse to, or representation or warranty from, the Credit Facility Lenders, except that each Credit Facility Lender shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) The Creditor Representatives in respect of the Credit Facilities shall, at the request of the Purchasing Senior Secured Note Creditors notify the Senior Secured Noteholders of the sum of the amounts described in paragraphs (a)(iii) above; and
- (c) If more than one Purchasing Senior Secured Note Creditor wishes to exercise the option to purchase the Credit Facility Liabilities in accordance with paragraph (a) above, each such Purchasing Senior Secured Note Creditor shall:
- (i) acquire the Credit Facility Liabilities *pro rata*, in the proportion that its Senior Secured Note Credit Participation bears to the aggregate Senior Secured Note Credit Participations of all the Purchasing Senior Secured Note Creditors; and
  - (ii) inform the Senior Secured Note Trustee in accordance with the terms of the Senior Secured Note Indenture or the relevant Creditor Representative(s) in accordance with the terms of the relevant Senior Secured Note Documents, who will determine (consulting with each other as required) the appropriate share of the Credit Facility Liabilities to be acquired by each such Purchasing Senior Secured Note Creditor and who shall inform each such Purchasing Senior Secured Note Creditor accordingly,
- and the Senior Secured Note Trustee shall promptly inform the Creditor Representatives of the Credit Facility Lenders of the intention to exercise the option to purchase the Credit Facility Liabilities.
- (d) No Senior Secured Note Option to Purchase Notice can be served at such time when a Second Lien Option to Purchase Notice is outstanding.

## 5.2 Option to purchase: Second Lien Note Creditors

- (a) Following receipt of a Second Lien Note Payment Stop Notice, the Second Lien Note Trustee may at the direction and expense of one or more of the Second Lien Note Creditors (the “**Purchasing Second Lien Note Creditors**”), if it gives not less than ten days’ prior written notice to the Security Agent, the Creditor Representative of the Credit Facility Lenders and the Senior Secured Note Trustee(s) and prior to giving any such notice, it obtains all necessary

approvals from the Purchasing Second Lien Note Creditors, acquire or procure the acquisition by a person nominated by the Purchasing Second Lien Note Creditors or the Second Lien Note Trustee of all (but not part only) of the rights and obligations of the Credit Facility Lenders and the Senior Secured Note Creditors in connection with the Liabilities owed to them under their respective Debt Documents by way of transfer under the relevant provisions in any relevant Debt Documents (“**Second Lien Option to Purchase Notice**”) if:

- (i) that transfer is lawful and, subject to paragraph (ii) below, otherwise permitted by the terms of the relevant Credit Facility Agreement and relevant Senior Secured Note Documents;
- (ii) any conditions relating to such a transfer contained in the relevant Credit Facility Agreement and relevant Senior Secured Note Documents are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required;
- (iii) the relevant Creditor Representative, on behalf of the Credit Facility Lenders, is paid an amount by the Purchasing Second Lien Note Creditors equal to the aggregate of:
  - (A) all of the Credit Facility Liabilities at that time (whether or not due), including all amounts that would have been payable under the Credit Facility Documents if the Credit Facility Liabilities were being prepaid by the relevant Debtors on the date of that payment; and
  - (B) all costs and expenses (including legal fees) incurred by the Creditor Representative on behalf of the Credit Facility Lenders and/or the Credit Facility Lenders as a consequence of giving effect to that transfer;
- (iv) the relevant Creditor Representative, on behalf of the Senior Secured Note Creditors, is paid an amount by the Purchasing Second Lien Note Creditors equal to the aggregate of:
  - (A) all of the Senior Secured Note Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Secured Note Documents if the Senior Secured Note Liabilities were being prepaid, redeemed or purchased by the relevant Debtors on the date of that payment; and
  - (B) all costs and expenses (including legal fees) incurred by the Creditor Representative on behalf of the Senior Secured Note Creditors and/or the Senior Secured Note Creditors as a consequence of giving effect to that transfer;
- (v) as a result of that transfer the Credit Facility Lenders and the Senior Secured Note Creditors have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
- (vi) an indemnity is provided from the Purchasing Second Lien Note Creditors (or from another third party acceptable to all the Credit Facility Lenders and the Creditor Representative for the Senior Secured Note Creditors) in a form satisfactory to each Credit Facility Lender and the Creditor Representative for the Senior Secured Note Creditors in respect of all losses which may be sustained or incurred by any Credit Facility Lender or Senior Secured Note Creditor in consequence of any sum received or recovered by any Credit Facility Lender or Senior Secured Note Creditor from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Credit Facility Lender or Senior Secured Note Creditor for any reason; and
- (vii) the transfer is made without recourse to, or representation or warranty from, the Credit Facility Lenders or Senior Secured Note Creditors, except that each Credit Facility Lender and Senior Secured Note Creditor shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.

- (b) The Creditor Representatives in respect of the Credit Facilities and the Senior Secured Note Trustee shall, at the request of the Purchasing Second Lien Note Creditors notify the Second Lien Note Trustee of the sum of the amounts described in paragraphs (a)(iii) and (iv) above; and
- (c) If more than one Purchasing Second Lien Note Creditor wishes to exercise the option to purchase the Credit Facility Liabilities and Senior Secured Note Liabilities in accordance with paragraph (a) above, each such Purchasing Second Lien Note Creditor shall:
  - (i) acquire the Credit Facility Liabilities and Senior Secured Note Liabilities pro rata, in the proportion that its Second Lien Note Credit Participation bears to the aggregate Second Lien Note Credit Participations of all the Purchasing Second Lien Note Creditors; and
  - (ii) inform the Second Lien Note Trustee in accordance with the terms of the Second Lien Note Indenture, who will determine the appropriate share of the Credit Facility Liabilities and Senior Secured Note Liabilities to be acquired by each such Purchasing Second Lien Note Creditor and who shall inform each such Purchasing Second Lien Note Creditor accordingly,and the Second Lien Note Trustee shall promptly inform the Creditor Representatives of the Credit Facility Lenders and the Creditor Representatives of the Senior Secured Note Creditors of the intention to exercise the option to purchase the relevant Liabilities.
- (d) No Second Lien Option to Purchase Notice can be served at such time when a Senior Secured Note Option to Purchase Notice is outstanding.

6. **INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES**

6.1 **Restriction on Payment: Intra-Group Liabilities**

Prior to the Final Discharge Date, the Debtors shall not, and shall procure that no other member of the Group will, make any Payments of the Intra-Group Liabilities at any time unless:

- (a) that Payment is permitted under Clause 6.2 (*Permitted Payments: Intra-Group Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 6.7 (*Permitted Enforcement: Intra-Group Lenders*).

6.2 **Permitted Payments: Intra-Group Liabilities**

- (a) Subject to paragraph (b) below, the Debtors may make Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) from time to time when due.
- (b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred unless:
  - (i) prior to the First Lien Discharge Date the Creditor Representative acting on the instructions of the Majority Credit Facility Lenders and the Senior Secured Note Trustee acting on the instructions of the Majority Senior Secured Note Creditors consent to that Payment being made;

- (ii) after the First Lien Discharge Date the Second Lien Note Trustee acting on the instructions of the Majority Second Lien Note Creditors consent to that Payment being made; or
- (iii) that Payment is made to facilitate the making of a Permitted Credit Facility Payment or a Permitted Senior Secured Note Payment or a Permitted Second Lien Note Payment.

**6.3 Payment obligations continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 6.1 (*Restriction on Payment: Intra-Group Liabilities*) and 6.2 (*Permitted Payments: Intra-Group Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

**6.4 Acquisition of Intra-Group Liabilities**

- (a) Subject to paragraph (b) below, each Debtor may, and may permit any other member of the Group to:
  - (i) enter into any Liabilities Acquisition; or
  - (ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition, in respect of any Intra-Group Liabilities at any time.
- (b) Subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities if:
  - (i) that action would result in a breach of a Credit Facility Agreement or the Senior Secured Note Indenture or the Second Lien Note Indenture; or
  - (ii) at the time of that action, an Acceleration Event has occurred.
- (c) The restrictions in paragraph (b) above shall not apply if:
  - (i) prior to the First Lien Discharge Date the Creditor Representative acting on the instructions of the Majority Credit Facility Lenders and the Senior Secured Note Trustee acting on the instructions of the Majority Senior Secured Note Creditors consent to that action; or
  - (ii) after the First Lien Discharge Date the Second Lien Note Trustee acting on the instructions of the Majority Second Lien Note Creditors consents to that action; or
  - (iii) that action is taken to facilitate the making of a Permitted Credit Facility Payment or a Permitted Senior Secured Note Payment or a Permitted Second Lien Note Payment.

**6.5 Security: Intra-Group Lenders**

Prior to the Final Discharge Date, the Intra-Group Lenders may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Intra-Group Liabilities unless:

- (a) that Security, guarantee, indemnity or other assurance against loss is expressly permitted by the Credit Facility Agreement(s) and not prohibited by the Senior Secured Note Indenture; or
- (b) the prior consent of the Creditor Representative acting on the instructions of the Majority Credit Facility Lenders and the Senior Secured Note Trustee acting on the instructions of the Majority Senior Secured Note Creditors is obtained.

**6.6 Restriction on enforcement: Intra-Group Lenders**

Subject to Clause 6.7 (*Permitted Enforcement: Intra-Group Lenders*), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date.

**6.7 Permitted Enforcement: Intra-Group Lenders**

After the occurrence of an Insolvency Event in relation to any member of the Group, each Intra-Group Lender may (unless otherwise directed by the Security Agent pursuant to instructions from the Instructing Group or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Intra-Group Lender in accordance with Clause 8.5 (*Filing of claims*)) exercise any right it may otherwise have against that member of the Group to:

- (a) accelerate any of that member of the Group's Intra-Group Liabilities or declare them prematurely due and payable or payable on demand;
- (b) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Intra-Group Liabilities;
- (c) exercise any right of set-off or take or receive any Payment in respect of any Intra-Group Liabilities of that member of the Group; or
- (d) claim and prove in the liquidation of that member of the Group for the Intra-Group Liabilities owing to it.

**6.8 Representations: Intra-Group Lenders**

Each Intra-Group Lender which is not a Debtor represents and warrants to the Primary Creditors and the Security Agent that:

- (a) it is a corporation or other limited liability entity, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of this Agreement does not and will not:
  - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
  - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

7. **SECOND LIEN NOTE LIABILITIES**

7.1 **Restriction on Payment: Second Lien Note Liabilities**

Prior to the First Lien Discharge Date, neither the Parent nor any other Debtor shall, and the Parent shall procure that no other member of the Group will, make any Payment of the Second Lien Note Liabilities at any time unless that Payment is permitted under Clause 7.2 (*Permitted Payments: Second Lien Note Liabilities*).

7.2 **Permitted Payments: Second Lien Note Liabilities**

The Debtors may:

- (a) prior to the First Lien Discharge Date, make Payments to the Second Lien Note Creditors in respect of the Second Lien Note Liabilities then due in accordance with the Second Lien Note Documents:
  - (i) if:
    - (A) the Payment is of any amount (including, without limitation, cash pay interest, default interest, fees and additional amounts) which is not an amount of principal or capitalised interest;
    - (B) no Second Lien Note Payment Stop Notice is outstanding; and
    - (C) no First Lien Payment Default has occurred and is continuing; or
  - (ii) if the Creditor Representative acting on the instructions of the Majority Credit Facility Lenders and (where that Payment is not permitted under the Senior Secured Note Documents) the Senior Secured Note Trustee acting on the instructions of the Majority Senior Secured Note Creditors give their prior approval in writing to that Payment being made; or
  - (iii) if the Payment is of Second Lien Note Trustee Amounts; or
  - (iv) if the Payment is of any costs, commissions, taxes, consent fees, underwriter or lead manager fees (including any original issue discount) and expenses incurred in respect of (or reasonably incidental to) the Second Lien Note Documents (including in relation to any reporting or listing requirements under the Second Lien Note Documents) provided such costs, commissions, taxes, premiums and any expenses are not incurred in respect of any current, threatened or pending litigation against the First Lien Creditors; or
  - (v) if the Payment is of costs, commissions, taxes, premiums and any expenses incurred in respect of (or reasonably incidental to) any financing of the Second Lien Note Liabilities in compliance with this Agreement, the Credit Facility Documents, and any Senior Secured Note Documents provided such costs, commissions, taxes, premiums and any expenses are not incurred in respect of any current, threatened or pending litigation against the First Lien Creditors,

provided that no Debtor shall provide funding to the Second Lien Note Issuer in respect of any such Payment more than five Business Days prior to the date that any such Payment is to be made by the Second Lien Note Issuer; and
- (b) on or after the First Lien Discharge Date, make Payments to the Second Lien Note Creditors in respect of the Second Lien Note Liabilities in accordance with the Second Lien Note Documents.

### 7.3 Issue of Second Lien Note Payment Stop Notice

- (a) Until the First Lien Discharge Date save as consented to in writing by the Creditor Representative acting on the instructions of the Majority Credit Facility Lenders and the Senior Secured Note Trustee acting on the instructions of the Majority Senior Secured Note Creditors the Parent shall procure that no member of the Group shall make, and no Second Lien Note Creditor may receive from any member of the Group, any Permitted Second Lien Note Payment (other than Second Lien Note Trustee Amounts) if:
- (i) a First Lien Payment Default is continuing; or
  - (ii) a First Lien Event of Default (other than a First Lien Payment Default) is continuing, from the date of receipt by the relevant Second Lien Note Trustee(s) of a notice (a “**Second Lien Note Payment Stop Notice**”) (with a copy to the Security Agent) from the Creditor Representative acting on the instructions of the Majority Credit Facility Lenders or the Senior Secured Note Trustee acting on the instructions of the Majority Senior Secured Note Creditors (as the case may be) specifying the event or circumstance in relation to that First Lien Event of Default until the earliest of:
    - (A) the date on which all outstanding First Lien Events of Default have been remedied or waived or cease to exist (or, if the relevant Credit Facility Liabilities or Senior Secured Note Liabilities have been accelerated, such acceleration has been rescinded) in accordance with the relevant Credit Facility Documents or the Senior Secured Note Documents (as applicable); and
    - (B) the date on which the Creditor Representative for the Credit Facility or the Senior Secured Note Trustee(s) which delivered the relevant Second Lien Note Payment Stop Notice (and, if at such time an Event of Default is continuing in relation to any other Credit Facility Liabilities or Senior Secured Note Liabilities, the Creditor Representative in respect of such Credit Facility Liabilities or Senior Secured Note Liabilities) delivers a notice to the Parent, the Security Agent and the Second Lien Note Trustee(s) cancelling the Second Lien Note Payment Stop Notice.
- (b) Unless the Second Lien Note Trustee(s) waives this requirement no Second Lien Note Payment Stop Notice may be delivered in reliance on a First Lien Event of Default more than 60 days after the date the relevant Creditor Representative for the Credit Facility and Senior Secured Note Trustee(s) (as applicable) received notice of that First Lien Event of Default.
- (c) The Creditor Representative for the Credit Facility and the Senior Secured Note Trustee(s) may serve more than one Second Lien Note Payment Stop Notice with respect to the same event or set of circumstances. Subject to paragraph (b) above, the Creditor Representative for the Credit Facility or the Senior Secured Note Trustee(s) may issue further Second Lien Note Payment Stop Notices in respect of any other event or set of circumstances.



**7.4 Effect of Second Lien Note Payment Stop Notice or First Lien Payment Default**

Any failure to make a Payment due under the Second Lien Note Documents as a result of the issue of a Second Lien Note Payment Stop Notice or the occurrence of a First Lien Payment Default shall not prevent the occurrence of an Event of Default as a consequence of that failure to make a Payment in relation to the relevant Second Lien Note Document.

**7.5 Payment obligations and capitalisation of interest continue**

- (a) No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Second Lien Note Document by the operation of Clauses 7.1 (*Restriction on Payment: Second Lien Note Liabilities*) to and including 7.4 (*Effect of Second Lien Stop Notice or First Lien Payment Default*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.
- (b) The accrual and capitalisation of interest (if any) in accordance with the Second Lien Note Documents shall continue notwithstanding the issue of a Second Lien Note Payment Stop Notice.

**7.6 Cure of Payment Stop: Second Lien Note Creditors**

If:

- (a) at any time following the issue of a Second Lien Note Payment Stop Notice or the occurrence of a First Lien Payment Default, that Second Lien Note Payment Stop Notice ceases to be outstanding and/or (as the case may be) the First Lien Payment Default ceases to be continuing; and
- (b) the relevant Debtor then promptly pays to the Second Lien Note Creditors an amount equal to any Payments which had accrued under the Second Lien Note Documents and which would have been Permitted Second Lien Note Payments but for that Second Lien Note Payment Stop Notice or First Lien Payment Default,

then any Event of Default which may have occurred as a result of that suspension of Payments shall be waived and any Second Lien Note Payment Stop Notice which may have been issued as a result of that Event of Default shall be waived, in each case without any further action being required on the part of the Second Lien Note Creditors.

**7.7 Restrictions on enforcement by Second Lien Note Creditors**

Until the First Lien Discharge Date, except with the prior consent of or as required by an Instructing Group no Second Lien Note Creditor shall take or require the taking of any Enforcement Action in relation to the Second Lien Note Liabilities.

**7.8 No acquisition of Second Lien Note Liabilities**

Prior to the First Lien Discharge Date, the Debtors shall not, and shall procure that no other member of the Group will:

- (a) enter into any Liabilities Acquisition; or
- (b) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

in respect of any of the Second Lien Note Liabilities, unless the prior consent of the Creditor Representative acting on the instructions of the Majority Credit Facility Lenders and the Senior Secured Note Trustee acting on the instructions of the Majority Senior Secured Note Creditors is obtained.

## 7.9 **Security: Second Lien Note Creditors**

The Second Lien Note Creditors may take, accept or receive the benefit of:

- (a) any Security in respect of the Second Lien Note Liabilities from any member of the Group in addition to the Common Transaction Security which to the extent legally possible is, at the same time, also offered either:
  - (i) to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
  - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties:
    - (A) to the other Secured Parties in respect of their Liabilities; or
    - (B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties,and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*); and
- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Second Lien Note Liabilities in addition to those in:
  - (i) a Second Lien Note Document; or
  - (ii) this Agreement; or
  - (iii) any Common Assurance,if and to the extent legally possible at the same time it is also offered to the other Secured Parties in respect of their respective Liabilities and (subject to the terms of this Agreement) ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

## 7.10 **Representations: Second Lien Note Creditors**

Each Second Lien Note Creditor represents and warrants to the First Lien Creditors and the Security Agent that:

- (a) it is a corporation, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of this Agreement does not and will not:
  - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
  - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

## 8. EFFECT OF INSOLVENCY EVENT

### 8.1 Turnover

This Clause 8 is subject to Clause 19.5 (*Turnover obligations: Senior Secured Note Trustee*) and Clause 20.5 (*Turnover obligations: Second Lien Note Trustee*).

### 8.2 Distributions

- (a) After the occurrence of an Insolvency Event in relation to any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group (in the case of a Primary Creditor, only to the extent that such amount constitutes Enforcement Proceeds) in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to make that distribution to the Security Agent (or to such other person as the Security Agent shall direct) until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Security Agent shall apply distributions made to it under paragraph (a) above in accordance with Clause 16 (*Application of Proceeds*).

### 8.3 Set-Off

To the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Creditor which benefited from that set-off shall (in the case of a Primary Creditor, only to the extent that such amount constitutes Enforcement Proceeds) pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 16 (*Application of Proceeds*).

### 8.4 Non-cash distributions

If the Security Agent or any other Secured Party receives a distribution in the form of Non-Cash Consideration in respect of any of the Liabilities (other than any distribution of Non-Cash Recoveries), the Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Liabilities.

### 8.5 Filing of claims

After the occurrence of an Insolvency Event in relation to any member of the Group, each Creditor irrevocably authorises the Security Agent (without obligation), on its behalf, to:

- (a) take any Enforcement Action (in accordance with the terms of this Agreement) against that member of the Group;
- (b) demand, sue, prove and give receipt for any or all of that member of the Group's Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of that member of the Group's Liabilities; and
- (d) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover that member of the Group's Liabilities.

### 8.6 Further assurance – Insolvency Event

Each Creditor will:

- (a) do all things that the Security Agent requests in order to give effect to this Clause 8; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 8 or if the Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action.

## 8.7 Security Agent instructions

For the purposes of Clause 8.2 (*Distributions*), Clause 8.5 (*Filing of claims*) and Clause 8.6 (*Further assurance – Insolvency Event*) the Security Agent shall act on the instructions of the Instructing Group.

## 9. TURNOVER OF RECEIPTS

### 9.1 Turnover

This Clause 9 is subject to Clause 19.5 (*Turnover Obligations: Senior Secured Note Trustee*) and Clause 20.5 (*Turnover obligations: Second Lien Note Trustee*).

### 9.2 Turnover by the Primary Creditors

Subject to Clause 9.4 (*Exclusions*) and to Clause 9.5 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Primary Creditor receives or recovers any Enforcement Proceeds except in accordance with Clause 16 (*Application of Proceeds*), that Primary Creditor will:

- (a) in relation to receipts and recoveries not received or recovered by way of set-off:
  - (i) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and
  - (ii) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and
- (b) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement.

### 9.3 Turnover by the Second Lien Note Creditors and other Creditors

Subject to Clause 9.4 (*Exclusions*) and to Clause 9.5 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Creditor other than a Primary Creditor or a Second Lien Note Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not either:
  - (i) a Permitted Payment; or
  - (ii) made in accordance with Clause 16 (*Application of Proceeds*);
- (b) other than where Clause 8.3 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;

- (c) notwithstanding paragraphs (a) and (b) above, and other than where Clause 8.3 (*Set-Off*) applies, any amount:
  - (i) on account of, or in relation to, any of the Liabilities:
    - (A) after the occurrence of a Distress Event; or
    - (B) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
  - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event, other than, in each case, any amount received or recovered in accordance with Clause 16 (*Application of Proceeds*);
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 16 (*Application of Proceeds*); or
- (e) other than where Clause 8.3 (*Set-Off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with Clause 16 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group, that Creditor will:
  - (i) in relation to receipts and recoveries not received or recovered by way of set-off:
    - (A) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and
    - (B) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and
  - (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement.

#### 9.4 Exclusions

Clause 9.2 (*Turnover by the Primary Creditors*) and Clause 9.3 (*Turnover by the Second Lien Note Creditors and other Creditors*) shall not apply to any receipt or recovery made in accordance with Clause 17 (*Equalisation*).

#### 9.5 Permitted assurance and receipts

Nothing in this Agreement shall restrict the ability of any Primary Creditor to:

- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit-based derivative or sub-participation); or

(b) make any assignment or transfer permitted by Clause 21 (*Changes to the Parties*), which:

(i) is:

- (A) expressly permitted by the Credit Facility Agreement(s); and
- (B) not prohibited by the Senior Secured Note Indenture; and

(ii) is not in breach of Clause 7.8 (*No acquisition of Second Lien Note Liabilities*),

and that Primary Creditor shall not be obliged to account to any other Party for any sum received by it as a result of that action.

#### 9.6 **Amounts received by Debtors**

If any of the Debtors receives or recovers any amount which, under the terms of any of the Debt Documents, should have been paid to the Security Agent, that Debtor will:

- (a) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, 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; and
- (b) promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement.

#### 9.7 **Saving provision**

If, for any reason, any of the trusts expressed to be created in this Clause 9 should fail or be unenforceable, the affected Creditor or Debtor will promptly pay or distribute an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

#### 9.8 **Turnover of Non-Cash Consideration**

For the purposes of this Clause 9, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to Clause 9.2 (*Turnover by the Primary Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 15.2 (*Cash value of Non-Cash Recoveries*).

### 10. **REDISTRIBUTION**

#### 10.1 **Recovering Creditor's rights**

- (a) Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 8 (*Effect of Insolvency Event*) or Clause 9 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and distributed to the Security Agent and Primary Creditors (each a "**Sharing Creditor**") in accordance with the terms of this Agreement.
- (b) On a distribution by the Security Agent under paragraph (a) above of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent (the "**Shared Amount**") will be treated as not having been paid or distributed by that Debtor.

## 10.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returned by that Recovering Creditor to that Debtor, then:
  - (i) each Sharing Creditor shall (subject to Clause 19 (*Senior Secured Note Trustee Protections*) and Clause 20 (*Second Lien Note Trustee Protections*)), upon request of the Security Agent, pay or distribute to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the “**Redistributed Amount**”); and
  - (ii) as between the relevant Debtor and each relevant Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor.
- (b) The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

## 10.3 Deferral of subrogation

- (a) No Creditor or Debtor will exercise any rights which it may have by reason of the performance by it of its obligations under the Debt Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor which ranks ahead of it in accordance with the priorities set out in Clause 2 (*Ranking and Priority*) or the order of application in Clause 16 (*Application of Proceeds*) until such time as all of the Liabilities owing to each prior ranking Creditor (or, in the case of any Debtor, owing to each Creditor) have been irrevocably discharged in full.
- (b) No Creditor will exercise any rights which it may have to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor until such time as all of the Liabilities owing to each Creditor have been irrevocably discharged in full.

## 11. ENFORCEMENT OF TRANSACTION SECURITY

### 11.1 Instructions to enforce

- (a) If either the Majority Credit Facility Lenders or the Majority Senior Secured Note Creditors wish to issue Enforcement Instructions, the Creditor Representatives representing the Primary Creditors comprising the Majority Credit Facility Lenders or Majority Senior Secured Note Creditors (as the case may be) shall deliver a copy of those proposed Enforcement Instructions (an “**Initial Enforcement Notice**”) to the Security Agent. A copy of the proposed Enforcement Instructions must be delivered by that Creditor Representative to each other Creditor Representative at least 5 (five) Business Days prior to being sent to the Security Agent.
- (b) The delivery of an Initial Enforcement Notice to the Security Agent shall commence a 10 day consultation period (or such shorter period as the relevant Creditor Representatives may agree) (the “**Initial Consultation Period**”) during which time the relevant Creditor Representatives shall consult with each other in good faith with a view to coordinating the proposed Enforcement Instructions (whilst keeping the Security Agent informed of such consultation and co-ordination efforts and the role that the Security Agent would be required to play in such Enforcement).

- (c) There shall be no requirement to adhere to the Initial Consultation Period if paragraphs (f) or (g) below, apply.
- (d) If, following the Initial Consultation Period, and subject to paragraphs (d), (e) and (f) below, the Security Agent has not received consistent Enforcement Instructions from both the Creditor Representatives for the Majority Credit Facility Lenders and the Majority Senior Secured Note Creditors the Security Agent will act in accordance with Enforcement Instructions received from the Creditor Representative acting on the instructions of the Majority Senior Secured Note Creditors.
- (e) If:
- (i) the Creditor Representative acting upon the instructions of the Majority Senior Secured Note Creditors has not either:
    - (A) made a determination as to the method of Enforcement they wish to instruct the Security Agent to pursue (and notified the Security Agent of that determination in writing) (and for the avoidance of doubt instructions not to enforce shall not constitute a determination as to the method of Enforcement); or
    - (B) appointed a Financial Adviser to assist them in making such a determination, within 3 (three) months of the date of the end of the Initial Consultation Period; or
  - (ii) the Credit Facility Lender Discharge Date has not occurred within 6 (six) months of the date of the end of the Initial Consultation Period,
- then the Security Agent will act in accordance with Enforcement Instructions received from the Creditor Representative acting on the instructions of the Majority Credit Facility Lenders until the Credit Facility Lender Discharge Date has occurred.
- (f) If an Insolvency Event is continuing with respect to a Debtor then the Security Agent will, to the extent the Creditor Representative acting on the instructions of the Majority Credit Facility Lenders elects to provide such Enforcement Instructions, act in accordance with Enforcement Instructions received from the Creditor Representative acting on the instructions of the Majority Credit Facility Lenders until the Credit Facility Lender Discharge Date has occurred.
- (g) If the Creditor Representative acting upon the instructions of the Majority Senior Secured Note Creditors has not either:
- (i) made a determination as to the method of Enforcement they wish to instruct the Security Agent to pursue (and notified the Security Agent of that determination in writing) (and for the avoidance of doubt instructions not to enforce shall not constitute a determination as to the method of Enforcement); or
  - (ii) appointed a Financial Adviser to assist them in making such a determination,
- and the Creditor Representative acting on the instructions of the Majority Credit Facility Lenders:
- (A) determines in good faith (and notifies the other Creditor Representatives and the Security Agent) that a delay in issuing Enforcement Instructions could



reasonably be expected to have a material adverse effect on the ability to effect a Distressed Disposal or on the expected realisation proceeds of any Enforcement; and

- (B) delivers Enforcement Instructions which it reasonably believes to be consistent with the Enforcement Principles and necessary or advisable to enhance the prospects of achieving the Enforcement Objective before the Security Agent has received any Enforcement Instructions from the Creditor Representative acting upon the instructions of the Majority Senior Secured Note Creditors,

then the Security Agent will act in accordance with the Enforcement Instructions received from the Majority Credit Facility Lenders until the Credit Facility Lender Discharge Date has occurred.

#### 11.2 Enforcement Instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security or taking any other action as to Enforcement unless instructed otherwise by the Instructing Group.
- (b) Subject to Clause 11.1 (*Instructions to enforce*) and to the Transaction Security having become enforceable in accordance with its terms, the Instructing Group may give or refrain from giving instructions to the Security Agent to take action as to Enforcement in accordance with the Enforcement Principles as they see fit by way of the issuance of Enforcement Instructions.
- (c) The Instructing Group shall provide Enforcement Instructions that are consistent with the Enforcement Principles.
- (d) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause **11.2**.

#### 11.3 Manner of enforcement

If the Transaction Security is being enforced or other action as to Enforcement is being taken pursuant to Clause 11.2 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security or take other action as to Enforcement in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Security Agent) as the Instructing Group shall instruct.

#### 11.4 Exercise of voting rights

- (a) Subject to paragraph (c) below, each Creditor (other than each Creditor Representative and each Arranger) will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent.
- (b) Subject to paragraph (c) below, the Security Agent shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by the Instructing Group provided that any such instructions have been given in accordance with Clause 11.2 (*Enforcement Instructions*).
- (c) Nothing in this Clause 11.4 entitles any party to exercise or require any other Primary Creditor to exercise such power of voting or representation to waive, reduce, discharge, extend the due date for (or change the basis for accrual of any) payment of or reschedule any of the Liabilities owed to that Primary Creditor.

## 11.5 **Waiver of rights**

To the extent permitted under applicable law and subject to Clause 11.2 (*Enforcement Instructions*), Clause 11.3 (*Manner of enforcement*), Clause 13.2 (*Proceeds of Distressed Disposals and Debt Disposals*), Clause 13.3 (*Fair value*) and Clause 16 (*Application of Proceeds*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

## 11.6 **Duties owed**

Each of the Secured Parties and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security, the duties of the Security Agent and of any Receiver or Delegate owed to them in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to Clause 13.2 (*Proceeds of Distressed Disposals and Debt Proposals*) and Clause 13.3 (*Fair value*), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors under general law.

## 11.7 **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 Transaction Security Documents except through the Security Agent. Instructions as to Enforcement may only be given by the Instructing Group in accordance with the terms of this Agreement.

## 11.8 **Alternative Enforcement Actions**

After the Security Agent has commenced Enforcement, it shall not accept any subsequent instructions as to Enforcement (save in the case where paragraph (e) of Clause 11.1 (*Instructions to enforce*) applies) from anyone other than the Instructing Group that instructed it to commence such enforcement of the Transaction Security, regarding any other enforcement of the Transaction Security over or relating to shares or assets directly or indirectly the subject of the enforcement of the Transaction Security which has been commenced (and, for the avoidance of doubt, on or prior to the First Lien Discharge Date concerning any enforcement of the Transaction Security only paragraph (a)(ii) of the definition of Instructing Group shall be applicable in relation to any instructions as to Enforcement given to the Security Agent by the Instructing Group under this Agreement and after the First Lien Discharge Date concerning any enforcement of the Transaction Security only paragraph (b) of the definition of Instructing Group shall be applicable in relation to any instructions as to Enforcement given to the Security Agent by the Instructing Group under this Agreement).

## 12. **NON-DISTRESSED DISPOSALS**

### 12.1 **Definitions**

In this Clause 12:

- (a) “**Disposal Proceeds**” means the proceeds of a Non-Distressed Disposal; and
- (b) “**Non-Distressed Disposal**” means a disposal of:
  - (i) an asset of a member of the Group; or
  - (ii) an asset which is subject to the Transaction Security,

to a person or persons outside the Group or by one member of the Group to another member of the Group (an “**Intra-Group Disposal**”) where:

- (A) the Creditor Representative in respect of each Credit Facility certifies to the Security Agent that that disposal is expressly permitted under its Credit Facility Documents;
- (B) two Officers of the Parent certify for the benefit of the Security Agent (and supply a copy to the Creditor Representative in respect of the Senior Secured Note Indenture) that the disposal and, if the disposal is of Charged Property, the release of Transaction Security is not prohibited under the Senior Secured Note Documents and this Agreement or the Creditor Representative in respect of the Senior Secured Note Indenture authorises the release;
- (C) two Officers of the Parent certify for the benefit of the Security Agent (and supply a copy to the Creditor Representative in respect of the Second Lien Note Indenture) that the disposal and, if the disposal is of Charged Property, the release of Transaction Security is not prohibited under the Second Lien Note Documents and this Agreement or the Creditor Representative in respect of each Second Lien Note Indenture authorises the release; and
- (D) two Officers of Parent certify for the benefit of the Security Agent that the disposal is not a Distressed Disposal.

#### 12.2 **Facilitation of Non-Distressed Disposals**

- (a) If a disposal of an asset is a Non-Distressed Disposal, the Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) but subject to paragraphs (b) and (c) below:
  - (i) to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;
  - (ii) where that asset consists of shares in the capital of a member of the Group, to release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group’s Property; and
  - (iii) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraphs (i) and (ii) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable,
- (b) In the case of a Non-Distressed Disposal which is an Intra-Group Disposal Clause 12.2(a) shall be subject to:
  - (A) such Intra-Group Disposal is made subject to the existing Transaction Security or, to the extent that replacement Transaction Security is required from the transferee under the terms of the Debt Documents, such Transaction Security will (subject to any requirements relating to the release, retaking, amendment or extension of the Transaction Security under the Debt Documents) be granted at the same time as (or before) the relevant disposal is effected; and

- (B) to the extent that replacement Transaction Security is required from the transferee under the terms of the Debt Documents contemporaneously with such release (followed by an immediate retaking of Security of at least equivalent ranking over the same assets), the Parent delivers to the Security Agent either:
1. a solvency opinion from a Financial Adviser confirming the solvency of that Debtor, after giving effect to such Intra-Group Disposal and any transactions related to such release and retaking;
  2. a certificate from two (2) Officers of the Parent, which certificate confirms the solvency of the Debtor granting such Transaction Security after giving effect to such Intra-Group Disposal and any transactions related to such release and retaking; or
  3. an opinion of counsel (subject to customary exceptions and qualifications), confirming that, after giving effect to such Intra-Group Disposal and any transactions related to such release and retaking, the Transaction Security created under the Transaction Security Documents so released and retaken is valid and perfected Transaction Security not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, that such Transaction Security was not otherwise subject to immediately prior to such release and retaking.
- (c) Each release of Transaction Security or any claim described in paragraph (a) above shall (to the extent permitted under applicable law) become effective only upon the making of the relevant Non-Distressed Disposal.

### 12.3 **Disposal Proceeds**

Notwithstanding anything contained herein to the contrary, if any Disposal Proceeds are required to be applied in mandatory prepayment of the Credit Facility Liabilities or the Senior Secured Note Liabilities then those Disposal Proceeds shall be applied in accordance with the relevant Debt Documents and the consent of any other Party shall not be required for that application.

### 12.4 **Release of Unrestricted Subsidiaries**

If two (2) Officers of the Parent certify for the benefit of the Security Agent that a member of the Group is designated as an Unrestricted Subsidiary in accordance with the terms of each of the Credit Facility Documents and the Senior Secured Note Documents, the Security Agent is irrevocably authorised and obliged (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor or Debtor):

- (a) to release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group's assets; and
- (b) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraph (a) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable or as requested by the Parent.

## 12.5 Release of a Debtor

If a member of the Group ceases to be a Debtor in accordance with Clause 21.13 (*Resignation of a Debtor*), then the Security Agent is irrevocably authorised and obliged (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor or Debtor):

- (a) to release the Transaction Security or any other claim (relating to a Debt Document) over that Debtor's assets; and
- (b) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraph (a) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that are reasonably requested by the Parent and may be necessary or desirable to effect such release.

## 12.6 Permitted Reorganisations

In circumstances where a Debtor is party to a Permitted Reorganisation, the Security Agent is irrevocably authorised and required (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor), to the extent necessary for that Permitted Reorganisation to occur only, to release the Transaction Security over the shares in the capital of that Debtor or its assets, provided that:

- (i) to the extent that replacement Transaction Security is required from the surviving entity under the terms of the Debt Documents, such Transaction Security will (subject to any requirements relating to the release, retaking, amendment or extension of the Transaction Security under the Debt Documents) be granted at the same time as (or before) the relevant Permitted Reorganisation is effected; and
- (ii) to the extent that replacement Transaction Security is required from the surviving entity under the terms of the Debt Documents, contemporaneously with such Permitted Reorganisation (followed by an immediate retaking of Security of at least equivalent ranking over the same assets), the Parent delivers to the Security Agent either:
  - (A) a solvency opinion from a Financial Adviser confirming the solvency of that Debtor (or, if different, the surviving entity), after giving effect to such Permitted Reorganisation and any transactions related to such release and retaking;
  - (B) a certificate from two (2) Officers of the Parent which certificate confirms the solvency of that Debtor (or, if different, the surviving entity) granting such Transaction Security after giving effect to such Permitted Reorganisation and any transactions related to such release and retaking; or
  - (C) an opinion of counsel (subject to customary exceptions and qualifications), confirming that, after giving effect to such Permitted Reorganisation any transactions related to such release and retaking, the Transaction Security created under the Transaction Security Documents so released and retaken is valid and perfected Transaction Security not otherwise subject to any limitation imperfection or new hardening period, in equity or at law, that such Transaction Security was not otherwise subject to immediately prior to such release and retaking.

## 12.7 Permitted releases

- (a) In circumstances where the Parent certifies for the benefit of the Security Agent that a Debtor is effecting a release pursuant to sections 11.09 (*Addition and Substitution of Qualified Collateral: Designation as a Mortgaged Vessel*), 11.14 (*Change of Flag*) or 12.01 (*“Trust Monies” Defined*) and 12.02 (*Use of Trust Monies*) of the Senior Secured Notes Indenture or provisions having substantially the same effect in the Credit Facility Documents, the Security Agent is irrevocably authorised and required (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) and subject to the fulfilment of the conditions at Clause 12.7(b) to:
- (i) release the Transaction Security over that asset; and
  - (ii) execute and deliver or enter into any release of the Transaction Security described in paragraph (i) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that are reasonably requested by the Parent and are necessary or desirable to effect such release.
- (b) The conditions referred to in Clause 12.7(a) are that:
- (i) two (2) Officers of the Parent certify for the benefit of the Security Agent (and supply a copy to each Creditor Representative) that the release and, if the release is of Charged Property, the release of Transaction Security is expressly permitted under this Agreement, the Credit Facility Documents, the Senior Secured Note Documents and the Second Lien Note Documents or each Creditor Representative authorises the release;
  - (ii) the release and, if the release is of Charged Property, the release of Transaction Security is not taking place on or after a Distress Event or being effected at the request of the Instructing Group in circumstances where the Transaction Security has become enforceable or being effected by enforcement of the Transaction Security; and
  - (iii) to the extent that new or replacement Transaction Security is required under the terms of the Debt Documents as a condition to that release, contemporaneously with such release (followed by an immediate granting of that new or replacement Transaction Security of at least equivalent ranking), the Parent delivers to the Security Agent either:
    - 1. a solvency opinion from a Financial Adviser confirming the solvency of that Debtor, after giving effect to such transaction and any transactions related to such release and retaking;
    - 2. a certificate from 2 Officers of the Parent, which certificate confirms the solvency of the Debtor granting such Transaction Security after giving effect to such transaction and any transactions related to such release and retaking; or
    - 3. an opinion of counsel (subject to customary exceptions and qualifications), confirming that, after giving effect to such transaction and any transactions related to such release and retaking, the Transaction Security created under the Transaction Security Documents so released and taken is valid and perfected Transaction Security not otherwise subject to any limitation imperfection or new hardening period, in equity or at law, that such Transaction Security was not otherwise subject to immediately prior to such release and taking.

13. **DISTRESSED DISPOSALS**

13.1 **Facilitation of Distressed Disposals**

Subject to Clause 13.4 (*Restriction on enforcement*), if a Distressed Disposal is being effected the Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor):

- (a) **release of Transaction Security/non-crystallisation certificates:** to release the Transaction Security or any other claim over the asset subject to the Distressed Disposal and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
- (b) **release of liabilities and Transaction Security on a share sale (Debtor):** if the asset subject to the Distressed Disposal consists of shares in the capital of a Debtor, to release:
  - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
    - (A) its Borrowing Liabilities;
    - (B) its Guarantee Liabilities; and
    - (C) its Other Liabilities;
  - (ii) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
  - (iii) any other claim of an Intra-Group Lender, or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

- (c) **release of liabilities and Transaction Security on a share sale (Holding Company):** if the asset subject to the Distressed Disposal consists of shares in the capital of any Holding Company of a Debtor, to release:
  - (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
    - (A) its Borrowing Liabilities;
    - (B) its Guarantee Liabilities; and
    - (C) its Other Liabilities;
  - (ii) any Transaction Security granted by that Holding Company or any Subsidiary of that Holding Company over any of its assets; and
  - (iii) any other claim of an Intra-Group Lender or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtors;

- (d) **facilitative disposal of liabilities on a share sale:** if the asset subject to the Distressed Disposal consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of:
- (i) the Liabilities (other than Liabilities due to any Creditor Representative or Arranger); or
  - (ii) the Debtors' Intra-Group Receivables,
- owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables (the "**Transferee**") will not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Creditors and Debtors *provided that* notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement;
- (e) **sale of liabilities on a share sale:** if the asset subject to the Distressed Disposal consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of:
- (i) the Liabilities (other than Liabilities due to any Creditor Representative or Arranger); or
  - (ii) the Debtors' Intra-Group Receivables,
- owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of:
- (A) all (and not part only) of the Liabilities owed to the Primary Creditors (other than to any Creditor Representative or Arranger); and
  - (B) all or part of any other Liabilities (other than Liabilities owed to any Creditor Representative or Arranger) and the Debtors' Intra-Group Receivables,
- on behalf of, in each case, the relevant Creditors and Debtors;
- (f) **transfer of obligations in respect of liabilities on a share sale:** if the asset subject to the Distressed Disposal consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the "**Disposed Entity**") and the Security Agent decides to transfer to another Debtor (the "**Receiving Entity**") all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of:
- (i) the Intra-Group Liabilities; or
  - (ii) the Debtors' Intra-Group Receivables,
- to execute and deliver or enter into any agreement to:
- (iii) agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Intra-Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
  - (iv) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables are to be transferred.



### 13.2 **Proceeds of Distressed Disposals and Debt Disposals**

The net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Security Agent for application in accordance with Clause 16 (*Application of Proceeds*) and, to the extent that any Liabilities Sale has occurred, as if that Liabilities Sale had not occurred.

### 13.3 **Fair value**

In the case of:

- (a) a Distressed Disposal; or
- (b) a Liabilities Sale / Debt Disposal,

effected by, or at the request of, the Security Agent, the Security Agent shall act in accordance with this Agreement.

### 13.4 **Restriction on enforcement**

If a Distressed Disposal or a Liabilities Sale / Debt Disposal is being effected:

- (a) the Security Agent is not authorised to release any Debtor, Subsidiary or Holding Company from any Borrowing Liabilities or Guarantee Liabilities owed to any Primary Creditor except in accordance with this Clause 13 (*Distressed Disposals*);
- (b) subject to Clause 13.5 (*Non-Cash Consideration*), a Distressed Disposal or a Debt Disposal may be made in whole or in part for consideration in the form of cash or, if not for cash, for Non-Cash Consideration the form of which is acceptable to the Security Agent; and
- (c) the relevant Primary Creditors shall simultaneously effect the unconditional release (or unconditional transfer to the purchaser of the relevant member of the Group) of all Borrowing Liabilities, Guarantee Liabilities and Other Liabilities owing to the Primary Creditors by the relevant Debtor and each of its direct and indirect Subsidiaries.

### 13.5 **Non-Cash Consideration**

No Distressed Disposal or Debt Disposal may be made for Non-Cash Consideration unless the prior consent of the Instructing Group (acting in accordance with the Enforcement Principles) is obtained.

### 13.6 **Appointment of Financial Adviser**

Without prejudice to Clause 18.8 (*Rights and discretions*), the Security Agent may engage, or approve the engagement of, and rely on the services of a Financial Adviser at the joint and several expense of the Debtors.

### 13.7 **Security Agent's actions**

For the purposes of Clause 13.1 (*Facilitation of Distressed Disposals*), Clause 13.3 (*Fair value*) and Clause 13.5 (*Non-Cash Consideration*) the Security Agent shall act on the instructions of the Instructing Group.

#### 14. FURTHER ASSURANCE – DISPOSALS AND RELEASES

Each Creditor and Debtor will:

- (a) do all things that the Security Agent requests in order to give effect to Clause 12 (*Non-Distressed Disposals*) and Clause 13 (*Distressed Disposals*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that may be necessary to give effect to the releases or disposals contemplated by those Clauses); and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

*provided that* the proceeds of those disposals are applied in accordance with Clause 12 (*Non-Distressed Disposals*) or Clause 13 (*Distressed Disposals*) as the case may be.

#### 15. NON-CASH RECOVERIES

##### 15.1 Security Agent and Non-Cash Recoveries

To the extent the Security Agent receives or recovers any Non-Cash Recoveries, it may (acting on the instructions of the Instructing Group) but without prejudice to its ability to exercise discretion under Clause 16.2 (*Prospective liabilities*):

- (a) distribute those Non-Cash Recoveries pursuant to Clause 16 (*Application of Proceeds*) as if they were Cash Proceeds;
- (b) hold, manage, exploit, collect, realise and dispose of those Non-Cash Recoveries; and
- (c) hold, manage, exploit, collect, realise and distribute any resulting Cash Proceeds.

##### 15.2 Cash value of Non-Cash Recoveries

- (a) The cash value of any Non-Cash Recoveries shall be determined by reference to a valuation obtained by the Security Agent from a Financial Adviser appointed by the Security Agent pursuant to Clause 13.6 (*Appointment of Financial Adviser*) taking into account any notional conversion made pursuant to Clause 16.4 (*Currency conversion*).
- (b) If any Non-Cash Recoveries are distributed pursuant to Clause 16 (*Application of Proceeds*), the extent to which such distribution is treated as discharging the Liabilities shall be determined by reference to the cash value of those Non-Cash Recoveries determined pursuant to paragraph (a) above.

##### 15.3 Facility Agents and Non-Cash Recoveries

- (a) Subject to paragraph (b) below and to Clause 15.4 (*Alternative to Non-Cash Consideration*), if, pursuant to Clause 16.1 (*Order of application*), a Creditor Representative receives Non-Cash Recoveries for application towards the discharge of any Liabilities, that Creditor Representative shall apply those Non-Cash Recoveries in accordance with the relevant Debt Document as if they were Cash Proceeds.
- (b) A Creditor Representative may:
  - (i) use any reasonably suitable method of distribution, as it may determine in its discretion, to distribute those Non-Cash Recoveries in the order of priority that would apply under the relevant Debt Document if those Non-Cash Recoveries were Cash Proceeds;

- (ii) hold any Non-Cash Recoveries through another person; and
- (iii) hold any amount of Non-Cash Recoveries for so long as that Creditor Representative shall think fit for later application pursuant to paragraph (a) above.

15.4 **Alternative to Non-Cash Consideration**

- (a) If any Non-Cash Recoveries are to be distributed pursuant to Clause 16 (*Application of Proceeds*), the Security Agent shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify each Creditor Representative entitled to receive those Non-Cash Recoveries on behalf and for the benefit of their applicable Primary Creditors pursuant to that distribution (the “**Entitled Creditors**”).
- (b) If:
  - (i) it would be unlawful for an Entitled Creditor to receive such Non-Cash Recoveries (or it would otherwise conflict with that Entitled Creditor’s constitutional documents for it to do so); and
  - (ii) that Entitled Creditor promptly so notifies the Security Agent and supplies such supporting evidence as the Security Agent may reasonably require,that Primary Creditor shall be a “**Cash Only Creditor**” and the Non-Cash Recoveries to which it is entitled shall be “**Retained Non-Cash**”.
- (c) To the extent that, in relation to any distribution of Non-Cash Recoveries, there is a Cash Only Creditor:
  - (i) the Security Agent shall not distribute any Retained Non-Cash to that Cash Only Creditor (or to any Creditor Representative on behalf of that Cash Only Creditor) but shall otherwise treat the Non-Cash Recoveries in accordance with this Agreement;
  - (ii) the Security Agent shall notify the relevant Creditor Representative of that Cash Only Creditor’s identity and its status as a Cash Only Creditor; and
  - (iii) to the extent notified pursuant to paragraph (ii) above, no Creditor Representative shall distribute any of those Non-Cash Recoveries to that Cash Only Creditor.
- (d) Subject to Clause 15.5 (*Security Agent protection*), the Security Agent shall hold any Retained Non-Cash and shall, acting on the instructions of the Cash Only Creditor entitled to it, manage, exploit, collect, realise and dispose of that Retained Non-Cash for cash consideration and shall distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of Proceeds*).
- (e) On any such distribution of Cash Proceeds which are attributable to a disposal of any Retained Non-Cash, the extent to which such distribution is treated as discharging the Liabilities due to the relevant Cash Only Creditor shall be determined by reference to:
  - (i) the valuation which determined the extent to which the distribution of the Non-Cash Recoveries to the other Entitled Creditors discharged the Liabilities due to those Entitled Creditors; and
  - (ii) the Retained Non-Cash to which those Cash Proceeds are attributable.
- (f) Each Primary Creditor shall, following a request by the Security Agent (acting in accordance with Clause 13.7 (*Security Agent’s actions*)), notify the Security Agent of the extent to which

paragraph (b)(i) above would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries. Absent written notice to the contrary from a Creditor, the Security Agent shall be entitled to conclusively assume that no Creditor is a Cash Only Creditor.

#### 15.5 Security Agent protection

- (a) No Distressed Disposal or Liabilities Sale may be made in whole or part for Non-Cash Consideration if the Security Agent in its sole discretion believes that its receiving, distributing, holding, managing, exploiting, collecting, realising or disposing of that Non-Cash Consideration would have an adverse effect on it.
- (b) If Non-Cash Consideration is distributed to the Security Agent under this Agreement, including without limitation, pursuant to Clause 9.2 (*Turnover by the Primary Creditors*) or Clause 9.3 (*Turnover by the Second Lien Note Creditors and other Creditors*) the Security Agent may, at any time after notifying the Creditors entitled to that Non-Cash Consideration and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Non-Cash Consideration for cash consideration (and distribute any Cash Proceeds of that Non-Cash Consideration to the relevant Creditors in accordance with Clause 16 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.
- (c) If the Security Agent holds Retained Non-Cash for a Cash Only Creditor (each as defined in Clause 15.4 (*Alternative to Non-Cash Consideration*)) the Security Agent may at any time, after notifying that Cash Only Creditor and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Retained Non-Cash for cash consideration (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Retained Non-Cash could have an adverse effect on it.

#### 16. APPLICATION OF PROCEEDS

##### 16.1 Order of application

Subject to Clause 16.2 (*Prospective liabilities*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 16, the “**Recoveries**”) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 16), in the following order of priority:

- (a) to the Security Agent for payment of any fees, costs, expenses, liabilities and indemnities owing to the Security Agent (other than pursuant to Clause 18.2 (*Parallel debt*)), any Receiver or any Delegate;
- (b) to the Creditor Representatives for payment of the Creditor Representative Amounts and in discharging all costs and expenses incurred by any Primary Creditor in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 8.6 (*Further assurance – Insolvency Event*) on a *pro rata* basis between them;
- (c) in payment or distribution to each Creditor Representative in respect of a Credit Facility on its own behalf and on behalf of the Credit Facility Creditors for which it is the Creditor Representative for application towards the discharge of the Credit Facility Liabilities (in accordance with the terms of the Credit Facility Documents) on a *pro rata* basis between Credit Facility Liabilities incurred under separate Credit Facility Agreements;

- (d) in payment or distribution to the Creditor Representatives in respect of any Senior Secured Note Liabilities on its own behalf and on behalf of the Senior Secured Note Creditors for which it is the Creditor Representative for application towards the discharge of the Senior Secured Note Liabilities (in accordance with the terms of the Senior Secured Note Documents);
- (e) in payment or distribution to each Creditor Representative in respect of any Second Lien Note Liabilities on its own behalf and on behalf of the Second Lien Note Creditors for which it is the Creditor Representative for application towards the discharge of the Second Lien Note Liabilities (in accordance with the terms of the Second Lien Note Documents);
- (f) if none of the Debtors is under any further actual or contingent liability under any Credit Facility Document, Senior Secured Note Document or Second Lien Note Document in payment or distribution to any person to whom the Security Agent is obliged under applicable laws to pay or distribute in priority to any Debtor; and
- (g) the balance, if any, in payment or distribution to the relevant Debtor.

#### 16.2 **Prospective liabilities**

Following a Distress Event the Security Agent may, in its discretion hold any amount of the Recoveries in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) as the Security Agent shall think fit (the interest being credited to the relevant account) for so long as the Security Agent shall think fit for later application under Clause 16.1 (*Order of application*) in respect of:

- (a) any sum to any Security Agent, any Receiver or any Delegate; and
- (b) any part of the Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

#### 16.3 **Deposit of cash proceeds**

- (a) Subject to Clause 16.3(b), prior to the application of the proceeds of the Security Property in accordance with Clause 16.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of any cash proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this Clause 16.
- (b) If the Security Agent receives proceeds of the Security Property prior to an Acceleration Event and 2 Officers of the Parent certify that: (i) the payment of the proceeds (or part thereof) into the Collateral Account is expressly permitted under this Agreement, the Credit Facility Documents, the Senior Secured Note Documents and the Second Lien Note Documents; and (ii) no Event of Default has occurred and is continuing, the proceeds (or part thereof) shall be paid into the Collateral Account.

#### 16.4 **Currency conversion**

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent or its agent may:
  - (i) convert any moneys received or recovered by the Security Agent (including, without limitation, any cash proceeds) from one currency to another, at the Security Agent's Spot Rate of Exchange; and
  - (ii) notionally convert the valuation provided in any opinion or valuation from one currency to another, at the Security Agent's Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied:
  - (i) in the case of paragraph (a)(i) above, to the extent of the amount of the due currency purchased after deducting the costs of conversion; and
  - (ii) in the case of paragraph (a)(ii) above, to the extent of the amount of the due currency which results from the notional conversion referred to in that paragraph.

#### 16.5 **Permitted Deductions**

The Security Agent shall be entitled, in its discretion, (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any law or regulation to make from any distribution or payment made by it under this Agreement, and to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties or exercising its rights, powers, authorities and discretions, or by virtue of its capacity as Security Agent under any of the Debt Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

#### 16.6 **Good Discharge**

- (a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent shall only be made to the relevant Creditor Representative on behalf of its Primary Creditors and in no event shall the Security Agent have any obligation to make such payment or distribution directly to any Primary Creditor.
- (b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Security Agent.
- (c) The Security Agent is under no obligation to make the payments to the Creditor Representatives under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Primary Creditor are denominated pursuant to the relevant Debt Document.

#### 16.7 **Calculation of Amounts**

For the purpose of calculating any person's share of any amount payable to or by it, the Security Agent shall be entitled to:

- (a) request and conclusively rely upon a certificate from each Creditor Representative as to the amounts due to such Creditor Representative and the Primary Creditors that such Creditor Representative represents, and the Security Agent shall incur no liability for any distributions made by it in reliance upon certifications;
- (b) notionally convert the Liabilities owed to any person into a common base currency, that notional conversion to be made at the then prevailing rate at which the Security Agent or its agent is able to purchase the notional base currency with the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made; and
- (c) assume that all amounts received or recovered as a result of the enforcement or realisation of the Security Property are applied in discharge of the Liabilities in accordance with the terms of the Debt Documents under which those Liabilities have arisen.

## 17. EQUALISATION

### 17.1 Equalisation Definitions

For the purposes of this Clause 17:

**“Enforcement Date”** means the first date (if any) on which a Credit Facility Creditor takes enforcement action of the type described in paragraphs (a) (i), (a)(iii), (a)(iv) or (c) of the definition of **“Enforcement Action”** in accordance with the terms of this Agreement.

**“Exposure”** means in relation to a Credit Facility Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations outstanding under the Credit Facility Agreements at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims between Credit Facility Lenders pursuant to any loss-sharing arrangement in the Credit Facility Agreements which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Credit Facility Agreement; and

**“Utilisation”** means a “utilisation” (however defined) of a facility under the Initial Revolving Facility Agreement or the relevant Credit Facility Document.

### 17.2 Equalisation

If, for any reason, any Credit Facility Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the Credit Facility Lenders in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures of all the Credit Facility Lenders at the Enforcement Date, the Credit Facility Lenders will make such payments amongst themselves to put the Credit Facility Lenders in such a position that (after taking into account such payments) those losses are borne in those proportions.

### 17.3 Turnover of enforcement proceeds

If:

- (a) the Security Agent or a Creditor Representative is not entitled, for reasons of applicable law, to pay or distribute amounts received pursuant to the making of a demand under any guarantee, indemnity or other assurance against loss or the enforcement of the Transaction Security to the relevant Credit Facility Creditors but is entitled to pay or distribute those amounts to Creditors (such Creditors, the **“Receiving Creditors”**) who, in accordance with the terms of this Agreement, are subordinated in right and priority of payment to the relevant Credit Facility Creditors; and
- (b) the Credit Facility Lender Discharge Date has not yet occurred (nor would occur after taking into account such payments),

then the Receiving Creditors shall make such payments or distributions to the relevant Credit Facility Creditors to place the relevant Credit Facility Creditors in the position they would have been in had such amounts been available for application against the Credit Facility Liabilities.

#### 17.4 **Notification of Exposure**

Before each occasion on which the provisions of this Clause 17 shall be implemented, the relevant Creditor Representative shall send notice to the Credit Facility Lenders notifying them of the Exposure of each Credit Facility Lender (if any).

#### 17.5 **Default in payment**

If a Credit Facility Creditor fails to make a payment due from it under this Clause 17, the relevant Creditor Representative for such Credit Facility Creditor(s) shall be entitled (but not obliged) to take action on behalf of the Credit Facility Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Credit Facility Creditor(s) in respect of costs) but shall have no liability or obligation towards such Credit Facility Creditor(s) or any other Primary Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

### 18. **THE SECURITY AGENT**

#### 18.1 **Security Agent as trustee**

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Each of the Primary Creditors 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 Debt Documents together with any other incidental rights, powers, authorities and discretions.
- (c) Every provision of this Agreement or any related document relating to the conduct or affecting the liability of or affording protection to the Security Agent shall be subject to the provisions of this Clause 18.

#### 18.2 **Parallel debt**

- (a) Each of the Debtors hereby irrevocably and unconditionally agrees and undertakes with the Security Agent and each Secured Party acknowledges that each of the Debtors shall pay to the Security Agent as creditor in its own right and not as a representative of any other Secured Party sums equal to, and in the currency of, any sums owing from time to time by it to any Secured Party (other than to the Security Agent solely by operation of this provision) under any Primary Finance Documents (the “**Principal Obligations**”) as and when the same fall due for payment under the relevant Primary Finance Document (together with the obligations described in paragraph (f) below, the “**Parallel Debt Obligations**”).
- (b) Each of the Debtors and each Secured Party (other than the Security Agent) acknowledges that the right of the Security Agent to demand payment of the Parallel Debt Obligations shall be independent, separate and several from, and shall not in any way limit or affect, the rights of the other Secured Parties to demand payment of the Principal Obligations nor shall the Parallel Debt Obligations be limited or affected in any way by the corresponding Principal Obligations provided that (i) the payment by a Debtor of its Parallel Debt Obligations to the Security Agent in accordance with this Clause 18.2 shall also discharge (in the amount of the relevant payment) the corresponding Principal Obligations and (ii) the payment by a Debtor of its Principal Obligations in accordance with the provisions of the Primary Finance Documents shall also discharge (in the amount of the relevant payment) the corresponding Parallel Debt Obligations provided further that no Principal Obligation shall be discharged by a discharge of the Parallel Debt Obligations if such discharge of the Parallel Debt Obligations is effected by virtue of any set-off, counterclaim or similar defence invoked by a Debtor vis-à-vis the Security Agent other than in accordance with the terms of the Primary Finance Documents.



- (c) Despite the foregoing, any payment under the Primary Finance Documents shall be made to the relevant Creditor Representative unless expressly stated otherwise in any Primary Finance Document or unless the relevant Creditor Representative directs such payment to be made to the Security Agent.
- (d) Without limiting or affecting the Security Agent's rights against any Debtor (whether under this Clause 18.2 or under any provision of the Primary Finance Documents):
  - (i) the Security Agent agrees with each other Secured Party (on a several and divided basis) that it will not exercise its rights under the Parallel Debt Obligations in respect of the Principal Obligations owing to a Secured Party except with the consent of the Instructing Group. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Security Agent's right to act in the protection or preservation of rights under any Transaction Security Document or to enforce any Transaction Security as contemplated by this Agreement, the relevant Transaction Security Document or any other Primary Finance Document (or to do any act reasonably incidental to the foregoing);
  - (ii) each Debtor acknowledges that (x) nothing in this Clause 18 shall impose any obligation on the Security Agent to advance any sum to any Debtor or otherwise under any Primary Finance Document, except in its capacity as a Secured Party (if applicable and other than as Security Agent) under any Primary Finance Document in accordance with the terms thereof, and (y) for the purpose of any vote taken under any Primary Finance Document, the Security Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Secured Party (if applicable and other than as Security Agent) under any Primary Finance Document in accordance with the terms thereof.
- (e) The Security Agent acts in its own name (in its capacity as Security Agent hereunder) and not as a trustee, and its claims in respect of the Parallel Debt Obligations shall not be held on trust. The Transaction Security granted under the Primary Finance Documents to the Security Agent to secure the Parallel Debt Obligations is granted to the Security Agent in its capacity as creditor of the Parallel Debt Obligations and shall not be held on trust.
- (f) An amount payable in respect of the Parallel Debt Obligations will be payable in the currency or currencies of the relevant Principal Obligations and will become due and payable as and when the Principal Obligations to which it corresponds becomes due and payable. A default (*verzuim*) within the meaning of section 3:248 of the Dutch Civil Code with respect to Principal Obligations shall also constitute a default (*verzuim*) within the meaning of section 3:248 of the Dutch Civil Code with respect to the relevant Parallel Debt Obligations without any notice being required.
- (g) The Security Agent undertakes to pay to the Secured Parties in accordance with the terms of this Agreement any amount collected or received by it in payment or partial payment of the Parallel Debt Obligations as if such amounts had been received in respect of the Principal Obligations.

### 18.3 Instructions

- (a) The Security Agent shall:
- (i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Instructing Group; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in accordance with instructions given to it by that Creditor or group of Creditors).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) 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 those instructions or that clarification.
- (c) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Instructing Group shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.
- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement expressly requires the Security Agent to act in a specified manner or to take a specified action without the instructions of the Instructing Group;
  - (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 Secured Parties including, without limitation, Clauses 18.6 (*No duty to account*) to Clause 18.11 (*Exclusion of liability*), Clause 18.14 (*Confidentiality*) to Clause 18.21 (*Custodians and nominees*) and Clause 18.24 (*Acceptance of title*) to Clause 18.27 (*Disapplication of Trustee Acts*);
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 12 (*Non-Distressed Disposals*);
    - (B) Clause 16.1 (*Order of application*);
    - (C) Clause 16.2 (*Prospective liabilities*); and
    - (D) Clause 16.5 (*Permitted Deductions*).
- (e) The Instructing Group shall not provide instructions which would have an effect equivalent to an Intercreditor Amendment, unless consent to those instructions is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.
- (f) With respect to any obligation of the Security Agent that is contained in both the Senior Secured Note Documents (and, to the extent applicable, any Second Lien Note Documents) and the Credit Facility Documents (including, without limitation, Schedule 14 (*Notes Restrictive Covenants*) to the Initial Revolving Facility Credit Agreement), a Debtor will not exercise any right to give direction or instruction to the Security Agent with respect to such obligation, unless it is authorized and permitted to give such direction or instruction (together

with any deliverables required to be delivered to the Security Agent pursuant thereto) under both the Senior Secured Note Documents (and, to the extent applicable, any Second Lien Note Documents) and the Credit Facility Documents (including, without limitation, Schedule 14 (*Notes Restrictive Covenants*) to the Initial Revolving Facility Credit Agreement). For the avoidance of doubt, the Security Agent shall not be liable for monitoring the Debtors compliance with the foregoing covenant, and shall not be liable to any Person to the extent it acts or omits to act in accordance with any direction or instruction from a Debtor which may have been given in contravention of the foregoing covenant.

- (g) In exercising any discretion to exercise a right, power or authority under the Debt 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 paragraph (d)(iv) above,the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (h) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors 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 Debt 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.
- (i) Without prejudice to the provisions of Clause 11 (*Enforcement of Transaction Security*) and the remainder of this Clause 18.3, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

#### 18.4 **Duties of the Security Agent**

- (a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:
  - (i) forward to each Creditor Representative a copy of any document received by the Security Agent from any Debtor under any Debt Document; and
  - (ii) 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 the Security Agent has expressly agreed 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) Without prejudice to Clause 24.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Creditor Representatives.
- (e) To the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, the Security Agent shall upon a request by that Party, promptly notify that Party of the relevant Security Agent's Spot Rate of Exchange to the extent available.
- (f) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is a signatory (and no others shall be implied).
- (g) Notwithstanding anything contained herein to the contrary, the right of the Security Agent to perform any discretionary act enumerated in this Agreement, the Debt Documents or any related document shall not be construed as a duty.

**18.5 No fiduciary duties to Debtors**

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of any Debtor.

**18.6 No duty to account**

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.

**18.7 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.

**18.8 Rights and discretions**

(a) The Security Agent shall be entitled to:

(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 Instructing Group, any Creditors any Creditor Representative or any group of Creditors are duly given in accordance with the terms of the Debt Documents and are given by individuals that are authorized at such time to take specified actions pursuant to this Agreement, the Debt Documents or any related document;

(B) unless it has received notice of revocation, that those instructions have not been revoked; and

(C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Debt Documents for so acting have been satisfied;

(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; and

(iv) conclusively rely (without independent confirmation, verification, inquiry or investigation of the contents thereof), as to the truth of the statements and the correctness of certificates or opinions furnished to the Security Agent under this Agreement or any related document and may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion,

notice, request, direction, consent, order, approval, bond or any other paper or document (including any of the foregoing delivered in electronic format) believed by it to be genuine and to have been signed or presented by the proper person or persons and the Security Agent need not investigate any statement, warranty or representation or any fact or matter stated in any such document and may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein.

- (b) 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 Creditors has not been exercised; and
  - (iii) any notice made by the Parent is made on behalf of and with the consent and knowledge of all the Debtors.
- (c) The Security Agent may engage 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 Security Agent may at any time engage the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Primary Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.
- (e) 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.
- (f) The Security Agent, any Receiver and any Delegate may act in relation to the Debt 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, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as Security Agent under this Agreement.
- (h) Notwithstanding any other provision of any Debt 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 or it is not provided for in this Agreement or the other Debt Documents.
- (i) Notwithstanding any provision of any Debt 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.

- (j) The Security Agent shall not be required to take any action under this Agreement, the Debt Documents or any related documents if taking such action (A) would subject the Security Agent to a tax in any jurisdiction where it is not then subject to a tax, or (B) would require the Security Agent to qualify to do business in any jurisdiction where it is not then so qualified.
- (k) Prior to taking any action under this Agreement or the relevant Debt Documents, as the case may be, the Security Agent may reasonably request and rely upon a certificate of the Parent and an opinion of counsel or opinion of another qualified expert, each at the Parent's expense.
- (l) In no event shall the Security Agent be liable for any conversion rate obtained by it (or its agent) under this Agreement.

**18.9 Responsibility for documentation**

None of the Security Agent, any Receiver nor any Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, a Debtor or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt 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 Debt Document or the Security Property;
- (c) the creation, perfection or priority of any lien or security interest purported to be created by this Agreement, the Debt Documents or any related document, or the value or sufficiency of any Security Property;
- (d) the satisfaction of any condition set forth in this Agreement, the Debt Documents or any related document; or
- (e) 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.

**18.10 No duty to monitor**

- (a) The Security Agent shall not be bound to enquire:
  - (i) whether or not any Default has occurred;
  - (ii) as to the performance, default or any breach by any Party of its obligations or covenants under any Debt Document; or
  - (iii) whether any other event specified in any Debt Document has occurred.
- (b) The Security Agent shall not be deemed to have knowledge of any default, breach or any other event specified in any Debt Documents unless a responsible officer of the Security Agent shall have received written notice of such event, referencing this Agreement, at the office of the Security Agent specified in Clause 25.3 (*Addresses*).

## 18.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any 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 Debt 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 Debt 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 Debt Document or the Security Property;
  - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
  - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,  
including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; 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 Debt 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 18.11 subject to Clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) 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 Primary Creditor,  
on behalf of any Primary Creditor and each Primary Creditor 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.
- (d) Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any

Receiver or Delegate arising under or in connection with any Debt 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 (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the 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, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

- (e) In order to comply with laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering (“Applicable Law”), the Security Agent is required to obtain, verify and record certain information relating to individuals and entities which maintain a business relationship with the Security Agent. Accordingly, each of the Debtors agrees to provide to the Security Agent upon its request from time to time such identifying information and documentation as may be available for such party in order to enable the Security Agent to comply with Applicable Law.

#### **18.12 Primary Creditors’ indemnity to the Security Agent**

- (a) Each Primary Creditor (other than any Creditor Representative) shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Primary Creditors (other than any Creditor Representative) for the time being (or, if the Liabilities due to the Primary Creditors (other than any Creditor Representative) are zero, immediately prior to their being reduced 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 relevant Security Agent’s, Receiver’s or Delegate’s gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).
- (b) Subject to paragraph (c) below, the Parent shall immediately on demand reimburse any Primary Creditor for any payment that Primary Creditor 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 Primary Creditor claims reimbursement relates to a liability of the Security Agent to a Debtor.

#### **18.13 Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Primary Creditors and the Parent.
- (b) Alternatively the Security Agent may resign by giving 45 days’ notice to each Creditor Representative and the Parent, in which case the Instructing Group may appoint a successor Security Agent.
- (c) If the Instructing Group have not appointed a successor Security Agent in accordance with paragraph (b) above within 35 days after notice of resignation was given, the retiring Security Agent (after consultation with the Creditor Representatives and with the Parent) may appoint a successor Security Agent or may petition a court of competent jurisdiction to appoint a successor Security Agent.



- (d) The retiring Security Agent shall, make available to the successor 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 Debt Documents. The Parent shall, within five (5) 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 of all the Security Property to that successor.
- (f) Upon the appointment of a successor or the termination of this Agreement, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 18.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 18 and Clause 23.1 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date) as well as any other provisions of the Debt Documents which expressly survive such discharge. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Instructing Group 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.

#### 18.14 Confidentiality

- (a) In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its corporate trust department which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Debt 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.

#### 18.15 Information from the Creditors

- (a) Each Creditor and Creditor Representative shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.
- (b) Each Creditor and Creditor Representative agrees to render to the Security Agent, at any time upon request of the Security Agent upon reasonable notice, an accounting of the amounts of the liabilities owing to it (and in the case of each Creditor Representative, amounts of the liabilities owing to the Primary Creditors it represents) and such other information with respect to the liabilities owing to each such person as the Security Agent may reasonably request in order to give effect to the terms and conditions of this Agreement. In the event that any Creditor or Creditor Representative fails to provide any information required to be provided by it to the Security Agent, then the Security Agent may (but shall not be obligated to) (i) take such actions as are required to be taken by it based on the most recent information

available to it, or (ii) in the case of any distributions to be made pursuant to this Agreement, hold such Creditor's and/or Creditor Representative's share or purported share in escrow (without obligation to pay interest thereon) until such Creditor and/or Creditor Representative provides the required information.

#### 18.16 Credit appraisal by the Secured Parties

Without affecting the responsibility of any Debtor for information supplied by it or on its behalf in connection with any Debt Document, each Secured Party (other than the Security Agent and the Creditor Representatives) 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 Debt 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 Debt 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 Debt Document or the Security Property;
- (c) whether that Secured 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 Debt Document, the Security Property, the transactions contemplated by the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt 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 Debt Document, the transactions contemplated by any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

#### 18.17 Security Agent's additional remuneration

- (a) In the event of:
  - (i) a Default;
  - (ii) the Security Agent being requested by a Debtor or the Instructing Group to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Debt Documents;
  - (iii) the proposed accession of any Credit Facility Creditors or Senior Secured Note Creditors or Second Lien Note Trustee pursuant to Clause 21.7 (*Accession of Credit Facility Creditors under new Credit Facilities*) or Clause 21.8 (*Accession of Senior Secured Note Creditors under new Senior Secured Notes*) or Clause 21.9 (*Accession of Second Lien Note Creditors*) respectively; or
  - (iv) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent 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 (b) below. Notwithstanding the foregoing, in no event shall the Security Agent be required to undertake any duties outside the scope of the express duties accepted by it under the Debt Documents unless the Security Agent expressly agrees to do so in writing.

- (b) If the Security Agent and the Parent fail to agree upon the additional remuneration referred to in paragraph (a) above, 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 Parent 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 Parent) and the determination of any investment bank shall be final and binding upon the Parties.

#### 18.18 **Reliance and engagement letters**

The Security Agent may obtain and rely on any certificate or report from any Debtor's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report on such terms as it may consider appropriate (including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

#### 18.19 **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 Debtor to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Debt 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 Debt Document or of the Transaction Security;
- (d) pay or discharge any tax, assessment, or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Transaction Security.
- (e) take, or to require any Debtor to take, any step to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (f) require any further assurance in relation to any Security Document.

#### 18.20 **Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:
- (i) to insure any of the Charged Property or to make any payments with respect to insurance for any of the Charged Property;
  - (ii) to require any other person to maintain any insurance; or
  - (iii) to verify any obligation to arrange or maintain insurance contained in any Debt 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.

#### 18.21 **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.

#### 18.22 **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.

#### 18.23 **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;
  - (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 Parent and the Primary Creditors 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 Debt 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.

#### 18.24 **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 Debtor may have to any of the Charged Property and shall not be liable for, or bound to require any Debtor to remedy, any defect in its right or title.

#### 18.25 **Winding up of trust**

If the Security Agent (and, to the extent any Security Agent which has resigned pursuant to Clause 18.13 (*Resignation of the Security Agent*) is required to deliver any release pursuant to Clause 18.25(ii) below, such resigned Security Agent) receives a certificate from each Creditor Representative that:

- (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor pursuant to the Debt 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 18.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document (if any).

#### 18.26 **Powers supplemental to Trustee Acts**

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Debt 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.

#### 18.27 **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. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

#### 18.28 **Intra-Group Lenders and Debtors: Power of Attorney**

Each Intra-Group Lender and Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Intra-Group Lender or Debtor has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do for a period of 10 Business Days or at any time after an Event of Default that is continuing (and the Security Agent may delegate that power on such terms as it sees fit).

**18.29 Illegality**

The Security Agent may refrain from doing anything (including disclosing any information) which might, in its opinion, constitute a breach of any law or regulation and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.

**18.30 Force Majeure**

In no event shall the Security Agent be liable for any failure or delay in the performance of its obligations under this Agreement, the Debt Documents or any related documents because of circumstances beyond the Security Agent's control, including, but not limited to, a failure, termination or suspension of a clearing house, securities depository, settlement system or central payment system in any applicable part of the world or acts of God, flood, war (whether declared or undeclared), civil or military disturbances or hostilities, nuclear or natural catastrophes, political unrest, explosion, severe weather or accident, earthquake, terrorism, fire, riot, labour disturbances, strikes or work stoppages for any reason, embargo, government action, including any laws, ordinances, regulations or the like (whether domestic, federal, state, county or municipal or foreign) which delay, restrict or prohibit the providing of the services contemplated by this Agreement, the Debt Documents or any related documents, or the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, or any other causes beyond the Security Agent's control whether or not of the same class or kind as specified above.

**18.31 Merger**

Any corporation into which the Security Agent may be merged, or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Security Agent shall be a party, shall become the Security Agent under this Agreement without the execution or filing of any document or any further act on the part of the parties hereto.

**18.32 Conflict**

For the avoidance of doubt, if there are any conflicts between the rights, protections and responsibilities of the Security Agent under the terms of this Agreement and the rights, protections and responsibilities of the Security Agent under the terms of the Debt Documents, the terms of this Agreement shall prevail.

**18.33 Enforcement Principles; Enforcement Objective**

In no event shall the Security Agent be responsible for complying with or monitoring any Creditor's or Creditor Representative's compliance with the Enforcement Principles or the Enforcement Objective and in no event shall the Security Agent be liable to the extent it is directed by an authorised Creditor Representative or Creditor(s) to enforce the Transaction Security in contravention of the Enforcement Principles or the Enforcement Objective.

**18.34 Investments**

The Security Agent shall have no obligation to invest or reinvest any cash held by the Security Agent pursuant to this Agreement. For such time as Deutsche Bank Trust Company Americas is the Security Agent it shall not invest or reinvest any cash held by it pursuant to this Agreement, but this shall not prevent it from depositing sums into an interest bearing suspense account.

## **19. SENIOR SECURED NOTE TRUSTEE PROTECTIONS**

### **19.1 Limitation of Senior Secured Note Trustee Liability**

It is expressly understood and agreed by the Parties that this Agreement is executed and delivered by each Senior Secured Note Trustee not individually or personally but solely in its capacity as a Senior Secured Note Trustee in the exercise of the powers and authority conferred and vested in it under the relevant Senior Secured Note Documents. It is further understood by the Parties that in no case shall a Senior Secured Note Trustee be (i) responsible or accountable in damages or otherwise to any other Party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by it in good faith in accordance with this Agreement and in a manner that the relevant Senior Secured Note Trustee believed to be within the scope of the authority conferred on the Senior Secured Note Trustee by this Agreement and the relevant Senior Secured Note Documents or by law, or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party, provided however, that a Senior Secured Note Trustee shall be personally liable under this Agreement for its own gross negligence or wilful misconduct. It is also acknowledged that a Senior Secured Note Trustee shall not have any responsibility for the actions of any individual Senior Secured Noteholder.

### **19.2 Note Trustee not fiduciary for other Creditors**

The Senior Secured Note Trustee shall not be deemed to owe any fiduciary duty to any of the Creditors (other than the Senior Secured Noteholders for which it is the Creditor Representative) or any member of the Group and shall not be liable to any Creditor (other than the Senior Secured Noteholders for which it is the Creditor Representative) or any member of the Group if the Senior Secured Note Trustee shall in good faith mistakenly pay over or distribute to the Senior Secured Noteholders or to any other person cash, property or securities to which any Creditor (other than the Senior Secured Noteholders for which it is the Creditor Representative) shall be entitled by virtue of this Agreement or otherwise. With respect to the Creditors (other than the Senior Secured Noteholders for which it is the Creditor Representative), the Senior Secured Note Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in the relevant Senior Secured Note Documents (including this Agreement) and no implied covenants or obligations with respect to Creditors (other than the Senior Secured Noteholders for which it is the Creditor Representative) shall be read into this Agreement against a Senior Secured Note Trustee.

### **19.3 Reliance on certificates**

A Senior Secured Note Trustee may rely without enquiry on any notice, consent or certificate of the Security Agent or any other Creditor Representative as to the matters certified therein.

### **19.4 Senior Secured Note Trustee**

In acting under and in accordance with this Agreement a Senior Secured Note Trustee shall act in accordance with the Senior Secured Note Indenture and shall seek any necessary instruction from the relevant Senior Secured Noteholders, to the extent provided for, and in accordance with, the Senior Secured Note Indenture, and where it so acts on the instructions of the Senior Secured Noteholders, the Senior Secured Note Trustee shall not incur any liability to any person for so acting other than in accordance with the Senior Secured Note Indenture. Furthermore, prior to taking any action under this Agreement or the relevant Senior Secured Note Documents, as the case may be, the Senior Secured Note Trustee may reasonably request and conclusively rely upon a certificate from two (2) Officers of the Parent and an opinion of counsel or opinion of another qualified expert, at the Parent's expense, as applicable; provided, however, that any such opinions shall be at the expense of the relevant Senior Secured Noteholders, if such actions are on the instructions of the relevant Senior Secured Noteholders.

#### 19.5 **Turnover obligations: Senior Secured Note Trustee**

Notwithstanding any provision in this Agreement to the contrary, a Senior Secured Note Trustee shall only have an obligation to turn over or repay amounts received or recovered under this Agreement by it (i) if it had actual knowledge that the receipt or recovery is an amount received in breach of a provision of this Agreement (a “**Turnover Receipt**”) and (ii) to the extent that, prior to receiving that knowledge, it has not distributed the amount of the Turnover Receipt to the Senior Secured Noteholders for which it is the Creditor Representative in accordance with the provisions of the Senior Secured Note Indenture. For the purpose of this Clause 19.5, (i) “actual knowledge” of the Senior Secured Note Trustee shall be construed to mean the Senior Secured Note Trustee shall not be charged with knowledge (actual or otherwise) of the existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless a responsible officer of such Senior Secured Note Trustee has received, not less than two Business Days’ prior to the date of such payment, a written notice that such payments are required or prohibited by this Agreement; and (ii) “responsible officer” when used in relation to the Senior Secured Note Trustee means any person who is an officer within the corporate trust and agency department of the Senior Secured Note Trustee, including any director, associate director, vice president, assistant vice president, senior associate, assistant treasurer, trust officer, or any other officer of the Senior Secured Note Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement.

#### 19.6 **Creditors and the Senior Secured Note Trustee**

In acting pursuant to this Agreement and the Senior Secured Note Indenture, the Senior Secured Note Trustee is not required to have any regard to the interests of the Creditors (other than the Senior Secured Noteholders for which it is the Creditor Representative).

#### 19.7 **Senior Secured Note Trustee; reliance and information**

- (a) The Senior Secured Note Trustee may rely and shall be fully protected in acting or refraining from acting upon any notice or other document reasonably believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person.
- (b) Without affecting the responsibility of any Debtor for information supplied by it or on its behalf in connection with any Debt Document, each Primary Creditor (other than the Senior Secured Noteholders for which it is the Creditor Representative) confirms that it has not relied exclusively on any information provided to it by a Senior Secured Note Trustee in connection with any Debt Document. A Senior Secured Note Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another party.
- (c) A Senior Secured Note Trustee is entitled to assume that:
  - (i) any payment or other distribution made in respect of the Liabilities, respectively, has been made in accordance with the provisions of this Agreement;
  - (ii) any Security granted in respect of the Senior Secured Note Liabilities is in accordance with Clause 4.2 (*Security: Senior Secured Note Creditors*);
  - (iii) no Default has occurred; and
  - (iv) the Senior Secured Note Discharge Date has not occurred,

unless it has received written notice to the contrary. A Senior Secured Note Trustee is not obliged to monitor or enquire whether any such default has occurred.



**19.8 No action**

A Senior Secured Note Trustee shall not have any obligation to take any action under this Agreement unless it is indemnified or secured to its satisfaction (whether by way of payment in advance or otherwise) by the Debtors or the Senior Secured Noteholders for which it is the Creditor Representative, as applicable, in accordance with the terms of the Senior Secured Note Indenture. A Senior Secured Note Trustee is not required to indemnify any other person, whether or not a Party in respect of the transactions contemplated by this Agreement.

**19.9 Departmentalisation**

In acting as a Senior Secured Note Trustee, a Senior Secured Note Trustee shall be treated as acting through its corporate trust department which shall be treated as a separate entity from its other divisions and departments. Any information received or acquired by a Senior Secured Note Trustee which is received or acquired by some other division or department or otherwise than in its capacity as Senior Secured Note Trustee may be treated as confidential by that Senior Secured Note Trustee and will not be treated as information possessed by that Senior Secured Note Trustee in its capacity as such.

**19.10 Other parties not affected**

This Clause 19 is intended to afford protection to each Senior Secured Note Trustee only and no provision of this Clause 19 shall alter or change the rights and obligations as between the other parties in respect of each other.

**19.11 Security Agent and the Senior Secured Note Trustees**

- (a) A Senior Secured Note Trustee is not responsible for the appointment or for monitoring the performance of the Security Agent.
- (b) A Senior Secured Note Trustee shall be under no obligation to instruct or direct the Security Agent to take any Security enforcement action unless it shall have been instructed to do so by the Senior Secured Noteholders for which it is the Creditor Representative and indemnified and/or secured to its satisfaction.
- (c) The Security Agent acknowledges and agrees that it has no claims for any fees, costs or expenses from, or indemnification against, a Senior Secured Note Trustee.

**19.12 Provision of information**

A Senior Secured Note Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party. A Senior Secured Note Trustee is not responsible for:

- (a) providing any Creditor with any credit or other information concerning the risks arising under or in connection with the Transaction Security Documents or Senior Secured Note Documents (including any information relating to the financial condition or affairs of any Debtor or their related entities or the nature or extent of recourse against any party or its assets) whether coming into its possession before, on or after the date of this Agreement; or
- (b) obtaining any certificate or other document from any Creditor.

**19.13 Disclosure of information**

Each Debtor irrevocably authorises a Senior Secured Note Trustee to disclose to any other Debtor any information that is received by that Senior Secured Note Trustee in its capacity as Senior Secured Note Trustee.

#### 19.14 **Illegality**

A Senior Secured Note Trustee may refrain from doing anything (including disclosing any information) which might, in its opinion, constitute a breach of any law or regulation and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.

#### 19.15 **Resignation of Senior Secured Note Trustee**

A Senior Secured Note Trustee may resign or be removed in accordance with the terms of the Senior Secured Note Indenture, provided that a replacement of such Senior Secured Note Trustee agrees with the Parties to become the replacement trustee under this Agreement by the execution of a Creditor/Creditor Representative Accession Undertaking.

#### 19.16 **Agents**

A Senior Secured Note Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with reasonable care by it hereunder.

#### 19.17 **No Requirement for Bond or Security**

A Senior Secured Note Trustee shall not be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Agreement.

#### 19.18 **Provisions Survive Termination**

The provisions of this Clause 19 shall survive any termination or discharge of this Agreement.

### 20. **SECOND LIEN NOTE TRUSTEE PROTECTIONS**

#### 20.1 **Limitation of Second Lien Note Trustee Liability**

It is expressly understood and agreed by the Parties that this Agreement is executed and delivered by each Second Lien Note Trustee not individually or personally but solely in its capacity as a Second Lien Note Trustee in the exercise of the powers and authority conferred and vested in it under the relevant Second Lien Note Documents. It is further understood by the Parties that in no case shall a Second Lien Note Trustee be (i) responsible or accountable in damages or otherwise to any other Party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by it in good faith in accordance with this Agreement and in a manner that the relevant Second Lien Note Trustee believed to be within the scope of the authority conferred on the Second Lien Note Trustee by this Agreement and the relevant Second Lien Note Documents or by law, or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party, provided however, that a Second Lien Note Trustee shall be personally liable under this Agreement for its own gross negligence or wilful misconduct. It is also acknowledged that a Second Lien Note Trustee shall not have any responsibility for the actions of any individual Second Lien Noteholder.

#### 20.2 **Second Lien Note Trustee not fiduciary for other Creditors**

The Second Lien Note Trustee shall not be deemed to owe any fiduciary duty to any of the Creditors (other than the Second Lien Noteholders for which it is the Creditor Representative) or any member of the Group and shall not be liable to any Creditor (other than the Second Lien Noteholders for which it is the Creditor Representative) or any member of the Group if the Second Lien Note Trustee shall in good faith mistakenly pay over or distribute to the Second Lien Noteholders or to any other person cash, property or securities to which any Creditor (other than the Second Lien Noteholders for which it is the Creditor Representative) shall be entitled by virtue of this Agreement or otherwise. With respect

to the Creditors (other than the Second Lien Noteholders for which it is the Creditor Representative), the Second Lien Note Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in the relevant Second Lien Note Documents (including this Agreement) and no implied covenants or obligations with respect to Creditors (other than the Second Lien Noteholders for which it is the Creditor Representative) shall be read into this Agreement against a Second Lien Note Trustee.

**20.3 Reliance on certificates**

A Second Lien Note Trustee may rely without enquiry on any notice, consent or certificate of the Security Agent or any other Creditor Representative as to the matters certified therein.

**20.4 Second Lien Note Trustee**

In acting under and in accordance with this Agreement a Second Lien Note Trustee shall act in accordance with the relevant Second Lien Note Indenture and shall seek any necessary instruction from the relevant Second Lien Noteholders, to the extent provided for, and in accordance with, the relevant Second Lien Note Indenture, and where it so acts on the instructions of the Second Lien Noteholders, the Second Lien Note Trustee shall not incur any liability to any person for so acting other than in accordance with the Second Lien Note Indenture. Furthermore, prior to taking any action under this Agreement or the relevant Second Lien Note Documents, as the case may be, the Second Lien Note Trustee may reasonably request and rely upon an opinion of counsel or opinion of another qualified expert, at the Parent's expense, as applicable; provided, however, that any such opinions shall be at the expense of the relevant Second Lien Noteholders, if such actions are on the instructions of the relevant Second Lien Noteholders.

**20.5 Turnover obligations: Second Lien Note Trustee**

Notwithstanding any provision in this Agreement to the contrary, a Second Lien Note Trustee shall only have an obligation to turn over or repay amounts received or recovered under this Agreement by it (i) if it had actual knowledge that the receipt or recovery is an amount received in breach of a provision of this Agreement (a "**Turnover Receipt**") and (ii) to the extent that, prior to receiving that knowledge, it has not distributed the amount of the Turnover Receipt to the Second Lien Noteholders for which it is the Creditor Representative in accordance with the provisions of the relevant Second Lien Note Indenture. For the purpose of this Clause 20.5, (i) "actual knowledge" of the Second Lien Note Trustee shall be construed to mean the Second Lien Note Trustee shall not be charged with knowledge (actual or otherwise) of the existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless a responsible officer of such Second Lien Note Trustee has received, not less than two Business Days' prior to the date of such payment, a written notice that such payments are required or prohibited by this Agreement; and (ii) "responsible officer" when used in relation to the Second Lien Note Trustee means any person who is an officer within the corporate trust and agency department of the Second Lien Note Trustee, including any director, associate director, vice president, assistant vice president, senior associate, assistant treasurer, trust officer, or any other officer of the Second Lien Note Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement.

**20.6 Creditors and the Second Lien Note Trustee**

In acting pursuant to this Agreement and the relevant Second Lien Note Indenture, the Second Lien Note Trustee is not required to have any regard to the interests of the Creditors (other than the Second Lien Noteholders for which it is the Creditor Representative).

**20.7 Second Lien Note Trustee; reliance and information**

- (a) The Second Lien Note Trustee may rely and shall be fully protected in acting or refraining from acting upon any notice or other document reasonably believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person.
- (b) Without affecting the responsibility of any Debtor for information supplied by it or on its behalf in connection with any Debt Document, each Primary Creditor (other than the Second Lien Noteholders for which it is the Creditor Representative) confirms that it has not relied exclusively on any information provided to it by a Second Lien Note Trustee in connection with any Debt Document. A Second Lien Note Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another party.
- (c) A Second Lien Note Trustee is entitled to assume that:
  - (i) any payment or other distribution made in respect of the Liabilities, respectively, has been made in accordance with the provisions of this Agreement;
  - (ii) any Security granted in respect of the Second Lien Note Liabilities is in accordance with Clause 7.9 (*Security: Second Lien Note Creditors*);
  - (iii) no Default has occurred; and
  - (iv) the Second Lien Note Discharge Date has not occurred,unless it has actual notice to the contrary. A Second Lien Note Trustee is not obliged to monitor or enquire whether any such default has occurred.

**20.8 No action**

A Second Lien Note Trustee shall not have any obligation to take any action under this Agreement unless it is indemnified or secured to its satisfaction (whether by way of payment in advance or otherwise) by the Debtors or the Second Lien Noteholders for which it is the Creditor Representative, as applicable, in accordance with the terms of the relevant Second Lien Note Indenture. A Second Lien Note Trustee is not required to indemnify any other person, whether or not a Party in respect of the transactions contemplated by this Agreement.

**20.9 Departmentalisation**

In acting as a Second Lien Note Trustee, a Second Lien Note Trustee shall be treated as acting through its agency division which shall be treated as a separate entity from its other divisions and departments. Any information received or acquired by a Second Lien Note Trustee which is received or acquired by some other division or department or otherwise than in its capacity as Second Lien Note Trustee may be treated as confidential by that Second Lien Note Trustee and will not be treated as information possessed by that Second Lien Note Trustee in its capacity as such.

**20.10 Other parties not affected**

This Clause 20 is intended to afford protection to each Second Lien Note Trustee only and no provision of this Clause 20 shall alter or change the rights and obligations as between the other parties in respect of each other.

**20.11 Security Agent and the Second Lien Note Trustees**

- (a) A Second Lien Note Trustee is not responsible for the appointment or for monitoring the performance of the Security Agent.

- (b) A Second Lien Note Trustee shall be under no obligation to instruct or direct the Security Agent to take any Security enforcement action unless it shall have been instructed to do so by the Second Lien Noteholders for which it is the Creditor Representative and indemnified and/or secured to its satisfaction.
- (c) The Security Agent acknowledges and agrees that it has no claims for any fees, costs or expenses from, or indemnification against, a Second Lien Note Trustee.

**20.12 Provision of information**

A Second Lien Note Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party. A Second Lien Note Trustee is not responsible for:

- (a) providing any Creditor with any credit or other information concerning the risks arising under or in connection with the Transaction Security Documents or Second Lien Note Documents (including any information relating to the financial condition or affairs of any Debtor or their related entities or the nature or extent of recourse against any party or its assets) whether coming into its possession before, on or after the date of this Agreement; or
- (b) obtaining any certificate or other document from any Creditor.

**20.13 Disclosure of information**

Each Debtor irrevocably authorises a Second Lien Note Trustee to disclose to any other Debtor any information that is received by that Second Lien Note Trustee in its capacity as Second Lien Note Trustee.

**20.14 Illegality**

A Second Lien Note Trustee may refrain from doing anything (including disclosing any information) which might, in its opinion, constitute a breach of any law or regulation and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.

**20.15 Resignation of Second Lien Note Trustee**

A Second Lien Note Trustee may resign or be removed in accordance with the terms of the relevant Second Lien Note Indenture, provided that a replacement of such Second Lien Note Trustee agrees with the Parties to become the replacement trustee under this Agreement by the execution of a Creditor/Creditor Representative Accession Undertaking.

**20.16 Agents**

A Second Lien Note Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with reasonable care by it hereunder.

**20.17 No Requirement for Bond or Security**

A Second Lien Note Trustee shall not be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Agreement.

**20.18 Provisions Survive Termination**

The provisions of this Clause 20 shall survive any termination or discharge of this Agreement.

**21. CHANGES TO THE PARTIES**

**21.1 Assignments and transfers**

No Party (other than the Security Agent in accordance with Clause 18.13 (*Resignation of the Security Agent*)) may:

- (a) assign any of its rights; or
- (b) transfer any of its rights and obligations,

in respect of any Debt Documents or the Liabilities except as permitted by this Clause 21.

**21.2 Change of Credit Facility Lender under an existing Credit Facility**

(a) A Credit Facility Lender under an existing Credit Facility may:

- (i) assign any of its rights; or
- (ii) transfer by novation any of its rights and obligations,

in respect of any Debt Documents or the Liabilities if:

- (A) that assignment or transfer is in accordance with the terms of the Credit Facility Agreement to which it is a party; and
- (B) any assignee or transferee has (if not already a Party as a Credit Facility Lender) acceded to this Agreement, as a Credit Facility Lender, pursuant to Clause 21.10 (*Creditor/Creditor Representative Accession Undertaking*).

**21.3 Change of Senior Secured Noteholder / Second Lien Noteholder**

Any Senior Secured Noteholder or Second Lien Noteholder may assign, transfer or novate any of its rights and obligations to any person without the need for such person to execute and deliver to the Security Agent a Creditor / Creditor Representative Accession Undertaking.

**21.4 Change of Creditor Representative**

No person shall become a Creditor Representative unless at the same time, it accedes to this Agreement as a Creditor Representative pursuant to Clause 21.10 (*Creditor/Creditor Representative Accession Undertaking*).

**21.5 Change of Intra-Group Lender**

Subject to Clause 6.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may:

- (a) assign any of its rights; or
- (b) transfer any of its rights and obligations,

in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already a Party as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 21.10 (*Creditor/Creditor Representative Accession Undertaking*).

#### 21.6 **New Intra-Group Lender**

If any Intra-Group Lender or any member of the Group makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount of (US)\$5,000,000 or more, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Intra-Group Lender) accedes to this Agreement as an Intra-Group Lender, pursuant to Clause 21.10 (*Creditor/Creditor Representative Accession Undertaking*).

#### 21.7 **Accession of Credit Facility Creditors under new Credit Facilities**

At any time on or following the Revolving Lender Discharge Date, in order for any credit facility (other than the Initial Revolving Facility) to be a "Credit Facility" for the purposes of this Agreement:

- (a) the Parent shall designate that credit facility as a Credit Facility and certify in writing to the Security Agent and the Primary Creditors that the establishment of that credit facility as a Credit Facility under this Agreement will not breach the terms of any of this Agreement, its existing Credit Facility Documents or Senior Secured Note Documents or Second Lien Note Documents;
- (b) each creditor in respect of that credit facility shall accede to this Agreement as a Credit Facility Lender;
- (c) each arranger in respect of that credit facility shall accede to this Agreement as a Credit Facility Arranger;
- (d) the facility agent in respect of that credit facility shall accede to this Agreement as the Creditor Representative in relation to that credit facility pursuant to Clause 21.10 (*Creditor/Creditor Representative Accession Undertaking*); and
- (e) any additional remuneration for the Security Agent in connection with the accession shall have been determined pursuant to Clause 18.17 (*Security Agent's additional remuneration*).

#### 21.8 **Accession of Senior Secured Note Creditors under new Senior Secured Notes**

In order for indebtedness in respect of any issuance of debt securities to constitute "Senior Secured Note Liabilities" for the purposes of this Agreement:

- (a) The issuance of debt securities shall be a further issue of Senior Secured Notes under the existing Senior Secured Notes Indenture;
- (b) the Parent shall designate that issuance of debt securities as Senior Secured Notes and certify in writing to the Security Agent and the Primary Creditors that the incurrence of those debt securities as Senior Secured Note Liabilities under this Agreement will not breach the terms of this Agreement, its existing Credit Facility Documents or the Senior Secured Note Documents;
- (c) the trustee in respect of those debt securities shall accede to this Agreement as the Creditor Representative in relation to those Senior Secured Note Liabilities pursuant to Clause 21.10 (*Creditor/Creditor Representative Accession Undertaking*); and
- (d) any additional remuneration for the Security Agent in connection with the accession shall have been determined pursuant to Clause 18.17 (*Security Agent's additional remuneration*).

## 21.9 Accession of Second Lien Note Creditors

In order for indebtedness in respect of any issuance of debt securities to constitute "Second Lien Debt Liabilities" for the purposes of this Agreement:

- (a) The Second Lien Note Liabilities:
  - (i) may only be incurred by the Second Lien Note Issuer;
  - (ii) must be incurred under a capital markets debt instrument; and
  - (iii) must not have any maturity date earlier than the date falling six months after the last maturity date of the Senior Secured Notes.
- (b) the Parent shall designate that issuance of debt securities as Second Lien Notes and certify in writing to the Security Agent and the Primary Creditors that the incurrence of those debt securities as Second Lien Debt Liabilities under this Agreement will not breach the terms of any of this Agreement, its existing Credit Facility Documents or Senior Secured Note Documents;
- (c) the trustee in respect of those debt securities shall accede to this Agreement as the Creditor Representative in relation to those Second Lien Debt Liabilities pursuant to Clause 21.10 (*Creditor/Creditor Representative Accession Undertaking*); and
- (d) any additional remuneration for the Security Agent in connection with the accession shall have been determined pursuant to Clause 18.17 (*Security Agent's additional remuneration*).

## 21.10 Creditor/Creditor Representative Accession Undertaking

With effect from the date of acceptance by the Security Agent of a Creditor/Creditor Representative Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor/Creditor Representative Accession Undertaking:

- (a) any Party ceasing entirely to be a Creditor shall be discharged from further obligations towards the Security Agent and other Parties under this Agreement (other than such obligations that are expressed to survive that discharge) and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and
- (b) as from that date, the replacement or new Creditor shall assume the same obligations and become entitled to the same rights, as if it had been an original Party in the capacity specified in the Creditor/Creditor Representative Accession Undertaking.

## 21.11 New Debtor

- (a) If any member of the Group:
  - (i) incurs any Liabilities; or
  - (ii) gives any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities,the Debtors will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor, in accordance with paragraph (b) below, no later than contemporaneously with the incurrence of those Liabilities or the giving of that assurance.
- (b) With effect from the date of acceptance by the Security Agent of a Debtor Accession Deed duly executed and delivered to the Security Agent by the new Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Debtor.



## 21.12 Additional parties

Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor/Creditor Representative Accession Undertaking delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Debt Document.

## 21.13 Resignation of a Debtor

- (a) The Parent may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (b) The Security Agent shall accept a Debtor Resignation Request and notify the Parent and each other Creditor Representative of its acceptance if:
  - (i) the Parent has certified that (A) no Default is continuing or would result from the acceptance of the Debtor Resignation Request, and (B) such Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities;
  - (ii) to the extent that the Credit Facility Lender Discharge Date has not occurred, each relevant Creditor Representative confirms to the Security Agent that that Debtor is not, or has ceased to be, a Credit Facility Borrower or a Credit Facility Guarantor; and
  - (iii) to the extent that the Senior Secured Note Discharge Date has not occurred, each Senior Secured Note Trustee confirms to the Security Agent that the Debtor is not, or has ceased to be, an issuer or guarantor of the Senior Secured Note Liabilities for which it is the Creditor Representative; and
- (c) Upon notification by the Security Agent to the Parent of its acceptance of the resignation of a Debtor, that member of the Group shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.

## 22. COSTS AND EXPENSES

### 22.1 Transaction expenses

The Parent shall, promptly on demand, pay the Security Agent the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent and by any Receiver or Delegate in connection with the negotiation, preparation, printing, execution, performance and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and
- (b) any other Debt Documents executed after the date of this Agreement,

but for the avoidance of doubt excluding any fees which are expressly stated to be included within its fee payable pursuant to the terms of the fee letter between the Parent and the Security Agent.

## 22.2 **Amendment costs**

If a Debtor requests an amendment, waiver or consent, the Parent shall, within three Business Days of demand, reimburse the Security Agent for the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

## 22.3 **Enforcement and preservation costs**

The Parent shall, within five (5) Business Days of demand, pay to the Security Agent the amount of all costs and expenses (including legal fees and together with any applicable VAT) incurred by it in connection with the enforcement of or the preservation of any rights under any Debt Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

## 22.4 **Stamp taxes**

The Parent shall pay and, within five (5) Business Days of demand, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document.

## 22.5 **Interest on demand**

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement or the Transaction Security Documents on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is 2 per cent. per annum over the rate at which the Security Agent was being offered, by leading banks in the London interbank market, deposits in an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select *provided that* if any such rate is below zero, that rate will be deemed to be zero.

## 22.6 **Fee letter**

The Parent shall pay to the Security Agent from time to time such compensation for its services as is set forth in a separate fee letter between the Parent and the Security Agent.

## 23. **OTHER INDEMNITIES**

### 23.1 **Indemnity to the Security Agent**

- (a) Each Debtor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate and their respective officers, directors, employees and agents against any cost, penalty, suit, cause of action, loss, fees, expenses (including any legal fees) or liability, including any environmental liability (together with any applicable VAT) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against any of them directly or indirectly relating to or arising out of or in connection with:
- (i) any failure by the Parent to comply with its obligations under Clause 22 (*Costs and Expenses*);
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Transaction Security;

- (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;
  - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
  - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
  - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 23.1 will not be prejudiced by any release or disposal under Clause 13 (*Distressed Disposals*) taking into account the operation of that Clause 13.
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 23.1 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.
- (d) All amounts and indemnities to be paid under this Agreement shall be payable immediately when due in U.S. dollars (the "**Dollars**") in the full amount due, without deduction for any variation in any Rate of Exchange (as defined below). The Debtors hereby jointly and severally agree to indemnify the Security Agent against any losses, damages, penalties, costs, expenses or disbursements of any kind or nature whatsoever, including, without limitation, attorney's fees and expenses, incurred by it as a result of any judgment or order being expressed and paid in a currency (the "**Judgment Currency**") other than Dollars and as a result of any variation as between (i) the rate of exchange at which the dollar amount is converted into Judgment Currency for the purpose of such judgment or order, and (ii) the Rate of Exchange at which the Security Agent is then able to purchase Dollars with the amount of the Judgment Currency actually received by it. The indemnity set forth in this paragraph shall constitute a separate and independent obligation of the Debtors and shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "**Rate of Exchange**" means the rate at which the Security Agent is able to purchase Dollars with the Judgment Currency on the foreign exchange market on the relevant date and shall include any premiums and other reasonable costs of exchange payable in connection with the purchase of, or conversion into, the relevant currency.

#### 23.2 **Parent's indemnity to Primary Creditors**

The Parent shall promptly and as principal obligor indemnify each Primary Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 13 (*Distressed Disposals*).

## 24. **INFORMATION**

### 24.1 **Dealings with Security Agent and Creditor Representatives**

Each Credit Facility Lender, Senior Secured Noteholder and Second Lien Noteholder shall deal with the Security Agent exclusively through its Creditor Representative. Notwithstanding anything contained herein to the contrary, in no event shall the Security Agent have any duty or obligation to

confirm whether any threshold of consents or instructions required to be provided by the Primary Creditors to its Creditor Representative under this Agreement has in fact been provided, and the Security Agent shall be entitled to conclusively rely (and shall incur no liability in acting upon such reliance) upon any instruction provided by each Creditor Representative as being given at the instruction of the applicable threshold of Primary Creditors it represents.

#### 24.2 **Disclosure between Primary Creditors and Security Agent**

Notwithstanding any agreement to the contrary, each of the Debtors consents, until the Final Discharge Date, to the disclosure by any Primary Creditor and the Security Agent to each other (whether or not through a Creditor Representative or the Security Agent) of any information concerning the Debtors.

#### 24.3 **Notification of prescribed events**

- (a) If an Event of Default or Default under a Credit Facility Document or Senior Secured Note Document or Second Lien Note Document either occurs or ceases to be continuing the relevant Creditor Representative shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Creditor Representative.
- (b) If a Credit Facility Acceleration Event occurs the relevant Creditor Representative for the Credit Facility shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Parent and each other Creditor Representative.
- (c) If a Senior Secured Note Acceleration Event occurs the relevant Creditor Representative(s) shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Parent and each other Creditor Representative.
- (d) If a Second Lien Note Acceleration Event occurs the relevant Creditor Representative(s) shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Parent and each other Creditor Representative.
- (e) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Creditor Representative of that action.
- (f) If any Primary Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative of that action.
- (g) If the Security Agent receives a notice under paragraph (a) of Clause 5.1 (*Option to purchase: Senior Secured Note Creditors*) or Clause 5.2 (*Option to purchase: Second Lien Note Creditors*) it shall upon receiving that notice, notify, and send a copy of that notice to, each Creditor Representative for the Credit Facility.

### 25. **NOTICES**

#### 25.1 **Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter.

#### 25.2 **Security Agent's communications with Primary Creditors**

The Security Agent shall be entitled to carry out all dealings with the Credit Facility Lenders, Senior Secured Noteholders and Second Lien Noteholders through their respective Creditor Representatives and may give to the Creditor Representatives, as applicable, any notice or other communication required to be given by the Security Agent to a Credit Facility Lender, Senior Secured Noteholder or Second Lien Noteholder.

### 25.3 **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 this Agreement is:

- (a) in the case of the Parent, that identified with its name below;
- (b) in the case of the Security Agent, that identified with its name below;
- (c) in the case of each Creditor Representative, that identified with its name below; and
- (d) in the case of each other Party, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,

or any substitute address, fax number or department or officer which that Party may notify to the Security Agent (or the Security Agent may notify to the other Parties, if a change is made by the Security Agent) by not less than five Business Days' notice.

### 25.4 **Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) subject to paragraph (b) below, 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 25.3 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Parent in accordance with this Clause 25.4 will be deemed to have been made or delivered to each of the Debtors.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.
- (e) Any communication for a Debtor shall be sent to the Parent in accordance with Clause 25.3 (*Addresses*) and service on the Parent in accordance with the preceding paragraphs of this Clause 25.4 shall be deemed good service on the relevant Debtor.

**25.5 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 25.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

**25.6 Electronic communication**

- (a) Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means 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 and if those two Parties:
  - (i) 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
  - (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 electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

**25.7 English language**

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
  - (i) in English; or
  - (ii) if not in English, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

**26. PRESERVATION**

**26.1 Partial invalidity**

If, at any time, any provision of a Debt Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.

**26.2 No impairment**

If, at any time after its date, any provision of a Debt Document (including this Agreement) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that Debt Document, neither the binding nature nor the enforceability of that provision or any other provision of that Debt Document will be impaired as against the other party(ies) to that Debt Document.

### 26.3 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Debt Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Debt Document. No election to affirm any Debt 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 Debt Document are cumulative and not exclusive of any rights or remedies provided by law.

### 26.4 Waiver of defences

The provisions of this Agreement or any Transaction Security will not be affected by an act, omission, matter or thing which, but for this Clause 26.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any Debtor 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, take up or enforce, any rights against, or security over assets of, any Debtor 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 any Debtor or other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;
- (g) any intermediate Payment of any of the Liabilities owing to the Primary Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

### 26.5 Priorities not affected

Except as otherwise provided in this Agreement the priorities referred to in Clause 2 (*Ranking and Priority*) will:

- (a) not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities owing to the Primary Creditors or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;
- (b) apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and
- (c) secure the Liabilities owing to the Primary Creditors in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

27. **CONSENTS, AMENDMENTS AND OVERRIDE**

27.1 **Required consents**

- (a) Subject to paragraph (b) below, to Clause 27.4 (*Exceptions*), to Clause 27.5 (*Disenfranchisement of Sponsor Affiliates*) and to Clause 27.6 (*Disenfranchisement of Defaulting Lenders*):
- (i) Clause 17.1 (*Equalisation Definitions*) to Clause 17.2 (*Equalisation*) may be amended or waived with the consent of (A) the Creditor Representatives in respect of any Credit Facilities and the Security Agent to the extent that that amendment or waiver does not affect the Senior Secured Note Creditors and / or the Second Lien Note Creditors, (B) by the Senior Secured Note Trustee and the Security Agent to the extent that that amendment or waiver does not affect the Credit Facility Creditors and / or the Second Lien Note Creditors, and (C) by the Second Lien Note Trustee and the Security Agent to the extent that that amendment or waiver does not affect the Credit Facility Creditors and / or the Senior Secured Note Creditors;
  - (ii) Schedule 4 (*Enforcement Principles*) may be amended or waived with the consent of the Creditor Representatives acting on behalf of the Majority Credit Facility Lenders and the Senior Secured Note Trustee acting on behalf of the Majority Senior Secured Note Creditors with notice to the Security Agent and without the consent of the Security Agent, Parent, any Debtor or any Intra-Group Lender to the extent that that amendment or waiver does not impose obligations on the Security Agent, the Parent, any Debtor or any Intra-Group Lender;
  - (iii) subject to paragraphs (i) and (ii) above, this Agreement may be amended or waived only with the consent of the Creditor Representatives, the Creditor Representative acting on behalf of the Credit Facility Lenders, the Senior Secured Note Trustee acting on behalf of the Senior Secured Note Creditors and the Second Lien Note Trustee acting on behalf of the Second Lien Note Creditors and the Security Agent.
- (b) An amendment or waiver that has the effect of changing or which relates to:
- (i) Clause 10 (*Redistribution*), Clause 11 (*Enforcement of Transaction Security*), Clause 16 (*Application of Proceeds*) or this Clause 27 (*Consents, Amendments and Override*);
  - (ii) paragraphs (d)(iii), (e) and (g) of Clause 18.3 (*Instructions*); or
  - (iii) the order of priority or subordination under this Agreement,
- shall not be made without the consent of:
- (A) the Creditor Representatives;
  - (B) the Creditor Representative acting on behalf of the Credit Facility Lenders or in the case of an amendment to the definitions of “Enforcement Instructions”, “Instructing Group”, “Majority Credit Facility Lenders” or any provision that expressly requires the consent of the Majority Credit Facility Lenders, the Creditor Representative acting on behalf of the Majority Credit Facility Lenders;
  - (C) the Senior Secured Note Trustee acting on behalf of the Senior Secured Noteholders or in the case of an amendment to the definitions of “Enforcement Instructions”, “Instructing Group”, “Majority Senior Secured Note Creditors” or any provision that expressly requires the consent of the Majority Senior Secured Note Creditors, the Senior Secured Note Trustee acting on behalf of the Majority Senior Secured Note Creditors;



- (D) the Second Lien Note Trustee acting on behalf of the Second Lien Noteholders or in the case of an amendment to the definitions of “Enforcement Instructions”, “Instructing Group”, “Majority Second Lien Note Creditors” or any provision that expressly requires the consent of the Majority Second Lien Note Creditors, the Second Lien Note Trustee acting on behalf of the Majority Second Lien Note Creditors; and
- (E) the Security Agent.

## 27.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to paragraph (b) below and to Clause 27.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Creditor Representative acting on behalf of the Credit Facility Lenders, the Senior Secured Note Trustee acting on behalf of the Senior Secured Noteholders, and the Second Lien Note Trustee acting on behalf of the Second Lien Noteholders and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.
- (b) Subject to paragraph (c) of Clause 27.4 (*Exceptions*), any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:
  - (i) the nature or scope of the Charged Property;
  - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
  - (iii) the release of any Transaction Security,

shall not be made without the prior consent of the Creditor Representative acting on behalf of the Credit Facility Lenders, the Senior Secured Note Trustee acting on behalf of the Senior Secured Noteholders and the Second Lien Note Trustee acting on behalf of the Second Lien Noteholders.

## 27.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this Clause 27 will be binding on all Parties and the Security Agent may effect, on behalf of any Primary Creditor, any amendment, waiver or consent permitted by this Clause 27.
- (b) Without prejudice to the generality of Clause 18.8 (*Rights and discretions*) in connection with the execution and delivery of any amendment, consent or waiver under this Clause 27, the Security Agent shall be entitled to receive, and shall be fully protected in relying upon, an opinion of counsel to the Parent and an officer’s certificate of the Parent each stating that the execution and delivery of such amendment, consent or waiver, as applicable, is authorized or permitted by this Agreement and the Debt Documents and that all conditions precedent contained in this Agreement and the Debt Documents relating to such amendment, consent or waiver have been satisfied. The Security Agent may, but shall not be obligated to, execute any such amendment, consent or waiver that affects the Security Agent’s own rights, duties, liabilities, indemnities or immunities under this Agreement, the Debt Documents or otherwise.

#### 27.4 **Exceptions**

- (a) Subject to paragraphs (c) and (d) below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:
- (i) in the case of a Primary Creditor (other than any Creditor Representative or any Arranger), in a way which affects or would affect Primary Creditors of that Party's class generally; or
  - (ii) in the case of a Debtor, to the extent consented to by the Parent under paragraph (a) of Clause 27.2 (*Amendments and Waivers: Transaction Security Documents*),
- the consent of that Party is required.
- (b) Subject to paragraphs (c) and (d) below, an amendment, waiver or consent which relates to the rights or obligations of a Creditor Representative, an Arranger or the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) may not be effected without the consent of that Creditor Representative or, as the case may be, that Arranger or the Security Agent.
- (c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 27.2 (*Amendments and Waivers: Transaction Security Documents*) shall apply:
- (i) to any release of Transaction Security, claim or Liabilities; or
  - (ii) to any consent
- which, in each case, the Security Agent gives in accordance with Clause 12 (*Non-Distressed Disposals*) or Clause 13 (*Distressed Disposals*).
- (d) Paragraphs (a) and (b) above shall apply to an Arranger only to the extent that Liabilities are then owed to that Arranger.
- (e) For the avoidance of doubt an accession or resignation effected in accordance with Clause 21 (*Changes to the Parties*) of this Agreement does not constitute an amendment or waiver of this Agreement.

#### 27.5 **Disenfranchisement of Sponsor Affiliates**

- (a) For so long as a Sponsor Affiliate (i) beneficially owns a Credit Facility Participation or (ii) has entered into a sub-participation agreement relating to a Credit Facility Participation or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:
- (i) in ascertaining:
    - (A) the Majority Credit Facility Lenders; or
    - (B) whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Credit Facility Participation, or the agreement of any specified group of Primary Creditors,
- has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

that Credit Facility Participation shall be deemed to be zero and that Sponsor Affiliate (or the person with whom it has entered into that sub-participation, other agreement or arrangement ) shall be deemed not to be a Credit Facility Lender.

- (b) Each Sponsor Affiliate that is a Credit Facility Lender agrees that:
- (i) in relation to any meeting or conference call to which all the Credit Facility Lenders or all the Primary Creditors are invited to attend or participate, it shall not attend or participate in the same if so requested by the Security Agent or, unless the Security Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
  - (ii) it shall not, unless the Security Agent otherwise agrees, be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Security Agent or the Credit Facility Lenders.

#### 27.6 **Disenfranchisement of Defaulting Lenders**

- (a) For so long as a Defaulting Lender has any Available Commitment:
- (i) in ascertaining:
    - (A) the Majority Credit Facility Lenders; or
    - (B) whether:
      - (1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Credit Facility Participations; or
      - (2) the agreement of any specified group of Primary Creditors,has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,that Defaulting Lender's Credit Facility Commitments will be reduced by the amount of its Available Commitments and, to the extent that that reduction results in that Defaulting Lender's Credit Facility Commitments being zero, that Defaulting Lender shall be deemed not to be a Credit Facility Lender.
- (b) For the purposes of this Clause 27.6, the following Primary Creditors are Defaulting Lenders:
- (i) any Credit Facility Lender which has notified the Security Agent that it has become a Defaulting Lender;
  - (ii) any Credit Facility Lender to the extent that the relevant Creditor Representative has notified the Security Agent that that Credit Facility Lender is a Defaulting Lender; and
  - (iii) any Credit Facility Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "**Defaulting Lender**" in the relevant Credit Facility Agreement has occurred,
- unless the applicable Creditor Representative has received notice to the contrary from the Credit Facility Lender concerned (together with any supporting evidence reasonably requested by the applicable Creditor Representative) or the applicable Creditor Representative is otherwise aware that the Credit Facility Lender has ceased to be a Defaulting Lender.

**27.7 Calculation of Credit Facility Participations, Senior Secured Note Credit Participations and Second Lien Note Credit Participations**

For the purpose of ascertaining whether any relevant percentage of Credit Facility Participations or Senior Secured Note Credit Participations or Second Lien Note Credit Participations has been obtained under this Agreement, the applicable Creditor Representative may notionally convert the Credit Facility Participations and/or Senior Secured Note Credit Participations and/or Second Lien Note Credit Participations into their Common Currency Amounts.

**27.8 Deemed consent**

- (a) If, at any time prior to the Credit Facility Lender Discharge Date the Credit Facility Lenders give a Consent in respect of their respective Debt Documents then, if that action was permitted by the terms of this Agreement, the Senior Secured Note Creditors, the Intra-Group Lenders and the Second Lien Note Creditors will (or will be deemed to):
  - (i) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
  - (ii) do anything (including executing any document) that the Primary Creditors may reasonably require to give effect to this Clause 27.8.
- (b) If, at any time after the Credit Facility Lender Discharge Date but prior to the Senior Secured Note Discharge Date the Senior Secured Note Creditors give a Consent in respect of their respective Debt Documents then, if that action was permitted by the terms of this Agreement, the Intra-Group Lenders and the Second Lien Note Creditors will (or will be deemed to):
  - (i) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
  - (ii) do anything (including executing any document) that the Primary Creditors may reasonably require to give effect to this Clause 27.8.

**27.9 Excluded consents**

Clause 27.8 (*Deemed consent*) does not apply to any Consent which has the effect of:

- (a) increasing or decreasing the Liabilities;
- (b) changing the basis upon which any Permitted Payments are calculated (including the timing, currency or amount of such Payments); or
- (c) changing the terms of this Agreement or of any Security Document.

**27.10 No liability**

None of the Credit Facility Creditors will be liable to any other Creditor, or Debtor for any Consent given or deemed to be given under this Clause 27.

**27.11 Agreement to override**

- (a) Subject to paragraph (b) below, unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents to the contrary.
- (b) Notwithstanding anything to the contrary in this Agreement, paragraph (a) above will not cure, postpone, waive or negate in any manner any default or event of default (however described) under any Debt Document as between any Creditor and any Debtor that are party to that Debt Document.

28. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

29. **GOVERNING LAW**

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

30. **ENFORCEMENT**

30.1 **Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 30.1 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.

30.2 **Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law:
  - (i) each Debtor (unless incorporated in England and Wales):
    - (A) irrevocably appoints Global Ship Lease Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and Global Ship Lease Services Limited, by its execution of this Agreement, accepts that appointment; and
    - (B) agrees that failure by a process agent to notify the relevant Debtor 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 Parent (in the case of an agent for service of process for a Debtor), must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to each Creditor Representative. Failing this, the relevant Creditor Representative may appoint another agent for this purpose.
- (c) Global Ship Lease Services Limited expressly agrees and consents to the provisions of this Clause 30 and Clause 29 (*Governing Law*).

**This Agreement has been executed as a deed and is intended to be and is delivered as a deed on the date specified above.**

**SCHEDULE 1**

**FORM OF DEBTOR ACCESSION DEED**

**THIS AGREEMENT** is made on [—] and made between:

- (1) [Insert Full Name of New Debtor] (the “**Acceding Debtor**”); and
- (2) [Insert Full Name of Current Security Agent] (the “**Security Agent**”), for itself and each of the other parties to the intercreditor agreement referred to below.

This agreement is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the “**Intercreditor Agreement**”) dated [—] between, amongst others, [—] as parent, [—] as company, [—] as security agent, [—] as revolving agent, [—] as senior secured note trustee, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

The Acceding Debtor intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

[Insert details (date, parties and description) of relevant documents]

the “Relevant Documents”.

**IT IS AGREED** as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
2. The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
  - (a) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
  - (b) all proceeds of that Security; and]\*
  - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,  
on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.
3. The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
4. [In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].\*\*

\* Include to the extent that the Security created in the Relevant Documents is expressed to be granted to the Security Agent as trustee for the Secured Parties.

\*\* Include this paragraph in the relevant Debtor Accession Deed if the Acceding Debtor is also to accede as an Intra-Group Lender to the Intercreditor Agreement.

[4]/[5] This Agreement and any non-contractual obligations arising out of or in connection with it are is governed by, English law.

**THIS AGREEMENT** has been signed on behalf of the Security Agent and executed as a deed by the Acceding Debtor and is delivered on the date stated above.

**The Acceding Debtor**

[**EXECUTED as a DEED**] )  
By: [Full Name of Acceding Debtor] )

\_\_\_\_\_ Director

\_\_\_\_\_ Director/Secretary

**OR**

[EXECUTED AS A DEED

By: [Full name of Acceding Debtor]

\_\_\_\_\_

*Signature of Director*

\_\_\_\_\_

*Name of Director*

*in the presence of*

\_\_\_\_\_

*Signature of witness*

\_\_\_\_\_

*Name of witness*

\_\_\_\_\_

*Address of witness*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Occupation of witness]*

Address for notices:

Address:

Fax:

**The Security Agent**

[Full Name of Current Security Agent]

By:

Date:



SCHEDULE 2

FORM OF CREDITOR/CREDITOR REPRESENTATIVE ACCESSION UNDERTAKING

To: *[Insert full name of current Security Agent]* for itself and each of the other parties to the Intercreditor Agreement referred to below.

From: *[Acceding Creditor]*

THIS UNDERTAKING is made on *[date]* by *[insert full name of new Credit Facility Lender/ Creditor Representative/ Arranger/ Intra-Group Lender]* (the “**Acceding Credit Facility Lender/ Creditor Representative/ Arranger/ Intra-Group Lender**”) in relation to the intercreditor agreement (the “**Intercreditor Agreement**”) dated *[—]* between, among others, *[INSERT NAME OF PARENT]* as parent, *[INSERT NAME OF SECURITY AGENT]* as security agent, *[INSERT NAME OF REVOLVING AGENT]* as revolving agent *[INSERT NAME OF SENIOR SECURED NOTE TRUSTEE]* as senior secured note trustee, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding *[Credit Facility Lender/ Creditor Representative/ Arranger/ Intra-Group Lender]* being accepted as a *[Credit Facility Lender/ Creditor Representative/ Arranger/ Intra-Group Lender]* for the purposes of the Intercreditor Agreement, the Acceding *[Credit Facility Lender/ Creditor Representative/ Arranger/ Intra-Group Lender]* confirms that, as from *[date]*, it intends to be party to the Intercreditor Agreement as a *[Credit Facility Lender/ Creditor Representative/ Arranger/ Intra-Group Lender]* and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a *[Credit Facility Lender/ Creditor Representative/ Arranger/ Intra-Group Lender]* and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

This Undertaking and any non-contractual obligations arising out of or in connection with it are governed by English law.

**THIS UNDERTAKING** has been entered into on the date stated above and is executed as a deed by the Acceding Creditor, if it is acceding as an Intra-Group Lender and is delivered on the date stated above.

Acceding *[Creditor]*

**[EXECUTED as a DEED]**  
*[insert full name of Acceding Creditor]*

By:

Address:

Fax:

Accepted by the Security Agent

---

for and on behalf of

*[Insert full name of current Security Agent]*

Date:

SCHEDULE 3

FORM OF DEBTOR RESIGNATION REQUEST

To: [—] as Security Agent  
From: [resigning Debtor] and [Parent]  
Dated:  
Dear Sirs

**[Parent] - [—] Intercreditor Agreement  
dated [—] (the “Intercreditor Agreement”)**

1. We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
2. Pursuant to Clause 21.13 (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [resigning Debtor] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
  - (a) no Default is continuing or would result from the acceptance of this request; and
  - (b) [resigning Debtor] is under no actual or contingent obligations in respect of the Intra-Group Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Parent]

[resigning Debtor]

By:

By:

## SCHEDULE 4

### ENFORCEMENT PRINCIPLES

1. In this Schedule 4:
  - “**Enforcement Objective**” means maximising, to the extent consistent with a prompt and expeditious realisation of value, the recovery of the Credit Facility Creditors and, without prejudice to Clause 16 (*Application of Proceeds*), the Senior Secured Note Creditors.
  - “**Fairness Opinion**” means, in respect of any Enforcement, an opinion from a Financial Adviser that the proceeds received or recovered in connection with that Enforcement are fair from a financial point of view taking into account all relevant circumstances and that such Enforcement is consistent with the Enforcement Objective (provided that the provider of such opinion may limit its liability in respect of that opinion to the amount of its fees in respect of such engagement).
  - “**Financial Adviser**” means any:
    - (a) independent internationally recognised investment bank;
    - (b) independent internationally recognised accountancy firm; or
    - (c) (with regard to the sale of vessels only) independent internationally recognised shipping broker.
2. It shall be the primary and over-riding aim of any Enforcement to achieve the Enforcement Objective. Any Enforcement shall be consistent with the Enforcement Objective.
3. Without prejudice to the Enforcement Objective, the Transaction Security will be enforced and other action as to Enforcement will be taken such that either:
  - (a) to the extent the Instructing Group is the Majority Credit Facility Lenders, all proceeds of Enforcement are received by the Security Agent in cash for distribution in accordance with Clause 16 (*Application of Proceeds*); or
  - (b) to the extent the Instructing Group is the Majority Senior Secured Note Creditors, either:
    - (i) all proceeds of enforcement are received by the Security Agent in cash for distribution in accordance with Clause 16 (*Application of Proceeds*); or
    - (ii) sufficient proceeds from Enforcement will be received by the Security Agent in cash to ensure that, when the proceeds are applied in accordance with Clause 16 (*Application of Proceeds*), the Credit Facility Lender Discharge Date will occur (unless the Majority Credit Facility Lenders agree otherwise).
4. Enforcement action must be prompt and expeditious and reasonably expected to realise proceeds from the assets subject to Enforcement within 6 months of receipt by the Security Agent of Enforcement Instructions.
5. On:
  - (a) a proposed Enforcement in relation to assets comprising Charged Property other than shares in a member of the Group over which Transaction Security exists, where the aggregate book value of such assets exceeds (US)\$5,000,000 (or its equivalent in any other currency or currencies); or
  - (b) a proposed Enforcement in relation to Charged Property comprising some or all of the shares in a member of the Group over which Transaction Security exists,

which, in either case, is not being effected through a Public Auction, the Security Agent shall, if instructed by the Creditor Representative acting upon instructions from the Majority Credit Facility Lenders or the Majority Senior Secured Note Creditors, appoint a Financial Adviser selected by the Revolving Agent or Creditor Representative for the Credit Facility Lenders and the Senior Secured Note Trustee (or in the event of any conflict selected by an investment bank (acting as an expert and not as an arbitrator) 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 Parent) and the determination of any investment bank shall be final and binding upon the Parties and which may be a Credit Facility Lender or a relationship bank of a Debtor) to provide a Fairness Opinion in relation to that Enforcement, *provided that* the Security Agent shall not be required to appoint a Financial Adviser nor obtain a Fairness Opinion if a proposed Enforcement:

- (i) would result in the receipt of sufficient Enforcement Proceeds in cash by the Security Agent to ensure that, after application in accordance with Clause 16 (*Application of Proceeds*):
  - (A) in the case of an Enforcement requested by the Majority Credit Facility Lenders, the Credit Facility Lender Discharge Date and the Senior Secured Note Discharge Date would occur; or
  - (B) in the case of an Enforcement requested by the Senior Secured Note Trustee acting on the instructions of the Majority Senior Secured Note Creditors, the Credit Facility Lender Discharge Date would occur,
- (ii) is in accordance with any applicable law; and
- (iii) complies with Clause 13 (*Distressed Disposals*).

6. The Security Agent shall be under no obligation to appoint a Financial Adviser or to seek the advice of a Financial Adviser unless expressly required to do so by this Schedule 4 or any other provision of this Agreement.

7. The Fairness Opinion will be conclusive evidence that the Enforcement Objective has been met.

SCHEDULE 5

ORIGINAL DEBTORS AND INTRA-GROUP LENDERS

PART A (INTRA-GROUP DEBTORS)

<u>Name of Intra-Group Lender</u>	<u>Jurisdiction of Incorporation</u>	<u>Registered Number</u>
Global Ship Lease, Inc.	Marshall Islands	28891
GSL Alcazar Inc.	Marshall Islands	26711
Global Ship Lease Services Limited	England	06285694
Global Ship Lease 1 Limited	Cyprus	211531
Global Ship Lease 2 Limited	Cyprus	211533
Global Ship Lease 3 Limited	Cyprus	211552
Global Ship Lease 4 Limited	Cyprus	211532
Global Ship Lease 5 Limited	Cyprus	211540
Global Ship Lease 6 Limited	Cyprus	211526
Global Ship Lease 7 Limited	Cyprus	211528
Global Ship Lease 8 Limited	Cyprus	211539
Global Ship Lease 9 Limited	Cyprus	211530
Global Ship Lease 10 Limited	Cyprus	211534
Global Ship Lease 12 Limited	Cyprus	211709
Global Ship Lease 13 Limited	Cyprus	212727
Global Ship Lease 14 Limited	Cyprus	212734
Global Ship Lease 15 Limited	Cyprus	212735
Global Ship Lease 16 Limited	Cyprus	212729
Global Ship Lease 17 Limited	Cyprus	212742

**PART B (ORIGINAL DEBTORS)**

<u>Name of Original Debtor</u>	<u>Jurisdiction of Incorporation</u>	<u>Registered Number</u>
Global Ship Lease, Inc.	Marshall Islands	28891
GSL Alcazar Inc.	Marshall Islands	26711
Global Ship Lease Services Limited	England	06285694
Global Ship Lease 1 Limited	Cyprus	211531
Global Ship Lease 2 Limited	Cyprus	211533
Global Ship Lease 3 Limited	Cyprus	211552
Global Ship Lease 4 Limited	Cyprus	211532
Global Ship Lease 5 Limited	Cyprus	211540
Global Ship Lease 6 Limited	Cyprus	211526
Global Ship Lease 7 Limited	Cyprus	211528
Global Ship Lease 8 Limited	Cyprus	211539
Global Ship Lease 9 Limited	Cyprus	211530
Global Ship Lease 10 Limited	Cyprus	211534
Global Ship Lease 12 Limited	Cyprus	211709
Global Ship Lease 13 Limited	Cyprus	212727
Global Ship Lease 14 Limited	Cyprus	212734
Global Ship Lease 15 Limited	Cyprus	212735
Global Ship Lease 16 Limited	Cyprus	212729
Global Ship Lease 17 Limited	Cyprus	212742

**SIGNATURES**

**Original Debtors and Intra-Group Lenders**

**The Parent**

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE, INC.** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

Address: Global Ship Lease, Inc.,  
c/o Global Ship Lease Services Limited  
Portland House  
Stag Place  
London  
SW1E 5RS

Fax number: +44 (0) 20 7869 8119

Attention: CFO

*[Intercreditor Agreement – Execution pages]*

**Other Original Debtors and Intra-Group Lenders**

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE SERVICES LIMITED** )  
acting by )  
)  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

Witness's signature /s/ Olivia Chan

/s/ Susan Cook

Name Olivia Chan  
Trainee Solicitor

Name Susan J. Cook

Address Norton Rose Fulbright  
Norton Rose Fulbright LLP  
3 More London Riverside  
London SE1 2AQ United Kingdom  
Nortonrosefulbright.com

Title CFO

[*Intercreditor Agreement – Execution pages*]



**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 1 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 2 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

[Intercreditor Agreement – Execution pages]

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 3 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 4 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 5 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 6 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 7 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

[Intercreditor Agreement – Execution pages]

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 8 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*



**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 9 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 10 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 12 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

[Intercreditor Agreement – Execution pages]

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 13 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 14 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 15 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 16 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*

**EXECUTED AS A DEED** by )  
**GLOBAL SHIP LEASE 17 LIMITED** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*



**EXECUTED AS A DEED** by )  
**GSL ALCAZAR INC.** )  
acting by )  
)

/s/ Ian Webber

Name Ian J. Webber

Title CEO

/s/ Susan Cook

Name Susan J. Cook

Title CFO

*[Intercreditor Agreement – Execution pages]*

**The Revolving Agent**

**EXECUTED AS A DEED by  
CITIBANK INTERNATIONAL PLC**

By: /s/ Raya Brody /s/ Steve Wright  
Raya Brody Steve Wright

Witness: /s/ Jeremy Hayes

Name: Jeremy Hayes

Address: Citibank International plc  
5th Floor, Citigroup Centre  
25 Canada Square, London, E14 5LB

Occupation: Agency Officer

Fax:

Attention:

Address: Citibank International plc  
5th Floor, Citigroup Centre  
25 Canada Square  
London  
E14 5LB

Fax Number: +44 (0) 20 7492 3980

Attention: European Loans Agency, EMEA

*[Intercreditor Agreement – Execution pages]*

**The Revolving Lender**

**EXECUTED AS A DEED by  
CITIBANK N.A., LONDON BRANCH**

By: /s/ Shreyas Chipalkatty  
Sheryas Chipalkatty

Witness: /s/ Meghan O'Connor

Name: Meghan O'Connor

Address: Citibank N.A., London Branch  
5<sup>th</sup> Floor, Citigroup Centre  
25 Canada Square  
London  
E14 5LB

Occupation:

Fax: +44 (0) 20 8043 0390

Attention: Shreyas Chipalkatty

*[Intercreditor Agreement – Execution pages]*

**The Revolving Arranger**

**EXECUTED AS A DEED by  
CITIBANK N.A., LONDON BRANCH**

By: /s/ Shreyas Chipalkatty  
Sheryas Chipalkatty

Witness: /s/ Meghan O'Connor

Name: Meghan O'Connor

Address: Citibank N.A., London Branch  
5<sup>th</sup> Floor, Citigroup Centre  
25 Canada Square  
London  
E14 5LB

Occupation:

Fax: +44 (0) 20 8043 0390

Attention: Shreyas Chipalkatty

[*Intercreditor Agreement – Execution pages*]

**The Senior Secured Notes Trustee**

**EXECUTED AS A DEED** by  
**DEUTSCHE BANK TRUST COMPANY AMERICAS**  
acting by **DEUTSCHE BANK NATIONAL TRUST COMPANY**

By: /s/ Jacqueline Bartnick

Name: Jacqueline Bartnick

Title: Director

By: /s/ Robert S. Peschler

Name: Robert S. Peschler

Title: Vice President

Address: Deutsche Bank Trust Company Americas  
Trust and Agency Services  
60 Wall Street, 16<sup>th</sup> Floor  
Mail Stop: NYC60-1630  
New York, New York 10005  
USA

Fax Number: +1 (732) 578-4635

Attention: Corporate Team, Global Ship Lease, Inc.

*With a copy to:*

Address: Deutsche Bank Trust Company Americas  
c/o Deutsche Bank National Trust Company  
Trust and Agency Services  
100 Plaza One – 6<sup>th</sup> Floor  
Mail Stop: JCY03-0699  
Jersey City, NJ 07311-3901  
USA

Fax Number: +1 (732) 578-4635

Attention: Corporate Team, Global Ship Lease, Inc.

[Intercreditor Agreement – Execution pages]

**The Security Agent**

**EXECUTED AS A DEED** by  
**DEUTSCHE BANK TRUST COMPANY AMERICAS**  
acting by **DEUTSCHE BANK NATIONAL TRUST COMPANY**

By: /s/ Jacqueline Bartnick

Name: Jacqueline Bartnick

Title: Director

By: /s/ Robert S. Peschler

Name: Robert S. Peschler

Title: Vice President

Address: Deutsche Bank Trust Company Americas  
Trust and Agency Services  
60 Wall Street, 16<sup>th</sup> Floor  
Mail Stop: NYC60-1630  
New York, New York 10005  
USA

Fax Number: +1 (732) 578-4635

Attention: Corporate Team, Global Ship Lease, Inc.

*With a copy to:*

Address: Deutsche Bank Trust Company Americas  
c/o Deutsche Bank National Trust Company  
Trust and Agency Services  
100 Plaza One – 6<sup>th</sup> Floor  
Mail Stop: JCY03-0699  
Jersey City, NJ 07311-3901  
USA

Fax Number: +1 (732) 578-4635

Attention: Corporate Team, Global Ship Lease, Inc.

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