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

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**FORM 10-Q**

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(Mark One)

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

For the quarterly period ended March 31, 2016

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-35784

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**NORWEGIAN CRUISE LINE HOLDINGS LTD.**

(Exact name of registrant as specified in its charter)

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**Bermuda**  
(State or other jurisdiction of  
incorporation or organization)

**98-0691007**  
(I.R.S. Employer  
Identification No.)

**7665 Corporate Center Drive, Miami, Florida 33126**  
(Address of principal executive offices) (zip code)

**(305) 436-4000**  
(Registrant's telephone number, including area code)

N/A  
(Former name, former address and former fiscal year, if changed since last report)

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

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

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

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

There were 227,006,865 ordinary shares outstanding as of May 5, 2016.

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## PART I. FINANCIAL INFORMATION

## Item 1. Financial Statements

Norwegian Cruise Line Holdings Ltd.  
Consolidated Statements of Operations  
(Unaudited)  
(in thousands, except share and per share data)

	Three Months Ended March 31,	
	2016	2015
<b>Revenue</b>		
Passenger ticket	\$ 740,112	\$ 670,483
Onboard and other	337,520	267,699
Total revenue	<u>1,077,632</u>	<u>938,182</u>
<b>Cruise operating expense</b>		
Commissions, transportation and other	175,437	171,827
Onboard and other	63,965	58,645
Payroll and related	177,143	157,629
Fuel	81,672	87,374
Food	51,003	41,851
Other	115,261	106,374
Total cruise operating expense	<u>664,481</u>	<u>623,700</u>
<b>Other operating expense</b>		
Marketing, general and administrative	180,574	154,157
Depreciation and amortization	101,295	99,976
Total other operating expense	<u>281,869</u>	<u>254,133</u>
Operating income	<u>131,282</u>	<u>60,349</u>
<b>Non-operating income (expense)</b>		
Interest expense, net	(59,754)	(50,989)
Other income (expense)	2,805	(30,139)
Total non-operating income (expense)	<u>(56,949)</u>	<u>(81,128)</u>
<b>Net income (loss) before income taxes</b>	74,333	(20,779)
<b>Income tax expense</b>	(1,104)	(677)
<b>Net income (loss)</b>	<u>\$ 73,229</u>	<u>\$ (21,456)</u>
<b>Weighted-average shares outstanding</b>		
Basic	227,239,533	224,301,117
Diluted	<u>228,112,035</u>	<u>224,301,117</u>
<b>Earnings (loss) per share</b>		
Basic	\$ 0.32	\$ (0.10)
Diluted	<u>\$ 0.32</u>	<u>\$ (0.10)</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Norwegian Cruise Line Holdings Ltd.**  
**Consolidated Statements of Comprehensive Income (Loss)**  
**(Unaudited)**  
**(in thousands)**

	<b>Three Months Ended</b>	
	<b>March 31,</b>	
	<b>2016</b>	<b>2015</b>
Net income (loss)	\$ 73,229	\$ (21,456)
Other comprehensive income (loss):		
Shipboard Retirement Plan	108	119
Cash flow hedges:		
Net unrealized gain (loss)	70,450	(103,765)
Amount realized and reclassified into earnings	34,550	21,886
Total other comprehensive income (loss)	105,108	(81,760)
Total comprehensive income (loss)	\$ 178,337	\$ (103,216)

The accompanying notes are an integral part of these consolidated financial statements.

**Norwegian Cruise Line Holdings Ltd.**  
**Consolidated Balance Sheets**  
**(Unaudited)**  
**(in thousands, except share data)**

	<u>March 31,</u> <u>2016</u>	<u>December 31,</u> <u>2015</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 154,867	\$ 115,937
Accounts receivable, net	45,613	44,996
Inventories	62,383	58,173
Prepaid expenses and other assets	130,053	121,305
Total current assets	392,916	340,411
Property and equipment, net	9,489,153	9,458,805
Goodwill	1,388,931	1,388,931
Tradenames	817,525	817,525
Other long-term assets	317,214	259,085
Total assets	<u>\$ 12,405,739</u>	<u>\$ 12,264,757</u>
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Current portion of long-term debt	\$ 629,953	\$ 629,840
Accounts payable	54,250	51,369
Accrued expenses and other liabilities	606,161	640,568
Due to Affiliate	20,976	20,769
Advance ticket sales	1,178,749	1,023,973
Total current liabilities	2,490,089	2,366,519
Long-term debt	5,670,144	5,767,697
Other long-term liabilities	317,895	349,661
Total liabilities	<u>8,478,128</u>	<u>8,483,877</u>
Commitments and contingencies (Note 7)		
Shareholders' equity:		
Ordinary shares, \$.001 par value; 490,000,000 shares authorized; 232,313,393 shares issued and 227,001,432 shares outstanding at March 31, 2016 and 232,179,786 shares issued and 227,815,301 shares outstanding at December 31, 2015	232	232
Additional paid-in capital	3,832,929	3,814,536
Accumulated other comprehensive income (loss)	(307,542)	(412,650)
Retained earnings	641,247	568,018
Treasury shares (5,311,961 and 4,364,485 ordinary shares at March 31, 2016 and December 31, 2015, respectively, at cost)	(239,255)	(189,256)
Total shareholders' equity	<u>3,927,611</u>	<u>3,780,880</u>
Total liabilities and shareholders' equity	<u>\$ 12,405,739</u>	<u>\$ 12,264,757</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Norwegian Cruise Line Holdings Ltd.**  
**Consolidated Statements of Cash Flows**  
(Unaudited)  
(in thousands)

	Three Months Ended March 31,	
	2016	2015
<b>Cash flows from operating activities</b>		
Net income (loss)	\$ 73,229	\$ (21,456)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization expense	104,686	104,533
(Gain) loss on derivatives	(11,948)	29,027
Deferred income taxes, net	158	60
Gain on contingent consideration	—	(9,100)
Write-off of deferred financing fees	—	195
Provision for bad debts and inventory	575	—
Share-based compensation expense	15,245	12,005
Changes in operating assets and liabilities:		
Accounts receivable, net	(1,042)	1,474
Inventories	(4,360)	(80)
Prepaid expenses and other assets	(5,390)	(4,488)
Accounts payable	2,750	(17,455)
Accrued expenses and other liabilities	7,572	(35,481)
Advance ticket sales	148,621	255,556
Net cash provided by operating activities	<u>330,096</u>	<u>314,790</u>
<b>Cash flows from investing activities</b>		
Additions to property and equipment, net	(132,027)	(73,131)
Settlement of derivatives	(1,167)	—
Net cash used in investing activities	<u>(133,194)</u>	<u>(73,131)</u>
<b>Cash flows from financing activities</b>		
Repayments of long-term debt	(308,248)	(477,224)
Proceeds from long-term debt	204,000	224,033
Proceeds from the exercise of share options	2,044	51,790
Proceeds from employee share purchase plan	1,104	—
Purchases of treasury shares	(49,999)	—
Deferred financing fees and other	(6,873)	(3,660)
Net cash used in financing activities	<u>(157,972)</u>	<u>(205,061)</u>
Net increase in cash and cash equivalents	38,930	36,598
Cash and cash equivalents at beginning of period	115,937	84,824
Cash and cash equivalents at end of period	<u>\$ 154,867</u>	<u>\$ 121,422</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Norwegian Cruise Line Holdings Ltd.**  
**Consolidated Statements of Changes in Shareholders' Equity**  
(Unaudited)  
(in thousands)

	Ordinary Shares	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Treasury Shares	Total Shareholders' Equity
<b>Balance, December 31, 2014</b>	\$ 230	\$ 3,702,344	\$ (242,642)	\$ 140,881	\$ (82,000)	\$ 3,518,813
Share-based compensation	—	12,005	—	—	—	12,005
Proceeds from the exercise of share options	2	51,788	—	—	—	51,790
Other comprehensive loss, net	—	—	(81,760)	—	—	(81,760)
Net loss	—	—	—	(21,456)	—	(21,456)
<b>Balance, March 31, 2015</b>	<u>\$ 232</u>	<u>\$ 3,766,137</u>	<u>\$ (324,402)</u>	<u>\$ 119,425</u>	<u>\$ (82,000)</u>	<u>\$ 3,479,392</u>
<b>Balance, December 31, 2015</b>	\$ 232	\$ 3,814,536	\$ (412,650)	\$ 568,018	\$ (189,256)	\$ 3,780,880
Share-based compensation	—	15,245	—	—	—	15,245
Proceeds from the exercise of share options	—	2,044	—	—	—	2,044
Proceeds from employee share purchase plan	—	1,104	—	—	—	1,104
Treasury shares	—	—	—	—	(49,999)	(49,999)
Other comprehensive income, net	—	—	105,108	—	—	105,108
Net income	—	—	—	73,229	—	73,229
<b>Balance, March 31, 2016</b>	<u>\$ 232</u>	<u>\$ 3,832,929</u>	<u>\$ (307,542)</u>	<u>\$ 641,247</u>	<u>\$ (239,255)</u>	<u>\$ 3,927,611</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Norwegian Cruise Line Holdings Ltd.  
Notes to Consolidated Financial Statements  
(Unaudited)**

Unless otherwise indicated or the context otherwise requires, references in this report to (i) the “Company,” “we,” “our” and “us” refer to NCLH (as defined below) and its subsidiaries (including Prestige (as defined below), except for periods prior to the consummation of the Acquisition of Prestige (as defined below)), (ii) “NCLC” refers to NCL Corporation Ltd., (iii) “NCLH” refers to Norwegian Cruise Line Holdings Ltd., (iv) “Norwegian” refers to the Norwegian Cruise Line brand and its predecessors, (v) “Prestige” refers to Prestige Cruises International, Inc., together with its consolidated subsidiaries, (vi) “PCH” refers to Prestige Cruise Holdings, Inc., Prestige’s direct wholly owned subsidiary, which in turn is the parent of Oceania Cruises, Inc. (“Oceania Cruises”) and Seven Seas Cruises S. DE R.L. (“Regent”) (Oceania Cruises also refers to the brand by the same name and Regent also refers to the brand Regent Seven Seas Cruises), (vii) “Apollo” refers to Apollo Global Management, LLC, its subsidiaries and the affiliated funds it manages and the “Apollo Holders” refers to one or more of AIF VI NCL (AIV), L.P., AIF VI NCL (AIV II), L.P., AIF VI NCL (AIV III), L.P., AIF VI NCL (AIV IV), L.P., AAA Guarantor — Co-Invest VI (B), L.P., Apollo Overseas Partners (Delaware) VI, L.P., Apollo Overseas Partners (Delaware 892) VI, L.P., Apollo Overseas Partners VI, L.P., Apollo Overseas Partners (Germany) VI, L.P., AAA Guarantor — Co-Invest VII, L.P., AIF VI Euro Holdings, L.P., AIF VII Euro Holdings, L.P., Apollo Alternative Assets, L.P., Apollo Management VI, L.P. and Apollo Management VII, L.P., (viii) “TPG Global” refers to TPG Global, LLC, “TPG” refers to TPG Global and its affiliates and the “TPG Viking Funds” refers to one or more of TPG Viking, L.P., TPG Viking AIV I, L.P., TPG Viking AIV II, L.P., and TPG Viking AIV-III, L.P. and/or certain other affiliated investment funds, each an affiliate of TPG, (ix) “Genting HK” refers to Genting Hong Kong Limited and/or its affiliates (formerly Star Cruises Limited and/or its affiliates) (Genting HK owns NCLH’s ordinary shares indirectly through Star NCLC Holdings Ltd., its wholly-owned subsidiary (“Star NCLC”)), and (x) “Affiliate(s)” or “Sponsor(s)” refers to the Apollo Holders, Genting HK and/or the TPG Viking Funds. References to the “U.S.” are to the United States of America, “dollars” or “\$” are to U.S. dollars, the “U.K.” are to the United Kingdom and “euros” or “€” are to the official currency of the Eurozone.

**1. Description of Business and Organization**

NCLH is a leading global cruise company which operates the Norwegian Cruise Line, Oceania Cruises and Regent Seven Seas Cruises brands. We have 23 ships with approximately 45,800 Berths including Sirena, previously under a Bareboat Charter, which joined our Oceania Cruises’ fleet in April 2016. We will introduce five additional ships to our fleet through 2020. We have two Explorer Class Ships on order for delivery in the summer of 2016 and the winter of 2020. Norwegian Joy is on order for delivery in the spring of 2017 and two additional Breakaway Plus Class Ships are on order for deliveries to the Norwegian fleet in the spring of 2018 and fall of 2019. These additions to our fleet will increase our total Berths to approximately 59,300.

**2. Summary of Significant Accounting Policies**

**Basis of Presentation**

The accompanying consolidated financial statements are unaudited and, in our opinion, contain all normal recurring adjustments necessary for a fair statement of the results for the periods presented.

Our operations are seasonal and results for interim periods are not necessarily indicative of the results for the entire fiscal year. Historically, demand for cruises has been strongest during the summer months. The interim consolidated financial statements should be read in conjunction with the audited consolidated financial statements for the year ended December 31, 2015, which are included in our most recently filed Annual Report on Form 10-K.

**Reclassification**

Certain amounts in prior periods have been reclassified to conform to the current period presentation.

**Earnings (Loss) Per Share**

A reconciliation between basic and diluted earnings (loss) per share was as follows (in thousands, except share and per share data):

	Three Months Ended March 31,	
	2016	2015
Net income (loss)	\$ 73,229	\$ (21,456)
Basic weighted-average shares outstanding	227,239,533	224,301,117
Dilutive effect of awards	872,502	—
Diluted weighted-average shares outstanding	228,112,035	224,301,117
Basic earnings (loss) per share	\$ 0.32	\$ (0.10)
Diluted earnings (loss) per share	\$ 0.32	\$ (0.10)(1)



- (1) Due to a net loss, excludes 4,745,812 shares as including these would be antidilutive.

### **Revenue and Expense Recognition**

Deposits received from guests for future voyages are recorded as advance ticket sales and are subsequently recognized as passenger ticket revenue along with onboard and other revenue, and all associated direct costs of a voyage are recognized as cruise operating expenses on a pro-rata basis over the period of the voyage. Guest cancellation penalties are recognized in passenger ticket revenue in the month of the cancellation.

Revenue and expenses include port fees and taxes. The amounts included on a gross basis are \$62.5 million and \$51.9 million for the three months ended March 31, 2016 and 2015, respectively.

### **Foreign Currency**

The majority of our transactions are settled in U.S. dollars. We translate assets and liabilities of our foreign subsidiaries at exchange rates in effect at the balance sheet date. Gains or losses resulting from transactions denominated in other currencies are recognized in our consolidated statements of operations within other income (expense) and such losses were \$(4.2) million and gains were \$4.9 million for the three months ended March 31, 2016 and 2015, respectively.

### **Depreciation and Amortization Expense**

The amortization of deferred financing fees are included in depreciation and amortization expense in the consolidated statements of cash flows but are included in interest expense, net and not included in the depreciation and amortization expense in the consolidated statements of operations.

### **Recently Issued Accounting Pronouncements**

In March 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2016-09 to improve multiple aspects of the accounting for share-based payment transactions, including income tax consequences, classification of awards as either equity or liabilities and classification on the statement of cash flows. The guidance is effective for annual periods beginning after December 15, 2016 and interim periods within those annual periods with early adoption permitted. We are currently evaluating the impact of the adoption of this newly issued guidance to our consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, which sets out the principles for the recognition, measurement, presentation and disclosure of leases for both parties to a contract (i.e. lessees and lessors). The ASU requires lessees to recognize assets and liabilities on the balance sheet for the rights and obligations created by all leases with terms of more than 12 months. The ASU further modifies lessors’ classification criteria for leases and the accounting for sales-type and direct financing leases. The ASU will also require qualitative and quantitative disclosures designed to give financial statement users additional information on the amount, timing, and uncertainty of cash flows arising from leases. The ASU is effective for annual reporting periods, and interim periods within those annual periods, beginning after December 15, 2018 with early adoption permitted. The ASU is to be applied using a modified retrospective approach. We are currently evaluating the impact of the adoption of this newly issued guidance to our consolidated financial statements.

In July 2015, the FASB issued ASU No. 2015-11 to simplify the measurement of inventory for all entities. This applies to all inventory that is measured using either the first-in, first-out or average cost method. The guidance requires an entity to measure inventory at the lower of cost or net realizable value. The guidance must be applied prospectively and will be effective for our interim and annual reporting periods beginning after December 15, 2016. Early adoption is permitted as of the beginning of an interim or annual reporting period. We are currently evaluating the impact of the adoption of this newly issued guidance to our consolidated financial statements.

In April 2015, the FASB issued ASU No. 2015-05 to clarify a customer’s accounting for fees paid in a cloud computing arrangement. The amendments provide guidance to customers about whether a cloud computing arrangement includes a software license or if the arrangement should be accounted for as a service contract. This guidance will impact the accounting of software licenses but will not change a customer’s accounting for service contracts. The guidance will be effective for annual periods, including interim periods within those annual periods, beginning after December 15, 2015. We have adopted this guidance and there has not been an impact to our consolidated financial statements.

In May 2014, FASB issued ASU No. 2014-09 which requires entities to recognize revenue through the application of a five-step model, including identification of the contract, identification of the performance obligations, determination of the transaction price, allocation of the transaction price to the performance obligation and recognition of revenue as the entity satisfies the performance obligations. Entities have the option of using either a full retrospective or a modified approach to adopt the guidance. In August 2015, the FASB issued ASU No. 2015-14 deferring the effective date for one year. We can elect to adopt the provisions of ASU No. 2014-09 for annual periods beginning after December 15, 2017 including interim periods within that reporting period or we can elect to

early adopt the guidance as of the original effective date. We are currently evaluating the impact of the adoption of this newly issued guidance to our consolidated financial statements.

### 3. Intangible Assets

The gross carrying amounts of intangible assets included within other long-term assets, the related accumulated amortization, the net carrying amounts and the weighted-average amortization periods of the Company's intangible assets are listed in the following table (in thousands, except amortization period):

March 31, 2016				
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted-Average Amortization Period (Years)
Customer relationships	\$ 120,000	\$ (20,793)	\$ 99,207	6.0
Licenses	3,368	(331)	3,037	5.6
Total intangible assets subject to amortization	<u>\$ 123,368</u>	<u>\$ (21,124)</u>	<u>\$ 102,244</u>	
License (Indefinite-lived)	<u>\$ 4,427</u>	<u>\$ —</u>	<u>\$ —</u>	

December 31, 2015				
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted-Average Amortization Period (Years)
Customer relationships	\$ 120,000	\$ (15,527)	\$ 104,473	6.0
Backlog	70,000	(70,000)	—	1.0
Licenses	3,368	(208)	3,160	5.6
Total intangible assets subject to amortization	<u>\$ 193,368</u>	<u>\$ (85,735)</u>	<u>\$ 107,633</u>	
License (Indefinite-lived)	<u>\$ 4,427</u>	<u>\$ —</u>	<u>\$ —</u>	

The aggregate amortization expense is as follows (in thousands):

	Three months ended	
	March 31,	
	2016	2015
Amortization expense	\$ 5,389	\$ 18,230

The following table sets forth the Company's estimated aggregate amortization expense for each of the five years below (in thousands):

Year ended December 31,	Amortization Expense
2017	\$ 31,177
2018	26,058
2019	18,489
2020	9,906
2021	75

### 4. Accumulated Other Comprehensive Income (Loss)

Accumulated other comprehensive income (loss) for the three months ended March 31, 2016 was as follows (in thousands):

	Accumulated Other Comprehensive Income (Loss)	Change Related to Cash Flow Hedges	Change Related to Shipboard Retirement Plan
Accumulated other comprehensive income (loss) at beginning of period	\$ (412,650)	\$ (405,298)	\$ (7,352)
Current period other comprehensive income before reclassifications	70,450	70,450	—
Amounts reclassified into earnings	34,658	34,550(1)	108(2)
Accumulated other comprehensive income (loss) at end of period	<u>\$ (307,542)</u>	<u>\$ (300,298)(3)</u>	<u>\$ (7,244)</u>

- (1) We refer you to Note 5— “Fair Value Measurements and Derivatives” for the affected line items in the Consolidated Statements of Operations.
- (2) Amortization of prior-service cost and actuarial loss reclassified to payroll and related expense.
- (3) Includes \$119.2 million of loss expected to be reclassified into earnings in the next 12 months.

Accumulated other comprehensive income (loss) for the three months ended March 31, 2015 was as follows (in thousands):

	Accumulated Other Comprehensive Income (Loss)	Change Related to Cash Flow Hedges	Change Related to Shipboard Retirement Plan
Accumulated other comprehensive income (loss) at beginning of period	\$ (242,642)	\$ (234,188)	\$ (8,454)
Current period other comprehensive loss before reclassifications	(103,765)	(103,765)	—
Amounts reclassified into earnings	22,005	21,886(1)	119(2)
Accumulated other comprehensive income (loss) at end of period	<u>\$ (324,402)</u>	<u>\$ (316,067)</u>	<u>\$ (8,335)</u>

- (1) We refer you to Note 5— “Fair Value Measurements and Derivatives” for the affected line items in the Consolidated Statements of Operations.
- (2) Amortization of prior-service cost and actuarial loss reclassified to payroll and related expense.

## 5. Fair Value Measurements and Derivatives

Fair value is defined as the price at which an orderly transaction to sell an asset or to transfer a liability would take place between market participants at the measurement date under current market conditions (that is, an exit price at the measurement date from the perspective of a market participant that holds the asset or owes the liability).

### Fair Value Hierarchy

The following hierarchy for inputs used in measuring fair value should maximize the use of observable inputs and minimize the use of unobservable inputs by requiring that the most observable inputs be used when available:

- Level 1 Quoted prices in active markets for identical assets or liabilities that are accessible at the measurement dates.
- Level 2 Significant other observable inputs that are used by market participants in pricing the asset or liability based on market data obtained from independent sources.
- Level 3 Significant unobservable inputs we believe market participants would use in pricing the asset or liability based on the best information available.

### Derivatives

We are exposed to market risk attributable to changes in interest rates, foreign currency exchange rates and fuel prices. We attempt to minimize these risks through a combination of our normal operating and financing activities and through the use of derivatives. We assess whether derivatives used in hedging transactions are “highly effective” in offsetting changes in the cash flow of our hedged forecasted transactions. We use regression analysis for this hedge relationship and high effectiveness is achieved when a statistically valid relationship reflects a high degree of offset and correlation between the fair values of the derivative and the hedged forecasted transaction. Cash flows from the derivatives are classified in the same category as the cash flows from the underlying hedged transaction. The determination of ineffectiveness is based on the amount of dollar offset between the cumulative change in fair value of the derivative and the cumulative change in fair value of the hedged transaction at the end of the reporting period. If it is determined that a derivative is not highly effective as a hedge, or if the hedged forecasted transaction is no longer probable of occurring, then the amount recognized in accumulated other comprehensive income (loss) is released to earnings. In addition, the ineffective portion of our highly effective hedges is recognized in earnings immediately and reported in other income (expense) in our consolidated statements of operations. There are no amounts excluded from the assessment of hedge effectiveness and there are no credit-risk-related contingent features in our derivative agreements.

We monitor concentrations of credit risk associated with financial and other institutions with which we conduct significant business. Credit risk, including but not limited to counterparty non-performance under derivatives and our Revolving Loan Facility, is not considered significant, as we primarily conduct business with large, well-established financial institutions that we have established relationships with and that have credit risks acceptable to us or the credit risk is spread out among a large number of creditors. We do not anticipate non-performance by any of our significant counterparties.

The following table sets forth our derivatives measured at fair value and discloses the balance sheet location (in thousands):

Balance Sheet location	Asset		Liability	
	March 31, 2016	December 31, 2015	March 31, 2016	December 31, 2015
<b>Fuel swaps designated as hedging instruments</b>				
Prepaid expenses and other assets	\$ 6,283	\$ —	\$ 256	\$ —
Other long-term assets	3,534	—	43	—
Accrued expenses and other liabilities	—	—	117,016	128,740
Other long-term liabilities	1,241	—	132,656	132,494
<b>Fuel swaps not designated as hedging instruments</b>				
Prepaid expenses and other assets	16	—	—	—
Accrued expenses and other liabilities	—	—	1,545	—
<b>Foreign currency forward contracts designated as hedging instruments</b>				
Prepaid expenses and other assets	671	—	—	—
Other long-term assets	59,812	3,446	2,953	1,370
Accrued expenses and other liabilities	—	—	138	8,737
Other long-term liabilities	1,397	551	5,390	24,181
<b>Foreign currency collar not designated as a hedging instrument</b>				
Accrued expenses and other liabilities	—	—	29,368	42,993
<b>Interest rate swaps designated as hedging instruments</b>				
Accrued expenses and other liabilities	—	—	3,882	4,079
Other long-term liabilities	—	—	4,490	3,395

The fair values of swap and forward contracts are determined based on inputs that are readily available in public markets or can be derived from information available in publicly quoted markets. The Company determines the value of options and collars utilizing an option pricing model based on inputs that are either readily available in public markets or can be derived from information available in publicly quoted markets. The option pricing model used by the Company is an industry standard model for valuing options and is used by the broker/dealer community. The inputs to this option pricing model are the option strike price, underlying price, risk-free rate of interest, time to expiration, and volatility. The fair value of option contracts considers both the intrinsic value and any remaining time value associated with those derivatives that have not yet settled. The Company also considers counterparty credit risk and its own credit risk in its determination of all estimated fair values. Our derivatives and financial instruments were categorized as Level 2 in the fair value hierarchy, and we had no derivatives or financial instruments categorized as Level 1 or Level 3.

Our derivative contracts include rights of offset with our counterparties. We have elected to net certain assets and liabilities within counterparties when the rights of offset exists. We are not required to post cash collateral related to our derivative instruments.

The following table discloses the gross and net amounts recognized within assets and liabilities (in thousands):

March 31, 2016	Gross Amounts	Gross Amounts Offset	Total Net Amounts	Gross Amounts Not Offset	Net Amounts
Assets	\$ 70,316	\$ (3,252)	\$ 67,064	\$ (49,147)	\$ 17,917
Liabilities	294,485	(2,638)	291,847	(39,761)	252,086
<b>December 31, 2015</b>					
Assets	\$ 3,446	\$ (1,370)	\$ 2,076	\$ (2,043)	\$ 33
Liabilities	344,619	(551)	344,068	(336,645)	7,423

#### Fuel Swaps

As of March 31, 2016, we had fuel swaps maturing through December 31, 2019 which are used to mitigate the financial impact of volatility in fuel prices pertaining to approximately 2.0 million metric tons of our projected fuel purchases.

The effects on the consolidated financial statements of the fuel swaps which were designated as cash flow hedges were as follows (in thousands):

	Three Months Ended	
	2016	2015
Loss recognized in other comprehensive income (loss) – effective portion	\$ (9,506)	\$ (2,801)
Loss recognized in other income (expense) – ineffective portion	(5,227)	(6,051)
Amount reclassified from accumulated other comprehensive income (loss) into fuel expense	31,137	20,536

As of March 31, 2016, we had fuel swaps pertaining to approximately 14,000 metric tons which were not designated as cash flow hedges. These fuel swaps were previously designated as cash flow hedges and were dedesignated due to a change in our expected future fuel purchases mix.

The effects on the consolidated financial statements of the fuel swaps which were dedesignated and recognized into earnings were as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Amount reclassified from accumulated other comprehensive income (loss) into other income (expense)	\$ 1,529	\$ —

***Fuel Collars***

We had fuel collars that matured and were used to mitigate the financial impact of volatility in fuel prices of our fuel purchases.

The effects on the consolidated financial statements of the fuel collars which were designated as cash flow hedges were as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Amount reclassified from accumulated other comprehensive income (loss) into fuel expense	\$ —	\$ 238

***Foreign Currency Options***

We had foreign currency options that matured which consisted of call options with deferred premiums. These options were used to mitigate the financial impact of volatility in foreign currency exchange rates related to our ship construction contracts denominated in euros. If the spot rate at the date the ships were delivered was less than the strike price under these option contracts, we would have paid the deferred premium and would not exercise the foreign currency options.

The effects on the consolidated financial statements of the foreign currency options which were designated as cash flow hedges were as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Amount reclassified from accumulated other comprehensive income (loss) into depreciation and amortization expense	\$ 330	\$ 330

***Foreign Currency Forward Contracts***

As of March 31, 2016, we had foreign currency forward contracts which are used to mitigate the financial impact of volatility in foreign currency exchange rates related to our ship construction contracts and forecasted Dry-dock payments denominated in euros. The notional amount of our foreign currency forward contracts was €2.3 billion, or \$2.6 billion based on the euro/U.S. dollar exchange rate as of March 31, 2016.

The effects on the consolidated financial statements of the foreign currency forward contracts which were designated as cash flow hedges were as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Gain (loss) recognized in other comprehensive income (loss) – effective portion	\$ 82,511	\$ (97,375)
Gain (loss) recognized in other income (expense) – ineffective portion	11	(15)
Amount reclassified from accumulated other comprehensive income (loss) into depreciation and amortization expense	645	(64)

***Foreign Currency Collar***

We had a foreign currency collar that matured and was used to mitigate the volatility of foreign currency exchange rates related to our ship construction contracts denominated in euros.

The effects on the consolidated financial statements of the foreign currency collar which was designated as a cash flow hedge was as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Amount reclassified from accumulated other comprehensive income (loss) into depreciation and amortization expense	\$ (91)	\$ (91)

As of March 31, 2016, we had a foreign currency collar used to mitigate the volatility of foreign currency exchange rates related to our ship construction contracts denominated in euros. The notional amount of our foreign currency collar was €274.4 million, or \$312.3 million based on the euro/U.S. dollar exchange rate as of March 31, 2016.

The effect on the consolidated financial statements of the foreign currency collar which was not designated as a cash flow hedge was as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Gain (loss) recognized in other income (expense)	\$ 13,625	\$ (28,953)

#### **Interest Rate Swaps**

As of March 31, 2016, we had interest rate swap agreements to hedge our exposure to interest rate movements and to manage our interest expense. The notional amount of outstanding debt associated with the interest rate swap agreements was \$411.7 million.

The effects on the consolidated financial statements of the interest rate swaps which were designated as cash flow hedges were as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Loss recognized in other comprehensive income (loss) – effective portion	\$ (2,555)	\$ (3,589)
Gain (loss) recognized in other income (expense) – ineffective portion	3	(7)
Amount reclassified from accumulated other comprehensive income (loss) into interest expense, net	1,000	937

We had an interest rate swap that matured in January 2015, which was used to mitigate our exposure to interest rate movements and to manage our interest expense.

The effect on the consolidated financial statements of the interest rate swap contract which was not designated as a hedging instrument was as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Loss recognized in other income (expense)	\$ —	\$ (2)

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

As of March 31, 2016 and December 31, 2015, the fair value of our long-term debt, including the current portion, was \$6.4 billion and \$6.5 billion, respectively, which was \$6.0 million and \$6.6 million lower, respectively, than the carrying values. The difference between the fair value and carrying value of our long-term debt is due to our fixed and variable rate debt obligations carrying interest rates that are above or below market rates at the measurement dates. The fair value of our long-term debt was calculated based on estimated rates for the same or similar instruments with similar terms and remaining maturities resulting in Level 2 inputs in the fair value hierarchy. Market risk associated with our long-term variable rate debt is the potential increase in interest expense from an increase in interest rates. The calculation of the fair value of our long-term debt is considered a Level 2 input.

#### **Other**

The carrying amounts reported in the consolidated balance sheets of all other financial assets and liabilities approximate fair value.

**6. Employee Benefits and Compensation Plans**

**Share Option Awards**

On March 1, 2016, we granted 1.0 million share option awards to our employees at an exercise price of \$50.31 with a contractual term of ten years. The share options vest equally over three years.

The following is a summary of option activity under our share option plan for the three months ended March 31, 2016 (excludes the impact of 364,584 previously awarded performance-based options as no grant date has been established):

	Number of Share Option Awards			Weighted-Average Exercise Price			Weighted-Average Contractual Term	Aggregate Intrinsic Value
	Time-Based Awards	Performance-Based Awards	Market-Based Awards	Time-Based Awards	Performance-Based Awards	Market-Based Awards	(years)	(in thousands)
Outstanding as of December 31, 2015	7,702,071	432,752	208,333	\$ 47.35	\$ 19.00	\$ 59.43	8.59	\$ 104,864
Granted	1,035,000	52,083	—	50.15	59.43	—	—	—
Exercised	(52,803)	(40,359)	—	25.92	19.00	—	—	—
Forfeited and cancelled	(329,027)	—	—	48.24	—	—	—	—
Outstanding as of March 31, 2016	<u>8,355,241</u>	<u>444,476</u>	<u>208,333</u>	<u>\$ 47.80</u>	<u>\$ 23.74</u>	<u>\$ 59.43</u>	<u>8.54</u>	<u>\$ 85,185</u>

**Restricted Ordinary Share Awards**

The following is a summary of restricted ordinary share activity for the three months ended March 31, 2016:

	Number of Time-Based Awards	Weighted-Average Grant Date Fair Value
Non-vested as of January 1, 2016	43,653	\$ 5.87
Granted	—	—
Vested	(10,462)	7.89
Forfeited or expired	(352)	2.50
Non-vested and expected to vest as of March 31, 2016	<u>32,839</u>	<u>\$ 5.26</u>

**Restricted Share Unit Awards**

On March 1, 2016, we granted 1.2 million restricted share unit awards to our employees which vest equally over three years.

The following is a summary of restricted share unit activity for the three months ended March 31, 2016 (excludes the impact of 87,500 previously awarded performance-based restricted share units as no grant date was established):

	Number of Time-Based Awards	Weighted-Average Grant Date Fair Value	Number of Performance-Based Awards	Weighted-Average Grant Date Fair Value	Number of Market-Based Awards	Weighted-Average Grant Date Fair Value
Non-vested as of January 1, 2016	150,000	\$ 59.43	—	\$ —	50,000	\$ 59.43
Granted	1,228,990	50.42	12,500	50.00	—	—
Vested	—	—	(12,500)	50.00	—	—
Forfeited or expired	(18,500)	50.31	—	—	—	—
Non-vested and expected to vest as of March 31, 2016	<u>1,360,490</u>	<u>\$ 51.42</u>	<u>—</u>	<u>\$ —</u>	<u>50,000</u>	<u>\$ 59.43</u>

The share-based compensation expense for the three months ended March 31, 2016 was \$15.2 million of which \$13.7 million was recorded in marketing, general and administrative expense and \$1.5 million was recorded in payroll and related expense.

## 7. Commitments and Contingencies

### Ship Construction Contracts

We have Norwegian Joy and two other Breakaway Plus Class Ships on order with Meyer Werft shipyard for delivery in the spring of 2017, spring of 2018 and fall of 2019, respectively. These ships will be the largest in our fleet, reaching approximately 164,600 Gross Tons. The combined contract price of these three ships is approximately €2.6 billion, or \$3.0 billion based on the euro/U.S. dollar exchange rate as of March 31, 2016. We have export credit financing in place that provides financing for 80% of their contract prices. We also have contracts with Fincantieri shipyard to build two Explorer Class Ships. The original contract price of the ships is approximately €765.0 million, or approximately \$870.6 million based on the euro/U.S. dollar exchange rate as of March 31, 2016. We have export credit financing in place that provides financing for 80% of these ships' contract price. The two Explorer Class Ships are expected to be delivered in the summer of 2016 and winter of 2020.

In connection with the second Explorer Class Ship, in March 2016 we entered into a financing agreement with a syndicate of banks that provides for up to \$498.2 million of borrowings. Under the terms of this agreement, we may elect either a fixed or variable interest rate and the loan is payable over twelve years.

In connection with the contracts to build these ships, we do not anticipate any contractual breaches or cancellation to occur. However, if any would occur, it could result in, among other things, the forfeiture of prior deposits or payments made by us, subject to certain refund guarantees, and potential claims and impairment losses which may materially impact our business, financial condition and results of operations.

### Litigation

In the normal course of our business, various claims and lawsuits have been filed or are pending against us. Most of these claims and lawsuits are covered by insurance and, accordingly, the maximum amount of our liability is typically limited to our deductible amount.

Nonetheless, the ultimate outcome of these claims and lawsuits that are not covered by insurance cannot be determined at this time. We have evaluated our overall exposure with respect to all of our threatened and pending litigation and, to the extent required, we have accrued amounts for all estimable probable losses associated with our deemed exposure. We are currently unable to estimate any other potential contingent losses beyond those accrued, as discovery is not complete nor is adequate information available to estimate such range of loss or potential recovery. We intend to vigorously defend our legal position on all claims and, to the extent necessary, seek recovery.

## 8. Restructuring Costs

Due to the Acquisition of Prestige, a number of employee positions were consolidated. As of March 31, 2016, we had an accrual balance of \$2.5 million for restructuring costs for severance and other employee-related costs. The expense of \$1.7 million for the three months ended March 31, 2016 is included in marketing, general and administrative expense.

The following table summarizes changes in the accrual for restructuring costs (in thousands):

	<u>Restructuring costs</u>
Accrued expense balance as of December 31, 2015	\$ (4,144)
Amounts paid	3,282
Additional accrued expense	(1,660)
Accrued expense balance as of March 31, 2016	<u>\$ (2,522)</u>

## 9. Supplemental Cash Flow Information

For the three months ended March 31, 2016, we had non-cash investing activities in connection with property and equipment of \$7.5 million and for the three months ended March 31, 2015, we had non-cash investing activities in connection with capital leases of \$27.6 million.

## 10. Revision to the Consolidated Statement of Cash Flows

During the three months ended September 30, 2015, we determined that for the three months ended March 31, 2015 and six months ended June 30, 2015, cash payments related to property and equipment were reported as a decrease in cash flows from operating activities related to the change in accrued expenses and other liabilities and prepaid and other assets when it should have been reported as a decrease in cash flows from investing activities related to additions to property and equipment. The Consolidated Statements of Cash Flows for the three months ended March 31, 2015 has been revised, and we will revise the six months ended June 30, 2015 in the Form 10-Q filing for the period ended June 30, 2016, to increase cash from operating activities related to the change in accrued expenses and other liabilities and prepaid and other assets and increase investing cash outflows from additions to property and equipment by \$14.6 million and \$18.5 million, respectively. We have determined that the revision is not material to our consolidated financial statements individually and in the aggregate.



## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

### Cautionary Statement Concerning Forward-Looking Statements

Certain statements in this report constitute forward-looking statements within the meaning of the U.S. federal securities laws intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical facts contained, or incorporated by reference, in this report, including, without limitation, those regarding our business strategy, financial position, results of operations, plans, prospects and objectives of management for future operations (including development plans and objectives relating to our activities), are forward-looking statements. Many, but not all, of these statements can be found by looking for words like "expect," "anticipate," "goal," "project," "plan," "believe," "seek," "will," "may," "forecast," "estimate," "intend" and "future" and similar words. Forward-looking statements do not guarantee future performance and may involve risks, uncertainties and other factors which could cause our actual results, performance or achievements to differ materially from the future results, performance or achievements expressed or implied in those forward-looking statements. Examples of these risks, uncertainties and other factors include, but are not limited to the impact of:

- adverse general economic and related factors, such as fluctuating or increasing levels of unemployment, underemployment and the volatility of fuel prices, declines in the securities and real estate markets, and perceptions of these conditions that decrease the level of disposable income of consumers or consumer confidence;
- the risks and increased costs associated with operating internationally;
- our efforts to expand our business into new markets;
- adverse events impacting the security of travel, such as terrorist acts, acts of piracy, armed conflict and threats thereof and other international events;
- breaches in data security or other disturbances to our information technology and other networks;
- the spread of epidemics and viral outbreaks;
- adverse incidents involving cruise ships;
- changes in fuel prices and/or other cruise operating costs;
- our hedging strategies;
- our inability to obtain adequate insurance coverage;
- our substantial indebtedness, including the ability to raise additional capital to fund our operations, and to generate the necessary amount of cash to service our existing debt;
- restrictions in the agreements governing our indebtedness that limit our flexibility in operating our business;
- the significant portion of our assets pledged as collateral under our existing debt agreements and the ability of our creditors to accelerate the repayment of our indebtedness;
- our ability to incur significantly more debt despite our substantial existing indebtedness;
- volatility and disruptions in the global credit and financial markets, which may adversely affect our ability to borrow and could increase our counterparty credit risks, including those under our credit facilities, derivatives, contingent obligations, insurance contracts and new ship progress payment guarantees;
- fluctuations in foreign currency exchange rates;
- our inability to recruit or retain qualified personnel or the loss of key personnel;
- future changes relating to how external distribution channels sell and market our cruises;
- our reliance on third parties to provide hotel management services to certain ships and certain other services;
- delays in our shipbuilding program and ship repairs, maintenance and refurbishments;
- future increases in the price of, or major changes or reduction in, commercial airline services;
- seasonal variations in passenger fare rates and occupancy levels at different times of the year;
- our ability to keep pace with developments in technology;
- amendments to our collective bargaining agreements for crew members and other employee relation issues;
- the continued availability of attractive port destinations;
- pending or threatened litigation, investigations and enforcement actions;

- changes involving the tax and environmental regulatory regimes in which we operate; and
- other factors set forth under “Risk Factors” in our most recently filed Annual Report on Form 10-K and “Item 1A. Risk Factors” in this report.

The above examples are not exhaustive and new risks emerge from time to time. Such forward-looking statements are based on our current beliefs, assumptions, expectations, estimates and projections regarding our present and future business strategies and the environment in which we will operate in the future. These forward-looking statements speak only as of the date made. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statement to reflect any change in our expectations with regard thereto or any change of events, conditions or circumstances on which any such statement was based, except as required by law.

### Terminology

This report includes certain non-GAAP financial measures, such as Net Revenue, Net Yield, Net Cruise Cost, Adjusted Net Revenue, Adjusted Net Yield, Adjusted Net Cruise Cost Excluding Fuel, Adjusted EBITDA, Adjusted Net Income and Adjusted EPS. Definitions of these non-GAAP financial measures are included below. For further information about our non-GAAP financial measures including detailed adjustments made in calculating our non-GAAP financial measures and a reconciliation to the most directly comparable GAAP financial measure, we refer you to “Results of Operations” below.

Unless otherwise indicated in this report, the following terms have the meanings set forth below:

- *Acquisition of Prestige*. In November 2014, pursuant to the Merger Agreement, we acquired Prestige in a cash and stock transaction for total consideration of \$3.025 billion, including the assumption of debt.
- *Adjusted EBITDA*. EBITDA adjusted for other income (expense) and other supplemental adjustments.
- *Adjusted EPS*. Adjusted Net Income divided by the number of diluted weighted-average shares outstanding.
- *Adjusted Net Cruise Cost Excluding Fuel*. Net Cruise Cost Excluding Fuel expense adjusted for supplemental adjustments.
- *Adjusted Net Income*. Net income adjusted for supplemental adjustments.
- *Adjusted Net Revenue*. Net Revenue adjusted for supplemental adjustments.
- *Adjusted Net Yield*. Net Yield adjusted for supplemental adjustments.
- *Berths*. Double occupancy capacity per cabin (single occupancy per studio cabin) even though many cabins can accommodate three or more passengers.
- *Breakaway Class Ships*. Norwegian Breakaway and Norwegian Getaway.
- *Breakaway Plus Class Ships*. The next generation of ships which are similar in design and innovation to Breakaway Class Ships.
- *Business Enhancement Capital Expenditures*. Capital expenditures other than those related to new ship construction and ROI Capital Expenditures.
- *Capacity Days*. Available Berths multiplied by the number of cruise days for the period.
- *Bareboat Charter*. The hire of a ship for a specified period of time whereby no crew or provisions are provided by the Company.
- *Constant Currency*. A calculation whereby foreign currency-denominated revenue and expenses in a period are converted at the U.S. dollar exchange rate of a comparable period in order to eliminate the effects of the foreign exchange fluctuations.
- *Dry-dock*. A process whereby a ship is positioned in a large basin where all of the fresh/sea water is pumped out in order to carry out cleaning and repairs of those parts of a ship which are below the water line.
- *EBITDA*. Earnings before interest, taxes, and depreciation and amortization.
- *EPS*. Earnings per share.
- *Explorer Class Ships*. Regent’s Seven Seas Explorer and a second ship on order.

- *GAAP*. Generally accepted accounting principles in the U.S.
- *Gross Cruise Cost*. The sum of total cruise operating expense and marketing, general and administrative expense.
- *Gross Tons*. A unit of enclosed passenger space on a cruise ship, such that one gross ton = 100 cubic feet or 2.831 cubic meters.
- *Gross Yield*. Total revenue per Capacity Day.
- *Management NCL Corporation Units*. NCLC's previously outstanding profits interests issued to management (or former management) of NCLC which were converted into units in NCLC. All Management NCL Corporation Units were exchanged for NCLH ordinary shares and restricted shares in the fourth quarter of 2014.
- *Merger Agreement*. Agreement and Plan of Merger, dated as of September 2, 2014, by and among Prestige, NCLH, Portland Merger Sub, Inc. and Apollo Management, L.P., as amended, for the Acquisition of Prestige.
- *Net Cruise Cost*. Gross Cruise Cost less commissions, transportation and other expense and onboard and other expense.
- *Net Cruise Cost Excluding Fuel*. Net Cruise Cost less fuel expense.
- *Net Revenue*. Total revenue less commissions, transportation and other expense and onboard and other expense.
- *Net Yield*. Net Revenue per Capacity Day.
- *Occupancy Percentage*. The ratio of Passenger Cruise Days to Capacity Days. A percentage in excess of 100% indicates that three or more passengers occupied some cabins.
- *Passenger Cruise Days*. The number of passengers carried for the period, multiplied by the number of days in their respective cruises.
- *Revolving Loan Facility*. \$625.0 million senior secured revolving credit facility maturing on May 24, 2018.
- *ROI Capital Expenditures*. Comprised of project-based capital expenditures which have a quantified return on investment.
- *Shipboard Retirement Plan*. An unfunded defined benefit pension plan for certain crew members which computes benefits based on years of service, subject to certain requirements.

#### **Non-GAAP Financial Measures**

We use certain non-GAAP financial measures, such as Net Revenue, Adjusted Net Revenue, Net Yield, Adjusted Net Yield, Net Cruise Cost, Adjusted Net Cruise Cost Excluding Fuel, Adjusted EBITDA, Adjusted Net Income and Adjusted EPS, to enable us to analyze our performance. See "Terminology" for the definitions of these non-GAAP financial measures. We utilize Net Revenue and Net Yield to manage our business on a day-to-day basis and believe that they are the most relevant measures of our revenue performance because they reflect the revenue earned by us net of significant variable costs. In measuring our ability to control costs in a manner that positively impacts net income, we believe changes in Net Cruise Cost and Adjusted Net Cruise Cost Excluding Fuel to be the most relevant indicators of our performance.

As our business includes the sourcing of passengers and deployment of vessels outside of the U.S., a portion of our revenue and expenses are denominated in foreign currencies, particularly British pound, Canadian dollar, euro and Australian dollar which are subject to fluctuations in currency exchange rates versus our reporting currency, the U.S. dollar. In order to monitor results excluding these fluctuations, we calculate certain non-GAAP measures on a Constant Currency basis whereby current period revenue and expenses denominated in foreign currencies are converted to U.S. dollars using currency exchange rates of the comparable period. We believe that presenting these non-GAAP measures on both a reported and Constant Currency basis is useful in providing a more comprehensive view of trends in our business.

We believe that Adjusted EBITDA is appropriate as a supplemental financial measure as it is used by management to assess operating performance. We believe that Adjusted EBITDA is a useful measure in determining our performance as it reflects certain operating drivers of our business, such as sales growth, operating costs, marketing, general and administrative expense and other operating income and expense. Adjusted EBITDA is not a defined term under GAAP. Adjusted EBITDA is not intended to be a measure of liquidity or cash flows from operations or a measure comparable to net income as it does not take into account certain requirements such as capital expenditures and related depreciation, principal and interest payments and tax payments and it includes other supplemental adjustments.

In addition, Adjusted Net Revenue and Adjusted Net Yield, which excludes certain business combination accounting entries, are non-GAAP financial measures that we believe are useful as supplemental measures in evaluating the performance of our operating business and provide greater transparency into our results of operations. Adjusted Net Income and Adjusted EPS are non-GAAP financial measures that exclude certain amounts and are used to supplement GAAP net income and EPS. We use Adjusted Net Income and Adjusted EPS as key performance measures of our earnings performance. We believe that both management and investors benefit from referring to these non-GAAP financial measures in assessing our performance and when planning, forecasting and analyzing future periods. These non-GAAP financial measures also facilitate management's internal comparison to our historical performance. The amounts excluded in the presentation of these non-GAAP financial measures may vary from period to period; accordingly, our presentation of Adjusted Net Revenue, Adjusted Net Yield, Adjusted Net Income and Adjusted EPS may not be indicative of future adjustments or results.

You are encouraged to evaluate each adjustment used in calculating our non-GAAP financial measures and the reasons we consider our non-GAAP financial measures appropriate for supplemental analysis. In evaluating our non-GAAP financial measures, you should be aware that in the future we may incur expenses similar to the adjustments in our presentation. Our non-GAAP financial measures have limitations as analytical tools, and you should not consider these measures in isolation or as a substitute for analysis of our results as reported under GAAP. Our presentation of our non-GAAP financial measures should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items. Our non-GAAP financial measures may not be comparable to other companies. Please see a historical reconciliation of these measures to the most comparable GAAP measure presented in our consolidated financial statements below in the "Results of Operations" section.

### **Financial Presentation**

Revenue from our cruise and cruise-related activities are categorized by us as "passenger ticket revenue" and "onboard and other revenue." Passenger ticket revenue and onboard and other revenue vary according to product offering, the size of the ship in operation, the length of cruises operated and the markets in which the ship operates. Our revenue is seasonal based on demand for cruises, which has historically been strongest during the Northern Hemisphere's summer months.

Passenger ticket revenue primarily consists of revenue for accommodations, meals in certain restaurants on the ship, certain onboard entertainment, and includes revenue for service charges and air and land transportation to and from the ship to the extent guests purchase these items from us. Onboard and other revenue primarily consists of revenue from gaming, beverage sales, shore excursions, specialty dining, retail sales, spa services, photo services as well as certain Bareboat Charter revenue. We record onboard revenue from onboard activities we perform directly or that are performed by independent concessionaires, from which we receive a share of their revenue.

Our cruise operating expense is classified as follows:

- Commissions, transportation and other primarily consists of direct costs associated with passenger ticket revenue. These costs include travel agent commissions, air and land transportation expenses, related credit card fees, costs associated with service charges, certain port expenses and the costs associated with shore excursions and hotel accommodations included as part of the overall cruise purchase price.
- Onboard and other primarily consists of direct costs that are incurred in connection with onboard and other revenue. These include costs incurred in connection with gaming, beverage sales and shore excursions.
- Payroll and related consists of the cost of wages and benefits for shipboard employees and costs of certain inventory items, including food, for a third party that provides crew and other hotel services for certain ships.
- Fuel includes fuel costs, the impact of certain fuel hedges and fuel delivery costs.
- Food consists of food costs for passengers and crew on certain ships.
- Other consists of repairs and maintenance (including Dry-dock costs), ship insurance and other ship expenses.

### **Critical Accounting Policies**

For a discussion of our critical accounting policies and estimates, see "Critical Accounting Policies" included in our Annual Report on Form 10-K for the year ended December 31, 2015 under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations." We have made no significant changes to our critical accounting policies and estimates from those described in our Annual Report on Form 10-K for the year ended December 31, 2015.

## Quarterly Overview

- Sirena, previously under a Bareboat Charter, joined our Oceania Cruises' fleet in April 2016. This ship is approximately 30,000 Gross Tons with approximately 684 Berths.
- We placed an order with Fincantieri shipyards to build a second Explorer Class Ship for delivery in the winter of 2020.
- We repurchased approximately \$50 million of NCLH's outstanding ordinary shares under our previously authorized three-year, \$500 million share repurchase program.

## Three months ended March 31, 2016 ("2016") compared to the three months ended March 31, 2015 ("2015")

Total revenue increased 14.9% to \$1.1 billion in 2016 compared to \$938.2 million in 2015. Net Revenue in 2016 increased 18.4% to \$838.2 million from \$707.7 million in 2015 due to an increase in Capacity Days of 12.2% and an increase in Net Yield of 5.5%. The increase in Capacity Days was primarily due to the delivery of Norwegian Escape in October 2015.

We had net income and diluted EPS of \$73.2 million and \$0.32, respectively, in 2016. Operating income was \$131.3 million in 2016 compared to \$60.3 million in 2015. We had Adjusted Net Income and Adjusted EPS of \$86.7 million and \$0.38, respectively, in 2016, which includes \$13.4 million of adjustments primarily consisting of expenses related to non-cash compensation and certain other adjustments. Adjusted EBITDA improved 28.2% in 2016 compared to 2015. We refer you to our "Results of Operations" below for a calculation of Net Revenue, Net Yield, Adjusted Net Income, Adjusted EPS and Adjusted EBITDA.

## Results of Operations

The following table sets forth operating data as a percentage of total revenue:

	Three Months Ended March 31,	
	2016	2015
<b>Revenue</b>		
Passenger ticket	68.7%	71.5%
Onboard and other	31.3%	28.5%
Total revenue	100.0%	100.0%
<b>Cruise operating expense</b>		
Commissions, transportation and other	16.3%	18.3%
Onboard and other	6.0%	6.3%
Payroll and related	16.4%	16.8%
Fuel	7.6%	9.3%
Food	4.7%	4.5%
Other	10.7%	11.3%
Total cruise operating expense	61.7%	66.5%
<b>Other operating expense</b>		
Marketing, general and administrative	16.8%	16.4%
Depreciation and amortization	9.4%	10.7%
Total other operating expense	26.2%	27.1%
Operating income	12.1%	6.4%
<b>Non-operating income (expense)</b>		
Interest expense, net	(5.5)%	(5.4)%
Other income (expense)	0.3%	(3.2)%
Total non-operating income (expense)	(5.2)%	(8.6)%
<b>Net income (loss) before income taxes</b>	6.9%	(2.2)%
<b>Income tax expense</b>	(0.1)%	(0.1)%
<b>Net income (loss)</b>	6.8%	(2.3)%

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The following table sets forth selected statistical information:

	Three Months Ended March 31,	
	2016	2015
Passengers carried	551,475	513,526
Passenger Cruise Days	4,285,294	3,768,115
Capacity Days	3,990,942	3,556,468
Occupancy Percentage	107.4%	106.0%

Net Revenue, Adjusted Net Revenue, Gross Yield, Net Yield and Adjusted Net Yield were calculated as follows (in thousands, except Capacity Days and Yield data):

	Three Months Ended March 31,		
	2016 Constant Currency		
	2016	2015	2015
Passenger ticket revenue	\$ 740,112	\$ 752,632	\$ 670,483
Onboard and other revenue	337,520	337,519	267,699
Total revenue	1,077,632	1,090,151	938,182
Less:			
Commissions, transportation and other expense	175,437	178,905	171,827
Onboard and other expense	63,965	63,965	58,645
Net Revenue	838,230	847,281	707,710
Non-GAAP Adjustment:			
Deferred revenue (1)	460	460	21,194
Adjusted Net Revenue	\$ 838,690	\$ 847,741	\$ 728,904
Capacity Days	3,990,942	3,990,942	3,556,468
Gross Yield	\$ 270.02	\$ 273.16	\$ 263.80
Net Yield	\$ 210.03	\$ 212.30	\$ 198.99
Adjusted Net Yield	\$ 210.15	\$ 212.42	\$ 204.95

(1) Reflects deferred revenue fair value adjustments related to the Acquisition of Prestige that were made pursuant to business combination accounting rules.

Gross Cruise Cost, Net Cruise Cost, Net Cruise Cost Excluding Fuel and Adjusted Net Cruise Cost Excluding Fuel were calculated as follows (in thousands, except Capacity Days and per Capacity Day data):

	Three Months Ended March 31,		
	2016 Constant Currency		
	2016	2015	2015
Total cruise operating expense	\$ 664,481	\$ 669,159	\$ 623,700
Marketing, general and administrative expense	180,574	181,315	154,157
Gross Cruise Cost	845,055	850,474	777,857
Less:			
Commissions, transportation and other expense	175,437	178,905	171,827
Onboard and other expense	63,965	63,965	58,645
Net Cruise Cost	605,653	607,604	547,385
Less: Fuel expense	81,672	81,672	87,374
Net Cruise Cost Excluding Fuel	523,981	525,932	460,011
<b>Less Non-GAAP Adjustments:</b>			
Non-cash deferred compensation (1)	791	791	1,453
Non-cash share-based compensation (2)	15,245	15,245	12,005
Severance payments and other fees (3)	2,030	2,030	10,387
Management NCL Corporation Units exchange expenses (4)	—	—	624
Acquisition of Prestige expenses (5)	1,741	1,741	400
Contingent consideration adjustment (6)	—	—	(9,100)
Adjusted Net Cruise Cost Excluding Fuel	\$ 504,174	\$ 506,125	\$ 444,242
Capacity Days	3,990,942	3,990,942	3,556,468
Gross Cruise Cost per Capacity Day	\$ 211.74	\$ 213.10	\$ 218.72
Net Cruise Cost per Capacity Day	\$ 151.76	\$ 152.25	\$ 153.91
Net Cruise Cost Excluding Fuel per Capacity Day	\$ 131.29	\$ 131.78	\$ 129.34
Adjusted Net Cruise Cost Excluding Fuel per Capacity Day	\$ 126.33	\$ 126.82	\$ 124.91

- (1) Non-cash deferred compensation expenses related to the crew pension plan and other crew expenses, which are included in payroll and related expense.
- (2) Non-cash share-based compensation expenses related to equity awards, which are included in marketing, general and administrative expense and payroll and related expense.
- (3) Severance payments and other expenses related to restructuring costs and other severance arrangements, which are included in marketing, general and administrative expense.
- (4) Expenses related to the exchange of Management NCL Corporation Units for ordinary shares, which are included in marketing, general and administrative expense.
- (5) Expenses related to the Acquisition of Prestige, which are included in marketing, general and administrative expense.
- (6) Contingent consideration fair value adjustment related to the Acquisition of Prestige, which is included in marketing, general and administrative expense.

Adjusted Net Income and Adjusted EPS were calculated as follows (in thousands, except share and per share data):

	Three Months Ended March 31,	
	2016	2015
Net income (loss)	73,229	(21,456)
<b>Non-GAAP Adjustments:</b>		
Non-cash deferred compensation (1)	791	1,453
Non-cash share-based compensation (2)	15,245	12,005
Severance payments and other fees (3)	2,030	10,387
Management NCL Corporation Units exchange expenses (4)	—	624
Acquisition of Prestige expenses (5)	1,741	400
Deferred revenue (6)	460	21,194
Amortization of intangible assets (7)	5,268	18,146
Contingent consideration adjustment (8)	—	(9,100)
Derivative adjustment (9)	(12,096)	28,953
Adjusted Net Income	<u>\$ 86,668</u>	<u>\$ 62,606</u>
Diluted weighted-average shares outstanding – Net income (loss)	<u>228,112,035</u>	<u>224,301,117</u> (10)
Diluted weighted-average shares outstanding – Adjusted Net Income	<u>228,112,035</u>	<u>229,046,929</u>
Diluted earnings (loss) per share	<u>\$ 0.32</u>	<u>\$ (0.10)</u>
Adjusted EPS	<u>\$ 0.38</u>	<u>\$ 0.27</u>

- (1) Non-cash deferred compensation expenses related to the crew pension plan and other crew expenses, which are included in payroll and related expense.
- (2) Non-cash share-based compensation expenses related to equity awards, which are included in marketing, general and administrative expense and payroll and related expense.
- (3) Severance payments and other expenses related to restructuring costs and other severance arrangements, which are included in marketing, general and administrative expense.
- (4) Expenses related to the exchange of Management NCL Corporation Units for ordinary shares, which are included in marketing, general and administrative expense.
- (5) Expenses related to the Acquisition of Prestige, which are included in marketing, general and administrative expense.
- (6) Deferred revenue fair value adjustments related to the Acquisition of Prestige that were made pursuant to business combination accounting rules, which are primarily included in Net Revenue.
- (7) Amortization of intangible assets related to the Acquisition of Prestige, which are included in depreciation and amortization expense.
- (8) Contingent consideration fair value adjustment related to the Acquisition of Prestige, which is included in marketing, general and administrative expense.
- (9) In 2016, a gain of approximately \$13.6 million for the fair value adjustment of a foreign exchange collar which does not receive hedge accounting and losses of approximately \$(1.5) million for the dedesignation of certain fuel swaps. In 2015, a loss for the fair value adjustment for a foreign exchange collar which does not receive hedge accounting treatment. These adjustments are included in other income (expense).
- (10) Due to a net loss, excludes 4,745,812 shares, as including these would be antidilutive.

EBITDA and Adjusted EBITDA were calculated as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Net income (loss)	\$ 73,229	\$ (21,456)
Interest expense, net	59,754	50,989
Income tax expense	1,104	677
Depreciation and amortization expense	101,295	99,976
EBITDA	235,382	130,186
Other (income) expense	(2,805)	30,139
<b>Non-GAAP Adjustments:</b>		
Non-cash deferred compensation (1)	791	1,453
Non-cash share-based compensation (2)	15,245	12,005
Severance payments and other fees (3)	2,030	10,387
Management NCL Corporation Units exchange expenses (4)	—	624
Acquisition of Prestige expenses (5)	1,741	400
Deferred revenue (6)	460	21,194
Contingent consideration adjustment (7)	—	(9,100)
Adjusted EBITDA	\$ 252,844	\$ 197,288

- (1) Non-cash deferred compensation expenses related to the crew pension plan and other crew expenses, which are included in payroll and related expense.
- (2) Non-cash share-based compensation expenses related to equity awards, which are included in marketing, general and administrative expense and payroll and related expense.
- (3) Severance payments and other expenses related to restructuring costs and other severance arrangements, which are included in marketing, general and administrative expense.
- (4) Expenses related to the exchange of Management NCL Corporation Units for ordinary shares, which are included in marketing, general and administrative expense.
- (5) Expenses related to the Acquisition of Prestige, which are included in marketing, general and administrative expense.
- (6) Deferred revenue fair value adjustments related to the Acquisition of Prestige that were made pursuant to business combination accounting rules, which are primarily included in Net Revenue.
- (7) Contingent consideration fair value adjustment related to the Acquisition of Prestige, which is included in marketing, general and administrative expense.

#### Three months ended March 31, 2016 (“2016”) compared to three months ended March 31, 2015 (“2015”)

##### Revenue

Total revenue increased 14.9% to \$1.1 billion in 2016 compared to \$938.2 million in 2015. Net Revenue in 2016 increased 18.4% to \$838.2 million from \$707.7 million in 2015 due to an increase in Capacity Days of 12.2% and an increase in Net Yield of 5.5%. The increase in Capacity Days was primarily due to the delivery of Norwegian Escape in October 2015. The increase in Net Yield was primarily due to an increase in passenger ticket pricing and higher onboard and other revenue. Adjusted Net Revenue includes a deferred revenue fair value adjustment of \$0.5 million and \$21.2 million in 2016 and 2015, respectively, related to the Acquisition of Prestige. On a Constant Currency basis, Net Yield and Adjusted Net Yield increased 6.7% and 3.6%, respectively, in 2016 compared to 2015.

##### Expense

Total cruise operating expense increased 6.5% in 2016 compared to 2015 primarily due to the increase in Capacity Days as discussed above and an increase in Dry-dock expenses. Total other operating expense increased 10.9% in 2016 compared to 2015 primarily due to an increase in marketing, general and administrative expenses with an increase in advertising expenses and in 2015 we had \$9.1 million of an incremental contingent consideration adjustment related to the Acquisition of Prestige. Depreciation and amortization expense increased primarily due to the depreciation of Norwegian Escape in 2016 and in 2015 we had \$13.0 million of incremental amortization of intangible assets due to the Acquisition of Prestige. On a Capacity Day basis, Net Cruise Cost decreased 1.4% (1.1% on a Constant Currency basis) due to a decrease in fuel expense which was primarily resulting from a 16.7% decrease in the average fuel price to \$438 per metric ton in 2016 from \$526 per metric ton in 2015 primarily offset by an increase in marketing, general and administrative expenses. Adjusted Net Cruise Cost Excluding Fuel per Capacity Day increased 1.1% (1.5% on a Constant Currency basis) primarily due to the increase in expenses discussed above.



Interest expense, net increased to \$59.8 million in 2016 from \$51.0 million in 2015 primarily due to higher interest rates due to an increase in LIBOR rates as well as an increase in average debt balances outstanding primarily associated with the delivery of Norwegian Escape in October 2015.

Other income (expense) was income of \$2.8 million in 2016 compared to an expense of \$(30.1) million in 2015. In 2016, the income was primarily related to unrealized gains on derivatives partially offset by realized losses on derivatives and losses on foreign currency exchange. In 2015, the expense was primarily related to the derivative fair value adjustment for a foreign exchange collar which does not receive hedge accounting treatment.

In 2016, we had an income tax expense of \$1.1 million compared to \$0.7 million in 2015.

## **Liquidity and Capital Resources**

### ***General***

As of March 31, 2016, our liquidity was \$691.9 million consisting of \$154.9 million in cash and cash equivalents and \$537.0 million under our Revolving Loan Facility. Our primary ongoing liquidity requirements are to finance working capital, capital expenditures and debt service.

As of March 31, 2016, we had a working capital deficit of \$2.1 billion. This deficit included \$1.2 billion of advance ticket sales, which represents the revenue we collect in advance of sailing dates, and accordingly, are substantially more like deferred revenue balances rather than actual current cash liabilities. Our business model, along with our Revolving Loan Facility, allows us to operate with a working capital deficit and still meet our operating, investing and financing needs.

We evaluate potential sources of additional liquidity, including the capital markets, in the ordinary course of business. We believe that prevailing market conditions, particularly in the debt capital markets, are generally favorable. We will continue to evaluate opportunities to increase our liquidity in the near term, taking into consideration our current and expected requirements, our assessment of prevailing market conditions and expectations regarding future conditions, and the contractual and other restrictions to which we are subject.

### ***Sources and Uses of Cash***

*In this section, references to “2016” refer to the three months ended March 31, 2016 and references to “2015” refer to the three months ended March 31, 2015.*

Net cash provided by operating activities was \$330.1 million in 2016 as compared to \$314.8 million in 2015. The change in net cash provided by operating activities reflects net income in 2016 of \$73.2 compared to a net loss in 2015 of \$(21.5) million. The net cash provided by operating activities included timing differences in cash receipts and payments relating to operating assets and liabilities.

Net cash used in investing activities was \$133.2 million in 2016, primarily related to payments for ship improvements, ships under construction and shoreside projects. Net cash used in investing activities was \$73.1 million in 2015, primarily related to payments for delivery of Norwegian Getaway and ship improvements and shoreside projects.

Net cash used in financing activities was \$158.0 million in 2016 and \$205.1 million in 2015 primarily due to net repayments of our Revolving Loan Facility and other loan facilities and the repurchase of our ordinary shares in 2016.

### ***Future Capital Commitments***

Future capital commitments consist of contracted commitments, including ship construction contracts, and future expected capital expenditures necessary for operations. As of March 31, 2016, anticipated capital expenditures were \$0.9 billion for the remainder of 2016 and \$1.3 billion for each of the years ending December 31, 2017 and 2018, of which we have export credit financing in place for the expenditures related to ship construction contracts of \$0.5 billion for the remainder of 2016, \$0.6 billion for 2017 and \$0.7 billion for 2018.

We have Norwegian Joy and two other Breakaway Plus Class Ships on order with Meyer Werft shipyard for delivery in the spring of 2017, spring of 2018 and fall of 2019, respectively. These ships will be the largest in our fleet, reaching approximately 164,600 Gross Tons. The combined contract price of these three ships is approximately €2.6 billion, or \$3.0 billion based on the euro/U.S. dollar exchange rate as of March 31, 2016. We have export credit financing in place that provides financing for 80% of their contract prices. We also have contracts with Fincantieri shipyard to build two Explorer Class Ships. The original contract price of the ships is approximately €765.0 million, or approximately \$870.6 million based on the euro/U.S. dollar exchange rate as of March 31, 2016. We have export credit financing in place that provides financing for 80% of these ships' contract price. The Explorer Class Ships are expected to be delivered in the summer of 2016 and winter of 2020.

In connection with the contracts to build these ships, we do not anticipate any contractual breaches or cancellation to occur. However, if any would occur, it could result in, among other things, the forfeiture of prior deposits or payments made by us, subject to certain

refund guarantees, and potential claims and impairment losses which may materially impact our business, financial condition and results of operations.

Capitalized interest for the three months ended March 31, 2016 and 2015 was \$7.1 million and \$7.7 million, respectively, primarily associated with the construction of our Breakaway Plus Class Ships.

#### Off-Balance Sheet Transactions

None.

#### Contractual Obligations

As of March 31, 2016, our contractual obligations with initial or remaining terms in excess of one year, including interest payments on long-term debt obligations, were as follows (in thousands):

	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Long-term debt (1)	\$ 6,399,065	\$ 629,953	\$ 1,923,757	\$ 2,015,666	\$ 1,829,689
Due to Affiliate (2)	20,976	20,976	—	—	—
Operating leases (3)	157,762	13,230	29,072	29,390	86,070
Ship construction contracts (4)	3,687,018	559,999	1,985,881	1,141,138	—
Port facilities (5)	251,144	38,875	59,536	52,078	100,655
Interest (6)	895,915	177,517	345,324	227,627	145,447
Other (7)	166,533	55,522	53,686	32,793	24,532
Total	<u>\$ 11,578,413</u>	<u>\$ 1,496,072</u>	<u>\$ 4,397,256</u>	<u>\$ 3,498,692</u>	<u>\$ 2,186,393</u>

(1) Includes premiums aggregating \$0.7 million. Also includes capital leases.

(2) Primarily related to the purchase of Norwegian Sky.

(3) Primarily for offices, motor vehicles and office equipment.

(4) For our newbuild ships based on the euro/U.S. dollar exchange rate as of March 31, 2016. Export credit financing is in place from syndicates of banks.

(5) Primarily for our usage of certain port facilities.

(6) Includes fixed and variable rates with LIBOR held constant as of March 31, 2016.

(7) Future commitments for service and maintenance contracts and other Business Enhancement Capital Expenditures.

The table above does not include \$11.2 million of unrecognized tax benefits.

#### Other

Certain service providers may require collateral in the normal course of our business. The amount of collateral may change based on certain terms and conditions.

As a routine part of our business, depending on market conditions, exchange rates, pricing and our strategy for growth, we regularly consider opportunities to enter into contracts for the building of additional ships. We may also consider the sale of ships, potential acquisitions and strategic alliances. If any of these were to occur, they may be financed through the incurrence of additional permitted indebtedness, through cash flows from operations, or through the issuance of debt, equity or equity-related securities.

#### Funding Sources

Our debt agreements contain covenants that, among other things, require us to maintain a minimum level of liquidity, as well as limit our net funded debt-to-capital ratio, maintain certain other ratios and restrict our ability to pay dividends. Our ships and substantially all other property and equipment are pledged as collateral for our debt. We believe we were in compliance with these covenants as of March 31, 2016.

The impact of changes in world economies and especially the global credit markets has created a challenging environment and may reduce future consumer demand for cruises and adversely affect our counterparty credit risks. In the event this environment deteriorates, our business, financial condition and results of operations could be adversely impacted.

We believe our cash on hand, expected future operating cash inflows, additional available borrowings under our Revolving Loan Facility and our ability to issue debt securities or raise additional equity, will be sufficient to fund operations, debt payment requirements, capital expenditures and maintain compliance with covenants under our debt agreements over the next twelve-month period. There is no assurance that cash flows from operations and additional financings will be available in the future to fund our future obligations.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

#### **General**

We are exposed to market risk attributable to changes in interest rates, foreign currency exchange rates and fuel prices. We attempt to minimize these risks through a combination of our normal operating and financing activities and through the use of derivatives. The financial impacts of these derivative instruments are primarily offset by corresponding changes in the underlying exposures being hedged. We achieve this by closely matching the amount, term and conditions of the derivatives with the underlying risk being hedged. We do not hold or issue derivatives for trading or other speculative purposes. Derivative positions are monitored using techniques including market valuations and sensitivity analyses.

#### ***Interest Rate Risk***

As of March 31, 2016, we had interest rate swap agreements to hedge our exposure to interest rate movements and to manage our interest expense. As of March 31, 2016, 52% of our debt was fixed and 48% was variable, which includes the effects of the interest rate swaps. The notional amount of outstanding debt associated with the interest rate swap agreements as of March 31, 2016 was \$411.7 million. Based on our March 31, 2016 outstanding variable rate debt balance, a one percentage point increase in annual LIBOR interest rates would increase our annual interest expense by approximately \$30.6 million excluding the effects of capitalization of interest.

#### ***Foreign Currency Exchange Rate Risk***

As of March 31, 2016, we had foreign currency derivatives to hedge the exposure to volatility in foreign currency exchange rates related to our ship construction contracts denominated in euros. These derivatives hedge the foreign currency exchange rate risk on a portion of the payments on our ship construction contracts. The payments not hedged aggregate €620.1 million, or \$705.7 million based on the euro/U.S. dollar exchange rate as of March 31, 2016. We estimate that a 10% change in the euro as of March 31, 2016 would result in a \$70.6 million change in the U.S. dollar value of the foreign currency denominated remaining payments.

#### ***Fuel Price Risk***

Our exposure to market risk for changes in fuel prices relates to the forecasted purchases of fuel on our ships. Fuel expense, as a percentage of our total cruise operating expense, was 12.3% and 14.0% for the three months ended March 31, 2016 and 2015, respectively. We use fuel derivative agreements to mitigate the financial impact of fluctuations in fuel prices and as of March 31, 2016, we had hedged approximately 92%, 82%, 55% and 50% of our 2016, 2017, 2018 and 2019 projected metric tons of fuel purchases, respectively. We estimate that a 10% increase in our weighted-average fuel price would increase our anticipated 2016 fuel expense by \$16 million. This increase would be partially offset by an increase in the fair value of our fuel swap agreements of \$10 million. Fair value of our derivative contracts is derived using valuation models that utilize the income valuation approach. These valuation models take into account the contract terms such as maturity, as well as other inputs such as fuel types, fuel curves, creditworthiness of the counterparty and the Company, as well as other data points.

### **Item 4. Controls and Procedures**

#### **Evaluation of Disclosure Controls and Procedures**

Our management has evaluated, with the participation of our Chief Executive Officer and Chief Financial Officer, the effectiveness of our disclosure controls and procedures, as such term is defined in Exchange Act Rule 13a-15(e), as of March 31, 2016. There are inherent limitations to the effectiveness of any system of disclosure controls and procedures, including the possibility of human error and the circumvention or overriding of the controls and procedures. Accordingly, even effective disclosure controls and procedures can only provide reasonable assurance of achieving their control objectives. Based upon our management's evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of March 31, 2016 to provide reasonable assurance that the information required to be disclosed by us in the reports we file or submit under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission, and that it is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

#### **Changes in Internal Control Over Financial Reporting**

There have been no changes in our internal control over financial reporting during the quarter ended March 31, 2016 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Limitations on the Effectiveness of Controls**

It should be noted that any system of controls, however well designed and operated, can provide only reasonable, and not absolute, assurance that the objectives of the system will be met. In addition, the design of any control system is based in part upon certain assumptions about the likelihood of future events. Because of these and other inherent limitations of control systems, there is only the reasonable assurance that our controls will succeed in achieving their goals under all potential future conditions.

**PART II. OTHER INFORMATION**

**Item 1. Legal Proceedings**

In the normal course of our business, various claims and lawsuits have been filed or are pending against us. Most of these claims and lawsuits are covered by insurance and, accordingly, the maximum amount of our liability is typically limited to our deductible amount.

Nonetheless, the ultimate outcome of these claims and lawsuits that are not covered by insurance cannot be determined at this time. We have evaluated our overall exposure with respect to all of our threatened and pending litigation and, to the extent required, we have accrued amounts for all estimable probable losses associated with our deemed exposure. We are currently unable to estimate any other potential contingent losses beyond those accrued, as discovery is not complete nor is adequate information available to estimate such range of loss or potential recovery. We intend to vigorously defend our legal position on all claims and, to the extent necessary, seek recovery.

**Item 1A. Risk Factors**

We refer you to our 2015 Annual Report on Form 10-K for a discussion of the risk factors that affect our business and financial results. We wish to caution the reader that the risk factors discussed in “Item 1A. Risk Factors” in our 2015 Annual Report on Form 10-K, elsewhere in this report or other Securities and Exchange Commission filings, could cause future results to differ materially from those stated in any forward-looking statements.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

**Purchases of Equity Securities by the Issuer**

On April 29, 2014, NCLH’s Board of Directors authorized, and NCLH announced, a three-year share repurchase program for up to \$500.0 million. NCLH may make repurchases in the open market, in privately negotiated transactions, or pursuant to accelerated share repurchase programs or structured share repurchase programs, and any repurchases may be made pursuant to Rule 10b5-1 plans.

Share repurchase activity during the three months ended March 31, 2016 was as follows:

Period	Total Number of Shares Purchased as Part of a Publicly Announced Program	Average Price Paid per Share	Approximate Dollar Value of Shares that May Yet be Purchased Under the Program (in thousands)
January 1, 2016 – January 31, 2016	538,363	\$ 55.72	\$ 283,505
February 1, 2016 – February 29, 2016	—	\$ —	\$ 283,505
March 1, 2016 – March 31, 2016	409,113	\$ 48.89	\$ 263,505
Total for the three months ended March 31, 2016	<u>947,476</u>	\$ 52.77	\$ 263,505

**Item 5. Other Information**

**Explorer Class Newbuild Loan Agreement**

On March 30, 2016, Explorer II New Build, LLC, a wholly-owned subsidiary of Regent, entered into a loan facility with Crédit Agricole Corporate and Investment Bank, Société Générale, HSBC Bank plc and KfW IPEX-Bank GmbH, as Joint Mandated Lead Arrangers, and Crédit Agricole Corporate and Investment Bank, as Agent and Security Trustee, and the banks and financial institutions lenders party thereto, providing for borrowings of up to approximately \$498 million with a syndicate of financial institutions to finance 80% of the construction contract for an Explorer Class Ship and payment of the export credit insurance premium (the “Explorer Class Newbuild Loan Agreement”). The twelve-year fully amortizing loan requires semi-annual principal and interest payments commencing six months following the draw-down date or, if three-month interest periods are elected, quarterly principal and interest payments commencing three months following the draw-down date. Borrowings under the Explorer Class Newbuild Loan Agreement will bear interest, at the election of Explorer II New Build, LLC, at either (i) a fixed rate of 3.01% per year, or (ii) three month or six month LIBOR plus a margin of 1.75% per year. Explorer II New Build, LLC is required to pay various fees to the lenders under the Explorer Class Newbuild Loan Agreement, including a commitment fee on the maximum undrawn loan amount payable semi-annually beginning September 2016. Obligations under the Explorer Class Newbuild Loan Agreement are guaranteed by NCLC, and they are also 95% guaranteed to the lenders by the export credit agency. The Explorer Class Newbuild Loan Agreement contains financial covenants, including a requirement for NCLC to maintain a minimum liquidity balance at all times, a maximum total net funded debt to total capitalization ratio at all times, and certain other ratios. The Explorer Class Newbuild Loan Agreement also contains negative covenants that are customary for credit facilities of this type. Events of default include, among others, the failure to pay principal and interest when due, a material breach of representation or warranty, covenant defaults, events of bankruptcy and change of control. The equity interests of Explorer II New Build, LLC are, and the ship together with certain interests relating to the ship, when delivered, will be, pledged as collateral for the aforementioned debt.

**Item 6. Exhibits**

- 2.1 Agreement and Plan of Merger, dated as of September 2, 2014, by and among Prestige Cruises International, Inc., Norwegian Cruise Line Holdings Ltd., Portland Merger Sub, Inc. and Apollo Management, L.P. (incorporated herein by reference to Exhibit 2.1 to Norwegian Cruise Line Holdings Ltd.’s Form 8-K filed on September 4, 2014 (File No. 001-35784))
- 2.2 Amendment No. 1 to the Agreement and Plan of Merger, dated as of October 6, 2014, by and among Prestige Cruises International, Inc., Norwegian Cruise Line Holdings Ltd., Portland Merger Sub, Inc. and Apollo Management, L.P. (incorporated herein by reference to Exhibit 2.1 to Norwegian Cruise Line Holdings Ltd.’s Form 8-K filed on October 8, 2014 (File No. 001-35784))

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- 10.1\* Employment Agreement by and between Prestige Cruise Services, LLC and Robert Binder, entered into on October 26, 2015 #
- 10.2\* Addendum No. 5, dated March 16, 2016, to Shipbuilding Contract for Hull identified therein, as amended, by and among Meyer Werft GmbH & Co. KG, Breakaway Four, Ltd. and NCL Corporation Ltd. +
- 10.3\* Addendum No. 4, dated March 16, 2016, to Shipbuilding Contract for Hull identified therein, as amended, by and among Meyer Werft GmbH & Co. KG, Seahawk One, Ltd. and NCL Corporation Ltd. +
- 10.4\* Addendum No. 4, dated March 16, 2016, to Shipbuilding Contract for Hull identified therein, as amended, by and among Meyer Werft GmbH & Co. KG, Seahawk Two, Ltd. and NCL Corporation Ltd. +
- 10.5\* Amendment No. 10, dated March 31, 2016, to Office Lease Agreement, dated December 1, 2006, as amended, by and between SPUS7 Miami ACC, LP and NCL (Bahamas) Ltd. +
- 10.6\* Explorer Class Newbuild Loan Agreement, dated March 30, 2016, among Explorer II New Build, LLC, as borrower, the banks and financial institutions listed in Schedule 1 as lenders, Crédit Agricole Corporate and Investment Bank, Société Générale, HSBC Bank plc, KFW IPEX-Bank GmbH, as joint mandated lead arrangers and Crédit Agricole Corporate and Investment Bank as agent and security trustee +
- 10.7\* Guarantee relating to the Explorer Class Newbuild Loan Agreement, dated March 30, 2016, among NCL Corporation Ltd., as guarantor, and Crédit Agricole Corporate and Investment Bank as Security Trustee +
- 31.1\* Certification of the President and Chief Executive Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934
- 31.2\* Certification of the Executive Vice President and Chief Financial Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934
- 32.1\*\* Certifications of the President and Chief Executive Officer and the Executive Vice President and Chief Financial Officer pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934 and Section 1350 of Chapter 63 of Title 18 of the United States Code
- 101\* The following unaudited financial statements are from Norwegian Cruise Line Holdings Ltd.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2016, formatted in Extensible Business Reporting Language (XBRL), as follows:
- (i) the Consolidated Statements of Operations for the three months ended March 31, 2016 and 2015;
  - (ii) the Consolidated Statements of Comprehensive Income (Loss) for the three months ended March 31, 2016 and 2015;
  - (iii) the Consolidated Balance Sheets as of March 31, 2016 and December 31, 2015;
  - (iv) the Consolidated Statements of Cash Flows for the three months ended March 31, 2016 and 2015;
  - (v) the Consolidated Statements of Changes in Shareholders' Equity for the three months ended March 31, 2016 and 2015; and
  - (vi) the Notes to the Consolidated Financial Statements, tagged in summary and detail.
- \* Filed herewith.
- \*\* Furnished herewith.
- + Confidential treatment has been requested with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.
- # Management contract or compensatory plan.

**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.

NORWEGIAN CRUISE LINE HOLDINGS LTD.  
(Registrant)

By: /s/ FRANK J. DEL RIO  
Name: Frank J. Del Rio  
Title: President and Chief Executive Officer  
(Principal Executive Officer)

By: /s/ WENDY A. BECK  
Name: Wendy A. Beck  
Title: Executive Vice President and Chief Financial  
Officer  
(Principal Financial Officer)

Dated: May 10, 2016

**EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (this "Agreement") is made and entered into this 26<sup>th</sup> day of October 2015, by and between Prestige Cruise Services, LLC, a company organized under the laws of Delaware (the "Company"), and Robert Binder (the "Executive").

**RECITALS**

**THE PARTIES ENTER THIS AGREEMENT** on the basis of the following facts, understandings and intentions:

- A. The Company desires to offer the Executive the benefits set forth in this Agreement and provide for the services of the Executive on the terms and conditions set forth in this Agreement.
- B. The Executive desires to be employed by the Company on the terms and conditions set forth in this Agreement.
- C. This Agreement shall govern the employment relationship between the Executive and the Company and all of its affiliates from and after the date hereof, and supersedes and negates any previous agreements with respect to such relationship.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the above recitals incorporated herein and the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

**1. Retention and Duties.**

**1.1 Retention.** The Company does hereby agree to employ the Executive for the Period of Employment (as such term is defined in Section 2) on the terms and conditions expressly set forth in this Agreement. The Executive does hereby accept and agree to such employment, on the terms and conditions expressly set forth in this Agreement.

**1.2 Duties.** During the Period of Employment, the Executive shall serve the Company as its Vice Chairman, Oceania Cruises and Regent Seven Seas Cruises, and shall be appointed to such position on the first day of the Period of Employment. The Executive shall have duties and obligations generally consistent with that position as the Company may assign from time to time. The Executive shall comply with the corporate policies of the Company as they are in effect from time to time throughout the Period of Employment (including, without limitation, the Company's Code of Ethical Business Conduct policy, as it may change from time to time). During the Period of Employment, the Executive shall report directly to the President and Chief Executive Officer of the Company, or his/her

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designee. During the Period of Employment, the Executive shall perform services for Norwegian Cruise Line Holdings Ltd., a company organized under the laws of Bermuda (the "Parent"), and the Parent's other subsidiaries, but shall not be entitled to any additional compensation with respect to such services.

**1.3 No Other Employment; Minimum Time Commitment.** During the Period of Employment, the Executive shall (i) devote substantially all of the Executive's business time, energy and skill to the performance of the Executive's duties for the Company, (ii) perform such duties in a faithful, effective and efficient manner to the best of Executive's abilities, and (iii) hold no other employment. The Executive's service on the boards of directors (or similar body) of other business entities is subject to the approval of the Board of Directors of the Parent (the "Board"), provided that the Executive shall be permitted to serve on one board of directors (or similar bodies) during the Period of Employment, subject to the Company's rights to require the Executive's resignation pursuant to the following sentence. The Company shall have the right to require the Executive to resign from any board or similar body (including, without limitation, any association, corporate, civic or charitable board or similar body) which he may then serve if the Board reasonably determines that the Executive's service on such board or body materially interferes with the effective discharge of the Executive's duties and responsibilities or that any business related to such service is then in competition with any business of the Company or any of its Affiliates (as such term is defined in Section 5.5), successors or assigns.

**1.4 No Breach of Contract.** The Executive hereby represents to the Company that: (i) the execution and delivery of this Agreement by the Executive and the Company and the performance by the Executive of the Executive's duties hereunder do not and shall not constitute a breach of, conflict with, or otherwise contravene or cause a default under, the terms of any other agreement or policy to which the Executive is a party or otherwise bound or any judgment, order or decree to which the Executive is subject; (ii) that the Executive has no information (including, without limitation, confidential information and trade secrets) relating to any other Person (as such term is defined in Section 5.5) which would prevent, or be violated by, the Executive entering into this Agreement or carrying out Executive's duties hereunder; (iii) the Executive is not bound by any employment, consulting, non-compete, confidentiality, trade secret or similar agreement (other than this Agreement) with any other Person; and (iv) the Executive understands the Company will rely upon the accuracy and truth of the representations and warranties of the Executive set forth herein and the Executive consents to such reliance.

**1.5 Location.** During the Period of Employment, the Executive's principal place of employment shall be the Company's principal executive office as it may be located from time to time. The Executive agrees that he will be regularly present at the Company's principal executive office. The Executive acknowledges that he will be required to travel from time to time in the course of performing Executive's duties for the Company.

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2. **Period of Employment.** The "Period of Employment" shall be a period commencing on October 1, 2015 (the "Effective Date") and ending at the close of business on the first December 31st following the third anniversary of the Effective Date (the "Termination Date"); provided, however, that this Agreement shall be automatically renewed, and the Period of Employment shall be automatically extended for one (1) additional year on the Termination Date and each anniversary of the Termination Date thereafter, unless either party gives written notice at least sixty (60) days prior to the expiration of the Period of Employment (including any renewal thereof) of such party's desire to terminate the Period of Employment (such notice to be delivered in accordance with Section 18). The term "Period of Employment" shall include any extension thereof pursuant to the preceding sentence. Notwithstanding the foregoing, the Period of Employment is subject to earlier termination as provided below in this Agreement.

3. **Compensation.**

3.1 **Base Salary.** During the Period of Employment, the Company shall pay the Executive a base salary (the "Base Salary"), which shall be paid biweekly or in such other installments as shall be consistent with the Company's regular payroll practices in effect from time to time. The Executive's Base Salary shall be at an annualized rate of Five Hundred thousand dollars (\$500,000.00). The Compensation Committee of the Board (the "Compensation Committee") will review the Executive's rate of Base Salary on an annual basis and may, in its sole discretion, increase (but not decrease) the rate then in effect.

3.2 **Incentive Bonus.** Beginning with the 2015 fiscal year, the Executive shall be eligible to receive an incentive bonus for each fiscal year of the Company that occurs during the Period of Employment ("Incentive Bonus"); provided that, except as provided in Section 5.3, the Executive must be employed by the Company at the time the Company pays the Incentive Bonus with respect to any such fiscal year in order to be eligible for an Incentive Bonus with respect to that fiscal year (and, if the Executive is not so employed at such time, in no event shall he have been considered to have "earned" any Incentive Bonus with respect to the fiscal year in question). The Executive's actual Incentive Bonus amount for a particular fiscal year shall be determined by the Compensation Committee in its sole discretion, based on performance objectives (which may include corporate, business unit or division, financial, strategic, individual or other objectives) established with respect to that particular fiscal year by the Compensation Committee. Any Incentive Bonus becoming payable for a particular fiscal year shall be paid in the following fiscal year following the close of the audit and generally by March 31.

3.3 **Equity Award.** The Executive shall be eligible to participate in the Parent's 2013 Performance Incentive Plan (together with any successor equity incentive plan, the "Parent Equity Plan") and to receive grants of equity awards under the Parent Equity Plan as may be approved from time to time by the Compensation Committee in its sole discretion.

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4. **Benefits.**

4.1 **Retirement, Welfare and Fringe Benefits.** During the Period of Employment, the Executive shall be entitled to participate, on a basis generally consistent with other similarly situated executives, in all employee pension and welfare benefit plans and programs, all fringe benefit plans and programs and all other benefit plans and programs (including those providing for perquisites or similar benefits) that are made available by the Company to the Company's other similarly situated executives generally, in accordance with the eligibility and participation provisions of such plans and as such plans or programs may be in effect from time to time. The Executive's participation in the foregoing plans and programs is subject to the eligibility and participation provisions of such plans, and the Company's right to amend or terminate such plans from time to time in accordance with their terms.

4.2 **Medical Executive Reimbursement Plan.** During the Period of Employment, the Company will provide the Executive, and the Executive's spouse and dependent children, with a Medical Executive Reimbursement Plan (the "MERP"), subject to the terms and conditions of such plan.

4.3 **Company Travel.** During the Period of Employment, Executive's travel expenses will be reimbursed in accordance with the Employer's travel policy in effect at the time of travel. Executive shall be permitted to travel via first class service on regularly scheduled commercial aircraft for travel to California one time per month.

4.4 **Reimbursement of Business Expenses.** The Executive is authorized to incur reasonable expenses in carrying out the Executive's duties for the Company under this Agreement and shall be entitled to reimbursement for all reasonable business expenses the Executive incurs during the Period of Employment in connection with carrying out the Executive's duties for the Company, subject to the Company's expense reimbursement policies and any pre-approval policies in effect from time to time.

4.5 **Vacation and Other Leave.** During the Period of Employment, the Executive's annual rate of vacation accrual shall be five (5) weeks per year; provided that such vacation shall accrue on a bi-weekly basis in accordance with the Company's regular payroll cycle and be subject to the Company's vacation policies in effect from time to time. The Executive shall also be entitled to all other holiday and leave pay generally available to other similarly situated executives of the Company.

5. **Termination.**

5.1 **Termination by the Company.** The Executive's employment by the Company, and the Period of Employment, may be terminated at any time by the Company: (i) with Cause (as such term is defined in Section 5.5), or (ii) without

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Cause, or (iii) in the event of the Executive's death, or (iv) in the event that the Board determines in good faith that the Executive has a Disability (as such term is defined in Section 5.5).

**5.2 Termination by the Executive.** The Executive's employment by the Company, and the Period of Employment, may be terminated by the Executive with or without Good Reason (as such term is defined in Section 5.5) upon written notice to the Company (such notice to be delivered in accordance with Section 18).

**5.3 Benefits Upon Termination.** If the Executive's employment by the Company is terminated during the Period of Employment for any reason by the Company or by the Executive, or upon or following the expiration of the Period of Employment (in any case, the date that the Executive's employment by the Company terminates is referred to as the "Severance Date"), the Company shall have no further obligation to make or provide to the Executive, and the Executive shall have no further right to receive or obtain from the Company, any payments or benefits except as follows:

- (a) The Company shall pay the Executive (or, in the event of Executive's death, the Executive's estate) any Accrued Obligations (as such term is defined in Section 5.5);
  - (b) Unless the provisions of Section 5.3(c) below apply, if, during the Period of Employment, the Executive's employment with the Company is terminated (1) by the Company without Cause (and other than due to the Executive's death or in connection with a good faith determination by the Board that the Executive has a Disability), (2) by the Executive for Good Reason, or (3) as a result of the Company's provision of notice to the Executive that this Agreement shall not be extended or further extended, the Executive shall be entitled to the following benefits:
    - (i) The Company shall pay the Executive (in addition to the Accrued Obligations), subject to tax withholding and other authorized deductions, an amount equal to two times Executive's Base Salary at the annualized rate in effect on the Severance Date. Such amount is referred to hereinafter as the "Severance Benefit." Subject to Section 5.7(a), the Company shall pay the Severance Benefit to the Executive in substantially equal installments in accordance with the Company's standard payroll practices over a period of twelve (12) consecutive months, with the first installment payable in the month following the month in which the Executive's Separation from Service (as such term is defined in Section 5.5) occurs. (For purposes of clarity, each such installment shall equal the applicable fraction of the aggregate Severance Benefit.)
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- (ii) Subject to the Executive's continued payment of the same percentage of the applicable premiums as he was paying on the Severance Date, the Company will pay or reimburse the Executive for Executive's premiums charged to continue medical and dental coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), and the Executive shall also be entitled to continued participation in the MERP, at the same or reasonably equivalent medical coverage for the Executive (and, if applicable, the Executive's eligible dependents) as in effect immediately prior to the Severance Date, to the extent that the Executive elects such continued coverage (the "COBRA Benefit"); provided that the Company's obligation to make any payment or reimbursement pursuant to this clause (ii) shall, subject to Section 5.7(a), commence with continuation coverage for the month following the month in which the Executive's Separation from Service occurs and shall cease with continuation coverage for the eighteenth month following the month in which the Executive's Separation from Service occurs (or, if earlier, shall cease upon the first to occur of the Executive's death, the date the Executive becomes eligible for coverage under the health plan of a future employer, or the date the Company ceases to offer group medical coverage or the MERP to its active executive employees or the Company is otherwise under no obligation to offer COBRA continuation coverage to the Executive). To the extent the Executive elects COBRA coverage, he shall notify the Company in writing of such election prior to such coverage taking effect and complete any other continuation coverage enrollment procedures the Company may then have in place.
  - (iii) The Company shall pay the Executive, subject to tax withholding and other authorized deductions, a pro-rata portion of the Incentive Bonus for the fiscal year in which the Executive's employment terminates (the "Pro-Rata Bonus"). The Pro-Rata Bonus shall equal the Incentive Bonus for the fiscal year of termination multiplied by a fraction, the numerator of which is the number of days in the current fiscal year through the Severance Date and the denominator is 365. Any Pro-Rata Bonus that becomes payable will be paid if and when the Incentive Bonus for active employees is paid (following the completion of the audit in the following calendar year).
  - (c) If, during the Period of Employment and within three months prior to a Change in Control or twenty-four months following a Change in Control, the Executive's employment with the Company is terminated (1) by the Company without Cause (and other than due to the Executive's death or in connection with a good faith determination by the Board that the Executive has a Disability), or (2) by the Executive for Good Reason, or
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(3) as a result of the Company's provision of notice to the Executive that this Agreement shall not be extended or further extended, the Executive shall be entitled to the following benefits in lieu of the benefits described under Section 5.3(b):

- (i) The Company shall pay the Executive (in addition to the Accrued Obligations), subject to tax withholding and other authorized deductions, an amount equal to two times Executive's Base Salary at the annualized rate in effect on the Severance Date. Such amount is referred to hereinafter as the "Change in Control Severance Benefit." Subject to Section 5.7(a), the Company shall pay the Change in Control Severance Benefit to the Executive in substantially equal installments in accordance with the Company's standard payroll practices over a period of twelve (12) consecutive months, with the first installment payable in the month following the month in which the Executive's Separation from Service (as such term is defined in Section 5.5) occurs. (For purposes of clarity, each such installment shall equal the applicable fraction of the aggregate Change in Control Severance Benefit.)
  - (ii) The Company shall provide the COBRA Benefit described in Section 5.3(b)(ii) above on the terms and conditions specified in that section until the eighteenth month following the month in which the Executive's Separation from Service occurs.
  - (iii) The Company shall pay the Executive, subject to tax withholding and other authorized deductions, the Pro-Rata Bonus, as described in Section 5.3(b)(iii) above.
  - (iv) At the Severance Date, all then outstanding and unvested equity awards granted under the Parent Equity Plan or any predecessor equity incentive plan shall receive full accelerated vesting.
- (d) Notwithstanding the foregoing provisions of this Section 5.3, if the Executive breaches Executive's obligations under Section 6 of this Agreement at any time, from and after the date of such breach and not in any way in limitation of any right or remedy otherwise available to the Company, the Executive will no longer be entitled to, and the Company will no longer be obligated to pay, any remaining unpaid portion of the Severance Benefit or Change in Control Severance Benefit, the Pro-Rata Bonus, or the COBRA Benefit; provided that, if the Executive provides the release contemplated by Section 5.4, in no event shall the Executive be entitled to a Severance Benefit or Change in Control Severance Benefit payment of less than \$5,000, which amount the parties agree is good and adequate consideration, in and of itself, for the Executive's release contemplated by Section 5.4.
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- (e) The foregoing provisions of this Section 5.3 shall not affect: (i) the Executive's receipt of benefits otherwise due terminated employees under group insurance coverage consistent with the terms of the applicable Company welfare benefit plan; or (ii) the Executive's rights under COBRA to continue participation in medical, dental, hospitalization and life insurance coverage.

**5.4**     **Release:**            **Exclusive**  
**Remedy.**

- (a) This Section 5.4 shall apply notwithstanding anything else contained in this Agreement or any stock option or other equity-based award agreement to the contrary. As a condition precedent to any Company obligation to the Executive pursuant to Sections 5.3(b) or (c), the Executive shall, upon or promptly following his or her last day of employment with the Company (and in any event within twenty-one (21) days following the Executive's last day of employment), execute a general release agreement in substantially the form of Exhibit A (with such amendments that may be necessary to ensure the release is enforceable to the fullest extent permissible under then applicable law), and such release agreement shall have not been revoked by the Executive pursuant to any revocation rights afforded by applicable law.
- (b) The Executive agrees that the payments and benefits contemplated by Section 5.3 (and any applicable acceleration of vesting of an equity-based award in accordance with the terms of such award in connection with the termination of the Executive's employment) shall constitute the exclusive and sole remedy for any termination of Executive's employment and the Executive covenants not to assert or pursue any other remedies, at law or in equity, with respect to any termination of employment. The Company and the Executive acknowledge and agree that there is no duty of the Executive to mitigate damages under this Agreement. All amounts paid to the Executive pursuant to Section 5.3 shall be paid without regard to whether the Executive has taken or takes actions to mitigate damages. The Executive agrees to resign, on the Severance Date, as an officer and director of the Company and any Affiliate of the Company, and as a fiduciary of any benefit plan of the Company or any Affiliate of the Company, and to promptly execute and provide to the Company any further documentation, as requested by the Company, to confirm such resignation.

**5.5**     **Certain**            **Defined**  
**Terms.**

- (a) As used herein, "Accrued Obligations" means:
    - (i) any Base Salary that had accrued but had not been paid on or before the Severance Date (including accrued and unpaid vacation time to the extent that the Executive is entitled to accrued vacation
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in accordance with the Company's policy in effect at the applicable time); and (ii) any reimbursement due to the Executive pursuant to Section 4.4 for expenses reasonably incurred by the Executive on or before the Severance Date and documented and pre-approved, to the extent applicable, in accordance with the Company's expense reimbursement policies in effect at the applicable time.

- (b) As used herein, "Affiliate" of the Company means a Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company. As used in this definition, the term "control," including the correlative terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or any partnership or other ownership interest, by contract or otherwise) of a Person. For purposes of clarity and without limiting the generality of the foregoing, the term "Affiliate" includes any Person that meets the definition of "Affiliate" and is, directly or indirectly through any other Person, engaged in the Business (as such term is defined in Section 6.2) if that Person is controlled by Apollo Global Management, LLC or any of its affiliated funds or Genting HK and its affiliates. However, any Person that would not otherwise be an Affiliate of the Company but for its ownership by Apollo Global Management, LLC or its affiliated funds shall not be considered an Affiliate if such Person is not, directly or indirectly through any other Person, engaged in the Business (as such term is defined in Section 6.2).
- (c) As used herein, "Cause" shall mean, as reasonably determined by the Chief Executive Officer based on the information then known to him, that one or more of the following has occurred:
- (i) the Executive has committed a felony (under the laws of the United States or any relevant state, or a similar crime or offense under the applicable laws of any relevant foreign jurisdiction), other than through vicarious liability not related to the Company or any of its Affiliates;
  - (ii) the Executive has engaged in acts of fraud, dishonesty or other acts of willful misconduct;
  - (iii) the Executive willfully fails to perform or uphold Executive's duties under this Agreement and/or willfully fails to comply with reasonable directives of the Board and/or Chief Executive Officer, in either case after there has been delivered to the Executive a written demand for performance from the Company and the Executive fails to remedy such condition(s) within ten (10) days of receiving such written notice thereof; or
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- (iv) any breach by the Executive of the provisions of Section 6, or any material breach by the Executive of any other contract he is a party to with the Company or any of its Affiliates.
  - (d) As used herein, "Change in Control" shall mean the following:
    - (i) The consummation by the Parent of a merger, consolidation, reorganization, or business combination, other than a transaction:
      - (A) Which results in the Parent's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Parent or the Person that, as a result of the transaction, controls, directly or indirectly, the Parent or owns, directly or indirectly, all or substantially all of the Parent's assets or otherwise succeeds to the business of the Parent (the Parent or such person, the "Successor Entity") directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and;
      - (B) After which no person or group (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) beneficially owns (within the meaning of Rule 13d-3 under the Exchange Act) voting securities representing 50% or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this Section 5.5(d)(i)(B) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Parent prior to the consummation of the transaction; or
    - (ii) A sale or other disposition of all or substantially all of the Parent's assets in any single transaction or series of related transactions; or
    - (iii) A transaction or series of transactions (other than an offering of stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any person or group (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act) (other than the Parent, any of its subsidiaries, an employee benefit plan maintained by the Parent or any of its subsidiaries or a person or group that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Parent) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3
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under the Exchange Act) of securities of the Parent and immediately after such acquisition possesses more than 50% of the total combined voting power of the Parent's securities outstanding immediately after such acquisition; or

- (iv) Individuals who, on the Effective Date, constitute the Board together with any new director(s) whose election by the Board was not in connection with an actual or threatened proxy contest, cease for any reason to constitute a majority thereof.
  - (e) As used herein, "Disability" shall mean a physical or mental impairment which, as reasonably determined by the Board, renders the Executive unable to perform the essential functions of Executive's employment with the Company, even with reasonable accommodation that does not impose an undue hardship on the Company, for more than 90 days in any 180-day period, unless a longer period is required by federal or state law, in which case that longer period would apply.
  - (f) As used herein, "Good Reason" shall mean that the Executive has complied with the "Good Reason Process" following the occurrence of any of the following events (referred to individually as a "Good Reason Event" and collectively as "Good Reason Events"): (A) any substantial adverse change, not consented to by the Executive in a writing signed by the Executive, in the nature or scope of the Executive's responsibilities, authorities, powers, functions, or duties; (B) an involuntary reduction in the Executive's Base Salary; (C) a breach by the Company of any of its material obligations under this Agreement; or (D) the requirement that the Executive be relocated from the Company's primary offices at which the Executive is principally employed to a location more than sixty (60) miles from the Company's current principal offices, or the requirement by the Company for the Executive to be based anywhere other than the Company's principal offices at such current location (or more than sixty (60) miles therefrom) on an extended basis, except for required travel on the Company's business to an extent substantially consistent with the Executive's current business travel obligations.
  - (g) As used herein, "Good Reason Process" shall mean that (i) the Executive reasonably determines in good faith that a Good Reason Event has occurred; (ii) the Executive notifies the Company in writing (such notice to be delivered in accordance with Section 18) of the occurrence of the Good Reason Event within 10 days thereof and the Executive's intent to terminate employment as a result thereof; and (iii) one or more of the Good Reason Events continues to exist for a period of more than thirty (30) days following such notice and has not been modified or cured in a manner acceptable to the Executive, in which case the Executive's employment shall automatically terminate on the thirty-first (31<sup>st</sup>) day after the date such notice is given.
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- (h) As used herein, the term “Person” shall be construed broadly and shall include, without limitation, an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.
- (i) As used herein, a “Separation from Service” occurs when the Executive dies, retires, or otherwise has a termination of employment with the Company that constitutes a “separation from service” within the meaning of Treasury Regulation Section 1.409A-1(h)(1), without regard to the optional alternative definitions available thereunder.

**5.6 Notice of Termination.** Any termination of the Executive’s employment under this Agreement shall be communicated by written notice of termination from the terminating party to the other party. This notice of termination must be delivered in accordance with Section 18 and must indicate the specific provision(s) of this Agreement relied upon in effecting the termination and the basis of any termination by the Company for Cause or by the Executive for Good Reason.

**5.7 Section 409A.**

- (a) If the Executive is a “specified employee” within the meaning of Treasury Regulation Section 1.409A-1(i) as of the date of the Executive’s Separation from Service, the Executive shall not be entitled to any payment or benefit pursuant to Sections 5.3(b) or (c) until the earlier of (i) the date which is six (6) months after Executive’s Separation from Service for any reason other than death, or (ii) the date of the Executive’s death. The provisions of this paragraph shall only apply if, and to the extent, required to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the Code. For purposes of clarity, the six (6) month delay shall not apply in the case of any short-term deferral as contemplated by Treasury Regulation Section 1.409A-1(b)(4) or severance pay contemplated by Treasury Regulation Section 1.409A-1(b)(9)(iii) to the extent of the limits set forth therein. Any amounts otherwise payable to the Executive upon or in the six (6) month period following the Executive’s Separation from Service that are not so paid by reason of this Section 5.7(a) shall be paid (without interest) as soon as practicable (and in all events within thirty (30) days) after the date that is six (6) months after the Executive’s Separation from Service (or, if earlier, as soon as practicable, and in all events within thirty (30) days, after the date of the Executive’s death).
  - (b) To the extent that any benefits pursuant to Sections 5.3(b)(ii) or (c)(ii) or reimbursements pursuant to Section 4 are taxable to the Executive, any reimbursement payment due to the Executive pursuant to any such provision shall be paid to the Executive on or before the last day of the
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Executive's taxable year following the taxable year in which the related expense was incurred. The benefits and reimbursements pursuant to Sections 5.3(b)(ii) and (c)(ii) and Section 4 are not subject to liquidation or exchange for another benefit and the amount of such benefits and reimbursements that the Executive receives in one taxable year shall not affect the amount of such benefits or reimbursements that the Executive receives in any other taxable year.

- (c) Any installment payments provided for in this Agreement shall be treated as separate payments for purposes of Section 409A of the Code. To the extent required to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the Code, the definition of Change in Control will be interpreted to mean a change in the ownership, effective control or ownership of a substantial portion of assets of Parent within the meaning of Section 409A of the Code. This Agreement is intended to comply with the requirements of Section 409A of the Code and shall be interpreted consistent with this intent so as to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the Code.

**5.8 Possible Limitation of Benefits in Connection with a Change in Control.** Notwithstanding anything contained in this Agreement to the contrary, if following a change in ownership or effective control or in the ownership of a substantial portion of assets (in each case, within the meaning of Section 280G of the Code), the tax imposed by Section 4999 of the Code or any similar or successor tax (the "Excise Tax") applies to any payments, benefits and/or amounts received by the Executive pursuant to this Agreement or otherwise, including, without limitation, any acceleration of the vesting of outstanding stock options or other equity awards (collectively, the "Total Payments"), then the Total Payments shall be reduced (but not below zero) so that the maximum amount of the Total Payments (after reduction) shall be one dollar (\$1.00) less than the amount which would cause the Total Payments to be subject to the Excise Tax; provided that such reduction to the Total Payments shall be made only if the total after-tax benefit to the Executive is greater after giving effect to such reduction than if no such reduction had been made. If such a reduction is required, the Company shall reduce or eliminate the Total Payments by first reducing or eliminating any cash payments under this Agreement, then by reducing or eliminating any accelerated vesting of stock options, then by reducing or eliminating any accelerated vesting of other equity awards, then by reducing or eliminating any other remaining Total Payments, in each case in reverse order beginning with the payments which are to be paid the farthest in time from the date of the transaction triggering the Excise Tax. The provisions of this Section 5.8 shall take precedence over the provisions of any other plan, arrangement or agreement governing the Executive's rights and entitlements to any benefits or compensation.

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6. **Protective Covenants.**

6.1 **Confidential Information; Inventions**

- (a) The Executive shall not disclose or use at any time, either during the Period of Employment or thereafter, any Confidential Information (as defined below) of which the Executive is or becomes aware, whether or not such information is developed by Executive, except to the extent that such disclosure or use is directly related to and required by the Executive's performance in good faith of duties for the Company. The Executive will take all appropriate steps to safeguard Confidential Information in Executive's possession and to protect it against disclosure, misuse, espionage, loss and theft. The Executive shall deliver to the Company at the termination of the Period of Employment, or at any time the Company may request, all memoranda, notes, plans, records, reports, computer tapes and software and other documents and data (and copies thereof) relating to the Confidential Information or the Work Product (as hereinafter defined) of the business of the Company or any of its Affiliates which the Executive may then possess or have under Executive's control. Notwithstanding the foregoing, the Executive may truthfully respond to a lawful and valid subpoena or other legal process, but shall give the Company the earliest possible notice thereof, shall, as much in advance of the return date as possible, make available to the Company and its counsel the documents and other information sought, and shall assist the Company and such counsel in resisting or otherwise responding to such process. Nothing in this Agreement prohibits Executive from reporting possible violations of federal law or regulation to any governmental agency or entity, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. Executive does not need the prior authorization to make any such reports or disclosures and is not required to notify the Employer of such reports or disclosures.
- (b) As used in this Agreement, the term "Confidential Information" means information that is not generally known to the public and that is used, developed or obtained by the Company or its Affiliates in connection with their businesses, including, but not limited to, information, observations and data obtained by the Executive while employed by the Company or any predecessors thereof (including those obtained prior to the Effective Date) concerning (i) the business or affairs of the Company (or such predecessors), (ii) products or services, (iii) fees, costs and pricing structures, (iv) designs, (v) analyses, (vi) drawings, photographs and reports, (vii) computer software, including operating systems, applications and program listings, (viii) flow charts, manuals and documentation, (ix) data bases, (x) accounting and business methods, (xi) inventions, devices, new developments, methods and processes, whether patentable or unpatentable and whether or not reduced to practice, (xii) customers and clients and customer or client lists, (xiii) other copyrightable works, (xiv) all production methods, processes, technology and trade secrets, and (xv) all similar and related information in whatever form. Confidential
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Information will not include any information that has been published (other than a disclosure by the Executive in breach of this Agreement) in a form generally available to the public prior to the date the Executive proposes to disclose or use such information. Confidential Information will not be deemed to have been published merely because individual portions of the information have been separately published, but only if all material features comprising such information have been published in combination.

- (c) As used in this Agreement, the term "Work Product" means all inventions, innovations, improvements, technical information, systems, software developments, methods, designs, analyses, drawings, reports, service marks, trademarks, trade names, logos and all similar or related information (whether patentable or unpatentable, copyrightable, registerable as a trademark, reduced to writing, or otherwise) which relates to the Company's or any of its Affiliates' actual or anticipated business, research and development or existing or future products or services and which are conceived, developed or made by the Executive (whether or not during usual business hours, whether or not by the use of the facilities of the Company or any of its Affiliates, and whether or not alone or in conjunction with any other person) while employed by the Company (including those conceived, developed or made prior to the Effective Date) together with all patent applications, letters patent, trademark, trade name and service mark applications or registrations, copyrights and reissues thereof that may be granted for or upon any of the foregoing. All Work Product that the Executive may have discovered, invented or originated during Executive's employment by the Company or any of its Affiliates prior to the Effective Date or that she may discover, invent or originate during the Period of Employment or at any time prior to the Severance Date, shall be the exclusive property of the Company and its Affiliates, as applicable, and Executive hereby assigns all of Executive's right, title and interest in and to such Work Product to the Company or its applicable Affiliate, including all intellectual property rights therein. Executive shall promptly disclose all Work Product to the Company, shall execute at the request of the Company any assignments or other documents the Company may deem necessary to protect or perfect its (or any of its Affiliates', as applicable) rights therein, and shall assist the Company, at the Company's expense, in obtaining, defending and enforcing the Company's (or any of its Affiliates', as applicable) rights therein. The Executive hereby appoints the Company as Executive's attorney-in-fact to execute on Executive's behalf any assignments or other documents deemed necessary by the Company to protect or perfect the Company's (and any of its Affiliates', as applicable) rights to any Work Product.

**6.2** Restriction on Competition. The Executive acknowledges that, in the course of Executive's employment with the Company and/or its Affiliates, he has become familiar, or will become familiar, with the Company's and its Affiliates'

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and their predecessors' trade secrets and with other Confidential Information concerning the Company, its Affiliates and their respective predecessors and that Executive's services have been and will be of special, unique and extraordinary value to the Company and its Affiliates. The Executive agrees that if the Executive were to become employed by, or substantially involved in, the business of a competitor of the Company or any of its Affiliates following the Severance Date, it would be very difficult for the Executive not to rely on or use the Company's and its Affiliates' trade secrets and Confidential Information. Thus, to avoid the inevitable disclosure of the Company's and its Affiliates' trade secrets and Confidential Information, and to protect such trade secrets and Confidential Information and the Company's and its Affiliates' relationships and goodwill with customers, during the Period of Employment and for a period of twenty-four months after the Severance Date, the Executive will not directly or indirectly through any other Person engage in, enter the employ of, render any services to, have any ownership interest in, nor participate in the financing, operation, management or control of, any Competing Business. For purposes of this Agreement, the phrase "directly or indirectly through any other Person engage in" shall include, without limitation, any direct or indirect ownership or profit participation interest in such enterprise, whether as an owner, stockholder, member, partner, joint venturer or otherwise, and shall include any direct or indirect participation in such enterprise as an employee, consultant, director, officer, licensor of technology or otherwise. For purposes of this Agreement, "Competing Business" means a Person anywhere in the continental United States and elsewhere in the world where the Company and its Affiliates engage in business, or reasonably anticipate engaging in business, on the Severance Date (the "Restricted Area") that at any time during the Period of Employment has competed, or at any time during the twelve month period following the Severance Date competes, with the Company or any of its Affiliates in the passenger cruise ship industry (the "Business"). Nothing herein shall prohibit the Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as the Executive has no active participation in the business of such corporation. Notwithstanding the foregoing, the Executive and the Company may agree that the Company shall waive all or a portion of the non-competition restrictions provided for in this Section 6.2 in exchange for the Executive's agreement to forfeit all or a portion of the Severance Benefit payable under Section 5.3(b) or the Change in Control Severance Benefit payable under Section 5.3(c). Any such agreement between the Executive and the Company shall be documented in the general release agreement provided for in Section 5.4 or in such other written agreement between the Executive and the Company determined by the Company.

**6.3 Non-Solicitation of Employees and Consultants** During the Period of Employment and for a period of twenty-four months after the Severance Date, the Executive will not directly or indirectly through any other Person (i) induce or attempt to induce any employee or independent contractor of the Company or any Affiliate of the Company to leave the employ or service, as applicable, of the Company or such Affiliate, or in any way interfere with the relationship between

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the Company or any such Affiliate, on the one hand, and any employee or independent contractor thereof, on the other hand, or (ii) hire any person who was an employee of the Company or any Affiliate of the Company until twelve months after such individual's employment relationship with the Company or such Affiliate has been terminated.

**6.4 Non-Solicitation of Customers.** During the Period of Employment and for a period of twenty-four months after the Severance Date, the Executive will not directly or indirectly through any other Person influence or attempt to influence customers, vendors, suppliers, licensors, lessors, joint venturers, associates, consultants, agents, or partners of the Company or any Affiliate of the Company to divert their business away from the Company or such Affiliate, and the Executive will not otherwise interfere with, disrupt or attempt to disrupt the business relationships, contractual or otherwise, between the Company or any Affiliate of the Company, on the one hand, and any of its or their customers, suppliers, vendors, lessors, licensors, joint venturers, associates, officers, employees, consultants, managers, partners, members or investors, on the other hand.

**6.5 Understanding of Covenants.** The Executive represents that he (i) is familiar with and has carefully considered the foregoing covenants set forth in this Section 6 (together, the "Restrictive Covenants"), (ii) is fully aware of Executive's obligations hereunder, (iii) agrees to the reasonableness of the length of time, scope and geographic coverage, as applicable, of the Restrictive Covenants, (iv) agrees that the Company and its Affiliates currently conduct business throughout the continental United States and the rest of the world, (v) agrees that the Restrictive Covenants are necessary to protect the Company's and its Affiliates' confidential and proprietary information, good will, stable workforce, and customer relations, and (vi) agrees that the Restrictive Covenants will continue in effect for the applicable periods set forth above in this Section 6 regardless of whether the Executive is then entitled to receive severance pay or benefits from the Company. The Executive understands that the Restrictive Covenants may limit Executive's ability to earn a livelihood in a business similar to the Business of the Company and any of its Affiliates, but he nevertheless believes that he has received and will receive sufficient consideration and other benefits as an employee of the Company and as otherwise provided hereunder or as described in the recitals hereto to clearly justify such restrictions which, in any event (given Executive's education, skills and ability), the Executive does not believe would prevent Executive from otherwise earning a living. The Executive agrees that the Restrictive Covenants do not confer a benefit upon the Company disproportionate to the detriment of the Executive.

**6.6 Enforcement.** The Executive agrees that the Executive's services are unique and that he has access to Confidential Information and Work Product. Accordingly, without limiting the generality of Section 17, the Executive agrees that a breach by the Executive of any of the covenants in this Section 6 would cause immediate and irreparable harm to the Company that would be difficult or

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impossible to measure, and that damages to the Company for any such injury would therefore be an inadequate remedy for any such breach. Therefore, the Executive agrees that in the event of any breach or threatened breach of any provision of this Section 6, the Company shall be entitled, in addition to and without limitation upon all other remedies the Company may have under this Agreement, at law or otherwise, to obtain specific performance, injunctive relief and/or other appropriate relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Section 6. The Executive further agrees that the applicable period of time any Restrictive Covenant is in effect following the Severance Date, as determined pursuant to the foregoing provisions of this Section 6, shall be extended by the same amount of time that Executive is in breach of any Restrictive Covenant.

7. **Withholding Taxes.** Notwithstanding anything else herein to the contrary, the Company may withhold (or cause there to be withheld, as the case may be) from any amounts otherwise due or payable under or pursuant to this Agreement such federal, state and local income, employment, or other taxes as may be required to be withheld pursuant to any applicable law or regulation.

8. **Successors and Assigns.**

- (a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.
- (b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Without limiting the generality of the preceding sentence, the Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor or assignee, as applicable, which assumes and agrees to perform this Agreement by operation of law or otherwise.

9. **Number and Gender: Examples** Where the context requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all other genders. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates.

10. **Section Headings.** The section headings of, and titles of paragraphs and subparagraphs contained in, this Agreement are for the purpose of convenience only, and they

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neither form a part of this Agreement nor are they to be used in the construction or interpretation thereof.

**11. Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF FLORIDA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF FLORIDA TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, THE INTERNAL LAW OF THE STATE OF FLORIDA WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT, EVEN IF UNDER SUCH JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

**12. Severability.** It is the desire and intent of the parties hereto that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable under any present or future law, and if the rights and obligations of any party under this Agreement will not be materially and adversely affected thereby, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction, and to this end the provisions of this Agreement are declared to be severable; furthermore, in lieu of such invalid or unenforceable provision there will be added automatically as a part of this Agreement, a legal, valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible. Notwithstanding the foregoing, if such provision could be more narrowly drawn (as to geographic scope, period of duration or otherwise) so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**13. Entire Agreement; Legal Effect.** This Agreement embodies the entire agreement of the parties hereto respecting the matters within its scope. This Agreement supersedes all prior and contemporaneous agreements of the parties hereto that directly or indirectly bear upon the subject matter hereof. Any prior negotiations, correspondence, agreements, proposals or understandings relating to the subject matter hereof shall be deemed to have been merged into this Agreement, and to the extent inconsistent herewith, such negotiations, correspondence, agreements, proposals, or understandings shall be deemed to be of no force or effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as expressly set forth herein.

**14. Modifications.** This Agreement may not be amended, modified or changed (in whole or in part), except by a formal, definitive written agreement expressly referring to this Agreement, which agreement is executed by both of the parties hereto.

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**15. Waiver.** Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

**16. Waiver of Jury Trial.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**17. Remedies.** Each of the parties to this Agreement and any such person or entity granted rights hereunder whether or not such person or entity is a signatory hereto shall be entitled to enforce its rights under this Agreement specifically to recover damages and costs for any breach of any provision of this Agreement and to exercise all other rights existing in its favor. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that each party may in its sole discretion apply to any court of law or equity of competent jurisdiction for specific performance, injunctive relief and/or other appropriate equitable relief (without posting any bond or deposit) in order to enforce or prevent any violations of the provisions of this Agreement. Each party shall be responsible for paying its own attorneys' fees, costs and other expenses pertaining to any such legal proceeding and enforcement regardless of whether an award or finding or any judgment or verdict thereon is entered against either party.

**18. Notices.** Any notice provided for in this Agreement must be in writing and must be either personally delivered, transmitted via telecopier, mailed by first class mail (postage prepaid and return receipt requested) or sent by reputable overnight courier service (charges prepaid) to the recipient at the address below indicated or at such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Notices will be deemed to have been given hereunder and received when delivered personally, when received if transmitted via telecopier, five days after deposit in the U.S. mail and one day after deposit with a reputable overnight courier service.

if to the Company:

Prestige Cruise Services, LLC  
8300 NW 33<sup>rd</sup> Street  
Miami, FL 33122  
Facsimile: (305) 436-4101  
Attn: Senior Vice President, Corporate Human Resources

with a copy to:

Prestige Cruise Services, LLC  
8300 NW 33<sup>rd</sup> Street

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Miami, FL 33122  
Facsimile: (305) 436-4101  
Attn: Senior Vice President and General Counsel

if to the Executive, to the address most recently on file in the payroll records of the Company.

**19. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. Photographic or other electronic copies of such signed counterparts may be used in lieu of the originals for any purpose.

**20. Legal Counsel; Mutual Drafting.** Each party recognizes that this is a legally binding contract and acknowledges and agrees that they have had the opportunity to consult with legal counsel of their choice. Each party has cooperated in the drafting, negotiation and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against either party on the basis of that party being the drafter of such language. The Executive agrees and acknowledges that he has read and understands this Agreement, is entering into it freely and voluntarily, and has been advised to seek counsel prior to entering into this Agreement and has had ample opportunity to do so.

**21. Clawback.** All bonuses and equity awards granted under this Agreement, the Parent Equity Plan or any other incentive plan are subject to the terms of the Company's or Parent's recoupment, clawback or similar policy as it may be in effect from time to time, as well as any similar provisions of applicable law, any of which could in certain circumstances require repayment or forfeiture of bonuses or awards or any shares or other cash or property received with respect to the bonuses or awards (including any value received from a disposition of the shares acquired upon payment of the bonuses or equity awards).

*(Signature Page to Follow)*

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IN WITNESS WHEREOF, the Company and the Executive have executed this Agreement as of the date hereof.

**“COMPANY”**

Prestige Cruise Services, LLC  
a company organized under the laws of Delaware

By: /s/ Frank J. Del Rio  
Name: Frank J. Del Rio  
Title: President and Chief Executive Officer

**“EXECUTIVE”**

/s/ Robert Binder  
Robert Binder

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**FORM OF RELEASE AGREEMENT**

This Release Agreement (this "Release Agreement") is entered into this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by and between [ \_\_\_\_\_ ], an individual (Executive), and Prestige Cruise Services, LLC. , a company organized under the laws of Delaware (the "Company").

**WHEREAS**, Executive has been employed by the Company or one of its subsidiaries; and

**WHEREAS**, Executive's employment by the Company or one of its subsidiaries has terminated and, in connection with the Executive's Employment Agreement with the Company, dated as of [ \_\_\_\_\_ ] (the "Employment Agreement"), the Company and Executive desire to enter into this Release Agreement upon the terms set forth herein;

**NOW, THEREFORE**, in consideration of the covenants undertaken and the releases contained in this Release Agreement, and in consideration of the obligations of the Company to pay severance and other benefits (conditioned upon this Release Agreement) under and pursuant to the Employment Agreement, Executive and the Company agree as follows:

1. Termination of Employment. Executive's employment with the Company terminated on [ \_\_\_\_\_, \_\_\_\_\_ ] (the "Separation Date"). Executive waives any right or claim to reinstatement as an employee of the Company and each of its affiliates. Executive hereby confirms that Executive does not hold any position as an officer, director or employee with the Company and each of its affiliates. Executive acknowledges and agrees that Executive has received all amounts owed for Executive's regular and usual salary (including, but not limited to, any overtime, bonus, accrued vacation, commissions, or other wages), reimbursement of expenses, sick pay and usual benefits.

2. Release. Executive, on behalf of Executive, Executive's descendants, dependents, heirs, executors, administrators, assigns, and successors, and each of them, hereby covenants not to sue and fully releases and discharges the Company and each of its parents, subsidiaries and affiliates, past and present, as well as its and their trustees, directors, officers, members, managers, partners, agents, attorneys, insurers, employees, stockholders, representatives, assigns, and successors, past and present, and each of them, hereinafter together and collectively referred to as the "Releasees," with respect to and from any and all claims, wages, demands, rights, liens, agreements or contracts (written or oral), covenants, actions, suits, causes of action, obligations, debts, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden (each, a "Claim"), which he now owns or holds or he has at any time heretofore owned or held or may in the future hold as against any of said Releasees (including, without limitation, any Claim arising out of or in any way connected with Executive's service as an officer, director, employee, member or manager of any Releasee, Executive's separation from Executive's position as an officer, director, employee, manager and/or member, as applicable, of any Releasee, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatever), whether known or unknown, suspected or

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unsuspected, resulting from any act or omission by or on the part of said Releasees, or any of them, committed or omitted prior to the date of this Release Agreement including, without limiting the generality of the foregoing, any Claim under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, the Family and Medical Leave Act of 1993, or any other federal, state or local law, regulation, or ordinance, or any Claim for severance pay, equity compensation, bonus, sick leave, holiday pay, vacation pay, life insurance, health or medical insurance or any other fringe benefit, workers' compensation or disability (the "Release"); provided, however, that the foregoing Release does not apply to any obligation of the Company to Executive pursuant to any of the following: (1) any equity-based awards previously granted by the Company or its affiliates to Executive, to the extent that such awards continue after the termination of Executive's employment with the Company in accordance with the applicable terms of such awards (and subject to any limited period in which to exercise such awards following such termination of employment); (2) any right to indemnification that Executive may have pursuant to the Bylaws of the Company, its Articles of Incorporation or under any written indemnification agreement with the Company (or any corresponding provision of any subsidiary or affiliate of the Company) or applicable state law with respect to any loss, damages or expenses (including but not limited to attorneys' fees to the extent otherwise provided) that Executive may in the future incur with respect to Executive's service as an employee, officer or director of the Company or any of its subsidiaries or affiliates; (3) with respect to any rights that Executive may have to insurance coverage for such losses, damages or expenses under any Company (or subsidiary or affiliate) directors and officers liability insurance policy; (4) any rights to continued medical or dental coverage that Executive may have under COBRA (or similar applicable state law); (5) any rights to the severance and other benefits payable under Section 5.3 of the Employment Agreement in accordance with the terms of the Employment Agreement; or (6) any rights to payment of benefits that Executive may have under a retirement plan sponsored or maintained by the Company or its affiliates that is intended to qualify under Section 401(a) of the Internal Revenue Code of 1986, as amended. In addition, this Release does not cover any Claim that cannot be so released as a matter of applicable law. Executive acknowledges and agrees that he has received any and all leave and other benefits that she has been and is entitled to pursuant to the Family and Medical Leave Act of 1993.

3. ADEA Waiver. Executive expressly acknowledges and agrees that by entering into this Release Agreement, Executive is waiving any and all rights or Claims that he may have arising under the Age Discrimination in Employment Act of 1967, as amended (the "ADEA"), which have arisen on or before the date of execution of this Release Agreement. Executive further expressly acknowledges and agrees that:

- A. In return for this Release Agreement, the Executive will receive consideration beyond that which the Executive was already entitled to receive before entering into this Release Agreement;
  - B. Executive is hereby advised in writing by this Release Agreement to consult with an attorney before signing this Release Agreement;
  - C. Executive has voluntarily chosen to enter into this Release Agreement and has not been forced or pressured in any way to sign it;
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D. Executive was given a copy of this Release Agreement on [\_\_\_\_\_, 20\_\_] and informed that he had twenty one (21) days within which to consider this Release Agreement and that if he wished to execute this Release Agreement prior to expiration of such 21-day period, he should execute the Endorsement attached hereto;

E. Executive was informed that he had seven (7) days following the date of execution of this Release Agreement in which to revoke this Release Agreement, and this Release Agreement will become null and void if Executive elects revocation during that time. Any revocation must be in writing and must be received by the Company during the seven-day revocation period. In the event that Executive exercises Executive's right of revocation, neither the Company nor Executive will have any obligations under this Release Agreement;

F. Nothing in this Release Agreement prevents or precludes Executive from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs from doing so, unless specifically authorized by federal law.

4. Non-Disparagement. Executive agrees not to make, directly or indirectly, whether verbal or in writing, any damaging or disparaging statements, representations or remarks about or concerning Employer or any of the Released Parties.

5. No Transferred Claims. Executive warrants and represents that the Executive has not heretofore assigned or transferred to any person not a party to this Release Agreement any released matter or any part or portion thereof and she shall defend, indemnify and hold the Company and each of its affiliates harmless from and against any claim (including the payment of attorneys' fees and costs actually incurred whether or not litigation is commenced) based on or in connection with or arising out of any such assignment or transfer made, purported or claimed.

6. Severability. It is the desire and intent of the parties hereto that the provisions of this Release Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Release Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable under any present or future law, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Release Agreement or affecting the validity or enforceability of such provision in any other jurisdiction; furthermore, in lieu of such invalid or unenforceable provision there will be added automatically as a part of this Release Agreement, a legal, valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Release Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

7. Counterparts. This Release Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the

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same agreement. This Release Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. Photographic or other electronic copies of such signed counterparts may be used in lieu of the originals for any purpose.

8. Successors. This Release Agreement is personal to Executive and shall not, without the prior written consent of the Company, be assignable by Executive. This Release Agreement shall inure to the benefit of and be binding upon the Company and its respective successors and assigns and any such successor or assignee shall be deemed substituted for the Company under the terms of this Release Agreement for all purposes. As used herein, "successor" and "assignee" shall include any person, firm, corporation or other business entity which at any time, whether by purchase, merger, acquisition of assets, or otherwise, directly or indirectly acquires the ownership of the Company, acquires all or substantially all of the Company's assets, or to which the Company assigns this Release Agreement by operation of law or otherwise.

9. Governing Law. THIS RELEASE AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH UNITED STATES FEDERAL LAW AND, TO THE EXTENT NOT PREEMPTED BY UNITED STATES FEDERAL LAW, THE LAWS OF THE STATE OF FLORIDA, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF FLORIDA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN UNITED STATES FEDERAL LAW AND THE LAW OF THE STATE OF FLORIDA TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, APPLICABLE FEDERAL LAW AND, TO THE EXTENT NOT PREEMPTED BY APPLICABLE FEDERAL LAW, THE INTERNAL LAW OF THE STATE OF FLORIDA, WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS RELEASE AGREEMENT, EVEN IF UNDER SUCH JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

10. Amendment and Waiver. The provisions of this Release Agreement may be amended and waived only with the prior written consent of the Company and Executive, and no course of conduct or failure or delay in enforcing the provisions of this Release Agreement shall be construed as a waiver of such provisions or affect the validity, binding effect or enforceability of this Release Agreement or any provision hereof.

11. Descriptive Headings. The descriptive headings of this Release Agreement are inserted for convenience only and do not constitute a part of this Release Agreement.

12. Construction. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. The language used in this Release Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

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13. Nouns and Pronouns. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice-versa.

14. Legal Counsel. Each party recognizes that this is a legally binding contract and acknowledges and agrees that they have had the opportunity to consult with legal counsel of their choice. Executive acknowledges and agrees that he has read and understands this Release Agreement completely, is entering into it freely and voluntarily, and has been advised to seek counsel prior to entering into this Release Agreement and he has had ample opportunity to do so.

The undersigned have read and understand the consequences of this Release Agreement and voluntarily sign it. The undersigned declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_, at \_\_\_\_\_

“Executive”

\_\_\_\_\_

Print Name: \_\_\_\_\_

Prestige Cruise Services, LLC  
a company organized under the laws of Delaware,

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

**ENDORSEMENT**

I, \_\_\_\_\_, hereby acknowledge that I was given 21 days to consider the foregoing Release Agreement and voluntarily chose to sign the Release Agreement prior to the expiration of the 21-day period.

I declare under penalty of perjury under the laws of the United States and the State of Florida that the foregoing is true and correct.

EXECUTED this [\_\_\_\_] day of [\_\_\_\_] 200\_\_].

Print Name: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[\*]: THE CONFIDENTIAL PORTION HAS BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND THE OMITTED MATERIAL HAS BEEN FILED SEPARATELY WITH THE COMMISSION.

**ADDENDUM NO. 5  
TO THE SHIPBUILDING CONTRACT  
HULL NO. [\*]  
DATED 14 SEPTEMBER 2012**

between

MEYER WERFT GMBH & CO. KG, a company organised and existing under the laws of Germany, and having its principal office at Industriegebiet Süd, D-26871 Papenburg, Germany (the "**Builder**"); and

BREAKAWAY FOUR, LTD., a company incorporated in Bermuda and having its registered office at Cumberland House, 9th Floor, 1 Victoria Street, Hamilton HM11, Bermuda (the "**Buyer**"); and

NCL CORPORATION LTD., a company incorporated in Bermuda having its registered office at Cumberland House, 9th Floor, 1 Victoria Street, Hamilton HM11, Bermuda ("**NCLC**").

Whereas, by a Shipbuilding Contract dated 14 September 2012 in relation to Hull No. [\*] – as amended – made between the Builder, the Buyer and NCLC (the "**Contract**"), the Builder agreed to design, build, complete and sell to the Buyer a passenger cruise ship and the Buyer agreed to purchase and accept delivery of the same, all in accordance with the terms and conditions of the Contract.

Whereas, the Buyer has requested the Builder to adjust the Ship extensively for the[\*] market although the Ship is already in an advanced stage of design and construction (hereinafter referred to as the "[\*] **Changes**"). For that reason a core team with specialists from technical design and construction departments was established to develop a complete new process and a procedure to implement such extensive changes as far as reasonably practicable at such a late stage of design and construction.

Whereas, the parties have agreed that the [\*] Changes shall be conducted and documented – in addition to this addendum – by way of an agreement on modification (named as the "[\*] Changes AOM), which describes the scope of modifications in detail and the impact on the Contract, Specification, including Appendices and Plans.

Now, therefore, in consideration of the premises, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

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1. The general arrangement plan which is currently agreed by the parties within the Contract and hence does currently form a part of the Contract shall be replaced as follows:

The general arrangement plan [\*] (as amended) shall be and is hereby entirely replaced by the general arrangement plan[\*] Changes Milestone C1, Alteration L, and dated March 07, 2016

2. Article 1 Clause 2 “Description of the Ship” shall be and is hereby amended as follows:

(ii) Deadweight

The guaranteed deadweight at a mean moulded draft of[\*] metres will be [\*] metric tons in seawater of 1.025 t/m3 density (and under the conditions further described in section G.2.3 of the Specification). The deadweight is the difference between the loaded displacement and the contractual lightweight. The contractual lightweight is the weight of the Ship clean, empty, equipped ready for sea in accordance with section G.8.3 of the Specification and adjusted by any weight (and related ballast) added or subtracted by reason of any agreements on modification made at any time under Article 3 of this Contract.

(iii) Passenger Cabins:

- Penthouse Suite: [\*]
- Courtyard Suite 1: [\*]
- Courtyard Suite 2: [\*]
- Courtyard Suite 2 ADA: [\*]
- Corner Suite: [\*]
- Junior Suite: [\*]
- Family Deluxe Suite: [\*]
- Family Deluxe Suite ADA: [\*]
- Family Cabin Large Type 01: [\*]
- Family Cabin Large Type 02: [\*]
- Concierge Family Cabin Large Type 01: [\*]
- Concierge Family Cabin Large Type 02: [\*]
- Concierge Suite Small: [\*]
- Concierge Suite Large A: [\*]
- Concierge Suite Large B: [\*]
- Concierge Suite B: [\*]
- Mini Suite: [\*]
- Mini Suite ADA: [\*]
- Balcony Cabin: [\*]
- Balcony Cabin ADA: [\*]
- Ocean View Cabins Transversal: [\*]
- Ocean View Cabins Longitudinal: [\*]
- Ocean View Cabins Longitudinal Family: [\*]
- Ocean View Cabins ADA: [\*]
- Family cabin: [\*]
- Family cabin ADA: [\*]
- Inside Cabin: [\*]
- Inside Cabin ADA: [\*]

(iv) Crew Cabins:

Captain class cabins: [\*]  
Senior officer cabins: [\*]  
Officer outside cabins: [\*]  
Officer inside cabins: [\*]  
Senior Crew single cabins: [\*]  
Senior Crew double cabins: [\*]  
Crew single cabins: [\*]  
Crew single shared cabins: [\*]  
Crew double cabins A: [\*]  
Crew double cabins B: [\*]  
Crew entertainer cabins: [\*]

(v) Life saving equipment:

The number of person on board for the purposes of long international voyages: [\*].

(vii) Speed:

The trial speed of the Ship at a mean moulded draft of [\*] metres shall be at least [\*] knots under the conditions specified in Section G.2.5 of the Specification.

Article 2, Clause 2:

The time period for the approval of those documents and drawings which will to any extent be revised or even newly issued in each case as a consequence of the [\*] Changes (the "[\*] Changes Plans") and which are to be approved by or on behalf of the Buyer under and in accordance with this Contract including without limitation Article 2 Clause 2.6 of the Contract, is hereby reduced from fifteen (15) working days to ten (10) working days and the Builder will deliver an indicative pre-alert list of the drawings to the Buyer the week before. Any [\*] Changes Plans which are sufficient for the Buyer's review under and in accordance with Article 2 Clause 2.4 of the Contract and which the Buyer fails to return to the Builder within the above mentioned period of (10) working days shall without any further notice being required by the Builder be deemed to have been automatically approved by the Buyer in their entirety.

3. Article 2, Clause 4:

The milestones programme which is currently agreed by the parties within the Contract and hence does currently form part of the Contract as Appendix 8 to the Specification ("Milestones"), shall be replaced as follows:

The milestone plan revision 4 is hereby replaced by the milestone plan revision 5, dated January 12, 2016.

4. Article 3, Clause 1:

For the avoidance of doubt, the [\*] Changes AOM shall be dealt with under and in accordance with Article 3 of the Contract and hence e.g. adjustments to or amendments of any relevant provisions of this Contract, the Plans or the Specification, which are directly, necessarily and reasonably occasioned by such modifications will be accepted accordingly. The price of the [\*] Changes, which have been agreed between the Buyer and the Builder but which still need to be documented in the [\*] Changes AOM, is EUR [\*] (in words: Euro [\*]) and shall be payable by the Buyer to the Builder with the balance of the Contract Price on delivery of the Ship. For the avoidance of doubt, the afore-mentioned price for the [\*] Changes does not include any other AOM agreed under and in accordance with the Contract so that accordingly also for any such other AOM the price(s) shall - if not agreed otherwise like for the [\*] AOM - be paid with the balance of the Contract Price on delivery of the Ship.

5. Article 6, Clause 2.2:

The guaranteed trial speed ("GTS") of the Ship at a mean moulded draft of [\*] metres ([\*] metres and [\*]) shall be [\*] knots and shall be demonstrated by the Builder during the sea trials tests under the conditions described in section G.2.5 of the Specification. If at any time the Builder anticipates that, or if the sea trials tests demonstrate that, there will be a deficiency in the GTS the Builder shall promptly develop and provide the Buyer with a proposal to remedy the deficiency at the Builder's cost.

6. Article 6, Clause 2.6:

The guaranteed deadweight capacity of the Ship shall be [\*] metric tons under the conditions defined in sections G.2.3 and G.2.4 of the Specification and shall be demonstrated by the Builder in the specified deadweight capacity test.

7. Article 6, Clause 2.7:

If the Builder fails to remedy any deficiency in the Ship's deadweight capacity before delivery, the Builder shall have no liability to the Buyer if the actual deadweight capacity of the Ship, as determined in accordance with the Specification, is less than [\*] below the guaranteed deadweight capacity, but the Contract Price for the Ship shall be reduced by way of liquidated damages by the sum of [\*] for each full metric ton of such deficiency being more than [\*] up to a maximum deficiency of [\*] at a draft of not more than [\*] on even keel with fractions of each metric ton being calculated in proportion provided that if the actual deadweight deficiency at a mean moulded draft of not more than [\*] even keel is more than [\*], the Buyer may, at its option, either accept the Ship at a reduction in the Contract Price of [\*] for such Defect or reject the Ship and terminate this Contract pursuant to Clause 2 in Article 9.

8. Article 6, Clause 2.14:

The Buyer and the Builder agree that Article 6, Clauses 2.14 to 2.18 shall not apply in the event of a delay in the delivery of the Ship by the Delivery Date (as amended in paragraph 9 below) if such delay is caused by the inability of the Builder to complete the [\*] Changes in accordance with the Contract by the Delivery Date, and that in the event of

any such delay the following provisions shall apply in place of Article 6, Clauses 2.14 to 2.18:

"The Builder: acknowledges that the Buyer intends to arrange for the Ship's maiden cruise with fare paying passengers to be held directly following the end of the Rectification Period; acknowledges that it is imperative for the Ship to be ready at the time, and in the condition, provided for in this Contract so as to enable the Buyer to fulfill its commitments in relation to the Ship's maiden cruise; agrees to take all reasonable measures to assist the Buyer to fulfill its commitments in relation to the Ship's maiden cruise; acknowledges that if the Outstanding Works (as defined in paragraph 10 below) have not been completed in accordance with this Contract by the end of the Rectification Period, the Buyer will suffer loss and damage (including reputational damage) in amounts which are extremely difficult to quantify in advance; and agrees that the per day sums set out below represent a genuine and reasonable pre-estimate of the Buyer's loss and damage for each day of delay in completion of the Outstanding Works in accordance with this Contract beyond the end of the Rectification Period.

If completion of the Outstanding Works in accordance with this Contract is delayed beyond the end of the Rectification Period, then subject to a grace period which will expire at midnight in Papenburg on the [ \* ], the Builder shall pay liquidated damages for each calendar day (or pro-rata for each part of a calendar day) of delay, calculated as follows: (a) for the first [ \* ] of delay, counting from midnight Papenburg on the [ \* ], the liquidated damages for delay shall be calculated at the rate of [ \* ] per day; and thereafter, until actual completion of the Outstanding Works in accordance with this Contract, the liquidated damages for delay shall be calculated at the rate of [ \* ].

Payment of the liquidated damages referred to above shall be made by the Builder to the Buyer as follows. The Builder's first payment shall be made on the earlier of (a) the [ \* ] after completion of the Outstanding Works in accordance with this Contract have been delayed beyond the last day of the Rectification Period and (b) the date on which completion of the Outstanding Works in accordance with this Contract actually occurs. Thereafter the payments shall be made every [ \* ] commencing on the [ \* ] after the end of the [ \* ] period mentioned above, and continuing on the last day of each succeeding [ \* ] period thereafter until the day on which completion of the Outstanding Works in accordance with this Contract actually occurs."

Provided however, the maximum liquidated damages payable by the Builder to the Buyer for delay in delivery resulting from the [ \* ] Changes shall be limited to a total maximum amount of [ \* ].

9. Article 7, Clause 1.1:

The Delivery Date of the Ship shall now be [ \* ] instead of [ \* ]. The Buyer herewith agrees and acknowledges that due to the late request for the [ \* ] Changes - and their corresponding late implementation into the Ship - the Ship might not be fit for purpose at the Delivery Date as currently provided for in the Contract. However, the Builder and the Buyer (i) will jointly take all reasonable efforts to make to Ship fit for purpose at the Delivery Date and (ii) expect at the date of this addendum in consideration of the amendments to the Contract contemplated herein that this common goal is achievable. In case the Ship contrary to the above expectations might have one or more Defects relating



to the [\*] Changes which: do not entitle the Buyer to reject the Ship under any of the provisions of Article 6, Clause 2.3, Clause 2.5 or Clause 2.7; do not and will not render the Ship unseaworthy or otherwise prevent the Buyer from safely conveying Ship to China; do not prevent the Buyer from registering the Ship under the flag and laws of the Flag State; do not prevent the Buyer from drawing any tranche of the loan by which the Buyer intends to finance its purchase of the Ship; do not and will not prevent the Buyer from insuring the ship in accordance with its usual policies and standards and do not qualify as minor and insignificant Defects under and in accordance with Article 7 Clause 1.6 of the Contract, including without limitation not receiving the passenger vessel safety certificate in time and/or receiving one or more conditions of class and/or other restrictions of other authorities (collectively, "**Acceptable Defects**") the Buyer herewith unconditionally and irrevocably waives all its present or future rights a) not to take delivery of the Ship at the Delivery Date by reason of any Acceptable Defects and b) to be paid liquidated damages for delay in delivery, including without limitation Article 6 Clause 2.15 of the Contract, because requirements of the Contract, including without limitation the requirements set forth in Article 7 Clauses 1.1 (i) to (iv) of the Contract are not fulfilled or partially not fulfilled.

10. Both a) any and all works which are not entirely completed under and in accordance with the Contract at the Delivery Date and which are within the foregoing definition of Acceptable Defects and b) any and all minor and insignificant Defects existing at the Delivery Date (together the "**Outstanding Works**") shall be completed by or on behalf of the Builder and in close cooperation with and support by the Buyer within [\*] counting from the day after the day the Ship was actually delivered (hereinafter referred to as the "**Rectification Period**"). For the avoidance of doubt despite the Outstanding Works described above the delivery of the Ship shall take place at the Delivery Date, including without limitation the payment of the balance of the Contract Price.
11. After the Ship's actual delivery to the Buyer and within the Rectification Period the Buyer shall at its own risk, cost and expense convey the Ship to its first port of call in China. Without the prior written consent of the Builder, the Buyer shall during the Rectification Period not be entitled to have persons on board the Ship other than the Buyers' and Builders' personnel and subcontractors and suppliers required for completing the Outstanding Works. During such conveyance and on-site on the first port of call in China or an alternative location in each case to be agreed upon between the Buyer and the Builder, the Buyer shall at its own cost and expense provide the Builder and the Builder's subcontractors and suppliers appropriate board and lodging onboard the Ship in each case in order to enable them to carry out the Outstanding Works in an appropriate manner. It is acknowledged and agreed that the completion of the Outstanding Works can only be performed on the basis of a proper coordination and cooperation between the parties hereto.
12. The Builder agrees that the Guarantee Period in respect of Acceptable Defects in the Ship at delivery shall be deemed to commence upon completion of their rectification in accordance with the Shipbuilding Contract and not on the date of delivery of the Ship.
13. With regard to any works that may be required to be performed by or on behalf of the Builder on the Ship after the delivery of the Ship (including without limitation the Outstanding Works, guarantee works, voluntary works on a goodwill basis or any other basis), the Buyer and the Builder shall discuss in good faith, but without any obligation or commitment on the part of the Buyer, subsequent to the date of this addendum but in any

event with sufficient lead time prior to delivery of the Ship, the possibility of naming the Builder as co-assured under the Buyer's hull & machinery insurance and as a protective co-assured under the Buyer's protection & indemnity insurance and including in each case a waiver of subrogation towards the Builder (the "**Buyer's Insurances**"), the amount of deductible for which the Builder would be responsible in the event of a loss to which such waiver of subrogation would apply under such coverage, and increased premiums and other costs, if any, which would be payable by the Builder. If the Buyer will not be able to include the Builder under the Buyer's Insurances as aforesaid, the Builder shall be entitled to charge the Buyer with any additional insurance costs the Builder incurs due to coverage of works to be performed after the delivery of the Ship as evidenced by the Builder to the Buyer as such costs are currently not included in the price for the [\*] Changes AOM.

14. This Addendum No. 5 will be treated as having been signed by the parties hereto at the time and on the date when each party has signed and initialled a complete, legible and identical counterpart of this Addendum No. 5 and exchanged the same by e-mail or fax with the other parties. Thereafter for record purposes only three identical original counterparts of this Addendum No. 5 shall be signed and initialled by each of the parties after which one original counterpart will be retained by the Builder, one will be retained by the Buyer and the other will be retained by NCLC.
15. Words and expressions defined in the Contract shall have the same meanings when used herein.
16. Except as set forth in this Addendum No. 5, the Contract shall remain unchanged and this Addendum No. 5 shall be treated as an integral part of the Contract.

IN WITNESS WHEREOF, the Builder, the Buyer and NCLC have duly executed this Addendum No. 5.

/s/ Bernard Meyer

For and on behalf of **MEYER WERFT GmbH & Co. KG**

16 March 2016

/s/Frank J. Del Rio

For and on behalf of **Breakaway Four, Ltd.**

16 March 2016

/s/Frank J. Del Rio

For and on behalf of **NCL Corporation Ltd.**

16 March 2016

[\*]: THE CONFIDENTIAL PORTION HAS BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND THE OMITTED MATERIAL HAS BEEN FILED SEPARATELY WITH THE COMMISSION.

**ADDENDUM NO. 4  
TO THE SHIPBUILDING CONTRACT  
HULL NO. [\*]  
DATED 14 June 2013**

between

MEYER WERFT GMBH & CO. KG, a company organised and existing under the laws of Germany, and having its principal office at Industriegebiet Süd, D-26871 Papenburg, Germany (the "Builder"); and

SEAHAWK ONE, LTD., a company incorporated in Bermuda and having its registered office at Cumberland House, 9th Floor, 1 Victoria Street, Hamilton HM11, Bermuda (the "Buyer"); and

NCL CORPORATION LTD., a company incorporated in Bermuda having its registered office at Cumberland House, 9th Floor, 1 Victoria Street, Hamilton HM11, Bermuda ("NCLC").

Whereas, by a Shipbuilding Contract originally dated 14 June 2013 in relation to Hull No. [\*] – as amended – to which, by novation made on 8 July 2014, the Builder, the Buyer and NCLC are parties – (the "Contract"), the Builder has agreed to design, build, complete and sell to the Buyer a passenger cruise ship and the Buyer has agreed to purchase and accept delivery of the same, all in accordance with the terms and conditions of the Contract.

Whereas, it is intended by the buyer to instruct the Builder to increase the standard of the design, quality, workmanship, Parts (as defined in the shipbuilding contract for the First Ship), function and performance of systems, and the aesthetic design of the passenger cabins and public areas and other specified areas of the First Ship by way of an Addendum No. 5 to the shipbuilding contract for the First Ship dated 14 September 2012, including without limitation the Asia Changes (as defined in the shipbuilding contract for the First Ship).

Whereas, the First Ship is the reference ship to the Ship under and in accordance with the Contract the applicable reference standard for the Ship needs to be amended due to fact that such increased standard of the First Ship is not considered in the shipbuilding contract for the Ship.

Now, therefore, in consideration of the premises, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. The parties herewith agree that the term First Ship (as defined in Article 14, Cl. 15.1 of the Contract) and the reference ship (as defined in Schedule 1 of the Contract) shall mean Builder's Hull No. [\*] as defined and specified by the shipbuilding contract for the First
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Ship dated 14 September 2012 including Addendum No. 1, 2, 3, 4 and all AOM's which have been agreed before the date of the above mentioned Addendum No. 5 to the shipbuilding contract for the First Ship (the "Applicable Status"). The parties herewith further agree that the Applicable Status does not and will not include and consider without limitation Addendum No. 5 to the shipbuilding contract for the First Ship, the Asia Changes for the First Ship and any other AOM or any other modification which may at any time be agreed for the First Ship on or after the date of the above mentioned Addendum No. 5 to the shipbuilding contract for the First Ship.

2. This Addendum No. 4 will be treated as having been signed by the parties hereto at the time and on the date when each party has signed and initialled a complete, legible and identical counterpart of this Addendum No. 4 and exchanged the same by e-mail or fax with the other parties. Thereafter for record purposes only three identical original counterparts of this Addendum No. 4 shall be signed and initialled by each of the parties after which one original counterpart will be retained by the Builder, one will be retained by the Buyer and the other will be retained by NCLC.
3. Words and expressions defined in the Contract shall have the same meanings when used herein.
4. Except as set forth in this Addendum No. 4, the Contract shall remain unchanged and this Addendum No. 4 shall be treated as an integral part of the Contract.

IN WITNESS WHEREOF, the Builder, the Buyer and NCLC have duly executed this Addendum No. 4.

/s/ Bernard Meyer

\_\_\_\_\_  
For and on behalf of **MEYER WERFT GmbH & Co. KG**  
16 March 2016

/s/Frank J. Del Rio

\_\_\_\_\_  
For and on behalf of **SEAHAWK ONE, LTD**  
16 March 2016

/s/Frank J. Del Rio

\_\_\_\_\_  
For and on behalf of **NCL CORPORATION LTD.**  
16 March 2016

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[\*]: THE CONFIDENTIAL PORTION HAS BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND THE OMITTED MATERIAL HAS BEEN FILED SEPARATELY WITH THE COMMISSION.

**ADDENDUM NO. 4  
TO THE SHIPBUILDING CONTRACT  
HULL NO. [\*]  
DATED 14 June 2013**

between

MEYER WERFT GMBH & CO. KG, a company organised and existing under the laws of Germany, and having its principal office at Industriegebiet Süd, D-26871 Papenburg, Germany (the "Builder"); and

SEAHAWK TWO, LTD., a company incorporated in Bermuda and having its registered office at Cumberland House, 9th Floor, 1 Victoria Street, Hamilton HM11, Bermuda (the "Buyer"); and

NCL CORPORATION LTD., a company incorporated in Bermuda having its registered office at Cumberland House, 9th Floor, 1 Victoria Street, Hamilton HM11, Bermuda ("NCLC").

Whereas, by a Shipbuilding Contract originally dated 14 June 2013 in relation to Hull No. [\*] – as amended – to which, by novation made on 8 July 2014, the Builder, the Buyer and NCLC are parties – (the "Contract"), the Builder has agreed to design, build, complete and sell to the Buyer a passenger cruise ship and the Buyer has agreed to purchase and accept delivery of the same, all in accordance with the terms and conditions of the Contract.

Whereas, it is intended by the buyer to instruct the Builder to increase the standard of the design, quality, workmanship, Parts (as defined in the shipbuilding contract for the First Ship), function and performance of systems, and the aesthetic design of the passenger cabins and public areas and other specified areas of the First Ship by way of an Addendum No. 5 to the shipbuilding contract for the First Ship dated 14 September 2012, including without limitation the Asia Changes (as defined in the shipbuilding contract for the First Ship).

Whereas, the First Ship is the reference ship to the Ship under and in accordance with the Contract the applicable reference standard for the Ship needs to be amended due to fact that such increased standard of the First Ship is not considered in the shipbuilding contract for the Ship.

Now, therefore, in consideration of the premises, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. The parties herewith agree that the term First Ship (as defined in Article 14, Cl. 15.1 of the Contract) and the reference ship (as defined in Schedule 1 of the Contract) shall mean Builder's Hull No. [\*] as defined and specified by the shipbuilding contract for the First
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Ship dated 14 September 2012 including Addendum No. 1, 2, 3, 4 and all AOM's which have been agreed before the date of the above mentioned Addendum No. 5 to the shipbuilding contract for the First Ship (the "Applicable Status"). The parties herewith further agree that the Applicable Status does not and will not include and consider without limitation Addendum No. 5 to the shipbuilding contract for the First Ship, the Asia Changes for the First Ship and any other AOM or any other modification which may at any time be agreed for the First Ship on or after the date of the above mentioned Addendum No. 5 to the shipbuilding contract for the First Ship.

2. This Addendum No. 4 will be treated as having been signed by the parties hereto at the time and on the date when each party has signed and initialled a complete, legible and identical counterpart of this Addendum No. 4 and exchanged the same by e-mail or fax with the other parties. Thereafter for record purposes only three identical original counterparts of this Addendum No. 4 shall be signed and initialled by each of the parties after which one original counterpart will be retained by the Builder, one will be retained by the Buyer and the other will be retained by NCLC.
3. Words and expressions defined in the Contract shall have the same meanings when used herein.
4. Except as set forth in this Addendum No. 4, the Contract shall remain unchanged and this Addendum No. 4 shall be treated as an integral part of the Contract.

IN WITNESS WHEREOF, the Builder, the Buyer and NCLC have duly executed this Addendum No. 4.

/s/ Bernard Meyer

For and on behalf of **MEYER WERFT GmbH & Co. KG**  
16 March 2016

/s/Frank J. Del Rio

For and on behalf of **SEAHAWK TWO, LTD**  
16 March 2016

/s/Frank J. Del Rio

For and on behalf of **NCL CORPORATION LTD.**  
16 March 2016

– REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –

[\*]: THE CONFIDENTIAL PORTION HAS BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND THE OMITTED MATERIAL HAS BEEN FILED SEPARATELY WITH THE COMMISSION.

**TENTH AMENDMENT TO LEASE**

(Norwegian Cruise Line – The Landing at MIA)

THIS TENTH AMENDMENT TO LEASE ("Amendment") is dated effective and for identification purposes as of March 31, 2016, and is made by and between SPUS7 MIAMI ACC, LP, a Delaware limited partnership ("Landlord"), and NCL (BAHAMAS) LTD., a Bermuda company, d/b/a Norwegian Cruise Line ("Tenant").

**RECITALS:**

WHEREAS, Landlord's predecessor-in-interest (Hines REIT Airport Corporate Center LLC) and Tenant entered into that certain Lease Agreement dated December 1, 2006 ("Original Lease"), as amended by that certain First Amendment dated December 1, 2006, Second Amendment dated March 20, 2007, Third Amendment dated July 31, 2007, Letter Agreement dated August 1, 2007, Fourth Amendment dated December 10, 2007, Fifth Amendment dated February 2, 2010, Sixth Amendment dated April 1, 2012, Seventh Amendment dated June 29, 2012, Eighth Amendment dated January 28, 2015, and Ninth Amendment to Lease dated June 30, 2015 (collectively, the "Lease"), pertaining to the premises located in 7665 Corporate Center Drive ("Building 11"), 7650 Corporate Center Drive ("Building 10") (collectively, the "Original Office Premises"), 7245 Corporate Center Drive ("Building 3") ("the Warehouse Premises"), and 7300 Corporate Center Drive, Miami, Florida ("Building 8"); and

WHEREAS, pursuant to the Eighth Amendment, Tenant shall lease (or is leasing) from Landlord approximately 65,862 rentable square feet of space located in Building 8 and an additional 4,434 rentable square feet of space located in Building 10. The Eighth Amendment Expansion Commencement Dates are as follows: for Building 8: (i) September 1, 2015 (2<sup>nd</sup> Floor except Suite 203 and 3<sup>rd</sup> Floor except Suites 301, 302, 305, 311, and 312)), (ii) December 1, 2015 (Suite 203), (iii) February 1, 2016 (Suites 302 and 305), and (iv) April 15, 2016 (Suites 301, 311 and 312); for Building 10: September 1, 2015 (Suite 301). Pursuant to the Eighth Amendment, as of April 15, 2016 the Total Premises shall be comprised of approximately 276,094 rentable square feet of space (of which 125,806 rentable square feet of space are located in Building 11, 77,359 rentable square feet of space are located in Building 10, 65,862 rentable square feet of space are located in Building 8, and 7,067 rentable square feet of space are located in Building 3). Further, pursuant to the Eighth Amendment, the Original Office Premises was re-measured. Accordingly, as of the Eighth Amendment Extension Commencement Date (*i.e.*, February 1, 2023), Tenant's leased rentable square footage will be increased by 5,294 rentable square feet of space in Building 11 and by 2,053 rentable square feet of space in Building 10. Additionally, on January 31, 2023, Tenant's lease of the Warehouse Premises shall expire. Therefore, as of the Eighth Amendment Extension Commencement Date (*i.e.* February 1, 2023), the Total Premises (not including the Expansion Premises in Building 8 pursuant to the Ninth Amendment and not including the Expansion Premises pursuant to this Amendment) shall be 276,374 rentable square feet of space; and

WHEREAS, pursuant to the Ninth Amendment, Tenant shall lease from Landlord approximately 28,396 rentable square feet of space (of which 17,434 rentable square feet of space are located in Suite 102, 1,853 rentable square feet of space are located in Suite 112, 4,509 rentable square feet of space are located in Suite 100, and 4,600 rentable square feet of space are located in Suite 111). The Ninth Amendment Expansion Commencement Dates are as follows: (i) November 1, 2015 (Suite 102), (ii) March 4, 2016 (Suite 112), (iii) March 4, 2016 (Suite 100), and (iv) November 1, 2015 (Suite 111). Accordingly, as of

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April 15, 2016 (i.e., the latest to occur Expansion Commencement Date of the Eighth Amendment), the Total Premises including the Warehouse Premises, as expanded shall be comprised of approximately 304,490 rentable square feet of space (of which 125,806 rentable square feet of space are located in Building 11, 77,359 rentable square feet of space are located in Building 10, and 94,258 rentable square feet of space are located in Building 8, and 7,067 rentable square feet of space are located in Building 3); and

WHEREAS, upon the Eighth Amendment Extension Commencement Date (i.e., February 1, 2023), the Total Premises (as re-measured and expanded) shall be comprised of approximately 304,770 rentable square feet of space (of which 131,100 rentable square feet of space are located in Building 11, 79,412 rentable square feet of space are located in Building 10, and 94,258 rentable square feet of space are located in Building 8), plus the Expansion Premises set forth in this Amendment; and

WHEREAS, Landlord and Tenant desire to enter into this Amendment to expand the Total Premises and provide for certain other matters as more fully set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree that the Lease shall be amended in accordance with the terms and conditions set forth below.

1. **Definitions.** The capitalized terms used herein shall have the same definitions as set forth in the Lease, unless otherwise defined herein.

2. **Expansion.**

(a) **Expansion Premises.** The term "Expansion Premises" is hereby defined to be and to mean that certain space located on the third floor of Building 10 (the "Building"), consisting of 2,058 rentable square feet of space (which is the final agreement of the parties and not subject to adjustment), as outlined on **Exhibit A**, attached hereto and incorporated herein by this reference. Accordingly, effective as of the Tenth Amendment Expansion Commencement Date (as defined below), the Total Premises, as expanded by this Amendment (and not including the Premises as re-measured and expanded on the Eighth Amendment Extension Commencement Date (i.e., February 1, 2023)), shall be deemed to consist of a collective total of 306,548 rentable square feet of space. Effective on February 1, 2023, the Total Premises, as expanded by this Amendment, shall be deemed to consist of a collective total of 306,828 rentable square feet of space.

(b) **Tenth Amendment Expansion Commencement Date.** The term "Tenth Amendment Expansion Commencement Date" is hereby defined to be and to mean April 1, 2016. If Tenant is allowed to occupy, use, work in or otherwise enter the Expansion Premises prior to the Tenth Amendment Expansion Commencement Date, the terms and conditions of the Lease as hereby amended shall apply, except that Tenant shall not be required to pay Rental for any period(s) prior to the Tenth Amendment Expansion Commencement Date for the Expansion Premises.

(c) **Expansion Term.** The term "Expansion Term" is hereby defined to be and to mean that period of time commencing on the Tenth Amendment Expansion Commencement Date and expiring contemporaneously with the Lease on the Expansion Expiration Date (i.e., January 31, 2028), as defined in Section 2(c) of the Ninth Amendment.

(d) **Acceptance.** Effective on the Tenth Amendment Expansion Commencement Date, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, on the terms and conditions set forth in the Lease, as amended, and herein, the Expansion Premises. Tenant shall accept the Expansion Premises in its present "as is" condition.



3. **Base Rental for the Expansion Premises.** During the Expansion Term, Tenant shall pay to Landlord Base Rental for the Expansion Premises (in addition to its Base Rental obligation for the original Premises), which shall be payable in monthly installments as follows:

**EXPANSION PREMISES**

Months	Annual Rate/RSF	Monthly Installment
Tenth Amendment Expansion		
Commencement Date - 08/31/16	\$ [*]	\$ [*]
09/01/16 – 08/31/17	\$ [*]	\$ [*]
09/01/17 – 08/31/18	\$ [*]	\$ [*]
09/01/18 – 08/31/19	\$ [*]	\$ [*]
09/01/19 – 08/31/20	\$ [*]	\$ [*]
09/01/20 – 08/31/21	\$ [*]	\$ [*]
09/01/21 – 08/31/22	\$ [*]	\$ [*]
09/01/22 – 08/31/23	\$ [*]	\$ [*]
09/01/23 – 08/31/24	\$ [*]	\$ [*]
09/01/24 – 08/31/25	\$ [*]	\$ [*]
09/01/25 – 08/31/26	\$ [*]	\$ [*]
09/01/26 – 08/31/27	\$ [*]	\$ [*]
09/01/27 – Expansion Expiration Date (01/31/28)	\$ [*]	\$ [*]

Except as otherwise expressly set forth herein, Base Rental shall be payable pursuant to the terms and conditions of Article 2 of the Original Lease.

4. **Tenant’s Percentage Share and Operating Expenses.** Beginning on the Tenth Amendment Expansion Commencement Date, Tenant’s Percentage Share, as defined in Section 2.3(c) of the Original Lease, shall be increased based upon an amount determined by (a) the fraction, the numerator of which is the total number of Rentable Square Feet then leased by Tenant in Building 10, and the denominator of which is the greater of (i) ninety-five percent (95%) of the total Rentable Square Feet in Building 10, or (ii) the total Rentable Square Feet in Building 10 actually leased or occupied by tenants.

5. **Tenant’s Parking Spaces.** Beginning on the Tenth Amendment Expansion Commencement Date, Tenant shall have the right to use an increased number of parking spaces based on the new rentable area of the Expansion Premises, pursuant to the same terms and conditions as Section 8 of the Eighth Amendment and Section 5 of the Ninth Amendment.

6. **Brokers.** Tenant hereby represents and warrants to Landlord that Tenant has not dealt with any real estate brokers or leasing agents, and Landlord hereby represents and warrants to Tenant that Landlord has not dealt with any real estate brokers or leasing agents in connection with the negotiation and execution of this Amendment. Landlord and Tenant hereby agree to indemnify and to hold each other harmless against any loss, expense, or liability with respect to any claims for commissions or brokerage fees arising from or out of any breach of the foregoing representation and warranty.

7. **Energy and Environmental Initiatives.** Tenant shall cooperate with Landlord in any programs in which Landlord may elect to participate relating to the Building’s (i) energy efficiency, management, and conservation; (ii) water conservation and management; (iii) environmental standards and efficiency; (iv) recycling and reduction programs; and/or (v) safety, which participation may include,

without limitation, the Leadership in Energy and Environmental Design (LEED) program and related Green Building Rating System promoted by the U.S. Green Building Council, as well as the Energy Star program promoted by the U.S. Environmental Protection Agency and the U.S. Department of Energy.

8. **Electronic Signatures.** This Amendment may be executed in counterparts. All executed counterparts shall constitute one (1) agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Amendment had been delivered. Landlord and Tenant (i) intend to be bound by the signatures (whether original, faxed or electronic) on any document sent by facsimile or electronic mail, (ii) are aware that the other party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Amendment based on the foregoing forms of signature.

9. **Miscellaneous.** With the exception of those matters set forth in this Amendment, Tenant's leasing of the Premises shall be subject to all terms, covenants and conditions of the Lease. In the event of any express conflict or inconsistency between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control and govern. Except as expressly modified by this Amendment, all other terms and conditions of the Lease are hereby ratified and affirmed. The parties acknowledge that the Lease is a valid and enforceable agreement and that neither party is aware of any demands, claims (matured or unmatured), losses, rights of set off or deduction asserted or assertable against the other party in any manner relating to the Lease, or arising in connection with the Premises or the Project.

(Signatures on following Page)

IN WITNESS WHEREOF, the foregoing Tenth Amendment to Lease is dated effective as of the date and year first written above.

WITNESS:

By: /s/Theresa Morris  
Name: Theresa Morris

By: /s/Susandra Soumetho  
Name: Susandra Soumetho

By: /s/Theresa Morris  
Name: Theresa Morris

By: /s/Susandra Soumetho  
Name: Susandra Soumetho

WITNESS:

By: /s/Lincoln M. Vidal  
Name: Lincoln M. Vidal

By: /s/Yakelin Chirino  
Name: Yakelin Chirino

**LANDLORD:**

SPUS7 MIAMI ACC, LP,  
a Delaware limited partnership

By: /s/Michael Burrichter  
Name: Michael Burrichter  
Title: Vice President  
Date: \_\_\_\_\_

By: /s/Claudia Walraven  
Name: Claudia Walraven  
Title: Assistant Vice President  
Date: \_\_\_\_\_

**TENANT:**

NCL (BAHAMAS) LTD.,  
a Bermuda company, d/b/a Norwegian Cruise Line

By: /s/Wendy Beck  
Name: Wendy Beck  
Title: Executive Vice President & Chief Financial Officer  
Date: 4/13/16

**CONSENT OF GUARANTOR**

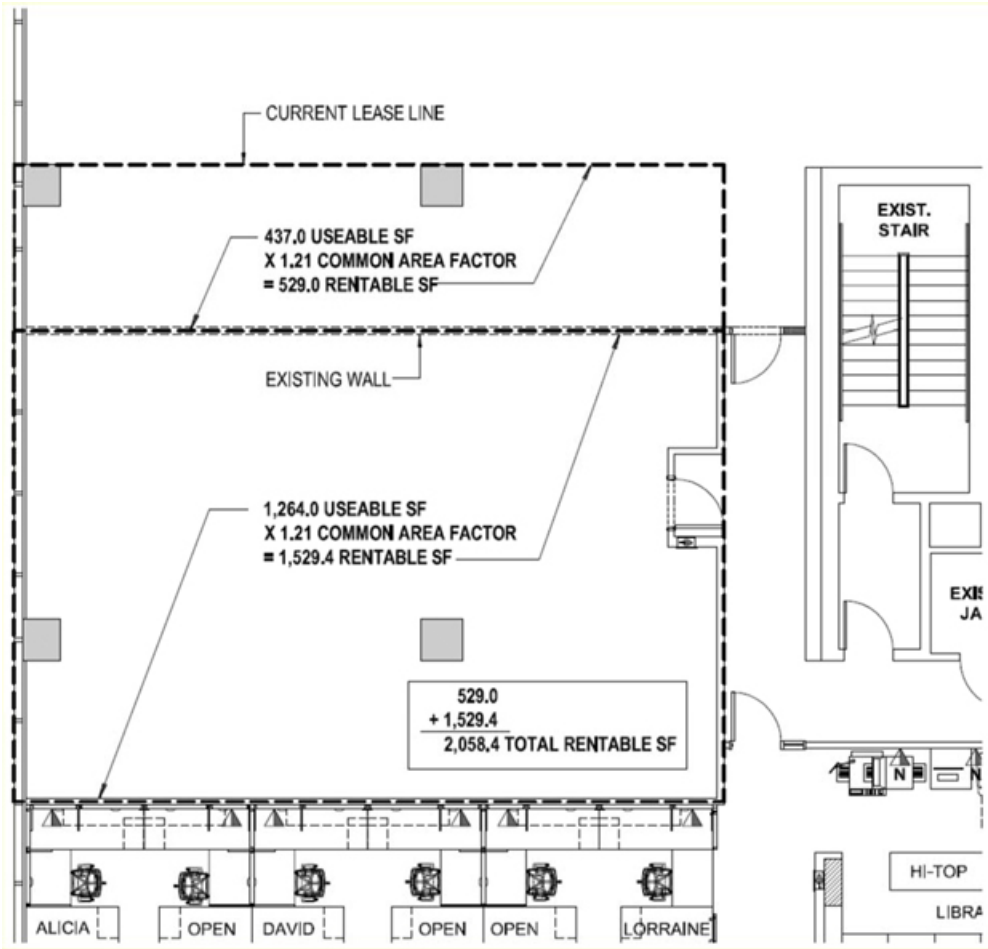
The undersigned Guarantor under the original Guaranty of Lease dated November 27, 2006 (the "Guaranty"), does hereby consent to the foregoing Amendment. Guarantor acknowledges and agrees that the Guaranty is in full force and effect and shall continue to apply to the Lease, as amended by this Amendment.

NCL CORPORATION LTD.,  
a Bermuda company

By: /s/Frank Del Rio  
Name: Frank Del Rio  
Title: President & Chief Executive Officer

**EXHIBIT A**

**EXPANSION PREMISES**



[\*]: THE CONFIDENTIAL PORTION HAS BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND THE OMITTED MATERIAL HAS BEEN FILED SEPARATELY WITH THE COMMISSION.

Execution Version

Dated 30 March 2016

**EXPLORER II NEW BUILD, LLC**  
as Borrower

and

**THE BANKS AND FINANCIAL INSTITUTIONS  
LISTED IN SCHEDULE 1**  
as Lenders

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK  
SOCIÉTÉ GÉNÉRALE  
HSBC BANK PLC  
KFW IPEX-BANK GMBH**  
as Joint Mandated Lead Arrangers

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Agent and SACE Agent

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee

with the support of

**SACE S.p.A.**

**LOAN AGREEMENT**

relating to the part financing of the 754 passenger cruise ship  
newbuilding presently designated as  
Hull No. 6281 at Fincantieri S.p.A

**WATSON FARLEY  
&  
WILLIAMS**

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THIS AGREEMENT is made on 30 March 2016

## PARTIES

- (1) **EXPLORER II NEW BUILD, LLC**, a limited liability company formed in the state of Delaware whose registered office is at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808 United States of America as borrower (the "**Borrower**")
- (2) **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Lenders and Commitments*) as lenders (the "**Lenders**")
- (3) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, SOCIÉTÉ GÉNÉRALE, KFW IPEX-BANK GMBH and HSBC BANK PLC** as joint mandated lead arrangers (the "**Joint Mandated Lead Arrangers**")
- (4) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, agent and SACE agent (the "**Agent**") and (the "**SACE Agent**")
- (5) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, as the security trustee (the "**Security Trustee**")

## BACKGROUND

- (A) By a shipbuilding contract dated as of 22 December 2015 entered into between (i) Fincantieri S.p.A., a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**") and (ii) the Borrower, the Builder has agreed to design, construct and deliver, and the Borrower has agreed to purchase, a 754 passenger cruise ship currently having hull number 6281 as more particularly described in the Shipbuilding Contract to be delivered on [\*] subject to any adjustments of such delivery date in accordance with the Shipbuilding Contract.
  - (B) The total price payable by the Borrower to the Builder under the Shipbuilding Contract is EUR 422,000,000 (the "**Initial Contract Price**") payable on the following terms:
    - (i) as to [\*]%, being EUR [\*], by an initial payment which is to be within 5 Business Days after the effective date of the Shipbuilding Contract in accordance with Article 10.1(A) of the Shipbuilding Contract;
    - (ii) as to [\*]%, being EUR [\*], on the later of the date of commencement of steel cutting and the date falling 26 months prior to the Delivery Date;
    - (iii) as to [\*]%, being EUR [\*], on the later of keel laying in dry-dock and the date falling 20 months prior to the Delivery Date;
    - (iv) as to [\*]%, being EUR [\*], on the later of launching and the date falling 12 months prior to the Delivery Date; and
    - (v) as to [\*]%, being EUR [\*], on delivery of the Ship on the Delivery Date,as each such event is described in the Shipbuilding Contract.
  - (C) The Initial Contract Price may be (i) increased or decreased from time to time under Article 24 of the Shipbuilding Contract in the event that the Borrower requests, and the Builder agrees, modifications to the specification or plans constituting a part of the Shipbuilding Contract or in the event that, subsequent to the date of the Shipbuilding Contract, variations are made to its provisions compliance with which is compulsory, the final net cost of all such variations being payable by no later than the Delivery Date (the "**Change Orders**"); and (ii) decreased at delivery of the Ship under Articles 13, 14, 16, 17, 19 and 20 of the Shipbuilding
-

Contract (in aggregate the "**Liquidated Damages**") or by mutual agreement between the parties (the Initial Contract Price adjusted as aforesaid being the "**Final Contract Price**").

- (D) The Lenders have agreed to make available to the Borrower a Dollar loan facility for the purpose of assisting the Borrower in financing, subject to exchange rate fluctuations, up to 80% of the Final Contract Price (and subject to an aggregate amount no greater than the Eligible Amount) and 100% of the SACE Premium.

## OPERATIVE PROVISIONS

### 1 INTERPRETATION

#### 1.1 Definitions

Subject to Clause 1.5 (*General Interpretation*), in this Agreement:

"**Affected Lender**" has the meaning given in Clause 6.5 (*Market disruption*).

"**Affiliate**" means in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Agent**" means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,327,121,031 and its registered office located at 9, Quai du Président Paul Doumer, 92920 Paris La Défense cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause 25 (*Role of the Agent and the Joint Mandated Lead Arrangers*).

"**Annex VI**" means Annex VI (Regulations for the Prevention of Air Pollution from Ships) to the International Convention for the Prevention of Pollution from Ships 1973 (as modified in 1978 and 1997, 2005, 2007, 2008, 2010 and 2012).

"**Approved Broker**" means Clarkson plc, Barry Rogliano Salles, Fearnleys, Rocca & Partners, Brax Shipbrokers AS (or any Affiliate of such person through which valuations are commonly issued) or such other shipbroker or ship valuer experienced in valuing cruise ships nominated by the Borrower and approved by the Agent.

"**Approved Flag**" means the Marshall Islands flag, the Bahamas flag or such other flag as the Agent may approve from time to time.

"**Approved Manager**" means the Borrower, Seven Seas as bareboat charterer, Prestige Cruise Services LLC, or any other company (whether or not a member of the Group) which the Agent may approve from time to time as the manager of the Ship.

"**Approved Manager's Undertaking**" means, in the event that the Approved Manager is a company other than the Borrower or Seven Seas (as bareboat charterer), a letter of undertaking executed or to be executed by the Approved Manager in favour of the Agent, which will include, without limitation, an agreement by the Approved Manager to subordinate its rights against the Ship and the Borrower to the rights of the Secured Parties under the Finance Documents, in the agreed form.

"**Availability Period**" means the period commencing on the date of this Agreement and ending on:

- (a) the earlier to occur of (i) the Delivery Date and (ii) 27 September 2020 (or such later date as the Agent may, with the authorisation of the Lenders, agree with the Borrower); or



(b) if earlier, the date on which the Total Commitments are fully borrowed, cancelled or terminated.

"**Bareboat Charter**" means the bareboat charter of the Ship by the Borrower as owner to Seven Seas as bareboat charterer which shall be entered into no later than the Delivery Date in the form of draft approved by the Agent before the date of this Agreement with such reasonable changes thereto as the Agent may approve from time to time.

"**Base Rate**" means one Euro for [\*] Dollars.

"**Builder**" has the meaning given in Recital (A).

"**Business Day**" means:

- (a) for the purposes of Recital (B) above, a day (other than a Saturday or a Sunday) on which banks are open in Paris, New York, Milan and Rome; and
- (b) for the purposes of any other provision in this Agreement, a day (other than a Saturday or a Sunday) on which banks are open in London, Frankfurt, Rome and Paris and, in relation to any payment to be made to the Builder, Milan and, in respect of a day on which a payment is required to be made under a Finance Document, also in New York City.

"**Certified Copy**" means in relation to any document delivered or issued by or on behalf of any company, a copy of such document certified as a true, complete and up-to-date copy of the original by any of the directors or the secretary or assistant secretary or any attorney-in-fact for the time being of that company.

"**Charged Property**" means all of the assets which from time to time are, or are expressed to be, the subject of Security Interests pursuant to the Finance Documents.

"**CIRR**" (Commercial Interest Reference Rate) means 2.76% per annum or any other CIRR rate being the fixed rate for medium and long term export credits in Dollars applicable to the financing of the Ship according to the Organisation for Economic Co-operation and Development rules as determined by the competent Italian Authorities.

"**CISADA**" means the United States Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 as it applies to non-US persons.

"**Code**" means the United States Internal Revenue Code of 1986.

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

"**Compliance Certificate**" has the meaning given to the term "Compliance Certificate" in the Guarantee.

"**Confidential Information**" means all information relating to any Obligor, the Group, the Finance Documents or the Loan of which a Secured Party becomes aware in its capacity as, or for the purpose of becoming, a Secured Party or which is received by a Secured Party in relation to, or for the purpose of becoming a Secured Party under, the Finance Documents or the Loan from either:

- (a) any member of the Group or any of its advisers; or

(b) another Secured Party, if the information was obtained by that Secured Party directly or indirectly from any member of the Group or any of its advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Secured Party of Clause 32 (*Confidentiality*)); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Secured Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Secured Party after that date, from a source which is, as far as that Secured Party is aware, unconnected with the Group and which, in either case, as far as that Secured Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"**Confidentiality Undertaking**" means a confidentiality undertaking in substantially the appropriate form recommended by the LMA from time to time or in any other form agreed between the Borrower and the Agent.

"**Contribution**" means, in relation to a Lender, the part of the Loan which is owing to that Lender.

"**Conversion Rate**" means the rate determined by the Agent on the Conversion Rate Fixing Date and notified to the Borrower as being the lower of:

- (a) the Base Rate; or
- (b) the FOREX Contracts Weighted Average Rate.

"**Conversion Rate Fixing Date**" means the date falling [\*] days before the Intended Delivery Date.

"**Corresponding Debt**" means any amount, other than any Parallel Debt, which an Obligor owes to a Creditor Party under or in connection with the Finance Documents.

"**Creditor Party**" means the Agent, the Security Trustee, the SACE Agent, the Joint Mandated Lead Arrangers or any Lender, whether as at the date of this Agreement or at any later time.

"**Delivery Date**" means the date and time of delivery of the Ship by the Builder to the Borrower as stated in the Protocol of Delivery and Acceptance.

"**Document of Compliance**" has the meaning given to it in the ISM Code.

"**Dollar Equivalent**" means such amount in Dollars as is calculated by the Agent on the Conversion Rate Fixing Date to be the equivalent of an amount in Euro at the Conversion Rate.

"**Dollars**" and "**\$**" means the lawful currency for the time being of the United States of America.

"**Drawdown Date**" means the date on which the Loan is drawn down and applied in accordance with Clause 2 (*Facility*).

**"Drawdown Notice"** means a notice in the form set out in Schedule 2 (*Form of Drawdown Notice*) (or in any other form which the Agent approves or reasonably requires).

**"Earnings"** means all moneys whatsoever which are now, or later become, payable (actually or contingently) to the Borrower, by Seven Seas as bareboat charterer and which arise out of the use or operation of the Ship, including (but not limited to):

- (a) all freight, hire, fare and passage moneys, compensation payable to the Borrower or the Agent in the event of requisition of the Ship for hire, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of the Ship;
- (b) all moneys which are at any time payable under Insurances in respect of loss of earnings; and
- (c) all moneys which are at any time payable to the Borrower in respect of the general average contribution;
- (d) if and whenever the Ship is employed on terms whereby any moneys falling within paragraphs (a) or (b) above are pooled or shared with any other person, that proportion of the net receipts of the relevant pooling or sharing arrangement which is attributable to the Ship.

**"Eligible Amount"** means 80% of the lesser of:

- (a) the Dollar Equivalent of EUR 436,770,000; and
- (b) the Dollar Equivalent of the Final Contract Price.

**"Environmental Approval"** means any present or future permit, ruling, variance or other authorisation required under Environmental Laws.

**"Environmental Claim"** means any claim by any governmental, judicial or regulatory authority or any other person which arises out of an Environmental Incident or an alleged Environmental Incident or which relates to any Environmental Law and, for this purpose, "claim" includes a claim for damages, compensation, contribution, injury, fines, losses and penalties or any other payment of any kind, including in relation to clean-up and removal, whether or not similar to the foregoing; an order or direction to take, or not to take, certain action or to desist from or suspend certain action; and any form of enforcement or regulatory action, including the arrest or attachment of any asset.

**"Environmental Incident"** means:

- (a) any release, emission, spill or discharge into the Ship or into or upon the air, sea, land or soils (including the seabed) or surface water of Environmentally Sensitive Material within or from the Ship; or
- (b) any incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water from a vessel other than the Ship and which involves a collision between the Ship and such other vessel or some other incident of navigation or operation, in either case, in connection with which the Ship is actually or potentially liable to be arrested, attached, detained or injuncted and/or the Ship and/or any Obligor and/or any operator or manager of the Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action; or

- (c) any other incident in which Environmentally Sensitive Material is released, emitted, spilled or discharged into or upon the air, sea, land or soils (including the seabed) or surface water otherwise than from the Ship and in connection with which the Ship is actually or potentially liable to be arrested and/or where any Obligor and/or any operator or manager of the Ship is at fault or allegedly at fault or otherwise liable to any legal or administrative action, other than in accordance with an Environmental Approval.

**"Environmental Law"** means any present or future law relating to pollution or protection of human health or the environment, to conditions in the workplace, to the carriage, generation, handling, storage, use, release or spillage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material.

**"Environmentally Sensitive Material"** means and includes all contaminants, oil, oil products, toxic substances and any other substance (including any chemical, gas or other hazardous or noxious substance) which is (or is capable of being or becoming) polluting, toxic or hazardous.

**"Euro"** and **"EUR"** means the single currency of the Participating Member States.

**"Event of Default"** means any of the events or circumstances described in Clause 18.1 (*Events of Default*).

**"Existing Indebtedness"** means Financial Indebtedness referred to in the financial statements of the Guarantor delivered to the Agent prior to the date of this Agreement.

**"Exporter Declaration"** means a declaration in the form required by SIMEST at the relevant time duly signed by an authorised signatory of the Builder.

**"Facility Office"** means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

**"FATCA"** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**"FATCA Application Date"** means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

"**FATCA Deduction**" means a deduction or withholding from a payment under a Finance Document required by FATCA.

"**FATCA Exempt Party**" means a Party that is entitled to receive payments free from any FATCA Deduction.

"**Fee Letter**" means any letter dated on or about the date of this Agreement between the SACE Agent and the Borrower setting out the fees referred to in paragraph (d) of Clause 9.1 (*Fees*).

"**Finance Documents**" means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) the Guarantee;
- (d) the Tripartite General Assignment;
- (e) the Mortgage;
- (f) the Post-Delivery Assignment;
- (g) the Limited Liability Company Interests Security Deed;
- (h) the Approved Manager's Undertaking;
- (i) any Transfer Certificate;
- (j) any other document (whether creating a Security Interest or not) which is executed as security for, or for the purpose of establishing any priority or subordination arrangement in relation to, the Secured Liabilities; and
- (k) any other document (whether creating a Security Interest or not) which is designated as a Finance Document by agreement between the Borrower, SACE and the Agent.

"**Final Contract Price**" has the meaning given in Recital (C).

"**Financial Indebtedness**" means, in relation to a person (the "**debtor**"), a liability of the debtor:

- (a) for principal, interest or any other sum payable in respect of any moneys borrowed or raised by the debtor;
- (b) under any loan stock, bond, note or other security issued by the debtor;
- (c) under any acceptance credit, guarantee or letter of credit facility made available to the debtor;
- (d) under a financial lease, a deferred purchase consideration arrangement or any other agreement having the commercial effect of a borrowing or raising of money by the debtor;

- (e) under any foreign exchange transaction, any interest or currency swap or any other kind of derivative transaction entered into by the debtor or, if the agreement under which any such transaction is entered into requires netting of mutual liabilities, the liability of the debtor for the net amount;
- (f) under a guarantee, indemnity or similar obligation entered into by the debtor in respect of a liability of another person which would fall within paragraphs (a) to (e) if the references to the debtor referred to the other person; or
- (g) receivables sold or discounted (other than receivables to the extent they are sold on a non-recourse basis).

**"First Instalment"** means the first instalment of the SACE Premium as more particularly described in paragraph (a) of Clause 8.1 *§ACE Premium*).

**"Fixed Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Agent to be the aggregate of:

- (a) the Margin; and
- (b) the CIRR.

**"Floating Interest Rate"** means, in respect of any Interest Period, the rate per annum determined by the Agent to be the aggregate of:

- (a) the Margin; and
- (b) LIBOR for the relevant period.

**"FOREX Contracts"** means each actual purchase contract, spot or forward contract and any other contract, such as an option or collar arrangement, which is entered into in the foreign exchange markets for the acquisition of Euro intended to pay the delivery instalment under the Shipbuilding Contract, which:

- (a) matures not later than the Intended Delivery Date, provided that option arrangements may mature up to one month after such date if at the time they are entered into there exists a reasonable uncertainty as to the date on which the Ship will be delivered;
- (b) is entered into by the Borrower or the Guarantor or a combination of the foregoing not later than two (2) days before the Conversion Rate Fixing Date so that the Borrower, directly or through the Guarantor, purchases or may purchase Euro with Dollars at a pre-agreed rate; and
- (c) is notified to the Agent within ten (10) days of its execution but in any event no later than the day preceding the Conversion Rate Fixing Date, with a Certified Copy of each such contract being delivered to the Agent at such time.

**"FOREX Contracts Weighted Average Rate"** means the rate determined by the Agent on the Conversion Rate Fixing Date in accordance with the following principles which (inter alia) are intended to take into account any maturity mismatch between the maturity of the FOREX Contracts and the Intended Delivery Date as well as FOREX Contracts that are unwound as part of the hedging strategy of the Borrower:

- (a) FOREX Contracts that are spot or forward foreign exchange contracts, if any, shall be valued at the contract value (taking into account any rescheduling);

- (b) the difference between the Euro amount available under (a) above and the Euro amount balance payable to the Builder on the Delivery Date is assumed to be purchased at the official daily fixing rate of the European Central Bank for the purchase of Euro with Dollars as displayed on "Reuters Page ECB 37" (or such other pages as may replace that page on that service or a successor service) at or around 2 p.m. (Paris time) on the Conversion Rate Fixing Date;
- (c) any FOREX Contract which is an option or collar arrangement and is not unwound at the Conversion Rate Fixing Date will be marked to market and the resulting profit or loss shall reduce or increase the Dollar countervalue of the purchased Euro;
- (d) any FOREX Contract which is an option or collar arrangement and is sold or purchased back at the time FOREX Contract(s) are entered into for an identical Euro amount shall be accounted for the net premium cost or profit, as the case may be.

Any marked to market valuation, as required in paragraph (c) above, shall be performed by Crédit Agricole Corporate and Investment Bank's dedicated desk in accordance with market practices. The Borrower shall have the right to request indicative valuations from time to time prior to the Conversion Rate Fixing Date.

"**GAAP**" means generally accepted accounting principles in the United States of America consistently applied (or, if not consistently applied, accompanied by details of the inconsistencies) including, without limitation, those set forth in the opinion 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.

"**Gross Negligence**" means any act or omission, whether deliberate or not, which in the circumstances (including both the probability and seriousness of the consequences likely to result) would reasonably be regarded by those familiar with the nature of the activity in question and with the surrounding circumstances, as amounting to the reckless disregard of, or serious indifference to, the consequences, being in any case more than a negligent failure to exercise proper skill and care.

"**Group**" means the Guarantor and its Subsidiaries.

"**Guarantee**" means a guarantee issued by the Guarantor in favour of the Security Trustee in the agreed form.

"**Guarantor**" means NCL Corporation Ltd., a Bermuda company with its registered office at Cumberland House, 9th Floor, 1 Victoria Street, Hamilton HM11, Bermuda.

"**Holding Company**" means, in relation to a person, any other person in respect of which it is a Subsidiary.

"**IAPPC**" means a valid international air pollution prevention certificate for the Ship issued under Annex VI.

"**Illicit Origin**" means any origin which is illicit, fraudulent or in breach of Sanctions including, without limitation, drug trafficking, corruption, organised criminal activities, terrorism, money laundering or fraud.

"**Initial Contract Price**" has the meaning given in Recital (B).

"Insurances" means:

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

"**Intended Delivery Date**" means [\*] (the date on which the Ship will be ready for delivery pursuant to the Shipbuilding Contract as at the date of this Agreement) or any other date notified by the Borrower to the Agent in accordance with paragraph (a)(i) of Clause 3.4 or paragraph (c) of Clause 3.7 as being the date on which the Builder and the Borrower have agreed that the Ship will be ready for delivery pursuant to the Shipbuilding Contract.

"**Interest Make-up Agreement**" means an interest make up agreement (*Capitolato*) to be entered into between SIMEST and the Agent on behalf of the Lenders and in form and substance acceptable to the Joint Mandated Lead Arrangers, whereby, inter alia, the return to the Lenders on the Loan made hereunder will be supplemented by SIMEST so that it equals that which the Lenders would have received if interest were payable on the Loan at LIBOR plus the Margin.

"**Interest Period**" means a period determined in accordance with Clause 7 (*Interest Periods*).

"**ISM Code**" means the International Safety Management Code for the safe operation of ships and for pollution prevention (including the guidelines on its implementation), adopted by the International Maritime Organisation as the same may be amended or supplemented from time to time.

"**ISPS Code**" means the International Ship and Port Facility Security (ISPS) Code adopted by the International Maritime Organisation (IMO) Diplomatic Conference of December 2002, as the same may be amended or supplemented from time to time.

"**Italian Authorities**" means SACE and/or SIMEST and any other relevant Italian authorities involved in the implementation of the Loan.

"**Lender**" means a bank, financial institution, trust, fund or other entity listed in Schedule 1 (*Lenders and Commitments*) and acting through its Facility Office or its transferee, successor or assign.

"**LIBOR**" means, in relation to a particular period, the rate determined by the Agent to be that at which deposits of Dollars in amounts comparable with the amount for which LIBOR is to be determined and for a period equivalent to such period are being offered in the London interbank eurocurrency market at or about 11 a.m. (London time) on the Quotation Date for such period as displayed on page LIBOR 01 or LIBOR 02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters (and if such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrower), **Provided that** if on such date no such rate is so displayed, LIBOR for such period shall be the rate quoted to the Agent by the Lenders at the request of the Agent as the Lenders' offered rate for deposits of Dollars in an amount approximately equal to the amount in relation to which LIBOR is to be determined for a period equivalent to such period to prime banks in the London interbank eurocurrency market at or about 11 a.m. (London time) on the Quotation Date for such period and **provided further that**, if the rate displayed on the relevant page is less than zero, LIBOR shall be deemed to be zero (except with respect to the Interest Make-Up Agreement).



**"Limited Liability Company Interests Security Deed"** means a security pledge in relation to the limited liability company interests of the Borrower executed or to be executed by Seven Seas in favour of the Security Trustee in the agreed form.

**"Loan"** means the principal amount for the time being outstanding under this Agreement.

**"Majority Lenders"** means:

- (a) before the Loan has been made, Lenders whose Commitments total [\*] per cent. of the Total Commitments; and
- (b) after the Loan has been made, Lenders whose Contributions total [\*] per cent. of the Loan.

**"Management Agreement"** means the management agreement (if any) entered or to be entered into between the Borrower and an Approved Manager which is not a member of the Group with respect to the Ship on terms reasonably acceptable to the Majority Lenders and SACE.

**"Margin"** means:

- (a) in relation to the Fixed Interest Rate zero point twenty-five per cent. (0.25%) per annum; and
- (b) in relation to the Floating Interest Rate one point seventy-five per cent. (1.75%) per annum.

**"Maritime Registry"** means the maritime registry which the Borrower will specify to the Lenders no later than 90 days before the Intended Delivery Date, being that of the Marshall Islands, Bahamas or such other registry as the Agent may approve.

**"Material Adverse Effect"** means the occurrence of any event or circumstance which reasonably would be expected to have a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) of any Obligor or the Group as a whole; or
- (b) the ability of any Obligor to perform its obligations under any Finance Document; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security Interest granted or intended to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Secured Party under any of the Finance Documents.

**"Maximum Loan Amount"** means the aggregate of:

- (a) the Dollar Equivalent of EUR 349,416,000;
- (b) 100% of the First Instalment of the SACE Premium to be paid by the Borrower direct to SACE on the earlier of (i) the date falling 30 days after the issuance of the SACE Insurance Policy and (ii) the date falling 6 months after the date of SACE's board approval; and
- (c) 100% of the Second Instalment of the SACE Premium payable on the Drawdown Date,

**Provided that** such amount shall not, at any time, exceed \$498,187,967.01.

"**Mortgage**" means the first priority mortgage on the Ship acceptable for registration on the Approved Flag and, if applicable, deed of covenant, executed or to be executed by the Borrower in favour of the Security Trustee in the agreed form.

"**Negotiation Period**" has the meaning given in Clause 6.8 (*Negotiation of alternative rate of interest*).

"**Obligors**" means the Borrower, the Guarantor, Seven Seas and (in the event that the Approved Manager is a member of the Group) the Approved Manager.

"**OFAC**" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"**Overnight LIBOR**" means, on any date, the London interbank offered rate, being the day to day rate at which Dollars are offered to prime banks in the London interbank market and published by the British Bankers' Association at or about 11.00 a.m. London time on page LIBOR01 of the Reuters screen. If the agreed page is replaced or the service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Borrower.

"**Parallel Debt**" means any amount which an Obligor owes to the Security Trustee under Clause 26.2 (*Parallel Debt (Covenant to pay the Security Trustee)*).

"**Participating Member State**" means any member state of the European Union that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"**Party**" means a party to this Agreement from time to time.

"**Permitted Security Interests**" means:

- (a) in the case of the Borrower,
  - (i) any of the Security Interests referred to in paragraph (b)(ii)(A) below, and
  - (ii) any of the Security Interests referred to in paragraphs (b)(ii)(B), (b)(ii)(C), (b)(ii)(E), (b)(ii)(H) and (b)(ii)(I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Borrower in the case of paragraphs (b)(ii)(C) or (b)(ii)(E) or incurred by the Borrower in the case of paragraphs (b)(ii)(B), (b)(ii)(H) or (b)(ii)(I); and
- (b) in the case of the Guarantor,
  - (i) any of the Security Interests referred to in paragraphs (ii)(A), (ii)(D), (ii)(F) and (ii)(G) below, and
  - (ii) any of the Security Interests referred to in paragraphs (C), (E), (H) and (I) below if, by reason of any chartering or management arrangements for the Ship approved by the Agent pursuant to the provisions of this Agreement, such Security Interests are created by the Guarantor in the case of paragraphs (C) or (E) or incurred by the Guarantor in the case of paragraphs (H) or (I);
    - (A) any Security Interest created by or pursuant to the Finance Documents and any deposits or other Security Interests placed or incurred in connection with any bond or other surety from time to time provided to the US Federal Maritime Commission in order to

comply with laws, regulations and rules applicable to the operators of passenger vessels operating to or from ports in the United States of America;

- (B) liens on the Ship up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) for current crew's wages and salvage and liens incurred in the ordinary course of trading the Ship;
- (C) any deposits or pledges up to an aggregate amount at any time not exceeding [\*] Dollars (\$[\*]) to secure the performance of bids, tenders, bonds or contracts required in the ordinary course of business;
- (D) any other Security Interest including in relation to the Existing Indebtedness over the assets of any Obligor other than the Borrower notified by the Borrower or any of the Obligors to the Agent and accepted by it prior to the date of this Agreement;
- (E) (without prejudice to the provisions of Clause 12.13 (*Financial Indebtedness and subordination of indebtedness*)) liens on assets leased, acquired or upgraded after the date of this Agreement or assets newly constructed or converted after the date of this Agreement provided that (i) such liens secure Financial Indebtedness otherwise permitted under this Agreement, (ii) such liens are incurred at the time of such lease, acquisition, upgrade, construction or conversion and (iii) the Financial Indebtedness secured by such liens does not exceed the cost of such upgrade or the cost of such assets acquired or leased;
- (F) other liens arising in the ordinary course of business of the Group unrelated to Financial Indebtedness and securing obligations not yet delinquent or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established provided that (i) the aggregate amount of all cash and the fair market value of all other property subject to such liens as are described in this paragraph (F) does not exceed [\*] Dollars (\$[\*]) and (ii) such cash and/or other property is not an asset of the Borrower;
- (G) subject to the other provisions of this Agreement and the Guarantee, any Security Interest in respect of existing Financial Indebtedness of a person which becomes a Subsidiary of the Guarantor or is merged with or into the Guarantor or any of its subsidiaries;
- (H) liens in favour of credit card companies on unearned customer deposits pursuant to agreements therewith;
- (I) liens in favour of customers on unearned customer deposits.

**"Pertinent Document"** means:

- (a) any Finance Document;
- (b) any policy or contract of insurance contemplated by or referred to in Clause 12 (*General Undertakings*) or any other provision of this Agreement or another Finance Document;

- (c) any other document contemplated by or referred to in any Finance Document; and
- (d) any document which has been or is at any time sent by or to the Agent in contemplation of or in connection with any Finance Document or any policy, contract or document falling within paragraphs (b) or (c).

**"Pertinent Matter"** means:

- (a) any transaction or matter contemplated by, arising out of, or in connection with a Pertinent Document; or
- (b) any statement relating to a Pertinent Document or to a transaction or matter falling within paragraph (a);

and covers any such transaction, matter or statement, whether entered into, arising or made at any time before the signing of this Agreement or on or at any time after that signing.

**"Post-Delivery Assignment"** means an assignment of the rights of the Borrower in respect of the post-delivery guarantee liability of the Builder under Article 25 of the Shipbuilding Contract executed or to be executed by the Borrower in favour of the Security Trustee in the agreed form.

**"Prohibited Payment"** means:

- (a) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would constitute bribery or an improper gift or payment under, or a breach of Sanctions, any laws of the Republic of Italy, England and Wales, Panama, the Council of the European Union, Germany, the United States of America or any other applicable jurisdiction; or
- (b) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would or might constitute bribery within the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997.

**"Prohibited Person"** means any person (whether designated by name or by reason of being included in a class of persons) against whom Sanctions are directed.

**"Protocol of Delivery and Acceptance"** means the protocol of delivery and acceptance of the Ship to be signed by the Borrower and the Builder in accordance with Article 8 of the Shipbuilding Contract.

**"Quotation Date"** means, in relation to any Interest Period (or any period for which an interest rate is to be determined under any provision of a Finance Document), the day which is 2 Business Days before the first day of that period, unless market practice differs in the Relevant Interbank Market for a currency, in which case the Quotation Date will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Date will be the last of those days).

**"Qualifying Certificate"** means the certificate to be issued by the Builder on the Delivery Date and issued to the Agent and copied to the Borrower substantially in the form set out in Schedule 5 (*Qualifying Certificate*).

**"Relevant Interbank Market"** means the European Interbank Market.

**"Relevant Jurisdiction"** means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to, or intended to be subject to, any of the Security Interests created, or intended to be created, under the Finance Documents to which it is a party is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Interests created, or intended to be created, under the Finance Documents to which it is a party.

"**Repayment Date**" means a date on which a repayment is required to be made under Clause 5 (*Repayment*).

"**Representative**" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"**Requisition Compensation**" includes all compensation or other moneys payable by reason of any act or event such as is referred to in paragraph (b) of the definition of "Total Loss".

"**SACE**" means SACE S.p.A.

"**SACE Agent**" means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,327,121,031 and its registered office located at 9, Quai du Président Paul Doumer, 92920 Paris La Défense cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause 25 (*Role of the Agent and the Joint Mandated Lead Arrangers*).

"**SACE Insurance Policy**" means the insurance policy in respect of this Agreement (which, in all material respects, is not inconsistent with the commercial terms of this Agreement) to be issued by SACE for the benefit of the Lenders in respect of 95% of the Loan in form and substance satisfactory to the Agent and the Lenders.

"**SACE Premium**" means the amount payable by the Borrower to SACE directly or through the Agent in two instalments in respect of the SACE Insurance Policy as set out in Clause 8 (*SACE Premium and Italian Authorities*).

"**SACE Required Documents**" means in relation to the Drawdown Notice:

- (a) a duly completed and executed Qualifying Certificate; and
- (b) each of the other documents, information and other evidence specified in or required to be enclosed with such Qualifying Certificate.

"**Sanctions**" means any sanctions, embargoes, freezing provisions, prohibitions or other restrictions relating to trading, doing business, investment, exporting, financing or making assets available (or other activities similar to or connected with any of the foregoing):

- (a) imposed by law or regulation of the United Kingdom, the Council of the European Union, the United Nations or its Security Council or imposed by any member state of the European Union or Switzerland;
- (b) imposed by CISADA or OFAC; or
- (c) otherwise imposed by any law or regulation,

by which any Obligor is bound or to which it is subject or, as regards a regulation, compliance with which is reasonable in the ordinary course of business of any Obligor.

"**Second Instalment**" means the second instalment of the SACE Premium as more particularly described in paragraph (b) of Clause 8.1 *SACE Premium*).

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

"**Secured Party**" means SACE, the Agent, the Security Trustee, the SACE Agent, the Joint Mandated Lead Arrangers or any Lender whether at the date of this Agreement or any later time.

"**Security Interest**" means:

- (a) a mortgage, charge (whether fixed or floating) or pledge, any maritime or other lien, assignment, hypothecation or any other security interest of any kind or other agreement or arrangement having the effect of conferring security;
- (b) the security rights of a plaintiff under an action *in rem*; and
- (c) any arrangement entered into by a person (A) the effect of which is to place another person (B) in a position which is similar, in economic terms, to the position in which B would have been had he held a security interest over an asset of A; but this paragraph (c) does not apply to a right of set off or combination of accounts conferred by the standard terms of business of a bank or financial institution.

"**Security Period**" means the period commencing on the date of this Agreement and ending on the date on which:

- (a) all amounts which have become due for payment by the Borrower or any Obligor under the Finance Documents have been paid;
- (b) no amount is owing or has accrued (without yet having become due for payment) under any Finance Document;
- (c) neither the Borrower nor any other Obligor has any future or contingent liability under Clause 19 *Application of sums received* below or any other provision of this Agreement or another Finance Document; and
- (d) the Agent does not consider that there is a significant risk that any payment or transaction under a Finance Document would be set aside, or would have to be reversed or adjusted, in any present or possible future bankruptcy of the Borrower or an Obligor or in any present or possible future proceeding relating to a Finance Document or any asset covered (or previously covered) by a Security Interest created by a Finance Document.

"**Security Property**" means:

- (a) the Security Interests expressed to be granted in favour of the Security Trustee as trustee for the Secured Parties and all proceeds received or recovered by or on behalf of the Security Trustee under or by virtue of any Security Interest including any money or other assets which are received or recovered by it as a result of the enforcement or exercise by it of such a Security Interest or right;

- (b) all obligations expressed to be undertaken by an Obligor to pay amounts in respect of the Secured Liabilities to the Security Trustee as trustee for the Secured Parties and secured by the Security Interests together with all representations and warranties expressed to be given by an Obligor in favour of the Security Trustee as trustee for the Secured Parties;
- (c) the Security Trustee's interest in any turnover trust created under the Finance Documents;
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Trustee is required by the terms of the Finance Documents to hold as trustee on trust for the Secured Parties,

except:

- (i) rights intended for the sole benefit of the Security Trustee; and
- (ii) any moneys or other assets which the Security Trustee has transferred to the Agent or (being entitled to do so) has retained in accordance with the provisions of this Agreement.

**"Security Requirement"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which is at any relevant time one hundred per cent (100%) of the Loan.

**"Security Trustee"** means Crédit Agricole Corporate and Investment Bank, a French "société anonyme", having a share capital of EUR 7,327,121,031 and its registered office located at 9, Quai du Président Paul Doumer, 92920 Paris La Défense cedex, France, registered under the n° Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre or any successor of it appointed under Clause 26 (*The Security Trustee*).

**"Security Value"** means the amount in Dollars (as certified by the Agent whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower and the Agent) which, at any relevant time, is the aggregate of (i) the market value of the Ship as most recently determined in accordance with Clause 13.4 (*Valuation of the Ship*); and (ii) the market value of any additional security for the time being actually provided to the Agent pursuant to Clause 15 (*Security Value Maintenance*).

**"Servicing Party"** means the Agent or the Security Trustee.

**"Seven Seas"** means Seven Seas Cruises S. DE R.L., a Panamanian *société de responsabilité limitada* domiciled in Panama whose resident agent is Arias, Fabrega & Fabrega at Plaza 2000 Building, 16th Floor, 50th Street, Panama, Republic of Panama.

**"Ship"** means the passenger cruise ship currently designated with Hull No. 6281 (as more particularly described in the Shipbuilding Contract) to be constructed under the Shipbuilding Contract and to be delivered to, and purchased by, the Borrower and registered in its name under an Approved Flag with the name "Explorer II".

**"Shipbuilding Contract"** has the meaning given in Recital (A).

**"SIMEST"** means Società Italiana per Le Imprese all'Estero - SIMEST Spa, which grants export subsidies in Italy under and according to the Italian Legislative Decree n. 143/98 and its amendments.

**"Subsidiary"** has the following meaning:

A company (S) is a subsidiary of another company (P) if:

- (i) a majority of the issued shares in S (or a majority of the issued shares in S which carry unlimited rights to capital and income distributions) are directly owned by P or are indirectly attributable to P; or
- (ii) P has direct or indirect control over a majority of the voting rights attaching to the issued shares of S; or
- (iii) P has the direct or indirect power to appoint or remove a majority of the directors of S; or
- (iv) P otherwise has the direct or indirect power to ensure that the affairs of S are conducted in accordance with the wishes of P;

and any company of which S is a subsidiary is a parent company of S.

**"Tax"** means any tax, levy, impost, duty, assessment, fee, deduction or other charge or withholding of a similar nature imposed by any governmental authority (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**"Total Loss"** means:

- (a) actual, constructive, compromised, agreed or arranged total loss of the Ship;
- (b) any expropriation, confiscation, requisition or acquisition of the Ship, whether for full consideration, a consideration less than its proper value, a nominal consideration or without any consideration, which is effected by any government or official authority or by any person or persons claiming to be or to represent a government or official authority, (excluding a requisition for hire for a fixed period not exceeding 1 year without any right to an extension) unless it is within 1 month redelivered to the Borrower's full control;
- (c) any arrest, capture, seizure or detention of the Ship (including any hijacking or theft) unless it is within 1 month redelivered to the Borrower's full control.

**"Total Loss Date"** means:

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

**"Transaction Documents"** means the Finance Documents and the Underlying Documents.

**"Transfer Certificate"** means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower.



"**Tripartite General Assignment**" means an assignment of the Bareboat Charter, any Management Agreement, the Earnings, the Insurances and any Requisition Compensation, executed or to be executed by the Borrower, Seven Seas as bareboat charterer and, in the event that the Approved Manager is not a member of the Group and is named as a co-assured in the Insurances, the Approved Manager in favour of the Security Trustee in the agreed form.

"**Underlying Documents**" means the Shipbuilding Contract, any Management Agreement, the Bareboat Charter and any charter and associated guarantee in respect of which a notice of assignment is required to be served under the terms of the Tripartite General Assignment.

"**Unpaid Sum**" means (i) any sum due and payable but unpaid by an Obligor under the Finance Documents and (ii) any part of the SACE Premium unpaid by the Borrower.

"**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 of certain terms

In this Agreement:

"**Agent**", the "**SACE Agent**", the "**Joint Mandated Lead Arranger**", the "**Security Trustee**", any "**Creditor Party**", any "**Secured Party**", any "**Lender**", any "**Obligor**" or any other "**person**", shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

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

"**company**" includes any partnership, joint venture and unincorporated association.

"**consent**" includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration, notarisation and legalisation.

"**contingent liability**" means a liability which is not certain to arise and/or the amount of which remains unascertained.

"**date of this Agreement**" means 30 March 2016.

"**document**" includes a deed; also a letter, fax or electronic mail.

"**expense**" means any kind of cost, charge or expense (including all legal costs, charges and expenses) and any applicable Taxes including VAT.

"**including**" and "**in particular**" (and other similar expressions) shall be construed as not limiting any general words or expressions in connection with which they are used.

"**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;

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

"**legal or administrative action**" means any legal proceeding or arbitration and any administrative or regulatory action or investigation.

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

"**months**" shall be construed in accordance with Clause 1.4 (*Meaning of "month"*).

"**parent company**" has the meaning given in the definition of "Subsidiary".

"**person**" includes any individual, firm, company, corporation, government, any state, political sub-division of a state and local or municipal authority, agency of a state or any association, trust, joint venture, consortium or partnership; and any international organisation (whether or not having a separate legal personality).

"**proceedings**" means, in relation to any enforcement provision of a Finance Document, proceedings of any kind, including an application for a provisional or protective measure;

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

### 1.3 Construction of Insurance Terms

"**approved**" means, for the purposes of Clause 14 (*Insurance Undertakings*), approved in writing by the Agent.

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

"**obligatory insurances**" means all insurances effected, or which the Borrower is obliged to effect, under Clause 14 (*Insurance Undertakings*) or any other provision of this Agreement or another Finance Document.

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

"**protection and indemnity risks**" means the usual risks covered by a protection and indemnity association managed in London, including pollution risks and the proportion (if any) of any sums payable to any other person or persons in case of collision which are not recoverable under the hull and machinery policies by reason of the incorporation in them of Clause 1 of the Institute Time Clauses (Hulls)(1/10/82) or Clause 8 of the Institute Time Clauses (Hulls) (1/11/1995) or the Institute Amended Running Down clause (1/10/71) or any equivalent provision.

"**war risks**" includes the risk of mines and all risks excluded by Clause 23 of the Institute Time Clauses (Hulls)(1/10/83) or clause 24 of the Institute Time Clauses (Hulls) (1/11/1995).

#### 1.4 Meaning of "month"

A period of one or more "months" ends on the day in the relevant calendar month numerically corresponding to the day of the calendar month on which the period started ("the numerically corresponding day"), but:

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

and "month" and "monthly" shall be construed accordingly.

#### 1.5 General Interpretation

In this Agreement:

- (a) references in Clause 1.1 (*Definitions*) to a Finance Document or any other document being an "agreed form" are to the form agreed between the Agent (acting with the authorisation of each of the Creditor Parties and SACE) and the Borrower with any modifications to that form which the Agent (with the authorisation of the Majority Lenders and SACE in the case of substantial modifications) approves or reasonably requires;
- (b) references to, or to a provision of, a Finance Document or any other document are references to it as amended, amended and restated or supplemented, whether before the date of this Agreement or otherwise;
- (c) references to, or to a provision of, any law include any amendment, extension, re-enactment or replacement, whether made before the date of this Agreement or otherwise;
- (d) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of a jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;
- (e) words denoting the singular number shall include the plural and vice versa; and
- (f) Clauses 1.1 (*Definitions*) to 1.5 (*General Interpretation*) apply unless the contrary intention appears.

#### 1.6 Headings

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

#### 1.7 Schedules

The schedules form an integral part of this Agreement.

## **2 FACILITY**

### **2.1 Amount of facility**

Subject to the other provisions of this Agreement, the Lenders agree to make available to the Borrower a loan not exceeding the Maximum Loan Amount intended to be applied as follows:

- (a) in payment to the Builder, up to the Eligible Amount, of all or part of 70% of the Final Contract Price and in reimbursement to the Borrower of all or part of 10% of the Final Contract Price;
- (b) in reimbursement to the Borrower of the amount of the First Instalment of the SACE Premium paid by it to SACE in accordance with paragraph (a) of Clause 8.1 (*SACE Premium*); and
- (c) in payment to SACE of the amount of the Second Instalment of the SACE Premium payable by the Borrower to SACE in accordance with paragraph (b) of Clause 8.1 (*SACE Premium*).

### **2.2 Lenders' participations in Loan**

Subject to the other provisions of this Agreement, each Lender shall participate in the Loan in the proportion which, as at the Drawdown Date, its Commitment bears to the Total Commitments.

### **2.3 Purpose of Loan**

The Borrower undertakes with each Secured Party to use the Loan only to pay for:

- (a) goods and services of Italian origin incorporated in the design, construction or delivery of the Ship;
- (b) subject to the limits and conditions fixed by the Italian Authorities, goods and services incorporated in the design, construction or delivery of the Ship and originating from countries other than Italy where the provision of such goods or services has been sub-contracted by the Builder and therefore remains the Builder's responsibility under the Shipbuilding Contract;
- (c) reimbursement to the Borrower of the First Instalment of the SACE Premium paid by the Borrower direct to SACE in accordance with paragraph (a) of Clause 8.1 (*SACE Premium*);
- (d) reimbursement to the Borrower of all or part of 10% of the Final Contract Price paid by the Borrower to the Builder prior to the Delivery Date; and
- (e) the Second Instalment of the SACE Premium payable in accordance with paragraph (b) of Clause 8.1 (*SACE Premium*).

### **2.4 Creditor Parties' rights and obligations**

- (a) The obligations of each Creditor Party under the Finance Documents are several. Failure by a Creditor Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Creditor Party is responsible for the obligations of any other Creditor Party under the Finance Documents.
- (b) The rights of each Creditor Party and SACE under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Creditor Party and SACE from an Obligor shall be a separate and independent debt.

- (c) A Creditor Party and SACE may not, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.
- (d) Notwithstanding any other provision of the Finance Documents and subject to the prior written consent of SACE, a Creditor Party may separately sue for any Unpaid Sum due to it without the consent of any other Creditor Party or joining any other Creditor Party to the relevant proceedings (it being understood that a Creditor Party may file a claim noting the amounts due to it in the event insolvency proceedings are commenced against the Borrower by a third party).

## **2.5 Monitoring**

No Creditor Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

## **2.6 Obligations of Lenders several**

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

- (a) the obligations of the other Lenders being increased; nor
- (b) any Obligor or any other Lender being discharged (in whole or in part) from its obligations under any Finance Document;

and in no circumstances shall a Lender have any responsibility for a failure of another Lender to perform its obligations under this Agreement or any other Finance Document.

## **2.7 Unconditional Obligations of the Borrower**

The obligations of the Borrower to make payments and to observe and perform its obligations under the Transaction Documents are absolute, unconditional, irrevocable and several and such obligations shall not:

- (a) in any way be discharged by reason of any matter affecting the Shipbuilding Contract including its performance, frustration or validity, the insolvency or dissolution of any party to the Shipbuilding Contract or the destruction, non-completion or non-functioning of the goods and equipment supplied under the Shipbuilding Contract;
- (b) in any way be affected or discharged by reason of any dispute under the Shipbuilding Contract or any claim which it or any other person may have against, or consider that it has against, any person under the Shipbuilding Contract;
- (c) in any way be affected or discharged by reason of unenforceability, illegality or invalidity of any obligation of the Borrower or any other person under the Shipbuilding Contract or any documents or agreements relating to the Shipbuilding Contract;
- (d) in any way be affected by the fact that all or any part of the amount requested referred to in the Drawdown Notice is not or was not due or payable to the Builder;
- (e) be conditional on the performance by the Creditor Parties of any obligations (except as otherwise stated herein) in order to give rise to a relevant obligation of the Borrower hereunder; or
- (f) in any way be affected or discharged by the insolvency or dissolution of the Borrower.

### 3 CONDITIONS PRECEDENT

#### 3.1 General

The Borrower may only draw under the Loan when the following conditions have been fulfilled to the satisfaction of the Agent and provided no Event of Default shall have occurred and remains unremedied or is likely to occur as a consequence of the drawing of the Loan:

#### 3.2 No later than the date of this Agreement

The Agent shall have received no later than the date of this Agreement:

- (a) an opinion from legal counsel acceptable to the Secured Parties as to the laws of the state of Delaware in form and substance satisfactory to the Agent and the Secured Parties, together with the limited liability company documentation of the Borrower supporting the opinion, including but without limitation the Certificate of Formation and Limited Liability Company Agreement as filed with the competent authorities and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, including, without limitation:
  - (i) the Borrower has been duly formed and is validly existing as a limited liability company under the laws of the state of Delaware;
  - (ii) this Agreement falls within the scope of the Borrower's limited liability company purpose as defined by its Certificate of Formation and Limited Liability Company Agreement;
  - (iii) the Borrower's representatives were at the date of this Agreement fully empowered to sign this Agreement;
  - (iv) either all administrative requirements applicable to the Borrower (whether in the state of Delaware or elsewhere), concerning the transfer of funds abroad and acquisitions of Dollars to meet its obligations hereunder have been complied with, or that there are no such requirements;
  - (v) no withholding tax or stamp duty implications arise by virtue of the Borrower entering into this Agreement;
  - (vi) a judgment of an English Court in relation to the Agreement and any relevant Finance Documents will be recognised by and acknowledged by the Courts in the State of Delaware; and
  - (vii) this Agreement constitutes the legal, valid and binding obligations of the Borrower enforceable in accordance with its terms,and containing such qualifications and assumptions as are standard for opinions of this type;
- (b) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties confirming, without limitation, that (i) the obligations of the Borrower under this Agreement and (ii) that the obligations of the Guarantor under the Guarantee are legally valid and binding obligations enforceable by the relevant Creditor Parties;
- (c) an opinion from legal counsel to the Secured Parties as to New York law in form and substance satisfactory to the Agent and the Secured Parties in respect of the validity and enforceability of the Limited Liability Company Interests Security Deed;

- (d) an opinion from legal counsel to the Secured Parties as to Bermuda law in form and substance satisfactory to the Agent and the Secured Parties in respect of the Guarantor's execution of the Guarantee;
- (e) a Certified Copy of the executed Shipbuilding Contract;
- (f) a confirmation from EC3 Services Limited of The St Botolph Building, 138 Houndsditch, London EC3A 7AR that it will act for the Borrower and the Guarantor as agent for service of process in England in respect of this Agreement and any other Finance Document;
- (g) an opinion from legal counsel acceptable to the Secured Parties as to Panamanian law in form and substance satisfactory to the Agent and the Secured Parties, together with the corporate documentation of Seven Seas supporting the opinion, including but without limitation the Articles of Incorporation and By-laws as filed with the competent authorities and a certificate of a competent officer of Seven Seas containing specimen signatures of the persons authorised to sign the documents on behalf of Seven Seas including without limitation:
  - (i) Seven Seas has been duly organised and is validly existing and in good standing as a Panamanian *sociedad anonima* or a *sociedad de responsabilidad limitada* with its domicile in the Republic of Panama and its Resident Agent being Arias Fabrega & Fabrega with address at Plaza 2000 Building, 16th Floor, 50th Street, Panama;
  - (ii) the Limited Liability Company Interests Security Deed is the legal, valid and binding obligation of Seven Seas which issued it enforceable in accordance with its terms;
  - (iii) the Limited Liability Company Interests Security Deed falls within the scope of Seven Seas' corporate purpose as defined by its Articles of Incorporation and By-laws; and
  - (iv) the representative of Seven Seas was at the date of the Limited Liability Company Interests Security Deed fully empowered to sign the Limited Liability Company Interests Security Deed,

and containing such qualifications and assumptions as are standard for opinions of this type;

- (h) duly executed originals of the Guarantee and the Limited Liability Company Interests Security Deed.

### **3.3 No later than ninety (90) days before the Intended Delivery Date**

The Agent shall have received no later than ninety (90) days before the Intended Delivery Date:

- (a) notification from the Borrower of its chosen Maritime Registry;
- (b) the SACE Insurance Policy documentation relating to the transaction contemplated by this Agreement issued on terms whereby the SACE Insurance Policy will enter into full force and effect upon fulfilment of the conditions specified therein to be fulfilled on or before the Drawdown Date;
- (c) evidence that the Borrower has paid the First Instalment of the SACE Premium to SACE in accordance with paragraph (a) of Clause 8.1 (*SACE Premium*);
- (d) notification of the Approved Manager;
- (e) (and on each subsequent date on which a Compliance Certificate is to be received by the Security Trustee pursuant to clause 11.3(c) of the Guarantee) a duly completed Compliance Certificate from the Guarantor; and

- (f) an opinion from legal counsel to the Creditor Parties as to Italian law in form and substance satisfactory to the Agent and the Secured Parties in respect of SACE's issuance of the SACE Insurance Policy and compliance with the principles governing the eligibility of credit risk mitigation techniques as per Article 194 of the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

**3.4 No later than sixty (60) days before the Intended Delivery Date**

- (a) The Agent shall have received from the Borrower no later than sixty (60) days before the Intended Delivery Date:
  - (i) notification of the Intended Delivery Date; and
  - (ii) a US tax opinion from legal counsel to the Secured Parties in respect of the tax treatment of the entry by the US incorporated Borrower into this Agreement and the other Finance Documents substantially in the form notified to the Borrower on or around the date of this Agreement and updated to reflect any changes in law;
- (b) The Agent shall notify to the Borrower any documents required under the ISM Code and the ISPS Code which are to be provided at delivery pursuant to paragraph (f) of Clause 3.10 below.

**3.5 No later than thirty (30) days before the Intended Delivery Date**

The Agent shall have received from the Borrower no later than thirty (30) days before the Intended Delivery Date notification, signed by a duly authorised signatory of the Borrower, specifying:

- (a) which of the Fixed Interest Rate or the Floating Interest Rate shall be applicable to the Loan until the date of payment of the final repayment instalment of the Loan; and
  - (b) if the Floating Interest Rate is applicable, whether the duration of the Interest Periods applicable to the Loan shall be 3 months or 6 months,
- and in absence of any such notification, the Borrower shall be deemed to have opted for the Floating Interest Rate with Interest Periods of 6 months.

**3.6 No later than fifteen (15) Business Days before the Intended Delivery Date**

The Agent shall have received no later than fifteen (15) Business Days before the Intended Delivery Date insurance documents in form and substance satisfactory to the Lenders confirming that the Insurances have been effected and will be in full force and effect on the Delivery Date.

**3.7 No later than five (5) Business Days before the Intended Delivery Date**

The Agent shall have received no later than five (5) Business Days before the Intended Delivery Date:

- (a) the Drawdown Notice from the Borrower, signed by a duly authorised signatory of the Borrower, specifying the amount of the Loan to be drawn down;
- (b) a Certified Copy of each of the Change Orders, of any amendments to the Shipbuilding Contract and of the power of attorney pursuant to which the authorised signatory of the Borrower signed the Drawdown Notice and a specimen of his signature;
- (c) a final confirmation of the Intended Delivery Date signed by a duly authorised signatory of the Borrower, and counter-signed by a duly authorised signatory of the Builder.



### 3.8 Examination of documents by the Agent

The Agent shall ensure that an officer or employee or other person designated by it as its authorised representative is present at the Builder on the proposed Drawdown Date for the purpose of examining originals (or certified copies) of the SACE Required Documents duly signed by the parties thereto and collecting copies thereof (which copies shall be certified as true copies by an authorised signatory of the Builder and/or the Borrower, as applicable).

### 3.9 No later than the Delivery Date

The Agent shall have received no later than the Delivery Date:

- (a) an opinion from legal counsel acceptable to the Secured Parties as to the laws of the state of Delaware in form and substance satisfactory to the Agent and the Secured Parties together with the limited liability company documentation of the Borrower and a certificate of a competent officer or manager of the Borrower containing specimen signatures of the persons authorised to sign the documents on behalf of the Borrower, confirming that, without limitation:
  - (i) the Mortgage, the Tripartite General Assignment, the Post-Delivery Assignment and the Bareboat Charter fall within the scope of the Borrower's limited liability company purpose as defined by its Certificate of Formation and Limited Liability Company Agreement and are binding on it; and
  - (ii) the Borrower's representatives are fully empowered to sign the Protocol of Delivery and Acceptance, the Mortgage, the Tripartite General Assignment, the Post-Delivery Assignment and the Bareboat Charter;
- (b) an opinion from legal counsel acceptable to the Secured Parties as to Panamanian law in form and substance satisfactory to the Agent and the Secured Parties together with the corporate documentation of Seven Seas and a certificate of a competent officer of Seven Seas containing specimen signatures of the persons authorised to sign the Tripartite General Assignment on behalf of Seven Seas, confirming that, without limitation:
  - (i) the Tripartite General Assignment falls within the scope of Seven Sea's corporate purpose as defined by its Articles of Incorporation and By-laws; and
  - (ii) the representative of Seven Seas is fully empowered to sign the Tripartite General Assignment;
- (c) evidence of payment to and receipt by the Builder of:
  - (i) the [\*] pre-delivery instalments of the Final Contract Price; and
  - (ii) any other part of the Final Contract Price as at the Delivery Date not being financed hereunder;
- (d) evidence of payment of all amounts which are due and payable hereunder by the Borrower on or prior to the Delivery Date;
- (e) a certificate from the Borrower, signed by an authorised representative of the Borrower, confirming that the representations and warranties contained in Clause 11 (*Representations and Warranties*) are true and correct as of the Delivery Date in consideration of the facts and circumstances existing as of the Delivery Date;
- (f) an original of the Interest Make-up Agreement relative to the Loan and in full force and effect;

- (g) an original of the SACE Insurance Policy;
- (h) an original or a certified copy of each of the SACE Required Documents and SACE and the Agent shall be satisfied that the SACE Required Documents on their face appear properly completed and comply with the requirements of this Agreement and the requirements of the SACE Insurance Policy; and

provided always that the obligations of the Lenders to make the Loan available on the Delivery Date are subject to the Lenders remaining satisfied that each of the SACE Insurance Policy and the Interest Make-up Agreement will cover the Loan following the advance of the Loan, payment of the Second Instalment of the SACE Premium and delivery to the Agent of the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

### **3.10 At Delivery**

Immediately prior to the delivery of the Ship by the Builder to the Borrower, the Agent shall have received:

- (a) evidence that immediately following delivery:
  - (i) the Ship will be registered in the name of the Borrower in the Maritime Registry;
  - (ii) title to the Ship will be held by the Borrower free of all Security Interests other than any maritime lien in respect of crew's wages and trade debts arising out of equipment, consumable and other stores placed on board the Ship prior to or concurrently with delivery, none of which is overdue;
  - (iii) the Mortgage will be duly registered in the Maritime Registry and constitutes a first priority security interest over the Ship and that all taxes and fees payable to the Maritime Registry in respect of the Ship have been paid in full; and
  - (iv) the opinions mentioned in paragraphs (b) and (c) of Clause 3.11, in draft form immediately prior to the delivery of the Ship, and the documents mentioned in paragraph (d) of Clause 3.11 will be issued to and received by the Agent;
- (b) a Certified Copy of a classification certificate (or interim classification certificate) showing the Ship to be classed in accordance with paragraph (c) of Clause 11.3 (*Representations on the Delivery Date*).
- (c) duly executed originals of the Tripartite General Assignment, any Approved Manager's Undertaking and the Post-Delivery Assignment together with relevant notices of assignment and the acknowledgement of the notice of assignment to be issued pursuant to the Tripartite General Assignment and the Post-Delivery Assignment;
- (d) a duly executed original of the Limited Liability Company Interests Security Deed (and of each document required to be delivered under the Limited Liability Company Interests Security Deed);
- (e) a Certified Copy of any executed Management Agreement, the Bareboat Charter and any time charterparty in respect of the Ship;
- (f) a Certified Copy of any current certificate of financial responsibility in respect of the Ship issued under OPA, a valid Safety Management Certificate (or interim Safety Management Certificate) issued to the Ship in respect of its management by the Approved Manager pursuant to the ISM Code, a valid Document of Compliance (or interim Document of Compliance) issued to the Approved Manager in respect of ships of the same type as the Ship pursuant to the ISM Code, a valid International Ship Security Certificate issued to the

Ship in accordance with the ISPS Code and a valid IAPPC issued to the Ship in accordance with Annex VI and, if entered into, any carrier initiative agreement with the United States' Customs and Border Protection under the Customs-Trade Partnership Against Terrorism (C-TPAT) programme along with any other documents required under the ISM Code and the ISPS Code and notified to the Borrower in accordance with paragraph (b) of Clause 3.4 above;

- (g) a Certified Copy of the power of attorney pursuant to which the authorised signatory(ies) of the Borrower signed the documents referred to in this Clause 3.10 *(Delivery)* and to which the Borrower is a party and a specimen of his or their signature(s);
- (h) a confirmation from EC3 Services Limited of The St Botolph Building, 138 Houndsditch, London EC3A 7AR (or any replacement process agent satisfactory to the Agent acting reasonably) that it will act for each of the relevant Obligors as agent for service of process in England in respect of the deed of covenants constituting part of the Mortgage (if applicable), the Tripartite General Assignment and the Post-Delivery Assignment.

**3.11 Immediately following the delivery of the Ship by the Builder to the Borrower, the Agent shall receive:**

- (a) a duly executed original of the Mortgage;
- (b) an opinion from legal counsel acceptable to the Secured Parties as to the law of the Maritime Registry in form and substance satisfactory to the Agent and the Secured Parties confirming:
  - (i) the valid registration of the Ship in the Maritime Registry; and
  - (ii) the Mortgage over the Ship has been validly registered in the Maritime Registry;
- (c) an opinion from legal counsel to the Secured Parties as to English law in form and substance satisfactory to the Agent and the Secured Parties confirming, without limitation, that the obligations of the Borrower under the deed of covenants constituting part of the Mortgage (if applicable), the Tripartite General Assignment and the Post-Delivery Assignment are legally valid and binding obligations enforceable by the relevant Creditor Parties in the English courts;
- (d) the documents listed in Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

**3.12 Notification of satisfaction of conditions precedent**

The Agent shall notify the Lenders and SACE promptly upon being satisfied as to the satisfaction of the conditions precedent referred to in this Clause 3 (*Conditions Precedent*).

**3.13 Waiver of conditions precedent**

If the Majority Lenders, at their discretion, subject to the prior written consent of SACE, permit the Loan to be borrowed before any of the conditions precedent referred to in Clause 3 (*Conditions Precedent*) has been satisfied, the Borrower shall ensure that that condition is satisfied within five (5) Business Days after the date (as specified in the relevant part of Clause 3 (*Conditions Precedent*)) or such later date as the Agent may agree in writing with the Borrower.

**3.14 Changes to SACE requirements**

- (a) If SACE notifies the Agent in writing of a change to the requirements of the SACE Insurance Policy with the effect that, in the opinion of the Agent, certain documents which the

Borrower is or may be required to provide for the purpose of drawing the Loan under this Agreement are no longer necessary to ensure that:

- (i) such SACE Insurance Policy will apply to the Loan made or to be made under this Agreement; and
- (ii) any claim which may be made in respect of the Loan under such SACE Insurance Policy will be valid and continue to be issued by SACE,

then the Agent shall promptly notify the Borrower of any changes the Agent considers appropriate to be made to this Agreement to reflect such a change in SACE's requirements.

- (b) If the Agent notifies the Borrower of any proposed changes to this Agreement under paragraph (a) above, and provided that:

- (i) all the Lenders and the Borrower agree with such changes; and
- (ii) the Borrower indemnifies and holds harmless the Agent and the Lenders for any reasonable costs that it may incur arising from or in connection with any such amendments (including legal fees),

then such changes will be made to this Agreement in accordance with the terms hereof.

- (c) If, in the opinion of the Lenders, there are any provisions of this Agreement that contradict or conflict with any provision of the SACE Insurance Policy to an extent that the same may have the effect of rendering all or any part of the SACE Insurance Policy void, voidable or otherwise not in full force and effect, this Agreement will be amended to the extent agreed in writing between the Borrower and the Agent to ensure compliance with the terms of the SACE Insurance Policy.

#### **4 DRAWDOWN**

##### **4.1 Borrower's irrevocable payment instructions**

The Lenders shall not be obliged to fulfil their obligation to make the Loan available other than (i) by reimbursing the Borrower, up to the Eligible Amount, all or part of 10% of the Final Contract Price and by paying the Builder all or part of 70% of the Final Contract Price on behalf of and in the name of the Borrower, (ii) by reimbursing the Borrower for the First Instalment of the SACE Premium which was paid by the Borrower to SACE on the earlier of (A) the date falling 30 days after the issuance of the SACE Insurance Policy and (B) the date falling 6 months after the date of SACE's board approval and (iii) by payment to SACE of the Second Instalment of the SACE Premium payable on the Delivery Date. For the avoidance of doubt, the amount of the Loan shall not exceed the Maximum Loan Amount.

The Borrower hereby instructs the Lenders in accordance with this Clause 4.1 *Borrower's irrevocable payment instructions*:

- (a) to pay to the Builder, up to the Eligible Amount, all or part of 70% of the Final Contract Price and to reimburse the Borrower all or part of 10% of the Final Contract Price;
- (b) to reimburse the Borrower the amount of the First Instalment of the SACE Premium already paid by the Borrower to SACE on the earlier of (i) the date falling 30 days after the issuance of the SACE Insurance Policy and (ii) the date falling 6 months after the date of SACE's board approval; and
- (c) to pay to the Agent on behalf of the Lenders for onward payment to SACE (such payment to SACE to be made for value on the Drawdown Date), by drawing under the Loan, the amount of the Second Instalment of the related SACE Premium.

Payment to the Builder of the amount drawn under paragraph (a) of Clause 4.1 above shall be made on the Delivery Date of the Ship during usual banking hours in Italy to the Builder's account as specified by the Builder in accordance with the Shipbuilding Contract after receipt and verification by the Agent of the documents provided under Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*).

Save as contemplated in Clause 4.3 (*Modification of payment terms*) below, the payment instruction contained in this Clause 4.1 (*Borrower's irrevocable payment instructions*) is irrevocable.

#### **4.2 Conversion Rate for Loan**

The Dollar amount to be drawn down under paragraph (a) of Clause 4.1 shall be calculated by the Agent on the Conversion Rate Fixing Date in accordance with the definitions of "Eligible Amount" and "Conversion Rate" in Clause 1.1 (*Definitions*).

#### **4.3 Modification of payment terms**

The Borrower expressly acknowledges that the payment terms set out in this Clause may only be modified with the agreement of the Italian Authorities, the Agent, the Security Trustee, the Lenders and the Borrower in the case of paragraph (a) of Clause 4.1 and with the agreement of the Italian Authorities, the Agent, the Lenders and the Borrower in the case of paragraphs (b) and (c) of Clause 4.1; **Provided that** it is the intention of the Borrower, the Lenders, the Security Trustee and the Agent that prior to the Conversion Rate Fixing Date agreement shall be reached with those financial institutions with whom the Borrower has entered into the FOREX Contracts (the "**Counterparties**") in order that the Euro payments due from the Counterparties under the FOREX Contracts shall be paid to the Agent for holding in escrow and to be released by the Agent simultaneously with (i) the payment in full to the Builder of the balance of the Final Contract Price denominated in Euro at the time of delivery of the Ship and (ii) the payment to the Counterparties of the Dollars due to them under the relevant FOREX Contracts out of the Dollar amount available under paragraph (a) of Clause 4.1, subject only to delivery of the Ship by the Builder to the Borrower taking place as evidenced by the execution and delivery of the Protocol of Delivery and Acceptance and to the Borrower having deposited with the Agent before delivery, if and to the extent required, any Dollar and/or Euro amounts as may be needed to ensure the payment in full of both the balance of the Final Contract Price in Euro and the Dollars owed to the Counterparties under all the relevant FOREX Contracts.

#### **4.4 Availability and conditions**

- (a) Drawing may not be made under this Agreement (and the Loan shall not be available) after the earlier of the Delivery Date and the expiry of the Availability Period.
- (b) There will be only one drawing under this Agreement.
- (c) The drawing cannot exceed the Maximum Loan Amount.

#### **4.5 Notification to Lenders of receipt of a Drawdown Notice**

The Agent shall promptly notify the Lenders that it has received a Drawdown Notice and shall inform each Lender of:

- (a) the amount of the Loan and the Drawdown Date;
- (b) the amount of that Lender's participation in the Loan; and
- (c) the duration of the first Interest Period.

#### 4.6 Lenders to make available Contributions

Subject to the provisions of this Agreement, each Lender shall, on and with value on the Drawdown Date, make available to the Agent the amount due from that Lender under Clause 2.2 (*Lenders' participations in Loan*).

#### 4.7 Disbursement of Loan

Subject to the provisions of this Agreement, the Agent shall on the Drawdown Date pay the amounts which the Agent receives from the Lenders under Clause 4.6 (*Lenders to make available Contributions*) in the like funds as the Agent received the payments from the Lenders:

- (a) in the case of the amount referred to in paragraph (a) of Clause 4.1, to the account of the Builder and the Borrower which the Borrower specifies in the Drawdown Notice; and
- (b) in the case of the amount referred to in paragraph (b) of Clause 4.1 to the account of the Borrower which the Borrower shall specify; and
- (c) in the case of the amount referred to in paragraph (c) of Clause 4.1 to the account of SACE which the SACE Agent shall specify.

#### 4.8 Disbursement of Loan to third party

The payment by the Agent under Clause 4.7 (*Disbursement of Loan*) shall constitute the making of the Loan and the Borrower shall at that time become indebted, as principal and direct obligor, to each Lender in an amount equal to that Lender's Contribution.

### 5 REPAYMENT

#### 5.1 Number of repayment instalments

The Borrower shall repay the Loan by:

- (a) if the Borrower has specified a Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5, twenty-four (24) consecutive six-monthly instalments;
- (b) if the Borrower has specified a Floating Interest Rate pursuant to paragraph (a) of Clause 3.5 and Interest Periods of 6 months pursuant to paragraph (b) of Clause 3.5 or the Borrower has not provided a notification pursuant to Clause 3.5, twenty-four (24) consecutive six-monthly instalments; or
- (c) if the Borrower has specified a Floating Interest Rate pursuant to paragraph (a) of Clause 3.5 and Interest Periods of 3 months pursuant to paragraph (b) of Clause 3.5 forty-eight (48) quarterly instalments.

#### 5.2 Repayment Dates

The first instalment shall be repaid on the date falling:

- (a) if paragraph (a) or paragraph (b) of Clause 5.1 (*Number of repayment instalments*) apply, six (6) months after the Delivery Date; or
- (b) if paragraph (c) of Clause 5.1 (*Number of repayment instalments*) applies, three (3) months after the Delivery Date,

and the last instalment on the date falling one hundred and forty four (144) months after the Delivery Date, each date of payment of an instalment being a **Repayment Date**".

### **5.3 Amount of repayment instalments**

Each repayment instalment of the Loan shall be of an equal amount.

### **5.4 Final Repayment Date**

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

## **6 INTEREST**

### **6.1 Fixed Interest Rate**

If the Borrower has specified a Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5, the Loan shall bear interest at the Fixed Interest Rate. Such interest shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid on each Repayment Date.

### **6.2 Floating Interest Rate**

If:

- (a) the Borrower has specified a Floating Interest Rate pursuant to paragraph (a) of Clause 3.5; or
- (b) the Borrower has specified a Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5 but thereafter for any reason whatsoever the Interest Make-up Agreement is suspended or otherwise ceases to be in effect; or
- (c) SIMEST has requested a change of currency pursuant to the Interest Make-Up Agreement and such change of currency is not agreed by the Borrower or Lenders in accordance with Clause 6.15 (*Change of currency*); or
- (d) SIMEST has failed to make a net payment of interest to the Lenders pursuant to the Interest Make-Up Agreement,

the rate of interest on the Loan in respect of any Interest Period shall be the Floating Interest Rate applicable for that Interest Period and the following provisions of this Clause 6 (*Interest*) shall apply (in the case of the circumstances referred to in paragraph (b) above, with effect from the date on which the Interest Make-up Agreement ceases to be in effect, with such consequential amendments as shall be necessary to give effect to the switch from a Fixed Interest Rate to a Floating Interest Rate).

### **6.3 Payment of Floating Interest Rate**

Subject to the provisions of this Agreement, interest on the Loan in respect of each Interest Period shall accrue on the actual number of days elapsed based upon a 360 day year and shall be paid by the Borrower on the last day of that Interest Period.

### **6.4 Notification of Interest Periods and Floating Interest Rate**

The Agent shall notify the Borrower and each Lender of each Floating Interest Rate and the duration of each Interest Period as soon as reasonably practicable after each is determined and no later than the Quotation Date.

## 6.5 Market disruption

The following provisions of this Clause 6 (*Interest*) apply if:

- (a) no rate is quoted on "Thomson Reuters Page LIBOR 01 or LIBOR 02" (or any other page replacing it) and the Lenders do not, before 1.00 p.m. (London time) on the Quotation Date for an Interest Period, provide quotations to the Agent in order to fix LIBOR; or
- (b) at least 1 Business Day before the start of an Interest Period, Lenders having Contributions together amounting to more than [\*] per cent. of the Loan (or, if the Loan has not been made, Commitments amounting to more than [\*] per cent. of the Total Commitments) notify the Agent that LIBOR fixed by the Agent would not accurately reflect the cost to those Lenders of funding their respective Contributions (or any part of them) during the Interest Period in the London Interbank Market at or about 11.00 a.m. (London time) on the Quotation Date for the Interest Period; or
- (c) at least 1 Business Day before the start of an Interest Period, the Agent is notified by a Lender (the "**Affected Lender**") that for any reason it is unable to obtain Dollars in the London Interbank Market in order to fund its Contribution (or any part of it) during the Interest Period.

## 6.6 Notification of market disruption

The Agent shall promptly notify the Borrower and each of the Lenders stating the circumstances falling within Clause 6.5 (*Market disruption*) which have caused its notice to be given.

## 6.7 Suspension of drawdown

If the Agent's notice under Clause 6.5 (*Market disruption*) is served before the Loan is made:

- (a) in a case falling within paragraphs (a) or (b) of Clause 6.5 (*Market disruption*), the Lenders' obligations to make the Loan;
  - (b) in a case falling within paragraph (c) of Clause 6.5 (*Market disruption*), the Affected Lender's obligation to participate in the Loan;
- shall be suspended while the circumstances referred to in the Agent's notice continue.

## 6.8 Negotiation of alternative rate of interest

If the Agent's notice under Clause 6.6 (*Notification of market disruption*) is served after the Loan is made, the Borrower, the Agent and the Lenders or (as the case may be) the Affected Lender shall use reasonable endeavours to agree, in consultation with SACE, within the 30 days after the date on which the Agent serves its notice under Clause 6.6 (*Notification of market disruption*) (the "**Negotiation Period**"), an alternative interest rate or (as the case may be) an alternative basis for the Lenders or (as the case may be) the Affected Lender to fund or continue to fund their or its Contribution during the Interest Period concerned.

## 6.9 Application of agreed alternative rate of interest

Any alternative interest rate or an alternative basis which is agreed during the Negotiation Period shall take effect in accordance with the terms agreed.

## 6.10 Alternative rate of interest in absence of agreement

If an alternative interest rate or alternative basis is not agreed within the Negotiation Period, and the relevant circumstances are continuing at the end of the Negotiation Period, then



the Agent shall, with the agreement of each Lender or (as the case may be) the Affected Lender (and in consultation with SACE), set an interest period and interest rate representing the cost of funding of the Lenders or (as the case may be) the Affected Lender in Dollars or in any available currency of their or its Contribution plus the Margin; and the procedure provided for by this Clause 6.10 (*Alternative rate of interest in absence of agreement*) shall be repeated if the relevant circumstances are continuing at the end of the interest period so set by the Agent.

#### **6.11 Notice of prepayment**

If the Borrower does not agree with an interest rate set by the Agent under Clause 6.10 (*Alternative rate of interest in absence of agreement*), the Borrower may give the Agent not less than 15 Business Days', or, if the Fixed Interest Rate has been selected pursuant to paragraph (a) of Clause 3.5, 30 days, notice of its intention to prepay at the end of the interest period set by the Agent.

#### **6.12 Prepayment; termination of Commitments**

A notice under Clause 6.11 (*Notice of prepayment*) shall be irrevocable; the Agent shall promptly notify the Lenders or (as the case may require) the Affected Lender and, if the Fixed Interest Rate has been selected by the Borrower, SIMEST of the Borrower's notice of intended prepayment; and:

- (a) on the date on which the Agent serves that notice, the Total Commitments or (as the case may require) the Commitment of the Affected Lender shall be cancelled; and
- (b) on the last Business Day of the interest period set by the Agent, the Borrower shall prepay (without premium or penalty subject to the provisions of Clause 20.2 (*Breakage costs and SIMEST arrangements*)) the Loan or, as the case may be, the Affected Lender's Contribution, together with accrued interest thereon at the applicable rate (being either the Floating Interest Rate or the Fixed Interest Rate as specified by the Borrower pursuant to paragraph (a) of Clause 3.5.

#### **6.13 Application of prepayment**

The provisions of Clause 16 (*Cancellation, Prepayment and Mandatory Prepayment*) shall apply in relation to the prepayment.

#### **6.14 Certain Circumstances**

Notwithstanding anything to the contrary in this Agreement:

- (a) in the event of any circumstances falling within Clause 6.5 (*Market disruption*) which might affect the advance of the Loan on the Drawdown Date (the "**Relevant Circumstances**"):
  - (i) occurring and being continuing on the date falling ninety (90) days before the Intended Delivery Date (the "**Relevant Date**"), each Lender will notify the Borrower (through the Agent) of the Relevant Circumstances on the Relevant Date or, if the Relevant Date is not a Business Day, on the next following Business Day; and
  - (ii) occurring after the Relevant Date, each Lender will notify the Borrower (through the Agent) immediately each Lender become aware of the Relevant Circumstances;
- (b) in the event of any Relevant Circumstances falling within paragraphs (a) or (b) of Clause 6.5 (*Market disruption*) (the "**Pricing-Related Relevant Circumstances**") occurring before the Loan is made available and notwithstanding the provisions of Clause 6.7 (*Suspension of drawdown*), each Lender will fund its respective Contributions by reference to the agreed alternative rate of interest in accordance with Clauses 6.8 (*Negotiation of alternative rate of*

interest), 6.9 (*Application of agreed alternative rate of interest*) and 6.10 (*Alternative rate of interest in absence of agreement*) as if the provisions of such Clauses applied not only in the event that the Pricing-Related Relevant Circumstances have been notified by the Agent to the Borrower after the making of the Loan but also before the making of the Loan.

- (c) in the event of any Relevant Circumstances falling within paragraph (c) of Clause 6.5 (*Market disruption*) (the "**Availability-Related Relevant Circumstances**") occurring before the Loan is made and notwithstanding the provisions of Clause 6.7, each Lender will enter into good faith discussions with the Borrower for a period not exceeding 10 Business Days in order to discuss a basis on which the Lenders could be able to fund their respective Contributions in Dollars (or, if unavailable in Dollars, then in any available currency). Such discussions shall be without obligation on the Lenders provided that during such discussion period, such circumstances continue.

#### **6.15 Change of currency**

- (a) In the event that the Agent notifies the Borrower that SIMEST has requested a change in the currency of the Loan in accordance with clause 6.3 of the Interest Make-Up Agreement, the Borrower and the Lenders shall, without obligation, consider such request for a change of currency acting reasonably for a period of not exceeding 10 Business Days. Following such discussions the Agent shall report the decision of the Borrower and the Lenders to SIMEST, providing their reason for any negative decision.
- (b) In the event that a change of currency is agreed the Parties agree to negotiate in good faith the necessary changes to the Loan Agreement, the Finance Documents, the SACE Insurance Policy and the Interest Make-Up Agreement in order to document the change in currency.
- (c) In the event that a change in currency is not acceptable to the Lenders or the Borrower, the provision of paragraph (c) of Clause 6.2 (*Floating Interest Rate*) shall apply.

### **7 INTEREST PERIODS**

#### **7.1 Commencement of Interest Periods**

The first Interest Period shall commence on the Drawdown Date and each subsequent Interest Period shall commence on the expiry of the preceding Interest Period.

#### **7.2 Duration of Interest Periods**

If:

- (a) the Borrower has specified a Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5, each Interest Period shall be 6 months and shall end on the next succeeding Repayment Date;
- (b) the Borrower has specified a Floating Interest Rate pursuant to paragraph (a) of Clause 3.5, each Interest Period shall be 3 months or 6 months at the Borrower's option, such option to be selected pursuant to paragraph (b) of Clause 3.5; or
- (c) paragraphs (b), (c) or (d) of Clause 6.2 (*Floating Interest Rate*) apply, each Interest Period shall be 6 months.

### **8 SACE PREMIUM AND ITALIAN AUTHORITIES**

#### **8.1 SACE Premium**

The estimated SACE Premium for a maximum amount of \$[\*] (being [\*]% of the Maximum Loan Amount) is due and payable in two instalments as follows:

- (a) the first instalment of the SACE Premium being an amount of \$[\*] (calculated as being [\*]% of [\*]% of the Maximum Loan Amount) (the "**First Instalment**") shall be paid by the Borrower to SACE (provided the Borrower and the Lenders have been notified by the SACE Agent that the SACE Insurance Policy has been issued) on the earlier of (i) the date falling 30 days after the issuance of the SACE Insurance Policy and (ii) the date falling 6 months after the date of SACE's board approval; and
- (b) the second instalment of the SACE Premium shall be such amount in Dollars as is calculated by SACE at the Conversion Rate as being [\*]% of [\*]% of the Loan actually advanced on the Drawdown Date (the "**Second Instalment**") and shall be payable on or prior to the Drawdown Date. For the sake of clarity, no set-off with the first instalment of the SACE Premium shall be permitted.

## **8.2 Reimbursement by the Borrower of the SACE Premium**

The Borrower irrevocably agrees to pay the First Instalment, and to instruct the Lenders to pay the Second Instalment on behalf of the Borrower, as follows:

- (a) the Borrower has requested and the Lenders have agreed to reimburse the payment of one hundred per cent. (100%) of the First Instalment to the Borrower on the Drawdown Date, it being agreed that such First Instalment shall be paid to SACE by the Borrower in accordance with paragraph (a) of Clause 8.1 (*SACE Premium*) and upon notification by the Agent to the Borrower (i) of the issuance of the SACE Insurance Policy documentation in the form required by paragraph (b) of Clause 3.3 of this Agreement, and (ii) of the amount of the First Instalment;
- (b) the Borrower has requested and the Lenders have agreed to finance the payment of one hundred per cent. (100%) of the Second Instalment on the Drawdown Date in accordance with paragraph (c) of Clause 2.1 (*Amount of facility*) of this Agreement.

Consequently, the Borrower hereby irrevocably instructs the Agent on behalf of the Lenders to pay the Second Instalment to SACE on the Drawdown Date in accordance with paragraph (c) of Clause 2.1 (*Amount of facility*) of this Agreement and to reimburse the Borrower by the Borrower drawing under the Loan the amount of the First Instalment in accordance with paragraph (b) of Clause 2.1 (*Amount of facility*) of this Agreement.

The First Instalment and Second Instalment each financed by the Loan will be repayable in any event by the Borrower to the Lenders in the manner specified in Clause 5 (*Repayment*) and under any and all circumstances including but without limitation in the event of prepayment or acceleration of the Loan.

## **8.3 Italian Authorities**

- (a) The Borrower acknowledges and agrees that the Agent and the Lenders are entitled to provide the Italian Authorities with any information they may have relative to the Loan and the business of the Group, to allow the Italian Authorities to inspect all their records relating to this Agreement and the other Transaction Documents and to furnish them with copies thereof. Any such information relative to the Loan may also be given by any Italian Authorities to international institutions charged with collecting statistical data.
- (b) The Borrower acknowledges that, in the making of any decision or determination or the exercise of any discretion or the taking or refraining to take any action under this Agreement or any of the other Finance Documents, the Agent and the Lenders shall be deemed to have acted reasonably if they have acted on the instructions of either of the Italian Authorities.
- (c) Each Party further undertakes not to act in a manner which is inconsistent with the terms of the SACE Insurance Policy and the Interest Make Up Agreement.

#### **8.4 Refund**

- (a) Provided that no Event of Default has occurred and is then continuing and no loss has occurred under the SACE Insurance Policy, the Borrower shall be entitled to a refund of the First Instalment of the SACE Premium in accordance with the terms of the SACE Insurance Policy in the event that no disbursements have been made under this Agreement and, as a result thereof, the SACE Insurance Policy has been definitely terminated by mutual consent between the parties thereto.
- (b) If the Borrower draws down less than the Eligible Amount, the Borrower shall be entitled to a refund of the SACE Premium in an amount corresponding to the undrawn amount.
- (c) Any refund of the SACE Premium, whether in whole or in part, must be expressly requested from SACE by the SACE Agent in writing following a request by the Borrower to the SACE Agent. Under the terms of the SACE Insurance Policy, a fixed amount of [\*] per cent. ([\*]%) shall be withheld from the amount of the SACE Premium to be refunded. Such withholding, charged as a lump sum to cover administration and management costs for the SACE Insurance Policy, may not, in any event, amount to less than the equivalent of €[\*], calculated at the exchange rate as at the date of the refund request.
- (d) Except as set out in paragraph (a) to (c) above, no part of the SACE Premium is refundable to any Obligor.
- (e) In no event shall the SACE Agent be liable for any refund of the SACE Premium to be made by SACE.

#### **9 FEES**

##### **9.1 Fees**

The following fees shall be paid to the Agent by the Borrower as required hereunder:

- (a) for the benefit of the Joint Mandated Lead Arrangers, a Joint Mandated Lead Arranger structuring fee in Euros, computed at the rate of [\*] per cent. ([\*]%) flat on EUR [\*] being the Maximum Loan Amount converted in to Euros at the Base Rate and payable on the date of this Agreement;
- (b) for the benefit of the Lenders, a commitment fee in Dollars for the period from the date of this Agreement to the Delivery Date of the Ship, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause 16.1 (*Cancellation*), whichever is the earliest, computed at the rate of [\*] per cent. ([\*]%) per annum and calculated on the undrawn amount of the Maximum Loan Amount and payable in arrears on the date falling six (6) months after the date of this Agreement and on each date falling at the end of each following consecutive six (6) month period, with the exception of the commitment fee due in respect of the last period, which shall be paid on the Drawdown Date, or the date of receipt by the Agent of the written cancellation notice sent by the Borrower as described in Clause 16.1 (*Cancellation*), whichever is the earliest, such commitment fee to be calculated on the actual number of days elapsed divided by three hundred and sixty (360). For the purpose of the computation of the periodical commitment fee payable to the Lenders, the Maximum Loan Amount is assumed to be \$498,187,967.01;
- (c) for the Agent, an agency fee of \$[\*] payable on the date of this Agreement and on or before each anniversary date thereof until total repayment of the Loan unless the Total Commitments are terminated pursuant to Clause 16.1 (*Cancellation*); and
- (d) for the SACE Agent an Agent structuring fee in the amount and payable at the time separately agreed in writing between the SACE Agent and the Borrower.

## 10 TAXES, INCREASED COSTS, COSTS AND RELATED CHARGES

### 10.1 Definitions

(a) In this Agreement:

**"Protected Party"** means a Secured Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document;

**"Tax Credit"** means a credit against, relief or remission for, or repayment of any Tax.

**"Tax Deduction"** means a deduction or withholding for or on account of Tax from a payment under a Finance Document other than a FATCA Deduction.

**"Tax Payment"** means either the increase in a payment made by an Obligor to a Secured Party under Clause 10.2 (*tax gross-up*) or a payment under Clause 10.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 10 (*Taxes, Increased Costs, Costs and Related Charges*) reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination.

### 10.2 Tax gross-up

(a) Each Obligor shall make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.

(c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) A payment shall not be increased under paragraph (c) above if on the date on which the payment falls due 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 (having been given notice of the documentation requested under Clause 10.7 (*Lender Status*) at least 30 Business Days prior to such payment date) complied with its obligations under Clause 10.7 (*Lender Status*).

(e) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Secured Party entitled to the payment evidence reasonably satisfactory to that Secured Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

### 10.3 Tax indemnity

- (a) The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
- (i) with respect to any Tax assessed on a Secured Party:
    - (A) under the law of the jurisdiction in which that Secured Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Secured Party is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which that Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction, if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Secured Party; or
  - (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 10.2 (*Tax gross-up*) or would have been compensated for by an increased payment under Clause 10.2 (*Tax gross-up*) but was not so compensated solely because an exclusion in paragraph (d) of Clause 10.2 (*Tax gross-up*) applied, or relates to a FATCA Deduction required to be made by a Party; or
  - (iii) with respect to the Taxes in the nature of a branch profits tax imposed by Section 884(a) of the Code that is imposed by any jurisdiction described in paragraph (b)(i)(B) above.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 10.3 (*Tax indemnity*), notify the Agent.

### 10.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Creditor Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Creditor Party has obtained, retained and utilised that Tax Credit,

the Creditor Party shall pay an amount to the Obligor which that Creditor Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

### 10.5 Stamp taxes

The Borrower shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

## 10.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Secured Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Secured Party to any Party under a Finance Document and such Secured Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Secured Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Secured Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Secured Party (the "**Supplier**") to any other Secured Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
  - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Secured Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Secured Party for the full amount of such cost or expense, including such part of it as represents VAT, save to the extent that such Secured Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 10.6 (*VAT*) to any Party being required to account to a tax authority for VAT shall, at any time when such Party is treated as a member of a group for VAT purposes, include a reference to another member of that group being required to so account to the relevant tax authority.
- (e) In relation to any supply made by a Secured Party to any Party under a Finance Document, if reasonably requested by such Secured Party, that Party must promptly provide such Secured Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Secured Party's VAT reporting requirements in relation to such supply.

## 10.7 Lender Status

- (a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under a Finance Document shall deliver to the Agent and the Borrower, at the time or times reasonably requested by the Agent or the Borrower, such properly completed and executed documentation reasonably requested by the Agent or the Borrower (and which it is reasonable for the Lender to complete and execute) as will permit such payments to be made without withholding or at a reduced rate of withholding. In

addition, any Lender, if reasonably requested by the Agent or the Borrower, shall deliver such other documentation as prescribed by applicable law and reasonably requested by the Agent or the Borrower as will enable the Agent or the Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

- (b) Any Lender shall, to the extent it is legally entitled to do so, deliver to the Agent and the Borrower on or prior to the date on which such Lender becomes a Lender under this Agreement or promptly thereafter (and from time to time thereafter as prescribed by applicable law or upon the request of the Agent or the Borrower), duly executed and properly completed copies of Internal Revenue Service Form W-9 or W-8, as applicable, certifying that it is not subject to U.S. federal backup withholding or establishing an exemption from, or reduction of, U.S. federal withholding Tax.

#### **10.8 FATCA Deduction**

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the Party to whom it is making the payment and, in addition, shall notify the Borrower, the Agent and the other Secured Parties.

#### **10.9 FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party;
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Creditor Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.



- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a) (i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) Each Lender shall, within ten Business Days of (i) where the relevant Lender is a Lender at the date of this Agreement, the date of this Agreement and (ii) where the relevant Lender is a Transferee Lender, the effective date of a Transfer Certificate under Clause 23.4 (*Effective Date of Transfer Certificate*), supply to the Agent:
  - (i) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
  - (ii) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the relevant Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the relevant Borrower.
- (h) The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

#### **10.10 Increased Costs**

- (a) If after the date of this Agreement by reason of (x) any change in law or in its interpretation or administration and/or (y) compliance with any request from or requirement of any central bank or other fiscal, monetary or other authority including but without limitation the Basel Committee on Banking Regulations and Supervisory Practices whether or not having the force of law:
  - (i) any of the Lenders incurs a cost as a result of its performing its obligations under this Agreement and/or its making available its Commitment hereunder; or
  - (ii) there is any increase in the cost to any of the Lenders of funding or maintaining all or any of the advances comprised in a class of advances formed by or including its Commitment advanced or to be advanced by it hereunder; or
  - (iii) any of the Lenders incurs a cost as a result of its having entered into and/or its assuming or maintaining its commitment under this Agreement; or
  - (iv) any of the Lenders becomes liable to make any payment on account of Tax or otherwise (other than Tax on its overall net income) on or calculated by reference to the amount of its Commitment advanced or to be advanced hereunder and/or any sum received or receivable by it hereunder; or

- (v) any of the Lenders suffers any decrease in its rate of return as a result of any changes in the requirements relating to capital ratios, monetary control ratios, the payment of special deposits, liquidity costs or other similar requirements affecting that Lender,

then the Borrower shall on demand pay to the Agent for the account of the relevant Lender or Lenders amounts sufficient to indemnify the relevant Lender or Lenders against, as the case may be, such cost, such increased cost (or such proportion of such increased cost as is in the reasonable opinion of the relevant Lender or Lenders attributable to the funding or maintaining of its or their Commitment(s) hereunder) or such liability.

- (b) This Clause 10.10 (*Increased Costs*) does not apply to the extent any Increased Cost is:
  - (i) Attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) Attributable to a FATCA Deduction required to be made by a Party;
  - (iii) Compensated for by Clause 10.3 (*Tax indemnity*) (or would have been compensated for under Clause 10.3 (*Tax indemnity*) but was not compensated solely because any of the exclusions in paragraph (b) of Clause 10.3 (*Tax indemnity*) applied); or
  - (iv) Attributable to the wilful breach by the relevant Creditor Party or its Affiliates of any law of regulation.

In this Clause 10.10 (*Increased Costs*), a reference to a "Tax Deduction" has the same meaning given to the term in Clause 10.1 (*Definitions*).

- (c) A Lender affected by any provision of this Clause 10.10 (*Increased Costs*) shall promptly inform the Agent after becoming aware of the relevant change and its possible results (which notice shall be conclusive evidence of the relevant change and its possible results) and the Agent shall, as soon as reasonably practicable thereafter, notify the Borrower of the change and its possible results. Without affecting the Borrower's obligations under this Clause 10.10 (*Increased Costs*) and in consultation with the Agent and the Italian Authorities, the affected Lender will then take all such reasonable steps as may be open to it to mitigate the effect of the change (for example (if then possible) by changing its Facility Office or transferring some or all of its rights and obligations under this Agreement to another financial institution reasonably acceptable to the Borrower and the Agent and the Italian Authorities). The reasonable costs of mitigating the effect of any such change shall be borne by the Borrower save where such costs are of an internal administrative nature and are not incurred in dealings by any Lender with third parties.

#### **10.11 Transaction Costs**

The Borrower undertakes to pay to the Agent, upon demand, all costs and expenses, duties and fees, including but without limitation pre-agreed legal costs (which, for avoidance of doubt are exclusive of VAT and disbursements) out of pocket expenses and travel costs, reasonably incurred by the Italian Authorities, the Joint Mandated Lead Arrangers and the Lenders (but not including any bank which becomes a Lender after the date of this Agreement) in connection with the negotiation, preparation and execution of all agreements, guarantees, security agreements and related documents entered into, or to be entered into, for the purpose of the transaction contemplated hereby as well as all costs and expenses, duties and fees incurred by the Agent or the Lenders in connection with the registration, filing, enforcement or discharge of the said guarantees or security agreements, including without limitation the fees and expenses of legal advisers and insurance experts (provided that such insurance costs are not to exceed \$10,000) and the fees and expenses of the Italian Authorities (including the fees and expenses of its legal advisers) payable by the Joint Mandated Lead Arrangers to the Italian Authorities, the cost of registration and discharge of security interests and the related travel and out of pocket expenses; the

Borrower further undertakes to pay to the Agent all costs, expenses, duties and fees incurred by the Lenders and the Italian Authorities in connection with any variation of this Agreement and the related documents, guarantees and security agreements, any supplements thereto and waiver given in relation thereto, in connection with the investigation of any potential Event of Default, the enforcement or preservation of any rights under this Agreement and/or the related guarantees and security agreements, including in each case the fees and expenses of legal advisers, and in connection with the consultations or proceedings made necessary or in the opinion of the Agent desirable by the acts of, or failure to act on the part of, the Borrower.

#### **10.12 Costs of delayed Delivery Date**

The Borrower undertakes to pay to the Agent, upon demand, any costs incurred by the Lenders and/or the Italian Authorities in funding the Loan in the event that the Delivery Date is later than the Intended Delivery Date unless the Borrower has given the Agent at least three (3) Business Days' notification of such delay in the Delivery Date.

#### **10.13 SACE obligations**

To the extent that this Clause 10 (*Taxes, Increased Costs, Costs and Related Charges*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

### **11 REPRESENTATIONS AND WARRANTIES**

#### **11.1 Timing and repetition**

The following applies in relation to the time at which representations and warranties are made and repeated:

- (a) the representations and warranties in Clause 11.2 (*Continuing representations and warranties*) are made on the date of this Agreement (apart from the representation at paragraphs (dd) and (ee) of Clause 11.2 (*Continuing representations and warranties*) which shall only be made on the date of this Agreement and shall not be repeated) and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents; and
- (b) the representations and warranties in Clause 11.3 (*Representations on the Delivery Date*) are made on the Delivery Date and shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made thereafter on each day until the Borrower has no remaining obligations, actual or contingent, under or pursuant to this Agreement or any of the other Finance Documents.

#### **11.2 Continuing representations and warranties**

The Borrower represents and warrants to each of the Secured Parties (provided always that the representations in paragraphs (t), (u), (x) and (y) of Clause 11.2 (*Continuing representations and warranties*) below, shall not be made by the Borrower to any Lender which is incorporated in the Federal Republic of Germany (and which has so notified the Agent) to the extent that the enforcement of such provision by a Lender would (x) violate, conflict with or incur liability under EU Regulation (EC) 2271/96 or (y) violate or conflict with section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*) in connection with section 4 paragraph (1) (a)(3) of the Foreign Trade Law (*Außenwirtschaftsgesetz*) or any similar anti-boycott statute in force in the Federal Republic of Germany) that:

- (a) each Obligor is a limited liability company or body corporate duly organised, constituted and validly existing under the laws of the country of its formation or (as the case may be) incorporation, possessing perpetual existence, the capacity to sue and be sued in its own name and the power to own and charge its assets and carry on its business as it is now being conducted;
- (b) the Borrower has an authorised 1000 Common Units all of which have been issued to Seven Seas;
- (c) the legal title to and beneficial interest in the equity in the Borrower is held free of any Security or any other claim by Seven Seas;
- (d) none of the equity in the Borrower is subject to any option to purchase, pre-emption rights or similar rights;
- (e) each Obligor has the power to enter into and perform this Agreement and those of the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby and has taken all necessary action to authorise the entry into and performance of this Agreement and such other Transaction Documents and such transactions;
- (f) this Agreement and each other Transaction Document constitutes (or will constitute when executed) legal, valid and binding obligations of each Obligor expressed to be a party thereto enforceable in accordance with their respective terms and in entering into this Agreement and borrowing the Loan, the Borrower is acting on its own account;
- (g) the entry into and performance of this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby do not and will not conflict with:
  - (i) any law or regulation or any official or judicial order; or
  - (ii) the constitutional documents of any Obligor; or
  - (iii) any agreement or document to which any Obligor is a party or which is binding upon such Obligor or any of its assets,

nor result in the creation or imposition of any Security Interest on the Borrower or its assets pursuant to the provisions of any such agreement or document, except for Security Interests which qualify as Permitted Security Interests with respect to the Borrower;

- (h) except for:
  - (i) the filing of UCC-1 Financing Statements against the Borrower in respect of those Financing Documents to which it is a party and which create Security Interests;
  - (ii) the recording of the Mortgage in the office of the Maritime Administrator of the Republic of the Marshall Islands; and
  - (iii) the registration of the Ship under an Approved Flag,

all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other matters, official or otherwise, required in connection with the entry into, performance, validity and enforceability of this Agreement and each of the other Transaction Documents to which any Obligor is a party and the transactions contemplated thereby have been obtained or effected and are in full force and effect except authorisations, approvals, consents, licences, exemptions, filings and registrations required in the normal day to day course of the operation of the Ship and not already obtained by the Borrower;

- (i) it is disregarded as an entity separate from its owner for U.S. federal Tax purposes;
- (j) all information furnished by any Obligor relating to the business and affairs of any Obligor in connection with this Agreement and the other Transaction Documents was and remains true and correct in all material respects and there are no other material facts or considerations the omission of which would render any such information misleading;
- (k) each Obligor has fully disclosed to the Agent all facts relating to each Obligor which it knows or should reasonably know and which might reasonably be expected to influence the Lenders in deciding whether or not to enter into this Agreement;
- (l) the obligations of the Borrower and the Guarantor under the Finance Documents rank at least pari passu with all its other present unsecured and unsubordinated indebtedness with the exception of any obligations which are mandatorily preferred by law;
- (m) the Borrower is and shall remain, after the advance to it of the Loan, solvent in accordance with the laws of the state of Delaware and the United Kingdom and in particular with the provisions of the Insolvency Act 1986 (as from time to time amended) and the requirements thereof;
- (n) neither the Borrower nor any other Obligor has taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against any of them for the reorganisation, winding-up, dissolution or for the appointment of a liquidator, administrator, receiver, administrative receiver, trustee or similar officer of any of them or any or all of their assets or revenues nor has it sought any other relief under any applicable insolvency or bankruptcy law;
- (o) (in relation to any date on which this representation and warranty is deemed to be repeated pursuant to paragraph (a) of Clause 11.1 (*Timing and repetition*)) the latest available annual consolidated audited accounts of the Guarantor at the date of repetition (which accounts have been prepared in accordance with GAAP) fairly represent the financial condition of the Guarantor as shown in such audited accounts;
- (p) none of the Obligors nor any of their respective assets enjoys any right of immunity (sovereign or otherwise) from set-off, suit or execution in respect of their obligations under this Agreement or any of the other Transaction Documents or by any relevant or applicable law;
- (q) all the membership interest in the Borrower and all shares or membership interest in any Approved Manager which is a member of the Group shall be legally and beneficially owned directly or indirectly by (in the case of the Borrower) Seven Seas and (in the case of such Approved Manager) the Guarantor and such structure shall remain so throughout the Security Period;
- (r) the copies of the Shipbuilding Contract, any Management Agreement, any charter and any charter guarantee which require a notice of assignment to be served under the terms of the Tripartite General Assignment (if any) and any other relevant third party agreements including but without limitation the copies of any documents in respect of the Insurances delivered to the Agent are true and complete copies of each such document constituting valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and, subject to Clauses 13.2 (*Management and employment*) and 12.22 (*Shipbuilding Contract*), no amendments thereto or variations thereof have been agreed nor has any action been taken by the parties thereto which would in any way render such document inoperative or unenforceable;
- (s) any borrowing by the Borrower under this Agreement, and the performance of its obligations under this Agreement and the other Transaction Documents, will be for its own account and will not involve any breach by it of any law or regulatory measure relating to

"money laundering" as defined in Article 1 of the Directive (91/308/EEC) of the Council of the European Communities; and

- (t) no Obligor is:
  - (i) a Prohibited Person;
  - (ii) is owned or controlled by or acting directly or indirectly on behalf of or for the benefit of, a Prohibited Person; or
  - (iii) owns or controls a Prohibited Person;
- (u) no proceeds of the Loan shall be made available directly or indirectly to or for the benefit of a Prohibited Person nor shall they be otherwise directly or indirectly applied in a manner or for a purpose prohibited by Sanctions;
- (v) the choice of governing law of each Transaction Documents to which it is a party will be recognised and enforced in its Relevant Jurisdictions and any judgment obtained in relation to a Transaction Document to which it is a party in the jurisdiction of the governing law of that Transaction Document will be recognised and enforced in its Relevant Jurisdictions;
- (w) 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 outside of the European Union and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in European Union country;
- (x) no payments made or to be made by the Borrower, Seven Seas or the Guarantor in respect of amounts due under this Agreement or any Finance Document have been or shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, Seven Seas or the Guarantor in connection with the construction of the Ship or its business are of Illicit Origin;
- (y) to the best of the Borrower's, Seven Seas' and the Guarantor's knowledge, no Prohibited Payment has been or will be made or provided, directly or indirectly, by (or on behalf of) it, any of its affiliates, its or its officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement and/or the Finance Documents;
- (z) no event has occurred which constitutes a default under or in respect of any Transaction Document to which any Obligor or the Builder is a party or by which any Obligor or the Builder may be bound (including (inter alia) this Agreement) and no event has occurred which constitutes a default under or in respect of any agreement or document to which any Obligor is a party or by which any Obligor may be bound to an extent or in a manner which might have a material adverse effect on the ability of that Obligor to perform its obligations under the Transaction Documents to which it is a party;
- (aa) none of the assets or rights of the Borrower is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Borrower or (ii) is permitted by Clause 12.7 (*Negative pledge*) of this Agreement;
- (bb) no litigation, arbitration or administrative proceedings are current or pending or, to its knowledge, threatened, which might, if adversely determined, have a material adverse effect on the ability of an Obligor to perform its obligations under the Transaction Documents to which it is a party;

- (cc) to the best of its knowledge, each of the Obligors has complied with all taxation laws in all jurisdictions in which it is subject to Taxation and has paid all Taxes due and payable by it;
- (dd) it is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to which it is a party with respect to any Lender that provides the documentation described in paragraph (b) of Clause 10.7 (*Lender Status*) indicating that it is not subject to tax withholding;
- (ee) under the laws of its Relevant Jurisdictions it is not necessary that any stamp or similar taxes or fees be paid on or in relation to the Finance Documents to which it is a party or the transactions contemplated by those Finance Documents;
- (ff) each member of the Group has good and marketable title to all its assets which are reflected in the audited accounts referred to in paragraph (o) of Clause 11.2 (*Continuing representations and warranties*);
- (gg) none of the Obligors has a place of business in any jurisdiction (except as already disclosed) which requires any of the Finance Documents to be filed or registered in that jurisdiction to ensure the validity of the Finance Documents to which it is a party;
- (hh) each of the Obligors and each member of the Group:
  - (i) is in compliance with all Environmental Laws and Environmental Approvals provided that any non-compliance would not be expected to result in a Material Adverse Effect;
  - (ii) has not received any notice or threat of any Environmental Claim against any member of the Group and no person has claimed that an Environmental Incident has occurred in each case that would reasonably be expected to result in a Material Adverse Effect;
  - (iii) confirms that no Environmental Incident has occurred and no person has claimed that an Environmental Incident has occurred in each case that would reasonably be expected to result in a Material Adverse Effect.

### **11.3 Representations on the Delivery Date**

The Borrower further represents and warrants to each of the Secured Parties at Delivery that:

- (a) the Ship is in its absolute and unencumbered ownership save as contemplated by the Finance Documents;
- (b) the Ship is registered in its name under the laws and flag of the Maritime Registry;
- (c) the Ship is classed with the highest classification available for a Ship of its type free of all recommendations and qualifications with Lloyd's Register, RINA or Bureau Veritas;
- (d) the Ship is operationally seaworthy and in compliance with all relevant provisions, regulations and requirements (statutory or otherwise) applicable to ships registered under the laws and flag of the Maritime Registry;
- (e) the Ship is in compliance with the ISM Code, the ISPS Code and Annex VI as they relate to the Borrower, any Approved Manager and the Ship;
- (f) the Ship is insured in accordance with the provisions of Clause 14 (*Insurance Undertakings*) and in compliance with the requirements therein in respect of such insurances;

- (g) the Ship is managed by the Approved Manager and, in the event that the Approved Manager is not a member of the Group, on and subject to the terms set out in the Management Agreement;
- (h) there is no agreement or understanding to allow or pay any rebate, premium, inducement, commission, discount or other benefit or payment (however described) to the Borrower or any other member of the Group, the Builder or a third party in connection with the purchase by the Borrower of the Ship, other than as disclosed to the Agent in writing on or before the date of this Agreement; and
- (i) no Obligor has delivered particulars, whether in its name stated in the Finance Documents or any other name, of any UK Establishment to the Registrar of Companies as required under the Overseas Regulations or, if it has so registered, it has provided to the Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

## **12 GENERAL UNDERTAKINGS**

### **12.1 General**

The Borrower undertakes with each Secured Party to comply with the following undertakings during the Security Period (provided always that the undertakings in paragraph (e) of Clause 12.2 (*Information*), Clause 12.3 (*Illicit Payments*), Clause 12.4 (*Prohibited Payments*) and Clause 12.24 (*Compliance with laws etc.*) below, shall not be made by the Borrower to any Lender which is incorporated in the Federal Republic of Germany (and which has so notified the Agent) to the extent that the enforcement of such provision by a Lender would (x) violate, conflict with or incur liability under EU Regulation (EC) 2271/96 or (y) violate or conflict with section 7 of the German Foreign Trade Regulation (Außenwirtschaftsverordnung) in connection with section 4 paragraph (1)(a)(3) of the Foreign Trade Law (Außenwirtschaftsgesetz) or any similar anti-boycott statute in force in the Federal Republic of Germany) that:

### **12.2 Information**

The Borrower will provide to the Agent for the benefit of the Lenders and SACE (or will procure the provision of):

- (a) as soon as practicable (and in any event within one hundred and twenty (120) days after the close of its financial year) a Certified Copy of the audited consolidated accounts of the Guarantor and its subsidiaries for that year (commencing with accounts made up to 31 December 2016 in the case of the consolidated accounts of the Guarantor);
- (b) as soon as practicable (and in any event within ninety (90) days of the commencement of each financial year) the budgetary forecast (profit and loss statement, balance sheet statement and cash flow statement) for the two following years for the Guarantor;
- (c) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter for the first three quarters in any fiscal year and within 90 days for the final quarter) a copy of the unaudited consolidated quarterly management accounts (including current and year-to-date profit and loss statements and balance sheet compared to the previous year and to budget) of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (c));
- (d) promptly, such further information in its possession or control regarding the condition or operations of the Ship and its financial condition and operations of the Borrower and those



of any company in the Group as the Agent may reasonably request for the benefit of the Secured Parties; and

- (e) details of any material litigation, arbitration or administrative proceedings (including proceedings relating to any alleged or actual breach of Sanctions, the ISM Code of the ISPS Code) which affect any company in the Group as soon as the same are instituted and served, or, to the knowledge of the Borrower, threatened (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding twenty million Dollars or the equivalent in another currency provided that this threshold shall not apply to any proceedings relating to Sanctions).

All accounts required under this Clause 12.2 (*Information*) shall be prepared in accordance with GAAP and shall fairly represent the financial condition of the relevant company.

### **12.3 Illicit Payments**

No payments made by the Borrower, Seven Seas, the Guarantor or any Approved Manager which is a member of the Group in respect of amounts due under this Agreement or any Finance Document shall be funded out of funds of Illicit Origin and none of the sources of funds to be used by the Borrower, Seven Seas, the Guarantor or any Approved Manager which is a member of the Group in connection with the construction of the Ship or its business shall be of Illicit Origin.

### **12.4 Prohibited Payments**

No Prohibited Payment shall be made or provided, directly or indirectly, by (or on behalf of) the Borrower, Seven Seas, the Guarantor or any of their affiliates, officers, directors or any other person acting on its behalf to, or for the benefit of, any authority (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, of any authority) in connection with the Ship, this Agreement and/or the Finance Documents.

### **12.5 Notification of default**

The Borrower will notify the Agent of any Event of Default forthwith upon becoming aware of the occurrence thereof. Upon the Agent's request from time to time the Borrower will issue a certificate stating whether any Obligor is aware of the occurrence of any Event of Default.

### **12.6 Consents and registrations**

The Borrower will procure that (and will promptly furnish Certified Copies to the Agent on the request of the Agent of) all such authorisations, approvals, consents, licences and exemptions as may be required under any applicable law or regulation to enable it or any Obligor to perform its obligations under, and ensure the validity or enforceability of, each of the Transaction Documents are obtained and promptly renewed from time to time and will procure that the terms of the same are complied with at all times. Insofar as such filings or registrations have not been completed on or before the Drawdown Date the Borrower will procure the filing or registration within applicable time limits of each Finance Document which requires filing or registration together with all ancillary documents required to preserve the priority and enforceability of the Finance Documents.

### **12.7 Negative pledge**

The Borrower will not create or permit to subsist any Security Interest on the whole or any part of its present or future assets, except for the following:

- (a) Security Interests created with the prior consent of the Agent; or

- (b) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (a) and (b) of the definition of "Permitted Security Interests" in Clause 1.1 (*Definitions*); or
- (c) Security Interests qualifying as Permitted Security Interests with respect to the Borrower and described in paragraphs (C), (E), (H) or (I) of such definition, provided that insofar as they are enforceable against the Ship they do not prevail over the Mortgage.

#### **12.8 Disposals**

Except in the case of a sale of the Ship if the completion of the sale is contemporaneous with prepayment of the Loan in accordance with the provisions of Clause 16.3 (*Mandatory prepayment – Sale and Total Loss*) and except for charters and other arrangements complying with Clause 13.1 (*Pooling of earnings and charters*) the Borrower shall not without the consent of the Majority Lenders and SACE, either in a single transaction or in a series of transactions whether related or not and whether voluntarily or involuntarily, (i) sell, transfer, lease or otherwise dispose of the Ship or any of the Ship's equipment except in the case of items (a) being replaced (by an equivalent or superior item) or renewed or (b) that are being disposed of in the ordinary course of business **provided that** in the case of both (a) and (b) the net impact does not reduce the value of the Ship and, in the case of (b), the value of any such disposals during the term of this Agreement do not, in aggregate, exceed \$3,000,000 (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms; (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set off or made subject to a combination of accounts, or (iv) enter into any other preferential arrangement having the same effect in circumstances where the arrangement or transaction is entered into primarily as a method of raising financial indebtedness or of financing the acquisition of an asset.

#### **12.9 Change of business**

Except with the prior consent of the Agent, the Borrower shall not make or threaten to make any substantial change in its business as presently conducted, namely that of a single ship owning company for the Ship, or carry on any other business which is substantial in relation to its business as presently conducted so as to affect, in the opinion of the Agent, the Borrower's ability to perform its obligations hereunder.

#### **12.10 Mergers**

Except with the prior consent of the Lenders and SACE and subject to compliance with all necessary "know your customer" requirements, the Borrower will not enter into any amalgamation, restructure, substantial reorganisation, merger, de-merger or consolidation or anything analogous to the foregoing nor will it acquire any equity, share capital or obligations of any corporation or other entity.

#### **12.11 Maintenance of status and franchises**

The Borrower will do all such things as are necessary to maintain its limited liability company existence in good standing and will ensure that it has the right and is duly qualified to conduct its business as it is conducted in all applicable jurisdictions and will obtain and maintain all franchises and rights necessary for the conduct of its business.

#### **12.12 Financial records**

The Borrower will keep proper books of record and account, in which proper and correct entries shall be made of all financial transactions and the assets, liabilities and business of the Borrower in accordance with GAAP.

### **12.13 Financial Indebtedness and subordination of indebtedness**

The following restrictions shall apply:

- (a) otherwise than in the ordinary course of business as owner of the Ship, except as contemplated by this Agreement and except any loan, advance or credit extended by the Guarantor or any member of the Group which is a wholly owned Subsidiary of the Guarantor, the Borrower will not create, incur, assume or allow to exist any financial indebtedness, enter into any finance lease or undertake any material capital commitment (including but not limited to the purchase of any capital asset); and
- (b) the Borrower shall procure that any and all indebtedness (and in particular with any other Obligor) is at all times fully subordinated to the Finance Documents and the obligations of the Borrower hereunder. Upon the occurrence of an Event of Default, the Borrower shall not make any repayments of principal, payments of interest or of any other costs, fees, expenses or liabilities arising from or representing such indebtedness. In this paragraph (b) of Clause 12.13 (*Financial Indebtedness and subordination of indebtedness*) "fully subordinated" shall mean that any claim of the lender against the Borrower in relation to such indebtedness shall rank after and be in all respects subordinate to all of the rights and claims of the Secured Parties under this Agreement and the other Finance Documents and that the lender shall not take any steps to enforce its rights to recover any monies owing to it by the Borrower and in particular but without limitation the lender will not institute any legal or quasi-legal proceedings under any jurisdiction at any time against the Ship, her Earnings or Insurances or the Borrower and it will not compete with the Secured Parties or any of them in a liquidation or other winding-up or bankruptcy of the Borrower or in any proceedings in connection with the Ship, her Earnings or Insurances.

### **12.14 Investments**

The Borrower shall not:

- (a) be the creditor in respect of any loan or any form of credit to any person other than another Obligor and where such loan or form of credit is Permitted Financial Indebtedness;
- (b) give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which the Borrower assumes any liability of any other person other than any guarantee or indemnity given under the Finance Documents.
- (c) enter into any material agreement other than:
  - (i) the Transaction Documents;
  - (ii) any other agreement expressly allowed under any other term of this Agreement; and
- (d) enter into any transaction on terms which are, in any respect, less favourable to the Borrower than those which it could obtain in a bargain made at arms' length; or
- (e) acquire any shares or other securities other than US or UK Treasury bills and certificates of deposit issued by major North American or European banks.

### **12.15 Unlawfulness, invalidity and ranking; Security imperilled**

No Obligor shall do (or fail to do) or cause or permit another person to do (or omit to do) anything which is likely to:

- (a) make it unlawful for an Obligor to perform any of its obligations under the Transaction Documents;
- (b) cause any obligation of an Obligor under the Finance Documents to cease to be legal, valid, binding or enforceable if that cessation individually or together with any other cessations materially or adversely affects the interests of the Secured Parties under the Transaction Documents;
- (c) cause any Transaction Document to cease to be in full force and effect;
- (d) cause any Security Interest to rank after, or lose its priority to, any other Security Interest; and
- (e) imperil or jeopardise any Security Interest.

**12.16 Dividends**

The Borrower shall not make or pay any dividend or other distribution (in cash or in kind) in respect of its share capital other than dividends and distributions that are transferred to Seven Seas or the Guarantor provided that no Event of Default has occurred or is continuing or would result from the payment of any dividend.

**12.17 Loans and guarantees by the Borrower**

Otherwise than in the ordinary course of business in its ownership and operation of the Ship following the Delivery Date, the Borrower will not make any loan or advance or extend credit to any person, firm or corporation or issue or enter into any guarantee or indemnity or otherwise become directly or contingently liable for the obligations of any other person, firm or corporation.

**12.18 Acquisition of shares**

The Borrower will not:

- (a) acquire any equity, share capital, assets or obligations of any corporation or other entity; or
- (b) permit any of its membership interest to be directly held other than by Seven Seas.

**12.19 Further assurance**

The Borrower will, from time to time on being required to do so by the Agent, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the Agent as the Agent may reasonably consider necessary for giving full effect to any of the Transaction Documents, the Interest Make-Up Agreement or the SACE Insurance Policy or securing to the Secured Parties the full benefit of the rights, powers and remedies conferred upon the Secured Parties or any of them in any such Transaction Document the Interest Make-Up Agreement or the SACE Insurance Policy.

**12.20 Irrevocable payment instructions**

The Borrower shall not modify, revoke or withhold the payment instructions set out in Clause 4.1 (*Borrower's irrevocable payment instructions*) without the agreement of the Builder (in the case of paragraph (a) of Clause 4.1 (*Borrower's irrevocable payment instructions*) only), the Agent, SACE and the Lenders.

#### 12.21 "Know your customer" checks

- (a) If:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
  - (ii) any change in the status of the Borrower after the date of this Agreement; or
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) of Clause 12.21 ("*Know your customer*" checks), 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 or the Lenders (acting reasonably) require any additional documents to supplement those already provided, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) of Clause 12.21 ("*Know your customer*" checks), on behalf of any prospective new Lender) in order for the Agent and, such Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of a Servicing Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Servicing Party (for itself) in order for that Servicing Party to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

#### 12.22 Shipbuilding Contract

The Shipbuilding Contract constitutes legal, valid and binding and enforceable obligations of the Builder and the Borrower shall not modify the Shipbuilding Contract, directly or indirectly, if such modifications (in aggregate) would result in (i) a change to the type or class of the Ship or (ii) decrease the value of the Ship by equal to or greater than 5 per cent (in aggregate). The Borrower will, therefore, submit to the Agent any proposals for any such modification and SACE and the Agent on behalf of the Lenders will indicate in a timely manner whether the modification proposed will allow the Loan to be maintained. On or about the last day of each successive period of three (3) months commencing on the date of this Agreement and on the date of the Drawdown Notice, the Borrower undertakes to provide the Agent with a copy of any Change Order entered into during that three (3) month or other period. The Borrower also undertakes to notify the Agent of any change in the Intended Delivery Date as soon as practicable after each change has occurred.

#### 12.23 FOREX Contracts

The Borrower shall:

- (a) provide the Agent with a copy of all FOREX Contracts together with all relevant details within ten (10) days of their execution; and
- (b) inform the Agent, when requested by the Agent, of its intended hedging policy for purchasing Euro with Dollars.

The Agent shall inform the Lenders within ten (10) days of receipt of such information from the Borrower.

#### **12.24 Compliance with laws etc.**

The Borrower shall:

- (a) comply, or procure compliance with:
  - (i) in all material respects, all laws and regulations relating to its business generally; and
  - (ii) in all material respects (except in the case of compliance with Sanctions which must be complied with in all respects), all laws or regulations relating to the Ship, its ownership, employment, operation, management and registration,including the ISM Code, the ISPS Code, all Environmental Laws, all Sanctions and the laws of the Approved Flag;
- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Environment Approvals which are applicable to it; and
- (c) without limiting paragraph (a) above, not employ the Ship nor allow its employment, operation or management in any manner contrary to any law or regulation including but not limited to the ISM Code, the ISPS Code, all Environmental Laws and all Sanctions.

#### **12.25 Most favoured nations**

The Borrower shall procure that if at any time after the date of this Agreement the Guarantor enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of Clause 11.2 (*Continuing representations and warranties*) and Clause 18.6 (*Cross default*) respectively, the Borrower or the Guarantor shall immediately notify the Agent of such provisions and the relevant provisions contained in this Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to this Agreement.

### **13 SHIP UNDERTAKINGS**

#### **13.1 Pooling of earnings and charters**

The Borrower will not without the prior written consent of the Agent or SACE enter into in respect of the Ship (such consent for the purposes of paragraph (e) of Clause 13.1 (*Pooling of earnings and charters*) shall not be unreasonably withheld or delayed), nor permit to exist at any time following the Delivery Date:

- (a) any pooling agreement or other arrangement for the sharing of any of the Earnings or the expenses of the Ship except with a member of the Group and provided that it does not adversely affect the rights of the Secured Parties under the Finance Documents in the reasonable opinion of the Agent; or
- (b) any demise or bareboat charter (other than the Bareboat Charter), provided however that such consent shall not be unreasonably withheld in the event that the Borrower wishes to enter into a bareboat charter in a form approved by the Agent with another member of the Group on condition that if so requested by the Agent and without limitation:
  - (i) any such bareboat charterer shall enter into such deeds (including but not limited to a full subordination and assignment deed in respect of its rights under the bareboat

charter and its interest in the Insurances and earnings payable to it arising out of its use of the Ship), agreements and indemnities as the Majority Lenders and SACE shall require prior to entering into the bareboat charter with the Borrower; and

- (ii) the Borrower shall assign the benefit of any such bareboat charter and its interest in the Insurances to the Secured Parties by way of further security for the Borrower's obligations under the Finance Documents.; or
- (c) any charter whereunder two (2) months' charterhire (or the equivalent thereof) is payable in advance in respect of the Ship; or
- (d) any charter of the Ship or employment which, with the exercise of options for extension, could be for a period longer than [\*] months; or
- (e) any time charter of the Ship with a company outside the Group (other than a time charter entered into in the ordinary course of business which does not exceed [\*] months **provided that** any such time charter (y) is assigned to the Security Trustee and (z) during the period of such time charter, the Ship continues to be managed by the existing Approved Manager), provided however that such consent shall not be unreasonably withheld in the event that:
  - (i) such time charter is assigned to the Security Trustee and the Borrower agrees to serve a notice of assignment of any time charter, the Earnings therefrom and any guarantee of the charterer's obligations on the time charterer and any time charter guarantor substantially in the form appended to the Tripartite General Assignment;
  - (ii) the Agent is satisfied that the income from such time charter will be sufficient to cover the expenses of the Ship and to service repayment of the Loan and all other amounts from time to time outstanding under this Agreement; and
  - (iii) during the term of such time charter, the Ship continues to be managed by the existing Approved Manager.

### **13.2 Management and employment**

The Borrower will not as from the Delivery Date:

- (a) permit any person other than an Approved Manager to be the manager of, including providing crewing services to, the Ship, at all times acting upon terms approved in writing by the Agent and having entered into (in the case of the Approved Manager) an Approved Manager's Undertaking; and
- (b) permit any amendment to be made to the terms of any Management Agreement unless the amendment is advised by the Borrower's tax counsel or is deemed necessary by the parties thereto to reflect the prevailing circumstances but provided that the amendment does not imperil the security to be provided pursuant to the Finance Documents or adversely affect the ability of any Obligor to perform its obligations under the Transaction Documents; or
- (c) permit the Ship to be employed other than within the Seven Seas brand unless the Borrower notifies the Lenders that they intend to employ the Ship within another brand of the Group and the ship remains employed within the Group.

### **13.3 Trading with the United States of America**

The Borrower shall in respect of the Ship take all reasonable precautions as from the Delivery Date to prevent any infringements of the Anti-Drug Abuse Act of 1986 of the United States of America (as the same may be amended and/or re-enacted from time to time hereafter) or any similar legislation applicable to the Ship in any other jurisdiction in which

the Ship shall trade (a "**Relevant Jurisdiction**") where the Ship trades in the territorial waters of the United States of America or a Relevant Jurisdiction.

#### **13.4 Valuation of the Ship**

The following shall apply in relation to the valuation of the Ship:

- (a) the Borrower will within 10 Business Days of the anniversary of the delivery of the Ship and at annual intervals thereafter unless an Event of Default has occurred and remains unremedied, at the Borrower's expense, procure that the Ship is valued by an Approved Broker (such valuation to be made without taking into account the benefit or otherwise of any fixed employment relating to the Ship);
- (b) the Borrower shall procure that forthwith upon the issuance of any valuation obtained pursuant to this Clause 13.4 (*Valuation of the Ship*) a copy thereof is sent directly to the Agent for review; and
- (c) in the event that the Borrower fails to procure a valuation in accordance with paragraph (a) of Clause 13.4 (*Valuation of the Ship*), the Agent shall be entitled to procure a valuation of the Ship on the same basis.

#### **13.5 Earnings**

The Borrower will procure that the Earnings (if any) are paid in full without set off and free and clear of and without deduction for any taxes levies duties imposts charges fees restrictions or conditions of any nature whatsoever.

#### **13.6 Operation and maintenance of the Ship**

From the Delivery Date until the end of the Security Period at its own expense the Borrower will keep the Ship in a good and efficient state of repair so as to maintain it to the highest classification notation available for the Ship of its age and type free of all recommendations and qualifications with Bureau Veritas. On the Delivery Date and annually thereafter, it will furnish to the Agent a statement by such classification society that such classification notation is maintained. It will comply with all recommendations, regulations and requirements (statutory or otherwise) from time to time applicable to the Ship and shall have on board as and when required thereby valid certificates showing compliance therewith and shall procure that all repairs to or replacements of any damaged, worn or lost parts or equipment are carried out (both as regards workmanship and quality of materials) so as not to diminish the value or class of the Ship. It will not make any substantial modifications or alterations to the Ship or any part thereof which would reduce the market and commercial value of the Ship determined in accordance with Clause 13.4 (*Valuation of the Ship*).

#### **13.7 Surveys and inspections**

The Borrower will:

- (a) submit the Ship to continuous survey in respect of its machinery and hull and such other surveys as may be required for classification purposes and, if so required by the Agent, supply to the Agent copies in English of the survey reports;
- (b) permit surveyors or agents appointed by the Agent to board the Ship to inspect its condition or satisfy themselves as to repairs proposed or already carried out and afford all proper facilities for such inspections **provided that**, unless an Event of Default has occurred or there is an accident to the Ship involving repairs the cost of which will or is likely to exceed \$[\*], such inspections shall be limited to one year and shall be at all reasonable times.



### **13.8 ISM Code**

The Borrower will comply, or procure that the Approved Manager will comply, with the ISM Code (as the same may be amended from time to time) or any replacement of the ISM Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISM Code and at all times thereafter:

- (a) hold, or procure that the Approved Manager holds, a valid Document of Compliance duly issued to the Borrower or the Approved Manager (as the case may be) pursuant to the ISM Code and a valid Safety Management Certificate duly issued to the Ship pursuant to the ISM Code;
- (b) provide the Agent with copies of any such Document of Compliance and Safety Management Certificate as soon as the same are issued; and
- (c) keep, or procure that there is kept, on board the Ship a copy of any such Document of Compliance and the original of any such Safety Management Certificate.

### **13.9 ISPS Code**

The Borrower will comply, or procure that the Approved Manager will comply, with the ISPS Code (as the same may be amended from time to time) or any replacement of the ISPS Code (as the same may be amended from time to time) and in particular, without prejudice to the generality of the foregoing, as and when required to do so by the ISPS Code and at all times thereafter:

- (a) keep, or procure that there is kept, on board the Ship the original of the International Ship Security Certificate required by the ISPS Code; and
- (b) keep, or procure that there is kept, on board the Ship a copy of the ship security plan prepared pursuant to the ISPS Code.

### **13.10 Annex VI**

The Borrower will comply with Annex VI (as the same may be amended from time to time) or any replacement of Annex VI (as the same may be amended from time to time) and in particular, without limitation, to:

- (a) procure that the Ship's master and crew are familiar with, and that the Ship complies with, Annex VI; and
- (b) maintain for the Ship throughout the Security Period a valid and current IAPPC and provide a copy to the Agent; and
- (c) notify the Agent immediately in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the IAPPC.

### **13.11 Employment of Ship**

The Borrower shall:

- (a) not employ the Ship or permit its employment in any trade or business which is forbidden by any applicable law or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render it liable to condemnation in a prize court or to destruction, seizure or confiscation or that may expose the Ship to penalties. In the event of hostilities in any part of the world (whether war be declared or not) it will not employ the Ship or permit its employment in carrying any contraband goods; and

- (b) promptly provide the Agent with (i) all information which the Agent may reasonably require regarding the Ship, its employment, earnings, position and engagements (ii) particulars of all towages and salvages and (iii) copies of all charters and other contracts for its employment and otherwise concerning it.

**13.12 Provision of information**

The Borrower shall give notice to the Agent promptly and in reasonable detail upon the Borrower or any other Obligor becoming aware of:

- (a) accidents to the Ship involving repairs the cost of which will or is likely to exceed [\*] Dollars (\$[\*]);
- (b) the Ship becoming or being likely to become a Total Loss;
- (c) any recommendation or requirement made by any insurer or classification society or by any competent authority which is not complied with, or cannot be complied with, within any time limit relating thereto and that might reasonably affect the maintenance of either the Insurances or the classification of the Ship;
- (d) any writ or claim served against or any arrest of the Ship or the exercise of any lien or purported lien on the Ship, her Earnings or Insurances;
- (e) the Ship ceasing to be registered under the flag of the Maritime Registry or anything which is done or not done whereby such registration may be imperilled;
- (f) it becoming impossible or unlawful for it to fulfil any of its obligations under the Finance Documents; and
- (g) anything done or permitted or not done in respect of the Ship by any person which is likely to imperil the security created by the Finance Documents.

**13.13 Payment of liabilities**

The Borrower shall promptly pay and discharge:

- (a) all debts, damages and liabilities, taxes, assessments, charges, fines, penalties, tolls, dues and other outgoings in respect of the Ship and keep proper books of account in respect thereof provided always that the Borrower shall not be obliged to compromise any debts, damages and liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested debt, damage or liability which, either individually or in aggregate exceeds [\*] Dollars (\$[\*]) shall forthwith be provided to the Agent. As and when the Agent may so require the Borrower will make such books available for inspection on behalf of the Agent and provide evidence satisfactory to the Agent that the wages and allotments and the insurance and pension contributions of the master and crew are being regularly paid, that all deductions of crew's wages in respect of any tax liability are being properly accounted for and that the master has no claim for disbursements other than those incurred in the ordinary course of trading on the voyage then in progress or completed prior to such inspection;
- (b) all liabilities which have given rise, or may give rise, to liens or claims enforceable against the Ship under the laws of all countries to whose jurisdiction the Ship may from time to time be subject and in particular the Borrower hereby agrees to indemnify and hold the Secured Parties, their successors, assigns, directors, officers, shareholders, employees and agents harmless from and against any and all claims, losses, liabilities, damages, expenses (including attorneys, fees and expenses and consultant fees) and injuries of any kind whatsoever asserted against the Secured Parties, with respect to or as a result of the presence, escape, seepage, spillage, release, leaking, discharge or migration from the Ship or other properties

owned or operated by the Borrower of any hazardous substance, including without limitation, any claims asserted or arising under any applicable environmental, health and safety laws, codes and ordinances, and all rules and regulations promulgated thereunder of all governmental agencies, regardless of whether or not caused by or within the control of the Borrower subject to the following:

- (i) it is the parties' understanding that the Secured Parties do not now, have never and do not intend in the future to exercise any operational control or maintenance over the Ship or any other properties and operations owned or operated by the Borrower, nor in the past, presently, or intend in the future to, maintain an ownership interest in the Ship or any other properties owned or operated by the Borrower except as may arise upon enforcement of the Lenders' rights under the Mortgage;
- (ii) unless and until an Event of Default shall have occurred and without prejudice to the right of each Lender to be indemnified pursuant to this paragraph (b) of Clause 13.13 (*Payment of liabilities*):
  - (A) each Lender will, if it is reasonably practicable to do so, notify the Borrower upon receiving a claim in respect of which the relevant Lender is or may become entitled to an indemnity under this Clause paragraph (b) of Clause 13.13 (*Payment of liabilities*); and
  - (B) subject to the prior written approval of the relevant Lender which the Lender shall have the right to withhold, the Borrower will be entitled to take, in the name of the relevant Lender, such action as the Borrower may see fit to avoid, dispute, resist, appeal, compromise or defend any such claims, losses, liabilities, damages, expenses and injuries as are referred to above in this paragraph (b) of Clause 13.13 (*Payment of liabilities*) or to recover the same from any third party, subject to the Borrower first ensuring that the relevant Lender is secured to its reasonable satisfaction against all expenses thereby incurred or to be incurred;

provided always that the Borrower shall not be obliged to compromise any liabilities as aforesaid which are being contested in good faith subject always that full details of any such contested liabilities which, either individually or in aggregate, exceed [\*] Dollars (\$[\*]) shall be forthwith provided to the Agent. If the Ship is arrested or detained for any reason it will procure its immediate release by providing bail or taking such other steps as the circumstances may require.

#### **13.14 Certificate as to liabilities**

The Borrower shall give to the Agent at such times as it may from time to time reasonably require a certificate, duly signed on its behalf, as to the total amount of any debts, damages and liabilities relating to the Ship and details of such of those debts, damages and liabilities as are over a certain amount to be specified by the Agent at the relevant time and, if so required by the Agent, forthwith discharge such of those debts, damages and liabilities as the Agent shall require other than those being contested in good faith.

#### **13.15 Modifications**

The Borrower shall maintain the type of the Ship as at the Delivery Date and not put the Ship into the possession of any person for the purpose of work being done on it in an amount exceeding or likely to exceed [\*] Dollars (\$[\*]) unless such person shall first have given to the Agent a written undertaking addressed to the Agent in terms satisfactory to the Agent agreeing not to exercise a lien on the Ship or her Earnings for the cost of such work or for any other reason (or the Borrower is able to demonstrate to the reasonable satisfaction of the Agent that the Borrower or Seven Seas has set aside and will have funds readily available

for payment when due of the cost of the work (to the extent not fully covered by insurance proceeds in the case of a partial loss)).

**13.16 Registration of Ship**

The Borrower shall maintain the registration of the Ship under and fly the flag of the Maritime Registry and not do or permit anything to be done whereby such registration may be forfeited or imperilled.

**13.17 Environmental Law**

The Borrower shall comply with all Environmental Laws, obtain, maintain and ensure compliance with all requisite Environmental Approvals, and implement procedures to monitor compliance with and to prevent liability under any Environmental Law.

**13.18 Notice of Mortgage**

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

**13.19 Environmental claims**

Each Obligor shall, (through the Guarantor), promptly upon becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental Claim which is likely to result in a Material Adverse Effect against any member of the Group which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group which is likely to result in a Material Adverse Effect.

**13.20 Trading in war zones**

In the event of hostilities in any part of the world (whether war is declared or not), the Borrower shall not cause or permit the Ship to enter or trade to any zone which is declared a war zone by the Ship's war risks insurers unless:

- (a) the prior written consent of the Security Trustee has been given; and
- (b) the Borrower has (at its expense) effected any special, additional or modified insurance cover which the Security Trustee may require.

**14 INSURANCE UNDERTAKINGS**

**14.1 General**

The undertakings in this Clause 14 (*Insurance Undertakings*) remain in force on and from the Delivery Date and throughout the rest of the Security Period except as the Agent may otherwise permit.

**14.2 Maintenance of obligatory insurances**

The Borrower shall insure the Ship in its name and keep the Ship insured on an agreed value basis for an amount in the currency in which the Loan is denominated approved by the Agent but not being less than the greater of (x) [\*] per cent. ([\*]%) of the amount of the

Loan; and (y) the full market and commercial value of the Ship determined in accordance with Clause 13.4 *Valuation of the Ship*) from time to time through internationally recognised independent first class insurance companies, underwriters, war risks and protection and indemnity associations acceptable to the Agent, acting reasonably, in each instance on terms and conditions approved by the Agent including as to deductibles but at least in respect of:

- (a) fire and marine risks including but without limitation hull and machinery and all other risks customarily and usually covered by first-class and prudent shipowners in the global insurance markets under English or Norwegian marine policies or Agent-approved policies containing the ordinary conditions applicable to similar Ships;
- (b) war risks (including terrorism, piracy, blocking and trapping and protection and indemnity war risks) up to the insured amount;
- (c) excess risks that is to say the proportion of claims for general average and salvage charges and under the running down clause not recoverable in consequence of the value at which the Ship is assessed for the purpose of such claims exceeding the insured value;
- (d) protection and indemnity risks with full standard coverage as offered by first-class protection and indemnity associations which are a member of the International Group of P&I Association and up to the highest limit of liability available (for oil pollution risk the highest limit currently available is one billion Dollars (USD1,000,000,000) and this to be increased if reasonably requested by the Agent and the increase is possible in accordance with the standard protection and indemnity cover for Ships of its type and is compatible with prudent insurance practice for first class cruise shipowners or operators in waters where the Ship trades from time to time from the Delivery Date until the end of the Security Period);
- (e) when and while the Ship is laid-up, in lieu of hull insurance, normal port risks; and
- (f) such other risks as the Agent may from time to time reasonably require;

and in any event in respect of those risks and at those levels covered by first class and prudent owners and/or financiers in the international market in respect of similar tonnage provided that if any of such insurances are also effected in the name of any other person (other than the Borrower and/or a Secured Party) such person shall if so required by the Agent execute a first priority assignment of its interest in such insurances in favour of the Secured Parties in similar terms mutatis mutandis to the relevant provisions of the Tripartite General Assignment.

#### **14.3 Mortgagee's interest and pollution risks insurances**

The Agent shall take out mortgagee interest insurance on such conditions as the Agent may reasonably require and mortgagee interest insurance for pollution risks as from time to time agreed each for an amount in the currency in which the Loan is denominated of [\*] per cent. ([\*]%) of the amount of the Loan, the Borrower having no interest or entitlement in respect of such policies; the Borrower shall upon demand of the Agent reimburse the Agent for the costs of effecting and/or maintaining any such insurance(s).

#### **14.4 Trading in the United States of America**

If the Ship shall trade in the United States of America and/or the Exclusive Economic Zone of the United States of America (the "EEZ") as such term is defined in the US Oil Pollution Act 1990 ("OPA"), to comply strictly with the requirements of OPA and any similar legislation which may from time to time be enacted in any jurisdiction in which the Ship presently trades or may or will trade at any time during the existence of this Agreement and in

particular before such trade is commenced and during the entire period during which such trade is carried on:

- (a) to pay any additional premiums required to maintain full standard protection and indemnity cover for oil pollution up to the highest limit available to it for the Ship in the market;
- (b) to make all such quarterly or other voyage declarations as may from time to time be required by the Ship's protection and indemnity association and to comply with all obligations in order to maintain such cover, and promptly to deliver to the Agent copies of such declarations;
- (c) to submit the Ship to such additional periodic, classification, structural or other surveys which may be required by the Ship's protection and indemnity insurers to maintain cover for such trade and promptly to deliver to the Agent copies of reports made in respect of such surveys;
- (d) to implement any recommendations contained in the reports issued following the surveys referred to in paragraph (c) of Clause 14.4 (*Trading in the United States of America*) within the time limit specified therein and to provide evidence satisfactory to the Agent that the protection and indemnity insurers are satisfied that this has been done;
- (e) in particular strictly to comply with the requirements of any applicable law, convention, regulation, proclamation or order with regard to financial responsibility for liabilities imposed on the Borrower or the Ship with respect to pollution by any state or nation or political subdivision thereof, including but not limited to OPA, and to provide the Agent on demand with such information or evidence as it may reasonably require of such compliance;
- (f) to procure that the protection and indemnity insurances do not contain a clause excluding the Ship from trading in waters of the United States of America and the EEZ or any other provision analogous thereto and to provide the Agent with evidence that this is so; and
- (g) strictly to comply with any operational or structural regulations issued from time to time by any relevant authorities under OPA so that at all times the Ship falls within the provisions which limit strict liability under OPA for oil pollution.

#### **14.5 Protections for Secured Parties**

- (a) The Borrower shall give notice forthwith of any assignment of its interest in the Insurances to the relevant brokers, insurance companies, underwriters and/or associations in the form approved by the Agent;
- (b) The Borrower shall execute and deliver all such documents and do all such things as may be necessary to confer upon the Secured Parties legal title to the Insurances in respect of the Ship and to procure that the interest of the Secured Parties is at all times filed with all slips, cover notes, policies and certificates of entry and to procure (a) that a loss payable clause in the form approved by the Agent shall be filed with all the hull, machinery and equipment and war risks policies in respect of the Ship and (b) that a loss payable clause in the form approved by the Agent shall be endorsed upon the protection and indemnity certificates of entry in respect of the Ship; and
- (c) In the event of the Borrower making default in insuring and keeping insured the Ship as hereinbefore provided then the Agent may (but shall not be bound to) insure the Ship or enter the Ship in such manner and to such extent as the Agent in its discretion thinks fit and in such case all the cost of effecting and maintaining such insurance together with interest thereon at the Interest Rate shall be paid on demand by the Borrower to the Agent.

**14.6 Copies of policies; letters of undertaking**

The Borrower will procure that each of the relevant brokers and associations furnishes the Agent with a letter of undertaking in the standard form available in the relevant insurance market or otherwise in such form as may be required by the Agent and waives any lien for premiums or calls except in relation to premiums or calls solely attributable to the Ship.

**14.7 Payment of premiums**

The Borrower shall punctually pay all premiums, calls, contributions or other sums payable in respect of the Insurances on the Ship and to produce all relevant receipts when so required by the Agent.

**14.8 Renewal of obligatory insurances**

The Borrower shall notify the Agent of the renewal of the obligatory insurances at least five (5) days before the expiry thereof and shall procure that the relevant brokers or associations shall promptly confirm in writing to the Agent that such renewal is effected it being understood by the Borrower that any failure to renew the Insurances on the Ship at least two (2) days before the expiry thereof or to give or procure the relevant notices of such renewal shall constitute an Event of Default.

**14.9 Guarantees**

The Borrower shall arrange for the execution of such guarantees as may from time to time be required by any protection and indemnity and/or war risks association.

**14.10 Provision of insurances information**

The Borrower will furnish the Agent from time to time on request with full information about all Insurances maintained on the Ship and the names of the offices, companies, underwriters, associations or clubs with which such Insurances are placed.

**14.11 Alteration to terms of insurances**

The Borrower shall not make or agree to any variation in the terms of any of the Insurances on the Ship without the prior approval of the Agent nor to do any act or voluntarily suffer or permit any act to be done whereby any Insurances shall or may be rendered invalid, void, voidable, suspended, defeated or unenforceable and not to suffer or permit the Ship to engage in any voyage nor to carry any cargo not permitted under any of the Insurances without first obtaining the consent of the insurers or reinsurers concerned and complying with such requirements as to payment of extra premiums or otherwise as the insurers or reinsurers may impose.

**14.12 Settlement of claims**

The Borrower shall not settle, compromise or abandon any claim in respect of any of the Insurances on the Ship other than a claim of less than [\*] Dollars (\$[\*]) or the equivalent in any other currency and not being a claim arising out of a Total Loss.

**14.13 Application of insurance proceeds**

The Borrower shall apply or ensure the appliance of all such sums receivable in respect of the Insurances on the Ship for the purpose of making good the loss and fully repairing all damage in respect whereof the insurance monies shall have been received.

#### **14.14 Insurance advisers**

The Agent shall be entitled, immediately prior to the Delivery Date and thereafter no more frequently than annually on renewals but also additionally at any time when there is a proposed change of underwriters or the terms of any Insurances, to instruct independent reputable insurance advisers for the purpose of obtaining any advice or information regarding any matter concerning the Insurances which the Agent shall deem necessary, it being hereby specifically agreed that the Borrower shall reimburse the Agent on demand for the costs and expenses incurred by the Agent in connection with the instruction of such advisers subject to a limit of \$10,000 at the time of delivery of the Ship or in the event of a change of underwriters or of terms of any Insurances and otherwise \$10,000 annually thereafter.

### **15 SECURITY VALUE MAINTENANCE**

#### **15.1 Security Shortfall**

If, upon receipt of a valuation of the Ship in accordance with Clause 13.4 (*Valuation of the Ship*), the Security Value shall be less than the Security Requirement, the Agent may give notice to the Borrower requiring that such deficiency be remedied and then the Borrower shall (unless the Ship has become a Total Loss) either:

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

Clauses 15.2 (*Costs*) and 15.4 (*Documents and evidence*) and paragraph (c) of Clause 16.2 (*Voluntary prepayment*) shall apply to prepayments under paragraph (a) of Clause 15.1 (*Security Shortfall*).

#### **15.2 Costs**

All costs in connection with the Agent obtaining any valuation of the Ship referred to in Clause 13.4 (*Valuation of the Ship*), and obtaining any valuation either of any additional security for the purposes of ascertaining the Security Value at any time or necessitated by the Borrower electing to constitute additional security pursuant to paragraph (b) of Clause 15.1 (*Security Shortfall*) shall be borne by the Borrower.

#### **15.3 Valuation of additional security**

For the purpose of this Clause 15 (*Security Value Maintenance*), the market value of any additional security provided or to be provided to the Agent shall be determined by the Agent in its absolute discretion without any necessity for the Agent assigning any reason thereto.

#### **15.4 Documents and evidence**

In connection with any additional security provided in accordance with this Clause 15 (*Security Value Maintenance*), the Agent shall be entitled to receive such evidence and documents of the kind referred to in Clause 3 (*Conditions Precedent*) in respect of other Finance Documents as may in the Agent's opinion be appropriate.



## 15.5 Valuations binding

Any valuation under this Clause 15 (*Security Value Maintenance*) shall be binding and conclusive as regards the Borrower.

## 15.6 Provision of information

- (a) The Borrower shall promptly provide the Agent and any shipbroker acting under this Clause 15 (*Security Value Maintenance*) with any information which the Agent or the shipbroker may reasonably request for the purposes of the valuation.
- (b) If the Borrower fails to provide the information referred to in paragraph (a) above by the date specified in the request, the valuation may be made on any basis and assumptions which the shipbroker or the Agent considers prudent.

## 16 CANCELLATION, PREPAYMENT AND MANDATORY PREPAYMENT

### 16.1 Cancellation

At any time prior to the delivery of a Drawdown Notice and not less than ninety (90) Business Days prior to the Intended Delivery Date, the Borrower may give notice to the Agent in writing that it wishes to cancel the Total Commitments in their entirety whereupon (without penalty to the Borrower but without prejudice to any liabilities of the Borrower including, without limitation, in respect of fees payable or accrued under this Agreement, arising prior to the date of such cancellation) the Total Commitments shall terminate upon the date specified in such notice.

### 16.2 Voluntary prepayment

- (a) The Borrower may prepay all or part of the Loan (but if in part being an amount that reduces the Loan by a minimum amount of one (1) repayment instalment of principal of the Loan) together with interest thereon. Such prepayment shall, regardless of the date on which such prepayment is made, be made together with all of the amounts that SIMEST is entitled to charge, whether for taxes, costs, expenses, indemnities, penalties, losses or liabilities whatsoever, under and in accordance with the Interest Make-up Agreement and Clause 20.2 (*Breakage costs and SIMEST arrangements*) but without any other penalty provided that the prepayment is made on the last day of an Interest Period and thirty-five (35) days prior written notice indicating the intended date of prepayment is given to the Agent and the SACE Agent. However, the following amounts shall be payable to the Agent for the account of the Lenders, or SIMEST, as the case may be, if any prepayment made pursuant to this Clause 16.2 (*Voluntary prepayment*) is not made on the last day of an Interest Period:
  - (i) if the Borrower elected a Floating Interest Rate pursuant to paragraph (a) of Clause 3.5, the difference (if positive), calculated by the Lenders and notified by them to the Agent, between the actual cost for the Lenders of the funding for the Loan and the rate of interest for the monies to be invested by the Lenders, applied to the amounts so prepaid for the period from the said prepayment until the last day of the Interest Period during which the prepayment occurs (if prepayment does not occur on the last day of that Interest Period), details of any such calculation being supplied to the Borrower by the Agent on behalf of the Lenders; or
  - (ii) if the Borrower elected a Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5, the sum of charges (if any) imposed by SIMEST representing funding or breakage costs of the Italian Authorities as more specifically set out in Clause 20 (*Indemnities*).
- (b) For the avoidance of doubt, regardless of the date on which a voluntary prepayment is made, such prepayment shall be paid together with all amounts payable in accordance with Clause 20.2 (*Breakage costs and SIMEST arrangements*) and if a voluntary prepayment is

made other than on the last day of an Interest Period, the prepayment shall be paid together with such other amounts payable in accordance with Clauses 20.1 (*Indemnities regarding borrowing and repayment of Loan*) and 20.2 (*Breakage costs and SIMEST arrangements*).

- (c) If the Borrower has selected the Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5, the SACE Agent shall give SIMEST thirty (30) days written notice of the intended date of prepayment.

### **16.3 Mandatory prepayment – Sale and Total Loss**

The Borrower shall be obliged to prepay the whole of the Loan if the Ship is sold or becomes a Total Loss:

- (a) in the case of a sale, on or before the date on which the sale is completed by delivery of the Ship to the buyer; or
- (b) in the case of a Total Loss, on the earlier of the date falling 120 days after the Total Loss Date and the date of receipt by the Agent of the proceeds of insurance relating to such Total Loss.

### **16.4 Mandatory prepayment – SACE Insurance Policy**

- (a) The Borrower shall be obliged to prepay the whole of the Loan if the SACE Insurance Policy is revoked, rescinded, cancelled, terminated, suspended or otherwise becomes unenforceable or ceases to be in full force and effect.
- (b) In the event that any other event occurs or any other circumstances arise or develop which would have a material adverse effect on SACE's ability to perform its obligations under the SACE Insurance Policy, the Borrower and the Lenders shall, provided that no Event of Default has occurred and is continuing, negotiate in good faith for a period of not less than 30 days with a view to agreeing such revised terms and conditions as the Lenders may require to enable the Lenders to maintain the entire Loan (and during such 30 day period, no Lender shall be obliged to make available to the Borrower their portion of the Loan to the extent such amounts have not already been drawn). In the event that following such negotiations the Borrower and the Lenders fail to agree on such revised terms, the Borrower shall be obliged to prepay, on demand by the Agent, the outstanding principal amount of the Loan to the extent of the amount covered pursuant to the SACE Insurance Policy. If, during the period while negotiations are on-going pursuant to this paragraph (b) of Clause 16.4 (*Mandatory prepayment – SACE Insurance Policy*) the events described in paragraph (a) of Clause 16.4 (*Mandatory prepayment – SACE Insurance Policy*) should occur, the Borrower shall be obliged to prepay the Loan in full as required by paragraph (a) of Clause 16.4 (*Mandatory prepayment – SACE Insurance Policy*).

### **16.5 Other amounts**

Any prepayment of the whole of the Loan shall be made together with all other sums due under this Agreement (including, without limitation, the compensation calculated in accordance with Clause 16.2 (*Voluntary prepayment*)).

### **16.6 Application of partial prepayment**

Amounts prepaid shall be applied in accordance with paragraph (b) of Clause 19.1 (*Receipts*).

### **16.7 No reborrowing**

Amounts prepaid may not be reborrowed.

## 17 INTEREST ON LATE PAYMENTS

### 17.1 Default rate of interest

Without prejudice to the provisions of Clause 18 (*Events of Default*) and without this Clause in any way constituting a waiver of terms of payment, all sums due by the Borrower under this Agreement will automatically bear interest on a day to day basis from the date when they are payable until the date of actual payment at a rate per annum equal to the higher of:

- (a) where the Floating Interest Rate is applicable, the aggregate of:
  - (i) Overnight LIBOR;
  - (ii) the Margin; and
  - (iii) [\*] per cent. ([\*]%) per annum; or
- (b) where the Fixed Interest Rate is applicable, the higher of:
  - (i) the Fixed Interest Rate plus [\*] per cent. ([\*]%) per annum; and
  - (ii) Overnight LIBOR plus the Margin plus [\*] per cent. ([\*]%) per annum.

### 17.2 Compounding of default interest

Any such interest will itself bear interest at the above rate if it is due for at least three (3) months and thereafter at three monthly intervals.

## 18 EVENTS OF DEFAULT

### 18.1 Events of Default

An Event of Default occurs if any of the events or circumstances described in Clauses 18.2 (*Non-payment*) to 18.20 (*Material Adverse Change*) occur.

### 18.2 Non-payment

Any Obligor fails to pay when due or (if so payable) on demand any sum payable under a Finance Document or under any document relating to a Finance Document and such failure is not remedied within three (3) Business Days of the due date or (if payable on demand) within three (3) Business Days of receiving the demand.

### 18.3 Non-remediable breaches

The Borrower fails to comply with the provisions of Clauses 12.7 (*Negative pledge*), 12.8 (*Disposals*), 12.10 (*Mergers*) or 12.17 (*Loans and guarantees by the Borrower*).

### 18.4 Breach of other obligations

- (a) Any Obligor fails to comply with any provision of any Finance Document (other than a failure to comply covered by any of the other provisions of Clauses 18.2 (*Non-payment*) to 18.20 (*Material Adverse Change*)) and in particular but without limitation the Guarantor fails to comply with the provisions of clause 11 (*Undertakings*) of its Guarantee or there is any breach in the opinion of the Majority Lenders and SACE of any of the Underlying Documents provided that no Event of Default shall be deemed to have occurred if, in the opinion of the Majority Lenders and SACE, such failure or breach is capable of remedy and is remedied within the Relevant Period (as defined below) from the date of its occurrence, if the failure was known to that Obligor, or from the date the relevant Obligor is notified by the Agent of

the failure, if the failure was not known to that Obligor, unless in any such case as aforesaid the Majority Lenders and SACE consider that the failure or breach is or could reasonably be expected to become materially prejudicial to the interests, rights or position of the Lenders, "**Relevant Period**" meaning for the purposes of this Clause thirty (30) days in respect of a remedy period commencing under this Clause not later than 31 January 2019 and fifteen (15) days in respect of a remedy period commencing after 31 January 2019; or

- (b) If there is a repudiation or termination of any Transaction Document or if any of the parties thereto becomes entitled to terminate or repudiate any of them and evidences an intention so to do.

#### **18.5 Misrepresentation**

Any representation, warranty or statement made or repeated in, or in connection with, any Transaction Document or the SACE Insurance Policy or in any accounts, certificate, statement or opinion delivered by or on behalf of any Obligor thereunder or in connection therewith is materially incorrect or misleading when made or would, if repeated at any time hereafter by reference to the facts subsisting at such time, no longer be materially correct.

#### **18.6 Cross default**

- (a) Any event of default occurs under any financial contract or financial document relating to any Financial Indebtedness of the Borrower; or
- (b) any such Financial Indebtedness or any sum payable in respect thereof is not paid when due (after the expiry of any applicable grace period(s)) whether by acceleration or otherwise; or
- (c) any other Financial Indebtedness of any member of the Group is not paid when due or is or becomes capable of being declared due prematurely by reason of default or any Security Interest securing the same becomes enforceable by reason of default provided that no Event of Default will arise if the aggregate amount of the relevant Financial Indebtedness and liabilities secured by the relevant Security Interests is less than \$[\*] or its equivalent in other currencies; and
- (d) any other Security Interest over any assets of any member of the Group securing any alleged liability that does not qualify as Financial Indebtedness becomes enforceable where the alleged liability is in respect of a sum of, or sum aggregating, \$[\*] or its equivalent in other currencies, unless the alleged liability is being contested in good faith by appropriate means by the relevant Group member and the Agent is reasonably satisfied that the relevant member of the Group has reasonable grounds for succeeding in its action.

#### **18.7 Winding-up**

Any order is made or an effective resolution passed or other action taken for the suspension of payments or reorganisation, dissolution, termination of existence, liquidation, winding-up or bankruptcy of any Obligor.

#### **18.8 Appointment of liquidators etc.**

A liquidator, trustee, administrator, receiver, administrative receiver, manager or similar officer is appointed in respect of any Obligor or in respect of all or any substantial part of the assets of any Obligor.

#### **18.9 Enforcement of any security**

Any corporate action, legal proceeding or other procedure or step is taken in relation to enforcement of any security interests over any assets of the Borrower.

#### **18.10 Insolvency**

- (a) An Obligor is unable or admits inability to pay its debts as they fall due, is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts.
- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent liabilities).
- (c) A moratorium in respect of all or any debts of any Obligor or a compromise, composition, assignment or an arrangement with creditors of any Obligor or any similar proceeding or arrangement by which the assets of any Obligor are submitted to the control of its creditors is applied for, ordered or declared or any Obligor commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of all or a significant part of its Financial Indebtedness. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

#### **18.11 Legal process**

Any corporate action, legal proceeding, distress, execution, attachment or other process affects the whole or any substantial part of the assets of any Obligor and remains undischarged for a period of thirty (30) days, any step is taken in relation to enforcement of any security interests over any assets of any Obligor (other than the Borrower) or any uninsured judgment which, in each case, is in excess of [\*] Dollars (\$[\*]) following final appeal, remains unsatisfied for a period of ten (10) days.

#### **18.12 Analogous events**

Anything analogous to or having a substantially similar effect to any of the events specified in Clauses 18.7 (*Winding-up*) to 18.11 (*Legal process*) shall occur under the laws of any applicable jurisdiction.

#### **18.13 Cessation of business**

Any Obligor ceases to carry on all or a substantial part of its business.

#### **18.14 Revocation of consents**

Any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement necessary to enable any Obligor to comply with any of its obligations under any of the Transaction Documents is materially adversely modified, revoked or withheld or does not remain in full force and effect and within ninety (90) days of the date of its occurrence such event is not remedied to the satisfaction of the Agent consider that such failure is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the modification, revocation or withholding of the authorisation, approval or consent is due to an act or omission of any Obligor and the Majority Lenders and SACE are satisfied that the Lenders' interests might reasonably be expected to be materially adversely affected.

#### **18.15 Unlawfulness**

At any time it is unlawful or impossible for any Obligor to perform any of its material (to the Secured Parties or any of them) obligations under any Transaction Document to which it is a party or it is unlawful or impossible for the Secured Parties or any Lender to exercise any of their or its rights under any of the Transaction Documents provided that no Event of Default shall be deemed to have occurred where the unlawfulness or impossibility does not relate to the payment obligation of any Obligor under any Transaction Document and is cured within

the period of twenty one (21) days of the date of occurrence of the event giving rise to the unlawfulness or impossibility and the affected Obligor performs its obligation within such period.

**18.16 Insurances**

The Borrower fails to insure the Ship in the manner specified in Clause 14 (*Insurance Undertakings*) or fails to renew the Insurances at least five (5) days prior to the date of expiry thereof and produce prompt confirmation of such renewal to the Agent provided that if the insurers withdraw their cover an Event of Default shall be deemed to have occurred upon issue of the insurer's notice of withdrawal.

**18.17 Disposals**

If the Borrower or any other Obligor shall have concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall have made any transfer of its property to or for the benefit of a creditor with the intention of preferring such creditor over any other creditor.

**18.18 Prejudice to security**

Anything is done or suffered or omitted to be done by any Obligor which in the reasonable opinion of the Agent would or might be expected to imperil the security created by any of the Finance Documents.

**18.19 Governmental intervention**

The authority of any Obligor in the conduct of its business is wholly or substantially curtailed by any seizure or intervention by or on behalf of any authority and within ninety (90) days of the date of its occurrence any such seizure or intervention is not relinquished or withdrawn and the Agent reasonably considers that the relevant occurrence is or might be expected to become materially prejudicial to the interests, rights or position of the Lenders provided that the Borrower shall not be entitled to the aforesaid ninety (90) day period if the seizure or intervention executed by any authority is due to an act or omission of any Obligor and the Majority Lenders and SACE are satisfied that the Lenders' interest might reasonably be expected to be materially adversely affected.

**18.20 Material Adverse Change**

Any event or circumstance occurs which results in a Material Adverse Effect.

**18.21 Actions following an Event of Default**

On, or at any time after, the occurrence of an Event of Default the Agent may, and if so instructed by the Majority Lenders and SACE, the Agent shall:

- (a) serve on the Borrower a notice stating that the Commitments and all other obligations of each Lender to the Borrower under this Agreement are terminated; and/or
- (b) serve on the Borrower a notice stating that the Loan (including but without limitation the amount representing the financed First Instalment and Second Instalment of the SACE Premium), all accrued interest and all other amounts accrued or owing under this Agreement are immediately due and payable or are due and payable on demand; and/or

- (c) take any other action which, as a result of the Event of Default or any notice served under paragraph (a) or (b), the Agent and/or the Lenders are entitled to take under any Finance Document or any applicable law.

**18.22 Termination of Commitments**

On the service of a notice under paragraph (a) of Clause 18.21 (*Actions following an Event of Default*), the Commitments and all other obligations of each Lender to the Borrower under this Agreement shall terminate.

**18.23 Acceleration of Loan**

On the service of a notice under paragraph (b) Clause 18.21 (*Actions following an Event of Default*), the Loan, all accrued interest and all other amounts accrued or owing from the Borrower or any Obligor under this Agreement and every other Finance Document shall become immediately due and payable or, as the case may be, payable on demand.

**18.24 Further amounts payable**

Upon an acceleration of repayment of the Loan following an Event of Default the Borrower shall be liable to pay compensation calculated in accordance with Clause 16.2 (*Voluntary prepayment*).

**18.25 Multiple notices; action without notice**

The Agent may serve notices under paragraphs (a) and (b) of Clause 18.21 (*Actions following an Event of Default*) simultaneously or on different dates and it may take any action referred to in paragraph (c) of Clause 18.21 (*Actions following an Event of Default*) if no such notice is served or simultaneously with or at any time after the service of both or either of such notices.

**18.26 Notification of Secured Parties and Obligors**

The Agent shall send to the Italian Authorities, each Lender and each Obligor a copy or the text of any notice which the Agent serves on the Borrower under Clause 18.21 (*Actions following an Event of Default*); but the notice shall become effective when it is served on the Borrower, and no failure or delay by the Agent to send a copy or the text of the notice to any other person shall invalidate the notice or provide any Obligor with any form of claim or defence.

**18.27 Lender's rights unimpaired**

Nothing in this Clause 18 (*Events of Default*) shall be taken to impair or restrict the exercise of any right given to individual Lenders under a Finance Document or the general law; and, in particular, this Clause is without prejudice to Clauses 2.4 (*Creditor Parties' rights and obligations*) and 2.6 (*Obligations of Lenders several*).

**18.28 Exclusion of Secured Party liability**

No Secured Party, and no receiver or manager appointed by the Agent, shall have any liability to an Obligor:

- (a) for any loss caused by an exercise of rights under, or enforcement of a Security Interest created by, a Finance Document or by any failure or delay to exercise such a right or to enforce such a Security Interest; or

- (b) as mortgagee in possession or otherwise, for any income or principal amount which might have been produced by or realised from any asset comprised in such a Security Interest or for any reduction (however caused) in the value of such an asset.

## **19 APPLICATION OF SUMS RECEIVED**

### **19.1 Receipts**

Except as any Finance Document may otherwise provide, all sums received under this Agreement or any other Finance Document by the Agent, on behalf of the Lenders, or by any of the Lenders for any reason whatsoever will be applied:

- (a) in priority, to payments of any kind due or in arrears in the order of their due payment dates and first, to fees, charges and expenses, second, to interest payable pursuant to Clause 17 (*Interest on Late Payments*), third, to interest payable pursuant to Clause 6 (*Interest*), fourth, to the principal of the Loan payable pursuant to Clause 5 (*Repayment*), fifth, to any sums due pursuant to Clause 20.2 (*Breakage costs and SIMEST arrangements*) and, sixth, to any other sums due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders; or
- (b) if no payments are in arrears or if these payments have been discharged as set out above, then and to sums remaining due under this Agreement or any other Finance Document and, if relevant, *pro rata* to each of the Lenders and in each case in inverse order of maturity, the interest being recalculated accordingly.

## **20 INDEMNITIES**

### **20.1 Indemnities regarding borrowing and repayment of Loan**

The Borrower shall fully indemnify the Agent and each Lender or SIMEST (but without double counting to the extent that a Lender is making a claim in respect of amounts owing to SIMEST) on the Agent's demand in respect of all claims, expenses, liabilities and losses which are made or brought against or incurred by that Secured Party, or which that Secured Party reasonably and with due diligence estimates that it will incur, as a result of or in connection with:

- (a) the Loan not being borrowed on the date specified in the Drawdown Notice for any reason other than a default by the Lender claiming the indemnity;
- (b) the receipt or recovery of all or any part of the Loan or an overdue sum otherwise than on the last day of an Interest Period or other relevant period;
- (c) any failure (for whatever reason) by the Borrower to make payment of any amount due under a Finance Document on the due date or, if so payable, on demand (after giving credit for any default interest paid by the Borrower on the amount concerned under Clause 17 (*Interest on Late Payments*)); and
- (d) the occurrence and/or continuance of an Event of Default and/or the acceleration of repayment of the Loan under Clause 18 (*Events of Default*).

### **20.2 Breakage costs and SIMEST arrangements**

Without limiting its generality, Clause 20.1 (*Indemnities regarding borrowing and repayment of Loan*) covers:

- (a) any claim, expense, liability or loss, including a loss of a prospective profit, incurred by a Lender in liquidating or employing deposits from third parties acquired or arranged to fund



or maintain all or any part of its Contribution and/or any overdue amount (or an aggregate amount which includes its Contribution or any overdue amount);

- (b) if the Borrower has selected the Fixed Interest Rate in accordance with paragraph (a) of Clause 3.5, all of the amounts that SIMEST is entitled to charge, whether for taxes, costs, expenses, indemnities, penalties, losses or liabilities whatsoever, under and in accordance with the Interest Make-up Agreement, including without limitation, as a result of any prepayment of all or any part of the Loan under this Agreement (whether voluntary, mandatory, following acceleration of the Loan or otherwise), as a result of an Interest Make-Up Event or as a result of the Borrower deciding to switch from the Fixed Interest Rate to another interest rate after the Drawdown Date and/or an Interest Make-up Event. Such amounts include, without limitation, (i) breakage costs, (ii) any amount due as a consequence of the close-out of any hedging arrangement entered into by SIMEST in relation to this Agreement, (iii) default interest and penalties (*maggiorazioni*) whenever applicable, and (iv) all amounts (if any) to be returned by the Agent to SIMEST under and pursuant to the Interest Make-Up Agreement; and
- (c) any other costs whatsoever or howsoever arising under or in respect of the Interest Make-Up Agreement which are passed to the Agent, any such costs imposed by SIMEST shall be paid by the Borrower to SIMEST through the Agent.

For the purposes of this Clause 20.2 (*Breakage costs and SIMEST arrangements*) "**Interest Make-Up Event**" means the occurrence of any circumstances which result in the termination, cancellation, revocation, cessation or suspension (in each case, in whole or in part) of the Interest Make-Up Agreement or the Interest Make-Up Agreement otherwise ceases or may cease to be in full force and effect or the Agent notifies the Borrower that the Fixed Interest Rate is not available for any reason, in each case, in accordance with the terms of the Interest Make-Up Agreement.

### 20.3 Miscellaneous indemnities

The Borrower shall fully indemnify each Secured Party severally on their respective demands in respect of all claims, expenses, liabilities and losses which may be made or brought against or incurred by a Secured Party, in any country, as a result of or in connection with:

- (a) any action taken, or omitted or neglected to be taken, under or in connection with any Finance Document by the Agent or any other Secured Party or by any receiver appointed under a Finance Document;
- (b) any other Pertinent Matter,

other than claims, expenses, liabilities and losses which are shown to have been directly and mainly caused by the dishonesty or wilful misconduct of the officers or employees of the Secured Party concerned.

Without prejudice to its generality, this Clause 20.3 (*Miscellaneous indemnities*) covers any claims, expenses, liabilities and losses which arise, or are asserted, under or in connection with any law relating to safety at sea, the ISM Code or any Environmental Laws or any Sanctions.

### 20.4 Currency indemnity

If any sum due from an Obligor to a Secured Party under a Finance Document or under any order or judgment relating to a Finance Document has to be converted from the currency in which the Finance Document provided for the sum to be paid (the "**Contractual Currency**") into another currency (the "**Payment Currency**") for the purpose of:

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

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

In this Clause 20.4 (*Currency indemnity*) the "**available rate of exchange**" means the rate at which the Secured Party concerned is able at the opening of business (Paris time) on the Business Day after it receives the sum concerned to purchase the Contractual Currency with the Payment Currency.

This Clause 20.4 (*Currency indemnity*) creates a separate liability of the Borrower which is distinct from its other liabilities under the Finance Documents and which shall not be merged in any judgment or order relating to those other liabilities.

#### **20.5 Certification of amounts**

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

#### **20.6 Sums deemed due to a Lender**

For the purposes of this Clause 20 (*Indemnities*), a sum payable by the Borrower to the Agent for distribution to a Lender shall be treated as a sum due to that Lender.

#### **20.7 SACE obligations**

To the extent that this Clause 20 (*Indemnities*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

### **21 ILLEGALITY, ETC.**

#### **21.1 Illegality**

This Clause 21 (*Illegality, etc.*) applies if

- (a) a Lender (the "**Notifying Lender**") notifies the Agent that it has become, or will with effect from a specified date, become:
  - (i) unlawful or prohibited as a result of the introduction of a new law, an amendment to an existing law or a change in the manner in which an existing law is or will be interpreted or applied, including for the avoidance of doubt in relation to Sanctions; or
  - (ii) contrary to, or inconsistent with, any regulation,

for the Notifying Lender to maintain or give effect to any of its obligations under this Agreement in the manner contemplated by this Agreement; or

- (b) an Obligor is or becomes a Prohibited Person.

paragraphs (a)(i) and (b) of Clause 21.1 (*Illegality*) above shall not apply to any Lender which is incorporated in the Federal Republic of Germany (and which has so notified the Agent) to the extent that the enforcement of such provision by a Lender would (a) violate, conflict with or incur liability under EU Regulation (EC) 2271/96 or (b) violate or conflict with section 7 of the German Foreign Trade Regulation (Außenwirtschaftsverordnung) in connection with section 4 paragraph (1)(a)(3) of the Foreign Trade Law (Außenwirtschaftsgesetz) or any similar anti-boycott statute in force in the Federal Republic of Germany.

## 21.2 Notification of illegality

- (a) The Agent shall promptly notify the Borrower, the Obligors and the other Lenders of the notice under Clause 21.1 (*Illegality*) which the Agent receives from the Notifying Lender.
- (b) Upon receipt of the notice under paragraph (a) above and provided that such illegality is not applicable with immediate effect (in which case paragraph (a) of Clause 21.3 (*Prepayment; termination of Commitment*) will apply immediately and this paragraph (a) of Clause 21.2 (*Notification of illegality*) will not apply, the Agent shall, where the Borrower has selected the Fixed Interest Rate pursuant to paragraph (a) of Clause 3.5 (*No later than thirty (30) days before the Intended Delivery Date*) inform SIMEST in writing in order to start consultations between themselves (pursuant to clause 6 of the Interest Make-Up Agreement) with a view to exploring any possible solution to mitigate the unlawfulness preventing that Lender from performing any of its obligations under a Finance Document or funding or maintaining its share in the Loan. Any solution agreed between the Agent and SIMEST at the end of the consultation period (which shall last for a period of ten (10) days from the service of such notice on SIMEST) will be binding among themselves and shall be notified by the Agent to each Obligor immediately thereafter (and in any case no later than ten (10) days following such decision).
- (c) If at the end of the consultation procedure set out in paragraph (b) above, no solution is agreed between the Agent and SIMEST, the Agent must immediately notify the Lenders and the Obligors.

## 21.3 Prepayment; termination of Commitment

- (a) After notification under paragraph (c) above or (in case the Interest Make-Up Agreement has ceased to be in force and effect or the Fixed Interest Rate has not been selected pursuant to paragraph (a) of Clause 3.5) after notification under paragraph (a) above and subject to Clause 21.4 (*Mitigation*) below the Borrower must repay or prepay that Lender's share in the Loan on the date specified in paragraph (c) below together with any Breakage Costs payable under Clause 20.2 (*Breakage costs and SIMEST arrangements*) and any indemnity payable under Clause 20.2(c) in respect of the Interest Make-Up Agreement;
- (b) On the Agent notifying the Borrower under paragraph (c) of Clause 21.2 (*Notification of illegality*), the Notifying Lender's Commitment shall terminate; and thereupon or, if later, on the date specified in the Notifying Lender's notice under Clause 21.1 (*Illegality*) as the date on which the notified event would become effective the Borrower shall prepay the Notifying Lender's Contribution and shall pay compensation to the Notifying Lender calculated in accordance with Clause 16.2 (*Voluntary prepayment*).
- (c) The date for repayment or prepayment of a Lender's share in the Loan will be:
  - (i) the date specified by the Agent in the notification under paragraph (b) above; or
  - (ii) in case the Interest Make-Up Agreement has ceased to be in force and effect or the Fixed Interest Rate has not been selected pursuant to paragraph (a) of Clause 3.5, the last day of the current Interest Period for the Loan or, if earlier, the date

specified by the Lender in the notification under paragraph (a) above and which must not be earlier than the last day of any applicable grace period allowed by law.

**21.4 Mitigation**

- (a) Each Secured Party shall, in consultation with the Borrowers, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to Clause 21 (*Illegality, etc.*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

**22 SET-OFF**

**22.1 Application of credit balances**

Each Creditor Party may without prior notice:

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

**22.2 Existing rights unaffected**

No Creditor Party shall be obliged to exercise any of its rights under Clause 22.1 (*Application of credit balances*); and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Creditor Party is entitled (whether under the general law or any document).

**22.3 Sums deemed due to a Lender**

For the purposes of this Clause 22 (*Set-Off*), a sum payable by the Borrower to the Agent for distribution to, or for the account of, a Lender shall be treated as a sum due to that Lender; and each Lender's proportion of a sum so payable for distribution to, or for the account of, the Lenders shall be treated as a sum due to such Lender.

**22.4 No Security Interest**

This Clause 22 (*Set-Off*) gives the Creditor Parties a contractual right of set-off only, and does not create any equitable charge or other Security Interest over any credit balance of the Borrower.

## 23 CHANGES TO THE LENDERS

### 23.1 Transfer by a Lender

Subject to Clause 23.5 (*No transfer without Transfer Certificate*), Clause 23.17 (*Assignment or transfer to SACE*) and Clause 23.14 (*Change of Facility Office*), a Lender (the "**Transferor Lender**") may at any time provided they have obtained the prior written consent of the Italian Authorities cause:

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

to be (in the case of its rights) transferred to, or (in the case of its obligations) assumed by, in whole or in part any of its Affiliates or another bank or financial institution or a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (a "**Transferee Lender**") by delivering to the Agent a completed certificate in the form set out in Schedule 4 (*Form of Transfer Certificate*) with any modifications approved or required by the Agent (a "**Transfer Certificate**") executed by the Transferor Lender and the Transferee Lender.

However any rights and obligations of the Transferor Lender in its capacity as Agent or Security Trustee will have to be dealt with separately in accordance with the provisions of Clauses 25 (*Role of the Agent and the Joint Mandated Lead Arrangers*) and 26 (*The Security Trustee*) respectively.

### 23.2 Conditions of assignment or transfer

- (a) The consent of the Borrower is required at all times (subject to the provisions of Clauses 23.5 (*No transfer without Transfer Certificate*) and 23.17 (*Assignment or transfer to SACE*)) for an assignment or transfer by an Existing Lender, unless (i) there is an Event of Default or (ii) the assignment or transfer is to another Lender or an Affiliate of a Lender.
- (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent ten (10) Business Days after the Existing Lender has requested it unless consent is expressly refused by that Borrower within that time.
- (c) The assignment or transfer must be with respect to a minimum Commitment of [\*] Dollars (\$[\*]) or, if less, the Existing Lender's full Commitment.

### 23.3 Transfer Certificate, delivery and notification

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

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

but the Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Transferor Lender and the Transferee Lender once it is satisfied it has complied with all

necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to that Transferee Lender.

#### **23.4 Effective Date of Transfer Certificate**

A Transfer Certificate becomes effective on the date, if any, specified in the Transfer Certificate as its effective date, Provided that it is signed by the Agent under Clause 23.3 (*Transfer Certificate, delivery and notification*) on or before that date.

#### **23.5 No transfer without Transfer Certificate**

Except as provided in Clause 23.16 (*Security over Lenders' rights*), no assignment or transfer of any right or obligation of a Lender under any Finance Document is binding on, or effective in relation to, the Borrower, any Obligor, the Agent or the Security Trustee unless it is effected, evidenced or perfected by a Transfer Certificate.

#### **23.6 Lender re-organisation; waiver of Transfer Certificate**

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

#### **23.7 Effect of Transfer Certificate**

A Transfer Certificate takes effect in accordance with English law as follows:

- (a) to the extent specified in the Transfer Certificate, all rights and interests (present, future or contingent) which the Transferor Lender has under or by virtue of the Finance Documents are assigned to the Transferee Lender absolutely, free of any defects in the Transferor Lender's title and of any rights or equities which the Borrower or any Obligor had against the Transferor Lender;
- (b) the Transferor Lender's Commitment is discharged to the extent specified in the Transfer Certificate;
- (c) the Transferee Lender becomes a Lender with the Contribution previously held by the Transferor Lender and a Commitment of an amount specified in the Transfer Certificate;
- (d) the Transferee Lender becomes bound by all the provisions of the Finance Documents which are applicable to the Lenders generally, including those about pro-rata sharing and the exclusion of liability on the part of, and the indemnification of, the Agent and the Security Trustee and, to the extent that the Transferee Lender becomes bound by those provisions (other than those relating to exclusion of liability), the Transferor Lender ceases to be bound by them;
- (e) any part of the Loan which the Transferee Lender advances after the Transfer Certificate's effective date ranks in point of priority and security in the same way as it would have ranked had it been advanced by the transferor, assuming that any defects in the transferor's title and any rights or equities of the Borrower or any Obligor against the Transferor Lender had not existed;
- (f) the Transferee Lender becomes entitled to all the rights under the Finance Documents which are applicable to the Lenders generally, including but not limited to those relating to the Majority Lenders and those under Clause 6.5 (*Market disruption*) and Clause 9 (*Fees*), and to

the extent that the Transferee Lender becomes entitled to such rights, the Transferor Lender ceases to be entitled to them; and

- (g) in respect of any breach of a warranty, undertaking, condition or other provision of a Finance Document or any misrepresentation made in or in connection with a Finance Document, the Transferee Lender shall be entitled to recover damages by reference to the loss incurred by it as a result of the breach or misrepresentation, irrespective of whether the original Lender would have incurred a loss of that kind or amount.

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

### **23.8 Maintenance of register of Lenders**

During the Security Period the Agent shall maintain a register in which it shall record the name, Commitment, Contribution and administrative details (including the Facility Office) from time to time of each Lender holding a Transfer Certificate and the effective date (in accordance with Clause 23.4 (*Effective Date of Transfer Certificate*)) of the Transfer Certificate; and the Agent shall make the register available for inspection by any Lender, the Security Trustee and the Borrower during normal banking hours, subject to receiving at least 3 Business Days' prior notice.

### **23.9 Reliance on register of Lenders**

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

### **23.10 Authorisation of Agent to sign Transfer Certificates**

The Borrower, the Security Trustee and each Lender irrevocably authorise the Agent to sign Transfer Certificates on its behalf.

### **23.11 Fees and Costs**

In respect of any Transfer Certificate:

- (a) the Agent shall be entitled to recover a registration fee of EUR 5,000 from the Transferor Lender or (at the Agent's option) the Transferee Lender;
- (b) the Transferee Lender shall pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by the Agent or the Lenders in connection with any necessary amendment to or supplementing of the Transaction Documents or any of them or the SACE Insurance Policy as a consequence of the assignment or transfer; and
- (c) the Transferee Lender shall pay to the Agent, upon demand, such amount as is payable to the Italian Authorities to cover its costs of giving its approval under Clause 23.1 (*Transfer by a Lender*).

### **23.12 Sub-participation; subrogation assignment**

A Lender may sub-participate all or any part of its rights and/or obligations under or in connection with the Finance Documents without the consent of, or any notice to, the Borrower, any Obligor, the Agent or the Security Trustee but with the prior written consent of SACE.

### 23.13 Disclosure of information

A Lender may disclose to a potential Transferee Lender or sub participant any information which the Lender has received in relation to the Borrower, any Obligor or their affairs under or in connection with any Finance Document, unless the information is clearly of a confidential nature.

### 23.14 Change of Facility Office

Subject to the prior written consent of SACE, a Lender may change its Facility Office by giving notice to the Agent and the change shall become effective on the later of:

- (a) the date on which the Agent receives the notice; and
- (b) the date, if any, specified in the notice as the date on which the change will come into effect, provided that if (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office, and (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment or an increased payment to the new Lender or Lender acting through its new Facility Office under Clause 10 (*Taxes, Increased Costs, Costs and Related Charges*), then the new Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause to the same extent as the existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

### 23.15 Notification

On receiving such a notice, the Agent shall notify the Borrower and the Security Trustee; and, until the Agent receives such a notice, it shall be entitled to assume that a Lender is acting through the Facility Office of which the Agent last had notice.

### 23.16 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 23 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from the Borrower or any Obligor but subject to the prior written consent of SACE, at any time charge, assign or otherwise create a Security Interest in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender (i) to the benefit of any Affiliate and/or (ii) within the framework of its, or its Affiliates, direct or indirect funding operations including, without limitation:

- (a) any charge, assignment or other Security Interest to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security Interest granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities;

except that no such charge, assignment or Security Interest shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interest for the Lender as a party to any of the Finance Documents; or
- (ii) alter the obligations of the Obligor or require any payments to be made by the Borrower or any Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.



### **23.17 Assignment or transfer to SACE**

- (a) Notwithstanding the above provisions of this Clause 23 (*Changes to the Lenders*) each Lender and the Agent shall, if so instructed by SACE in accordance with the provisions of the SACE Insurance Policy and without any requirement for the consent of any Obligor, assign its rights or (as the case may be) transfer its rights and obligations to SACE (but for the avoidance of doubt, SACE will not assume any of the Lenders' obligations pursuant to Clauses 10 (*Taxes, Increased Costs, Costs and Related Charges*) or 32 (*Confidentiality*) of this Agreement), which assignment or transfer shall take effect upon the date stated in the relevant documentation subject to SACE being satisfied that it has complied with all necessary "know your customer" requirements in relation to such assignment or transfer;
- (b) The Agent shall promptly notify the Obligors of any such assignment or transfer to SACE and, following an Event of Default, the Obligors shall pay to the Agent, upon demand, all reasonable costs and expenses, duties and fees, including but without limitation legal costs and out of pocket expenses, incurred by SACE, the Agent or the Lenders in connection with any such assignment or transfer.

### **23.18 No prejudice to SACE rights**

Nothing in the Finance Documents shall prejudice or otherwise limit:

- (a) the rights of any Lender to assign its rights or transfer its rights and obligations, under, or in connection with, any Finance Document to SACE or as directed by SACE; and
- (b) the right of SACE to be subrogated to any Lender's rights under, or in connection with, any Finance Document.

### **23.19 SACE's power to direct**

The Creditor Parties agree and the Obligors acknowledge that SACE has the right to direct the decision-making of the Agent and/or the Security Trustee, including (without limitation) following an Event of Default.

## **24 CHANGES TO THE OBLIGORS**

### **24.1 No change without consent**

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

## **25 ROLE OF THE AGENT AND THE JOINT MANDATED LEAD ARRANGERS**

### **25.1 Appointment of the Agent**

- (a) Each other Secured Party appoints the Agent to act as its agent under and in connection with this Agreement and the other Finance Documents, the SACE Insurance Policy and the Interest Make Up Agreement.
- (b) Each other Secured Party authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### **25.2 Duties of the Agent**

- (a) The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.

- (b) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) If the Agent receives notice from a Party referring to this Agreement, describing an Event of Default and stating that the circumstance described is an Event of Default, it shall promptly notify the other Secured Parties.
- (d) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Secured Party (other than the Agent or a Joint Mandated Lead Arranger) under this Agreement it shall promptly notify the other Secured Parties.
- (e) The Agent's duties under the Finance Documents are solely administrative in nature.

### **25.3 Role of Joint Mandated Lead Arrangers**

None of the Joint Mandated Lead Arrangers has any obligations of any kind to any other Party under or in connection with any Transaction Document, the Interest Make-Up Agreement or the SACE Insurance Policy.

### **25.4 No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent or any of the Joint Mandated Lead Arrangers as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor any of the Joint Mandated Lead Arrangers 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.

### **25.5 Business with the Guarantor**

The Agent and each of the Joint Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Affiliate or Subsidiary of the Guarantor.

### **25.6 Rights and discretions of the Agent**

- (a) The Agent may rely on:
  - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
  - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Event of Default has occurred (unless it has actual knowledge of an Event of Default); and
  - (ii) any right, power, authority or discretion vested in any Party or the Lenders has not been exercised.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.

- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as the Agent under this Agreement.
- (f) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor any of the Joint Mandated Lead Arrangers 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.

#### **25.7 Lenders' and SACE's instructions**

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall:
  - (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders and SACE (or, if so instructed by the Majority Lenders and SACE, refrain from exercising any right, power, authority or discretion vested in it as the Agent); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders and SACE.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders and SACE will be binding on all the Secured Parties.
- (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders and SACE until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders and SACE the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Secured Parties.
- (e) The 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.
- (f) Notwithstanding anything to the contrary, the Lenders agree that if the Agent (acting in its sole discretion) is of the opinion that or if any Lender notifies the Agent that it is of the opinion that, the prior approval of the Italian Authorities should be obtained in relation to the exercise or non-exercise by the Agent or the Lenders of any power, authority or discretion specifically given to them under or in connection with the Finance Documents or in relation to any other incidental rights, powers, authorities or discretions, then the Agent shall seek such approval of the Italian Authorities prior to such exercise or non-exercise.

#### **25.8 Responsibility for documentation**

The Agent is not responsible for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, a Joint Mandated Lead Arranger, an Obligor or any other person given in or in connection with any Transaction Document, the SACE Insurance Policy or the Interest Make-Up Agreement; nor for
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document the SACE Insurance Policy or the Interest Make-Up Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Transaction Document, the SACE Insurance Policy or the Interest Make-Up Agreement.

## **25.9 Exclusion of liability**

- (a) Without limiting paragraph (b) of Clause 25.9 (*Exclusion of liability*), the Agent will not be liable for any action taken by it under or in connection with any Finance Document, the SACE Insurance Policy or the Interest Make-Up Agreement, unless directly caused by its Gross Negligence or wilful misconduct.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, the SACE Insurance Policy or the Interest Make-Up Agreement and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 35.4 (*Third party rights*) and the provisions of the Third Parties Rights Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents, the SACE Insurance Policy or the Interest Make-Up Agreement to be paid by the Agent if the 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 Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or a Joint Mandated Lead Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Joint Mandated Lead Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or a Joint Mandated Lead Arranger.

## **25.10 Lenders' indemnity to the Agent**

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 Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's Gross Negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

## **25.11 Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Creditor Parties, the Borrower and SACE and with the consent of SACE.
- (b) Alternatively the Agent may resign by giving notice to the other Secured Parties and the Borrower, in which case the Lenders (after consultation with the Borrower and the prior consent of SACE) may appoint a successor Agent.
- (c) If the Lenders have not appointed a successor Agent in accordance with paragraph (b) of Clause 25.11 (*Resignation of the Agent*) within thirty (30) days after notice of resignation was given, the Agent (after consultation with the Borrower and SACE) may appoint a successor Agent.
- (d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.

- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 25 (*Role of the Agent and the Joint Mandated Lead Arrangers*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) After consultation with the Italian Authorities, the Majority Lenders may, subject to the prior consent of the Italian Authorities, by notice to the Agent, require it to resign in accordance with paragraph (b) of Clause 25.11 (*Resignation of the Agent*). In this event, the Agent shall resign in accordance with paragraph (b) of Clause 25.11 (*Resignation of the Agent*) but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
- (h) The appointment of a successor Agent pursuant to this Clause 25.11 (*Resignation of the Agent*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

#### **25.12 Confidentiality**

- (a) In acting as agent for the Secured Parties, the 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 Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

#### **25.13 Relationship with the Lenders**

The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

#### **25.14 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 Agent and each of the Joint Mandated Lead Arrangers 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 the Guarantor and each Subsidiary of the Guarantor;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (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 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;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, 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; 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 Security Interests or the existence of any Security Interest affecting the Charged Property.

**25.15 Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

**25.16 Full freedom to enter into transactions**

Notwithstanding any rule of law or equity to the contrary, the Agent shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security agent for, and/or participating in, other facilities to such Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, the Agent shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

**25.17 SACE Agent, SACE Insurance Policy and Interest Make-Up Agreement**

- (a) Where the context permits, references to the Agent shall include the SACE Agent. The Agent and the SACE Agent shall be the same entity throughout the Security Period.
- (b) With the prior written consent of each of the Lenders, the SACE Agent may amend or modify the SACE Insurance Policy and the Interest Make-Up Agreement provided that such amendments are not inconsistent with the commercial terms of this Agreement, otherwise, the SACE Agent undertakes not to amend or modify the SACE Insurance Policy or the Interest Make-Up Agreement.

## **25.18 Resignation of the Agent in relation to FATCA**

The Agent shall resign in accordance with Clause 25.11 (*Resignation of the Agent*) (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) of Clause 25.11 (*Resignation of the Agent*)) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:

- (a) the Agent fails to respond to a request under Clause 10.9 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (b) the information supplied by the Agent pursuant to Clause 10.9 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (c) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

## **26 THE SECURITY TRUSTEE**

### **26.1 Trust**

- (a) The Security Trustee declares that it shall hold the Security Property on trust for the Secured Parties on the terms contained in this Agreement and shall deal with the Security Property in accordance with this Clause 26 (*The Security Trustee*) and the other provisions of the Finance Documents.
- (b) Each of the parties to this Agreement agrees that the Security Trustee shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Finance Documents (and no others shall be implied).
- (c) The Security Trustee shall not have any liability to any person in respect of its duties, obligations and responsibilities under this Agreement or the other Finance Documents except as expressly set out in paragraph (a) of Clause 26.1 (*Trust*) and as excluded or limited by this Clause 26 (*The Security Trustee*) including in particular Clause 26.8 (*Instructions to Security Trustee and exercise of discretion*), Clause 26.13 (*Responsibility for documentation*), Clause 26.14 (*Exclusion of liability*), Clause 26.16 (*Lenders' indemnity to the Security Trustee*), Clause 26.23 (*Business with the Group*) and Clause 26.29 (*Full freedom to enter into transactions*).

### **26.2 Parallel Debt (Covenant to pay the Security Trustee)**

- (a) Each Obligor irrevocably and unconditionally undertakes to pay to the Security Trustee its Parallel Debt which shall be amounts equal to, and in the currency or currencies of, its Corresponding Debt.
- (b) The Parallel Debt of an Obligor:
  - (i) shall become due and payable at the same time as its Corresponding Debt;
  - (ii) is independent and separate from, and without prejudice to, its Corresponding Debt.

- (c) For purposes of this Clause 26.2 (*Parallel Debt (Covenant to pay the Security Trustee)*), the Security Trustee:
- (i) is the independent and separate creditor of each Parallel Debt;
  - (ii) acts in its own name and not as agent, representative or trustee of the Secured Parties and its claims in respect of each Parallel Debt shall not be held on trust; and
  - (iii) shall have the independent and separate right to demand payment of each Parallel Debt in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).
- (d) The Parallel Debt of an Obligor shall be:
- (i) decreased to the extent that its Corresponding Debt has been irrevocably and unconditionally paid or discharged; and
  - (ii) increased to the extent that its Corresponding Debt has increased,
- and the Corresponding Debt of an Obligor shall be:
- (A) decreased to the extent that its Parallel Debt has been irrevocably and unconditionally paid or discharged; and
  - (B) increased to the extent that its Parallel Debt has increased,
- in each case provided that the Parallel Debt of an Obligor shall never exceed its Corresponding Debt.
- (e) All amounts received or recovered by the Security Trustee in connection with this Clause 26.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) to the extent permitted by applicable law, shall be applied in accordance with Clause 19 (*Application of sums received*).
- (f) This Clause 26.2 (*Parallel Debt (Covenant to pay the Security Trustee)*) shall apply, with any necessary modifications, to each Finance Document.

### **26.3 No independent power**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any Security Interest created by any of the Finance Documents or to exercise any rights or powers arising under the Finance Documents creating the Security Interest except through the Security Trustee.

### **26.4 Application of receipts**

- (a) Except as expressly stated to the contrary in any Finance Document, any moneys which the Security Trustee receives or recovers and which are, or are attributable to, Security Property (for the purposes of this Clause 26 (*The Security Trustee*), the "**Recoveries**") shall be transferred to the Agent for application in accordance with Clause 19 (*Application of sums received*).
- (b) Paragraph (a) above is without prejudice to the rights of the Security Trustee, any receiver:
- (i) under Clause 25.10 (*Lenders' indemnity to the Agent*) to be indemnified out of the Charged Property; and



- (ii) under any Finance Document to credit any moneys received or recovered by it to any suspense account.
- (c) Any transfer by the Security Trustee to the Agent in accordance with paragraph (a) above shall be a good discharge, to the extent of that payment, by the Security Trustee.
- (d) The Security Trustee is under no obligation to make the payments to the Agent under paragraph (a) of this Clause 26.4 (*Application of receipts*) in the same currency as that in which the obligations and liabilities owing to the relevant Secured Party are denominated.

#### **26.5 Deductions from receipts**

- (a) Before transferring any moneys to the Agent under Clause 26.4 (*Application of receipts*), the Security Trustee may, in its discretion:
  - (i) deduct any sum then due and payable under this Agreement or any other Finance Documents to the Security Trustee or any receiver and retain that sum for itself or, as the case may require, pay it to another person to whom it is then due and payable;
  - (ii) set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement; and
  - (iii) pay all Taxes which may be assessed against it in respect of any of the Security Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Trustee under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).
- (b) For the purposes of paragraph (a)(i) above, if the Security Trustee has become entitled to require a sum to be paid to it on demand, that sum shall be treated as due and payable, even if no demand has yet been served.

#### **26.6 Prospective liabilities**

Following acceleration of any Security Interest, the Security Trustee may, in its discretion, or at the request of the Agent, hold any recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the relevant account) for later payment to the Agent for application in accordance with Clause 19 (*Application of sums received*) in respect of:

- (a) any sum to the Security Trustee, any receiver; and
- (b) any part of the Secured Liabilities,

that the Security Trustee or, in the case of paragraph (b) only, the Agent, reasonably considers, in each case, might become due or owing at any time in the future.

#### **26.7 Investment of proceeds**

Prior to the payment of the proceeds of the recoveries to the Agent for application in accordance with Clause 19 (*Application of sums received*) the Security Trustee may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the

relevant account) pending the payment from time to time of those moneys in the Security Trustee's discretion in accordance with the provisions of this 26.7 (*Investment of proceeds*).

#### **26.8 Instructions to Security Trustee and exercise of discretion**

- (a) Subject to paragraph (d) below, the Security Trustee shall act in accordance with any instructions given to it by the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) or, if so instructed by the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)), refrain from exercising any right, power, authority or discretion vested in it as Security Trustee and shall be entitled to assume that:
- (i) any instructions received by it from the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) are duly given in accordance with the terms of the Finance Documents; and
  - (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.
- (b) The Security Trustee shall be entitled to request instructions, or clarification of any direction, from the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Security Trustee may refrain from acting unless and until those instructions or clarification are received by it.
- (c) Any instructions given to the Security Trustee by the Agent (acting on the instructions of SACE and the Majority Lenders or all the Lenders (as appropriate)) shall override any conflicting instructions given by any other Party.
- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement requires the Security Trustee to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Trustee's own position in its personal capacity as opposed to its role of Security Trustee for the Secured Parties including, without limitation, the provisions set out in Clauses 26.10 (*Security Trustee's discretions*) to Clause 26.29 (*Full freedom to enter into transactions*); and
  - (iv) in respect of the exercise of the Security Trustee's discretion to exercise a right, power or authority under any of Clause 26.5 (*Deductions from receipts*) and Clause 26.6 (*Prospective liabilities*).

#### **26.9 Security Trustee's Actions**

Without prejudice to the provisions of Clause 26.4 (*Application of receipts*), the Security Trustee may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Finance Documents as it considers in its discretion to be appropriate.

#### **26.10 Security Trustee's discretions**

- (a) The Security Trustee may:
- (i) assume (unless it has received actual notice to the contrary from the Agent) that (i) no Event of Default has occurred and no Obligor is in breach of or default under

its obligations under any of the Finance Documents and (ii) any right, power, authority or discretion vested by any Finance Document in any person has not been exercised;

- (ii) assume that any notice or request made by the Borrower (other than the Drawdown Notice) is made on behalf of and with the consent and knowledge of all the Obligors;
  - (iii) if it receives any instructions or directions to take any action in relation to a Security Interest under the Finance Documents, assume that all applicable conditions under the Finance Documents for taking that action have been satisfied;
  - (iv) engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, surveyors or other experts (whether obtained by the Security Trustee or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable;
  - (v) act in relation to the Finance Documents through its personnel and agents;
  - (vi) disclose to any other Party any information it reasonably believes it has received as Security Trustee under this Agreement;
  - (vii) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party or an Obligor, upon a certificate signed by or on behalf of that person; and
  - (viii) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Finance Documents) until it has received any indemnification and/or security that it may in its discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in so acting.
- (b) Notwithstanding any other provision of any Finance Document to the contrary, the Security Trustee 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.

#### **26.11 Security Trustee's obligations**

The Security Trustee shall promptly:

- (a) copy to the Agent the contents of any notice or document received by it from any Obligor under any Finance Document;
- (b) forward to a Party the original or a copy of any document which is delivered to the Security Trustee for that Party by any other Party provided that, except where a Finance Document expressly provides otherwise, the Security Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party; and
- (c) inform the Agent of the occurrence of any Event of Default or any default by an Obligor in the due performance of or compliance with its obligations under any Finance Document of which the Security Trustee has received notice from any other party to this Agreement.

#### **26.12 Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Trustee shall not:

- (a) be bound to enquire as to (i) whether or not any Event of Default has occurred or (ii) the performance, default or any breach by an Obligor of its obligations under any of the Finance Documents;
- (b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;
- (d) have or be deemed to have any relationship of trust or agency with, any Obligor.

**26.13 Responsibility for documentation**

None of the Security Trustee, any receiver shall accept responsibility or be liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Trustee or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (c) any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Finance Documents, the Security Property or otherwise, whether in accordance with an instruction from the Agent or otherwise unless directly caused by its Gross Negligence or wilful misconduct;
- (d) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Finance Documents, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Finance Documents or the Security Property; or
- (e) any shortfall which arises on the enforcement or realisation of the Security Property.

**26.14 Exclusion of liability**

- (a) Without limiting Clause 26.15 (*No proceedings*), none of the Security Trustee or any receiver will be liable for any action taken by it or not taken by it under or in connection with any Finance Document or any Security Interest, unless directly caused by its Gross Negligence or wilful misconduct.
- (b) The Security Trustee 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 it if it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by it for that purpose.
- (c) Nothing in this Agreement shall oblige the Security Trustee to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Security Trustee 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 Trustee.

**26.15 No proceedings**

No Party (other than the Security Trustee or that receiver) may take any proceedings against any officer, employee or agent of the Security Trustee or a receiver in respect of any claim it might have against the Security Trustee or a receiver in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Security Property and any officer, employee or agent of the Security Trustee or a receiver may rely on this Clause subject to Clause 35.4 (*Third party rights*) and the provisions of the Third Parties Rights Act.

**26.16 Lenders' indemnity to the Security Trustee**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Security Trustee and every receiver within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Trustee 's or receiver's Gross Negligence or wilful misconduct) in acting as Security Trustee or receiver under the Finance Documents (unless the relevant Security Trustee or receiver has been reimbursed by an Obligor pursuant to a Finance Document).

**26.17 Own responsibility**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Creditor Party confirms to the Security Trustee 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 and enforceability of any Finance 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 Finance Document or the Security Property;
- (c) whether that Creditor Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Security Property, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Security Property;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Security Trustee 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 Charged Property, the priority of any of the Security Interests created by the Finance Documents or the existence of any Security Interest affecting the Charged Property,

and each Creditor Party warrants to the Security Trustee that it has not relied on and will not at any time rely on the Security Trustee in respect of any of these matters.

**26.18 No responsibility to perfect Security Interests**

The Security Trustee 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 Obligor 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 of the Finance Documents or any Security Interest;
- (c) register, file or record or otherwise protect any Security Interests (or the priority of any of Security Interest) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Finance Documents or of any Security Interest;
- (d) take, or to require any of the Obligors to take, any steps to perfect its title to any of the Charged Property or to render any Security Interest effective or to secure the creation of any ancillary Security under the laws of any jurisdiction; or
- (e) require any further assurances in relation to any of the Finance Documents creating the Security Interests.

**26.19 Insurance by Security Trustee**

- (a) The Security Trustee shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Finance Documents. The Security Trustee shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.
- (b) Where the Security Trustee is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Agent shall have requested it to do so in writing and the Security Trustee shall have failed to do so within fourteen (14) days after receipt of that request.

**26.20 Custodians and nominees**

The Security Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Trustee 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 Trustee 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.

**26.21 Acceptance of title**

The Security Trustee shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any of the Obligors may have to any of the Charged Property and shall not be liable for or bound to require any Obligor to remedy any defect in its right or title.

**26.22 Refrain from illegality**

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, the Security Trustee may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction and the Security Trustee may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

**26.23 Business with the Group**

The Security Trustee may accept deposits from, lend money to, and generally engage in any kind of banking or other business with, any member of the Group.

**26.24 Winding up of trust**

If the Security Trustee, with the approval of the Agent determines that (a) all of the Secured Liabilities and all other obligations secured by the Finance Documents creating the Security Interests have been fully and finally discharged and (b) none of the Secured Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents:

- (a) the trusts set out in this Agreement shall be wound up and the Security Trustee shall release, without recourse or warranty, all of the Security Interests and the rights of the Security Trustee under each of the Finance Documents creating the Security Interests; and
- (b) any Retiring Security Trustee shall release, without recourse or warranty, all of its rights under each of the Finance Documents creating the Security Interests.

**26.25 Perpetuity period**

The trusts constituted by this Agreement are governed by English law and the perpetuity period under the rule against perpetuities, if applicable to this Agreement, shall be the period of 125 years from the date of this Agreement.

**26.26 Powers supplemental**

The rights, powers and discretions conferred upon the Security Trustee by this Agreement 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 Trustee by general law or otherwise.

**26.27 Trustee division separate**

- (a) In acting as trustee for the Secured Parties, the Security Trustee shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Trustee, it may be treated as confidential to that division or department and the Security Trustee shall not be deemed to have notice of it nor shall it be obliged to disclose such information to any Party.

**26.28 Disapplication**

In addition to its rights under or by virtue of this Agreement and the other Finance Documents, the Security Trustee shall have all the rights conferred on a trustee by the Trustee Act 1925, the Trustee Delegation Act 1999, the Trustee Act 2000 and by general law or otherwise, provided that:

- (a) section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by this Agreement and the other Finance Documents; and
- (b) where there are any inconsistencies between (i) the Trustee Acts 1925 and 2000 and (ii) the provisions of this Agreement and any other Finance Document, the provisions of this Agreement and any other Finance Document shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, such provisions shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.

## 26.29 Full freedom to enter into transactions

Notwithstanding any rule of law or equity to the contrary, the Security Trustee shall be absolutely entitled:

- (a) to enter into and arrange banking, derivative, investment and/or other transactions of every kind with or affecting any Obligor or any person who is party to, or referred to in, a Finance Document (including, but not limited to, any interest or currency swap or other transaction, whether related to this Agreement or not, and acting as syndicate agent and/or security trustee for, and/or participating in, other facilities to such Obligor or any person who is party to, or referred to in, a Finance Document);
- (b) to deal in and enter into and arrange transactions relating to:
  - (i) any securities issued or to be issued by any Obligor or any other person; or
  - (ii) any options or other derivatives in connection with such securities; and
- (c) to provide advice or other services to the Borrower or any person who is a party to, or referred to in, a Finance Document,

and, in particular, each Servicing Party shall be absolutely entitled, in proposing, evaluating, negotiating, entering into and arranging all such transactions and in connection with all other matters covered by paragraphs (a), (b) and (c) above, to use (subject only to insider dealing legislation) any information or opportunity, howsoever acquired by it, to pursue its own interests exclusively, to refrain from disclosing such dealings, transactions or other matters or any information acquired in connection with them and to retain for its sole benefit all profits and benefits derived from the dealings transactions or other matters.

## 26.30 Resignation of the Security Trustee

- (a) The Security Trustee may resign and appoint one of its affiliates as successor by giving notice to the Borrower and each Secured Party.
- (b) Alternatively the Security Trustee may resign by giving notice to the other Parties in which case the Majority Lenders (with the prior consent of SACE) may appoint a successor Security Trustee.
- (c) If the Majority Lenders have not appointed a successor Security Trustee in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Trustee (after consultation with the Agent and SACE) may appoint a successor Security Trustee.
- (d) The retiring Security Trustee (the "**Retiring Security Trustee**") shall, at its own cost, make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may reasonably request for the purposes of performing its functions as Security Trustee under the Finance Documents.
- (e) The Security Trustee's resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer, by way of a document expressed as a deed, of all of the Security Property to that successor.
- (f) Upon the appointment of a successor, the Retiring Security Trustee shall be discharged, by way of a document executed as a deed, from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 26.24 (*Winding up of trust*) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Trustee, remain entitled to the benefit of Clause 26 (*The Security Trustee*), Clause 26.5 (*Deductions from receipts*), Clause 26.16 (*Lenders' indemnity to the Security*)



*Trustee*) and any other provisions of a Finance Document which are expressed to limit or exclude its liability in acting as Security Trustee. Its 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 Majority Lenders may, by notice to the Security Trustee, require it to resign in accordance with paragraph (b) above. In this event, the Security Trustee shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Borrower.
- (h) The consent of the Borrower (or any other Obligor) is not required for an assignment or transfer of rights and/or obligations by the Security Trustee.
- (i) The appointment of a successor Security Trustee pursuant to this Clause 26.30 (*Resignation of the Security Trustee*) shall be subject to compliance with all necessary "know your customer" requirements of the Lenders.

**26.31 Delegation**

- (a) Each of the Security Trustee or any receiver may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Finance Documents.
- (b) That delegation may be made upon any terms and conditions and subject to any restrictions that the Security Trustee or that receiver (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate.

**26.32 Additional Security Trustee**

- (a) The Security Trustee may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
  - (i) if it considers that appointment to be in the interests of the Secured Parties; or
  - (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Trustee deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Trustee shall give prior notice to the Borrower and the Agent of that appointment.
- (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Trustee by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.
- (c) The remuneration that the Security Trustee 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 Trustee.

## 27 CONDUCT OF BUSINESS BY THE CREDITOR PARTIES

### 27.1 No provision of this Agreement will:

- (a) interfere with the right of any Creditor Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Creditor 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 Creditor Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

## 28 SHARING AMONG THE CREDITOR PARTIES

### 28.1 Payments to Creditor Parties

If a Creditor Party (a "**Recovering Creditor Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 28 *Sharing among the Creditor Parties*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Creditor Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Creditor Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 19 (*Application of sums received*) and Clause 29 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Creditor Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Creditor Party as its share of any payment to be made, in accordance with Clause 19 (*Application of sums received*) and Clause 29 (*Payment Mechanics*).

### 28.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Creditor Parties (other than the Recovering Creditor Party) in accordance with Clause 19 (*Application of sums received*) and Clause 29 (*Payment Mechanics*).

### 28.3 Recovering Creditor Party's rights

- (a) On a distribution by the Agent under Clause 28.2 (*Redistribution of payments*), the Recovering Creditor Party will, if possible under the relevant applicable laws, be subrogated to the rights of the Creditor Parties which have shared in the redistribution.
- (b) If and to the extent that the Recovering Creditor Party is not able to rely on its rights under paragraph (a) of Clause 28.3 *Recovering Creditor Party's rights*, the relevant Obligor shall be liable to the Recovering Creditor Party for a debt equal to the Sharing Payment which is immediately due and payable.

### 28.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Creditor Party becomes repayable and is repaid by that Recovering Creditor Party, then:

- (a) each Lender which has received a share of the relevant Sharing Payment pursuant to Clause 28.2 *Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Creditor Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Creditor Party for its proportion of any interest on the Sharing Payment which that Recovering Creditor Party is required to pay); and
- (b) that Recovering Creditor Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Creditor Party for the amount so reimbursed.

#### **28.5 Exceptions**

- (a) This Clause 28 (*Sharing among the Creditor Parties*) shall not apply to the extent that the Recovering Creditor Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Creditor Party is not obliged to share with any other Creditor Party any amount which the Recovering Creditor Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that other Creditor Party of the legal or arbitration proceedings; and
  - (ii) that other Creditor Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.
- (c) Following full indemnification by SACE of the SACE Agent (on behalf of the Lenders) under the SACE Insurance Policy, the provisions relating to the sharing of proceeds among the Creditor Parties in this Clause 28 (*Sharing among the Creditor Parties*) shall not apply to any payment made to SACE by a Lender or the Borrower following a payment by SACE to any Lender under the SACE Insurance Policy.

#### **29 PAYMENT MECHANICS**

##### **29.1 Payments to the Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.
- (c) Payment shall be made before 11.00 a.m. New York time or 11.00 a.m. Paris time (in the case of a payment in Euro).
- (d) For each payment by the Borrower, it shall notify the Agent on the third Business Day prior to the due date for payment that it will issue to its bank (which shall be named in such notification) to make the payment.

##### **29.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 29.3 (*Distributions to an Obligor*), Clause 29.4 (*Clawback*) be made

available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to Euro, in the principal financial centre of a Participating Member State or London).

### **29.3 Distributions to an Obligor**

The Agent may in accordance with Clause 22 (*Set-Off*) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### **29.4 Clawback**

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

### **29.5 No set-off by Obligors**

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### **29.6 Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or unpaid sum under this Agreement interest is payable on the principal or unpaid sum at the rate payable on the original due date.

### **29.7 Currency of account**

- (a) Subject to paragraphs (b) and (c) of Clause 29.7 (*Currency of account*) Dollars is the currency of account and payment for any sum from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

### **29.8 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

- (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Lenders and the Borrower); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Lenders and the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

#### **29.9 Distributions under the Interest Make-Up Agreement**

Each payment received by the Agent under the Interest Make-Up Agreement for a Lender shall be made available by the Agent as soon as practicable after receipt to the Lender entitled to receive such payment in accordance with this Agreement (for the account of its Facility Office), to such account as that Lender may notify to the Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to Euro, in the principal financial centre of a Participating Member State or London).

### **30 VARIATIONS AND WAIVERS**

#### **30.1 Variations, waivers etc. by Majority Lenders**

Subject to Clause 30.2 (*Variations, waivers etc. requiring agreement of all Lenders*), a document shall be effective to vary, waive, amend, suspend or limit any provision of a Finance Document, or any Creditor Party's rights or remedies under such a provision or the general law, only if the document is signed, or specifically agreed to by fax, by the Borrower, by the Agent on behalf of the Majority Lenders, by the Agent and the Security Trustee in their own rights, and, if the document relates to a Finance Document to which an Obligor is party, by an Obligor (provided that no amendment or variation may be made to this Agreement or any other Finance Document without the consent of the Italian Authorities); provided, further, that no amendment or variation may be made before the date falling ten Business Days after the terms of that amendment or variation have been notified by the Agent to the Lenders. The Agent shall notify the Lenders reasonably promptly of any amendments or variations proposed by the Borrower.

#### **30.2 Variations, waivers etc. requiring agreement of all Lenders**

However, as regards the following, Clause 30.1 (*Variations, waivers etc. by Majority Lenders*) applies as if the words "by the Agent on behalf of the Majority Lenders" were replaced by the words "by or on behalf of every Lender":

- (a) a reduction in the Margin;
- (b) a postponement to the date for, or a reduction in the amount of, any payment of principal, interest, fees, commission or other sum payable under this Agreement;
- (c) an increase in or extension of any Lender's Commitment or any requirement that a cancellation of Commitments reduces the Commitments rateably under the Loan;
- (d) a change to the definition of "**Majority Lenders**";

- (e) a change to Clause 2 (*Facility*), Clause 6 (*Interest*), Clause 23 (*Changes to the Lenders*) or this Clause 30 (*Variations and Waivers*);
- (f) any release of, or material variation to, a Security Interest, guarantee, indemnity or subordination arrangement set out in a Finance Document; and
- (g) any other change or matter as regards which this Agreement or another Finance Document expressly provides that each Lender's consent is required.

**30.3 Exclusion of other or implied variations**

Except for a document which satisfies the requirements of Clauses 30.1 (*Variations, waivers etc. by Majority Lenders*) and 30.2 (*Variations, waivers etc. requiring agreement of all Lenders*), no document, and no act, course of conduct, failure or neglect to act, delay or acquiescence on the part of the Creditor Parties or any of them (or any person acting on behalf of any of them) shall result in the Creditor Parties or any of them (or any person acting on behalf of any of them) being taken to have varied, waived, suspended or limited, or being precluded (permanently or temporarily) from enforcing, relying on or exercising:

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

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

**31 NOTICES**

**31.1 General**

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

**31.2 Addresses for communications**

A notice shall be sent:

- (a) to the Borrower:
  - 7665 Corporate Center Drive
  - Miami FL33126, USA
  - Fax No: (00) 1 305 436 4140
- (b) to a Lender:
  - At the address below its name in Schedule 1 (*Lenders and Commitments*) or (as the case may require) in the relevant Transfer Certificate.
- (c) to the Agent or the SACE
  - 9 quai du Président Paul Doumer
  - Agent: 92920 Paris La Défense Cedex
  - Paris

Fax No: (33) 1 41 89 29 87  
Attn: Shipping Group - Mr Jerome Leblond

and

Fax No. (33) 1 41 89 19 34  
Attn: Shipping Middle Office – Ms Clémentine Costil and  
Romy Rousset

or to such other address as the relevant party may notify the Agent or, if the relevant party is the Agent, the Borrower and the Lenders.

**31.3 Effective date of notices**

Subject to Clauses 31.4 (*Service outside business hours*) and 31.5 (*Electronic communication*):

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

**31.4 Service outside business hours**

However, if under Clause 31.3 (*Effective date of notices*) a notice would be deemed to be served:

- (a) on a day which is not a business day in the place of receipt; or
- (b) on such a business day, but after 6 p.m. local time;

the notice shall (subject to Clause 31.5 (*Electronic communication*)) be deemed to be served, and shall take effect, at 9 a.m. on the next day which is such a business day.

**31.5 Electronic communication**

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means, 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 Agent only if it is addressed in such a manner as the 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.

### 31.6 Illegible notices

Clauses 31.3 (*Effective date of notices*) and 31.4 (*Service outside business hours*) do not apply if the recipient of a notice notifies the sender within 1 hour after the time at which the notice would otherwise be deemed to be served that the notice has been received in a form which is illegible in a material respect.

### 31.7 Valid notices

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

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

### 31.8 English language

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

### 31.9 Meaning of "notice"

In this Clause 31 (*Notices*), "notice" includes any demand, consent, authorisation, approval, instruction, waiver or other communication.

## 32 CONFIDENTIALITY

### 32.1 Confidential Information

Each Creditor Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 32.2 *Disclosure of Confidential Information*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### 32.2 Disclosure of Confidential Information

Any Creditor Party may disclose:

- (a) to the Italian Authorities, to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Creditor Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Representatives and professional advisers;



- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Representatives and professional advisers;
- (iii) appointed by any Creditor Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitrations, administrative or other investigations, proceedings or disputes;
- (vii) who is a Party, a member of the Group or any related entity of an Obligor;
- (viii) as a result of the registration of any Finance Document as contemplated by any Finance Document or any legal opinion obtained in connection with any Finance Document; or
- (ix) with the consent of the Guarantor; or
- (x) any employee, officer, director or Representative of any Italian Authorities to whom information is required to be disclosed in the course of such person's employment or duties;
- (xi) to whom or for whose benefit that Creditor Party charges, assigns or otherwise creates a Security Interest (or may do so) pursuant to Clause 23.16 *Security over Lenders' rights*).

in each case, such Confidential Information as that Creditor Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(xi) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-

sensitive information except that there shall be no requirement to so inform if, in the opinion of that Creditor Party, it is not practicable so to do in the circumstances;

- (c) to any person appointed by that Creditor Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered in to a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Creditor Party;
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

### **32.3 Entire agreement**

This Clause 32 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Creditor Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

### **32.4 Inside information**

Each of the Creditor Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Creditor Parties undertakes not to use any Confidential Information for any unlawful purpose.

### **32.5 Notification of disclosure**

Each of the Creditor Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 32.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 32 (*Confidentiality*).

### **32.6 Continuing obligations**

The obligations in this Clause 32 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Creditor Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

- (b) the date on which such Creditor Party otherwise ceases to be a Creditor Party.

### **32.7 Disclosure by SACE**

Notwithstanding any other provision of this Agreement to the contrary, SACE may disclose any Confidential Information:

- (a) to its ultimate shareholder, holding company, subsidiaries and affiliates;
- (b) to any providers of any reinsurance, counter-guarantee or any form of risk enhancement (including but not limited to SACE's agents, brokers and consultants) subject to such persons entering into confidentiality arrangements with SACE unless such persons are subject to professional obligations of confidentiality;
- (c) if required for the purposes of the state guarantee in favour of SACE pursuant to article 32 of law-decree no. 91/2014 converted into law 116/2014 in the Republic of Italy;
- (d) following any payment due under the SACE Insurance Policy; or
- (e) with the consent of the Borrower, such consent not to be unreasonably withheld.

### **32.8 Press release**

Neither SACE nor the Borrower will issue any press release or make any public announcement in relation to the SACE Insurance Policy without the prior consent of the other party (such consent not to be unreasonably withheld).

## **33 LEGAL INDEPENDENCE**

### **33.1 Legal independence**

This Agreement is legally independent from the Shipbuilding Contract. The Borrower, in carrying out and fulfilling this Agreement, is not allowed to raise any defences or objections emanating from the Shipbuilding Contract, in particular if, but not limited thereto, the Shipbuilding Contract and/or any dispute in relation to the Shipbuilding Contract or the Ship is prematurely terminated or otherwise ends, from its business relations with the Builder and/or any other third party, or the insolvency or dissolution of either party to the Shipbuilding Contract or the destruction, non-completion or non-functioning of the Ship.

## **34 SACE SUBROGATION AND REIMBURSEMENT**

### **34.1 Acknowledgement of Subrogation**

Each Obligor and each Creditor Party acknowledges that, immediately upon any payment being made by SACE of any amount under the SACE Insurance Policy, SACE will be subrogated to the rights of the Lenders in the amount of such payment under the Finance Documents in accordance with the SACE Insurance Policy.

### **34.2 Reimbursement**

- (a) Without prejudice to Clause 34.1 (*Acknowledgement* of Subrogation), each Obligor, jointly and severally undertakes to pay to SACE, and keep SACE indemnified from and against, each and every amount paid (whether by direct payment or set-off) by SACE to the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy;
- (b) Each Obligor undertakes to pay SACE an amount in dollars equal to:

- (i) for each payment made by SACE to any of the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy, the amount of such payment; and
- (ii) for each deduction or withholding imposed, levied, collected, withheld or assessed on any payment by SACE to any of the Creditor Parties or any person on any of their behalf under the SACE Insurance Policy, the amount of such deduction or withholding,

in each case together with interest thereon (calculated in accordance with Clause 17.1 *Default rate of interest*) of this Agreement).

- (c) Each Obligor further agrees that its obligations under this Clause 34.2 *Reimbursement* are separate from and in no way conditional upon the Obligor's obligations under this Agreement or any of the other Finance Documents and will not be affected or discharged by any matter relating thereto including, but not limited to, whether or not the Obligor is itself liable to make payment, or is disputing its liability to make payment, under this Agreement or any of the other Finance Documents.
- (d) SACE will promptly inform the Obligors of any amounts to be reimbursed and indemnified under this Clause 34.2 *Reimbursement*.
- (e) Each amount that is payable by the Obligors pursuant to Clause 34.2 *Reimbursement* is due and payable to SACE in dollars within five (5) Business Days of demand by SACE to the Obligors.

### **34.3 Obligations Absolute**

The obligations of the Obligors under this Clause 34.2 *Reimbursement*, to the extent permitted by applicable law:

- (a) are absolute and unconditional;
- (b) are to be discharged and/or performed strictly in accordance with this Agreement under all circumstances;
- (c) are continuing obligations and will extend to the ultimate balance of sums payable by SACE to any Creditor Party or any person on any of their behalf under the SACE Insurance Policy, regardless of any intermediate payment or discharge in whole or in part;
- (d) will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under Clause 34.2 *Reimbursement* (without limitation and whether or not known to it or any Creditor Party) including:
  - (i) any time, waiver or consent granted to, or composition with any Obligor;
  - (ii) any lack of validity or enforceability of, or any amendment or other modifications of, or waiver with respect to, any of the Finance Documents;
  - (iii) any reduction or release of any other obligations under this Agreement;
  - (iv) the release of any Obligor or any other person under the terms of any composition or arrangement;
  - (v) the taking, variation, compromise, exchange, renewal, discharge, substitution or release of, or refusal or neglect to perfect, take up, realise or enforce, any rights against, or security over assets of, any Obligor 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;

- (vi) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor, any Creditor Party or any other person;
- (vii) any amendment (however fundamental) or replacement of a Finance Document, the SACE Insurance Policy or any other document or security;
- (viii) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, the SACE Insurance Policy or any other document or security;
- (ix) any insolvency or similar proceedings;
- (x) the existence of any claim, set-off, defence, reduction, abatement or other right which any Obligor may have at any time against SACE;
- (xi) any document presented in connection with the SACE Insurance Policy proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;
- (xii) any payment by SACE against presentation of a demand for payment substantially, on its face, in the form of a claim under the SACE Insurance Policy where any certificate or other document required to be provided with such claim in accordance with the terms of the SACE Insurance Policy either is not provided or does not comply with the terms of the SACE Insurance Policy; and
- (xiii) any other circumstances which might otherwise constitute a defence available to, or discharge of any Obligor.

## **35 SUPPLEMENTAL**

### **35.1 Rights cumulative, non-exclusive**

The rights and remedies which the Finance Documents give to each Secured Party are:

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

### **35.2 Severability of provisions**

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

### **35.3 Counterparts**

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

### **35.4 Third party rights**

- (a) Except for SACE and its successors, transferees and assignees or as otherwise provided in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Party Act**") to enforce or to enjoy the benefit of any term of this Agreement.

- (b) Notwithstanding any provision of any Finance Document, the consent of any person (other than SACE or its successors, transferees and assignees) who is not a party to a Finance Document is not required to rescind, vary or terminate any Finance Document at any time.
- (c) Subject to the provisions of the Third Party Act, SACE has the right to enforce and to enjoy the benefit of Clause 34 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payments*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 10.11 (*Transaction Costs*), Clause 20.3 (*Miscellaneous indemnities*), Clause 20.4 (*Currency indemnity*), Clause 10.6 (*VAT*), Clause 10.13 (*SACE obligations*), Clauses 32.7 (*Disclosure by SACE*) and 32.8 (*Press release*) and Clause 37 (*Enforcement*),
- (d) Any amendment or waiver which relates to the rights of SACE under this Agreement, including under Clause 34 (*SACE Subrogation and Reimbursement*), Clause 17 (*Interest on Late Payments*), Clause 10.2 (*Tax gross-up*), Clause 10.3 (*Tax indemnity*), Clause 20.4 (*Currency indemnity*), Clause 20.3 (*Miscellaneous indemnities*), Clause 10.6 (*VAT*), Clause 10.11 (*Transaction Costs*), Clauses 32.7 (*Disclosure by SACE*) and 32.8 (*Press release*) and Clause 37 (*Enforcement*) may not be effected without the consent of SACE.

**35.5 No waiver**

No failure or delay on the part of a Secured Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof by the Secured Parties or the exercise by the Secured Parties of any other right, power or privilege. The rights and remedies of the Secured Parties herein provided are cumulative and not exclusive of any rights or remedies provided by law.

**35.6 Writing required**

This Agreement shall not be capable of being modified otherwise than by an express modification in writing signed by the Borrower, the Agent and the Lenders.

**36 GOVERNING LAW**

**36.1 Law**

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

**37 ENFORCEMENT**

**37.1 Jurisdiction of English Courts**

The courts of England have exclusive jurisdiction to settle any Dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**"). Each Party agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

This Clause 37.1 (*Jurisdiction of English Courts*) is for the benefit of the Creditor Parties only. As a result, no Creditor Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, any Creditor Party may take concurrent proceedings in any number of jurisdictions.

**37.2 Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints EC3 Services Limited of The St Botolph Building, 138 Houndsitch, London EC3A 7AR, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within 15 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**SCHEDULE 1**

**LENDERS AND COMMITMENTS**

<b>Lender</b>	<b>Facility Office</b>	<b>Commitment (%)</b>
Crédit Agricole Corporate and Investment Bank	9 quai du Président Paul Doumer 92920 Paris La Défense Cedex France	[*]%
HSBC Bank plc	Level 2, 8 Canada Square London E14 5HQ United Kingdom	[*]%
Société Générale	29 Boulevard Haussmann 75009 Paris France	[*]%
KfW IPEX-Bank GmbH	KfW IPEX-Bank GmbH Palmengartenstr. 5-9 60325 Frankfurt Germany	[*]%



**SCHEDULE 2**

**FORM OF DRAWDOWN NOTICE**

To: [Crédit Agricole Corporate and Investment Bank]

Attention: [Loans Administration]

[●]

**DRAWDOWN NOTICE**

- 1 We refer to the loan agreement (the "**Loan Agreement**") dated [●] 2016 and made between ourselves, as Borrower, the Lenders, and the Joint Mandated Lead Arrangers referred to therein and yourselves as Agent in connection with a facility of the Dollar Equivalent of up to EUR [●]. Terms defined in the Loan Agreement have their defined meanings when used in this Drawdown Notice.
- 2 We request to borrow as follows:-
- (a) Amount:
- (i) \$[●] in respect of the payment of part of the Eligible Amount of the Final Contract Price to be paid to the Builder to the account specified in paragraph (d) below;
  - (ii) \$[●] in respect of the payment of part of the Eligible Amount of the Final Contract Price to be paid to the Borrower to the account specified in paragraph (d) below;
  - (iii) \$[●] in respect of the First Instalment of the SACE Premium to be reimbursed to the Borrower to the account specified in paragraph (d) below;
  - (iv) \$[●] in respect of the Second Instalment of the SACE Premium to be paid, in accordance with paragraph (d) below to SACE.
- (b) Drawdown Date: [●];
- (c) [Duration of the first Interest Period shall be [●] months;]
- (d) Payment instructions: *[account details to be completed in respect of (i), (ii) and (iii) above]*
- 3 We represent and warrant that:
- (a) the representations and warranties in Clauses 11.2 (*Continuing representations and warranties*) and 11.3 (*Representations on the Delivery Date*) of the Loan Agreement would remain true and not misleading if repeated on the date of this notice with reference to the circumstances now existing;
  - (b) no Event of Default has occurred or will result from the borrowing of the Loan.
- 4 This notice cannot be revoked without the prior consent of the Agent.

5 We authorise you to deduct the commitment fee accrued and unpaid referred to in paragraph (a) of Clause 9.1 (*Fees*) from the amount of the Loan drawn pursuant to paragraph 2(a)(ii) above.

[Name of Signatory]

Director

for and on behalf of

**EXPLORER II NEW BUILD, LLC**

### SCHEDULE 3

#### DOCUMENTS TO BE PRODUCED BY THE BUILDER TO THE AGENT ON DELIVERY

- 1 Certified copies of the commercial invoice, evidencing payment by the Borrower and receipt by the Builder of the instalments already paid pursuant to the Shipbuilding Contract and the Final Contract Price, duly executed by the Builder in favour of the Borrower and countersigned by the Borrower.
- 2 Certified copy of bank statements evidencing receipt by the Builder of the first, second, third and fourth instalments of the Initial Contract Price (as described in Recital (B)).
- 3 Certified Copy of the Protocol of Delivery and Acceptance, duly executed by the Builder and the Borrower.
- 4 Certified Copy of the declaration of warranty, duly executed by the Builder confirming that the Ship is delivered to the Borrower free and clear of all encumbrances whatsoever.
- 5 Certified Copy of the commercial invoice(s) corresponding to the Change Orders (if any) or any other similar document issued by the Builder stating the Change Order Amount and evidencing the payment by the Borrower and receipt by the Builder of the amounts not being financed by the Loan and of all final amounts due at delivery, duly executed by the Builder in favour of the Borrower and countersigned by the Borrower.
- 6 Certified copy of (i) the builder's certificate duly executed by the Builder and (ii) a Qualifying Certificate duly signed by the Builder specifying the origin of the exported goods and in which there are declared all the amounts transferred abroad for any reason regarding the performance of the Shipbuilding Contract.
- 7 Certified copy of the acknowledgement of the notice of assignment of the Borrower's rights under the post-delivery warranty given by the Builder under the Shipbuilding Contract pursuant to the Post-Delivery Assignment.
- 8 Certified Copy of the power of attorney pursuant to which the authorised signatory of the Builder signed the documents referred to in this Schedule 3 (*Documents to be produced by the Builder to the Agent on Delivery*) and a specimen of his signature.
- 9 Certified Copy of the Exporter's Declaration to SIMEST duly executed by the Builder and delivered to SIMEST (where the Fixed Interest Rate has been selected).

## SCHEDULE 4

### FORM OF TRANSFER CERTIFICATE

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

To: [Name of Agent] for itself and for and on behalf of the Borrower, any other Obligor, the Security Trustee and each Lender, as defined in the Loan Agreement referred to below.

[●]

1 This Certificate relates to Loan Agreement (the "**Loan Agreement**") dated [●] 2016 and made between (1) EXPLORER II NEW BUILD, LLC (the "**Borrower**"), (2) the banks and financial institutions named therein as lenders (3) Crédit Agricole Corporate and Investment Bank as Agent and (4) Crédit Agricole Corporate and Investment Bank as Security Trustee for a loan facility of up to \$498,187,967.01.

2 In this Certificate, terms defined in the Loan Agreement shall, unless the contrary intention appears, have the same meanings and:

"**Relevant Parties**" means the Agent, the Borrower, any other Obligor, the Security Trustee and each Lender.

"**Transferor**" means [full name] of [facility office].

"**Transferee**" means [full name] of [facility office].

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

4 The Transferor assigns to the Transferee absolutely all rights and interests (present, future or contingent) which the Transferor has as Lender under or by virtue of the Loan Agreement and every other Finance Document in relation to [●] per cent. of its Contribution, which percentage represents \$[●].

5 By virtue of this Certificate and Clause 23 (*Changes to the Lenders*) of the Loan Agreement, the Transferor is discharged [entirely from its Commitment which amounts to \$[●]] [from [●] per cent. of its Commitment, which percentage represents \$[●]] and the Transferee acquires a Commitment of \$[●].]

6 The Transferee undertakes with the Transferor and each of the Relevant Parties that the Transferee will observe and perform all the obligations under the Finance Documents which Clause 23 (*Changes to the Lenders*) of the Loan Agreement provides will become binding on it upon this Certificate taking effect.

7 The Agent, at the request of the Transferee (which request is hereby made) accepts, for the Agent itself and for and on behalf of every other Relevant Party, this Certificate as a Transfer Certificate taking effect in accordance with Clause 23 (*Changes to the Lenders*) of the Loan Agreement.

- 8 The Transferor:
- (a) warrants to the Transferee and each Relevant Party that:
    - (i) the Transferor has full capacity to enter into this transaction and has taken all corporate action and obtained all consents which are in connection with this transaction; and
    - (ii) this Certificate is valid and binding as regards the Transferor;
  - (b) warrants to the Transferee that the Transferor is absolutely entitled, free of encumbrances, to all the rights and interests covered by the assignment in paragraph 4 above; and
  - (c) undertakes with the Transferee that the Transferor will, at its own expense, execute any documents which the Transferee reasonably requests for perfecting in any relevant jurisdiction the Transferee's title under this Certificate or for a similar purpose.
- 9 The Transferee:
- (a) confirms that it has received a copy of the Loan Agreement and each of the other Finance Documents;
  - (b) agrees that it will have no rights of recourse on any ground against either the Transferor, the Agent, the Security Trustee or any Lender in the event that:
    - (i) any of the Finance Documents prove to be invalid or ineffective;
    - (ii) the Borrower or any Obligor fails to observe or perform its obligations, or to discharge its liabilities, under any of the Finance Documents;
    - (iii) it proves impossible to realise any asset covered by a Security Interest created by a Finance Document, or the proceeds of such assets are insufficient to discharge the liabilities of the Borrower or other Obligors under the Finance Documents;
  - (c) agrees that it will have no rights of recourse on any ground against the Agent, the Security Trustee or any Lender in the event that this Certificate proves to be invalid or ineffective;
  - (d) warrants to the Transferor and each Relevant Party that:
    - (i) it has full capacity to enter into this transaction and has taken all corporate action and obtained all consents which it needs to take or obtain in connection with this transaction; and
    - (ii) this Certificate is valid and binding as regards the Transferee; and
  - (e) confirms the accuracy of the administrative details set out below regarding the Transferee.
- 10 The Transferor and the Transferee each undertake with the Agent and the Security Trustee severally, on demand, fully to indemnify the Agent and/or the Security Trustee in respect of any claim, proceeding, liability or expense (including all legal expenses) which they or either of them may incur in connection with this Certificate or any matter arising out of it, except such as are shown to have been mainly and directly caused by the gross and culpable negligence or dishonesty of the Agent's or the Security Trustee's own officers or employees.
- 11 The Transferee shall repay to the Transferor on demand so much of any sum paid by the Transferor under paragraph 10 as exceeds one-half of the amount demanded by the Agent or the Security Trustee in respect of a claim, proceeding, liability or expense which was not reasonably foreseeable at the date of this Certificate; but nothing in this paragraph shall

affect the liability of each of the Transferor and the Transferee to the Agent or the Security Trustee for the full amount demanded by it.

[Name of Transferor] [Name of Transferee]

By: By:

Date: Date:

Agent

Signed for itself and for and on behalf of itself

as Agent and for every other Relevant Party

[Name of Agent]

By:

Date:

**Administrative Details of Transferee**

Name of Transferee:

Facility Office:

Contact Person

(Loan Administration Department):

Telephone:

Fax:

Contact Person

(Credit Administration Department):

Telephone:

Fax:

Account for payments:

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

**SCHEDULE 5**

**QUALIFYING CERTIFICATE**

To: Credit Agricole Corporate and Investment Bank as Agent (the "**Agent**")

cc: EXPLORER II NEW BUILD, LLC as Borrower

From: Fincantieri S.p.A (the "**Builder**")

Date:

Dear Sirs,

- 1 We refer to the SACE backed term facility agreement dated [●] 2016 (the "**Facility Agreement**") and entered into between, among others, the Agent, the Borrower and the financial institutions named therein as Lenders. Terms defined in the Facility Agreement shall have the same meaning when used herein.
- 2 This is a Qualifying Certificate.
- 3 This Qualifying Certificate relates to the Drawdown Notice dated [●].
- 4 We attach hereto the following documents in respect of the Ship to be delivered on the Drawdown Date under the Shipbuilding Contract:
- (a) a copy (certified as a true copy by the Builder) of the invoice(s) from the Builder in respect of the amounts paid and to be paid in respect of the Ship, as well as a copy (certified as a true copy by the Builder) of the relevant bank statements attesting receipt of the amounts paid in respect of the Ship;
  - (b) the Builder's Certificate and Declaration of Warranty (as each is defined in the Shipbuilding Contract);
  - (c) the protocol of delivery and acceptance issued under the Shipbuilding Contract; and
  - (d) a duly executed Exporter Declaration.
- 5 We hereby certify that the cumulative total amount invoiced by us pursuant to the Shipbuilding Contract and to be paid by the Borrower as direct payment is as follows: EUR [●] corresponding to not less than 30% of the Final Contract Price of the Ship.
- 6 We certify that, to the best of our knowledge and belief, the SACE Insurance Policy will apply to the Loan requested in the Drawdown Notice referred to above when it is made.
- 7 We hereby warrant that:
- (a) the amount claimed does not include any sum in respect of any matter currently the subject of arbitration or other proceeding nor to the best of our knowledge and belief will it be the subject of arbitration or other proceeding;
  - (b) the Shipbuilding Contract has not been terminated, suspended or amended and to the best of our knowledge and belief no action is proceeding which might lead to the termination or suspension thereof;
  - (c) all documents supplied by us in support of this Qualifying Certificate are in all material respect in conformity with the Shipbuilding Contract and SACE's requirements; you may rely



on the accuracy and completeness of all information and documents contained in or supplied with this Qualifying Certificate or delivered pursuant thereto;

- (i) the goods incorporated in and used for the construction of the Ship have the origin set out in the table below and complies with the requirements of the SACE Insurance Policy; and

<b>Origin of the goods incorporated in the Ship</b>	<b>Value in percentage of the total Contract Price of the Ship</b>	<b>Relevant portion of the Contract Price of the Ship</b>
<b>Italian goods</b>	<b>[●]%</b>	<b>EUR [●]</b>
<b>Other EU goods</b>	<b>[●]%</b>	<b>EUR [●]</b>
<b>Extra EU goods (if any)</b>	<b>[●]%</b>	<b>EUR [●]</b>
	<b>Total Contract Price of the Ship (in percentage) =</b>	<b>Total Contract Price of the Ship = EUR [●]</b>
	<b>100%</b>	

- (ii) the aggregate amounts transferred abroad (*importi trasferiti all'estero*) up to the date hereof and to be transferred abroad following the Drawdown Date for any reason connected to the performance of the Shipbuilding Contract, are equal to EUR [●].

Yours faithfully,

Fincantieri S.p.A  
For and on behalf of the Builder  
(the Authorised Signatory of the Builder)

**EXECUTION PAGES**

**BORROWER**

**SIGNED** by

for and on behalf of  
**EXPLORER II NEW BUILD, LLC**  
in the presence of:

) /s/Paul Alan Turner  
) Paul Alan Turner  
) Attorney-in-Fact  
)  
) /s/Amanda Gara  
Amanda Gara  
Solicitor  
Clyde & Co LLP  
The St Botolph Building  
138 Houndsditch  
London EC3A 7AR  
United Kingdom

**LENDERS**

**SIGNED** by

for and on behalf of  
**CRÉDIT AGRICOLE CORPORATE  
AND INVESTMENT BANK**  
in the presence of:

) /s/ Mathieu Gagnez  
) Mathieu Gagnez  
)  
) /s/ Jérôme Leblond  
) Jérôme Leblond  
)  
) /s/ Anne-Laure Orange  
Anne-Laure Orange

**SIGNED** by

for and on behalf of  
**SOCIÉTÉ GÉNÉRALE**  
in the presence of:

) /s/Isabelle Seneca  
) Isabelle Seneca  
) Director, Export Finance  
)  
) /s/ Agnès Deschenes-Voirin  
Agnès Deschenes-Voirin  
Director, Export Finance

**SIGNED** by

for and on behalf of  
**KFW IPEX-BANK GMBH**  
in the presence of:

) /s/Claudia Wenzel  
) Claudia Wenzel  
) Vice President  
)  
) /s/ André Tiele  
André Tiele  
Vice President

/s/Julia Zellmann  
Julia Zellmann

**SIGNED** by

for and on behalf of  
**HSBC BANK PLC**  
in the presence of:

) /s/Philip E. Lewis  
) Philip E. Lewis  
) Head of Export Finance - Transportation  
)  
) /s/Sam Lippitt  
Sam Lippitt

**AGENT**

**SIGNED** by  
for and on behalf of  
**CRÉDIT AGRICOLE CORPORATE  
AND INVESTMENT BANK**  
in the presence of:

) /s/ Mathieu Gagnez  
) Mathieu Gagnez  
)  
) /s/ Jérôme Leblond  
) Jérôme Leblond  
)  
) /s/ Anne-Laure Orange  
Anne-Laure Orange

**SECURITY TRUSTEE**

**SIGNED** by  
for and on behalf of  
**CRÉDIT AGRICOLE CORPORATE  
AND INVESTMENT BANK**  
in the presence of:

) /s/ Mathieu Gagnez  
) Mathieu Gagnez  
)  
) /s/ Jérôme Leblond  
) Jérôme Leblond  
)  
) /s/ Anne-Laure Orange  
Anne-Laure Orange

**SACE AGENT**

**SIGNED** by  
for and on behalf of  
**CRÉDIT AGRICOLE CORPORATE  
AND INVESTMENT BANK**  
in the presence of:

) /s/ Mathieu Gagnez  
) Mathieu Gagnez  
)  
) /s/ Jérôme Leblond  
) Jérôme Leblond  
)  
) /s/ Anne-Laure Orange  
Anne-Laure Orange

**JOINT MANDATED LEAD ARRANGERS**

**SIGNED** by  
for and on behalf of  
**CRÉDIT AGRICOLE CORPORATE  
AND INVESTMENT BANK**  
in the presence of:

) /s/ Mathieu Gagnez  
) Mathieu Gagnez  
)  
) /s/ Jérôme Leblond  
) Jérôme Leblond  
)  
) /s/ Anne-Laure Orange  
Anne-Laure Orange

**SIGNED** by  
for and on behalf of  
**SOCIETE GENERALE**  
in the presence of:

) /s/ Isabelle Seneca  
) Isabelle Seneca  
) Director, Export Finance  
)  
) /s/ Agnès Deschenes-Voirin  
Agnès Deschenes-Voirin  
Director, Export Finance

**SIGNED** by  
for and on behalf of  
**KFW IPEX-BANK GMBH**  
in the presence of:

) /s/Claudia Wenzel  
) Claudia Wenzel  
) Vice President  
)  
) /s/ André Tiele  
André Tiele  
Vice President

/s/Julia Zellmann  
Julia Zellmann

**SIGNED** by  
for and on behalf of  
**HSBC BANK PLC**  
in the presence of:

) /s/Philip E. Lewis  
) Philip E. Lewis  
) Head of Export Finance - Transportation  
)  
) /s/Sam Lippitt

[\*]: THE CONFIDENTIAL PORTION HAS BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND THE OMITTED MATERIAL HAS BEEN FILED SEPARATELY WITH THE COMMISSION.

Execution Version

Dated 30 March 2016

**NCL CORPORATION LTD.**  
as Guarantor

- and -

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**  
as Security Trustee

**GUARANTEE**

relating to  
a Loan Agreement dated 30 March 2016 in respect of the passenger  
cruise ship newbuilding presently designated as Hull No. 6281

**Watson, Farley & Williams**

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THIS GUARANTEE is made on 30 March 2016

**BETWEEN**

- (1) **NCL CORPORATION LTD.**, a company incorporated under the laws of Bermuda with its registered office at Cumberland House, 9th Floor, 1 Victoria Street, Hamilton HM11, Bermuda (the "**Guarantor**");
- (2) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK** a *société anonyme*, having a share capital of EUR7,327,121,031 and its registered office located at 9, quai du Président Paul Doumer, 92920 Paris La Défense Cedex, France registered under the no. Siren 304 187 701 at the Registre du Commerce et des Sociétés of Nanterre as security trustee (the "**Security Trustee**", which expression includes its successors and assigns).

**BACKGROUND**

- (A) By a shipbuilding contract dated 22 December 2015 (as amended from time to time, the "**Shipbuilding Contract**") entered into between (i) Fincantieri S.p.A, a company incorporated in Italy with registered office in Trieste, via Genova, 1, and having fiscal code 00397130584 (the "**Builder**") and (ii) Explorer II New Build, LLC (the "**Borrower**"), the Builder has agreed to design, construct and deliver, and the Borrower has agreed to purchase, a 754 passenger cruise ship currently having hull number 6281 as more particularly described in the Shipbuilding Contract to be delivered on [\*] subject to any adjustments of such delivery date in accordance with the Shipbuilding Contract.
- (B) By a loan agreement dated 30 March 2016 (as amended from time to time, the "**Loan Agreement**") and made between (i) the Borrower, (ii) the Lenders, (iii) the Joint Mandated Lead Arrangers, (iv) the Agent and SACE Agent and (v) the Security Trustee, it was agreed that the Lenders would make available to the Borrower a loan facility of the Dollar Equivalent of up to EUR [\*] (not to exceed USD 498,187,967.01) for the purpose of assisting the Borrower in financing (a) payment or reimbursement under the Shipbuilding Contract of all or part of 80% of the Final Contract Price up to the Eligible Amount, (b) payment to SACE of 100% of the SACE Premium (as defined therein).
- (C) The execution and delivery to the Security Trustee of this Guarantee is one of the conditions precedent to the availability of the facility under the Loan Agreement.

**IT IS AGREED** as follows:

**1 INTERPRETATION**

**1.1 Defined expressions**

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

**1.2 Construction of certain terms**

In this Guarantee:

"**Apollo**" means the Fund and any Fund Affiliate.

"**bankruptcy**" includes a liquidation, receivership or administration and any form of suspension of payments, arrangement with creditors or reorganisation under any corporate or insolvency law of any country.

"**Capital Stock**" means:

- (a) in the case of a corporation, corporate stock or shares;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (d) 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.

"**First Financial Quarter**" means the financial quarter ending immediately prior to or on the date falling 90 days before the Intended Delivery Date.

"**Fund**" means Apollo Management VI, L.P. and other co-investment partnerships managed by Apollo Management VI, L.P..

"**Fund Affiliate**" means (i) each Affiliate of the Fund that is neither a "portfolio company" (which means a company actively engaged in providing goods or services to unaffiliated customers), whether or not controlled, nor a company controlled by a "portfolio company" and (ii) any individual who is a partner or employee of Apollo Management, L.P., Apollo Management VI, L.P. or Apollo Management V, L.P..

"**Loan Agreement**" means the loan agreement dated 30 March 2016 referred to in Recital (B) and includes any existing or future amendments, restatements, or supplements, whether made with the Guarantor's consent or otherwise.

"**Management**" means the employees of the Guarantor and its subsidiaries or their dependants or any trust for which such persons are the intended beneficiary.

### **1.3 Application of construction and interpretation provisions of Loan Agreement**

Clauses 1.2 to 1.5 of the Loan Agreement apply, with any necessary modifications, to this Guarantee.

## **2 GUARANTEE**

### **2.1 Guarantee and indemnity**

The Guarantor unconditionally and irrevocably:

- (a) guarantees to the Security Trustee punctual performance by the Borrower of all the Borrower's obligations under or in connection with the Loan Agreement and every other Finance Document;
- (b) undertakes to the Security Trustee that whenever the Borrower does not pay any amount when due under or in connection with the Loan Agreement and the other Finance Documents, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor;
- (c) agrees that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Security Trustee and each other Secured Party immediately on demand by the Security Trustee against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Loan Agreement or any other Finance Document on the date when it would have been due. Any such demand for indemnification shall be made through the Security Trustee, for itself or on behalf of the Secured Parties. The amount payable by a Guarantor under this indemnity will



not exceed the amount it would have had to pay under this Clause 2.1 if the amount claimed had been recoverable on the basis of a guarantee.

## **2.2 No limit on number of demands**

The Security Trustee may serve any number of demands under Clause 2.1.

## **3 LIABILITY AS PRINCIPAL AND INDEPENDENT DEBTOR**

### **3.1 Principal and independent debtor**

The Guarantor shall be liable under this Guarantee as a principal and independent debtor and accordingly it shall not have, as regards this Guarantee, any of the rights or defences of a surety.

### **3.2 Waiver of rights and defences**

Without limiting the generality of Clause 3.1, the obligations of the Guarantor under this Guarantee will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, the Borrower or other person;
- (b) the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of any affiliate of the Borrower;
- (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, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any insolvency or similar proceedings;
- (g) any arrangement or concession (including a rescheduling or acceptance of partial payments) relating to, or affecting, the Finance Documents;
- (h) any release or loss whatsoever of any guarantee, right or Security Interest created by the Finance Documents;
- (i) any failure whatsoever promptly or properly to exercise or enforce any such right or Security Interest, including a failure to realise for its full market value an asset covered by such a Security Interest; or
- (j) any other Finance Document or any Security Interest now being or later becoming void, unenforceable, illegal or invalid or otherwise defective for any reason, including a neglect to register it.

## **4 EXPENSES**

### **4.1 Costs of preservation of rights, enforcement etc**

The Guarantor shall pay to the Security Trustee on its demand the amount of all expenses incurred by the Security Trustee or any other Secured Party in connection with any matter arising out of this Guarantee or any Security Interest connected with it, including any advice, claim or proceedings relating to this Guarantee or such a Security Interest.

### **4.2 Fees and expenses payable under Loan Agreement**

Clause 4.1 is without prejudice to the Guarantor's liabilities in respect of the Borrower's obligations under clauses 9 (Fees) and 10 (Taxes, Increased Costs, Costs and Related Charges) of the Loan Agreement and under similar provisions of other Finance Documents.

## **5 ADJUSTMENT OF TRANSACTIONS**

### **5.1 Reinstatement of obligation to pay**

The Guarantor shall pay to the Security Trustee on its demand any amount which any Secured Party is required, or agrees, to pay pursuant to any claim by, or settlement with, a trustee in bankruptcy of the Borrower or of any other Obligor (or similar person) on the ground that the Loan Agreement or any other Finance Document, or a payment by the Borrower or of such other Obligor, was invalid or on any similar ground.

## **6 PAYMENTS**

### **6.1 Method of payments**

Any amount due under this Guarantee shall be paid:

- (a) in immediately available funds;
- (b) to such account as the Security Trustee may from time to time notify to the Guarantor;
- (c) without any form of set-off, cross-claim or condition; and
- (d) free and clear of any tax deduction except a tax deduction which the Guarantor is required by law to make.

### **6.2 Grossing-up for taxes**

If the Guarantor is required by law to make a tax deduction, the amount due to the Security Trustee shall be increased by the amount necessary to ensure that the Security Trustee and (if the payment is not due to the Security Trustee for its own account) the Secured Party beneficially interested in the payment receives and retains a net amount which, after the tax deduction, is equal to the full amount that it would otherwise have received.

### **6.3 Tax Credits**

If an additional payment is made by the Guarantor under this Clause and any Secured Party determines that it has received or been granted a credit against or relief of or calculated with reference to the deduction giving rise to such additional payment, such Secured Party shall, to the extent that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment and provided that it has received the cash benefit of such credit, relief or remission, pay to the Guarantor such amount as such Secured Party shall in its reasonable opinion have concluded to be attributable to the relevant deduction. Any such payment shall be conclusive evidence of the amount due to the Guarantor

hereunder and shall be accepted by the Guarantor in full and final settlement of its rights of reimbursement hereunder in respect of such deduction. Nothing herein contained shall interfere with the right of each Secured Party to arrange its tax affairs in whatever manner it thinks fit.

**6.4** To the extent that this Clause 6 (*Payments*) imposes obligations or restrictions on a Secured Party, such obligations or restrictions shall not apply to SACE and SACE shall have no obligations hereunder nor be constrained by such restrictions.

## **7 INTEREST**

### **7.1 Accrual of interest**

Any amount due under this Guarantee shall carry interest after the date on which the Security Trustee demands payment of it until it is actually paid, unless interest on that same amount also accrues under the Loan Agreement.

### **7.2 Calculation of interest**

Interest on sums payable under this Guarantee shall be calculated and accrue in the same way as interest under clause 6 of the Loan Agreement.

### **7.3 Guarantee extends to interest payable under Loan Agreement**

For the avoidance of doubt, it is confirmed that this Guarantee covers all interest payable under the Loan Agreement, including that payable under clause 17 of the Loan Agreement.

## **8 SUBORDINATION**

### **8.1 Subordination of rights of Guarantor**

Until all amounts which may be or become payable by the Obligor under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, all rights which the Guarantor at any time has (whether in respect of this Guarantee or any other transaction) against the Borrower, any other Obligor or their respective assets shall be fully subordinated to the rights of the Secured Parties under the Finance Documents; and in particular, the Guarantor shall not:

- (a) claim, or in a bankruptcy of the Borrower or any other Obligor prove for, any amount payable to the Guarantor by the Borrower or any other Obligor, whether in respect of this Guarantee or any other transaction;
- (b) take or enforce any Security Interest for any such amount;
- (c) exercise any right to be indemnified by an Obligor;
- (d) bring legal or other proceedings for an order requiring the Borrower or any other Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under this Guarantee;
- (e) claim to set-off any such amount against any amount payable by the Guarantor to the Borrower or any other Obligor; or
- (f) claim any subrogation or right of contribution or other right in respect of any Finance Document or any sum received or recovered by any Secured Party under a Finance Document.

If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application in accordance with the Loan Agreement and the Finance Documents.

## **9 ENFORCEMENT**

### **9.1 No requirement to commence proceedings against Borrower**

The Guarantor waives any right it may have of first requiring the Security Trustee or any other Secured Party to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Guarantee. Neither the Security Trustee nor any other Secured Party will need to make any demand under, commence any proceedings under, or enforce any guarantee or any Security Interest contained in or created by, the Loan Agreement or any other Finance Document before claiming or commencing proceedings under this Guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **9.2 Conclusive evidence of certain matters**

However, as against the Guarantor:

- (a) any judgment or order of a court in England or the jurisdiction of the Approved Flag or the United States of America in connection with the Loan Agreement; and
  - (b) any statement or admission by the Borrower in connection with the Loan Agreement,
- shall be binding and conclusive as to all matters of fact and law to which it relates.

### **9.3 Suspense account**

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, the Security Trustee and any Secured Party may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by it (or any trustee or agent on its behalf which, in the case of a Secured Party, shall include the Agent and the Security Trustee) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Guarantor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Guarantee.

## **10 REPRESENTATIONS AND WARRANTIES**

### **10.1 General**

The Guarantor represents and warrants to the Security Trustee as follows on the date of this Guarantee, which representations and warranties shall be deemed to be repeated, with reference mutatis mutandis to the facts and circumstances subsisting, as if made on each day from the date of this Guarantee to the end of the Security Period.

**10.2 Status**

The Guarantor is duly incorporated and validly existing and in good standing under the laws of Bermuda as an exempted company.

**10.3 Corporate power**

The Guarantor has the corporate capacity, and has taken all corporate action and obtained all consents necessary for it:

- (a) to execute this Guarantee; and
- (b) to make all the payments contemplated by, and to comply with, this Guarantee.

**10.4 Consents in force**

All the consents referred to in Clause 10.3 remain in force and nothing has occurred which makes any of them liable to revocation.

**10.5 Legal validity**

This Guarantee constitutes the Guarantor's legal, valid and binding obligations enforceable against the Guarantor in accordance with its terms subject to any relevant insolvency laws affecting creditors' rights generally.

**10.6 No conflicts**

The execution by the Guarantor of this Guarantee and its compliance with this Guarantee will not involve or lead to a contravention of:

- (a) any law or regulation; or
- (b) the constitutional documents of the Guarantor; or
- (c) any contractual or other obligation or restriction which is binding on the Guarantor or any of its assets.

**10.7 No withholding taxes**

All payments which the Guarantor is liable to make under this Guarantee may be made without deduction or withholding for or on account of any tax payable under any law of Bermuda or the United States of America.

**10.8 No default**

To the knowledge of the Guarantor, no Event of Default has occurred which is continuing.

**10.9 Information**

All information which has been provided in writing by or on behalf of the Guarantor to the Security Trustee or any other Secured Party in connection with any Finance Document satisfied the requirements of Clause 11.2; all audited and unaudited accounts which have been so provided satisfied the requirements of Clause 11.4; and there has been no material adverse change in the financial position or state of affairs of the Guarantor from that disclosed in the latest of those accounts.

#### **10.10 No litigation**

No legal or administrative action involving the Guarantor has been commenced or taken or, to the Guarantor's knowledge, is likely to be commenced or taken which, in either case, would be likely to have a material adverse effect on the Guarantor's financial position or profitability.

#### **10.11 No Security Interests**

None of the assets or rights of the Guarantor is subject to any Security Interest except any Security Interest which (i) qualifies as a Permitted Security Interest with respect to the Guarantor or (ii) is permitted by Clause 11.11 of this Guarantee.

### **11 UNDERTAKINGS**

#### **11.1 General**

The Guarantor undertakes with the Security Trustee to comply with the following provisions of this Clause 11 at all times from the date of this Deed to the end of the Security Period, except as the Security Trustee may otherwise permit.

#### **11.2 Information provided to be accurate**

All financial and other information which is provided in writing by or on behalf of the Guarantor under or in connection with this Guarantee will be true and not misleading and will not omit any material fact or consideration.

#### **11.3 Provision of financial statements**

The Guarantor will send to the Security Trustee:

- (a) as soon as practicable, but in no event later than 120 days after the end of each financial year of the Guarantor beginning with the year ending 31 December 2016, the audited consolidated accounts of the Guarantor and its subsidiaries;
- (b) as soon as practicable (and in any event within forty-five (45) days of the end of the contemplated quarter in respect of the first three quarters of each fiscal year and 90 days in respect of the final quarter) a copy of the unaudited consolidated quarterly management accounts (including current and year to date profit and loss statements and balance sheet compared to the previous year and to budget) of the Guarantor certified as to their correctness by the chief financial officer of the Guarantor (it being understood that the delivery by the Guarantor of quarterly or annual reports as filed with the Securities and Exchange Commission in respect of the Guarantor and its consolidated subsidiaries shall satisfy all the requirements of this paragraph (b));
- (c) a compliance certificate in the form set out in Schedule 1 to this Guarantee or in such other form as the Security Trustee may reasonably require (each a **Compliance Certificate**) at the same time as there is delivered to the Security Trustee, and together with, each set of unaudited consolidated quarterly management accounts under paragraph (b) and, if applicable, audited consolidated accounts under paragraph (a), duly signed by the chief financial officer of the Guarantor and certifying whether or not the requirements of Clause 11.15 are then complied with;
- (d) such additional financial or other relevant information regarding the Guarantor and the Group as the Security Trustee may reasonably request; and
- (e) (i) As soon as practicable (and in any event within 120 days after the close of each fiscal year), commencing with the fiscal year ending 31 December 2016, annual cash flow

projections on a consolidated basis of the Group showing on a monthly basis advance ticket sales (for at least 12 months following the date of such statement) for the Group;

(ii) As soon as practicable (and in any event not later than January 31 of each fiscal year):

(x) a budget for the Group for such new fiscal year including a 12 month liquidity budget for such new fiscal year;

(y) updated financial projections of the Group for at least the next five years (including an income statement, balance sheet statement and cash flow statement and quarterly break downs for the first of those five years); and

(z) an outline of the assumptions supporting such budget and financial projections including but without limitation any scheduled drydockings;

#### **11.4 Form of financial statements**

All accounts (audited and unaudited) delivered under Clause 11.3 will:

- (a) be prepared in accordance with GAAP;
- (b) when required to be audited, be audited by the auditors which are the Guarantor's auditors at the date of this Guarantee or other auditors approved by the Security Trustee, provided that, such approval by the Security Trustee shall not be unreasonably withheld or delayed;
- (c) give a true and fair view of the state of affairs of the Guarantor and its subsidiaries at the date of those accounts and of their profit for the period to which those accounts relate; and
- (d) fully disclose or provide for all significant liabilities of the Guarantor and its subsidiaries.

#### **11.5 Shareholder and creditor notices**

The Guarantor will send the Security Trustee, at the same time as they are despatched, copies of all communications which are despatched to the Guarantor's shareholders or creditors generally or any class of them.

#### **11.6 Consents**

The Guarantor will maintain in force and promptly obtain or renew, and will promptly send certified copies to the Security Trustee of, all consents required:

- (a) for the Guarantor to perform its obligations under this Guarantee;
- (b) for the validity or enforceability of this Guarantee;

and the Guarantor will comply with the terms of all such consents.

#### **11.7 Notification of litigation**

The Guarantor will provide the Security Trustee with details of any material legal or administrative action involving the Guarantor as soon as such action is instituted or it becomes apparent to the Guarantor that it is likely to be instituted (and for this purpose proceedings shall be deemed to be material if they involve a claim in an amount exceeding ten million Dollars or the equivalent in another currency).

#### **11.8 Domicile and principal place of business**

The Guarantor:

- (a) will maintain its domicile and registered office at the address stated at the commencement of this Agreement or at such other address in Bermuda as is notified beforehand to the Security Trustee;
- (b) will maintain its principal place of business and keep its corporate documents and records in the United States of America at 7665 Corporate Center Drive, Miami, 33126, Florida (Fax: (305) 436 4140) or at such other address in the United States of America as is notified beforehand to the Security Trustee; and
- (c) will not move its domicile out of Bermuda nor its principal place of business out of the United States of America without the prior agreement of the Security Trustee, acting with the authorisation of the Secured Parties, such agreement not to be unreasonably withheld.

**11.9 Notification of default**

The Guarantor will notify the Security Trustee as soon as the Guarantor becomes aware of the occurrence of an Event of Default and will thereafter keep the Security Trustee fully up-to-date with all developments.

**11.10 Maintenance of status**

The Guarantor will maintain its separate corporate existence and remain in good standing under the laws of Bermuda.

**11.11 Negative pledge**

The Guarantor shall not, and shall procure that the Borrower will not, create or permit to arise any Security Interest over any asset present or future except Security Interests created or permitted by the Finance Documents and except for the following:

- (a) Security Interests created with the prior consent of the Security Trustee or otherwise permitted by the Finance Documents;
- (b) in the case of the Guarantor, Security Interests which qualify as Permitted Security Interests with respect to the Guarantor;
- (c) in the case of the Borrower, Security Interests permitted under clause 12.7 (negative pledge) of the Loan Agreement;
- (d) Security Interests provided in favour of lenders under and in connection with any refinancing of the Existing Indebtedness or any financing arrangements entered into by any member of the Group for the acquisition of additional or replacement ship(s) (including any refinancing of any such arrangement) but limited to:
  - (i) pledges of the share capital of the relevant ship owning subsidiary(/ies); and/or
  - (ii) ship mortgages and other securities over the financed ship(s).

**11.12 No disposal of assets, change of business**

The Guarantor will:

- (a) not, and shall procure that its subsidiaries, as a group, shall not, transfer all or substantially all of the cruise vessels owned by them and shall procure that any cruise vessels which are disposed of in compliance with the foregoing shall be disposed on a willing seller willing buyer basis at or about market rate and at arm's length subject always to the provisions of any pertinent loan documentation, and



- (b) continue to be a holding company for a group of companies whose main business is the operation of cruise vessels as well as the marketing of cruises on board such vessels and the Guarantor will not change its main line of business so as to affect any Obligor's ability to perform its obligations under the Finance Documents or to imperil, in the opinion of the Security Trustee, the security created by any of the Finance Documents or the SACE Insurance Policy.

#### **11.13 No merger etc**

The Guarantor shall not enter into any form of merger, sub-division, amalgamation, restructuring, consolidation, winding-up, dissolution or anything analogous thereto or acquire any entity, share capital or obligations of any corporation or other entity (each of the foregoing being a "**Transaction**") unless:

- (a) the Guarantor has notified the Security Trustee in writing of the agreed terms of the relevant Transaction promptly after such terms have been agreed as heads of terms (or similar) and thereafter notified the Security Trustee in writing of any significant amendments to such terms during the course of the negotiation of the relevant Transaction; and
- (b) the relevant Transaction does not require or involve or result in any dissolution of the Guarantor so that at all times the Guarantor remains in existence; and
- (c) each notice delivered to the Security Trustee pursuant to paragraph (a) above is accompanied by a certificate signed by the chief financial officer of the Guarantor whereby the Guarantor represents and warrants to the Security Trustee that the relevant Transaction will not:
  - (i) adversely affect the ability of any Obligor to perform its obligations under the Finance Documents;
  - (ii) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; or
  - (iii) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15; and
- (d) if the merger or analogous transaction involves the Guarantor or the Borrower, all the necessary "Know your customer requirements" have been complied with.

#### **11.14 Maintenance of ownership of Borrower and Guarantor.**

- (a) The Guarantor shall remain the direct or indirect beneficial owner of the entire issued and allotted share capital of Seven Seas, free from any Security Interest and Seven Seas shall remain the legal holder and direct beneficial owner of all membership interest in the Borrower, free from any Security Interest, except that created in favour of the Security Trustee; or
- (b) no person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934 (15 USC §78a et seq.) (the "**Exchange Act**") as in effect on the Delivery Date) shall acquire beneficial ownership of 35% or more on a fully diluted basis of the voting interest in the Guarantor's equity interests unless a combination of Apollo and Management (the "**Permitted Holders**") shall own directly or indirectly, more than such person or "group" on a fully diluted basis of the voting interest in the Guarantor's equity interests.

#### **11.15 Financial Covenants**

- (a) The Guarantor will not permit the Free Liquidity to be less than \$50,000,000 at any time.

- (b) The Guarantor will not permit the ratio of Total Net Funded Debt to Total Capitalization to be greater than 0.70:1.00 at any time.
- (c) The Guarantor will not permit the ratio of Consolidated EBITDA to Consolidated Debt Service for the Group at the end of any fiscal quarter, computed for the period of the four consecutive fiscal quarters ending as at the end of the relevant fiscal quarter, to be less than 1.25:1.00 unless the Free Liquidity of the Group at all times during such period of four consecutive fiscal quarters ending as at the end of such fiscal quarter was equal to or greater than \$100,000,000.

#### 11.16 Financial definitions

For the purposes of Clause 11.15:

- (a) "**Cash Balance**" shall mean, at any date of determination, the unencumbered and otherwise unrestricted cash and Cash Equivalents of the Group;
- (b) "**Cash Equivalents**" shall mean (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition, (ii) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of \$200,000,000, with maturities of not more than one year from the date of acquisition by any person, (iii) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications specified in clause (ii) above, (iv) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least B-1 or the equivalent thereof by Moody's and in each case maturing not more than one year after the date of acquisition by any other person, and (v) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (i) through (iv) above;
- (c) "**Consolidated Debt Service**" shall mean, for any relevant period, the sum (without double counting), determined in accordance with GAAP, of:
  - (i) the aggregate principal payable or paid during such period on any Indebtedness for Borrowed Money of any member of the Group, other than:
    - (A) principal of any such Indebtedness for Borrowed Money prepaid at the option of the relevant member of the Group or by virtue of "cash sweep" or "special liquidity" cash sweep provisions (or analogous provisions) in any debt facility of the Group;
    - (B) principal of any such Indebtedness for Borrowed Money prepaid upon a sale or a Total Loss of any ship (as if references in that definition were to all ships and not just the Ship) owned or leased under a capital lease by any member of the Group; and
    - (C) balloon payments of any such Indebtedness for Borrowed Money payable during such period (and for the purpose of this paragraph (c) a "balloon payment" shall not include any scheduled repayment installment of such Indebtedness for Borrowed Money which forms part of the balloon);
  - (ii) Consolidated Interest Expense for such period;
  - (iii) the aggregate amount of any dividend or distribution of present or future assets, undertakings, rights or revenues to any shareholder of any member of the Group

(other than the Guarantor, or one of its wholly owned Subsidiaries) or any dividends or distributions other than tax distributions in each case paid during such period; and

- (iv) all rent under any capital lease obligations by which the Guarantor or any consolidated Subsidiary is bound which are payable or paid during such period and the portion of any debt discount that must be amortized in such period;

as calculated in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3;

- (d) "**Consolidated EBITDA**" shall mean, for any relevant period, the aggregate of:
  - (i) Consolidated Net Income from the Guarantor's operations for such period; and
  - (ii) the aggregate amounts deducted in determining Consolidated Net Income for such period in respect of gains and losses from the sale of assets or reserves relating thereto, Consolidated Interest Expense, depreciation and amortization, impairment charges and any other non-cash charges and deferred income tax expense for such period.
- (e) "**Consolidated Interest Expense**" shall mean, for any relevant period, the consolidated interest expense (excluding capitalized interest) of the Group for such period;
- (f) "**Consolidated Net Income**" shall mean, for any relevant period, the consolidated net income (or loss) of the Group for such period as determined in accordance with GAAP;
- (g) "**Free Liquidity**" shall mean, at any date of determination, the aggregate of the Cash Balance or any other amounts available for drawing under other revolving or other credit facilities of the Group, which remain undrawn, could be drawn for general working capital purposes or other general corporate purposes and would not, if drawn, be repayable within six months;
- (h) "**Indebtedness**" shall mean any obligation for the payment or repayment of money, whether as principal or as surety and whether present or future, actual or contingent including, without limitation, pursuant to an Interest Rate Protection Agreement or Other Hedging Agreement;
- (i) "**Indebtedness for Borrowed Money**" shall mean Indebtedness (whether present or future, actual or contingent, long-term or short-term, secured or unsecured) in respect of:
  - (i) moneys borrowed or raised;
  - (ii) the advance or extension of credit (including interest and other charges on or in respect of any of the foregoing);
  - (iii) the amount of any liability in respect of leases which, in accordance with GAAP, are capital leases;
  - (iv) the amount of any liability in respect of the purchase price for assets or services payment of which is deferred for a period in excess of 180 days;
  - (v) all reimbursement obligations whether contingent or not in respect of amounts paid under a letter of credit or similar instrument; and
  - (vi) (without double counting) any guarantee of Indebtedness falling within paragraphs (i) to (v) above;

**PROVIDED THAT** the following shall not constitute Indebtedness for Borrowed Money:

- (A) loans and advances made by other members of the Group which are subordinated to the rights of the Secured Parties;
  - (B) loans and advances made by any shareholder of the Guarantor which are subordinated to the rights of the Secured Parties on terms reasonably satisfactory to the Agent; and
  - (C) any liabilities of the Guarantor or any other member of the Group under any Interest Rate Protection Agreement or any Other Hedging Agreement or other derivative transactions of a non-speculative nature;
- (j) "**Interest Rate Protection Agreement**" shall mean any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement, interest rate floor agreement or other similar agreement or arrangement entered into between a Lender or its Affiliate, or a Joint Mandated Lead Arranger or its Affiliate, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement;
- (k) "**Other Hedging Agreement**" shall mean any foreign exchange contracts, currency swap agreements, commodity agreements or other similar agreements or arrangements entered into between a Lender or its Affiliate, or a Joint Mandated Lead Arranger or its Affiliates, and the Guarantor and/or the Borrower in relation to the Secured Liabilities of the Borrower under the Loan Agreement and designed to protect against the fluctuations in currency or commodity values;
- (l) "**Total Capitalization**" means, at any date of determination, the Total Net Funded Debt plus the consolidated stockholders' equity of the Group at such date determined in accordance with GAAP and derived from the then latest accounts delivered under Clause 11.3; provided it is understood that the effect of any impairment of intangible assets shall be added back to stockholders' equity; and
- (m) "**Total Net Funded Debt**" shall mean, as at any relevant date:
- (i) Indebtedness for Borrowed Money of the Group on a consolidated basis; and
  - (ii) the amount of any Indebtedness for Borrowed Money of any person which is not a member of the Group but which is guaranteed by a member of the Group as at such date;

less an amount equal to any Cash Balance as at such date; provided that any Commitments and other amounts available for drawing under other revolving or other credit facilities of the Group which remain undrawn shall not be counted as cash or indebtedness for the purposes of this Guarantee.

#### 11.17 Negative Undertakings

- (a) The Guarantor may:
- (i) at any time prior to the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Security Trustee;
  - (ii) at any time after the end of the First Financial Quarter, declare or pay dividends or make other distributions or payment in respect of Financial Indebtedness owed to its shareholders without the prior written consent of the Security Trustee, subject to it on each such occasion satisfying the Security Trustee acting on behalf of the Secured Parties that it will continue to meet all the requirements of Clause 11.15, if

such covenants were to be tested immediately following the payment of any such dividend; and

- (iii) pay dividends (x) to persons responsible for paying the tax liability in respect of consolidated, combined, unitary or affiliated tax returns for each relevant jurisdiction of the Group, or (y) to holders of the Guarantor's Capital Stock with respect to income taxable as a result of a member of the Group being taxed as a pass-through entity for U.S. Federal, state and local income tax purposes or attributable to any member of the Group,

provided that the actions in paragraphs (ii) and (iii) above shall only be permitted if there is no Event of Default which is continuing under the Loan Agreement and no Event of Default would arise from the payment of such dividend.

- (b) The Guarantor shall not, and shall procure that none of its subsidiaries shall:

- (i) make loans to any person that is not the Guarantor or a direct or indirect subsidiary of the Guarantor; or

- (ii) issue or enter into one or more guarantees covering the obligations of any person which is not the Guarantor or a direct or indirect subsidiary of the Guarantor,

except if such loan is granted to a non subsidiary or such guarantee is issued in the ordinary course of business covering the obligations of a non subsidiary and the aggregate amount of all such loans and guarantees made or issued by the Guarantor and its subsidiaries does not exceed USD[\*] or is otherwise approved by the Security Trustee which approval shall not be unreasonably withheld if such loan or guarantee in respect of a non subsidiary would neither:

- (A) affect the ability of any Obligor to perform its obligations under the Finance Documents; nor

- (B) imperil the security created by any of the Finance Documents or the SACE Insurance Policy; nor

- (C) affect the ability of the Guarantor to comply with the financial covenants contained in Clause 11.15 if such covenants were to be tested immediately following the grant of such loan or the issuance of such guarantee, as demonstrated by evidence satisfactory to the Security Trustee.

#### **11.18 Most favoured nations**

The Guarantor undertakes that if at any time after the date of this Agreement it enters into any financial contract or financial document relating to any Financial Indebtedness with or which has the support of any export credit agency and which contains *pari passu* provisions or cross default provisions which are more favourable to the lenders than those contained in paragraph (l) of Clause 11.2 (Continuing representations and warranties) of the Loan Agreement and Clause 18.6 (Cross default) of the Loan Agreement respectively, the Guarantor shall immediately notify the Borrower and the Agent of such provisions and the relevant provisions contained in the Loan Agreement shall be deemed amended so that such more favourable *pari passu* provisions or cross default provisions are granted to the Creditor Parties pursuant to the Loan Agreement.

## **12 JUDGMENTS AND CURRENCY INDEMNITY**

### **12.1 Judgments relating to Loan Agreement**

This Guarantee shall cover any amount payable by the Borrower under or in connection with any judgment relating to the Loan Agreement.

### **12.2 Currency indemnity**

In addition, clause 20.4 (Currency indemnity) of the Loan Agreement shall apply, with any necessary adaptations, in relation to this Guarantee.

## **13 SET-OFF**

### **13.1 Application of credit balances**

Each Secured Party may without prior notice:

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

### **13.2 Existing rights unaffected**

No Secured Party shall be obliged to exercise any of its rights under Clause 13.1; and those rights shall be without prejudice and in addition to any right of set-off, combination of accounts, charge, lien or other right or remedy to which a Secured Party is entitled (whether under the general law or any document).

### **13.3 Sums deemed due to a Lender**

For the purposes of this Clause 13, a sum payable by the Guarantor to the Security Trustee for distribution to, or for the account of, a Lender shall be treated as a sum due to that Lender; and each Lender's proportion of a sum so payable for distribution to, or for the account of, the Lenders shall be treated as a sum due to that Lender.

## **14 SUPPLEMENTAL**

### **14.1 Continuing guarantee**

This Guarantee shall remain in force as a continuing security at all times during the Security Period, regardless of any intermediate payment or discharge in whole or in part.

### **14.2 Rights cumulative, non-exclusive**

The Security Trustee's rights under and in connection with this Guarantee are cumulative, may be exercised as often as appears expedient and shall not be taken to exclude or limit any right or remedy conferred by law.

**14.3 No impairment of rights under Guarantee**

If the Security Trustee omits to exercise, delays in exercising or invalidly exercises any of its rights under this Guarantee, that shall not impair that or any other right of the Security Trustee under this Guarantee.

**14.4 Severability of provisions**

If any provision of this Guarantee is or subsequently becomes void, illegal, unenforceable or otherwise invalid, that shall not affect the validity, legality or enforceability of its other provisions.

**14.5 Guarantee not affected by other security**

This Guarantee is in addition to and shall not impair, nor be impaired by, any other guarantee, any Security Interest or any right of set-off or netting or to combine accounts which the Security Trustee or any Secured Party may now or later hold in connection with the Loan Agreement.

**14.6 Guarantor bound by Loan Agreement**

The Guarantor agrees with the Security Trustee to be bound by all provisions of the Loan Agreement which are applicable to the Obligors in the same way as if those provisions had been set out (with any necessary modifications) in this Guarantee.

**14.7 Applicability of provisions of Guarantee to other Security Interests**

Any Security Interest which the Guarantor creates (whether at the time at which it signs this Guarantee or at any later time) to secure any liability under this Guarantee shall be a principal and independent security, and Clauses 3 and 17 shall, with any necessary modifications, apply to it, notwithstanding that the document creating the Security Interest neither describes it as a principal or independent security nor includes provisions similar to Clauses 3 and 17.

**14.8 Applicability of provisions of Guarantee to other rights**

Clauses 3 and 17 shall also apply to any right of set-off or netting or to combine accounts which the Guarantor creates by an agreement entered into at the time of this Guarantee or at any later time (notwithstanding that the agreement does not include provisions similar to clauses 3 and 17), being an agreement referring to this Guarantee.

**14.9 Third party rights**

Other than a Secured Party or the Italian Authorities, no person who is not a party to this Guarantee has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Guarantee.

**14.10 Waiver of rights against SACE**

Nothing in this Guarantee or any of the Finance Documents is intended to grant to the Guarantor or any other person any right of contribution from or any other right or claim against SACE and the Guarantor hereby waives irrevocably any right of contribution or other right or claim as between itself and SACE.

**15 ASSIGNMENT AND TRANSFER**

**15.1 Assignment and transfer by Security Trustee**

The Security Trustee may assign or transfer its rights under and in connection with this Guarantee to the same extent as it may assign or transfer its rights under the Loan Agreement.

The Guarantor may not assign or transfer its rights under and in connection with this Guarantee.

**16 NOTICES**

**16.1 Notices to Guarantor**

Any notice or demand to the Guarantor under or in connection with this Guarantee shall be given by letter or fax at:

NCL Corporation Ltd.  
7665 Corporate Center Drive  
Miami  
Florida, 33126  
Fax: (305) 436 4140

or to such other address which the Guarantor may notify to the Security Trustee.

**16.2 Application of certain provisions of Loan Agreement**

Clauses 31.3 to 31.9 of the Loan Agreement apply to any notice or demand under or in connection with this Guarantee.

**16.3 Validity of demands**

A demand under this Guarantee shall be valid notwithstanding that it is served:

- (a) on the date on which the amount to which it relates is payable by the Borrower under the Loan Agreement;
- (b) at the same time as the service of a notice under clause 18.21 (actions following an Event of Default) of the Loan Agreement;

and a demand under this Guarantee may refer to all amounts payable under or in connection with the Loan Agreement without specifying a particular sum or aggregate sum.

**16.4 Notices to Security Trustee**

Any notice to the Security Trustee under or in connection with this Guarantee shall be sent to the same address and in the same manner as notices to the Security Trustee under the Loan Agreement.

**17 INVALIDITY OF LOAN AGREEMENT**

**17.1 Invalidity of Loan Agreement**

In the event of:



- (a) the Loan Agreement or any provision thereof now being or later becoming, with immediate or retrospective effect, void, illegal, unenforceable or otherwise invalid for any reason whatsoever; or
- (b) without limiting the scope of paragraph (a), a bankruptcy of the Borrower, the introduction of any law or any other matter resulting in the Borrower being discharged from liability under the Loan Agreement, or the Loan Agreement ceasing to operate (for example, by interest ceasing to accrue);

this Guarantee shall cover any amount which would have been or become payable under or in connection with the Loan Agreement if the Loan Agreement had been and remained entirely valid, legal and enforceable, or the Borrower had not suffered bankruptcy, or any combination of such events or circumstances, as the case may be, and the Borrower had remained fully liable under it for liabilities whether invalidly incurred or validly incurred but subsequently retrospectively invalidated; and references in this Guarantee to amounts payable by the Borrower under or in connection with the Loan Agreement shall include references to any amount which would have so been or become payable as aforesaid.

#### **17.2 Invalidity of Finance Documents**

Clause 17.1 also applies to each of the other Finance Documents to which the Borrower is a party.

### **18 GOVERNING LAW AND JURISDICTION**

#### **18.1 English law**

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

#### **18.2 Exclusive English jurisdiction**

Subject to Clause 18.3, the courts of England shall have exclusive jurisdiction to settle any Dispute.

#### **18.3 Choice of forum for the exclusive benefit of the Security Trustee**

Clause 18.2 is for the exclusive benefit of the Security Trustee, which reserves the rights:

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

The Guarantor shall not commence any proceedings in any country other than England in relation to a Dispute.

#### **18.4 Process agent**

The Guarantor irrevocably appoints EC3 Services Limited at its registered office for the time being, presently at The St Botolph Building, 138 Houndsditch, London, EC3A 7AR, United Kingdom, to act as its agent to receive and accept on its behalf any process or other document relating to any proceedings in the English courts which are connected with a Dispute.

**18.5 Secured Parties' rights unaffected**

Nothing in this Clause 18 shall exclude or limit any right which any Secured Party may have (whether under the law of any country, an international convention or otherwise) with regard to the bringing of proceedings, the service of process, the recognition or enforcement of a judgment or any similar or related matter in any jurisdiction.

**18.6 Meaning of "proceedings"**

In this Clause 18, "**proceedings**" means proceedings of any kind, including an application for a provisional or protective measure and a "**Dispute**" means any dispute arising out of or in connection with this Guarantee (including a dispute relating to the existence, validity or termination of this Guarantee) or any non-contractual obligation arising out of or in connection with this Guarantee.

**THIS GUARANTEE** has been entered into on the date stated at the beginning of this Guarantee.

**EXECUTION PAGE**

**GUARANTOR**

**SIGNED** by  
for and on behalf of  
**NCL CORPORATION LTD.**  
as its duly appointed attorney-in-fact  
in the presence of:

) /s/ Paul Turner  
) Paul Turner  
)  
) /s/ Amanda Gara  
) Solicitor  
Clyde & Co LLP  
The St Botolph Building  
138 Houndsditch  
London EC3A 7AR  
United Kingdom

**SECURITY TRUSTEE**

**SIGNED** by  
for and on behalf of  
**CRÉDIT AGRICOLE CORPORATE  
AND INVESTMENT BANK**  
as its duly appointed attorney-in-fact  
in the presence of:

) /s/ Mathieu Gagnez  
) Mathieu Gagnez  
)  
) /s/ Jérôme Leblond  
) Jérôme Leblond  
)  
) /s/ Anne-Laure Orange  
Anne-Laure Orange

SCHEDULE 1

FORM OF COMPLIANCE CERTIFICATE

To: CRÉDIT AGRICOLE CORPORATE  
AND INVESTMENT BANK  
9 Quai du Président Paul Doumer  
92920 Paris La Défense Cedex  
France

Attn: [●]

[●] 20[●]

Dear Sirs

**Loan Agreement dated \_\_\_\_ March 2016 (as amended from time to time, the "Loan Agreement") made between (1) Explorer II New Build, LLC (the "Borrower"), (2) the banks and financial institutions named at schedule 1 therein as lenders, (3) Crédit Agricole Corporate and Investment Bank, Société Générale, HSBC Bank plc and KfW IPEX Bank GmbH as Joint Mandated Lead Arrangers, (4) Crédit Agricole Corporate and Investment Bank as Agent and SACE Agent and (5) Crédit Agricole Corporate and Investment Bank as Security Trustee for a loan facility of up to the aggregate of the Dollar Equivalent of EUR 360,222,680.41 (not to exceed USD 498,187,967.01) and Guarantee dated \_\_\_\_ March 2016 (the "Guarantee") made between (1) us as guarantor and (2) Crédit Agricole Corporate and Investment Bank as Security Trustee.**

We refer to the Loan Agreement and the Guarantee. Terms defined in the Loan Agreement and the Guarantee have their defined meanings when used in this Compliance Certificate.

We also refer to the financial covenants set out in Clause 11.15 of the Guarantee.

We certify that in relation to such covenants and by reference to the latest accounts provided under Clause 11.3[(11.3(a))/(11.3(b))] of the Guarantee:

- (a) Free Liquidity is \$[●] and [was / was not] less than \$50,000,000 at all times during the three month period ending at the end of the fiscal quarter for which the latest accounts have been provided;
- (b) the ratio of Total Net Funded Debt to Total Capitalization is [●] and therefore [was/was not] greater than 0.70:1.00 at all times during the three month period ending at the end of the fiscal quarter for which the latest accounts have been provided;
- (c) [the Free Liquidity of the Group at all times during the period of four consecutive fiscal quarters ending as at the end of the fiscal quarter for which the latest accounts have been provided was equal to or greater than \$100,000,000] [as at the end of the fiscal quarter for which the latest accounts have been provided, computed for the period of four consecutive fiscal quarters ending at the end of such fiscal quarter, Consolidated EBITDA to Consolidated Debt Service is [●] and therefore [is/is not] less than 1.25:1.00];

To evidence compliance with the terms of Clause 11.15, we attach:

a copy of the latest quarterly consolidated accounts of the Group as Appendix A [and a copy of the latest annual consolidated accounts of the Group as Appendix B].

No Event of Default has occurred in relation to the Borrower or the Guarantor.

Signed: \_\_\_\_\_

Chief Financial Officer of  
NCL Corporation Ltd.

## CERTIFICATION

I, Frank J. Del Rio, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Norwegian Cruise Line Holdings Ltd.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: May 10, 2016

/s/ Frank J. Del Rio

Name: Frank J. Del Rio  
Title: President and Chief Executive Officer

## CERTIFICATION

I, Wendy A. Beck, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Norwegian Cruise Line Holdings Ltd.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: May 10, 2016

/s/ Wendy A. Beck

Name: Wendy A. Beck

Title: Executive Vice President and Chief Financial Officer

**CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL  
OFFICER PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, each of Frank J. Del Rio, the President and Chief Executive Officer, and Wendy A. Beck, the Executive Vice President and Chief Financial Officer, of Norwegian Cruise Line Holdings Ltd. (the "Company"), does hereby certify, that, to such officer's knowledge:

The Quarterly Report on Form 10-Q of the Company, for the quarter ended March 31, 2016 (the "Form 10-Q"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: May 10, 2016

By: /s/ Frank J. Del Rio  
Name: Frank J. Del Rio  
Title: President and Chief Executive Officer

By: /s/ Wendy A. Beck  
Name: Wendy A. Beck  
Title: Executive Vice President and Chief Financial Officer