

NewLead Holdings Ltd. (NEWL)

20-F

Annual and transition report of foreign private issuers pursuant to sections 13 or 15(d)

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549**

FORM 20-F

- REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934**
- OR**
- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2010

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

For the transition period from _____ to _____

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

Date of event requiring this shell company report _____

Commission file number
xxx-xxxxx

NEWLEAD HOLDINGS LTD.

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

Bermuda

(Jurisdiction of incorporation or organization)

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(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

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

Title of each class	Name of each exchange on which registered
Common shares, \$0.01 par value	NASDAQ Global Market

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

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

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

As of December 31, 2010, there were 7,327,934 of the registrant's common shares outstanding.

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

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

Note—Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those Sections.

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 website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T 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, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:
U.S. GAAP International Financial Reporting Standards as issued by the International Accounting Standards Other

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

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

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

In this report, “we,” “us,” “our,” “NewLead” and the “Company” all refer to NewLead Holdings Ltd. and its subsidiaries.

The Company desires to take advantage of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 and is including this cautionary statement in connection therewith. This document and any other written or oral statements made by the Company or on its behalf may include forward-looking statements that reflect its current views with respect to future events and financial performance. This report includes assumptions, expectations, projections, intentions and beliefs about future events. These statements are intended as “forward-looking statements.” We caution that assumptions, expectations, projections, intentions and beliefs about future events may and often do vary from actual results and the differences can be material. When used in this document, the words “anticipate,” “estimate,” “project,” “forecast,” “plan,” “potential,” “may,” “should” and “expect” reflect forward-looking statements.

All statements in this document that are not statements of historical fact are forward-looking statements. Forward-looking statements include, but are not limited to, such matters as future operating or financial results; our liquidity position and cash flows, our ability to borrow additional amounts under our revolving credit facility and, if needed, to obtain waivers from our lenders and restructure our debt, our ability to continue as a going concern; statements about planned, pending or recent vessel disposals and/or acquisitions, business strategy, future dividend payments and expected capital spending or operating expenses, including dry-docking and insurance costs; statements about trends in the product tanker and dry bulk vessel shipping segments, including charter rates and factors affecting supply and demand; expectations regarding the availability of vessel acquisitions; completion of repairs; length of off-hire; availability of charters and anticipated developments with respect to any pending litigation.

The forward-looking statements in this report are based upon various assumptions, many of which are based, in turn, upon further assumptions, including, without limitation, management’s examination of historical operating trends, data contained in our records and other data available from third parties. Although NewLead believes that these assumptions were reasonable when made, because these assumptions are inherently subject to significant uncertainties and contingencies which are difficult or impossible to predict and are beyond our control, NewLead cannot assure you that it will achieve or accomplish these expectations, beliefs or projections described in the forward-looking statements contained in this report. Important factors that, in our view, could cause actual results to differ materially from those discussed in the forward-looking statements include the strength of world economies and currencies; general market conditions, including changes in charter rates and vessel values; failure of a seller to deliver one or more vessels; failure of a buyer to accept delivery of a vessel; inability to procure acquisition financing; default by one or more charterers of our vessels; our ability to complete documentation of agreements in principle; changes in demand for oil and oil products; the effect of changes in OPEC’s petroleum production levels; worldwide oil consumption and storage; changes in demand that may affect attitudes of time charterers; scheduled and unscheduled dry-docking; additional time spent in completing repairs; changes in NewLead’s voyage and operating expenses, including bunker prices, dry-docking and insurance costs; changes in governmental rules and regulations or actions taken by regulatory authorities; potential liability from pending or future litigation; domestic and international political conditions; potential disruption of shipping routes due to accidents, international hostilities and political events or acts by terrorists or pirates; material adverse events affecting NewLead; and other factors discussed in NewLead’s filings with the U.S. Securities and Exchange Commission, or the SEC, from time to time.

PART I

Item 1. Identity of Directors, Senior Management and Advisers

Not applicable.

Item 2. Offer Statistics and Expected Timetable

Not applicable.

Item 3. Key Information

Unless the context otherwise requires, as used in this report, the terms “the Company,” “we,” “us” and “our” refer to NewLead Holdings Ltd. and all of its subsidiaries. We use the term deadweight tons, or dwt, in describing the size of vessels. Dwt, expressed in metric tons, each of which is equivalent to 1,000 kilograms, refers to the maximum weight of cargo and supplies that a vessel can carry.

A. Selected Financial Data

The NewLead historical successor information is derived from the audited consolidated financial statements of NewLead for the year ended December 31, 2010 and for the period from October 14, 2009 to December 31, 2009. The NewLead historical predecessor information is derived from the audited consolidated financial statements as of and for the years ended December 31, 2008, 2007, 2006 and for the period from January 1, 2009 to October 13, 2009. The information is only a summary and should be read in conjunction with “Item 5. Operating and Financial Review and Prospects” and our audited consolidated financial statements and the audited financial statements of our predecessor and notes thereto contained in this report. “Predecessor” refers to NewLead Holdings Ltd. prior to the Company’s \$400 million recapitalization on October 13, 2009, and “Successor” refers to NewLead Holdings Ltd. after the recapitalization on October 13, 2009. Please see the discussion in “Item 5. Operating and Financial Review and Prospects — Lack of Historical Operating Data for Vessels Before their Acquisition.”

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	Successor		Predecessor			
	Year Ended December 31, 2010	October 14 to December 31, 2009	January 1 to October 13, 2009	Year Ended December 31, 2008	Year Ended December 31, 2007	Year Ended December 31, 2006
Statement of Operations Data						
Operating revenues	102,733	14,096	33,564	56,519	55,774	45,973
Vessel operating expenses	(39,219)	(6,530)	(22,681)	(19,798)	(17,489)	(12,780)
Management fees	(1,007)	(315)	(900)	(1,404)	(1,243)	(1,110)
General & administrative expenses	(15,592)	(12,025)	(8,366)	(7,816)	(5,278)	(4,029)
Depreciation and amortization expenses	(39,558)	(4,844)	(11,813)	(15,040)	(14,029)	(9,318)
Impairment losses	(39,515)	—	(68,042)	—	—	—
Operating (loss)/income from continuing operations	(54,856)	(14,659)	(87,581)	5,449	14,471	16,157
Interest and finance expense, net	(44,899)	(23,996)	(10,928)	(15,741)	(16,966)	(13,463)
Other income/(expenses), net	(5)	—	40	2	(11)	(72)
(Loss)/income from continuing operations	(97,618)	(35,865)	(95,448)	(16,573)	(5,936)	1,644
Net (loss)/income	(94,849)	(37,872)	(125,764)	(39,828)	(8,733)	2,199
(Loss)/earnings per share (basic and diluted) continuing operations	(14.03)	(6.42)	(39.84)	(6.94)	(2.50)	0.72
(Loss)/earnings per share (basic and diluted)	(13.63)	(6.78)	(52.49)	(16.69)	(3.68)	0.96
Cash dividends declared per share	—	—	—	1.20	7.56	10.68
Weighted average number of shares (basic and diluted)	6,958,903	5,588,937	2,395,858	2,386,182	2,373,238	2,368,073
Balance Sheet Data (at period end)						
Cash and cash equivalents	67,531	106,255	—	4,009	12,444	11,612
Restricted cash (current)	12,606	403	1,898	8,510	39	3,242
Total current assets	102,569	121,421	10,018	19,741	20,199	22,430
Restricted cash (non-current)	30,700	9,668	—	—	1,548	—
Total assets	761,733	485,369	196,849	317,777	425,491	458,040
Current portion of long-term debt	26,773	14,240	221,430	223,710	284,800	—
Total current liabilities	94,739	54,260	256,303	251,489	311,997	29,622
Long-term debt	554,238	264,460	—	—	—	284,800
Total liabilities	686,099	326,857	256,303	252,261	318,372	325,452
Total shareholders' equity/(deficit)	75,634	158,512	(59,454)	65,516	107,119	132,588
Other Financial Data (for period ending)						
Net cash (used in)/provided by operating activities	(9,685)	(5,869)	(10,557)	2,901	17,581	24,215
Net cash provided by/(used in) investing activities	(22,189)	—	2,216	61,083	(2,008)	(101,815)
Net cash provided by/(used in) financing activities	(6,850)	112,124	4,332	(72,419)	(14,741)	69,964
Net increase (decrease) in cash and cash equivalents	(38,724)	106,255	(4,009)	(8,435)	832	(7,636)
Cash dividends paid	—	—	—	(2,862)	(17,970)	(25,292)
Fleet Data (at period end)						
Number of product tankers owned	6	9	9	9	10	10
Number of container vessels owned ⁽¹⁾	—	2	2	3	5	5
Number of dry bulk vessels owned	12	3	—	—	—	—

(1) Considered discontinued operations for all periods presented.

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B. Capitalization and Indebtedness

Not applicable.

C. Reasons for the Offer and Use of Proceeds

Not applicable.

D. Risk Factors

The following risks relate principally to the industry in which we operate and our business in general. Other risks relate to the securities market and ownership of our common shares. If any of the circumstances or events described below actually arises or occurs, our business, results of operations, cash flows, financial condition and ability to pay dividends in the future could be materially adversely affected. In any such case, the market price of our common shares could decline, and you may lose all or part of your investment.

Industry Specific Risk Factors

Charter rates for product tankers and bulkers have declined significantly and are experiencing high volatility. Charter rates for both tankers and bulkers may decrease further in the future, which may adversely affect our earnings.

The degree of charter rate volatility among different types of product tankers and dry bulk vessels has varied widely and after reaching historical highs in mid-2008, charter rates for product tankers and dry bulk vessels have declined significantly. If the shipping industry is depressed when our charters expire or are otherwise terminated, our revenues, earnings and available cash flow may be adversely affected. In addition, a further decline in charter rates likely will cause the value of our vessels to further decline. During 2011, four time charters (two Panamax bulkers, one Handysize bulker and one Panamax tanker) are expiring. In addition, one of our dry bulkers is currently employed in the spot market. Also, certain of our charterers are experiencing financial difficulties, which has resulted in an increase in time for us to realize our receivables. In certain instances, our charterers have been unable to fulfill their obligations under their charters. If such charterers continue to be unable to perform their obligations, we may be forced to reclaim and re-charter the related vessels. Given the currently depressed market conditions, we may not be able to successfully charter these vessels in the future or renew our existing charters at rates sufficient to allow us to operate our business profitably. Our ability to re-charter tanker vessels on the expiration or termination of our current charters, the charter rates payable under any replacement charters and vessel values will depend upon, among other things, economic conditions in the product tanker markets at that time, changes in the supply and demand for vessel capacity and changes in the supply and demand for oil and oil products. We anticipate that the future demand for our dry bulk carriers and dry bulk charter rates will be dependent upon demand for imported commodities, economic growth in the emerging markets, including the Asia Pacific region (including China), India, Brazil and Russia and the rest of the world, seasonal and regional changes in demand and changes to the capacity of the world fleet. Recent adverse economic, political, social or other developments have decreased demand and prospects for growth in the shipping industry and thereby could reduce revenue significantly. A decline in demand for commodities transported in dry bulk carriers or an increase in supply of dry bulk vessels could cause a further decline in charter rates, which could materially adversely affect our results of operations and financial condition. If we sell a vessel at a time when the market value of our vessels has fallen, the sale may be at less than the vessel's carrying amount, resulting in a loss.

Furthermore, the recent economic slowdown in the U.S. and Japan, together with the deteriorating economic situation in Europe caused by the sovereign debt crises in certain European Union ("EU") member countries may further reduce demand for transportation of oil over long distances and supply of tankers that carry oil, which may materially and adversely affect our future revenues, profitability and cash flows.

The product tanker and dry bulk vessel markets are cyclical with high volatility in charter rates and industry profitability. The factors affecting the supply and demand for product tankers and dry bulk vessels are

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outside of our control and are unpredictable. The nature, timing, direction and degree of changes in industry conditions are also unpredictable.

The factors that influence the demand for tonnage capacity include:

- demand for cargoes (e.g., oil and oil products for tankers, coal, raw materials, agricultural products and steel products for bulkers);
- supply of cargoes;
- oil prices;
- demand of energy in developing countries;
- continuing growth of industrialization in the emerging countries;
- regional availability of refining capacity;
- the globalization of manufacturing;
- global and regional economic and political conditions;
- armed conflicts, acts of piracy and terrorism;
- developments in international trade;
- changes in seaborne and other transportation patterns, including changes in the distances over which cargoes are transported;
- environmental and other regulatory developments;
- currency exchange rates; and
- weather.

The factors that influence the supply of vessel capacity include:

- the number of newbuilding deliveries;
- the scrapping activity and age of vessels in the existing world fleet;
- the price of steel;
- changes in environmental and other regulations that may limit the useful lives of vessels;
- the conversion of vessels from one type to another;
- the loss of vessels;
- the number of vessels (tankers mainly) that are used for storage;
- the number of vessels that are in or out of service; and
- port or canal congestion and increased waiting days at port.

If the number of new vessels delivered exceeds the number of vessels being scrapped, lost and converted, tonnage capacity will increase. If the supply of tonnage capacity increases but the demand for tonnage capacity does not increase correspondingly, charter rates and vessel values could materially decline.

Downturns in the product tankers and dry bulk vessels charter markets may have an adverse effect on our earnings, affect compliance with our loan covenants and our ability to pay dividends if reinstated in the future.

Charter rates for product tankers and dry bulk vessels have declined sharply since the highs of 2008. The increase of supply (because of the newbuilding deliveries) and the decrease of demand (because of the decrease in world production and/or consumption) drove down charter rates during 2009 and 2010. Freight

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rates started falling during the fourth quarter of 2008 and weakened gradually to the lowest level in September 2009 followed by a steady upturn in the fourth quarter of 2009.

During 2010, the rapid growth of the product tanker fleet has clearly had a debilitating impact on the freight market at a time when trade was recovering from the downturn of 2009. The downturn resulted in lower operating revenues for the product tanker charter markets, especially during the second half of the year. According to market reports, the products tanker market did not perform well during 2010. The dirty products market has been especially downbeat, with earnings remaining below \$10,000/day for much of 2010. The clean products market initially offered some resistance to the slowdown in oil demand, but as the fleet has continued to grow, the availability of spot tonnage soon outstripped demand. The decline in charter rates in the product tanker market has resulted in a commensurate decline in our tanker vessel values, which in turn has affected our cash flows and liquidity. During 2010, the two main Baltic Tanker Indices that reflect the market dynamics, BDTI (for crude tankers that carry crude oil or residual fuel oil, or dirty products) and BCTI (for product tankers that carry refined petroleum products, or clean products), are each still approximately 26% below their respective 10 year market averages. The 10 year (2001–2010) average of BDTI was 1,201 points while the average of the same index for 2010 was 896.10 points. The other tanker index, BCTI, had a 10 year average of 989.99 points, while the average for 2010 was 732 points. Both indices followed a similar change, but BDTI experienced more volatility.

Seaborne dry bulk trade increased slightly by more than 2% annually during the 1990s, while the average growth was 5.6% annually between 2000 and 2008. During 2009, dry bulk trade decreased by 3%, but the market was stronger than expected as China increased its imports by 41% to partially offset the 107 million ton decrease in the rest of the world. In 2010, dry bulk trade started to rebound, with an annual expected growth of 11%, as compared with the dry bulk trade of 2009, due to the fast recovery of world production, especially of the Asian countries (China and India). However, the dry bulk market fell again during 2011, with the capesize 4 Time Charter routes having been at historical lows in May 2011, with average daily charter rate at below \$10,000 per day. If the market remains at or below these levels, it will have a negative effect on our earnings.

During 2011, two of our tanker vessels (two Handy tankers) will participate in the Handymax tanker pool of Scorpio Ship Management (“Scorpio”) and the charter of one of our Panamax tankers is expiring. In addition, one of our dry bulk vessels is in the spot market, one of our dry bulk vessels is time chartered with floating hire based on the market index (BPI), and the time charters for three of our dry bulk vessels are expected to expire sometime during 2011. If the current low charter rates in the product tanker and dry bulk markets continue through a significant portion of 2011, and we are consequently exposed to then-prevailing charter rates, our earnings may be adversely affected. If these trends continue, in order to remain viable, we may have to extend the period during which we suspend dividend payments and/or sell vessels in our fleet. At the same time, we endeavor to charter several vessels in our fleet under period charters with floor hire rates plus profit sharing elements in order to benefit from a potential increase in the charter market. However, we cannot assure you that we will be able to enter into such period charters with upside potential.

Our impairment analysis on long lived assets and goodwill performed for the year ended December 31, 2010 resulted in impairment losses of \$39.5 million. However, the current assumptions used and the estimates made are highly subjective and could be negatively impacted by further significant deterioration in charter rates or vessel utilization over the remaining life of the vessels, which could require us to record a material impairment charge in future periods.

A further economic slowdown in the Asia Pacific region could exacerbate the effect of recent slowdowns in the economies of the United States and the European Union and may have a material adverse effect on our business, financial condition and results of operations.

We anticipate that a significant number of the port calls made by our vessels will continue to involve the loading or discharging of commodities in ports in the Asia Pacific region. As a result, negative changes in economic conditions in any Asia Pacific country, particularly in China, may exacerbate the effect of recent slowdowns in the economies of the United States and the European Union and may have a material adverse

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effect on our business, financial condition and results of operations, as well as our future prospects. In recent years, China has been one of the world's fastest growing economies in terms of gross domestic product, which has had a significant impact on shipping demand. China's rate of growth, which was higher than 10% per year from 2005 until the first half of 2008, declined significantly in the second half of 2008 and the first quarter of 2009. Despite its fast recovery during 2010, China and other countries in the Asia Pacific region are likely to continue to experience slowed economic growth in the near future. Moreover, the current economic slowdown in the economies of the United States, the European Union and other Asian countries may further adversely affect economic growth in China and other emerging countries. Our business, financial condition and results of operations, as well as our future prospects, will likely be materially and adversely affected by a further economic downturn in any of these countries.

Changes in the economic and political environment in China and policies adopted by the government to regulate its economy may have a material adverse effect on our business, financial condition and results of operations.

The Chinese economy differs from the economies of most countries belonging to the Organization for Economic Cooperation and Development (OECD) in such respects as structure, government involvement, level of development, growth rate, capital reinvestment, allocation of resources, rate of inflation and balance of payments position. Prior to 1978, the Chinese economy was a planned economy. Since 1978, increasing emphasis has been placed on the utilization of market forces in the development of the Chinese economy. Annual and five-year state plans are adopted by the Chinese government in connection with the development of the economy. Although state-owned enterprises still account for a substantial portion of the Chinese industrial output, in general, the Chinese government is reducing the level of direct control that it exercises over the economy through state plans and other measures. There is an increasing level of freedom and autonomy in areas such as allocation of resources, production, pricing and management and a gradual shift in emphasis to a "market economy" and enterprise reform. Limited price reforms were undertaken, with the result that prices for certain commodities are principally determined by market forces. Many of the reforms are unprecedented or experimental and may be subject to revision, change or abolition based upon the outcome of such experiments. If the Chinese government does not continue to pursue a policy of economic reform, the level of imports to and exports from China could be adversely affected by changes to these economic reforms by the Chinese government, as well as by changes in political, economic and social conditions or other relevant policies of the Chinese government, such as changes in laws, regulations or export and import restrictions, all of which could, adversely affect our business, operating results and financial condition.

The earthquake and resulting tsunami and nuclear power plant crisis that struck Japan in March 2011 could, in the near term, reduce tanker and dry bulk trade to and from Japan, affect global charter rates and adversely affect our business.

In March 2011, a severe earthquake struck northern Japan. The earthquake created a severe tsunami, the effects of which were felt in Japan and other countries along the eastern coast of Asia and across the Pacific Ocean. In addition, the earthquake and resulting tsunami have caused several nuclear power plants located in Japan to fail and emit radiation which possibly could result in meltdowns that could have catastrophic effects. Recently, the Japanese economy has fallen back into recession and the outlook for growth remains unclear in the near term. The full effect of these disasters, both on the Japanese and global economies and the environment, are not currently known, and may not be known for a significant period of time. These disasters will likely result in less tanker and dry bulk trade to and from Japan, in the short term, and could reduce charter rates globally in the short term. In addition, there can be no assurances that vessels trading in the Pacific may not be impacted by the possible effects of spreading radiation. These disasters and the resulting economic effects, both in the region and globally, could have an adverse effect on our business and results of operations.

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The value of our vessels may fluctuate, which may adversely affect our liquidity.

Vessel values can fluctuate substantially over time due to a number of different factors, including:

- general economic and market conditions affecting the shipping industry;
- increase/decrease in demand for vessels' acquisitions;
- the types and sizes of available vessels;
- increase/decrease in the supply of tonnage capacity;
- expected newbuilding deliveries and future market expectations;
- the cost of newbuildings;
- availability of acquisition finance;
- prevailing charter rates; and
- technological advances in vessel design or equipment, changes in applicable environmental or other regulations or standards, or otherwise.

In addition, as vessels grow older, they generally decline in value. Due to the cyclical nature of the product tanker and dry bulk vessel markets, if for any reason we sell vessels at a time when prices have fallen, we could incur a loss and our business, results of operations, cash flows, financial condition and ability to pay dividends in the future could be adversely affected.

An oversupply of tanker capacity may lead to reductions in charter rates, which could materially adversely affect our profitability.

The product tanker fleet (including Handy, Panamax and Aframax sizes) expanded by 4.7% to 106.31 million dwt between December 2009 and December 2010, while the increase in the total tanker fleet was approximately 4.2% to 451.24 million dwt during the same period. As of December 2010, tankers on order represented 27.8% of the existing fleet, and the supply of tankers, which is affected by a number of factors as described above, is expected to increase both in 2011 and 2012. However, the phase out of single-hull tankers due to environmental and safety legislation and concerns, as well as the conversion of tankers to non-tanker purposes, are expected to prevent fleet growth from a large oversupply. Triggered by a retrenchment in import demand in major developed countries and more restricted access to trade financing, trade flows fell at an annualized rate of between 30% and 50% in most economies in late 2008 and early 2009. Asian economies experienced the sharpest decline. Import demand from consumption and business investment in Asia remained weak during this period. Global demand for crude oil and refined products dropped in 2009. As a result, the tanker market suffered long periods of depressed hire rates in 2009. World crude oil and liquid fuels consumption grew by an estimated 2.4 million barrels per day ("bbl/d") in 2010, to 86.7 million bbl/d, the second largest annual increase in at least 30 years. EIA expects that world liquid fuels consumption will grow by 1.5 million bbl/d in 2011 and by an additional 1.6 million bbl/d in 2012. Trading patterns change as developing countries search for new areas to source their oil supplies. There has been an increase in the shipping fixtures for moving crude oil from West Africa and the Caribbean to India and the Far East. India is expected to have a positive impact in the short- to medium-term, as many new Indian refinery projects are coming online in the next few years, which will result in increased transportation of crude oil into India and an increase in demand for transportation of refined oil products out of India, along with an increase in demand for transportation of refined oil over long distances. However, this increase in demand may not fully offset any oversupply of tanker capacity. If there is an oversupply of tanker capacity, this may result in a reduction of charter rates. If a reduction in charter rates occurs, upon the expiration or termination of our vessels' current charters, we may only be able to re-charter our vessels at reduced or unprofitable rates or we may not be able to charter these vessels at all, which could lead to a material adverse effect on our results of operations.

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An oversupply of dry bulk vessel capacity may lead to further reductions in charter rates, and disproportionately affect older vessels, which could materially adversely affect our profitability.

The market supply of dry bulk vessels has been increasing, and the carrying capacity (measured in dwt) on order is at a historically high level. As of December 2010, approximately 278.5 million dwt of dry bulk vessels are on order, representing approximately 53% of the existing fleet. This may lead to an oversupply of dry bulk vessel capacity, especially of Capesize bulkers, which is experiencing the highest level of orders, resulting in a reduction of charter rates and a decrease in the value of our dry bulk vessels. Even in the case of high order cancellations and high delayed deliveries, new deliveries are expected to be higher than usual and it is unclear whether this increase of supply will be absorbed by the increase of demand. Significant fleet expansion would cap rate levels over the next couple of years. The reduction in rates may affect the ability of our customers who charter our dry bulk vessels to make charter hire payments to us. This and other factors affecting the supply and demand for dry bulk vessels are outside our control and the nature, timing and degree of changes in the industry may affect the ability of our charterers to make charter hire payments to us.

During periods when the shipping industry is experiencing excess capacity, falling demand and/or declining rates, older vessels are generally adversely affected in a disproportionate manner because newer vessels are generally preferred by customers. As the severity and length of such periods increase, the scrap rate for older vessels tends to rise because the costs for keeping an older vessel in the fleet may exceed the benefits. However, we may be unable to scrap some of our older vessels if, for example, such vessels have loan obligations that exceed their scrap values. In such a case, we may be restricted from taking the most economically prudent course of action, which may negatively affect our results of operations. See also “— The risks and costs associated with vessels increase as the vessels age.”

Disruptions in world financial markets and the resulting governmental action in the United States and in other parts of the world could have a material adverse impact on our results of operations, financial condition and cash flows, and could cause the market price of our common shares to further decline.

Many parts of the world experienced deteriorating economic trends and were in a recession in 2008 and 2009 and continued to experience weakness in 2010 and 2011. Despite recent signs of recovery, the outlook for the world economy remains uncertain. General market volatility has resulted from uncertainty about sovereign debt and fears of countries such as Greece, Portugal and Ireland defaulting on their governments' financial obligations. In addition, continued hostilities in the Middle East, recent tensions in North Africa and the continuing effects of the March 2011 natural disasters in Japan could adversely affect the economies of the United States and other countries. The credit markets in the United States have experienced significant contraction, deleveraging and reduced liquidity, and the United States' federal government and state governments have implemented and are considering a broad variety of governmental action and/or new regulation of the financial markets. Securities and futures markets and the credit markets are subject to comprehensive statutes, regulations and other requirements. The SEC, other regulators, self-regulatory organizations and exchanges are authorized to take extraordinary actions in the event of market emergencies, and may effect changes in law or interpretations of existing laws.

Recently, a number of financial institutions have experienced serious financial difficulties and, in some cases, have entered bankruptcy proceedings or are in regulatory enforcement actions. The uncertainty surrounding the future of the credit markets in the United States and the rest of the world has resulted in reduced access to credit worldwide. As of December 31, 2010, we had total outstanding indebtedness of approximately \$588.7 million which is net of the \$69.1 million of beneficial conversion feature, or BCF, related to the \$125.0 million of 7% Notes.

We face risks attendant to changes in economic environments, changes in interest rates, and instability in the banking and securities markets around the world, among other factors. Major market disruptions and the current adverse changes in market conditions and regulatory climate in the United States and worldwide may adversely affect our business or impair our ability to borrow amounts under our \$221.4 million facility agreement, referred to herein as the “Facility Agreement”, or any future financial arrangements. We cannot predict how long the current market conditions will last. However, these recent and developing economic and

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governmental factors, together with the concurrent decline in charter rates and vessel values, may have a material adverse effect on our results of operations, financial condition or cash flows, have caused the trading price of our common shares on the NASDAQ Global Select Market to decline and could cause the price of our common shares to continue to decline.

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

Acts of piracy have historically affected ocean-going vessels trading in certain regions of the world, such as the South China Sea and in the Gulf of Aden off the coast of Somalia. Throughout 2008 to 2010, the frequency of piracy incidents increased significantly, particularly in the Gulf of Aden off the coast of Somalia, with dry bulk vessels and tankers particularly vulnerable to such attacks. One example of the increase in piracy came in November 2008, when the M/V Sirius Star, a crude oil tanker which was not affiliated with us, was captured by pirates in the Indian Ocean while carrying crude oil estimated to be worth approximately \$100 million. More recently, in April 2010, the M/V Samho Dream, another crude oil tanker not affiliated with us, was captured off the Somali coast while carrying approximately \$170 million in crude oil. In December 2009, the M/V Navios Apollon, a cargo vessel not affiliated with us, was seized by pirates 800 miles off the coast of Somalia while transporting fertilizer from Tampa, Florida to Rozi, India. The vessel was released in late February 2010 upon the payment of an unreported sum of money. In April 2009, the Maersk Alabama, a cargo vessel not affiliated with us, was captured by pirates off the coast of Somalia and was released following military action by the U.S. Navy. If these piracy attacks result in regions in which our vessels are deployed being characterized as “war risk” zones by insurers, as the Gulf of Aden temporarily was in May 2008, or Joint War Committee (JWC) “war and strikes” listed areas, premiums payable for insurance coverage could increase significantly and such insurance coverage may be more difficult to obtain. In addition, crew costs, including costs due to employing onboard security guards, could increase in such circumstances. In addition, while we believe the charterer of a pirated vessel would remain liable for charter payments while the vessel is seized by pirates, the charterer may dispute this and withhold charter payments until the vessel is released. A charterer may also claim that a vessel seized by pirates was not “on-hire” for a certain number of days and it is therefore entitled to cancel the charter party, a claim that we would dispute. We may not be adequately insured to cover losses from these incidents, which could have a material adverse effect on us. In addition, any detention and/or hijacking of our vessels as a result of an act of piracy, or an increase in cost or unavailability of insurance for our vessels, could have a material adverse impact on our business, financial condition, results of operations and ability to reinstate the payment of dividends.

Increases in fuel, or bunker prices, may adversely affect profits.

While we generally do not bear the cost of fuel, or bunkers, under our time charters, fuel is a significant factor in negotiating charter rates. As a result, an increase in the price of fuel beyond our expectations may adversely affect our profitability at the time of charter negotiation or when our vessels trade in the spot market. Fuel is also a significant, if not our largest, expense in our shipping operations when vessels are under voyage charter. Increases in the price of fuel may adversely affect our profitability. The price and supply of fuel is unpredictable and fluctuates based on events outside our control, including geopolitical developments, supply and demand for oil and gas, actions by OPEC and other oil and gas producers, war and unrest in oil producing countries and regions, regional production patterns and environmental concerns. Further, fuel may become much more expensive in the future, which may reduce the profitability and competitiveness of our business versus other forms of transportation, such as truck or rail.

We are subject to complex laws and regulations, including environmental and safety laws and regulations, that can adversely affect the cost, manner or feasibility of doing business and consequently our results of operations.

The shipping business and vessel operation are materially affected by government regulation in the form of international conventions, national, state and local laws, and regulations in force in the jurisdictions in which vessels operate, as well as in the country or countries of their registration. Many of these requirements

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are designed to reduce the risk of oil spills, air emissions or other pollution. Because such conventions, laws and regulations are often revised, we cannot predict the ultimate cost of complying with such conventions, laws and regulations, or the impact thereof on the fair market price or useful life of our vessels. Compliance with these laws and regulations, as well as with standards imposed by maritime self-regulatory organizations and customer requirements or competition, may require us to make capital and other expenditures; affect the resale value or useful lives of our vessels; require reductions in cargo capacity, ship modifications or other operational changes or restrictions; lead to reduced availability of insurance coverage or increased policy costs; or result in denial of access to certain jurisdictional ports or waters, or detention in certain ports. In order to satisfy any such requirements, we may be required to take our vessels out of service for extended periods of time, with corresponding losses of revenues. In the future, market conditions may not justify these expenditures or enable us to operate our vessels profitably, particularly older vessels, during the remainder of their economic lives. This could lead to significant asset write-downs.

A failure to comply with applicable laws and regulations may result in administrative and civil penalties, criminal sanctions or suspension or termination of our operations. We are required by various governmental and quasi-governmental agencies to obtain certain permits, licenses and certificates with respect to our operations. A decision by an agency to deny or delay issuing a new or renewed permit, license or certificate, or to revoke or substantially modify an existing one, could materially adversely affect our operations.

Government regulation of vessels, particularly environmental and safety requirements, may become stricter in the future and require us to incur significant capital expenditure on our vessels to keep them in compliance, or even to scrap or sell certain vessels altogether. Additional legislation or amendments to existing legislation is expected in areas such as ship recycling, sewage systems, emission control (including emission of greenhouse gases) and ballast treatment and handling. For example, amendments to revise the regulations of the International Convention for the Prevention of Pollution from Ships, or MARPOL, regarding the prevention of air pollution from ships were approved and formally adopted by the Marine Environment Protection Committee, or MEPC, in October 2008. The amendments establish a series of progressive standards limiting the sulfur content in fuel oil and new tiers of nitrogen oxide emission standards for new marine diesel engines. The amendments entered into force in July 2010 and we incurred significant costs for compliance. Similarly, even more stringent controls of air emissions from ocean-going vessels have been adopted for European Baltic and North Atlantic waters and for the U.S. / Canadian coasts. The phasing in of such standards may require significant capital expenditures or operating expenses (such as increased costs for low-sulfur fuel) in order for us to maintain compliance.

In addition, various jurisdictions and regulatory organizations, including the International Maritime Organization, or the IMO, the U.S. and states within the U.S., have proposed or implemented requirements relating to the management of ballast water to prevent the introduction of foreign invasive species having adverse ecological impacts. Significant expenditures for the installation of new equipment or new systems on board our vessels and changes in operating procedure may be necessary to comply with future regulations regarding ballast water management. Such future regulations may also result in increased port disposal costs.

Additionally, as a result of marine accidents in recent years, safety regulation of the shipping industry is likely to continue to become more stringent and more expensive for us and our competitors. The IMO and the European Union have both accelerated their existing phase-out schedules for vessels without double hulls in response to highly publicized oil spills and shipping accidents involving companies unrelated to us. Legislation is also being discussed that would subject vessels to centralized routing. Future incidents may result in the adoption of even more stringent laws and regulations, which could limit our operations or our ability to do business, require capital expenditures or otherwise increase our cost of doing business, which may adversely affect our operations, as well as the shipping industry generally.

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We could incur material liabilities, including cleanup obligations and natural resource damages, in the event there is a release of oil or other hazardous substances from our vessels or otherwise in connection with our operations.

For all vessels, including those operated under our fleet, at present, international liability for bunker oil pollution is governed by the International Convention on Civil Liability for Bunker Oil Pollution Damage, or the Bunker Convention. In 2001, the IMO adopted the Bunker Convention, which imposes strict liability on ship owners for pollution damage in jurisdictional waters of ratifying states caused by discharges of “bunker oil.” The Bunker Convention defines “bunker oil” as “any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil.” The Bunker Convention also requires registered owners of ships over a certain size to maintain insurance for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime (but not exceeding the amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims of 1976, as amended, or the 1976 Convention). The Bunker Convention entered into force on November 21, 2008, and in early 2011 it was in effect in 58 countries. In other jurisdictions, liability for spills or releases of oil from ships’ bunkers continues to be determined by the national or other domestic laws in the jurisdiction where the events or damages occur.

With respect to oil pollution liability, generally, many countries have ratified and follow the liability plan adopted by the IMO and set out in the International Convention on Civil Liability for Oil Pollution Damage of 1969, as amended in 2000, or the CLC. Under this convention, and depending on whether the country in which the damage results is a party to the CLC, a registered owner of a tanker that is carrying a cargo of “persistent oil” as defined by the CLC is strictly liable for pollution damage caused in the territorial waters of a contracting state by discharge of persistent oil, subject to certain complete defenses and liability limits. This liability is subject to a financial limit calculated by reference to the tonnage of the ship. The right to limit liability may be lost if the spill is caused by the owner’s intentional or reckless conduct. Vessels trading to states that are parties to these conventions must provide evidence of insurance covering the liability of the owner. When a tanker is carrying clean oil products that do not constitute “persistent oil” for the purposes of CLC, liability for any pollution damage will generally fall outside the CLC and will depend on national or other domestic laws in the jurisdiction where the spillage occurs. The United States is not a party to the CLC. In jurisdictions where the CLC has not been adopted, various legislative schemes or common law govern, and liability is imposed either on the basis of fault or in a manner similar to that of the CLC.

The most widely applicable international regime limiting maritime pollution liability is the 1976 Convention referred to above. Rights to limit liability under the 1976 Convention are forfeited when a spill is caused by a shipowner’s intentional or reckless conduct. Certain states have ratified the IMO’s 1996 Protocol, or the 1996 LLMC Protocol, to the 1976 Convention. The 1996 LLMC Protocol provides for substantially higher the liability limits to apply in those jurisdictions than the limits set forth in the 1976 Convention. Finally, some jurisdictions are not a party to either the 1976 Convention or the 1996 LLMC Protocol, and, therefore, a shipowner’s rights to limit liability for maritime pollution in such jurisdictions may be uncertain.

Environmental legislation in the United States merits particular mention as it is in many respects more onerous than international laws, representing a high-water mark of regulation with which ship owners and operators must comply, and of liability likely to be incurred in the event of non-compliance or an incident causing pollution. U.S. federal legislation, including notably the Oil Pollution Act of 1990, or the OPA, establishes an extensive regulatory and liability regime for the protection and cleanup of the environment from oil spills, including bunker oil spills from dry bulk vessels as well as cargo or bunker oil spills from tankers. The OPA affects all shipowners and operators whose vessels trade in the United States, its territories and possessions, or whose vessels operate in U.S. waters, which includes the United States’ territorial sea and its 200-nautical-mile exclusive economic zone. Under the OPA, vessel owners, operators and bareboat charterers are “responsible parties” and are jointly, severally and strictly liable (unless the spill results solely from the act or omission of a third party, an act of God or an act of war) for all containment and clean-up costs and other damages arising from discharges or substantial threats of discharges of oil from their vessels. In response to the 2010 Deepwater Horizon oil incident in the Gulf of Mexico, the U.S. House of Representatives passed, and the U.S. Senate considered but did not pass a bill to strengthen certain requirements of the OPA; similar

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legislation may be introduced in the 112th Congress. In addition to potential liability under the OPA, vessel owners may in some instances incur liability on an even more stringent basis under state law in the particular state where the spillage occurred.

In some areas of regulation of ship–source pollution, the EU has introduced new laws without attempting to procure a corresponding amendment of international law. Notably, in 2005, it adopted a directive on ship–source pollution, imposing criminal sanctions for pollution not only where this is caused by intent or recklessness (which would be an offence under the MARPOL), but also where it is caused by “serious negligence”. There is skepticism that the notion of “serious negligence” is likely to prove any narrower in practice than ordinary negligence. The directive could therefore result in criminal liability being incurred in circumstances where it would not be incurred under international law. Criminal liability for a pollution incident could not only result in us incurring substantial penalties or fines, but may also, in some jurisdictions, facilitate civil liability claims for greater compensation than would otherwise have been payable.

We currently maintain, for each of our owned vessels, insurance coverage against pollution liability risks in the amount of \$1.0 billion per incident. The insured risks include penalties and fines as well as civil liabilities and expenses resulting from accidental pollution. However, this insurance coverage is subject to exclusions, deductibles and other terms and conditions. If any liabilities or expenses fall within an exclusion from coverage, or if damages from a catastrophic incident exceed the \$1.0 billion limitation of coverage per incident, our cash flow, profitability and financial position could be adversely impacted.

Climate change and government laws and regulations related to climate change could negatively impact our financial condition.

In addition to other climate–related risks set forth in this “Risk Factors” section, we are and will be, directly and indirectly, subject to the effects of climate change and may, directly or indirectly, be affected by government laws and regulations related to climate change. A number of countries have adopted, or are considering the adoption of, regulatory frameworks to reduce greenhouse gas emissions. The IMO has announced its intention to develop limits on greenhouse gases from international shipping and is working on technical and operational measures to reduce emissions. In addition, while the emissions of greenhouse gases from international shipping are not subject to the Kyoto Protocol to the United Nations Framework Convention on Climate Change, which requires adopting countries to implement national programs to reduce greenhouse gas emissions, a new treaty may be adopted in the future that includes restrictions on shipping emissions. The European Union has also indicated that it intends to propose an expansion of the existing European Union emissions trading scheme to include greenhouse gas emission from marine vessels. Similarly, the U.S. EPA is considering petitions to regulate greenhouse gas emissions from marine vessels. We cannot predict with any degree of certainty what effect, if any, possible climate change and government laws and regulations related to climate change will have on our operations, whether directly or indirectly. While we believe that it is difficult to assess the timing and effect of climate change and pending legislation and regulation related to climate change on our business, we believe that climate change, including the possible increase in severe weather events resulting from climate change, and government laws and regulations related to climate change may affect, directly or indirectly, (i) the cost of the vessels we may acquire in the future, (ii) our ability to continue to operate as we have in the past, (iii) the cost of operating our vessels, and (iv) insurance premiums, deductibles and the availability of coverage. As a result, our financial condition could be negatively impacted by significant climate change and related governmental regulation, and that impact could be material.

We are subject to international safety regulations and the failure to comply with these regulations may subject us to increased liability, may adversely affect our insurance coverage and may result in a denial of access to, or detention in, certain ports.

The operation of our vessels is affected by the requirements set forth in the IMO International Management Code for the Safe Operation of Ships and Pollution Prevention, or ISM Code. The ISM Code requires shipowners, ship managers and bareboat charterers to develop and maintain an extensive “Safety Management System” that includes the adoption of a safety and environmental protection policy setting forth

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instructions and procedures for safe operation and describing procedures for dealing with emergencies. The failure of a shipowner or bareboat charterer to comply with the ISM Code may subject it to increased liability, may invalidate existing insurance or decrease available insurance coverage for the affected vessels and may result in a denial of access to, or detention in, certain ports. For example, the United States Coast Guard and European Union authorities have indicated that vessels not in compliance with the ISM Code will be prohibited from trading in ports in the United States and European Union. As of the date of this report, each of our vessels is ISM code-certified. However, there can be no assurance that such certification will be maintained indefinitely.

Our vessels may suffer damage due to the inherent operational risks of the seaborne transportation industry and we may experience unexpected dry-docking costs, which could adversely affect our business and financial condition.

Our vessels and their cargoes will be at risk of being damaged or lost because of events such as marine disasters, bad weather, business interruptions caused by mechanical failures, grounding, fire, explosions and collisions, human error, war, terrorism, piracy and other circumstances or events. These hazards may result in death or injury to persons, loss of revenues or property, environmental damage, higher insurance rates, damage to our customer relationships, delay or rerouting. If our vessels suffer damage, they may need to be repaired at a dry-docking facility. The costs of dry-dock repairs are unpredictable and may be substantial. We may have to pay dry-docking costs that our insurance does not cover in full. The loss of revenue while these vessels are being repaired and repositioned, as well as the actual cost of these repairs, would decrease our earnings. In addition, space at dry-docking facilities is sometimes limited and not all dry-docking facilities are conveniently located. We may be unable to find space at a suitable dry-docking facility or our vessels may be forced to travel to a dry-docking facility that is not conveniently located to our vessels' positions. The loss of revenue while these vessels are forced to wait for space or to steam to more distant dry-docking facilities would decrease our earnings. For example, on October 8, 2010, the Grand Rodosi, one of our bulk carriers, was involved in a collision with a docked fishing vessel at Port Lincoln, Australia. While no personal injuries or environmental damage were incurred, the collision resulted in physical damage to the two vessels. The damage was fully covered by our insurance.

Our insurance may not be adequate to cover our losses that may result from our operations, which are subject to the inherent operational risks of the seaborne transportation industry.

We carry insurance to protect us against most of the accident-related risks involved in the conduct of our business, including marine hull and machinery insurance, protection and indemnity insurance, which includes pollution risks, crew insurance and war risk insurance. However, we may not be adequately insured to cover losses from all of our operational risks, which could have a material adverse effect on us. Even if our insurance coverage is adequate to cover our losses, we may not be able to obtain a timely replacement, which may result in the loss of revenue. Additionally, our insurers may refuse to pay particular claims and our insurance may be voidable by the insurers if we take, or fail to take, certain action, such as failing to maintain certification of our vessels with applicable maritime regulatory organizations. Any significant uninsured or under-insured loss or liability could have a material adverse effect on our business, results of operations, cash flows and financial condition. In addition, we may not be able to obtain adequate insurance coverage at reasonable rates in the future during adverse insurance market conditions.

As a result of the September 11, 2001 attacks, the U.S. response to the attacks and the related concerns regarding terrorism, insurers have increased premiums and reduced or restricted coverage for losses caused by terrorist acts generally. Accordingly, premiums payable for terrorist coverage have increased substantially and the level of terrorist coverage has been significantly reduced.

In addition, while we carry loss of hire insurance to cover 100% of our fleet, we may not be able to maintain this level of coverage. Accordingly, any loss of a vessel or extended vessel off-hire, due to an accident or otherwise, could have a material adverse effect on our business, results of operations, financial condition and our ability to pay dividends, if reinstated to our shareholders in the future.

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Because we obtain some of our insurance through protection and indemnity associations, we may also be subject to calls in amounts based not only on our own claim records, but also on the claim records of other members of the protection and indemnity associations.

We may be subject to calls in amounts based not only on our claim records but also on the claim records of other members of the protection and indemnity associations through which we receive insurance coverage for tort liability, including pollution-related liability. Our payment of these calls could result in significant expense to us, which could have a material adverse effect on our business, results of operations, cash flows and financial condition.

In addition, in some jurisdictions, such as South Africa, under the “sister ship” theory of liability, a claimant may arrest both the vessel that is subject to the claimant’s maritime lien and any “associated” vessel, which is any vessel owned or controlled by the same owner. Claimants could try to assert “sister ship” liability against one vessel in our fleet for claims relating to another of our vessels.

The risks and costs associated with vessels increase as the vessels age.

The costs to operate and maintain a vessel in operation increase with the age of the vessel. The average age of our bulker fleet is 15.4 years and the average age of our tanker fleet 6.6 years. Most dry bulk and tanker vessels have an expected life ranging between 25 to 30 years. In some instances, charterers prefer newer vessels that are more fuel efficient than older vessels. Cargo insurance rates also increase with the age of a vessel, making older vessels less desirable to charterers as well. In addition, older vessels could have loan obligations in excess of their scrap value. Governmental regulations, safety or other equipment standards related to the age of the vessels may require expenditures for alterations or the addition of new equipment to vessels and may restrict the type of activities in which these vessels may engage. We cannot assure you that, as our vessels age, market conditions will justify those expenditures or enable us to operate our vessels profitably during the remainder of their useful lives. If we sell vessels, we may have to sell them at a loss, and if charterers no longer charter-out vessels due to their age, our earnings could be materially adversely affected.

A failure to pass inspection by classification societies could result in one or more vessels being unemployable unless and until they pass inspection, resulting in a loss of revenues from such vessels for that period and a corresponding decrease in operating cash flows.

The hull and machinery of every commercial vessel must be classed by a classification society authorized by its country of registry. The classification society certifies that a vessel is safe and seaworthy in accordance with the applicable rules and regulations of the country of registry of the vessel and with International Convention for the Safety of Life at Sea, or SOLAS. Our fleet is currently enrolled with Bureau Veritas, American Bureau of Shipping, Registro Italiano Navale (RINA) and Det Norske Veritas.

A vessel must undergo an annual survey, an intermediate survey and a special survey. In lieu of a special survey, a vessel’s machinery may be on a continuous survey cycle, under which the machinery would be surveyed periodically over a five-year period. Our vessels are on special survey cycles for hull inspection and continuous survey cycles for machinery inspection. Every vessel may be also required to be dry-docked every two to three years for inspection of the underwater parts of such vessel.

If any vessel fails any annual survey, intermediate survey or special survey, the vessel may be unable to trade between ports and, therefore, would be unemployable, potentially causing a negative impact on our revenues due to the loss of revenues from such vessel until she is able to trade again.

If we purchase any newbuilding vessels, delays, cancellations or non-completion of deliveries of newbuilding vessels could harm our operating results.

If we purchase any newbuilding vessels, the shipbuilder could fail to deliver the newbuilding vessel as agreed or their counterparty could cancel the purchase contract if the shipbuilder fails to meet its obligations. In addition, under charters we may enter into that are related to a newbuilding vessel, if our delivery of the newbuilding vessel to our customer is delayed, we may be required to pay liquidated damages during the

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delay. For prolonged delays, the customer may terminate the charter and, in addition to the resulting loss of revenues, we may be responsible for additional, substantial liquidated damages.

The completion and delivery of newbuilding vessels could be delayed, cancelled or otherwise not completed because of:

- quality or engineering problems;
- changes in governmental regulations or maritime self-regulatory organization standards;
- work stoppages or other labor disturbances at the shipyard;
- bankruptcy or other financial crisis of the shipbuilder;
- a backlog of orders at the shipyard;
- political or economic disturbances;
- weather interference or catastrophic event, such as a major earthquake or fire;
- requests for changes to the original vessel specifications;
- shortages of or delays in the receipt of necessary construction materials, such as steel;
- inability to finance the construction or conversion of the vessels; or
- inability to obtain requisite permits or approvals.

In addition to the above, we are currently facing liquidity constraints that may result in our inability to make contractual payments in a timely manner or at all, which may negatively affect our ability to accept delivery of newbuilding vessels in a timely manner. If delivery of a vessel is materially delayed, it could materially adversely affect our results of operations and financial condition and our ability to make cash distributions.

Labor interruptions could disrupt our business.

Our vessels are manned by masters, officers and crews that are employed by third parties. If not resolved in a timely and cost-effective manner, industrial action or other labor unrest could prevent or hinder our operations from being carried out as we expect and could have a material adverse effect on our business, results of operations, cash flows, financial condition and ability to pay dividends, if reinstated in the future.

Maritime claimants could arrest our vessels through foreclosure proceedings, which would interrupt our business.

Crew members, suppliers of goods and services to a vessel, shippers of cargo and other parties may be entitled to a maritime lien against a vessel for unsatisfied debts, claims or damages. In many jurisdictions, a maritime lien holder may enforce its lien by arresting or attaching a vessel through foreclosure proceedings. The arrest or attachment of one or more of our vessels could interrupt our business or require us to pay large sums of money to have the arrest lifted, which would have a negative effect on our cash flows. In addition, in some jurisdictions, such as South Africa, under the “sister ship” theory of liability, a claimant may arrest both the vessel which is subject to the claimant’s maritime lien and any “associated” vessel, which is any vessel owned or controlled by the same owner. As a result, claimants could try to assert “sister ship” liability against one vessel in our fleet for claims relating to another vessel in our fleet.

Governments could requisition our vessels during a period of war or emergency without adequate compensation.

A government could requisition or seize our vessels. Under requisition for title, a government takes control of a vessel and becomes its owner. Under requisition for hire, a government takes control of a vessel and effectively becomes its charterer at dictated charter rates. Generally, requisitions occur during periods of war or emergency. Although we would be entitled to compensation in the event of a requisition, the amount

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and timing of payment would be uncertain. Government requisition of one or more of our vessels may negatively impact our business, financial condition and results of operations.

We operate our vessels worldwide and, as a result, our vessels are exposed to international risks that could reduce revenue or increase expenses.

The international shipping industry is an inherently risky business involving global operations. Our vessels are at risk of damage or loss because of events such as mechanical failure, collision, human error, war, terrorism, piracy, cargo loss, natural disasters and bad weather. In addition, changing economic, regulatory and political conditions in some countries, including political and military conflicts, have from time to time resulted in attacks on vessels, mining of waterways, piracy, terrorism, labor strikes and boycotts. These sorts of events could interfere with shipping routes and result in market disruptions that may reduce our revenue or increase our expenses.

Terrorist attacks and international hostilities can affect the seaborne transportation industry, which could adversely affect our business and results of operations.

We conduct most of our operations outside of the United States, and our business, results of operations, cash flows and financial condition may be adversely affected by changing economic, political and government conditions in the countries and regions where our vessels are employed or registered. Moreover, we operate in a sector of the economy that is likely to be adversely impacted by the effects of political instability, terrorist or other attacks, war or international hostilities. Terrorist attacks such as the attacks on the United States on September 11, 2001, in London on July 7, 2005 and in Mumbai on November 26, 2008 and the continuing response of the United States and others to these attacks, as well as the threat of future terrorist attacks in the United States or elsewhere, continue to cause uncertainty in the world financial markets and may affect our business, operating results and financial condition. The continuing presence of the United States and other armed forces in Iraq and Afghanistan may lead to additional acts of terrorism and armed conflict around the world, which may contribute to further economic instability in the global financial markets. These uncertainties could also adversely affect our ability to obtain additional financing on terms acceptable to us or at all. In the past, political conflicts have also resulted in attacks on vessels, mining of waterways and other efforts to disrupt international shipping, particularly in the Arabian Gulf region. Acts of terrorism and piracy have also affected vessels trading in regions such as the South China Sea and the Gulf of Aden off the coast of Somalia. Any of these occurrences could have a material adverse impact on our operating results, revenues and costs.

Terrorist attacks on vessels, such as the October 2002 attack on the M/V Limburg, a very large crude carrier not related to us, may in the future also negatively affect our operations and financial condition and directly impact our vessels or our customers. Future terrorist attacks could result in increased volatility and turmoil in the financial markets in the United States and globally. Any of these occurrences could have a material adverse impact on our revenues and costs.

We are subject to vessel security regulations and will incur costs to comply with recently adopted regulations and may be subject to costs to comply with similar regulations which may be adopted in the future in response to terrorism.

Since the terrorist attacks of September 11, 2001, there have been a variety of initiatives intended to enhance vessel security. On November 25, 2002, the Maritime Transportation Security Act of 2002, or MTSA, came into effect. To implement certain portions of the MTSA, in July 2003, the U.S. Coast Guard issued regulations requiring the implementation of certain security requirements aboard vessels operating in waters subject to the jurisdiction of the United States. Similarly, in December 2002, amendments to the International Convention for the Safety of Life at Sea, or SOLAS, created a new chapter of the convention dealing specifically with maritime security. The new chapter went into effect in July 2004, and imposes various

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detailed security obligations on vessels and port authorities, most of which are contained in the newly created ISPS Code. Among the various requirements are:

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

Furthermore, additional security measures could be required in the future which could have a significant financial impact on us. The U.S. Coast Guard regulations, intended to be aligned with international maritime security standards, exempt non-U.S. vessels from MTSA vessel security measures, provided such vessels had on board, by July 1, 2004, a valid International Ship Security Certificate, or ISSC, that attests to the vessel's compliance with SOLAS security requirements and the ISPS Code. We have implemented and will continue implement the various security measures addressed by the MTSA, SOLAS and the ISPS Code and take measures for the vessels to attain compliance with all applicable security requirements within the prescribed time periods. Although management does not believe these additional requirements will have a material financial impact on our operations, there can be no assurance that there will not be an interruption in operations to bring vessels into compliance with the applicable requirements and any such interruption could cause a decrease in charter revenues. The cost of vessel security measures has also been affected by the dramatic escalation in recent years in the frequency and seriousness of acts of piracy against ships, notably off the coast of Somalia, including the Gulf of Aden and Arabian Sea area which could have a significant financial impact on us. Attacks of this kind have commonly resulted in vessels and their crews being detained for several months, and being released only on payment of large ransoms. Substantial loss of revenue and other costs may be incurred as a result of such detention. We insure against these losses to the extent practicable, but the risk remains that uninsured losses could significantly affect our business. Costs are incurred in taking additional security measures in accordance with Best Management Practices to Deter Piracy, notably those contained in the BMP3 industry standard. A number of flag states have signed the 2009 New York Declaration, which expresses commitment to Best Management Practices in relation to piracy and calls for compliance with them as an essential part of compliance with the ISPS Code.

Economic sanctions and other international trade restrictions imposed by the United States, the European Union, and other jurisdictions could increase the legal compliance risks and costs associated with our international activities.

Economic sanctions and/or other trade restrictions imposed by the United States or other governments or organizations, including the United Nations, the European Union and its member states, could increase the legal costs of, and risks associated with, our international operations.

Under economic sanctions and related trade laws, governments may impose modifications to business activities and practices and modifications to compliance programs, which may increase compliance costs, increase the risk of violations of law, and, in the event of a violation of such laws, may subject us to fines and other penalties. Engaging in sanctions-triggering activity, such as that outlined under the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 ("CISADA"), could also result in the imposition of sanctions against us.

In recent months, the scope of sanctions imposed against Iran and persons engaging in certain activities or doing certain business with or involving Iran has been expanded by a number of jurisdictions, including the United States, the EU, and Canada. The EU has strengthened sanctions against Iran by prohibiting a wider universe of transactions and activities involving Iran. CISADA, enacted by the United States, also strengthens existing U.S. sanctions against Iran, and, *inter alia*, provides for the imposition of sanctions against foreign (non-U.S.) entities that transport or otherwise supply refined petroleum products ("RPP") to Iran.

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We are monitoring developments in the United States, the EU and other jurisdictions that maintain sanctions programs, including developments in implementation and enforcement of such sanctions programs. Expansion of sanctions programs, embargoes and other restrictions in the future (including additional designations of countries or entities subject to sanctions), or modifications in how existing sanctions are interpreted or enforced, could prevent our tankers from calling on ports in sanctioned countries or could limit their cargoes and also could expose us to sanctions based on the activities of the vessels while the vessels are chartered out to third parties — even though we do not control such third parties.

We constantly keep abreast of legal developments in the economic sanctions and trade restrictions area, and we adjust our compliance programs and internal policies accordingly. We believe that we are in compliance with all applicable laws, including all laws impacting the trade of our vessels with Iran and other countries identified by the United States as state sponsors of terrorism. Our vessels are not authorized to engage in unlawful trade, or, save for vessels acquired while already on charter, any sanctions-triggering activity. Moreover, our vessels' trade with the foregoing countries is infrequent, and the revenue we derive from such activity is *de minimus*. Additionally, our vessels are not chartered to entities that have been designated as sanctions targets by the United States.

In an affirmative step to guard against violations and to prevent our vessels from engaging in any sanctions-triggering trade, we now include provisions in all of our new charters designed to prevent our charter parties from violating applicable laws relating to existing sanctions and from engaging in sanctions-triggering activity.

For example, as it relates to Iran, the provisions in the charter parties/contracts for our vessels contain exclusions that prohibit the use of our vessels in unlawful and/or sanctions-triggering trade with Iran. However, six of the vessels we acquired plus one newbuilding vessel that was delivered in December 2010, were already subject to charters that did not contain such provisions/exclusions. None of these vessels have made any call to Iran to date and four of these charter parties have now expired. With respect to Iran, none of our tankers engage in unlawful trade or in any activities that could trigger sanctions under CISADA. Only two of our tankers are capable, based on provisions of their current charter parties (which are due to expire in the second quarter of 2011), of transporting RPP, and thus only these two tankers could possibly be involved in transporting RPP to Iran in the future, which is an activity that would trigger sanctions under CISADA. We are seeking to amend these charters to incorporate relevant exclusions, but unless and until we do amend the charters, there is some risk that the charter parties could engage in activity that could (indirectly) cause us to violate applicable law, expose us to sanctions under CISADA and any similar laws, and, as a consequence, cause reputational and other damage that could have a material adverse impact on our business and operations.

To mitigate the foregoing risk until the charter parties may be modified to include relevant exclusions and prohibitions, we have notified the charterers of the two tankers that they could face CISADA sanctions if they engage in CISADA sanctions-triggering trade with Iran (RPP deliveries) while using our vessels.

Company Specific Risk Factors

The report of our independent registered public accounting firm states that we may be unable to continue as a going concern

The report of PricewaterhouseCoopers S.A., our independent registered public accountants, on our financial statements includes an explanatory paragraph stating that there is substantial doubt as to our ability to continue as a going concern. The financial statements, however, were prepared using principles under Generally Accepted Accounting Principles in the United States of America (GAAP) applicable to a going concern.

Over the past several months, we have experienced a decline in our liquidity and cash flows, which has affected, and which we expect will continue to affect, our ability to satisfy our obligations. Recently, charter rates for product tankers and bulkers have experienced a high degree of volatility. Currently, charter rates for product tankers are significantly lower than applicable historical averages and charter hire rates for bulkers, after showing signs of stabilization for a period, have declined to historical lows.

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Furthermore, recent economic conditions have caused certain of our charterers to experience financial difficulties as well. This has resulted in an increase in the time it takes for us to realize our receivables. In certain instances, our charterers have been unable to fulfill their obligations under their charters. One of our charterers, who is chartering three of our vessels, is having difficulty performing its obligations and, since the end of March 2011, has been late on a number of payments causing us to arrest vessels which are owned by the particular charterer and/or by such charterer's affiliated companies on two occasions in order to collect payment. These vessels are chartered out at rates significantly above market, and if we are forced to reclaim and re-charter these vessels (which there is no assurance that we could do), we expect a significant reduction in the cash flow from these vessels, which in turn would further impair our liquidity.

Furthermore, we remain uncertain as to our ability to borrow the remaining \$12.8 million approximately of undrawn amounts under our \$62.0 million revolving credit facility. Negotiations with the bank are continuing, but there is no assurance that we will be able to fully draw down this amount, if at all.

Certain of our debt arrangements, including our Facility Agreement, contain covenants that require us to maintain certain minimum financial ratios, including a minimum ratio of shareholders' equity to total assets (starting from the third quarter of 2012), a minimum amount of working capital, and a minimum EBITDA to interest coverage ratio (starting from the third quarter of 2012). Our Facility Agreement requires that we maintain at all times a minimum amount of liquidity in the form of cash and cash equivalents equal to at least 5% of the outstanding loan at all times under such agreement. Moreover, certain of our other debt arrangements require that we maintain at all times a minimum amount of liquidity in the form of cash and cash equivalents equal to at least 5% of the total outstanding indebtedness. We are currently not in compliance with our minimum liquidity requirements under our loan agreements with West LB and Bank of Scotland (Junior and Senior Kamsarmax credit facilities) which results or will result in cross defaults with other loans. We have received notification from West LB that there is formal credit approval for the temporary waiver of the minimum liquidity covenant through March 31, 2012. This temporary waiver is subject to the execution of formal documentation. In addition, the adverse change in our liquidity position, absent receipt of waivers, will have a negative effect on our ability to remain in compliance with such covenants under our other loan agreements, and we expect to be in breach of the minimum liquidity requirements under various other debt agreements by June 30, 2011.

As of June 30, 2011, we are still exploring financing and other options to increase our liquidity, including selling certain of our vessels, accessing the capital markets and/or incurring new indebtedness. Recently, we were unable to complete an offering of \$120.0 million of senior secured notes due 2016 due to market conditions. In addition, our proposed public offering of common shares has not proceeded. There is no assurance that we will be able to obtain financing or sell vessels on favorable terms, or at all.

In addition, on June 30, 2011, we received notification from DVB Bank, as agent of a loan agreement with DVB Bank, Nord LB and Emporiki Bank that the Company is in breach of certain covenants in its loan agreement, with regard to a dispute under the shipbuilding contract to which the loan relates. Although we believe we are not in default of the loan agreement or the shipbuilding contract, there is no assurance that we would prevail in the above mentioned dispute as to such issue. Although we are seeking and will continue to seek waivers to these covenants from our lenders, it is uncertain that we will be able to obtain such waivers. We will seek to restructure our indebtedness. If we are not able to obtain the necessary waivers and/or restructure our debt, this could lead to the acceleration of the outstanding debt under our debt agreements that contain a minimum liquidity covenant or any other covenant that may be breached, which would result in the cross acceleration of our other outstanding indebtedness. Our failure to satisfy our covenants under our debt agreements, and any consequent acceleration and cross acceleration of our outstanding indebtedness, would have a material adverse effect on our business operations, financial condition and liquidity.

All of the above raises substantial doubt regarding our ability to continue as a going concern.

Generally accepted accounting principles require that long-term debt be classified as a current liability when a covenant violation gives the lender the right to call the debt at the balance sheet date, absent a waiver. Accordingly, as of June 30, 2011, we will be required to reclassify our long term debt as current liabilities in our consolidated balance sheet if we have not received waivers in respect of the covenants that are breached at such time. The financial statements have been prepared assuming that we will continue as a going concern and

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do not include any adjustments that might be necessary if we are unable to continue as a going concern. See also Item 5. “Operating and Review and Prospects — Going Concern” for more information.

Under the terms of our facility agreement with Bank of Scotland as agent, dated October 13, 2009, certain financial covenants (excluding working capital and minimum liquidity) have been waived by our lenders until at least April 2012 and others have been waived until October 2012. Our other existing credit facilities and financing arrangements contain payment obligations and restrictive covenants that may limit our liquidity and our ability to expand our fleet. A failure by us to meet our obligations under our credit facilities and financing arrangements could result in an event of default under such credit facilities or financing arrangements. Such event could have a material adverse effect on our operations and our ability to raise new capital.

Prior to our recapitalization, the Company was in default under its \$360.0 million fully revolving credit facility with Bank of Scotland and Nordea Bank Finland as lead arrangers and Bank of Scotland as agent which had an outstanding balance of \$221.4 million on October 13, 2009. As part of the recapitalization our existing syndicate of lenders entered into a new \$221.4 million facility agreement, referred to herein as the “Facility Agreement”, by and among us and the banks identified therein in order to refinance our existing revolving credit facility.

On April 26, 2010, we entered into a supplemental deed, or the Deed, relating to this Facility Agreement. The Deed is supplemental to the Facility Agreement dated October 13, 2009, as supplemented and amended from time to time, and was entered into among us and the banks signatory thereto. Pursuant to the terms of the Deed, the minimum liquidity amount covenanted to under the original deed may be applied to prepayment of sums outstanding under the original loan without incurring an event of default. All amounts so applied will be made available by banks for re-borrowing without restriction and shall be deemed to constitute part of the minimum liquidity amount and be deemed to constitute cash for purposes of determining the minimum liquidity amount.

Our facility agreements contain restrictions and limitations that could significantly impact our ability to operate our business and if we receive waivers and/or restructure our indebtedness, our lenders may impose additional restrictions on us and/or modify the terms of our existing loans. Any default or breach of the covenants in our debt agreements could have a material adverse effect on our operations and financial position.

As a result of our recapitalization, new financial covenants were put in place. Except for working capital (as defined in each respective facility agreement) and minimum liquidity, all other covenants will become effective in a period ranging from 30 to 36 months from the effective date of each of the facility agreements, to allow a sufficient period of time for management to implement its business strategy. Our facility agreements require us to maintain compliance with certain financial covenants as of the end of each fiscal quarter. They contain certain restrictions and limitations that could significantly limit our ability to operate our business. In the absence of a consent, these restrictions may limit our ability to:

- incur or guarantee additional indebtedness;
- create liens on our assets;
- make investments;
- engage in recapitalizations and acquisitions;
- redeem capital stock;
- make capital expenditures;
- change the management of our vessels or terminate the management agreements we have relating to our vessels;
- enter into long-term charter arrangements without the consent of the lender; and
- sell any of our vessels.

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In addition, our existing credit facilities require us to, among other things, maintain compliance with financial covenants, which include the maintenance of the following ratios (all as defined in the respective credit facilities):

- specific ratios of shareholders' equity as a percentage of our total assets, adjusting the book value of our fleet to its market value;
- working capital of not less than zero dollars;
- maintenance of minimum liquidity requirements at five per cent of the outstanding loans;
- maintenance of ratio of EBITDA to interest payable to specific levels;
- maintenance of specific value to loan ratios;
- cash sweep on the earnings of the vessels;
- minimum interest coverage ratios; and
- minimum market adjusted equity ratios.

As a result of such covenants, we will need to seek permission from our lenders in order to engage in some corporate and commercial actions that we believe would be in the best interest of our business, and a denial of permission may make it difficult for us to successfully execute our business strategy or effectively compete with companies that are not similarly restricted. Our lenders' interests may be different from our interests, shareholders' interests or the interests of the holders of our notes, and we cannot guarantee that we will be able to obtain our lenders' permission when needed. This may prevent us from taking actions that are in our best interest. Any future credit facility agreement may include similar or more restrictive restrictions.

Our ability to comply with the covenants and restrictions contained in our credit facility agreements and other indebtedness may be affected by economic, financial and industry conditions and other factors beyond our control. If we default on our obligations under the agreements governing our indebtedness, including a default under our credit facility agreements, and such default is not waived by the required lenders, the applicable creditors may accelerate such indebtedness and, in the absence of any agreement with the lenders, if such indebtedness is secured, such creditors could proceed against the collateral securing that indebtedness. In any such case, we may be unable to borrow under our credit facility agreements and may not be able to repay the amounts due under our credit facility agreements and our outstanding notes. Furthermore, if any of our debt is accelerated, all of our other indebtedness may be accelerated pursuant to cross-acceleration or cross-default provisions. This could have serious consequences to our financial condition and results of operations and could cause us to become bankrupt or insolvent. Our ability to comply with these covenants in future periods will also depend substantially on the value of our assets, our charter rates, our success at keeping our costs low and our ability to successfully implement our overall business strategy. Any future credit agreement or amendment or debt instrument may contain similar or more restrictive covenants.

Furthermore, in connection with any waivers and/or restructuring of our indebtedness, our lenders may impose additional requirements or restrictions on us. Such additional restrictions may further limit our ability to engage in actions that we believe would be in the best interest of our company.

These covenants may also restrict our ability to fully draw on our existing revolving credit facilities, and in such event, any such restrictions could limit our ability to operate our business. For more information about our existing indebtedness, please refer to Item 5. "Operating and Financial Review and Prospects — Indebtedness."

We are highly leveraged and may incur substantial additional debt, which could materially adversely affect our financial health and our ability to obtain financing in the future, react to changes in our business and make debt service payments.

As of December 31, 2010, our outstanding indebtedness, was \$588.7 million, which is net of the \$69.1 million BCF related to the \$125.0 million of 7% Notes. Although the agreements governing our existing

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indebtedness contain, and it is likely that any agreements governing our future indebtedness will contain, limitations on our ability to incur indebtedness, we will still be able to incur a significant amount of additional indebtedness. Our high level of indebtedness could have important consequences to our shareholders.

Because we are highly leveraged:

- our ability to obtain additional financing for working capital, capital expenditures, debt service requirements, vessel or other acquisitions or general corporate purposes may be impaired in the future;
- if new debt is added to our debt levels, the related risks that we now face would increase and we may not be able to meet all of our debt obligations;
- a substantial portion of our cash flow from operations must be dedicated to the payment of principal and interest on our indebtedness, thereby reducing the funds available to us for other purposes, and there can be no assurance that our operations will generate sufficient cash flow to service this indebtedness;
- we will be exposed to the risk of increased interest rates because our borrowings under facility agreements will be at variable rates of interest;
- it may be more difficult for us to satisfy our obligations to our lenders, resulting in possible defaults on and acceleration of such indebtedness and the cross-acceleration or cross-default of our other indebtedness;
- we may be more vulnerable to general adverse economic and industry conditions;
- we may be at a competitive disadvantage compared to our competitors with less debt or comparable debt at more favorable interest rates;
- our ability to refinance indebtedness may be limited or the associated costs may increase; and
- our flexibility to adjust to changing market conditions and ability to withstand competitive pressures could be limited, or we may be prevented from carrying out capital spending that is necessary or important to our growth strategy and efforts to improve operating margins or our business.

Highly leveraged companies are significantly more vulnerable to unanticipated downturns and set backs, whether directly related to their business or flowing from a general economic or industry condition, and therefore are more vulnerable to a business failure or bankruptcy. Accordingly, while we view our ability to obtain a high percentage of debt as a competitive advantage, it also heightens the risk of owning our securities.

The market values of our vessels have declined and may further decrease, which could lead to the loss of our vessels and/or we may incur a loss if we sell vessels following a decline in their market value.

The fair values of our vessels have generally experienced high volatility and have recently declined significantly and resulted in an impairment charge of \$15.7 million for the year ended December 31, 2010. If we sell one or more of our vessels at a time when vessel prices have fallen and before we have recorded an impairment adjustment to our consolidated financial statements, the sale may be less than the vessel's carrying value on our consolidated financial statements, resulting in a loss and a reduction in earnings. Furthermore, if vessel values fall significantly, we may have to record further impairment adjustments in our consolidated financial statements, which could materially adversely affect our financial results. In addition, any decline in vessel values could trigger loan covenant defaults in the future.

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For the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009 and for the year ended December 31, 2008, we were dependent upon three significant charterers for a majority of our revenues, and for the year ended December 31, 2010, we received 43% of our revenue from continuing operations from three charterers, one of which is experiencing financial difficulties.

We have historically derived a significant part of our revenue from a small number of charterers. For the year ended December 31, 2010, 43% of our revenue from continuing operations was derived from three charterers. One of these charterers, which is chartering three of our vessels and accounted for approximately 22% of our revenues for the year ended December 31, 2010, is experiencing financial difficulties. See “Operating and Review and Prospects — Going Concern”. For the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, and for the year ended December 31, 2008, approximately 65%, 55% and 65%, respectively, of our revenue was derived from three charterers. The loss of charterers upon whom we have historically been dependent may adversely affect our results of operations, cash flows and financial condition. Further, after the sale of all the non-core vessels and the transfer of 14 vessels in total from Grandunion Inc., or Grandunion, we now operate a fleet of 22 vessels (including three newbuildings). Assuming that we sell one or more additional vessels in order to reduce the outstanding balance under our Facility Agreement and other loan agreements, we will operate a smaller fleet. If the size of our fleet decreases, we will become increasingly dependent upon a limited number of charterers for our revenues.

Our charterers may terminate or default on their charters, which could materially adversely affect our results of operations and cash flow. When the charter agreements expire or terminate, we will need to find new employment for the affected vessels in the currently depressed charter market, which may adversely affect our results of operations and cash flows.

Our charterers may terminate their charters earlier than the dates indicated in their charter agreements. The terms of our charters vary as to which events or occurrences will cause a charter to terminate or give the charterer the option to terminate the charter, but these generally include a total or constructive total loss of the related vessel, the requisition for hire of the related vessel or the failure of the related vessel to meet specified performance criteria. In addition, the ability of each of our charterers to perform its obligations under a charter will depend on a number of factors that are beyond our control. These factors may include general economic conditions, the condition of a specific shipping market sector, the charter rates received for specific types of vessels and various operating expenses. The costs and delays associated with the default by a charterer of a vessel may be considerable and may materially adversely affect our business, results of operations, cash flows and financial condition.

Recent economic conditions have caused certain of our charterers to experience financial difficulties. This has resulted in an increase in the time it takes for us to realize our receivables. In certain instances, certain of our charterers have been unable to fulfill their obligations under their charters. One of our charterers, who is chartering three of our vessels, is having difficulty performing its obligations and, since the end of March 2011, has been late on a number of payments causing us to arrest vessels which are owned by the particular charterer and/or by charterer’s affiliated companies on two occasions in order to collect payment. These vessels are chartered out at rates significantly above market, and if we are forced to reclaim and re-charter these vessels (which there is no assurance that we could do), we expect a significant reduction in the cash flow from these vessels, which in turn would further impair our liquidity. We also cannot predict whether our charterers will, upon the expiration of their charters, recharter our vessels on favorable terms or at all. If our charterers decide not to recharter our vessels, we may not be able to recharter them on terms similar to the terms of our current charters. In the future, we may also employ our vessels on the spot charter market, which is subject to greater rate fluctuation than the time charter market.

Recently, charter rates for product tankers and bulkers have experienced a high degree of volatility. Currently, charter hire rates for product tankers are significantly lower than applicable historical averages and charter rates for bulkers, after showing signs of stabilization for a period, have declined to historical lows. The time charters for eight of our vessels (including the newbuildings) currently provide for charter rates that are above current market rates. If we receive lower charter rates under replacement charters or are unable to

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recharter all of our vessels, our business, results of operations, cash flows and financial condition may be adversely affected. In addition, in depressed market conditions, our charterers may no longer need a vessel that is currently under charter or may be able to obtain a comparable vessel at lower rates. As a result, charterers may seek to renegotiate the terms of their existing charter parties or avoid their obligations under those contracts. Should a counterparty fail to honor its obligations under agreements with us, we could sustain significant losses, which could have a material adverse effect on our business, results of operations, cash flows and financial condition.

We periodically employ some of our vessels on a spot basis. The spot charter market is highly competitive and freight rates within this market are highly volatile, while longer-term charter contracts provide income at pre-determined rates over more extended periods of time. We cannot assure you that we will be successful in keeping our vessels fully employed in these short-term markets, or that future spot rates will be sufficient to enable such vessels to be operated profitably. A significant decrease in spot market rates or our inability to fully employ our vessels by taking advantage of the spot market would reduce the incremental revenue received from spot chartering and adversely affect our results of operations, including our profitability and cash flows, which, in turn, could impair our ability to service our debt.

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

Under the terms of the charter agreements under which our vessels operate, or are expected to operate in the case of newbuilding vessels, when a vessel is “off-hire,” or not available for service or otherwise deficient in its condition or performance, the charterer generally is not required to pay the hire rate, and we will be responsible for all costs (including the cost of bunker fuel) unless the charterer is responsible for the circumstances giving rise to the lack of availability. A vessel generally will be deemed to be off-hire if there is an occurrence preventing the full working of the vessel due to, among other things:

- operational deficiencies;
- the removal of a vessel from the water for repairs, maintenance or inspection, which is referred to as drydocking;
- equipment breakdowns;
- delays due to accidents or deviations from course;
- occurrence of hostilities in the vessel’s flag state;
- crewing strikes, labor boycotts, certain vessel detentions or similar problems; or
- our failure to maintain the vessel in compliance with its specifications, contractual standards and applicable country of registry and international regulations or to provide the required crew.

Furthermore, while we believe the charterer of a pirated vessel would remain liable for charter payments while the vessel is seized by pirates, the charterer may dispute this and withhold charter payments until the vessel is released. A charterer may also claim that a vessel seized by pirates was not “on-hire” for a certain number of days and it is therefore entitled to cancel the charter party, a claim that we would dispute. We may not be adequately insured to cover losses from these incidents, which could have a material adverse effect on us. In addition, any detention and/or hijacking of our vessels as a result of an act of piracy, or an increase in cost or unavailability of insurance for our vessels, could have a material adverse impact on our business, financial condition, results of operations and ability to reinstate the payment of dividends.

We may be unable to attract and retain key management personnel and other employees in the shipping industry, which may negatively impact the effectiveness of our management and our results of operations.

Our success depends to a significant extent upon the abilities and efforts of our management team. We expect to enter into employment contracts with Nicholas G. Fistes, our Chairman, and Michail S. Zolotas, our Deputy Chairman, Chief Executive Officer and President, and we have entered into an employment agreement

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with Allan L. Shaw, our Chief Financial Officer. Our success will depend upon our ability to retain key members of our management team and to hire new members as may be necessary. The loss of any of these individuals could adversely affect our business prospects and financial condition. Difficulty in hiring and retaining replacement personnel could have a similar effect. We do not maintain “key man” life insurance on any of our officers.

If we are unable to operate our vessels efficiently, we may be unsuccessful in competing in the highly competitive international tanker market.

The operation of tanker vessels and transportation of crude and petroleum products is extremely competitive. Competition arises primarily from other tanker owners, including major oil companies as well as independent tanker companies, some of whom have substantially greater resources than our own. Competition for the transportation of oil and oil products can be intense and depends on price, location, size, age, condition and the acceptability of the tanker and its operators to the charterers. Due in part to the highly fragmented market, competitors with greater resources could enter the product tanker shipping markets and operate larger fleets through consolidations or acquisitions and may be able to offer lower charter rates and higher quality vessels than we are able to offer. Our market share may decrease in the future. We may not be able to compete profitably as we expand our business into new geographic regions or provide new services. New markets may require different skills, knowledge or strategies than we use in our current markets, and the competitors in those new markets may have greater financial strength and capital resources than we do.

The operation of tankers involves certain unique operational risks.

The operation of tankers has unique operational risks associated with the transportation of oil. An oil spill may cause significant environmental damage, and a catastrophic spill could exceed the insurance coverage available. Compared to other types of vessels, tankers are exposed to a higher risk of damage and loss by fire, whether ignited by a terrorist attack, collision, or other cause, due to the high flammability and high volume of the oil transported in tankers.

If we are unable to maintain or safeguard our vessels adequately, we may be unable to prevent these events. Any of these circumstances or events could negatively impact our business, financial condition and results of operations. In addition, the loss of any of our vessels could harm our reputation as a safe and reliable vessel owner and operator.

We may not be able to grow or effectively manage our growth, which may negatively impact our cash flows and operating results.

A principal focus of our strategy is to grow by expanding our product tanker and dry bulk fleet as opportunities are identified. Our future growth will depend on a number of factors. These factors include our ability to:

- identify vessels for acquisition;
- consummate acquisitions;
- integrate acquired vessels successfully with our existing operations;
- identify businesses engaged in managing, operating or owning vessels for acquisitions or joint ventures;
- hire, train and retain qualified personnel and crew to manage and operate our growing business and fleet;
- identify additional new markets;
- improve our operating, financial and accounting systems and controls; and
- obtain required financing for our existing and new operations.

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A deficiency in any of these factors could adversely affect our ability to achieve anticipated growth in cash flows or realize other anticipated benefits. In addition, competition from other buyers could reduce our acquisition opportunities or cause us to pay a higher price than we might otherwise pay.

The process of integrating acquired vessels into our operations may result in unforeseen operating difficulties, may absorb significant management attention and may require significant financial resources that would otherwise be available for the ongoing development and expansion of our existing operations. Future acquisitions could result in the incurrence of additional indebtedness and liabilities that could have a material adverse effect on our business, results of operations, cash flows and financial condition. Further, if we issue additional common shares, your interest in our Company will be diluted.

Capital expenditures and other costs necessary to operate and maintain our vessels may increase due to changes in governmental regulations or safety or other equipment standards.

Changes in governmental regulations or safety or other equipment standards, as well as compliance with standards imposed by maritime self-regulatory organizations and customer requirements or competition, may require us to make additional expenditures to operate and maintain our vessels. These expenditures could increase as a result of changes in:

- the cost of our labor and materials;
- the cost of suitable replacement vessels;
- customer/market requirements;
- increases in the size of our fleet; and
- governmental regulations and maritime self-regulatory organization standards relating to safety, security or the environment.

In order to satisfy these requirements, we may, from time to time, be required to take our vessels out of service for extended periods of time, with corresponding losses of revenues. In the future, market conditions may not justify these expenditures or enable us to operate some or all of our vessels profitably during the remainder of their economic lives.

If we are unable to fund our capital expenditures, we may not be able to take delivery and/or operate our vessels, which would have a material adverse effect on our business.

In order to fund our capital expenditures, we may be required to incur additional borrowings or raise capital through the sale of debt or equity securities. Our ability to access the capital markets through future offerings may be limited by our financial condition at the time of any such offering as well as by adverse market conditions resulting from, among other things, general economic conditions and contingencies and uncertainties that are beyond our control. Generally, significant capital expenditures are required to take delivery of our newbuilding vessels. In addition, our existing vessels may require significant capital expenditures, such as expenditures for scheduled and unscheduled dry-docking and regulatory compliance, to continue operations. As a result, the failure to obtain the funds necessary for our capital expenditures could have a material adverse effect on our business, results of operations and financial condition.

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

Unless we maintain reserves or are able to borrow or raise funds for vessel replacement, we will be unable to replace the vessels in our fleet upon the expiration of their useful lives, which we estimate to be at a range of 25 to 30 years. Our cash flows and income are dependent on the revenues earned by the chartering of our vessels to customers. If we are unable to replace the vessels in our fleet upon the expiration of their useful lives, our business, results of operations and financial condition in the future will be materially and adversely

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affected. Any reserves set aside for vessel replacement may not be available for dividends, if any, in the future.

Exposure to currency exchange rate fluctuations will result in fluctuations in our cash flows and operating results.

Our vessel-owning subsidiaries generate revenues in U.S. dollars but incur certain expenses in other currencies, primarily Euros. During the year ended December 31, 2010, the value of the U.S. dollar reached a high of \$1.46 and a low of \$1.19 compared to the Euro. Due to the sovereign debt crisis in certain EU-member countries, the U.S. dollar-Euro exchange rate continues to experience volatility. An adverse or positive movement in these currencies could increase our expenses. During the year ended December 31, 2010, the effect was minimal.

Our incorporation under the laws of Bermuda may limit the ability of our shareholders to protect their interests.

We are a Bermuda company. Our memorandum of association and bye-laws and the Bermuda Companies Act of 1981, as amended, or the BCA, govern our corporate affairs. Investors may have more difficulty in protecting their interests in the face of actions by management, directors or controlling shareholders than would shareholders of a corporation incorporated in a United States jurisdiction. Under Bermuda law, a director generally owes a fiduciary duty only to the company, not to the company's shareholders. Our shareholders may not have a direct cause of action against our directors. In addition, Bermuda law does not provide a mechanism for our shareholders to bring a class action lawsuit. Further, our bye-laws provide for the indemnification of our directors or officers against any liability arising out of any act or omission, except for an act or omission constituting fraud or dishonesty. There is a statutory remedy under Section 111 of the BCA, which provides that a shareholder may seek redress in the courts as long as such shareholder can establish that our affairs are being conducted, or have been conducted, in a manner oppressive or prejudicial to the interests of some of our shareholders, including such shareholder.

If the recent volatility in LIBOR continues, it could affect our profitability, earnings and cash flow.

LIBOR has recently been volatile, with the spread between LIBOR and the prime lending rate widening significantly at times. These conditions are the result of the recent disruptions in the international credit markets. Because the interest rates borne by our outstanding indebtedness fluctuate with changes in LIBOR, if this volatility were to continue, it would affect the amount of interest payable on our debt, which, in turn, could have an adverse effect on our profitability, earnings and cash flow. Recently, however, lenders have insisted on provisions that entitle the lenders, in their discretion, to replace published LIBOR as the base for the interest calculation with their cost-of-funds rate. If we are required to agree to such a provision in future loan agreements, our lending costs could increase significantly, which would have an adverse effect on our profitability, earnings and cash flow.

It may not be possible for investors to enforce U.S. judgments against us.

We and the majority of our subsidiaries are incorporated in jurisdictions outside the U.S. (with the exception of NewLead Holdings (US) LLC, which is incorporated in Delaware), and substantially all of our assets and those of our subsidiaries are located outside the U.S. In addition, most of our directors and officers are non-residents of the U.S., and all or a substantial portion of the assets of such officers and directors are located outside the U.S. As a result, it may be difficult or impossible for U.S. investors to serve process within the U.S. upon us, our subsidiaries or our directors and officers or to enforce a judgment against us for civil liabilities in U.S. courts. In addition, you should not assume that courts in the countries in which we or our subsidiaries are incorporated or where our or the assets of our subsidiaries are located (1) would enforce judgments of U.S. courts obtained in actions against us or our subsidiaries based upon the civil liability provisions of applicable U.S. federal and state securities laws or (2) would enforce, in original actions, liabilities against us or our subsidiaries based on the laws of such jurisdictions.

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U.S. tax authorities could treat us as a “passive foreign investment company,” which could have adverse U.S. federal income tax consequences to U.S. shareholders.

A foreign corporation will be treated as a “passive foreign investment company,” or PFIC, for U.S. federal income tax purposes if either (1) at least 75% of its gross income for any taxable year consists of certain types of “passive income” or (2) at least 50% of the average value of the corporation’s assets produce or are held for the production of those types of “passive income.” For purposes of these tests, “passive income” includes dividends, interest, and gains from the sale or exchange of investment property, and rents and royalties other than rents and royalties which are received from unrelated parties in connection with the active conduct of a trade or business. For purposes of these tests, income derived from the performance of services does not constitute “passive income.” U.S. shareholders of a PFIC are subject to a disadvantageous U.S. federal income tax regime applicable to the income derived by the PFIC, the distributions they receive from the PFIC, and the gain, if any, they derive from the sale or other disposition of their shares in the PFIC.

Based on our method of operation, we do not believe that we have been, are or will be a PFIC. In this regard, we treat the gross income we derive or are deemed to derive from our chartering activities as services income, rather than rental income. Accordingly, we believe that our income from our chartering activities does not constitute “passive income,” and the assets that we own and operate in connection with the production of that income do not constitute passive assets.

There is, however, no direct legal authority under the PFIC rules addressing our method of operation. Accordingly, no assurance can be given that the U.S. Internal Revenue Service, or IRS, or a court of law will accept our position, and there is a risk that the IRS or a court of law could determine that we are a PFIC. Moreover, no assurance can be given that we would not constitute a PFIC for any future taxable year if there were to be changes in the nature and extent of our operations.

If the IRS were to find that we are or have been a PFIC for any taxable year, our U.S. shareholders would face adverse and special U.S. tax consequences. Among other things, the distributions a shareholder received with respect to our shares and the gain, if any, a shareholder derived from his sale or other disposition of our shares would be taxable as ordinary income (rather than as qualified dividend income or capital gain, as the case may be), would be treated as realized ratably over his holding period in our common shares, and would be subject to an additional interest charge. However, a U.S. shareholder may be able to make certain tax elections that would ameliorate these consequences. See the discussion under “Taxation — United States Federal Income Taxation of U.S. Holders — Passive Foreign Investment Company Status and Significant Tax Consequences.”

We may have to pay tax on U.S.–source income, which would reduce our earnings.

Under the United States Internal Revenue Code, referred to herein as the Code, 50% of the gross shipping income of a vessel-owning or chartering corporation, such as our Company and our subsidiaries, that is attributable to transportation that begins or ends, but that does not both begin and end, in the United States is characterized as U.S.–source shipping income and is subject to a 4% United States federal income tax without allowance for deduction, unless that corporation qualifies for exemption from tax under Section 883 of the Code and the related treasury regulations, referred to herein as “Treasury Regulations”.

We expect that we and each of our subsidiaries qualify for this statutory tax exemption, and we take this position for United States federal income tax reporting purposes. However, there are factual circumstances beyond our control that could cause us to lose the benefit of this tax exemption and thereby become subject to United States federal income tax on our U.S.–source income.

If we or our subsidiaries are not entitled to exemption under Section 883 of the Code for any taxable year, the imposition of a 4% U.S. federal income tax on our U.S.–source shipping income and that of our subsidiaries could have a negative effect on our business and would result in decreased earnings available for distribution to our shareholders. See the discussion under “Taxation — United States Federal Income Taxation of Our Company.”

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Risks Relating to Our Common Shares

There may not be an active market for our common shares, which may cause our common shares to trade at a discount and make it difficult to sell the common shares you purchase.

We cannot assure you that an active trading market for our common shares will be sustained. We cannot assure you of the price at which our common shares will trade in the public market in the future or that the price of our shares in the public market will reflect our actual financial performance. You may not be able to resell your common shares at or above their current market price. Additionally, a lack of liquidity may result in wide bid–ask spreads, contribute to significant fluctuations in the market price of our common shares and limit the number of investors who are able to buy the common shares.

The product tanker markets have been highly unpredictable and volatile. The market price of our common shares may be similarly volatile.

Michail S. Zolotas, our Chief Executive Officer, President and Deputy Chairman, beneficially owns approximately 91% of our outstanding common shares and, as a result, he is able to influence the outcome of shareholder votes.

As of December 31, 2010, Michail S. Zolotas, our Chief Executive Officer, President and Deputy Chairman, beneficially owns approximately 91% of our outstanding common shares through his ownership of common shares directly and through Grandunion, his beneficial ownership of the common shares underlying the 7% senior unsecured convertible notes (the “7% Notes”), and through Grandunion’s voting power over the shares subject to a voting agreement between Grandunion and Rocket Marine Inc., or Rocket Marine, a company controlled by two of our former directors and principal shareholders. For so long as Mr. Zolotas beneficially owns a significant percentage of our outstanding common shares, he will be able to control or influence the outcome of any shareholder vote, including the election of directors, the adoption or amendment of provisions in our memorandum of association or bye–laws and possible recapitalizations, amalgamations, corporate control contests and other significant corporate transactions. This concentration of beneficial ownership may have the effect of delaying, deferring or preventing a change in control, recapitalization, amalgamation, consolidation, takeover or other business combination. This concentration of beneficial ownership could also discourage a potential acquirer from making a tender offer or otherwise attempting to obtain control of us, which could in turn have an adverse effect on the market price of our common shares. In addition, this concentration of beneficial ownership has had, and may continue to have, an adverse effect on the liquidity of our common shares.

Anti–takeover provisions in our constitutional documents and in our loan/financing agreements could have the effect of discouraging, delaying or preventing a recapitalization, amalgamation or acquisition or other business combination, which could adversely affect the market price of our common shares.

Several provisions of our bye–laws and the loan/financing agreements to which we are party could discourage, delay or prevent a recapitalization or acquisition that shareholders may consider favorable. These include provisions:

- authorizing our board of directors to issue “blank check” preference shares without shareholder approval;
- establishing a classified board of directors with staggered, three–year terms;
- prohibiting us from engaging in a “business combination” with an “interested shareholder” for a period of three years after the date of the transaction in which the person becomes an interested shareholder unless certain conditions are met;
- not permitting cumulative voting in the election of directors;
- authorizing the removal of directors only for cause and only upon the affirmative vote of the holders of at least 80% of our outstanding common shares;

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- limiting the persons who may call special meetings of shareholders to our board of directors, subject to certain rights guaranteed to shareholders under the BCA;
- requiring Grandunion, or Nicholas Fistes and Michail Zolotas, directly or indirectly, to maintain legal and beneficial ownership of not less than 10% of the issued and outstanding share capital of the Company (whereas in two loan agreements the requirement is for Michail Zolotas and Nicholas Fistes to maintain, directly or indirectly, legal and beneficial ownership of not less than 33.3% of the issued and outstanding share capital of the Company);
- requiring Nicholas Fistes and Michail Zolotas to be at any given time the beneficial owners of at least 50.1% of the voting share capital of Grandunion;
- requiring Nicholas Fistes and Michail Zolotas to remain at any given time the Chairman, and the President and Chief Executive Officer of the Company, respectively; and
- establishing advance notice requirements for nominations for election to our board of directors and for proposing matters that can be acted on by shareholders at our shareholder meetings.

These provisions could have the effect of discouraging, delaying or preventing a recapitalization, amalgamation or acquisition, which could adversely affect the market price of our common shares.

Our board of directors has determined to suspend the payment of cash dividends in order to preserve capital and to allow management to focus on improving our operating results, and until conditions improve in the international shipping industry and credit markets, management will continue to evaluate whether to reinstate the payment of dividends.

On September 12, 2008, our board of directors determined to immediately suspend payment of our quarterly dividend. The decision followed our management's strategic review of our business and reflected our focus on improving our long-term strength and operational results. We will make dividend payments to our shareholders only if our board of directors, acting in its sole discretion, determines that such payments would be in our best interest and in compliance with relevant legal and contractual requirements. The principal business factors that our board of directors expects to consider when determining the timing and amount of dividend payments will be our earnings, financial condition and cash requirements at the time. Currently, the principal contractual and legal restrictions on our ability to make dividend payments are those contained in our Facility Agreement as well as in our other credit facilities and those required by Bermuda law.

Our debt agreements contain covenants that limit our ability to pay dividends. For example, our credit facility with Marfin Egnatia Bank S.A. prohibits us from paying dividends without our lender's consent, and the Facility Agreement only permits the payment of dividend if we meet certain ratios. Our facility agreements further require us to maintain financial ratios and minimum liquidity and working capital amounts.

Under Bermuda law, we may not declare or pay dividends if there are reasonable grounds for believing that (1) we are, or would after the payment be, unable to pay our liabilities as they become due or (2) the realizable value of our assets would thereby be less than the sum of our liabilities, our issued share capital (the total par value of all outstanding shares) and share premium accounts (the aggregate amount paid for the subscription for our shares in excess of the aggregate par value of such shares). Consequently, events beyond our control, such as a reduction in the realizable value of our assets, could cause us to be unable to make dividend payments.

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We may incur other expenses or liabilities that would reduce or eliminate the cash available for distribution as dividends in the future. We may also enter into new agreements or new legal provisions may be adopted that will restrict our ability to pay dividends in the future. As a result, we cannot assure you that we will be able to reinstate the payment of dividends.

Item 4. Information on the Company

A. History and Development of the Company

The legal and commercial name of the Company is NewLead Holdings Ltd., a company incorporated under the Bermuda Companies Act of 1981 on January 12, 2005. NewLead's principal place of business is 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38 and its telephone number is (30) 213-014-8600.

NewLead is an international shipping company engaged in the transportation of refined products, such as gasoline and jet fuel, and dry bulk goods, such as iron ore, coal and grain. We operate a fleet of six double-hulled product tankers and 16 dry bulk carriers with a combined carrying capacity of approximately 1.89 million dwt. We seek to provide our customers with safe, reliable and environmentally sound seaborne transportation services that meet stringent internal and external standards while endeavoring to capitalize on the dynamics of the shipping industry. We will continue to evaluate options to expand our fleet and operations through opportunistic acquisitions designed to create shareholder value.

Our business strategy is to invest in the product tanker and dry bulk markets in order to enhance our source of future revenues and profits, and to also provide more consistent shareholder returns. We believe our ability to opportunistically select and efficiently operate both product tanker and dry bulk vessels will provide the potential for greater returns. In addition, we continue to revitalize our fleet, lower the fixed cost structure inherited from our predecessor, and grow our extensive network of customer relationships.

In October 2009, our predecessor company, Aries Maritime Transport Limited, underwent a recapitalization of approximately \$400.0 million and installed new executive management. Upon the successful completion of these two initiatives, we subsequently changed our name to NewLead Holdings Ltd. and implemented the following corporate actions in connection with our development strategy:

- Brought in-house commercial, operational and technical management with highly qualified and experienced personnel;
- Exited the container sector;
- Completed the divestiture of all of the underperforming and unprofitable tanker vessels that existed prior to the recapitalization;
- Implemented a newbuilding program;
- Doubled our fleet size from 11 to 22 vessels;
- Diversified both our vessel and charter mix to limit our exposure to market cycles, while positioning ourselves to take advantage of market upswings;
- Focused on creating an advantageous blend of product tanker and dry bulk vessels; and
- Created a scalable platform to support future growth.

Since our recapitalization, we have put in place a scalable platform which we believe will enable us to grow our fleet without adding significant overhead. We are now seeking to expand upon our new platform and reduce our leverage.

Furthermore, we believe we have benefitted from certain transactions with Grandunion, a company controlled by two of our named executive officers — Michail S. Zolotas, our Chief Executive Officer, and Nicholas G. Fistes, our Chairman of the Board and its affiliates. Grandunion and its affiliates helped to facilitate the recapitalization and assembling of our core fleet and also bring in-house our commercial, operational and technical management. However, we do not plan to make, and will not make, any additional

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vessel acquisitions from Grandunion, Michail S. Zolotas, Nicholas G. Fistes or their respective affiliates, except that we reserve the right to exercise our right of first refusal as to three newbuildings owned by Grandunion if and when a triggering event occurs. We do not anticipate that our plan not to purchase any further vessels from Grandunion, Michail S. Zolotas, Nicholas G. Fistes or their respective affiliates will have an effect on our business or operating results.

2009 Recapitalization

On October 13, 2009, we completed an approximately \$400.0 million recapitalization, which resulted in Grandunion acquiring control of the Company. Pursuant to the Stock Purchase Agreement entered into on September 16, 2009, Grandunion, a company controlled by Michail S. Zolotas and Nicholas G. Fistes, acquired 1,581,483 newly issued common shares of the Company in exchange for three dry bulk carriers. Of such shares, 222,223 were transferred to Rocket Marine, a company controlled by two former directors and principal shareholders in the Company, in exchange for Rocket Marine and its affiliates entering into a voting agreement with Grandunion. Under this voting agreement, Grandunion controls the voting rights relating to the shares owned by Rocket Marine and its affiliates. As of June 29, 2011, Grandunion owned approximately 28% of the Company's common shares and, as a result of the voting agreement, controls the vote of approximately 48% of the Company's outstanding common shares.

In connection with the recapitalization, the Company issued \$145.0 million in aggregate principal amount of 7% Notes. The 7% Notes are convertible into common shares at a conversion price of \$9.00 per share, subject to adjustment for certain events, including certain distributions by the Company of cash, debt and other assets, spin offs and other events. In November 2009, Focus Maritime Corp., a company controlled by Mr. Zolotas, the Company's Deputy Chairman, President and Chief Executive Officer, converted \$20.0 million of the 7% Notes into approximately 2.2 million new common shares. As a result, in the aggregate, \$125.0 million of the 7% Notes remain outstanding.

Name Change and Amended Bye-Laws

NewLead Holdings Ltd. was incorporated on January 12, 2005 under the name "Aries Maritime Transport Limited" and, on December 21, 2009, upon the receipt of shareholder approval, the Company changed its name to NewLead Holdings Ltd. at which time the Company changed its trading symbol on the NASDAQ Stock Market to "NEWL." In addition, upon the receipt of shareholder approval at the same special general meeting, the Company adopted a change to its bye-laws to permit written resolutions to be approved by a majority of the shareholders rather than unanimously.

Fleet Expansion and Activities

Dropdown of six vessels and commercial/technical management companies

On April 1, 2010, we completed the acquisition of six vessels (four dry bulk vessels and two product tankers) and Newlead Shipping S.A., or Newlead Shipping, and its subsidiaries, an integrated technical and commercial management company, pursuant to the terms of a Securities Purchase Agreement dated March 31, 2010. In exchange for shares of the subsidiaries acquired, we assumed approximately \$161.0 million of bank debt, accounts payable and accrued liabilities, net of cash acquired, and paid Grandunion an additional consideration of \$5.3 million, which consisted of \$100,000 in cash, as well as issued 700,214 common shares to Grandunion, reflecting the 737,037 shares initially issued to complete the acquisition and the subsequent cancellation of 36,823 of these shares to maintain the aggregate consideration in accordance with the terms of the Securities Purchase Agreement as a result of assuming a higher amount of liabilities. The shares were subject to a Lock-Up Agreement, dated April 1, 2010, whereby the shares issued to Grandunion were restricted from disposition or any other transfer for the one year period ended April 1, 2011.

Newlead Shipping is an integrated technical and commercial management company that manages oil tankers as well as dry bulk vessels through its subsidiaries. The subsidiaries provide a broad spectrum of technical and commercial management to all segments of the maritime shipping industry. Newlead Shipping and certain of its subsidiaries provide technical and commercial management services to our product tanker

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vessels. Newlead Bulkers S.A., or Newlead Bulkers, which is a subsidiary of Newlead Shipping that was acquired as part of this transaction, provides technical and commercial management services to our dry bulk vessels. Newlead Shipping holds the following accreditations:

- ISO 9001 from American Bureau of Shipping Quality Evaluations for a quality management system, by consistently providing a service that meets customer and applicable statutory and regulatory requirements, and by enhancing customer satisfaction through, among other things, processes for continual improvement;
- ISO 14001 from American Bureau of Shipping for environmental management, including policies and objectives targeting legal and other requirements; and
- Certificate of Company Compliance by the American Bureau of Shipping for safety, quality and environmental requirements of the ABS HSQE guide.

Acquisition of five vessels

In July 2010, we completed the acquisition of five dry bulk vessels, including two newbuildings with long term time charters. Total consideration for the acquisition of the five vessels was approximately \$147.0 million, which included approximately \$93.0 million in assumed bank debt and other liabilities. The balance, representing newbuilding installments, is anticipated to be financed with committed bank and shipyard credit facilities, as well as with cash from our balance sheet.

Newbuilding program and delivery of one new Kamsarmax vessel

In the second quarter of 2010, we completed the purchase of two geared Kamsarmaxes (each approximately 80,000 dwt) for an aggregate purchase price of \$112.7 million (including payments up to the delivery of the vessels and ready for sea costs). The first Kamsarmax, named the Newlead Tomi, was delivered in December 2010 and the second vessel is expected to be delivered from the COSCO Dalian Shipyard during the fourth quarter of 2011 and will be chartered out immediately upon delivery. The first vessel is chartered-out for an initial period of five years at a net rate of \$28,710 per day. The charter provides the charterer with call option for one year plus one additional year, and the owner with a put option for one year plus one additional year at a net charter rate between \$19,800 and \$28,710. The second vessel is chartered-out for a seven-year term at a net rate of \$27,300 per day.

In the first quarter of 2010, we completed the purchase of a 92,000 dwt post-Panamax vessel for \$37.0 million. The vessel, named the Newlead Endurance, was constructed at a Korean shipyard and was delivered in June 2011. The vessel is chartered-out to a charterer for approximately seven years at a floor rate of \$14,438 net rate per day plus 50/50 profit sharing of the daily earnings of the charterer above \$17,000. We financed the acquisition of this vessel with a combination of cash from the balance sheet and a sale and immediate bareboat leaseback transaction completed during 2011.

As part of the acquisition of the five vessels in July 2010 described above, we also acquired two 35,000 dwt Handysize vessels, which are under construction at a shipyard in Korea and are expected to be delivered during the second half of 2011 and third quarter of 2012, respectively. Once delivered, each vessel will be immediately chartered-out for 12 years at a floor rate of \$12,000 per day plus 40/60 profit sharing (Newlead/Charterer) of the daily earnings of the charterer above \$14,000 to a European charterer.

In addition, we also secured the right of first refusal for three additional newbuildings from Grandunion. The three newbuildings are 81,000 dwt Kamsarmaxes, being constructed at a shipyard in Korea, scheduled for delivery in 2013 with long-term charters attached.

Acquisition of one dry bulk vessel

In the third quarter of 2010, we entered into an agreement for the acquisition of one 2003 built, 34,682 dwt, Handysize dry bulk vessel for a consideration of \$24.5 million. The vessel, named the Newlead Prosperity, was delivered in early October 2010 and was initially bareboat chartered up to March 15, 2011,

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with an obligation to conclude the purchase by the end of the charter period. By an addendum signed on March 11, 2011, the parties agreed initially to extend the charter period until April 8, 2011, while by a second addendum signed on April 7, 2011, the charter period was extended until May 6, 2011. On May 10, 2011, we completed the acquisition of the vessel. The vessel has been fixed in a time charter for seven years (plus or minus three months) at a net daily hire rate of \$12,936. We financed the acquisition of this vessel with a combination of debt and cash from the balance sheet.

Sale of non-core vessels

Our “non-core” fleet, excluding previously disposed container vessels, consisted of the following vessels: the High Land, the High Rider, the Chinook, the Ostria and the Nordanvind. All these non-core vessels have been sold. All other vessels currently in operation, as well as the newbuildings, represent Newlead’s “core” fleet.

In April 2010, we divested two non-core vessels, the High Rider and the Chinook. The High Rider was sold for a consideration of approximately \$6.7 million. We transferred the vessel Chinook and in exchange we acquired two Kamsarmaxes under construction for an aggregate consideration of approximately \$112.7 million (including the assumption of newbuilding contract commitments and debt related to the two Kamsarmaxes). The gain on the sale of the High Rider amounted to \$0.1 million.

In September 2010, we divested three non-core vessels, the High Land, the Ostria and the Nordanvind, for a total consideration of approximately \$20.8 million. The aggregate gain on the sale of these vessels amounted to \$1.1 million.

Furthermore, in January 2010, we completed the sale of our container vessels, the MSC Seine and the Saronikos Bridge, for approximately \$13.0 million of gross cash proceeds. The aggregate gain on the sale of these vessels amounted to \$2.5 million. A portion of these proceeds was used to pay down outstanding debt. As a result of the sale and delivery of these vessels, we exited the container market. Accordingly, the results of operations related to the container market are reflected as discontinued operations.

New charter party agreements

In August 2010, we reached two agreements with a charterer to enter into time charters for the Newlead Avra and the Newlead Fortune, each a 2004 built, 73,495 dwt Panamax, for 12 months. The time charter for the Newlead Fortune commenced in November 2010 and the time charter for the Newlead Avra commenced in February 2011. The net daily charter-out rate for both vessels is \$13,825 plus 50/50 profit sharing of the daily earnings of the charterer above \$14,000. In addition, we reached an agreement with a charterer to enter into a time charter for the Grand Rodosi for a period ranging from four to six months. The net daily charter-out rate is \$21,516 and the time charter commenced during September 2010.

In February 2011, the Newlead Compass (72,934 dwt) and the Newlead Compassion (72,782 dwt) were each chartered-out for a five-year period. The Newlead Compassion commenced its charter in May 2011, while the Newlead Compass is expected to commence its charter during the third quarter of 2011. The net daily charter-out rate for each vessel will be \$11,700 for the first year, \$13,650 for the second, third and fourth years and \$15,600 for the fifth year. In addition, during the term of the charters, we will have a profit-sharing interest equal to 50% of the actual earnings of the charterer up to \$26,000 per day and 30% above such amount.

Sale and leaseback of four vessels

In November 2010, we entered into an agreement with Lemissoler Maritime Company W.L.L. for the sale and immediate bareboat leaseback of four dry bulk vessels comprised of three Capesize vessels, the Brazil, the Australia, and the China, as well as the Panamax vessel Grand Rodosi. Total consideration for the sale was \$86.8 million and the bareboat leaseback charter period is eight years. We retain call options to buy the vessels back during the lease period at pre-determined de-escalating prices and we are obligated to repurchase the vessels for approximately \$40.0 million at the end of the lease term. The repurchase obligation can be paid

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partially in cash and partially in common shares. We have also secured the option to substitute one or more vessels throughout the term of the lease, subject to approval by the owners and their lenders. The aggregate net rate of the bareboat charters for the four vessels is approximately \$40,000 per day for the first three years, and approximately \$24,000 per day thereafter. We will continue to earn charter hire on the current time charters on the vessels. The sale and leaseback transaction was treated as a capital lease for accounting purposes, resulting in an immediate loss of \$2.7 million (in respect of each vessel for which the fair value was below their carrying amount) and deferred gain of \$10.5 million (in respect of each vessel for which the fair value was above their carrying amount) which is amortized over the life of each vessel.

In addition, pursuant to the sale and leaseback transaction, we agreed with Lemissoler Maritime Company W.L.L. (i) to issue 36,480 common shares upon execution of the agreement; (ii) on each of the first and second anniversaries of the date of the agreement, to deliver, at our option, either cash of \$182,400 or a number of common shares having a value of \$182,400, based on a common share value of 120% of the 30-day average immediately preceding such anniversary; and (iii) on each of the third through seventh anniversaries of the date of the agreement, to deliver, at our option, either cash of \$109,440 or a number of common shares having a value of \$109,440, based on a common share value of 120% of the 30-day average immediately preceding such anniversary. The cash or common shares that may be delivered on such anniversary dates are subject to downward adjustment upon the occurrence of certain events.

We used the proceeds from the aforementioned sale and leaseback transaction to repay all loans outstanding on the aforementioned vessels, as well as other bank debt and associated fees. Subsequently, we entered into a revolving credit facility of up to \$62.0 million by Marfin Egnatia Bank S.A., of which \$49.0 million has been drawn. We utilized this credit facility to refinance several vessels and to provide additional financial flexibility to the Company.

B. Business Overview

FLEET

As of June 29, 2011, NewLead controlled 22 vessels, of which 19 are in operation, including six double-hull product tankers, 13 dry bulk vessels and three dry bulk newbuilds. We have many long-established charter relationships which we believe are well regarded within the international shipping community. Our management's assessment of a charterer's financial condition and reliability is an important factor in negotiating employment of our vessels. The Company has established stringent requirements for selecting qualified charterers that are being practiced and adhered to.

The core fleet of 22 vessels consists of 16 dry bulk carriers (including the three dry bulk newbuilds) totaling 1.52 million dwt and six double-hull product tankers totaling 0.37 million dwt. The total dwt for the core fleet is 1.89 million. Of the core fleet, the 19 vessels currently in operation have an average age of 12.6 years. As of December 31, 2010, we had contracted 66%, 46% and 36% of our available days on a charter-out-basis for 2011, 2012 and 2013, respectively. As a result, as of such date, we had over \$200.0 million of total contracted revenue through 2013. The employment profile of the fleet as June 29, 2011 is reflected in the table below:

Vessel Name	Size	Vessel	Year Built	Charter Expiration	Net Daily Charter
	(Dwt)	Type			Hire Rate
Product Tanker Vessels					
Newlead Compass	72,934	Panamax	2006	Q3 2016 ⁽¹⁾	\$11,700 plus 50% profit sharing up to \$26,000 and 30% above such amount
Newlead Compassion	72,782	Panamax	2006	min: April 2016 max: June 2016 ⁽¹⁾	\$11,700 plus 50% profit sharing up to \$26,000 and 30% above such amount
Newlead Avra	73,495	Panamax	2004	min: February 2012 max: March 2012	\$13,825 plus 50% profit sharing above \$14,000

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Vessel Name	Size	Vessel	Year Built	Charter Expiration	Net Daily Charter
	(Dwt)	Type			Hire Rate
Newlead Fortune	73,495	Panamax	2004	min: November 2011 max: December 2011	\$13,825 plus 50% profit sharing above \$14,000
Hiotissa	37,329	Handymax	2004	— ⁽²⁾	Scorpio Handymax Tanker Pool Earnings
Hiona	37,337	Handymax	2003	— ⁽²⁾	Scorpio Handymax Tanker Pool Earnings
Dry bulk Vessels					
Newlead Endurance	92,000	Post–Panamax	2011	min: March 2018 max: May 2018	\$14,438 plus 50% profit sharing ⁽³⁾
Newlead Tomi	79,224	Kamsarmax	2010	min: September 2015 max: March 2016	\$28,710 ⁽⁴⁾
Newlead Prosperity	34,682	Handysize	2003	August 2011	\$12,188 ⁽⁵⁾
Newlead Victoria	75,966	Panamax	2002	min: July 2012 max: October 2012	Floating rate time charter ⁽⁶⁾
Brazil ⁽⁷⁾	151,738	Capesize	1995	min: December 2013 max: February 2014	\$28,985 ⁽⁸⁾
Australia ⁽⁷⁾	172,972	Capesize	1993	min: November 2011 max: January 2012	\$20,391
China ⁽⁷⁾	135,364	Capesize	1992	min: November 2015 max: October 2016	\$12,753
Grand Ocean	149,498	Capesize	1990	min: January 2012 max: May 2012 ⁽⁹⁾	\$19,680
Newlead Venetico	134,982	Capesize	1990	min: June 2012 max: October 2012 ⁽¹⁰⁾	\$17,760
Grand Rodosi ⁽⁶⁾	68,788	Panamax	1990	August 2011	\$22,325
Newlead Markela	71,733	Panamax	1990	min: February 2013 max: June 2013	\$21,972
Newlead Esmeralda	69,458	Panamax	1990	min: August 2011 max: November 2011	\$17,953
Newlead Spartounta	135,070	Capesize	1989	Spot	—
Newbuildings					
	Size (Dwt)	Vessel Type	Expected Delivery Date	Charter Term	Charter Rate (Daily, Net)
Newlead TBN	35,000	Handysize	2 nd Half 2011	Twelve years +/- 4 months	\$12,000 plus 40% profit sharing ⁽¹¹⁾
Newlead TBN	80,000	Kamsarmax	Q4 2011	Seven year time charter	\$27,300
Newlead TBN	35,000	Handysize	Q3 2012	Twelve years +/- 4 months	\$12,000 plus 40% profit sharing ⁽¹¹⁾

- (1) The time charter of the Newlead Compassion commenced in May 2011, while the Newlead Compass is expected to commence during Q3 2011. The net daily charter–out rate is \$11,700 for the first year, \$13,650 for the second, third and fourth year and \$15,600 for the fifth year plus 50.0% profit–sharing on the actual earnings of the charterer up to \$26,000 per day and 30% above such amount.
- (2) The Hiotissa entered the Handymax Tanker Pool of Scorpio Management in April 2011, while the Hiona is expected to enter the same pool in Q3 2011.
- (3) At the end of the seven year time charter, the charterer also has an option to extend the charter period for one year and one additional year. Charter–out rate for first optional year is \$15,400 (net) per day plus 50/50 profit sharing. Charter–out rate for second optional year is \$16,844 per day (net) plus 50/50 profit sharing.
- (4) Five year time charter at net charter rate of \$28,710 per day, plus charterer’s option for one year plus one additional year. The vessel owners have a put option for a second two–year charter at a net charter rate between \$19,800 and \$28,710 per day. The second charter is subject to the first charterer not exercising the optional years. The first and second charters secure a total charter duration of seven years for the vessel.
- (5) The vessel was chartered–in during the fourth quarter 2010 initially until March 15, 2011, with an obligation to conclude the purchase by the end of the charter period at the latest. By an addendum signed on March 11, 2011, the parties agreed initially to extend the charter period until April 8, 2011, while by a second addendum signed on

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April 7, 2011, the charter period was extended until May 6, 2011. On May 10, 2011, we completed the acquisition of the vessel. Subject to the charterer's option to redeliver the vessel in the Mediterranean Sea, which, if exercised, would result in a net daily charter-out rate of \$14,063.

- (6) The vessel owner shall have the right to an earlier redelivery of the vessel, at any time within the charter duration, subject to vessel owner's tendering to charterers three months' advance notice.
- (7) This vessel was sold and leased back to the Company on a bareboat charter for a period of eight years.
- (8) Net charter rate of \$28,985 per day for the first three years and \$26,180 per day thereafter, plus 50/50 profit sharing of the daily earnings of the charterer above \$26,600.
- (9) The charterer also has an option to extend the charter period for one additional year.
- (10) The charterer also has an option to extend the charter period for six additional months.
- (11) Base rate is \$12,000 per day. Above a rate of \$14,000 per day, profit sharing is 40% based on open book accounting on actual earnings. Charterers have a 50% purchase option.

Fleet Management

At December 31, 2009, the vessel-owning companies of the vessels Newlead Avra (formerly Altius), Newlead Fortune (formerly Fortius), High Land, High Rider and Ostria had technical ship management agreements with International Tanker Management Limited ("ITM"). The agreed annual management fees were approximately \$0.165 million per vessel for both 2010 and 2009. During the year ended December 31, 2010, the vessel owning companies of Newlead Avra and Newlead Fortune terminated their ship management agreements with ITM. Accordingly, the vessel owning companies of the vessels have signed agreements for the provision of both technical and commercial ship management services with Newlead Shipping, a company which was controlled by Grandunion and currently is NewLead's subsidiary. The agreed annual management fees were approximately \$0.20 million per vessel, and were in effect until Newlead Shipping became a subsidiary of Newlead.

The Chinook had a technical ship management agreement with Ernst Jacob, which was terminated upon the sale of the vessel on April 15, 2010. In January 2010, the vessel owning company of the Nordanvind also signed a technical ship management agreement with Ernst Jacob, which was terminated upon the sale of the vessel on September 7, 2010. The annual management fees per vessel for 2010 and 2009 were approximately €153,000 and €150,000, respectively (equal to approximately \$0.2 million per vessel).

At December 31, 2009, the Australia had a commercial and technical ship management agreement with Stamford Navigation Inc., or Stamford, and the China and the Brazil each had a commercial and technical ship management agreement with Newfront Shipping S.A., or Newfront. During the first quarter of 2010, these agreements were terminated. Accordingly, the vessel owning companies signed agreements for the provision of commercial and technical ship management services with Newlead Bulkers S.A., or Newlead Bulkers, a company which was controlled by Grandunion and currently is NewLead's subsidiary. The annual management fee under each of the agreements was approximately \$0.19 million per vessel; however, all payments to Newlead Bulkers have been eliminated since the date on which Newlead Bulkers became a subsidiary of Newlead.

Magnus Carriers Corporation, or Magnus Carriers, a company owned by two of our former officers and directors, provided the ship-owning companies of the Newlead Avra, the Newlead Fortune, the High Land, the High Rider, the Ostria and the Chinook with non-exclusive commercial management services in accordance with commercial management agreements that were cancelled by us effective May 1, 2009.

On April 1, 2010, we completed the acquisition of six vessels (four dry bulk vessels and two product tankers) and Newlead Shipping and its subsidiaries, an integrated technical and commercial management company, pursuant to the terms of the Purchase Agreement. Newlead Shipping and certain of its subsidiaries provide technical and commercial management services to our product tanker vessels. Newlead Bulkers, which is a subsidiary of Newlead Shipping that was acquired as part of this transaction, provides technical and commercial management services to our dry bulk vessels. As of December 31, 2010 and June 29, 2011, the commercial and technical management services of all of our owned and operated vessels are managed in-house.

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Crewing and Employees

As of December 31, 2010, all of our employees were employed by our wholly-owned subsidiaries, Newlead Shipping and Newlead Bulkers, which employed 36 persons and 33 persons, respectively, except for our Chairman, our CEO and our CFO who are employed by NewLead Holdings Ltd., all of whom are shore-based. We employ an average of 24 crew members per vessel owned, which number varies depending on the number of vessels in the fleet at any given time and duration of ship voyages.

Our technical managers ensure that all seamen have the qualifications and licenses required to comply with international regulations and shipping conventions and that our vessels employ experienced and competent personnel.

All of the employees of our managers are subject to a general collective bargaining agreement covering employees of shipping agents. These agreements set industry-wide minimum standards. We have not had any labor interruptions with our employees under this collective bargaining agreement.

Inspection by a Classification Society

Our vessels have been certified as being “in class” by Bureau Veritas, American Bureau of Shipping, Registro Italiano Navale (RINA), or Det Norske Veritas, each of which is a member of the International Association of Classification Societies. Every commercial vessel’s hull and machinery is evaluated by a classification society authorized by its country of registry. The classification society certifies that the vessel has been built and maintained in accordance with the rules of the classification society and complies with applicable rules and regulations of the vessel’s country of registry and the international conventions of which that country is a member. Each vessel is inspected by a surveyor of the classification society in three surveys of varying frequency and thoroughness: every year for the annual survey, every two to three years for intermediate surveys and every four to five years for special surveys. Should any defects be found, the classification surveyor will issue a “recommendation” for appropriate repairs, which have to be made by the shipowner within the time limit prescribed. Vessels may be required, as part of the annual and intermediate survey process, to be dry-docked for inspection of the underwater portions of the vessel and for necessary repair stemming from the inspection. Special surveys always require dry-docking.

Competition

We operate in shipping markets that are diversified, highly competitive and highly fragmented. Our business fluctuates in line with the main patterns of trade of the major dry bulk cargoes and varies according to changes in the supply and demand for these items. We compete for charters on the basis of price, vessel location, size, age and condition of the vessel, as well as on our reputation as an operator. We typically arrange our charters in the period market through the use of brokers, who negotiate the terms of the charters based on market conditions. We compete primarily with owners of dry bulk ships and owners of product tankers in the Aframax, Panamax and Handymax class sizes. The dry bulk shipping markets are divided among approximately 1,400 independent dry bulk carrier owners. The world’s active dry bulk fleet consists of approximately 7,000 vessels, aggregating approximately 460 million dwt. It is likely that we will face substantial competition for long term charter business from a number of experienced companies. Many of these competitors will have significantly greater financial resources than we do. It is also likely that we will face increased numbers of competitors entering into our transportation sectors, including in the dry bulk sector. Many of these competitors have strong reputations and extensive resources and experience. Increased competition may cause greater price competition, especially for long term charters.

Environmental and Other Regulations

Government regulation significantly affects the ownership and operation of our fleet. We are subject to various international conventions, laws and regulations in force in the countries in which our vessels may operate or are registered. Compliance with such laws, regulations and other requirements can entail significant expense, including vessel modification and implementation of certain operating procedures. Noncompliance

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with such regulations and requirements could result in the imposition of substantial penalties or require us to incur substantial costs or temporarily suspend operations of one or more of the vessels in our fleet.

A variety of governmental and private entities subject our vessels to both scheduled and unscheduled inspections. These entities include the local port authorities (applicable national authorities, such as the U.S. Coast Guard and harbor masters), classification societies, flag state administration (country of registry) and charterers, particularly terminal operators, and oil companies. Some of these entities require us to obtain permits, licenses, certificates and other authorizations for the operation of our fleet. Our failure to maintain necessary permits or approvals could result in imposition of substantial penalties or require us to incur substantial costs or temporarily suspend operation of one or more of the vessels in our fleet.

Heightened levels of environmental and quality concerns among insurance underwriters, regulators and charterers have led to greater inspection and safety requirements on all vessels and may accelerate the scrapping of older vessels throughout the industry. Increasing environmental concerns have created a demand for vessels that conform to stricter environmental standards. We are required to maintain operating standards for all of our vessels emphasizing operational safety, quality maintenance, continuous training of our officers and crews and compliance with applicable local, national and international environmental laws and regulations. We believe that the operation of our vessels is in compliance with applicable environmental laws and regulations and that our vessels have all material permits, licenses, certificates or other authorizations necessary for the conduct of our operations; however, because such laws and regulations are frequently changed and may impose increasingly stricter requirements, we cannot predict the ultimate cost of complying with these requirements, or the impact of these requirements on the resale value or useful lives of our vessels. In addition, a future serious marine incident that results in significant oil pollution or otherwise causes significant adverse environmental impact could result in additional legislation or regulation that could negatively affect our profitability.

International Maritime Organization

The IMO has negotiated a number of international conventions concerned with preventing, reducing or controlling pollution from ships. These fall into two main categories, consisting firstly of those concerned generally with ship safety standards, and secondly of those specifically concerned with measures to prevent pollution. The primary IMO regulations are discussed below.

The IMO continues to review and introduce new regulations. It is difficult to accurately predict what additional regulations, if any, may be passed by the IMO in the future and what effect, if any, such regulations might have on our operations.

Vessel Construction and Safety Requirements

The IMO has adopted MARPOL, which implements standards for the control, minimization or elimination of accidental, deliberate, or negligent discharge of oil, garbage, noxious liquids, harmful substances in packaged forms, sewage and air emissions. These regulations, which have been implemented in many jurisdictions in which our vessels operate, provide, in part, that:

- 25-year-old tankers must be of double-hull construction or of a mid-deck design with double-sided construction, unless:
 - (1) they have wing tanks or double-bottom spaces not used for the carriage of oil which cover at least 30% of the length of the cargo tank section of the hull or bottom; or
 - (2) they are capable of hydrostatically balanced loading (loading less cargo into a tanker so that in the event of a breach of the hull, water flows into the tanker, displacing oil upwards instead of into the sea);
- 30-year-old tankers must be of double-hull construction or mid-deck design with double-sided construction; and
- all tankers will be subject to enhanced inspections.

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Also, under IMO regulations, a newbuild tanker of 5,000 dwt and above must be of double-hull construction or a mid-deck design with double-sided construction or be of another approved design ensuring the same level of protection against oil pollution if the tanker:

- is the subject of a contract for a major conversion or original construction on or after July 6, 1993;
- commences a major conversion or has its keel laid on or after January 6, 1994; or
- completes a major conversion or is a newbuilding delivered on or after July 6, 1996.

Effective September 2002, the IMO accelerated its existing timetable for the phase-out of single-hull oil tankers. At the time, these regulations required the phase-out of most single-hull oil tankers by 2015 or earlier, depending on the age of the tanker and whether it has segregated ballast tanks. Under the regulations, the flag state may allow for some newer single-hull ships registered in its country that conform to certain technical specifications to continue operating until the 25th anniversary of their delivery. Any port state, however, may deny entry of those single-hull tankers that are allowed to operate until their 25th anniversary to ports or offshore terminals.

However, as a result of the oil spill in November 2002 relating to the loss of the MT Prestige, which was owned by a company not affiliated with us, in December 2003, the Marine Environmental Protection Committee of the IMO, or MEPC, adopted an amendment to the MARPOL Convention, which became effective in April 2005. The amendment revised an existing Regulation 13G accelerating the phase-out of single-hull oil tankers and adopted a new Regulation 13H on the prevention of oil pollution from oil tankers when carrying heavy grade oil.

Under the revised regulations, a flag state may permit continued operation of certain Category 2 or 3 tankers beyond their phase-out date in accordance with the above schedule. Under Regulation 13G, the flag state may allow for some newer single-hull oil tankers registered in its country that conform to certain technical specifications to continue operating until the earlier of the anniversary of the date of delivery of the vessel in 2015 or the 25th anniversary of their delivery. Under Regulations 13G and 13H, as described below, certain Category 2 and 3 tankers fitted only with double bottoms or double sides may be allowed by the flag state to continue operations until their 25th anniversary of delivery. Any port state, however, may deny entry of those single-hull oil tankers that are allowed to operate under any of the flag state exemptions.

In October 2004, the MEPC adopted a unified interpretation of Regulation 13G that clarified the delivery date for converted tankers. Under the interpretation, where an oil tanker has undergone a major conversion that has resulted in the replacement of the fore-body, including the entire cargo carrying section, the major conversion completion date shall be deemed to be the date of delivery of the ship, provided that:

- the oil tanker conversion was completed before July 6, 1996;
- the conversion included the replacement of the entire cargo section and fore-body and the tanker complies with all the relevant provisions of the MARPOL Convention applicable at the date of completion of the major conversion; and
- the original delivery date of the oil tanker will apply when considering the 15 years of age threshold relating to the first technical specifications survey to be completed in accordance with the MARPOL Convention.

In December 2003, the MEPC adopted a new Regulation 13H on the prevention of oil pollution from oil tankers when carrying heavy grade oil, or HGO, which includes most grades of marine fuel. The new regulation bans the carriage of HGO in single-hull oil tankers of 5,000 dwt and above after April 5, 2005, and in single-hull oil tankers of 600 dwt and above but less than 5,000 dwt, no later than the anniversary of their delivery in 2008.

Under Regulation 13H, HGO means any of the following:

- crude oils having a density at 15°C higher than 900 kg/m³;
- fuel oils having either a density at 15°C higher than 900 kg/m³ or a kinematic viscosity at 50°C higher than 180 mm²/s; or
- bitumen, tar and their emulsions.

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Under Regulation 13H, the flag state may allow continued operation of oil tankers of 5,000 dwt and above, carrying crude oil with a density at 15°C higher than 900 kg/m³ but lower than 945 kg/m³, that conform to certain technical specifications and if, in the opinion of the flag state, the ship is fit to continue such operation, having regard to the size, age, operational area and structural conditions of the ship, provided that the continued operation shall not go beyond the date that is 25 years after the date of its delivery. The flag state may also allow continued operation of a single-hull oil tanker of 600 dwt and above but less than 5,000 dwt, carrying HGO as cargo, if, in the opinion of the flag state, the ship is fit to continue such operation, having regard to the size, age, operational area and structural conditions of the ship, provided that the operation shall not go beyond the date that is 25 years after the date of its delivery.

The flag state may also exempt an oil tanker of 600 dwt and above carrying HGO as cargo if the ship is either engaged in voyages exclusively within an area under its jurisdiction, or is engaged in voyages exclusively within an area under the jurisdiction of another party, provided the party within whose jurisdiction the ship will be operating agrees. The same applies to vessels operating as floating storage units of HGO.

Any port state, however, can deny entry of single-hull tankers carrying HGO that have been allowed to continue operation under the exemptions mentioned above, into the ports or offshore terminals under its jurisdiction, or deny ship-to-ship transfer of HGO in areas under its jurisdiction except when this is necessary for the purpose of securing the safety of a ship or saving life at sea.

Revised Annex I to the MARPOL Convention entered into force in January 2007. Revised Annex I incorporates various amendments adopted since the MARPOL Convention entered into force in 1983, including the amendments to Regulation 13G (Regulation 20 in the revised Annex I) and Regulation 13H (regulation 21 in the revised Annex I). Revised Annex I also imposes construction requirements for oil tankers delivered on or after January 1, 2010. A further amendment to revised Annex I includes an amendment to the definition of HGO that will broaden the scope of Regulation 21. On August 1, 2007, regulation 12A (an amendment to Annex I) came into force requiring oil fuel tanks to be located inside the double hull in all ships with an aggregate oil fuel capacity of 600 m³ and above, which are delivered on or after August 1, 2010, including ships for which the building contract is entered into on or after August 1, 2007 or, in the absence of a contract, for which the keel is laid on or after February 1, 2008.

All of the tankers in our fleet are double-hulled. The phasing out of single-hull tankers in accordance with the MARPOL Convention and its amendments is expected to decrease tanker supply, which may help to prevent further decline in charter rates in the product tanker market.

Ballast Water Requirements

The IMO adopted an International Convention for the Control and Management of Ships' Ballast Water and Sediments, or the BWM Convention, in February 2004. The BWM Convention's implementing regulations call for a phased introduction of mandatory ballast water exchange requirements (beginning in 2009), to be replaced in time with mandatory concentration limits. The BWM Convention will not enter into force until 12 months after it has been adopted by 30 states, the combined merchant fleets of which represent not less than 35% of the gross tonnage of the world's merchant shipping. To date, there has not been sufficient adoption of this standard by governments that are members of the convention for it to take force. Moreover, the IMO has supported deferring the requirements of this convention that would first come into effect until December 31, 2011, even if it were to be adopted earlier. As of January 31, 2011, the BWM Convention had been adopted by 27 states, representing approximately 25% of the world's tonnage. We may incur costs to come into compliance with these requirements if they come into effect.

Air Emissions

In September 1997, the IMO adopted Annex VI to the MARPOL Convention to address air pollution from ships. Effective in May 2005, Annex VI sets limits on sulfur oxide and nitrogen oxide emissions from all commercial vessel exhausts and prohibits deliberate emissions of ozone depleting substances (such as halons and chlorofluorocarbons), emissions of volatile compounds from cargo tanks, and the shipboard incineration of specific substances. Annex VI also includes a global cap on the sulfur content of fuel oil. We believe that all

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our vessels are currently compliant in all material respects with these existing regulations. Additional or new conventions, laws and regulations may be also adopted that could require the installation of expensive emission control systems. Such future emission control requirements could adversely affect our business, cash flows, results of operations and financial condition.

In October 2008, the IMO adopted amendments to Annex VI regarding particulate matter, nitrogen oxide and sulfur oxide emission standards that entered into force on July 1, 2010. The amended Annex VI aims to reduce air pollution from vessels by, among other things, (i) implementing a progressive reduction of sulfur oxide emissions from ships, with the global sulfur cap reduced initially to 3.5% (from the current cap of 4.5%), effective from January 1, 2012, then progressively reduced to 0.50%, effective from January 1, 2020, subject to a feasibility review to be completed no later than 2018; and (ii) establishing new tiers of stringent nitrogen oxide emissions standards for marine engines, depending on their date of installation. We incurred significant costs to comply with these revised standards.

The revised Annex VI also allows for designation, in response to proposals from member parties, of Emission Control Areas (ECAs) that impose accelerated and/or more stringent requirements for control of sulfur oxide, particulate matter, and nitrogen oxide emissions. Such ECAs have been formally adopted for the Baltic Sea, the North Sea including the English Channel, and the coasts of North America, and a US Caribbean ECA is expected to be adopted in 2011. For the currently-designated ECAs, much lower sulfur limits on fuel oil content are being phased in (1% in July 2010 for the Baltic and North Sea ECAs and beginning in 2012 for the North American ECA; and 0.1% in these ECAs beginning in 2015), as well as nitrogen oxide aftertreatment requirements that will become applicable in 2016. These more stringent fuel standards, when fully in effect, are expected to require measures such as fuel switching, vessel modification adding distillate fuel storage capacity, or addition of exhaust gas cleaning scrubbers, to achieve compliance, and may require installation and operation of further control equipment at significant increased cost.

Safety Requirements

The IMO has also adopted the International Convention for the Safety of Life at Sea, or SOLAS Convention, and the International Convention on Load Lines, 1966, or LL Convention, which impose a variety of standards to regulate design and operational features of ships. SOLAS Convention and LL Convention standards are revised periodically. We believe that all our vessels are in substantial compliance with SOLAS Convention and LL Convention standards.

Under Chapter IX of SOLAS, the requirements contained in the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention, or ISM Code, promulgated by the IMO, the party with operational control of a vessel is required to develop an extensive safety management system that includes, among other things, the adoption of a safety and environmental protection policy setting forth instructions and procedures for operating its vessels safely and describing procedures for responding to emergencies. In 1998, the ISM Code became mandatory with the adoption of Chapter IX of SOLAS. We intend to rely upon the safety management systems that our ship management companies, Newlead Shipping and Newlead Bulkers, have developed.

The ISM Code requires that vessel operators obtain a safety management certificate for each vessel they operate. This certificate evidences compliance by a vessel's management with ISM Code requirements for a safety management system. No vessel can obtain a safety management certificate unless its operator has been awarded a document of compliance, issued by each flag state, under the ISM Code. Our ship management companies, Newlead Shipping and Newlead Bulkers, have obtained documents of compliance for their offices and safety management certificates for the vessels in our fleet for which such certificates are required by the IMO. These documents of compliance and safety management certificates are renewed as required.

Non-compliance with the ISM Code and other IMO regulations may subject the shipowner or bareboat charterer to increased liability, may lead to decreases in available insurance coverage for affected vessels and may result in the denial of access to, or detention in, some ports. For example, the U.S. Coast Guard and European Union (EU) authorities have indicated that vessels not in compliance with the ISM Code will be prohibited from trading in U.S. and EU ports.

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Another amendment of SOLAS, made after the terrorist attacks in the United States on September 11, 2001, introduced special measures to enhance maritime security, including the International Ship and Port Facilities Security Code, or ISPS Code. Our fleet maintains ISM and ISPS certifications for safety and security of operations.

Oil Pollution Liability

With respect to oil pollution liability, many countries have ratified and follow the liability plan adopted by the IMO and set out in the International Convention on Civil Liability for Oil Pollution Damage of 1969, as amended in 2000, or the CLC. Under this convention and depending on whether the country in which the damage results is a party to the CLC, a vessel's registered owner is strictly liable for pollution damage caused in the territorial waters of a contracting state by discharge of persistent oil, subject to certain complete defenses. The limits on liability outlined in the IMO Protocol of 1992, or 1992 Protocol, use the International Monetary Fund currency unit of Special Drawing Rights, or SDR. Under an amendment to the 1992 Protocol that became effective on November 1, 2003 for vessels of 5,000 to 140,000 gross tons (a unit of measurement for the total enclosed spaces within a vessel), liability will be limited to approximately 4.51 million SDR, or \$7.159 million, plus 631 SDR, or \$1001.58 million, for each additional gross ton over 5,000. For vessels over 140,000 gross tons, liability will be limited to 89.77 million SDR, or \$142.49 million. The exchange rate between SDRs and U.S. dollars was 0.63 SDR per U.S. dollar on June 29, 2011. The right to limit liability is forfeited under the CLC where the spill is caused by the owner's actual fault and under the 1992 Protocol where the spill is caused by the owner's intentional or reckless conduct. Vessels trading to states that are parties to these conventions must provide evidence of insurance covering the liability of the owner. The U.S. is not a party to the CLC. In jurisdictions where the CLC has not been adopted, various legislative schemes or common law govern, and liability is imposed either on the basis of fault or in a manner similar to that of the CLC. We believe that our insurance will cover the liability under the plan adopted by the IMO.

The most widely applicable international regime limiting maritime pollution liability is the 1976 Convention. Rights to limit liability under the 1976 Convention are forfeited where a spill is caused by a shipowner's intentional or reckless conduct. Some jurisdictions have ratified the 1996 LLMC Protocol to the 1976 Convention, which provides for liability limits substantially higher than those set forth in the 1976 Convention to apply in such states. Finally, some jurisdictions are not a party to either the CLC, the 1976 Convention or the 1996 LLMC Protocol, and, therefore, shipowners' rights to limit liability for maritime pollution in such jurisdictions may be uncertain.

International laws governing Bunker Oil Pollution

In 2001, the IMO adopted the Bunker Convention, which imposes strict liability on ship owners for pollution damage in jurisdictional waters of ratifying states caused by discharges of "bunker oil." The Bunker Convention defines "bunker oil" as "any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil." The Bunker Convention also requires registered owners of ships over a certain size to maintain insurance for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime (but not exceeding the amount calculated in accordance with the 1976 Convention, discussed above). The Bunker Convention entered into force on November 21, 2008, and in early 2011 it was in effect in 58 states. In other jurisdictions liability for spills or releases of oil from ships' bunkers continues to be determined by the national or other domestic laws in the jurisdiction where the events or damages occur. Outside the United States, national laws generally provide for the owner to bear strict liability for pollution, subject to a right to limit liability under applicable national or international regimes for limitation of liability.

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United States Requirements

The U.S. Oil Pollution Act of 1990 and Comprehensive Environmental Response, Compensation and Liability Act

In 1990, the U.S. Congress enacted the OPA, to establish an extensive regulatory and liability regime for environmental protection and cleanup of oil spills. OPA affects all owners and operators whose vessels trade with the U.S. or its territories or possessions, or whose vessels operate in the waters of the U.S., which include the U.S. territorial sea and the 200 nautical mile exclusive economic zone around the U.S. The Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, imposes liability for clean-up and natural resource damage from the release of hazardous substances (other than oil) whether on land or at sea. Both OPA and CERCLA are potentially applicable to our operations in the U.S.

Under OPA, vessel owners, operators and bareboat charterers are responsible parties who are jointly, severally and strictly liable (unless the spill results solely from the act or omission of a third party, an act of God or an act of war) for all containment and clean-up costs and other damages arising from oil spills from their vessels. These other damages are defined broadly to include:

- natural resource damages and related assessment costs;
- real and personal property damages;
- net loss of taxes, royalties, rents, profits or earnings capacity;
- net cost of public services necessitated by a spill response, such as protection from fire, safety or health hazards;
- loss of profits or impairment of earning capacity due to injury, destruction or loss of real property, personal property and natural resources; and
- loss of subsistence use of natural resources.

Effective July 31, 2009, the U.S. Coast Guard adjusted the limits of OPA liability with respect to tanker vessels with a qualifying double hull, to the greater of \$2,000 per gross ton or \$17.088 million per vessel that is over 3,000 gross tons, and with respect to non-tanker vessels, to the greater of \$1,000 per gross ton or \$854,400 per vessel (subject to periodic adjustment for inflation). OPA specifically permits individual states to impose their own liability regimes with regard to oil pollution incidents occurring within their boundaries, and some state environmental laws impose for unlimited liability for discharge of pollutants including oil, within their waters. CERCLA, which applies to owners and operators of vessels, contains a similar liability regime and provides for clean-up, removal and natural resource damages relating to the discharge of hazardous substances (other than oil). Liability under CERCLA is limited to the greater of \$300 per gross ton or \$5.0 million for vessels carrying a hazardous substance as cargo or residue and the greater of \$300 per gross ton or \$0.5 million for any other vessel.

These limits of liability do not apply, however, where the incident is caused by violation of applicable U.S. federal safety, construction or operating regulations, or by the responsible party's gross negligence or willful misconduct. These limits also do not apply if the responsible party fails or refuses to report the incident or to cooperate and assist in connection with the substance removal activities. OPA and CERCLA each preserve the right to recover damages under existing law, including maritime tort law. We currently have no OPA or CERCLA claims pending against us. However, in the event of an oil spill or release of hazardous substances from our vessels, we could be subject to such claims, which could adversely affect our cash flow, profitability and financial position.

Under OPA, an owner or operator of a fleet of vessels is required only to demonstrate evidence of financial responsibility in an amount sufficient to meet its potential liabilities under OPA and CERCLA. Under the regulations, evidence of financial responsibility may be demonstrated by insurance, surety bond, self-insurance or guaranty. Under the self-insurance provisions, the ship owner or operator must have a net worth and working capital, measured in assets located in the U.S. against liabilities located anywhere in the world, that exceeds the applicable amount of financial responsibility. We have complied with the U.S. Coast

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Guard regulations by providing a certificate of responsibility from third party entities that are acceptable to the U.S. Coast Guard evidencing sufficient self-insurance. The U.S. Coast Guard's regulations concerning certificates of financial responsibility provide, in accordance with OPA, that claimants may bring suit directly against an insurer or guarantor that furnishes certificates of financial responsibility. In the event that such insurer or guarantor is sued directly, it is prohibited from asserting any contractual defense that it may have had against the responsible party and is limited to asserting those defenses available to the responsible party and the defense that the incident was caused by the willful misconduct of the responsible party. Certain organizations, which had typically provided certificates of financial responsibility under pre-OPA laws, including the major protection and indemnity organizations, have declined to furnish evidence of insurance for vessel owners and operators if they are subject to direct actions or required to waive insurance policy defenses. This requirement may have the effect of limiting the availability of the type of coverage required by the U.S. Coast Guard and could increase our costs of obtaining this insurance as well as the costs of our competitors that also require such coverage.

We have arranged insurance for our vessels with pollution liability insurance in the maximum commercially available amount of \$1.0 billion per incident. The insured risks include penalties and fines as well as civil liabilities and expenses resulting from accidental pollution. However, this insurance coverage is subject to exclusions, deductibles and other terms and conditions. If any liabilities or expenses fall within an exclusion from coverage, or if damages from a catastrophic incident exceed the \$1.0 billion limitation of coverage per incident, our cash flow, profitability and financial position would be adversely impacted.

Under OPA, with certain limited exceptions, all newly-built or converted vessels operating in U.S. waters must be built with double hulls, and existing vessels that do not comply with the double-hull requirement will be prohibited from trading in U.S. waters over a 20-year period (1995-2015) based on size, age and place of discharge, unless retrofitted with double hulls. All of the tankers in our fleet are double-hulled. Owners or operators of tankers operating in the waters of the U.S. must file vessel response plans with the U.S. Coast Guard, and their tankers are required to operate in compliance with their U.S. Coast Guard approved plans. These response plans must, among other things:

- address a "worst case" scenario and identify and ensure, through contract or other approved means, the availability of necessary private response resources to respond to a "worst case discharge";
- describe crew training and drills; and
- identify a qualified individual with full authority to implement removal actions.

We have obtained vessel response plans approved by the U.S. Coast Guard for our vessels operating in the waters of the U.S. In addition, we conduct regular oil spill response drills in accordance with the guidelines set out in OPA.

In response to the 2010 Deepwater Horizon incident in the Gulf of Mexico, the U.S. House of Representatives passed a bill that would have amended OPA to mandate stronger safety standards and increased liability and financial responsibility for offshore drilling operations, but the bill did not seek to change the OPA liability limits applicable to vessels. The U.S. Senate considered, but did not pass, similar legislation. In the 112th Congress, further proposals for oil spill response legislation maybe introduced. While Congressional activity on this topic is expected to continue to focus on offshore facilities rather than on vessels generally, it cannot be known with certainty what form any such new legislative initiatives may take.

As discussed above, OPA does not prevent individual states from imposing their own liability regimes with respect to oil pollution incidents occurring within their boundaries, including adjacent coastal waters. In fact, most U.S. states that border a navigable waterway have enacted environmental pollution laws that impose strict liability on a person for removal costs and damages resulting from a discharge of oil or a release of a hazardous substance. These laws may be more stringent than U.S. federal law.

Additional U.S. Environmental Requirements

The U.S. Clean Air Act of 1970, as amended by the Clean Air Act Amendments of 1977 and 1990, or the CAA, requires the U.S. Environmental Protection Agency, or EPA, to promulgate standards applicable to emissions of volatile organic compounds and other air contaminants. Under the CAA, EPA regulations require vapor control systems (“VCSs”) for certain cargoes when loading, unloading, ballasting, cleaning and conducting other operations in regulated port areas. The CAA also requires states to adopt State Implementation Plans, or SIPs, designed to attain national health-based air quality standards in primarily major metropolitan and/or industrial areas. Several SIPs regulate emissions resulting from vessel loading and unloading operations by requiring the installation of vapor control equipment. Also under the CAA, the U.S. Coast Guard has since 1990 regulated the safety of VCSs that are required under EPA and state rules. Our vessels operating in regulated port areas have installed VCSs that are compliant with EPA, state and U.S. Coast Guard requirements. In October 2010, the U.S. Coast Guard proposed a rule that would make its VCS requirements more compatible with new EPA and State regulations, reflect changes in VCS technology, and codify existing U.S. Coast Guard guidelines. It appears unlikely that the updated U.S. Coast Guard rule when finalized will impose a material increase in costs.

In April 2010, U.S. EPA adopted regulations implementing the provisions of MARPOL Annex VI. Under these regulations, both U.S. and foreign-flagged ships subject to the engine and fuel standards of MARPOL Annex VI must comply with the applicable Annex VI provisions when they enter U.S. ports or operate in most internal U.S. waters including the Great Lakes. MARPOL Annex VI requirements are discussed in greater detail above under “Air Emissions.”

The Clean Water Act, or CWA, prohibits the discharge of oil or hazardous substances into navigable waters and imposes strict liability in the form of penalties for any unauthorized discharges. The CWA also imposes substantial liability for the costs of removal, remediation and damages. State laws for the control of water pollution also provide varying civil, criminal and administrative penalties in the case of a discharge of petroleum or hazardous materials into state waters.

Effective February 6, 2009, the EPA regulates the discharge of ballast water and other substances incidental to the normal operation of vessels in U.S. waters using a Vessel General Permit, or VGP, system pursuant to the CWA, in order to combat the risk of harmful foreign organisms that can travel in ballast water carried from foreign ports. Compliance with the conditions of the VGP is required for commercial vessels 79 feet in length or longer (other than commercial fishing vessels). Currently the EPA and the U.S. Coast Guard are studying the technical feasibility of strengthened requirements for ballast water management that could be incorporated as further conditions of the VGP or other new rulemaking. In addition, through the CWA certification provisions that allow U.S. states to place additional conditions on use of the VGP within state waters, a number of states have proposed or implemented a variety of stricter ballast water requirements including, in some states, specific treatment standards. Compliance with new U.S. federal and state requirements could require the installation of equipment on our vessels to treat ballast water before it is discharged or the implementation of other port facility disposal arrangements or procedures at potentially substantial cost, and/or otherwise restrict our vessels from entering U.S. waters.

Ballast water is also addressed under the U.S. National Invasive Species Act, or NISA. U.S. Coast Guard regulations adopted under NISA impose mandatory ballast water management practices for all vessels equipped with ballast water tanks entering U.S. waters.

European Union Restrictions

European regulations in the maritime sector are in general based on international law. However, since the Erika incident in 1999, the European Union has become increasingly active in the field of regulation of maritime safety and protection of the environment. It has been the driving force behind a number of amendments of MARPOL (including, for example, changes to accelerate the time-table for the phase-out of single-hull tankers, and to prohibit the carriage in such tankers of heavy grades of oil). If dissatisfied either with the extent of such amendments or with the time-table for their introduction, the European Union has been prepared to legislate on a unilateral basis. In some instances where it has done so, international regulations

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have subsequently been amended to the same level of stringency as that introduced in Europe. However, European Union regulations may from time to time impose burdens and costs on ship owners and operators that are additional to those involved in complying with international rules and standards. In some areas of regulation, the European Union has introduced new laws without attempting to procure a corresponding amendment of international law. Notably, it adopted in 2005 a directive on ship-source pollution, imposing criminal sanctions for pollution not only where this is caused by intent or recklessness (which would be an offence under MARPOL), but also where it is caused by “serious negligence.” There is skepticism that the notion of “serious negligence” is likely to prove any narrower in practice than ordinary negligence. The directive could therefore result in criminal liability being incurred in circumstances where it would not be incurred under international law. Criminal liability for a pollution incident could not only result in us incurring substantial penalties or fines but may also, in some jurisdictions, facilitate civil liability claims for greater compensation than would otherwise have been payable.

In response to the MT Prestige oil spill in November 2002, the European Union adopted legislation that prohibits all single-hull tankers from entering into its ports or offshore terminals by June 2010 or earlier depending on age. The European Union has also banned all single-hull tankers carrying heavy grades of oil from entering or leaving its ports or offshore terminals or anchoring in areas under its jurisdiction. Certain single-hull tankers above 15 years of age are also restricted from entering or leaving European Union ports or offshore terminals and anchoring in areas under European Union jurisdiction.

The European Union has also adopted legislation that: (1) strengthens regulation against manifestly sub-standard vessels (defined as those over 15 years old that have been detained by port authorities at least twice in a six-month period) from European waters and creates an obligation of port states to inspect vessels posing a high risk to maritime safety or the marine environment and (2) provides the European Union with greater authority and control over classification societies, including the ability to seek to suspend or revoke the authority of negligent societies. It is difficult to accurately predict what legislation or additional regulations, if any, may be promulgated by the European Union or any other constituent country or authority in Europe.

Greenhouse Gas Regulation

In February 2005, the Kyoto Protocol to the United Nations Framework Convention on Climate Change, which we refer to as the Kyoto Protocol, entered into force. Pursuant to the Kyoto Protocol, adopting countries are required to implement national programs to reduce emissions of certain gases, generally referred to as greenhouse gases, which are suspected of contributing to global warming. Currently, the emissions of greenhouse gases from international shipping are not subject to the Kyoto Protocol. However, the European Union has indicated that it intends to propose an expansion of the existing European Union emissions trading scheme to include emissions of greenhouse gases from vessels. The IMO announced its intention to develop limits on greenhouse gases from international shipping and is working on technical and operational measures to reduce emissions. In the U.S., the EPA has declared greenhouse gases to be pollutants that pose a threat to human health and welfare and will begin regulating greenhouse gas emissions from certain stationary sources in 2011. The EPA is also considering petitions to regulate greenhouse gas emissions from marine vessels. Any passage of climate control legislation or other regulatory initiatives by the IMO, European Union, the U.S. or other countries where we operate that restrict emissions of greenhouse gases from marine vessels could require us to make significant financial expenditures we cannot predict with certainty at this time.

Vessel Security Regulations

Since the terrorist attacks of September 11, 2001, there have been a variety of initiatives intended to enhance vessel security. On November 25, 2002, the U.S. Maritime Transportation Security Act of 2002, or MTSA, came into effect. To implement certain portions of the MTSA, in July 2003, the U.S. Coast Guard issued regulations requiring the implementation of certain security requirements aboard vessels operating in waters subject to the jurisdiction of the U.S. Similarly, in December 2002, amendments to SOLAS created a new chapter of the convention dealing specifically with maritime security. The new chapter became effective in July 2004 and imposes various detailed security obligations on vessels and port authorities, most of which are contained in the International Ship and Port Facilities Security Code, or the ISPS Code. The objective of

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the ISPS Code is to establish the framework that allows detection of security threats and implementation of preventive measures against security incidents that can affect ships or port facilities used in international trade. To trade internationally, a vessel must attain an International Ship Security Certificate, or ISSC, from a recognized security organization approved by the vessel's flag state. Among the various requirements are:

- on-board installation of automatic identification systems to provide a means for the automatic transmission of safety-related information from among similarly equipped ships and shore stations, including information on a ship's identity, position, course, speed and navigational status;
- on-board installation of ship security alert systems, which do not sound on the vessel and instead only alert the authorities on shore;
- the development of vessel security plans;
- a ship identification number to be permanently marked on a vessel's hull;
- a continuous synopsis record kept onboard showing a vessel's history, including the name of the ship and of the state whose flag the ship is entitled to fly, the date on which the ship was registered with that state, the ship's identification number, the port at which the ship is registered and the name of the registered owner(s) and their registered address; and
- compliance with flag state security certification requirements.

The U.S. Coast Guard regulations, intended to align with international maritime security standards, exempt from MTSA vessel security measures for non-U.S. vessels that have on board, as of July 1, 2004, a valid ISSC attesting to the vessel's compliance with SOLAS security requirements and the ISPS Code. We have implemented the various security measures addressed by MTSA, SOLAS and the ISPS Code, and our fleet is in compliance with applicable security requirements.

Risk of Loss and Insurance

The operation of any cargo vessel includes risks such as mechanical failure, physical damage, collision, property loss, cargo loss or damage and business interruption due to political circumstances in foreign countries, hostilities and labor strikes. In addition, there is always an inherent possibility of marine disaster, including oil spills and other environmental mishaps, and the liabilities arising from owning and operating vessels in international trade. OPA, which imposes virtually unlimited liability upon owners, operators and charterers of any vessel trading in the United States' exclusive economic zone for certain oil pollution accidents in the United States, has made liability insurance more expensive for ship owners and operators trading in the U.S. market. While we believe that our present insurance coverage is adequate, not all risks can be insured against, and there can be no guarantee that any specific claim will be paid, or that we will always be able to obtain adequate insurance coverage at reasonable rates.

On October 8, 2010, Grand Rodosi, one of our bulk carriers, was involved in a collision with a docked fishing vessel at Port Lincoln, Australia. While no personal injuries or environmental damage were sustained, the collision resulted in physical damage to the two vessels. The damage was fully covered by our insurance.

We have obtained marine hull and machinery and war risk insurance, which includes the risk of actual or constructive total loss, for all our vessels. The vessels are each covered up to at least fair market value.

We also arranged increased value insurance for most of our vessels. Under the increased value insurance, in case of total loss of the vessel, we will be able to recover the sum insured under the policy in addition to the sum insured under our hull and machinery policy. Increased value insurance also covers excess liabilities that are not recoverable in full by the hull and machinery policies by reason of under-insurance.

Protection and indemnity insurance, which covers our third-party liabilities in connection with our shipping activities, is provided by mutual protection and indemnity associations, or P&I Associations. This insurance covers third-party liability and other related expenses of injury or death of crew, passengers and other third parties, loss or damage to cargo, claims arising from collisions with other vessels, damage to other third-party property, pollution arising from oil or other substances, and salvage, towing and other related costs,

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including wreck removal. Protection and indemnity insurance is a form of mutual indemnity insurance, extended by protection and indemnity mutual associations, or “clubs.” Our coverage, except for pollution, is unlimited.

Our current protection and indemnity insurance coverage for pollution is \$1.0 billion per vessel per incident. The 13 P&I Associations that compose the International Group insure approximately 90% of the world’s commercial tonnage and have entered into a pooling agreement to reinsure each association’s liabilities. All qualifying claims in excess of \$8 million up to, currently, approximately \$6.9 billion are shared between the P&I Associations in accordance with the terms of the pooling agreement. As a member of a P&I Association that is a member of the International Group, we are subject to calls payable to the associations based on our claim records as well as the claim records of all other members of the individual associations and members of the International Group.

INDUSTRY

THE REFINED PRODUCT AND DRY BULKSHIPPING INDUSTRIES

All the information and data presented in this section, including the analysis of the various sectors of the refined product and dry bulk shipping industries has been provided by Drewry. Drewry has advised that the statistical and graphical information contained herein is drawn from its database and other sources. In connection therewith, Drewry has advised that: (a) certain information in Drewry's database is derived from estimates or subjective judgments; (b) the information in the databases of other maritime data collection agencies may differ from the information in Drewry's database; (c) while Drewry has taken reasonable care in the compilation of the statistical and graphical information and believes it to be accurate and correct, data compilation is subject to limited audit and validation procedures.

Introduction

Seaborne cargo is broadly categorized as either liquid or dry cargo. Liquid cargo includes crude oil, refined petroleum products, vegetable oils, gases and chemicals. Dry cargo includes drybulk cargo, container cargo, non-container cargo and other cargo.

The following table presents the breakdown of global seaborne trade by type of cargo in 2000 and 2010.

World Seaborne Trade: 2000 and 2010

	Trade — Million Tons		CAGR ⁽¹⁾ %	% Total Trade	
	2000	2010	2000–10	2000	2010
Liquid Cargo					
Crude Oil	2,079	2,276	0.91	32.1	25.9
Refined Petroleum Products	602	875	3.81	9.3	10.0
Liquid Chemicals	128	214	5.28	2.0	2.4
Liquefied Gases	168	261	4.54	2.6	3.0
Total Liquid Cargo	2,977	3,627	1.99	46.0	41.3
Total Dry Cargo	3,491	5,155	3.98	54.0	58.7
Dry Bulk					
Coal	539	915	5.43	8.3	10.4
Iron Ore	489	1,004	7.46	7.6	11.4
Grain	221	242	0.9	3.4	2.8
Total Major Bulks	1,249	2,161	5.63	19.3	24.6
Minor Bulks	901	1,018	1.23	13.9	11.6
Other					
Container Cargo	620	1,366	8.21	9.6	15.6
General Cargo	720	610	(16.4)	11.1	6.9
Total Seaborne Trade	6,468	8,782	3.11	100.0	100.0

(1) Compound annual growth rate.

Source: Drewry Research

Ocean going vessels represent the most efficient and often the only means of transporting large volumes of basic commodities and finished products over long distances. In general, the supply of and demand for seaborne transportation capacity are the primary drivers of charter rates and values for all vessels. Larger vessels exhibit higher charter rate and vessel value volatility compared with smaller vessels, due to the larger volume of cargo shipped on board, their reliance on a few key commodities, and long-haul routes among a small number of ports. Vessel values primarily reflect prevailing and expected future charter rates, and are also

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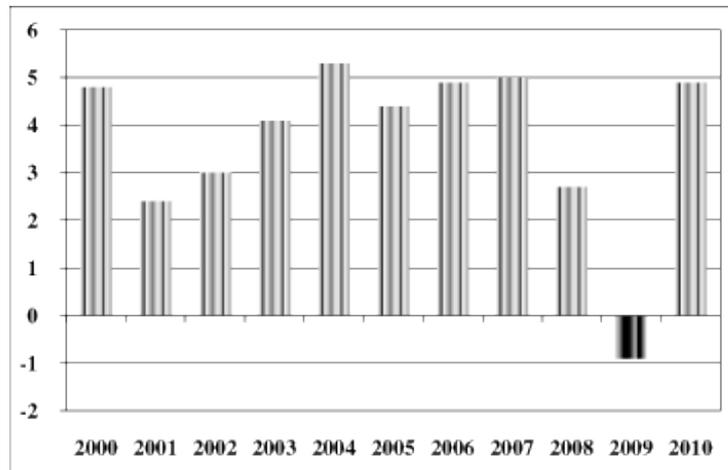
influenced by factors such as the age of the vessel, the shipyard of its construction and its specifications. During extended periods of high charter rates, vessel values tend to appreciate, while during periods where rates have declined, such as the period we are in currently, vessel values tend to decline. Historically, the relationship between incremental supply and demand has varied among different sectors, meaning that at any one time different sectors of the seaborne transportation industry may be at differing stages of their respective supply and demand cycle, as the drivers of demand in each sector are different and are not always subject to the same factors.

Oil Tanker Demand

Demand for crude oil and refined petroleum products is affected by a number of factors including general economic conditions (including increases and decreases in industrial production), oil prices, environmental concerns, weather conditions, and competition from alternative energy sources.

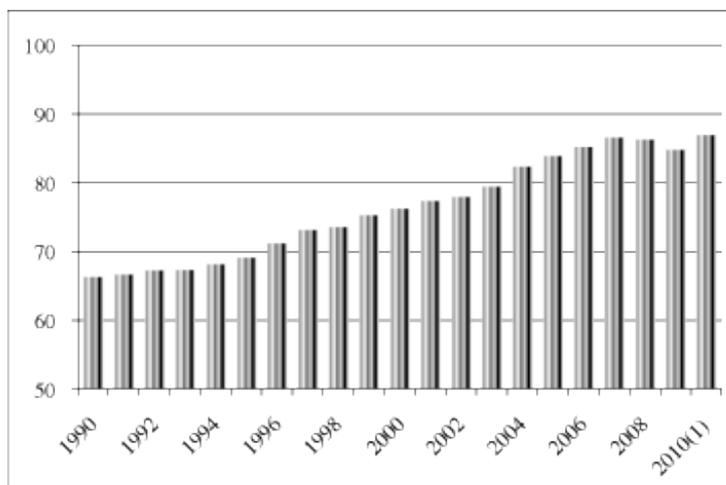
As the following figures indicate the world economy grew at a fairly consistent rate in the period 2000 to 2008, but growth came to an abrupt halt in 2009 as the world went into a global depression. The downturn was short-lived and the most recent data suggest that the world economy returned to positive growth in 2010, with China and India being the main engines of growth.

World GDP Growth: 2000 to 2010
(Percent change from previous period)



Source: Drewry Research

World Oil Consumption: 1990 — 2010
(Million Barrels Per Day)



(1) Provisional

Source: Drewry Research

World oil consumption has generally experienced sustained growth since 2000, albeit it declined in 2009 due to the downturn in the global economy. The provisional data for 2010 however suggests that world oil demand rebounded strongly.

World oil consumption in 2010 is provisionally estimated at 86.9 million barrels per day. Since 2000 it has grown at a CAGR of approximately 1.2%.

World Oil Consumption by Region: 2000 — 2010
(Million Barrels Per Day)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
North America	24.0	24.0	24.1	24.5	25.3	25.5	25.4	25.5	24.2	23.3	23.8
Europe	15.1	15.3	15.3	15.4	15.6	15.5	15.5	15.3	15.4	14.5	14.3
Pacific	8.6	8.7	8.6	8.7	8.5	8.6	8.5	8.4	8.1	7.7	7.7
Total OECD⁽¹⁾	47.7	48.0	48.0	48.6	49.4	49.6	49.4	49.2	47.7	45.5	45.7
China	4.8	4.7	5.0	5.6	6.4	6.6	7.0	7.6	7.9	8.4	9.2
Middle East	4.7	5.2	5.4	5.4	5.8	6.1	6.5	6.5	7.1	7.0	7.3
Asia (excluding China)	7.3	7.6	7.9	8.1	8.6	8.8	8.9	9.5	9.7	10.0	10.3
Africa	2.4	2.6	2.7	2.7	2.8	2.9	3.0	3.1	3.2	3.2	3.2
Latin America	4.9	4.9	4.8	4.7	4.9	5.0	5.2	5.7	5.9	6.0	6.3
FSU ⁽²⁾	3.6	3.7	3.5	3.6	3.7	3.8	3.9	4.2	4.2	4.0	4.2
Europe	0.7	0.8	0.7	0.7	0.7	0.7	0.7	0.8	0.7	0.7	0.7
Total Non-OECD	28.4	29.5	30.0	30.8	32.9	33.9	35.2	37.4	38.7	39.3	41.2
World Total	76.1	77.5	78.0	79.4	82.3	83.5	84.6	86.6	86.4	84.8	86.9

(1) Organisation for Economic Co-operation & Development; (2) Former Soviet Union

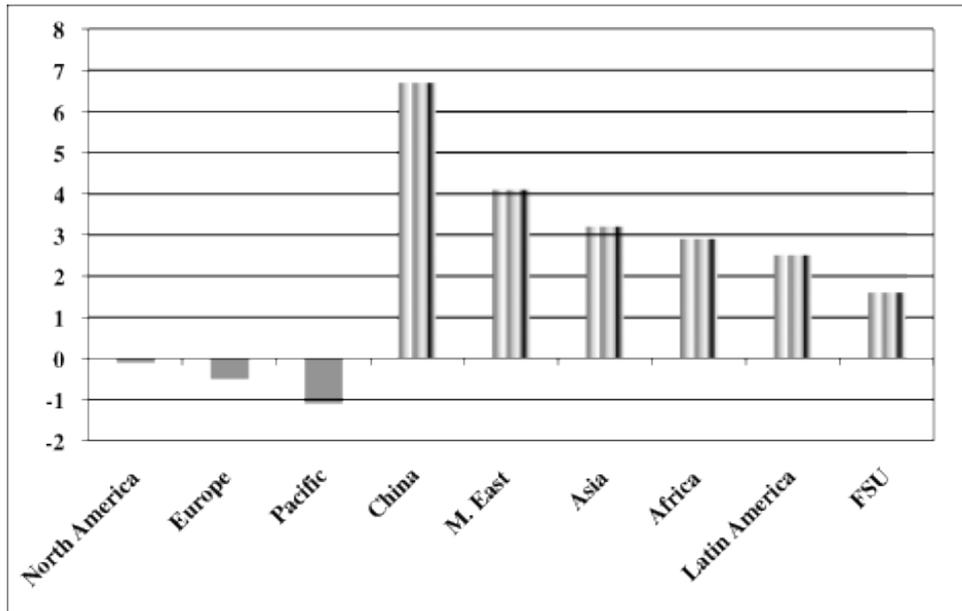
Source: Drewry Research — derived from industry sources

Regionally, oil consumption is either static or declining in most of the developed world, but is increasing in most of the developing world as the following chart indicates. In recent years, Asia, in particular China has been the main generator of additional demand for oil, with this demand largely supplied from traditional sources such as the Middle East. In the period 2000 to 2010 Chinese oil consumption grew by a CAGR of 6.7% to reach 9.2 million barrels per day in 2010.

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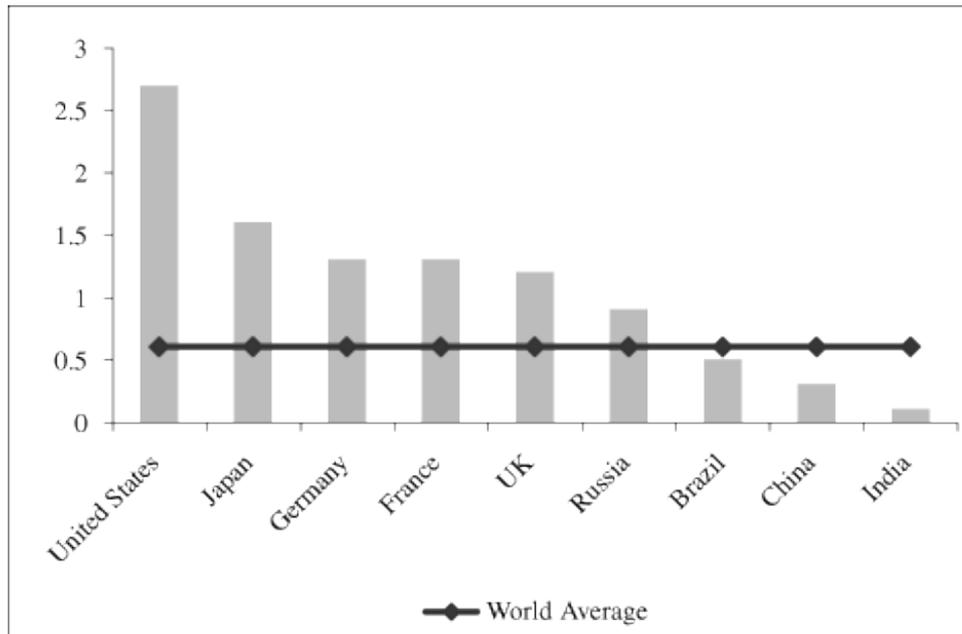
Oil consumption on a per capita basis is still low in countries such as China and India when compared with the United States and Western Europe.

Regional Oil Consumption Growth Rates: 2000 — 2010
(CAGR — Percent)



Source: Drewry Research

Oil Consumption Per Capita: 2009
(Tons per Capita)



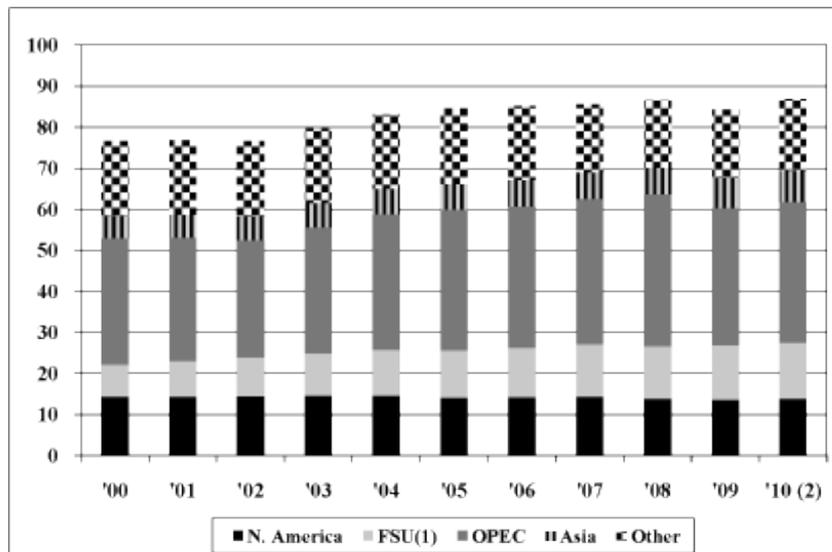
Source: Drewry Research

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Seasonal trends also affect world oil consumption and consequently oil tanker demand. While trends in consumption do vary with season, peaks in tanker demand quite often precede seasonal consumption peaks, as refiners and suppliers anticipate consumer demand. Seasonal peaks in oil demand can broadly be classified into two main categories: increased demand prior to Northern Hemisphere winters as heating oil consumption increases and increased demand for gasoline prior to the summer driving season in the United States.

Global trends in crude oil production by main region in the period 2000 to 2010 are shown in the table below. Production trends have naturally followed the underlying pattern in oil consumption, allowing for the fact that changes in the level of oil inventories also play a part in determining production levels.

World Oil Production: 2000 to 2010
(Million Barrels Per Day)



(1) Former Soviet Union. (2) Provisional

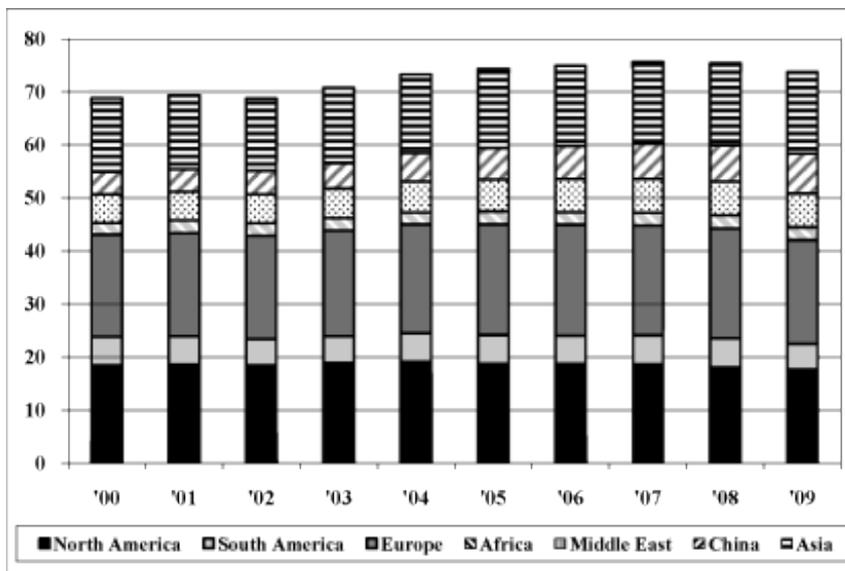
Source: Drewry Research

Production and exports from the Middle East (largely OPEC) have historically had a significant impact on the demand for tanker capacity, and, consequently, on tanker charter rates, due to the relatively long distances between this supply source and typical destination ports. Oil exports from short-haul regions, such as Latin America and the North Sea, are significantly closer to ports used by the primary consumers of such exports, which results in shorter average voyage length as compared to oil exports from the Middle East. Therefore, production in short-haul regions historically has had less of an impact on the demand for larger vessels while increasing the demand for vessels in the Handy, Panamax and Aframax market segments.

Oil Refinery Capacity

Oil refineries also vary greatly in the quantity, variety and specification of products that they produce, and it is common for tankers to take products into and out of the same refinery. This global multi-directional trade pattern enables owners and operators of product tankers to engage in charters of triangulation, and thereby maximize the revenue. The distribution of refinery throughput by region in the period 2000 to 2009 is shown in the following chart.

Oil Refinery Throughput by Region: 2000–2009
(Million Barrels Per Day)

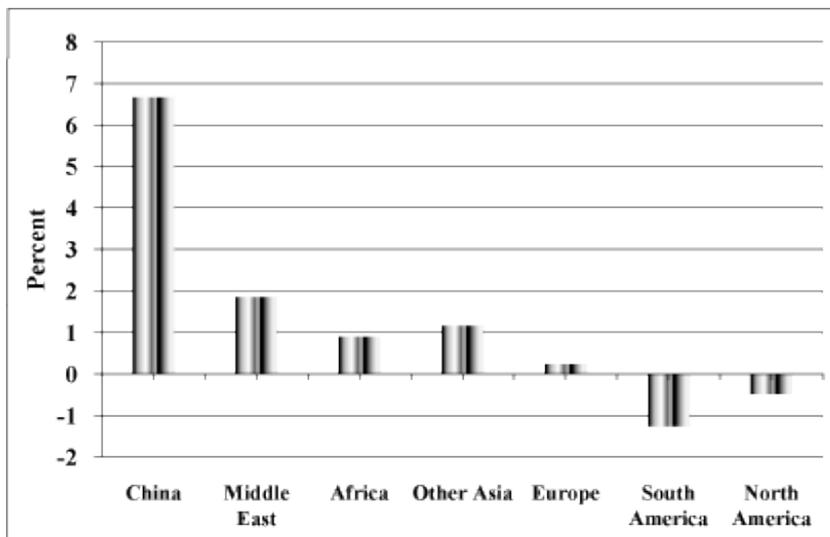


Source: Drewry Research

Changes in refinery throughput are to a certain extent driven by changes in the location of capacity and capacity increases are taking place mostly in the developing world, especially in Asia. In turn this is leading to changes in voyage patterns and longer voyages.

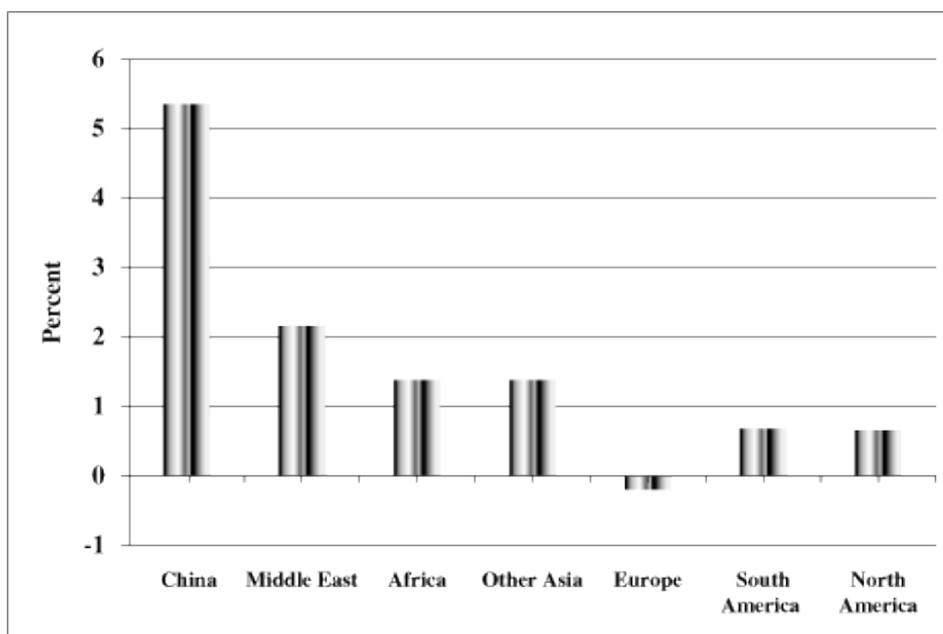
As the chart above indicates, in response to growing domestic demand, Chinese refinery throughput has grown at the fastest rate of any global region in the last decade, with the Middle East and other emerging economies following behind. By contrast, refinery throughput in North America has actually declined in the last decade.

Oil Refinery Throughput by Region: Growth Rates 2000–2009
(CAGR — Percent)



Source: Drewry Research

Oil Refinery Capacity by Region: Growth Rates 2000–2009
(CAGR — Percent)



Source: Drewry Research

The shift in global refinery capacity from the developed to the developing world is likely to continue as refinery development plans are heavily focused on areas such as Asia and the Middle East, with relatively little capacity additions planned for North America and Europe.

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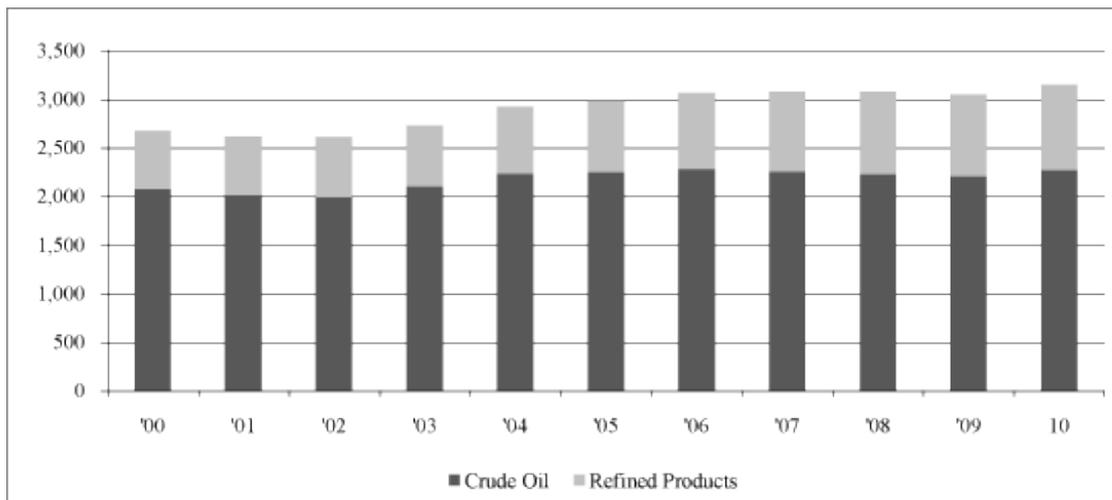
regions following behind. By contrast, refinery throughput in North America has actually declined in the last decade. The shift in global refinery capacity from the developed to the developing world is likely to continue as refinery development plans are heavily focused on areas such as Asia and the Middle East, with relatively little capacity additions planned for regions such as North America and Europe.

World Oil Trades

World oil trades are naturally the result of geographical imbalances between areas of oil consumption and production, although it is important to recognize that in sectors such refined petroleum products arbitrage can have an impact on trade flows.

The chart below illustrates changes in global seaborne movements of crude oil and refined petroleum products between 2000 and 2010.

Seaborne Oil Trade Development: 2000 to 2010
(Million Tons)



Source: *Drewry Research*

The volume of crude oil moved by sea each year also reflects the underlying changes in world oil consumption and production. Seaborne trade in crude oil in 2010 is provisionally estimated at 2.3 billion tons, while refined petroleum products movements are provisionally estimated at 875 million tons.

Demand for oil tankers is primarily determined by the volume of crude oil and refined petroleum products transported and the distances over which they are transported. Tanker demand is generally expressed in ton miles and is measured as the product of the volume of oil carried (measured in metric tons) multiplied by the distance over which it is carried (measured in miles).

The transportation of crude oil is typically unidirectional, in that most oil is transported from a few areas of production to many regions of consumption, where it is refined into petroleum products. Conversely, the transportation of refined petroleum products and associated cargoes is multi-directional, in that there are several areas of both production and consumption.

Oil Tanker Demand: 2000–2010
(Million Tons/Billion Ton Miles)

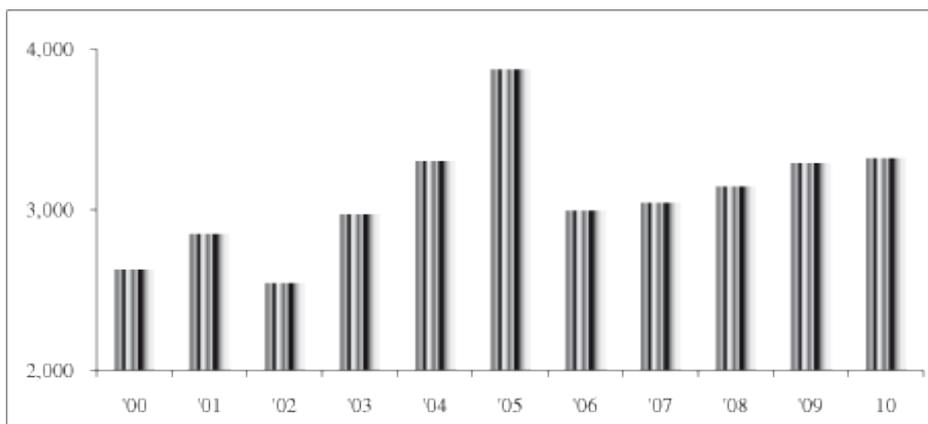
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Seaborne Trade — Million Tons											
Refined Products	602	608	618	623	686	745	779	823	854	847	875
Crude Oil	2,079	2,017	1,997	2,111	2,241	2,253	2,289	2,262	2,232	2,210	2,276
Total Seaborne Trade	2,681	2,625	2,615	2,734	2,927	2,998	3,068	3,085	3,086	3,057	3,151
Demand — Billion Ton Miles											
Refined Products	1,583	1,733	1,572	1,853	2,226	2,886	2,332	2,506	2,686	2,788	2,905
Crude Oil	7,220	7,528	7,140	7,814	8,504	9,299	8,715	8,751	8,911	8,681	9,104
Total Ton Mile Demand	8,803	9,261	8,712	9,667	10,730	12,185	11,047	11,257	11,597	11,469	12,009

Source: Drewry Research

The growth in the volume of oil moved by sea since 2000 had been quite modest, but the absolute volume of trade hides the fact that changes in the pattern or trade have had quite a positive impact on tanker demand when expressed in terms of ton miles. In the period 2000 to 2009 ton mile demand in the tanker sector grew at a CAGR of 3.8%, whereas the overall increase in trade over the same period was 1.5%. As a result of changes in the pattern of trade the average haul length of crude oil trades has risen from a recent market low of 3,700 miles (loaded voyage only) in 2005 to 4,200 miles in 2009, equivalent to an increase of 14%.

The growth in the volume of oil moved by sea since 2000 had been quite modest, but the absolute volume of trade hides the fact that changes in the pattern or trade have had quite a positive impact on tanker demand when expressed in terms of ton miles. In the period 2000 to 2010 ton mile demand in the tanker sector grew at a CAGR of 3.2%, whereas the overall increase in trade over the same period was 1.6%. As a result of changes in the pattern of trade the average haul length of refined product trades has risen from a recent market low of 2,544 miles (loaded voyage only) in 2002 to 3,320 miles in 2010, equivalent to an increase of 30%.

Refined Petroleum Products — Average Voyage Lengths
(Nautical Miles)



Source: Drewry Research

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The main product tanker trades are shown in the map below.



Source: Drewry Research

Oil Tanker Supply

The world oil tanker fleet is generally divided into five major types of vessel classifications, based on vessel carrying capacity. Additionally, the tanker fleet is divided between crude tankers that carry crude oil or residual fuel oil (“dirty” products), and product tankers that carry refined petroleum products (“clean” products) such as gasoline, jet fuel, kerosene, naphtha and gas oil.

The main fleet categories are Very Large Crude Carrier (VLCC), Suezmax, Aframax, Panamax and Handy oil tankers.

Category	Size Range — Dwt
Handy	10–49,999
Panamax	50–79,999
Aframax	80–119,999
Suezmax	120–199,999
VLCC	200,000 +

In order to benefit from economies of scale, tanker charterers transporting crude oil will typically charter the largest possible vessel, taking into consideration port and canal size restrictions and optimal cargo lot sizes. The main tanker vessel types are:

VLCCs, with an oil cargo carrying capacity in excess of 200,000 dwt. VLCCs carry the largest percentage of crude oil, typically on long-haul voyages, although port constraints limit their trading routes. For example, only a few U.S. ports, such as the Louisiana Offshore Oil Port, are capable of handling a fully laden VLCC. VLCCs generally trade on long-haul routes from the Middle East to Asia, Europe and the U.S. Gulf or the Caribbean. Vessels in excess of 320,000 dwt are sometimes known as Ultra Large Crude Carriers, or ULCCs.

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Suezmax tankers, with an oil cargo carrying capacity of approximately 120,000 to 200,000 dwt. Suezmax tankers are engaged in a range of crude oil trades, most usually from West Africa to the United States, the Gulf of Mexico and to the Caribbean; from the Middle East to Europe, within the North Sea, the Mediterranean and within Asia.

Aframax tankers, with an oil cargo carrying capacity of approximately 80,000 to 120,000 dwt. Aframax tankers are employed in shorter regional trades, mainly in North West Europe, the Caribbean, the Mediterranean and Asia.

Panamax tankers, with an oil carrying capacity of 50,000 to 80,000 dwt. Panamax tankers represent a more specialized trading sphere by generally taking advantage of port restrictions on larger vessels in North and South America and, therefore, generally trade in these markets.

Handy tankers, comprising both Handysize tankers and Handymax tankers, with an oil cargo carrying capacity of less than 50,000 dwt but more than 10,000 dwt. Handy tankers trade on a variety of regional trade routes carrying refined petroleum products and crude oil on trade routes not suitable for larger vessels. While larger size vessels, generally Aframax and above, typically carry only crude oil, a number of such tankers have the capability to carry refined petroleum products and some chemicals. As such, some of these vessels will also be included within the chemical fleet. However, handy tankers carry the majority of refined petroleum products, with more than 90% of vessels in this size range transporting clean products.

While product tankers can carry dirty products, they generally do not switch between clean and dirty cargoes, as a vessel's tank must be cleaned prior to loading a different cargo type. Product tankers do not form a distinct vessel classification, but are identified on the basis of various factors, including technical and trading histories.

Types of Product Tanker

There is no industry standard definition of ship types in the product sector, but Drewry divides the fleet into four major types of vessel based on vessel size, which are as follows:

- **LR2** (long range 2 tankers, with a product cargo carrying capacity in excess of 80,000 dwt. LR2 tankers typically operate on long-haul voyages, although port constraints limit their trading routes. LR2s generally trade on long-haul routes from the Middle East to Asia, Europe and the Gulf of Mexico or the Caribbean.
- **LR1** (long range 1 tankers), with an oil cargo carrying capacity of approximately 50,000 to 79,999 dwt. LR1 tankers are engaged in a range of product trades, generally from Europe to the United States, the Gulf of Mexico, or back. They also trade within the Mediterranean, or within Asia as well as between the Middle East and Asia.
- **MR2** (medium range 2 tankers), with an oil cargo carrying capacity of approximately 30,000 to 49,999 dwt. MR2 tankers are employed in shorter regional trades, mainly in North West Europe, the Caribbean, the Mediterranean and Asia. A typical cargo size would be between 45–50,000 tons.
- **Handysize/MR1** (medium range 1 tankers), with an oil-carrying capacity of 10,000 to 29,999 dwt. MR1 tankers trade on a variety of regional trade routes carrying refined petroleum products on trade routes not suitable for larger vessels.

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The principal trading routes where these vessels are deployed is shown in the table below.

Product Tankers — Typical Deployment by Size Category

Area	Trade Route	Voyage Length	Refined Petroleum Products			
			MR1	MR2	LR1	LR2
Inter-Regional	MEG ⁽¹⁾ / Far East	Long			X	X
	MEG / North America				X	X
	MEG / Europe				X	X
	NS ⁽²⁾ / North America				X	X
	MEG / Pacific Rim				X	X
Intra-Regional	North Sea Caribbean Mediterranean Indo-Pacific	Medium	X	X	X	
Local	Various	Short	X	X		

(1) Middle East Gulf. (2) North Sea.

Source: Drewry Research

A number of tankers also have the capability to carry chemicals as well as refined petroleum products. These ships are sometimes referred to as product/chemical tankers and they move between the carriage of chemicals or refined petroleum products depending on market conditions and employment opportunities. The following analysis however focuses on straight product tankers and the ships with product/chemical capability are covered in the section dealing with chemical tankers which follows.

Oil Tanker Fleet — March 31, 2011

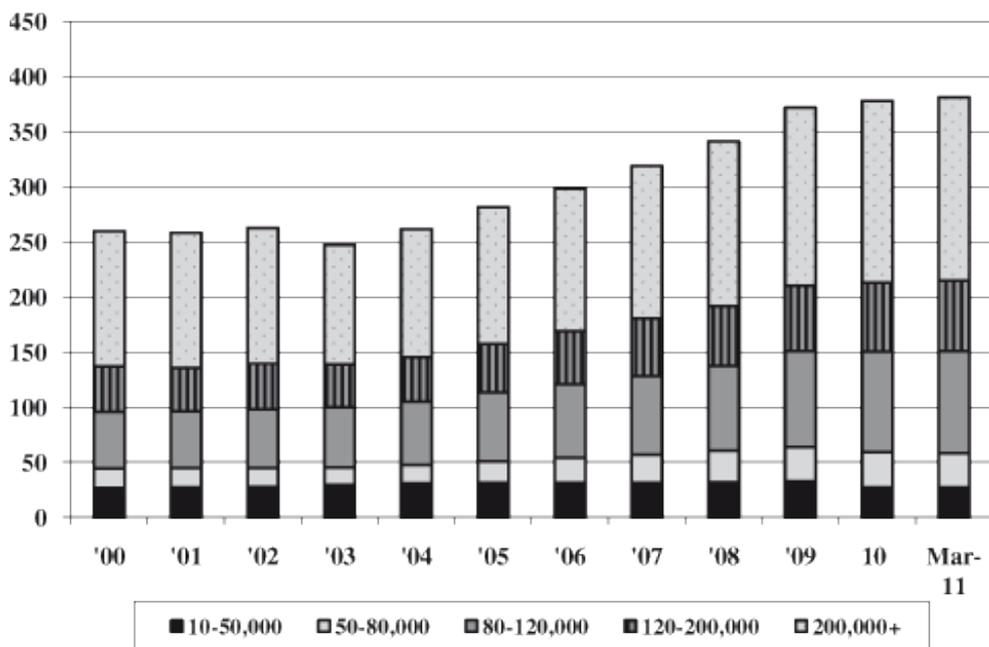
Size Category	Deadweight	Number of	% of Fleet	Total Capacity	% of Fleet
	Tons	Vessels	(Number)	(Million Dwt)	(Dwt)
VLCC	>200,000	548	18.0	166.1	43.6
Suezmax	120,000–199,000	418	13.7	64.2	16.9
Aframax	80,000–119,000	874	28.7	92.6	24.3
Panamax	50,000–79,999	443	14.6	30.8	8.1
Handymax/size	10,000–49,999	758	24.9	27.3	7.2
Total		3,041	100.0%	381.0	100.0%

Source: Drewry Research

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Between the end of 2000 and March 2011 the overall size of the tanker fleet grew by close to 50% with increases in fleet size taking place across all sectors, with the exception of the small ship category.

Oil Tanker Fleet Development: 2000 to March 2011
(Million Dwt)



Source: Drewry Research

The Product Tanker Fleet

The supply of tankers is measured in deadweight tons, or dwt. The supply of tanker capacity is determined by the age and size of the existing global fleet, the number of vessels on order and the number of ships removed from the fleet by scrapping and international regulations. Other factors which can affect the short-term supply of tankers include the number of combined carriers (vessels capable of trading wet and dry cargoes) trading in the oil market and the number of tankers in storage, dry-docked, awaiting repairs or otherwise not available or out of commission (collectively, “lay-up” or total inactivity).

The product tanker fleet as of March 31, 2011 by the above definition comprises 1,193 ships of 65.7 million dwt.

World Product⁽¹⁾ Tanker Fleet 31, March 2011

Size Category	Deadweight	Number of	% of	Total Capacity	% of
	Tons	Vessels	Orderbook	(Million Dwt)	(Dwt)
LR2	>80,000	40	18.9%	4.5	33.4%
LR1	50,000–79,999	90	42.5%	5.8	43.4%
MR2	25,000–49,999	66	31.1%	2.9	21.5%
MR1	10,000–24,999	16	7.5%	0.2	1.7%
Total		212	100.0%	13.4	100.0%

Source: Drewry Research

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Over the years, the supply of the smallest product tanker category (10,000–29,999 dwt) fleet has declined in favour of the larger ships that are more suited to the long-haul routes. The development of the fleet between 2000 and March 2011 is shown in the table below.

World Product Tanker Fleet Development: 2000 to 2011⁽¹⁾

End Period	Total	
	No.	Size ('000 Dwt)
2000	878	30,712
2001	866	30,587
2002	829	29,694
2003	785	28,803
2004	833	31,952
2005	882	35,260
2006	926	38,555
2007	976	42,429
2008	1,038	46,348
2009	1,115	51,765
2010	1,207	65,417
March 2011 ⁽¹⁾	1,193	65,700

(1) Through March 31, 2011

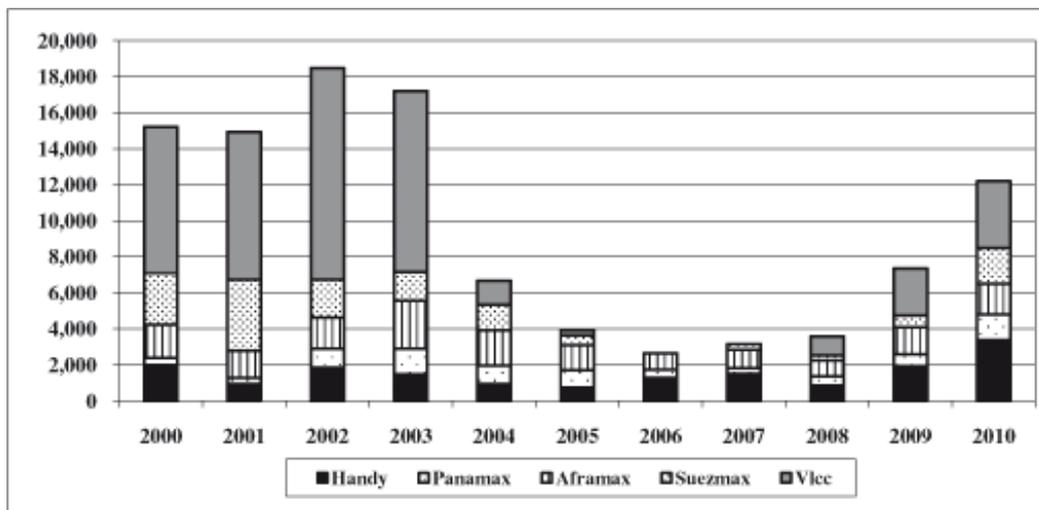
Source: Drewry Research

Oil Tanker Deletions

As the tanker fleet ages, a number of vessels are scrapped as they become uneconomical to operate. Vessel owners often conclude that it is more economical to scrap a vessel that has exhausted its useful life than to upgrade the vessel to maintain it “in-class.” A vessel is deemed to be “in-class” if the surveyors of a classification society determine that the vessel conforms to the standards and rules of that classification society. Customers, insurance companies and other industry participants use the survey and classification regime to obtain reasonable assurance of a vessel’s seaworthiness, and vessels must be certified as in-class in order to continue to trade and be admitted to ports worldwide. In many cases, particularly when tankers reach approximately 25 years of age, the costs of conducting the special survey and performing associated repairs, such as the replacement of steel plate, in order to maintain a vessel in-class may not be economically efficient. In recent years, most oil tankers that have been scrapped were between 25 and 30 years of age.

Scrapping activity declined in the middle of the decade to relatively low levels when freight rates were very strong, but picked up in 2009 when the freight market was weak. This trend continued in 2010 with demolition levels reaching just over 12.0 million dwt for the year. Historically, scrap prices have averaged around \$150 per ton, although in March 2011 they were in excess of \$500 per ton at Indian breaking locations.

Oil Tanker Scrapping: 2000–2010
(*000 Dwt)



Source: Drewry Research.

Besides age, the removal of ships from the trading fleet can be influenced by legislation. According to the revised MARPOL (the IMO International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78)) Regulation 13G, single-hull tankers should be phased out or converted to a double-hull by the dates established by the revised regulation.

Despite the legislative changes there still exists the potential to use single-hull, double-side or double-bottom tankers beyond 2010, as there is flexibility allowed by the IMO for flag and state exemptions. As per the exemptions mentioned under MARPOL Regulation 13H for the prevention of oil pollution from oil tankers, when carrying heavy grade oil (HGOs) such as heavy crude oils and fuel oils of density higher than 900 kg/m³ at 15°C, the IMO has the discretion to allow continued operation of single-hull, double-side or double-bottom tankers beyond the set phase-out dates (April 5, 2005 for single-hull tankers of 5,000 dwt and above; and the anniversary date in 2008 for single-hull tankers of 600 dwt and above but less than 5,000 dwt), depending upon size, age, operational area, structural conditions of the ship and results of the IMO’s Condition Assessment Scheme (CAS), provided that the operation does not go beyond the date on which the ship reaches 25 years after the date of its delivery.

In addition, according to the revised MARPOL Convention, Regulation 13G, single-hull tankers should be phased out or converted to double-hull tankers by the dates established by the revised regulation. However, the regulation allows the flag state of a given vessel to permit continued operation of Category 2 (an oil tanker of 20,000 dwt and above carrying crude oil, fuel oil, heavy diesel oil or lubricating oil as cargo, and of 30,000 dwt and above carrying oil other than the above) or Category 3 tankers (an oil tanker of 5,000 dwt and above but less than that specified for a Category 2 type oil tanker) beyond their phase-out dates, in accordance with the schedule, subject to satisfactory results from the Condition Assessment Scheme. Nonetheless, the continued operation of single-hull tankers must not go beyond the anniversary of the date of delivery of the ship in 2015 or the date on which the ship reaches 25 years of age after the date of its delivery, whichever is earlier.

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Product Tanker Fleet Age Profile

The average age of the ships in each major class are shown below, while the average age for the fleet as a whole is 11.0 years.

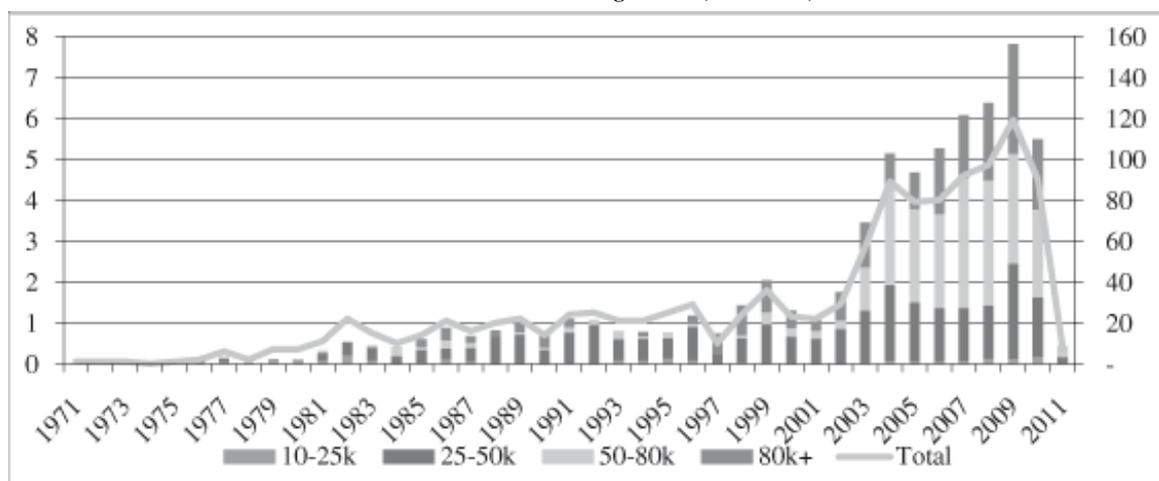
World Product Tanker Fleet: Average Age: March 31, 2011

World Product Tanker Fleet: Average		
Size Category	Deadweight	Average Age
	Tons	(Years)
LR2	>80,000	7.3
LR1	50,000–79,999	5.5
M R2	25,000–49,999	11.1
M R1	10,000–24,999	16.4
Fleet Average		9.8

Source: Drewry Maritime Research

The graph below illustrates the age profile of the world’s product tanker fleet as of March 31, 2011.

World Product Tanker Fleet: Age Profile, March 31, 2011



Left Hand Scale = Million Dwt; Right Hand Scale = No of Ships

Source: Drewry Research

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Oil Tanker Orderbook

As of March 31, 2011 the tanker orderbook amounted to 656 tankers of 104.4 million dwt, equivalent to 27.4% of the current fleet.

Oil Tanker Orderbook March 31, 2011

Size Category	Deadweight	Number of	% of Fleet	Total Capacity	% of Fleet
	Tons	Vessels	(Number)	(Million Dwt)	(Dwt)
VLCC	>200,000	179	32.7	56.3	33.9
Suezmax	120,000–199,999	150	35.9	23.2	36.2
Aframax	80,000–119,999	135	15.4	14.8	16.0
Panamax	50,000–79,999	104	23.5	6.8	22.1
Handy	10,000–49,999	88	11.6	3.3	12.0
Total		656	21.6%	104.4	27.4%

Source: Drewry Research

Product Tanker Orderbook

As of March 31, 2011 the product tanker orderbook amounted to 212 ships of 13.4 million dwt. Other tankers within these size ranges that do not have protective coatings and are thus suitable for carrying only crude cargoes have been excluded from the table below.

World Product Tanker Orderbook, March, 2010

Size Category	Deadweight	Number of	% of	Total Capacity	% of
	Tons	Vessels	Orderbook	(Million Dwt)	Orderbook (Dwt)
LR2	>80,000	40	18.9%	4.5	33.4%
LR1	50,000–79,999	90	42.5%	5.8	43.4%
MR2	25,000–49,999	66	31.1%	2.9	21.5%
MR1	10,000–24,999	16	7.5%	0.2	1.7%
Total		212	100.0%	13.4	100.0%

Source: Drewry Research

World Product Tanker Orderbook Delivery Schedule, March, 2010

Size	2011		2012		2013		2014		Total	
	No.	M Dwt	No.	M Dwt	No.	M Dwt	No.	M Dwt	No.	M Dwt
10,000–24,999	14	0.2	2	0.0	0	0.0	0	0.0	16	0.2
25,000–49,999	41	1.8	22	1.0	3	0.1	0	0.0	66	2.9
50,000–79,999	49	3.4	25	1.4	16	1.0	0	0.0	90	5.8
80,000+	19	2.1	16	1.8	2	0.2	3	0.4	40	4.5
Total	123	7.5	65	4.2	21	1.3	3	0.4	212	13.4

Source: Drewry Research

Deliveries and Slippage

Delays in deliveries are often referred to as slippage. Historically, slippage rates of delays in deliveries have tended to be less than 10%, which means that 10% of the ships due to be delivered in any year are in

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fact delivered in subsequent years. However, in 2008, 2009 and 2010 slippage rates rose due to a number of factors namely;

- In the most recent new ordering spree, which peaked in early 2008, shipowners were often quoted unrealistic delivery times by some of the less experienced and newly emerging shipyards. Delays in deliveries from these shipyards have been varied, but the evidence available suggests that slippage rates have been considerable, with some shipyards only delivering two-thirds of what they were due to deliver in 2009/2010.
- Financing is not in place for all of the tankers on order and in the current climate some owners will find it difficult to secure adequate funding.
- Orders have been placed at “greenfield” shipyards, some of which are also finding it difficult to secure funding for yard development. A greenfield yard is a shipyard with no prior experience in building vessels for international account.
- The current economic and financial crisis and the steep decline in shipping markets since 2009 may lead to further orderbook cancellations.

Product Tankers: Actual — v — Scheduled Deliveries

	Products									
	10–25k		25–50k		50–80k		80k+		Total	
	No.	Dwt	No.	Dwt	No.	Dwt	No.	Dwt	No.	Dwt
2009										
Actual Deliveries	9	131,334	49	2,312,512	37	2,692,001	24	2,675,138	119	7,810,985
Scheduled OB Deliveries(1)	13	156,786	63	2,785,009	53	3,707,883	36	4,036,625	165	10,686,303
Slippage (% of OB)	31%	16%	22%	17%	30%	27%	33%	34%	28%	27%
Actual Deliveries	12	172,695	31	1,449,508	32	2,148,660	15	1,708,882	90	5,479,745
2010										
Scheduled OB Deliveries(2)	13	173,857	55	2,389,278	40	2,633,562	26	2,826,084	134	8,022,781
Slippage (% of OB)	8%	1%	44%	39%	20%	18%	42%	40%	33%	32%

(1) Based on Orderbook as of January 2009; (2) Based on Orderbook as of January 2010

Source: Drewry Maritime Research

The Product Tanker Freight Market

Types of Charter

Oil tankers are employed in the market through a number of different chartering options. The general terms typically found in these types of contracts are described below.

- A **bareboat charter** involves the use of a vessel usually over longer periods of time ranging up to several years. In this case, all voyage related costs, including vessel fuel, or bunker, and port dues as well as all vessel operating expenses, such as day-to-day operations, maintenance, crewing and insurance, transfer to the charterer’s account. The owner of the vessel receives monthly charter hire payments on a per day basis and is responsible only for the payment of capital costs related to the vessel.
- A **time charter** involves the use of the vessel, either for a number of months or years or for a trip between specific delivery and redelivery positions, known as a trip charter. The charterer pays all voyage related costs. The owner of the vessel receives semi-monthly charter hire payments on a per day basis and is responsible for the payment of all vessel operating expenses and capital costs of the vessel.
- A **single or spot voyage charter** involves the carriage of a specific amount and type of cargo on a load-port to discharge-port basis, subject to various cargo handling terms. Most of these charters are of a single or spot voyage nature, as trading patterns do not encourage round voyage trading. The owner

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of the vessel receives one payment derived by multiplying the tons of cargo loaded on board by the agreed upon freight rate expressed on a per cargo ton basis. The owner is responsible for the payment of all expenses including voyage, operating and capital costs of the vessel.

- A **contract of affreightment, or COA**, relates to the carriage of multiple cargoes over the same route and enables the COA holder to nominate different ships to perform individual voyages. Essentially, it constitutes a number of voyage charters to carry a specified amount of cargo during the term of the COA, which usually spans a number of years. All of the ship's operating, voyage and capital costs are borne by the ship owner. The freight rate normally is agreed on a per cargo ton basis.

Freight Rates

Worldscale is the tanker industry's standard reference for calculating freight rates, and its aim is to make the business of fixing tankers quicker, easier and more flexible. Worldscale is used because it provides the flexibility required for the oil trade. Oil is a fairly homogenous commodity, it does not vary too much in quality and it is relatively easy to transport by a variety of methods. This, combined with the volatility of the world oil markets, means that an oil cargo may be bought and sold many times while at sea. The cargo owner therefore requires great flexibility in its choice of discharge options. If tanker fixtures were priced in the same way as dry cargo fixtures this would involve the shipowner calculating separate individual freights for a wide variety of discharge points. Worldscale provides a solution to this problem by providing a set of nominal rates designed to provide roughly the same daily income irrespective of discharge point.

TCE, or time charter equivalent, is the figure that describes the earnings potential of any voyage based on the quoted Worldscale rate. As described above, the Worldscale rate is set and can then be converted into dollars per cargo ton. A voyage calculation is then performed which takes all expenses (port costs, bunkers and commission) out from the gross revenue. This leaves a net profit which is divided by the total voyage days (at sea and in port) to give a daily TCE rate.

Tanker charter rates and vessel values for all tankers are influenced by the supply and demand for tanker capacity. However, the product segment generally appears less volatile than other crude market segments because these vessels mainly transport refined petroleum products that are not subject to the same degree of volatility as the crude oil market. Also, in general terms time charter rates are less volatile than spot rates, because they reflect the fact that the vessel is fixed for a longer period of time. In the spot market, rates will reflect the immediate underlying conditions in vessel supply and demand and are thus prone to more volatility. The recent trends in rates in the time charter equivalent of spot rates and time charter rates are shown in the tables below.

Tanker charter rates and vessel values for all tankers are strongly influenced by the supply and demand for tanker capacity. Small changes in tanker utilization have historically led to relatively large fluctuations in tanker charter rates for VLCCs, more moderate price volatility in the Suezmax, Aframax and Panamax markets and less volatility in the Handy market compared to the tanker market as a whole.

From 2005 to 2007 time charter rates for all sizes of oil tankers rose quite steeply, reflecting the fact that buoyant demand for oil and increased sea-borne movements of oil generated additional demand for tanker capacity. This led to a much tighter balance between vessel demand and supply. However, as the world economy weakened in the second half of 2008 demand for oil also fell and had a negative impact on tanker demand and freight rates. Rates therefore declined in 2009, only to recover in the early part of 2010, before falling once again in the summer months and then remaining weak into 2011.

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Oil Tanker One Year Time Charter Rates: 2000–2011
(US\$/Day Period Averages)

Size Category	Handysize	Handymax	Aframax	Suezmax	VLCC
DWT	30,000	45,000	90–95,000	150,000	280,000
2000	12,454	13,958	18,854	27,042	35,250
2001	15,583	17,563	23,125	30,500	37,958
2002	11,417	13,288	16,896	17,750	23,458
2003	13,267	14,846	19,146	26,104	33,604
2004	15,629	19,029	29,500	37,875	53,900
2005	18,854	25,271	35,021	42,292	60,125
2006	21,417	26,792	35,233	42,667	55,992
2007	22,000	24,500	33,143	43,042	53,333
2008	21,438	23,092	34,708	46,917	74,662
2009	13,675	14,850	19,663	27,825	38,533
2010	11,000	12,388	18,571	25,967	36,083
March 2011	12,000	13,000	16,000	21,000	29,000

Source: Drewry Research

In general terms, time charter rates are less volatile than spot rates, because they reflect the fact that the vessel is fixed for a longer period of time. In the spot market, rates will reflect the immediate underlying conditions in vessel supply and demand and are thus prone to more volatility.

Product Tanker Spot Charter Rates: 2000–2011
(US\$/Day — Period Averages)

Routes	Arabian Gulf — Japan (50,000–60,000 Dwct*)		Caribbean — USES ^{(1),(2)} (35,000–40,000 Dwct*)		Mediterranean–NW Europe (25,000–35,000 Dwct*)	
	WS ⁽³⁾	(\$/day)TCE ⁽⁴⁾	WS	(\$/day)TCE	WS	(\$/day)TCE
2000	237	24,390	276	14,415	234	10,750
2001	249	32,835	267	18,040	260	14,625
2002	152	16,515	182	10,100	185	8,610
2003	218	25,390	270	17,240	238	14,975
2004	251	31,800	337	24,000	304	14,800
2005	276	37,675	272	23,925	297	11,925
2006	214	26,525	233	21,575	259	7,600
2007	181	24,150	203	22,000	242	17,775
2008	250	34,600	234	23,400	287	21,325
2009	93	14,050	93	9,450	114	6,275
2010	133	12,658	141	10,958		
March 2011	122	4,200	190	14,900		

* dwct refers to the cargo parcel size and in the case of a fully loaded ship is normally equivalent to approximately 97% of the vessel's deadweight.

(1) 25,000–35,000 dwct prior to January 2005.

(2) United States Eastern Seaboard.

(3) Worldscale.

(4) Time Charter Equivalent.

Source: Drewry Research

Product Tanker One Year Time Charter Rates: 2000–2011
(US\$/Day — Period Averages)

Size Category Dwt	MR1 30,000	MR2 45,000	LR1 75,000 ⁽¹⁾
	<u>(5–Years Old)</u>	<u>(5–Years Old)</u>	<u>(5–Years Old)</u>
2000	12,454	13,958	17,284
2001	15,583	17,563	22,064
2002	11,417	13,288	16,677
2003	13,267	14,846	15,891
2004	15,629	19,029	24,485
2005	18,854	25,271	28,933
2006	21,417	26,792	29,100
2007	22,200	24,500	30,408
2008	21,438	23,092	28,525
2009	13,675	14,850	18,617
2010	11,000	12,388	16,333
March 2011	12,000	13,000	14,500

(1) 70–75,000 Dwt prior to 2007

Source: Drewry Research

Vessel Values

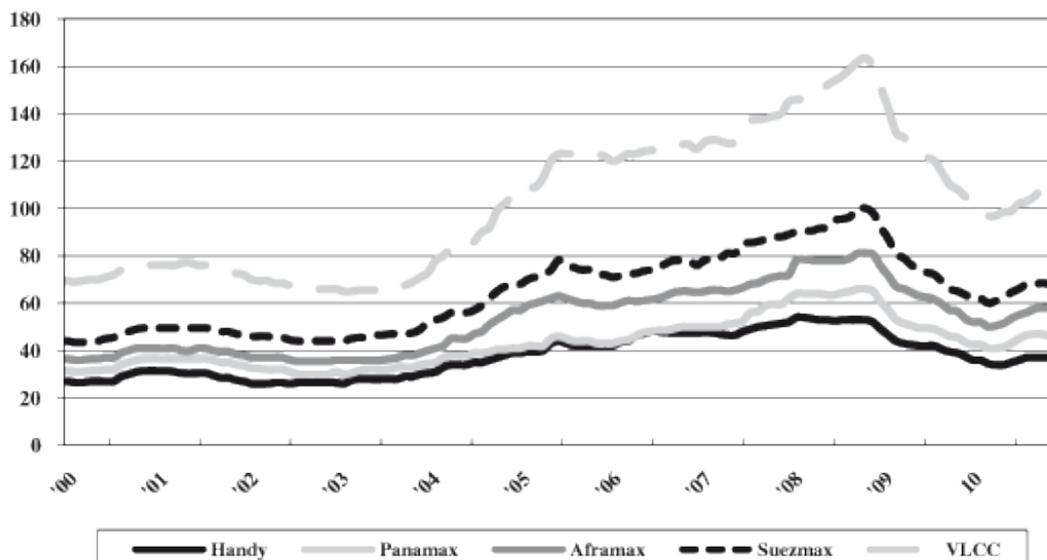
Newbuilding Prices

Global shipbuilding is concentrated in Japan, South Korea and, more recently, China. This concentration is the result of economies of scale, construction techniques and the prohibitive costs of building in other parts of the world. These three countries collectively account for approximately 80% of the world's newbuilding capacity. Vessels are constructed at shipyards of varying size and technical sophistication. Although there are many exceptions to this rule, drybulk carriers are generally considered to be the least technically sophisticated. As such, shipyards tend to extract the smallest margin for their construction. Tankers, and to a larger extent container vessels and liquefied natural gas carriers, are respectively more profitable for shipyards with the requisite size and technical sophistication to build.

Currently, it takes approximately two to three years from the date of signing a newbuilding contract to the date a shipowner takes delivery of the vessel from a shipyard. The actual construction of a vessel takes place in 9 to 12 months and is highlighted by 5 stages, namely: contract signing, steel cutting, keel laying, launching and delivery. Each of these stages is usually associated with an installment to the shipyard. The difference between the time it takes for a vessel to be delivered and the time it is actually under construction is a result of the current shortage of newbuilding berths.

Oil Tanker Newbuilding Prices: 2000–2011⁽¹⁾

(US\$ Million)



(1) Through March, 2011

Source: Drewry Research

Newbuilding prices as a whole rose steadily between 2004 and mid 2008 owing to high levels of new ordering, shortage in newbuilding capacity during a period of high charter rates, and increased shipbuilders' costs as a result of increasing steel prices and the weakening U.S. Dollar. However, prices weakened in 2009 in the wake of the downturn in new ordering as illustrated by the following chart. The lack of new orders makes it difficult to gauge current price levels exactly, but the most recent evidence suggests that newbuilding prices weakened a little in 2010.

Product Tanker⁽¹⁾ Newbuilding Prices: 2000–2011

(US\$ Million — Period Averages)

Year	Size Category	MR1	MR2	LR1
	Dwt	30,000	50,000 ⁽²⁾	75,000 ⁽²⁾
2000		n/a	28.4	33.2
2001		n/a	29.8	35.8
2002		n/a	26.3	31.1
2003		26.3	28.3	32.3
2004		32.5	35.4	38.9
2005		36.9	41.8	43.6
2006		40.0	46.8	48.0
2007		41.9	49.5	56.0
2008		44.8	52.1	63.6
2009		34.8	40.3	47.5
2010		31.6	36.0	44.7
March 2011		31.5	36.3	44.7

(1) Coated tankers.

(2) 45,000–50,000 Dwt prior to 2008; 70,000–75,000 Dwt prior to 2008

Source: Drewry Research

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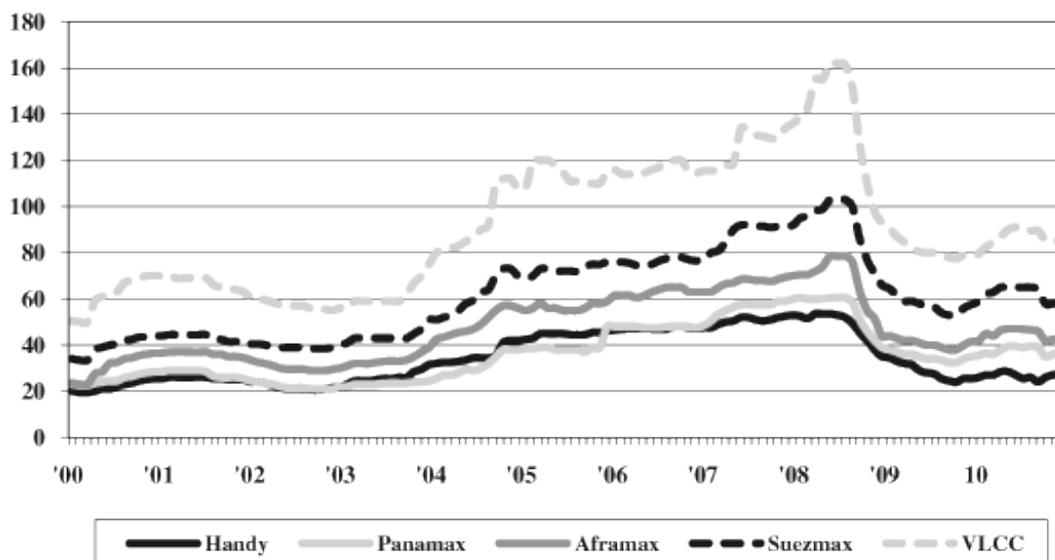
Secondhand Prices

Secondhand values primarily, albeit with a lag, reflect prevailing and expected charter rates. During extended periods of high charter rates vessel values tend to appreciate and vice versa. However vessel values are also influenced by other factors depending on a vessel's age. Prices for young vessels, those approximately up to five years old, are also influenced by newbuilding prices while prices for old vessels, near the end of their useful economic life, those approximately at or in excess of 25 years, are influenced by the value of scrap steel.

In addition values for younger vessels tend to fluctuate less on a percentage — not a nominal — basis than values for older vessels. This is attributed to the finite useful economic life of vessels which makes the price of younger vessels with a commensurably longer remaining economic life less susceptible to the level of prevailing and expected charter rates in the foreseeable future while prices of older vessels are influenced more since their remaining economic life is limited beyond the foreseeable future. Vessel values are determined on a daily basis in the sale and purchase, or S&P, market where vessels are sold and bought through specialized sale and purchase brokers who report these transactions to participants in the seaborne transportation industry on a regular basis. The sales and purchase market for vessels is therefore transparent and quite liquid with a large number of vessels changing hands on an annual basis

The chart below illustrates the movements of prices (expressed in US\$ million) for second hand (5 year old) oil tankers between 2000 and March 2011.

Oil Tanker Secondhand Prices — 5 Year Old Vessels: 2000–2011⁽¹⁾
(US\$ Million)



(1) Through March, 2011

Source: Drewry Research

With vessel earnings running at high levels and a dearth of available newbuilding berths, demand for oil tankers available for early delivery was at a premium and secondhand values for all tankers rose steadily from 2004 until the middle of 2008. In some instances, the market witnessed secondhand prices for five-year-old oil tankers reaching levels higher than those for comparably sized newbuildings. However, this situation was temporary and with the downturn in freight rates secondhand values for tankers fell throughout the whole of 2009, and in some cases in 2010 as well.

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The table below illustrates the movements of prices (expressed in US\$ million) for second hand (5 year old) product tankers between 2000 and March 2011.

Product Tanker⁽¹⁾ Secondhand Prices: 2000–2011 (US\$ Million — Five-Year-Old Tankers — Period Averages)

Size Category Dwt	MR1 ⁽²⁾	MR2*	LR1*
	<u>30,000⁽¹⁾</u>	<u>45,000⁽³⁾</u>	<u>70,000⁽⁴⁾</u>
2000	16.9	22.0	30.1
2001	17.0	25.6	33.2
2002	15.5	21.8	26.5
2003	21.8	25.4	27.7
2004	29.9	34.8	36.3
2005	36.6	44.3	45.9
2006	37.6	47.1	47.9
2007	40.4	50.0	54.8
2008	42.5	51.0	58.0
2009	26.2	30.2	35.8
2010	23.0	26.4	37.2
March 2011	22.5	28.0	37.0

(1) Coated Tankers

(2) 35,000–40,000 dwt prior to 2007

(3) 45,000–50,000 dwt prior to 2007

(4) 70,000–75,000 dwt prior to 2007

Source: Drewry Research

Regulations

Government regulation significantly affects the ownership and operation of vessels including international conventions, national, state and local laws and regulations in force in the countries in which vessels may operate or are registered.

A variety of governmental and private entities subject vessels to both scheduled and unscheduled inspections. These entities include the local port authorities (U.S. Coast Guard, harbor master or equivalent), classification societies, flag state administration (country of registry) and charterers, particularly terminal operators. Certain of these entities require vessel owners to obtain permits, licenses and certificates for the operation of their vessels. Failure to maintain necessary permits or approvals could require a vessel owner to incur substantial costs or temporarily suspend operation of one or more of its vessels.

National authorities and international conventions have historically regulated the seaborne transportation of crude oil and refined petroleum products. Legislation and regulations, such as OPA, United Nations-backed IMO protocols and classification society procedures, demand higher-quality vessel construction, maintenance, repair and operations. This development has accelerated in recent years in the wake of several high-profile accidents involving 1970s-built ships of single-hull construction — first the “Erika” in 1999 and then the “Prestige” in November 2002. For example, in 2003 the IMO amended regulations to accelerate the phase-out of certain pre-1982 built single-hull tankers to 2005, with all remaining single-hull tankers removed by 2015 at the latest. In addition to IMO regulations, OPA requires that all oil tankers entering U.S. waterways be exclusively double-hull by 2015. Successive regulations place increasingly stringent age limits and quality requirements on vessels accepted at various ports around the world, with a view to protecting the environment. Charterers, port authorities, terminal operators, insurers and shippers have sought to enforce such regulations

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through the periodic inspection and vetting of vessels. The following table summarises the features of selected regulations pertaining to the operations of tankers.

The heightened level of environmental and quality concerns among insurance placing agents, regulators and charterers is leading to greater inspection and safety requirements on all vessels and may accelerate the scrapping of older vessels throughout the industry. Increasing environmental concerns have created a demand for vessels that conform to the stricter environmental standards. Vessel owners are required to maintain operating standards for all vessels that will emphasize operational safety, quality maintenance, continuous training of officers and crews and compliance with United States and international regulations.

In recent years, as regulators and charterers have increasingly focused on safety and protection of the environment, there has been a significant and continuing movement within the tanker industry towards higher quality vessels and vessel operations. Long seen as a commodity market with little degree of differentiation between vessels and owners, the industry began to change during the early 1990s. The Exxon Valdez incident in 1989 started the movement towards tighter industry regulations and an increasing emphasis on environmental protection through legislation and regulations. These included the OPA 90 protocols established by the IMO and procedures established by classification societies, demanding higher-quality tanker construction, maintenance, repair and operations. In addition, oil companies acting as charterers, other shippers and receivers of oil, and terminal operators have become increasingly selective in their acceptance of tankers, periodically inspecting and vetting vessels as well as their owners and operators.

International Tanker Regulations

Regulation	Introduced	Features
OPA	1990	Single-hull ships banned by 2010 in the U.S. Double-sided and double-bottom ships banned by 2015.
IMO MARPOL Regulations 13G & 13H	Latest amendment in 2003	Newbuildings must be double-hull. Phase out of pre-MARPOL tankers as of 2005. Remaining single-hull tankers phased out by 2010 or 2015, depending on port and flag states. Single-hull ships over 15 years subject to Conditional Assessment Scheme. Single-hull tankers banned from carrying heavy oil grades as of 2005, or as of 2008 for tankers between 600–5,000 dwt.
EU 417/2002	1999	25-year-old single-hull ships to cease trading as of 2007 unless they apply hydrostatic balance methods or segregated ballast tanks. Single-hull tankers fitted with segregated ballast tanks phased out by 2015.
EU 1723/2003	2003	Pre-MARPOL single-hull tankers banned after 2005. Remaining single-hull vessels banned as of 2010. Single-hull tankers banned from carrying heavy oil grades by 2003.
MARPOL Annex II, International Bulk Chemical Code (IBC)	2004	Beginning January 1, 2007, vegetable oils which were previously categorized as being unrestricted will now be required to be carried in IMO II chemical tankers or certain IMO III tankers that meet the environmental protection requirements of an IMO II tanker with regard to hull type (double hull) and cargo tank location.

Source: Drewry Research

Besides the MARPOL regulations, it is becoming increasingly clear that oil majors are reluctant to accept ships that are over 20 years of age. In addition, some countries have in fact talked of introducing age restrictions that would prevent old single hulled tankers from calling at their ports, but to date China/Hong Kong are the only major oil importers to introduce such legislation. However, the recent pollution problems in the U.S. Gulf will only heighten the awareness of governments around the world to the potential dangers of oil pollution from both drilling and production operations and transportation.

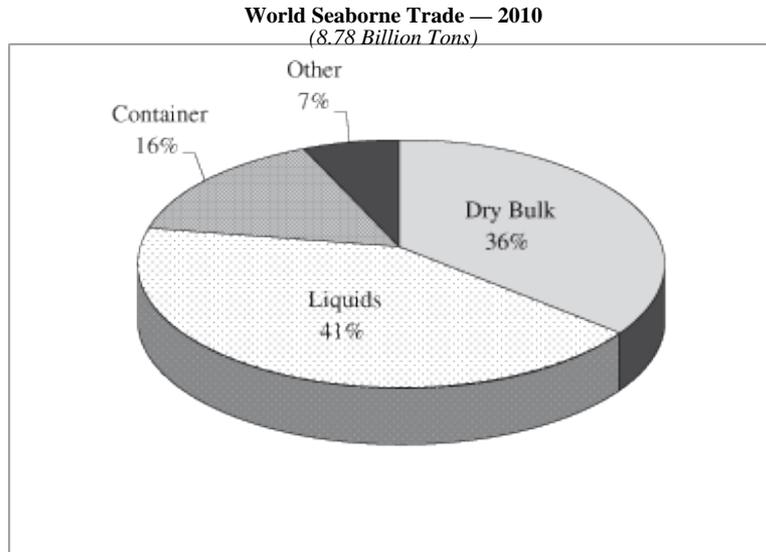
Overall, the increasing focus on safety and protection of the environment has led oil companies acting as charterers, terminal operators, shippers and receivers to become increasingly selective with respect to the vessels they charter, vetting both vessels and shipping companies on a periodic basis. Although these vetting procedures and increased regulations raise the operational cost and potential liabilities for tanker vessel owners and operators, they strengthen the relative competitive position of shipowners with high quality young tanker fleets and high quality operations.

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The Dry Bulk Shipping Industry

Introduction

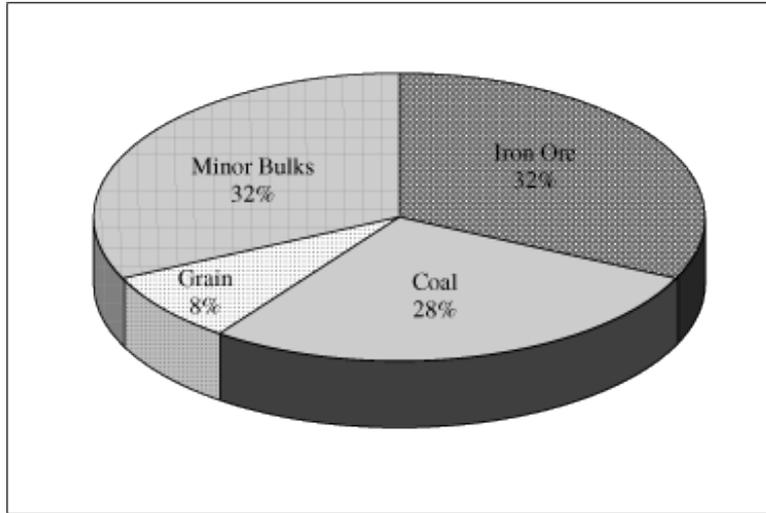
Dry bulk cargo comprises approximately 36% of total seaborne trade. Dry bulk cargo is any form of cargo that is shipped in bulk and can be loaded and unloaded in its original, unadulterated and unpackaged state. Commonly seen dry bulk cargoes include steel, grains (soybean, wheat, etc.), cement, and lumber. Less directly visible, but often in large quantities, are iron ore and metallurgic coal (the two primary raw materials used in producing steel), thermal coal (used in power plants for electric generation), and fertilizers (used in farming). For statistical purposes, dry bulk cargoes are commonly categorized in to major or minor bulks. The major bulks category consists of iron ore, coal, and grains. The minor bulks category includes, but is not limited to, fabricated steel, steel scrap, fertilizers, lumber, cement, and minerals. These raw materials are typically poured or lifted into a ship's hold without the aid of additional pallets or other packaging materials.



Source: Drewry Research

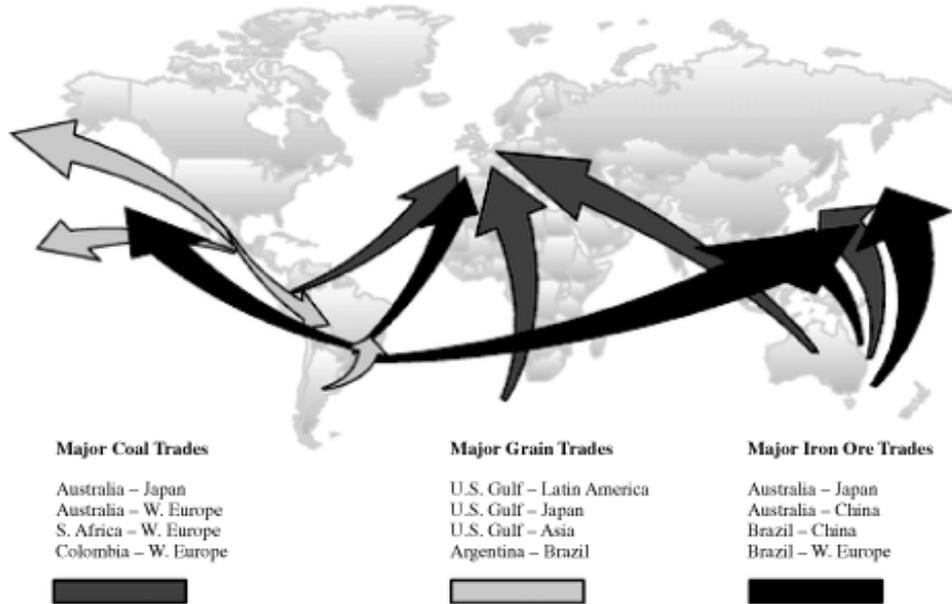
Dry bulk carriers play an important role in connecting the resource extraction points, such as mines and farms, and end users, such as steel mills and food processors. Due to the increasingly global supply chain and changing demand patterns for different raw materials, dry bulk freighters provide the most cost effective means of completing the supply chain than other methods such as air, rail, or truck transportation. Shipping benefits relative to the other modes of transportation from larger economies of scale of vessels considering the massive capacity of bulk freighters, and their ability to serve destinations with limited existing infrastructure. Additionally, the majority of the supply centers are either at a great distance or separated by vast bodies of water from the main demand centers, thus waterborne transportation is effectively often the only means of movement.

Dry Bulk Seaborne Trade — 2010
(3.18 Billion Tons)



Source: Drewry Research

Major Dry Bulk Seaborne Trades

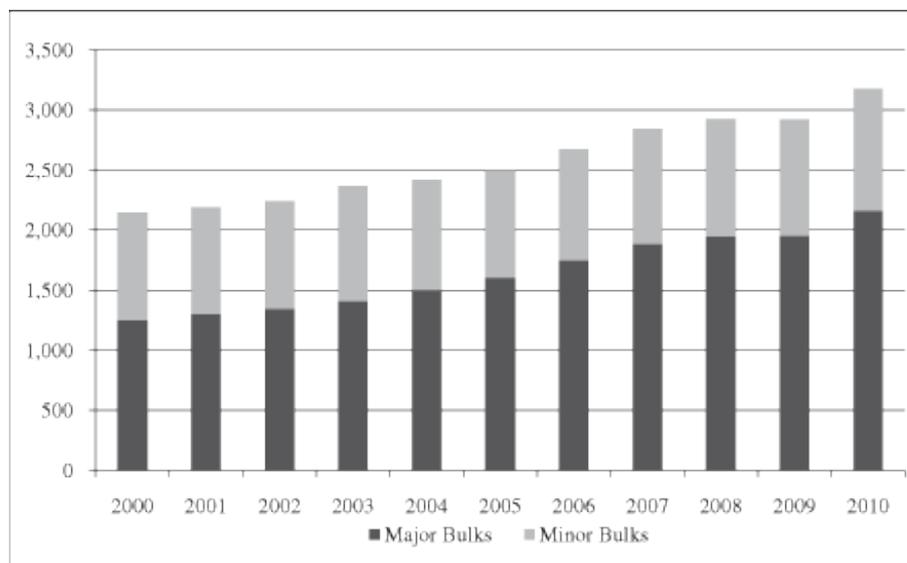


Source: Drewry Research

Dry Bulk Shipping Demand

Dry bulk trade is influenced by the underlying demand for the dry bulk commodities which, in turn, is influenced by the level of worldwide economic activity. Generally, growth in gross domestic product, or GDP, and industrial production correlate with peaks in demand for marine dry bulk transportation services. The following chart demonstrates the change in world dry bulk trade between 2000 and 2010.

Dry Bulk Trade Development: 2000 to 2010
(Million Tons)



Source: Drewry Research

Historically, certain economies have acted as the primary drivers of dry bulk trade. In the 1990s, Japan was the driving force of increases in ton-miles, when buoyant Japanese industrial production stimulated demand for imported dry bulk commodities. More recently, China and, to a lesser extent, India have been the main drivers behind the recent increase in seaborne dry bulk trade, as high levels of economic growth have generated increased demand for imported raw materials. The following table illustrates China's and India's gross domestic product growth rates compared to those of the United States, Europe, Japan and the world during the periods indicated.

Real GDP Growth: 2000 to 2010
(% change previous period)

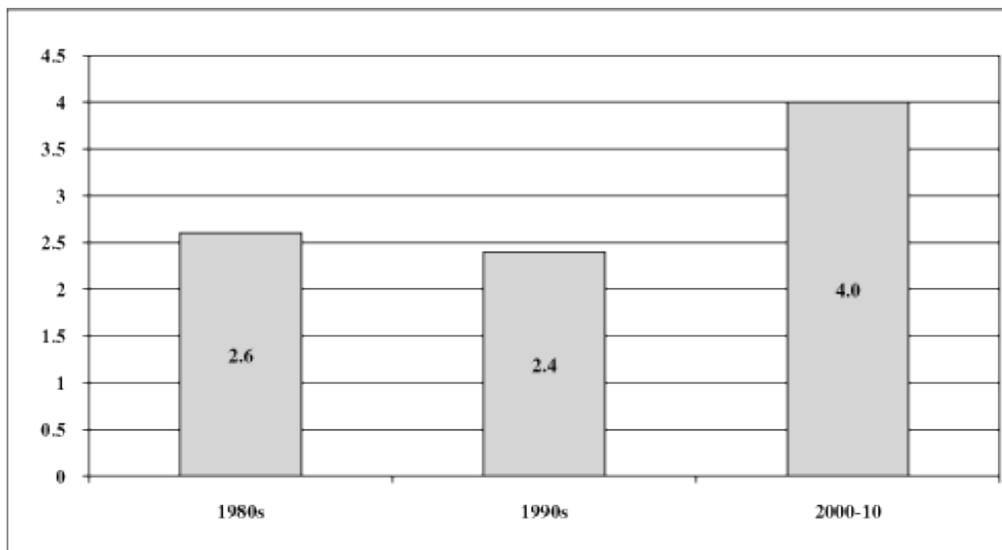
GDP	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010 ⁽¹⁾
Global Economy	4.8	2.4	3.0	4.1	5.3	4.4	4.9	5.0	2.8	(0.9)	4.9
USA	3.8	0.3	1.6	2.7	3.9	3.1	2.7	2.1	0.4	(2.6)	2.9
Europe	3.4	1.7	1.1	1.1	2.1	1.8	3.1	2.7	0.5	(4.0)	1.7
Japan	2.8	0.4	(0.3)	1.8	2.7	1.9	2.0	2.4	(1.2)	(6.3)	4.4
China	8.0	7.5	8.3	10.0	10.1	10.4	11.6	13.0	9.6	9.1	10.2
India	5.1	4.4	4.7	7.4	7.0	9.1	9.9	9.3	7.5	6.7	8.6

(1) Provisional

Source: Drewry Research

The impact of the rapid expansion of Asian economies on dry bulk trade growth can be seen below. In the 1990s, the average CAGR in seaborne trade was 2.4%, but in the period 2000–2009, the average annual rate increased to 3.9%.

Dry Bulk Trade* — Growth Rates by Period
(CAGR — Percent)



* Based on tons

Source: Drewry Research

The following is an overview of changes in seaborne trade in major and minor bulk cargoes in the period 2000 to 2010.

Dry Bulk Seaborne Trade: 2000 to 2010
(Million Tons)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Coal	539	587	590	619	650	675	769	833	830	784	915
Iron Ore	489	503	544	580	644	715	759	823	886	959	1,004
Grain	221	213	210	211	208	212	221	228	235	209	242
Minor Bulks	901	890	900	957	918	895	927	960	975	969	1,015
Total	2,150	2,193	2,244	2,367	2,420	2,497	2,676	2,844	2,929	2,921	3,179

Source: Drewry Research

Coal

Asia’s rapid industrial development has contributed to strong demand for coal, which accounted for roughly one third of the total growth of seaborne dry bulk trade between 2000 and 2009. Coal is divided into two main categories: thermal (or steam) and coking (or metallurgical). Thermal coal is used mainly for power generation, whereas coking coal is used to produce coke to feed blast furnaces in the production of steel. Chinese and Indian electricity consumption has grown at a rapid pace. China is the second largest consumer of electricity in the world, even though generally highly populated developing economies have low per capita electricity consumption.

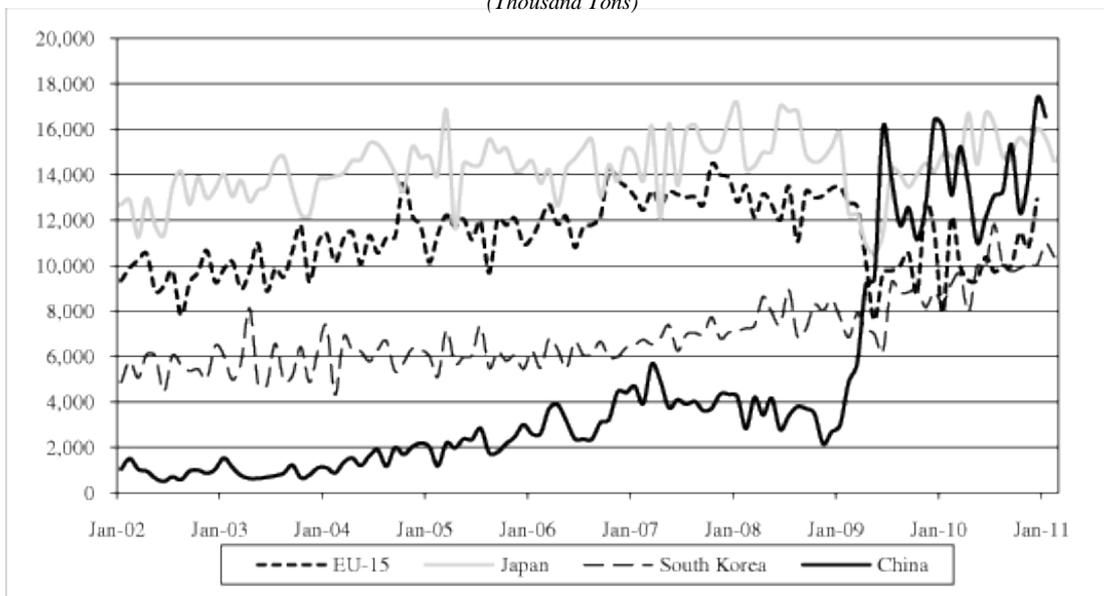
Expansion in air conditioned office and factory space, along with industrial use, has increased demand for electricity, of which nearly half is generated from coal-fired plants, thus increasing demand for thermal coal. In addition, Japan’s domestic nuclear power generating industry has suffered from safety problems in recent years, leading to increased demand for oil, gas and coal-fired power generation. Furthermore, the high cost of oil and gas has led to increasing development of coal-fired electricity plants around the world, especially in

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Asia. Future prospects are also heavily tied to the steel industry. Coking coal is of a higher quality than thermal coal (i.e., more carbon and fewer impurities) and its price is both higher and more volatile.

Increases in steam coal demand have been significant, as both developed and developing nations require increasing amounts of electric power. The main exporters of coal are Australia, South Africa, Russia, Indonesia, United States, Colombia and Canada. The main importers of coal are Europe, Japan, South Korea, Taiwan, India and China, as illustrated in the first chart below. China has recently become a net importer of coal, and Indian imports have doubled in less than five years. Coal is transported primarily by Capesize, Panamax and Supramax vessels.

Coal Imports: 2002 to 2011
(Thousand Tons)

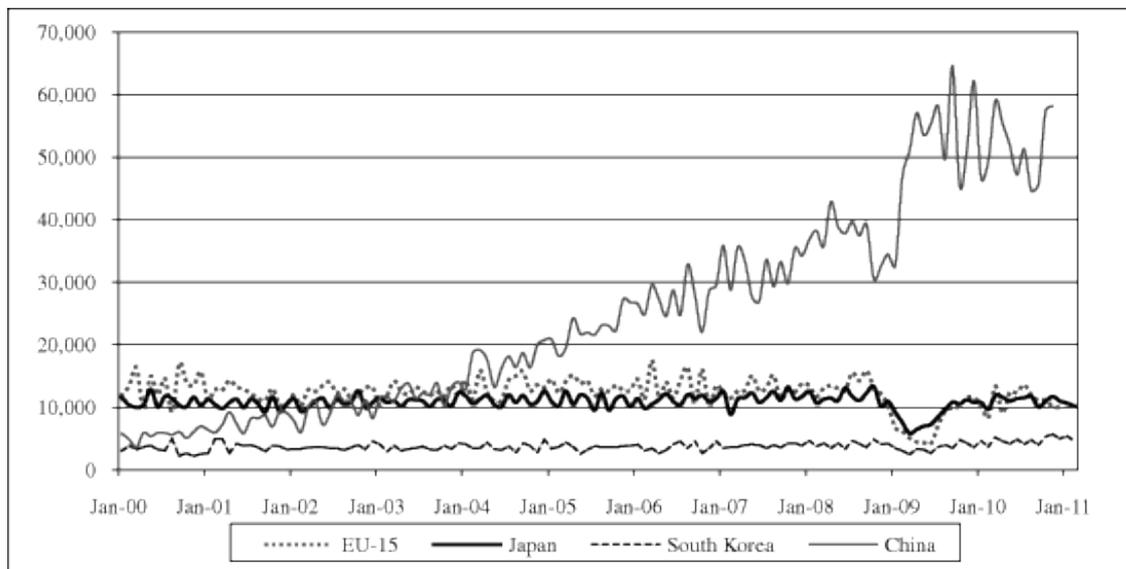


Source: Drewry Research

Iron Ore

Iron ore is used as a raw material for the production of steel, along with limestone and coking (or metallurgical) coal. Steel is the most important construction and engineering material in the world. In 2010, approximately 1.0 billion tons of iron ore were exported worldwide, with the main importers being China, the European Union, Japan and South Korea. The main producers and exporters of iron ore are Australia and Brazil.

Iron Ore Imports: 2000 to 2011
(Thousand Tons)



Source: Drewry Research

Chinese imports of iron ore have grown significantly due to increased steel production in the last few years and have been a major driving force in the dry bulk sector. In 2008, Chinese iron ore imports increased by approximately 15.7% to 444.1 million tons and despite the downturn in the world economy and global trade they continued to grow in 2009 and 2010. In 2010, total Chinese imports of iron ore amounted to 616.8 million tons in the wake of renewed growth in domestic steel production.

Chinese imports of iron ore have traditionally come primarily from Australia, Brazil and India. The shares of Indian and Brazilian imports into China have increased since 2000. Australia and Brazil together account for approximately two-thirds of global iron ore exports. Although both countries have seen strong demand from China, Australia continues to benefit the most from China's increased demand for iron ore. India is also becoming a major exporter of iron ore. Unlike Australia and Brazil, which tend to export primarily in the larger Capesize vessels, much of India's exports are shipped in smaller vessels.

Grains

Grains include wheat, coarse grains (corn, barley, oats, rye and sorghum) and oil seeds extracted from different crops such as soybeans and cotton seeds. In general, wheat is used for human consumption, while coarse grains are used as feed for livestock. Oil seeds are used to manufacture vegetable oil for human consumption or for industrial use, while their protein-rich residue is used as food for livestock.

Global grain production is dominated by the United States. Argentina is the second largest producer, followed by Canada and Australia. International trade in grains is dominated by four key exporting regions: North America, South America, Oceania and Europe (including the former Soviet Union). These regions collectively account for over 90% of global exports. In terms of imports, the Asia/Pacific region (excluding Japan) ranks first, followed by Latin America, Africa and the Middle East.

Historically, international grain trade volumes have fluctuated considerably as a result of regional weather conditions and the long history of grain price volatility and government interventionism. However, demand for wheat and coarse grains are fundamentally linked in the long-term to population growth and rising per capita income.

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Minor Dry Bulks

The balance of dry bulk trade, minor dry bulks, can be subdivided into two types of cargo. The first type includes secondary dry bulks or free-flowing cargo, such as agricultural cargoes, bauxite and alumina, fertilizers and cement. The second type is neo-bulks, which include non-free flowing or part manufactured cargo that is principally forest products and steel products, including scrap.

Dry Bulk Carrier Demand

Globally, total seaborne trade in all dry bulk commodities increased from 2.15 billion tons in 2000 to 3.18 billion tons in 2010, representing a CAGR of 4.0%.

Another industry measure of vessel demand is ton-miles, which is calculated by multiplying the volume of cargo moved on each route by the distance of such voyage. Between 2000 and 2010, ton-mile demand in the dry bulk sector increased by 64% to 18.4 billion ton-miles, equivalent to a CAGR of 5.1%. Ton mile employment has grown faster than trade due to geographical shifts in the pattern and an increase in average voyage lengths. The following table illustrates this measure.

Dry Bulk Vessel Demand⁽¹⁾: 2000 to 2010
(Billion Ton-Miles)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Coal	2,831	3,082	3,115	3,250	3,412	3,544	4,073	4,500	4,566	4,101	4,854
Iron Ore	2,690	2,766	2,990	3,193	3,525	3,899	4,098	4,936	5,438	6,231	6,731
Grain	1,161	1,118	1,103	1,108	1,089	1,113	1,161	1,196	1,243	1,109	1,310
Minor Bulks	4,469	4,411	4,481	4,714	5,036	4,924	5,097	5,327	5,411	5,296	5,529
Total	11,150	11,378	11,688	12,264	13,063	13,480	14,429	15,959	16,658	16,735	18,424

(1) Excludes coastal trade

Source: Drewry Research

The above figures however exclude demand arising on coastal and intra-regional trades. In this context, it is worth noting that there is over 1 billion tonnes of cargo of all kinds which is transported between Chinese ports by sea. The dry bulk proportion of this trade is in excess of 400 million tonnes and it therefore creates considerable employment for dry bulk carriers, especially smaller vessels such as Handysize bulk carriers.

Seasonality

Two of the three largest commodity drivers of the dry bulk industry, coal and grains, are affected by seasonal demand fluctuations. Thermal coal is linked to the energy markets and in general encounters upswings towards the end of the year in anticipation of the forthcoming winter period as power supply companies try to increase their stocks, or during hot summer periods when increased electricity demand is required for air conditioning and refrigeration purposes. Grain production is also seasonal and is driven by the harvest cycle of the northern and southern hemispheres. However, with four nations and the European Union representing the largest grain producers (the United States, Canada and the European Union in the northern hemisphere and Argentina and Australia in the southern hemisphere), harvests and crops reach seaborne markets throughout the year. Taken as a whole, seasonal factors mean that the market for dry bulk vessels is often stronger during the winter months.

Dry Bulk Carrier Supply

The world dry bulk fleet is generally divided into six major categories, based on a vessel's cargo carrying capacity. These categories consist of: Handysize, Handymax/Supramax, Panamax, Post Panamax, Capesize and Very Large Ore Carrier.

Dry Bulk Vessel Types and Sizes

Category	Size Range — Dwt
Handysize	10–39,999
Handymax/Supramax	40–59,999
Panamax	60–79,999
Post Panamax	80–109,999
Capesize	110–199,999
VLOC	200,000 +

- **Handysize.** Handysize vessels have a carrying capacity of up to 39,999 dwt. These vessels are primarily involved in carrying minor bulk cargoes. Increasingly, vessels of this type operate on regional trading routes, and may serve as trans-shipment feeders for larger vessels. Handysize vessels are well suited for small ports with length and draft restrictions. Their cargo gear enables them to service ports lacking the infrastructure for cargo loading and unloading.
- **Handymax/Supramax.** Handymax vessels have a carrying capacity of between 40,000 and 59,999 dwt. These vessels operate on a large number of geographically dispersed global trade routes, carrying primarily iron ore, coal, grains and minor bulks. Within the Handymax category there is also a sub-sector known as **Supramax**. Supramax bulk vessels are vessels between 50,000 to 59,999 dwt, normally offering cargo loading and unloading flexibility with on-board cranes, while at the same time possessing the cargo carrying capability approaching conventional Panamax bulk vessels. Hence, the earnings potential of a Supramax dry bulk vessel, when compared to a conventional Handymax vessel of 45,000 dwt, is greater.
- **Panamax.** Panamax vessels have a carrying capacity of between 60,000 and 79,999 dwt. These vessels carry coal, grains, and, to a lesser extent, minor bulks, including steel products, forest products and fertilizers. Panamax vessels are able to pass through the Panama Canal, making them more versatile than larger vessels.
- **Post Panamax.** (sometimes known as Kamsarmax). Post Panamax vessels typically have a carrying capacity of between 80,000 and 109,999 dwt. These vessels tend to be shallower and have a larger beam than a standard Panamax vessel with a higher cubic capacity. They have been designed specifically for loading high cubic cargoes from draught restricted ports. This type of vessel cannot transit the Panama Canal. The term Kamsarmax stems from Port Kamsar in Guinea, where large quantities of bauxite are exported from a port with only 13.5 meter draught and a 229 meter length overall restriction, but no beam restriction.
- **Capesize.** Capesize vessels have carrying capacities of between 110,000 and 199,999 dwt. Only the largest ports around the world possess the infrastructure to accommodate vessels of this size. Capesize vessels are mainly used to transport iron ore or coal and, to a lesser extent, grains, primarily on long-haul routes.
- **VLOC.** Very large ore carriers are in excess of 200,000 dwt and are a comparatively new sector of the dry bulk vessel fleet. VLOCs are built to exploit economies of scale on long-haul iron ore routes.

Dry Bulk Vessels: Indicative Deployment by Size Category

Cargo Type	Post Panamax/						
	<u>Handysize</u>	<u>Handymax</u>	<u>Supramax</u>	<u>Panamax</u>	<u>Kamsarmax</u>	<u>Capesize</u>	<u>VLOC</u>
Iron Ore	X					X	X
Coal	X		X	X	X	X	X
Grains	X	X	X	X	X		
Alumina, Bauxite	X	X	X	X	X		
Steel Products	X	X	X	X	X		
Forest Products	X	X	X				
Fertilizers	X	X	X				
Minerals	X	X	X				
Minor Bulks–Other	X	X					

Source: Drewry Research

The supply of dry bulk shipping capacity, measured by the amount of suitable vessel tonnage available to carry cargo, is determined by the size of the existing worldwide dry bulk fleet, the number of new vessels on order, the scrapping of older vessels and the number of vessels out of active service (i.e., laid up or otherwise not available for hire). In addition to prevailing and anticipated freight rates, factors that affect the rate of newbuilding, scrapping and laying-up include newbuilding prices, secondhand vessel values in relation to scrap prices, costs of bunkers and other voyage expenses, costs associated with classification society surveys, normal maintenance and insurance coverage, the efficiency and age profile of the existing fleets in the market and government and industry regulation of marine transportation practices.

As of March 31, 2011, the world fleet of dry bulk vessels consisted of 8,248 vessels, totaling 546 million dwt in capacity. These figures are, however, based on pure dry bulk vessels and exclude a small number of combination vessels. The following table presents the world dry bulk vessel fleet by size as of March 31, 2011.

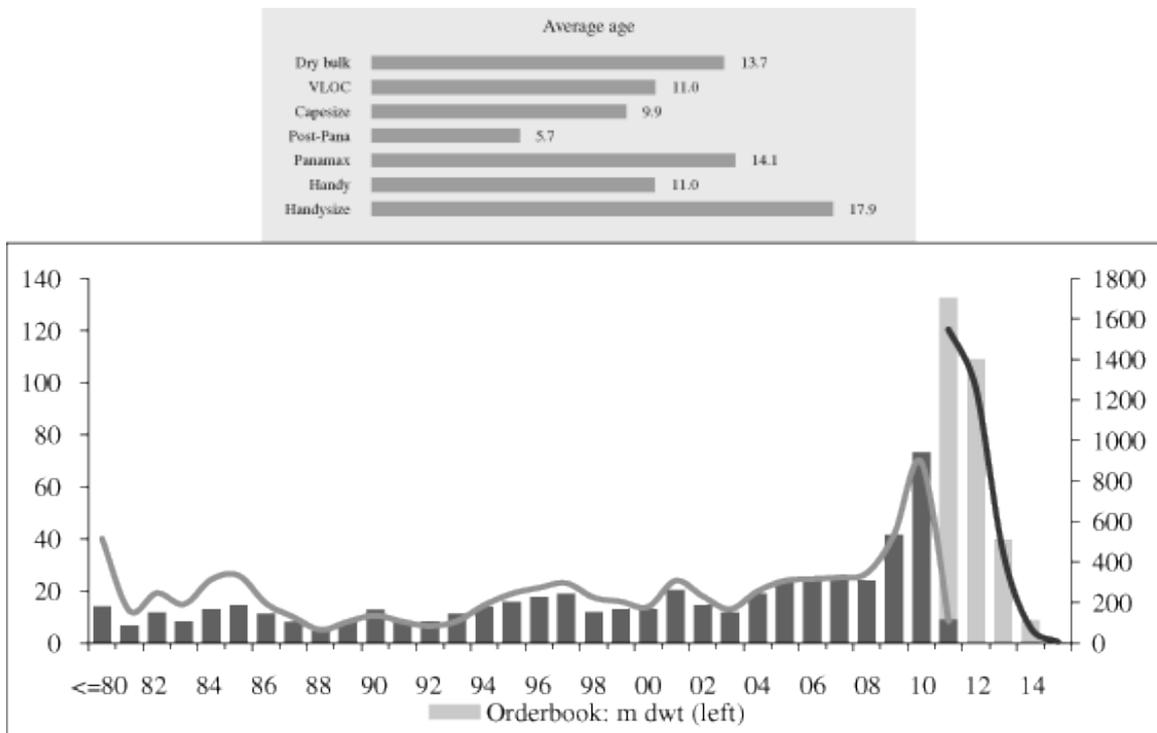
Dry Bulk Fleet: March 31, 2011

Size Category	<u>Deadweight</u>	<u>Number of</u>	<u>% of Total Fleet</u>	<u>Total Capacity</u>	<u>% of Total Fleet</u>
	<u>(Tons)</u>	<u>Vessels</u>	<u>(No)</u>	<u>(Million Dwt)</u>	<u>(Dwt)</u>
Handysize	10–39,999	3,020	36.6	82.2	15.1
Handymax	40–59,999	2,207	26.8	114.4	20.4
Panamax	60–79,999	1,432	17.3	102.5	18.8
Post Panamax	80–109,999	430	5.2	37.8	6.9
Capesize	110–199,999	965	11.7	162.6	29.8
VLOC	200,000+	202	2.4	49.0	9.0
Total		8,248	100.0	545.5	100.0

Source: Drewry Research

The average age of dry bulk vessels in service as of March 31, 2011 was approximately 13.7 years, and 25% of the fleet is more than 20 years old. The following chart illustrates the age profile of the global dry bulk vessel fleet as of March, 31 2011, together with scheduled deliveries by year as per the orderbook at March 31, 2011.

Dry Bulk Vessel Fleet Age Profile: December 31, 2010
(Millions of Dwt & No. of Vessels)



Source: Drewry Research

The supply of dry bulk vessels depends on the delivery of new vessels and the removal of vessels from the global fleet, either through scrapping or loss.

As of March 31, 2011, the global dry bulk orderbook (excluding options) amounted to 270 million dwt, or 49.4% of the then-existing dry bulk fleet.

Dry Bulk Vessel Orderbook: March 31, 2011

Size	2011		2012		2013		2014		2015+		Total		% of fleet
	No.	Dwt	No.	Dwt	No.	Dwt	No.	Dwt	No.	Dwt	No.	Dwt	
10-40,000	456	14,326	265	8,829	62	2,127	9	303	0	0	792	25,585	31.1%
40-60,000	384	21,448	287	15,766	117	6,263	20	1,091	0	0	808	44,568	40.0%
60-80,000	116	8,446	121	8,761	68	4,865	4	299	0	0	309	22,370	21.8%
80-110,000	261	22,654	291	24,466	74	6,352	23	2,143	3	301	652	55,917	147.8%
110-200,000	236	39,575	147	24,305	41	6,893	0	0	0	0	424	70,773	43.5%
200,000+	57	16,517	84	21,839	35	8,606	13	3,520	0	0	189	50,482	103.0%
Total	1,510	122,966	1,195	103,966	397	35,106	69	7,356	3	301	3,174	269,695	49.4%

Source: Drewry Research

Deliveries & Slippage

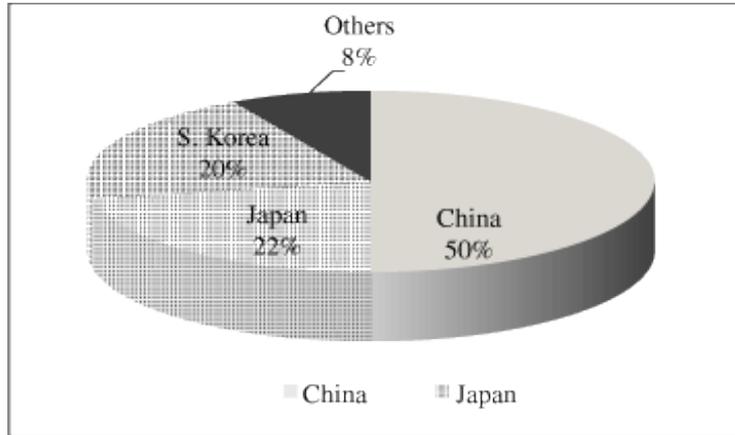
Delays in deliveries are often referred to as slippage. Historically, slippage rates have tended to be less than 10%, which means that 10% of the vessels due to be delivered in any year are in fact delivered in subsequent years. However, in 2007 and 2008 slippage rates rose, as the high level of new ordering that

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occurred across all market sectors since 2004 led to the commercial vessel orderbook reaching its highest point in history. This placed pressure on shipbuilding capacity, which in turn forced shipowners to place orders for new vessels in countries or shipyards which have little or no experience in building vessels for international customers.

In the dry bulk sector, the evidence suggests that the slippage rate was slightly less than 20% in 2008 and that it increased further in 2009 and 2010. At the start of 2009, approximately 70 million dwt was scheduled for delivery in the year, but by the year end only 43 million dwt had been completed. In 2010, the provisional data suggests that just over 70 million dwt was delivered, against expected deliveries of 110 million dwt. As previously explained, one reason for the delay in deliveries is the inexperience of some of the shipyards constructing dry bulk vessels. Indeed, almost 50% of the current dry bulk vessel orderbook is with Chinese shipyards.

Dry Bulk Vessel Orderbook — By Place of Build: March 31, 2011



Source: Drewry Research

If all the vessels currently on order are delivered on time and to schedule, there will be a large influx of newbuildings in 2011 in the dry bulk sector. However, it is clear that not all vessels currently on order will be delivered on time for a number of reasons, including the following:

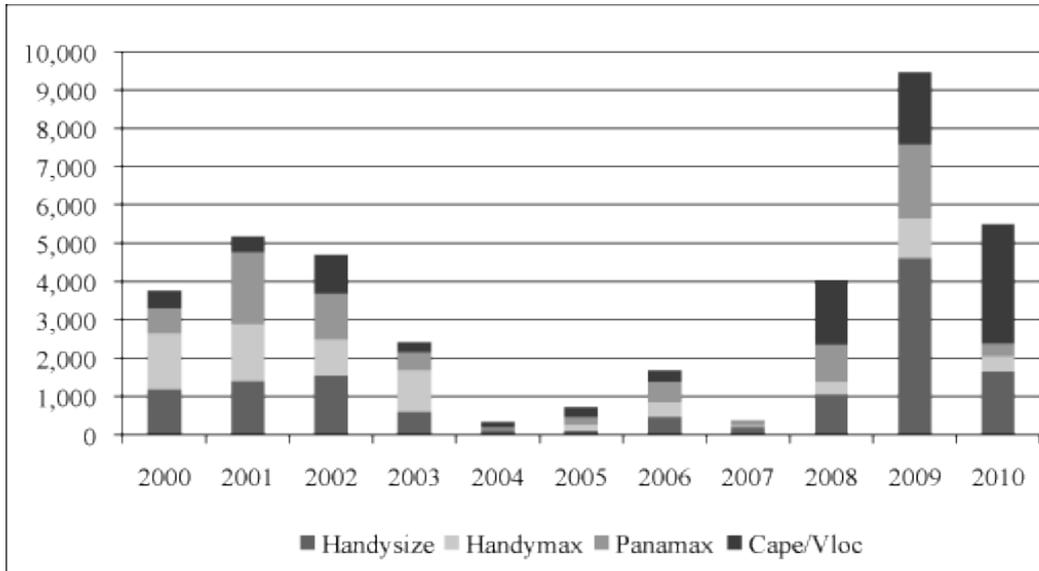
- In the most recent new ordering spree, which peaked in early 2008, shipowners were quoted unrealistic delivery times by some of the less experienced and new emerging shipyards.
- The current economic and financial crisis and the steep depression in shipping markets generally may lead to further orderbook cancellations. A significant number of dry bulk vessel orders have been cancelled since the crisis began in the second half of 2008.
- Financing is not in place for all of the vessels on order and in the current climate some owners will find it difficult to secure adequate funding.
- Orders have been placed at “greenfield” shipyards, some of which are also finding it difficult to secure funding for yard development.
- Even before the crisis, the less experienced shipyards were experiencing delays in deliveries.

Taken as whole, slippage is a manifestation of the combined effects of (1) shipyards initially quoting unrealistic delivery times, (2) inexperience among new shipbuilders, and (3) financing problems associated with both shipowners securing finance and new shipyards obtaining development capital.

Vessel Scrapping

The level of scrapping activity is generally a function of the age profile of the fleet, as all vessels have finite lives, together with charter market conditions, and operating, repair and survey costs. While strong freight markets persisted, there was minimal scrapping activity, but as freight markets weakened, scrapping activity has increased. The following chart illustrates the scrapping rates of dry bulk vessels for the periods indicated. It can be seen there was a marked increase in scrapping activity in 2008, 2009 and 2010.

Dry Bulk Vessel Scrapping: 2000 to 2010
(*000 Dwt)



Source: Drewry Research

The Freight Market

Dry bulk vessels are employed in the market through a number of different chartering options. The general terms typically found in these types of contracts are described below.

- **Time Charter.** A charter under which the vessel owner is paid charterhire on a per-day basis for a specified period of time. Typically, the shipowner receives semi-monthly charterhire payments on a U.S. dollar-per-day basis and is responsible for providing the crew and paying vessel operating expenses while the charterer is responsible for paying the voyage expenses and additional voyage insurance. Under time charters, including trip time charters, the charterer pays voyage expenses such as port, canal and fuel costs and bunkers.
- **Trip Charter.** A time charter for a trip to carry a specific cargo from a load port to a discharge port at a set daily rate.
- **Voyage Charter.** A voyage charter involves the carriage of a specific amount and type of cargo on a load port-to-discharge port basis, subject to various cargo handling terms. Most of these charters are of a single voyage nature, as trading patterns do not encourage round voyage trading. The owner of the vessel receives one payment derived by multiplying the tonnage of cargo loaded on board by the agreed upon freight rate expressed on a U.S. dollar-per-ton basis. The owner is responsible for the payment of all voyage and operating expenses, as well as the capital costs of the vessel.
- **Spot Charter.** A spot charter generally refers to a voyage charter or a trip charter, which generally last from 10 days to three months. Under both types of spot charters, the shipowner would pay for

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vessel operating expenses, which include crew costs, provisions, deck and engine stores, lubricating oil, insurance, maintenance and repairs and for commissions on gross revenues. The shipowner would also be responsible for each vessel's intermediate and special survey costs.

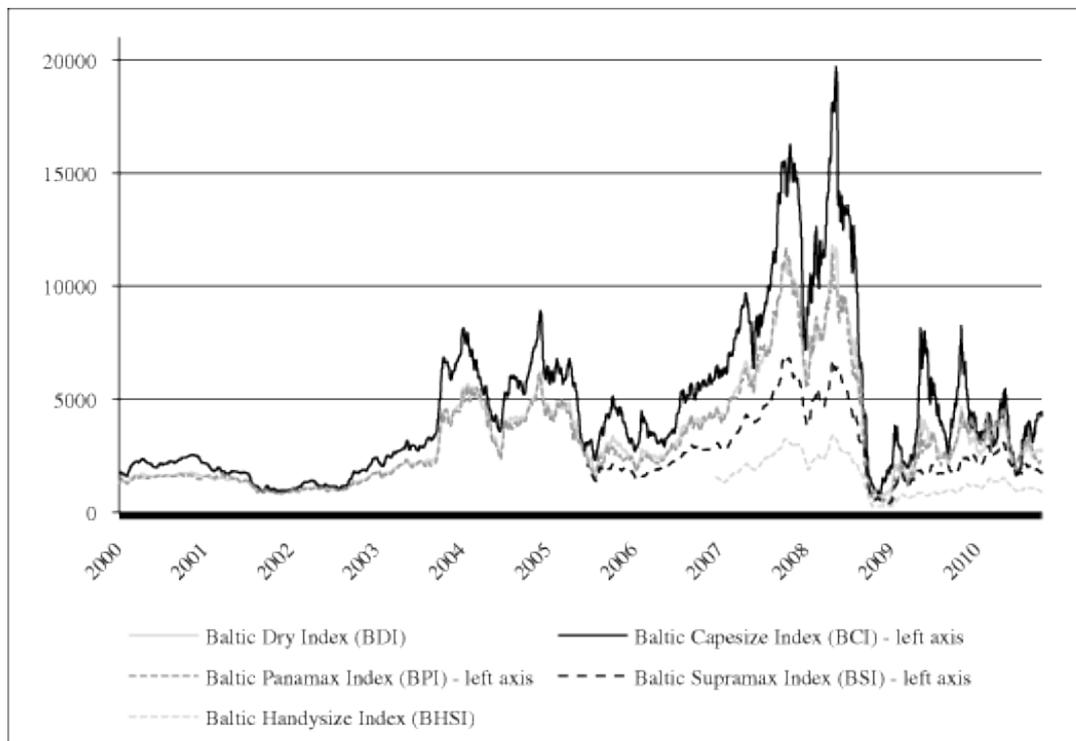
- ***Contract of Affreightment.*** A contract of affreightment, or CoA, relates to the carriage of multiple cargoes over the same route and enables the CoA holder to nominate different vessels to perform the individual voyages. Essentially, it constitutes a series of voyage charters to carry a specified amount of cargo during the term of the CoA, which usually spans a number of years. The entire vessel's operating expenses, voyage expenses and capital costs are borne by the shipowner. Freight normally is agreed on a U.S. dollar-per-ton basis.
- ***Bareboat Charter.*** A bareboat charter involves the use of a vessel usually over longer periods of time ranging over several years. In this case, all voyage related costs, mainly vessel fuel and port dues, as well as all vessel operating expenses, such as day-to-day operations, maintenance, crewing and insurance, are for the charterer's account. The owner of the vessel receives monthly charter hire payments on a U.S. dollar per day basis and is responsible only for the payment of capital costs related to the vessel. A bareboat charter is also known as a "demise charter" or a "time charter by demise."

Charter Rates

In the time charter market, rates vary depending on the length of the charter period and vessel specific factors such as age, speed, size and fuel consumption. In the voyage charter market, rates are influenced by cargo size, commodity, port dues and canal transit fees, as well as delivery and redelivery regions. In general, a larger cargo size is quoted at a lower rate per ton than a smaller cargo size. Routes with costly ports or canals generally command higher rates. Voyages loading from a port where vessels usually discharge cargo, or discharging from a port where vessels usually load cargo, are generally quoted at lower rates. This is because such voyages generally increase vessel efficiency by reducing the unloaded portion (or ballast leg) that is included in the calculation of the return charter to a loading area.

Within the dry bulk shipping industry, the freight rate indices issued by the Baltic Exchange in London are the references most likely to be monitored. These references are based on actual charter rates under charters entered into by market participants as well as daily assessments provided to the Baltic Exchange by a panel of major shipbrokers. The Baltic Exchange, an independent organization comprised of shipbrokers, shipping companies and other shipping players, provides daily independent shipping market information and has created freight rate indices reflecting the average freight rates (that incorporate actual business concluded as well as daily assessments provided to the exchange by a panel of independent shipbrokers) for the major bulk vessel trading routes. These indices include the Baltic Panamax Index, or BPI, the index with the longest history and, more recently, the Baltic Capesize Index, or BCI. The following chart details the movement of the BPI, BCI and Baltic Supramax Index.

Baltic Exchange Freight Indices: 2000 to 2010
(Index Points)



* The Baltic Supramax Index (BSI) is included from January 7, 2005, the date of its initial calculation.

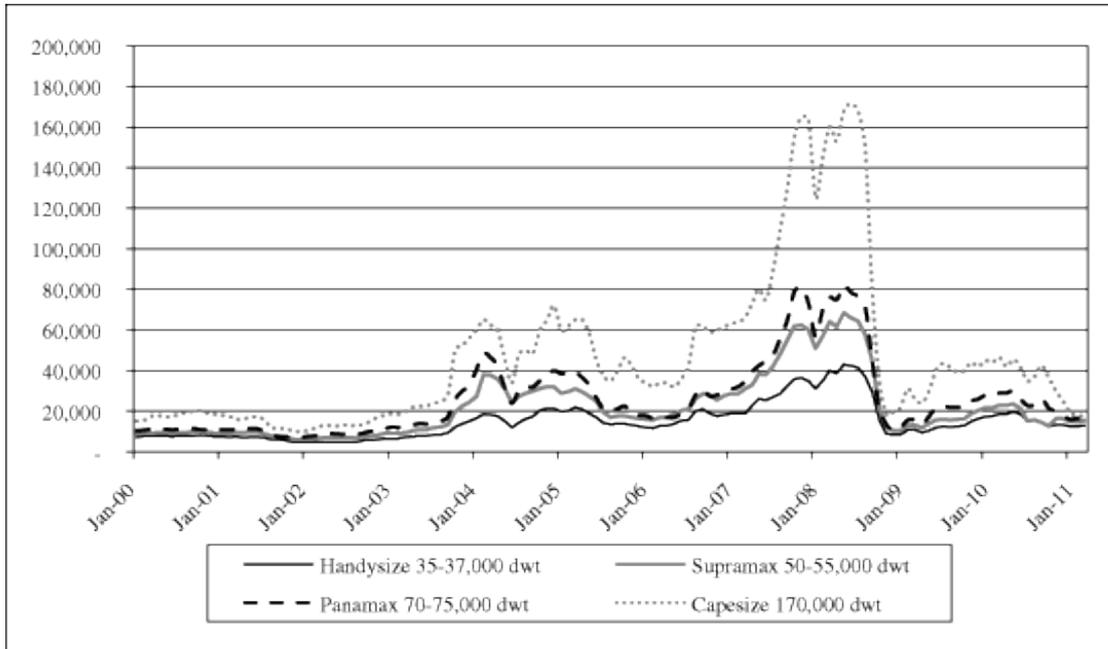
Source: *Baltic Exchange*

Charter (or hire) rates paid for dry bulk vessels are generally a function of the underlying balance between vessel supply and demand. Over the past 25 years, dry bulk cargo charter rates have passed through cyclical phases and changes in vessel supply and demand have created a pattern of rate “peaks” and “troughs,” which can be seen from the chart above. Generally, spot/voyage charter rates will be more volatile than time charter rates, as they reflect short term movements in demand and market sentiment.

In the time charter market, rates vary depending on the length of the charter period as well as vessel specific factors, such as age, speed and fuel consumption. Generally, short-term time charter rates are higher than long-term charter rates. The market benchmark tends to be a 12-month time charter rate, based on a modern vessel.

From early 2006 until the middle of 2008, rates for all sizes of dry bulk vessels increased significantly and in most cases reached record levels. However, the severe downturn in the global economy in the second half of 2008 and the collapse in demand for dry bulk vessels led rates to plummet to record lows. Since the early part of 2009 rates have been volatile, but they have gradually recovered from the market lows, with further improvements taking place in the first half of 2010, before leveling out in the second half of the 2010 and the early part of 2011. The following charts show one year time charter rates for Capesize, Panamax, Supramax and Handysize class vessels between 2000 and 2011.

One Year Time Charter Rates: 2000 to 2011
(U.S. Dollars per Day)



Source: Drewry Research

The following table illustrates a comparison of average one year time charter rates for Handysize, Supramax, Panamax, Capesize and VLOC dry bulk vessels between 2000 and 2011.

Dry Bulk Vessels — One Year Time Charter Rates (Period Averages)
(U.S. Dollars per Day)

	Handysize 28,000 Dwt 10 Years Old	Supramax 55,000 Dwt 5 Years Old	Panamax 75,000 Dwt 5 Years Old	Capesize 170,000 Dwt 5 Years Old	VLOC 200,000 Dwt+ 5 Years Old
2000	7,371	9,433	11,063	18,021	n/a
2001	5,629	8,472	9,543	14,431	n/a
2002	4,829	7,442	9,102	13,608	n/a
2003	8,289	13,736	17,781	30,021	n/a
2004	14,413	31,313	36,708	55,917	n/a
2005	12,021	23,038	27,854	49,333	54,330
2006	12,558	21,800	22,475	45,646	50,650
2007	23,021	43,946	52,229	102,875	107,920
2008	24,110	48,310	56,480	116,180	119,240
2009	9,425	15,179	19,650	35,285	30,950
2010	14,025	20,779	25,317	40,308	38,955
March 2011	13,000	15,500	16,750	18,000	18,500

Source: Drewry Research

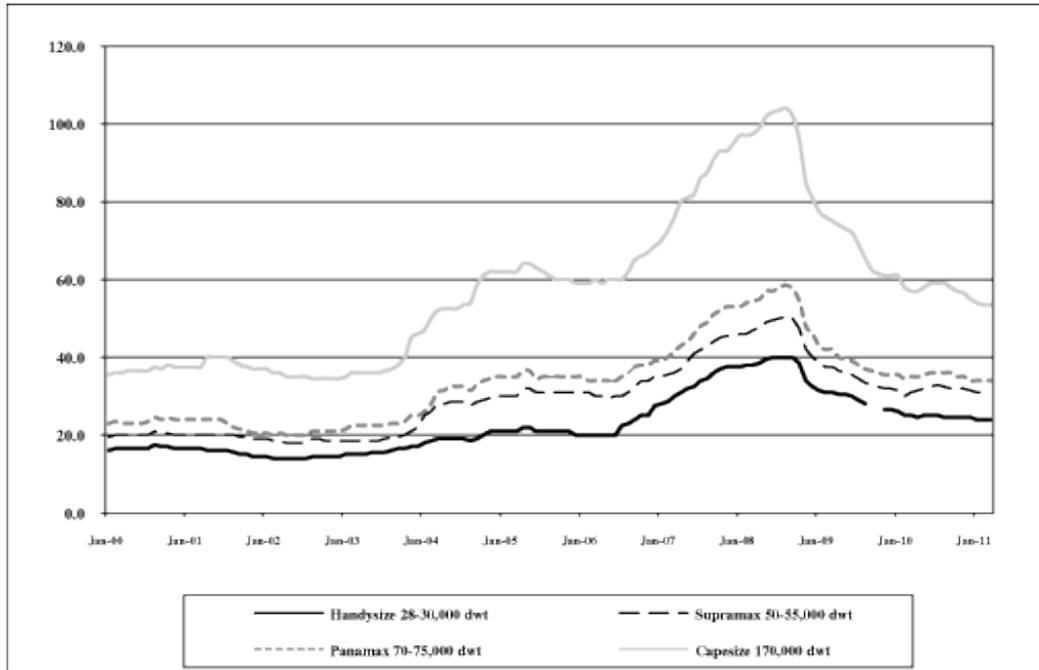
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Newbuilding Prices

Newbuilding prices are determined by a number of factors, including the underlying balance between shipyard output and newbuilding demand, raw material costs, freight markets and exchange rates. From 2003 to 2007, high levels of new ordering were recorded across all sectors of shipping, and as a result, newbuilding prices increased significantly, as can be seen in the chart below. However, as freight markets declined in the second half of 2008, new vessel ordering came to an almost complete stop, which made the assessment of newbuilding prices very difficult. Nevertheless, based on the few contracts which have been reported, it is evident that prices for new vessels also weakened in line with the general downturn in the market, but stabilized in 2010.

The following chart depicts changes in newbuilding contract prices for dry bulk vessels on a monthly basis since 2000 to 2011.

Dry Bulk Vessel Newbuilding Prices: 2000 to 2011
(Million U.S. Dollars)



Source: Drewry Research

Secondhand Prices

The dramatic increase in newbuilding prices and the strength of the charter market have also affected values in the secondhand market, to the extent that prices for dry bulk vessels rose sharply from 2004 reaching a peak in mid-2008. With vessel earnings running at relatively high levels and a limited availability of newbuilding berths, the ability to deliver a vessel early has resulted in increases in secondhand prices, especially for modern tonnage. Consequently, secondhand prices of modern dry bulk vessels in 2008 reached higher levels than those of comparably sized newbuildings.

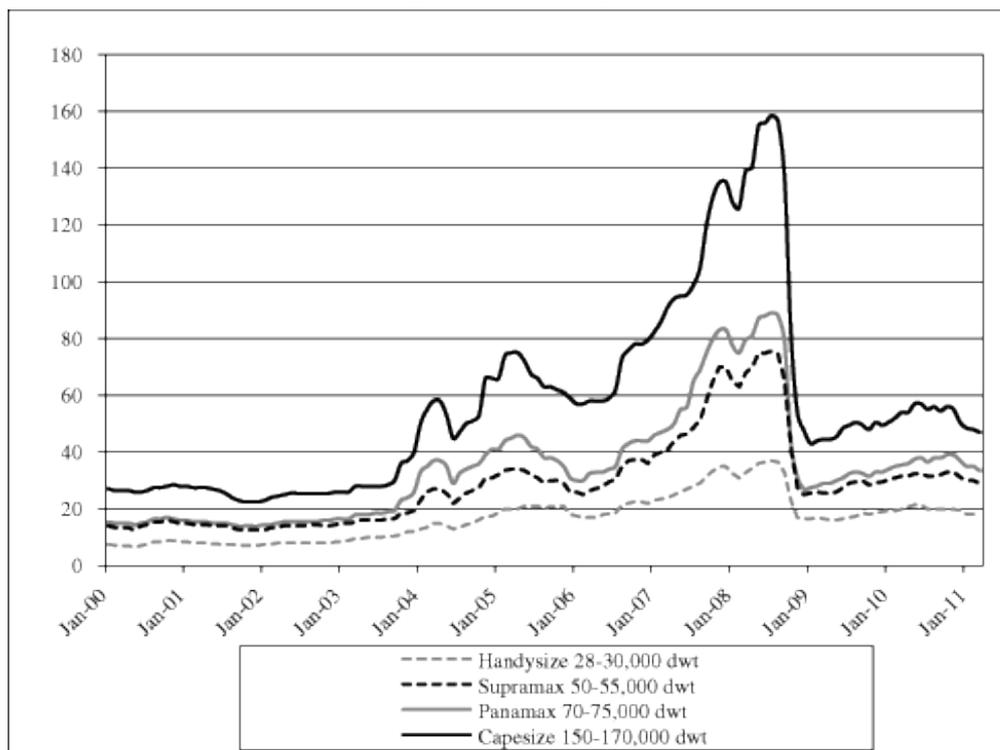
However, this situation changed quickly when the freight market fell and values for all types of bulk vessels declined steeply in the second half of 2008. There were very few recorded sales in the second half of 2008 after the market collapsed and the trend in prices during this period can only be taken as an assessment. In 2009, there were more reported sales and the details of these sales seem to suggest that after reaching a low

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in the early part of 2009, prices for modern secondhand dry bulk vessels staged a modest recovery, only to fall back again in late 2010.

Dry Bulk Vessel Secondhand Prices: 2000 to 2011

5 Year Old Vessels⁽¹⁾
(Million U.S. Dollars)



(1) Handysize vessel is 10 years old

Source: Drewry Maritime Research

C. Organizational Structure

NewLead is the sole owner of all outstanding shares of the subsidiaries listed in Note 2 of our consolidated financial statements included in this report.

D. Properties, Plants and Equipment

Not applicable.

Item 4A. Unresolved Staff Comments

Not applicable.

Item 5. Operating and Financial Review and Prospects

The following is a discussion of NewLead Holdings Ltd., as “Successor” to the recapitalization, as discussed below and in Note 1 to the consolidated financial statements, as of and for the year ended December 31, 2010 and for the period from October 14, 2009 to December 31, 2009 and as “Predecessor” of the recapitalization for the period from January 1, 2009 to October 13, 2009. Also following is a discussion of the Predecessor Company’s financial condition and results of operations as of and for the fiscal year ended

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December 31, 2008. All of these financial statements have been prepared in accordance with GAAP. You should read this section together with the consolidated financial statements including the notes to those financial statements for the years and periods mentioned above, which are included elsewhere in this document.

This report contains forward-looking statements made pursuant to the safe harbor provisions of the Private Securities Reform Act of 1995. These forward-looking statements are based on our current expectations and observations. The factors that, in management's view, could cause actual results to differ materially from the forward-looking statements include, among others, those discussed in Item 3.b. "Risk Factors", and such differences may be material. For additional information regarding forward-looking statements used in this report please refer to the section "Cautionary Statement Regarding Forward-Looking Statements."

Recent Developments

In June 2011, the Post Panamax newbuilding vessel, named the Newlead Endurance, was delivered from a Korean shipyard. We financed the vessel through a combination of cash from the balance sheet and a sale and immediate bareboat leaseback transaction.

In May 2011, we completed the acquisition of the Newlead Prosperity, a 2003 built, 34,682 dwt, Handysize dry bulk vessel.

In March 2011, we announced that two of its product tankers, the Hiona and the Hiotissa, will participate in the Handymax Tanker Pool of Scorpio Management ("SHTP"), a major tanker pool with more than 30 vessels currently participating. The Hiona (37,337 dwt, 2003-built) is expected to enter in the second quarter of 2011 and the Hiotissa (37,329 dwt, 2004-built) entered the SHTP pool in April 2011. Both vessels will participate in the SHTP for a minimum of one year.

In January 2011, we entered into two new five-year time charter contracts with profit sharing for two product tankers, the Newlead Compass and the Newlead Compassion, for a net daily charter-out rate for each vessel of \$11,700 for the first year, \$13,650 for the second, third and fourth years, and \$15,600 for the fifth year.

Overview

General

The legal and commercial name of the Company is NewLead Holdings Ltd., a company incorporated under the Bermuda Companies Act of 1981 on January 12, 2005. NewLead's principal place of business is 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38 and its telephone number is (30) 213-014-8600.

NewLead Holdings Ltd. is an international shipping company engaged in the transportation of refined products, such as gasoline and jet fuel, and dry bulk goods, such as iron ore, coal and grain. We operate a fleet of six double-hulled product tankers and 16 dry bulk carriers (including the three newbuildings) with a combined carrying capacity of approximately 1.89 million dwt. We seek to provide our customers with safe, reliable and environmentally sound seaborne transportation services that meet stringent internal and external standards while endeavoring to capitalize on the dynamics of the shipping industry. We will endeavour to expand through accretive acquisitions to create shareholder value.

Our business strategy is to invest in the product tanker and dry bulk markets in order to provide more consistent shareholder returns. We believe our ability to opportunistically select and efficiently operate both product tanker and dry bulk vessels provides the potential for enhanced returns. In addition, we continue to revitalize our fleet, lower the fixed cost structure inherited from our predecessor, and grow our extensive network of customer relationships.

In October 2009, our predecessor company, Aries Maritime Transport Limited, underwent an approximately \$400.0 million recapitalization and installed new executive management. Upon the successful

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completion of these two initiatives, we subsequently changed our name to NewLead Holdings Ltd. and implemented the following corporate actions in connection with our development strategy:

- Brought in-house commercial, operational and technical management with highly qualified and experienced personnel;
- Exited the container sector;
- Completed the divestiture of all of the underperforming and unprofitable tanker vessels that existed prior to the recapitalization;
- Implemented a newbuilding program;
- Doubled our fleet size from 11 to 22 vessels;
- Diversified both our vessel and charter mix to limit our exposure to market cycles, while positioning ourselves to take advantage of market upswings;
- Focused on creating an advantageous blend of product tanker and dry bulk vessels; and
- Created a scalable platform to support future growth.

A. Operating results

The following discussion solely reflects results from continuing operations, other than as described in Note 25, “Discontinued Operations”, of the notes to our consolidated financial statements, unless otherwise noted.

Going Concern

Over the past several months, we have experienced a decline in our liquidity and cash flows, which has affected, and which we expect will continue to affect, our ability to satisfy our obligations. Recently, charter rates for product tankers and bulkers have experienced a high degree of volatility. Currently, charter rates for product tankers are significantly lower than applicable historical averages and charter rates for bulkers, after showing signs of stabilization for a period, have declined to historical lows.

Furthermore, recent economic conditions have caused certain of our charterers to experience financial difficulties as well. This has resulted in an increase in the time it takes for us to realize our receivables. In certain instances, our charterers have been unable to fulfill their obligations under their charters. One of our charterers, who is chartering three of our vessels, is having difficulty performing its obligations and, since the end of March 2011, has been late on a number of payments causing us to arrest vessels which are owned by the particular charterer and/or by such charterer’s affiliated companies on two occasions in order to collect payment. These vessels are chartered out at rates significantly above market, and if we are forced to reclaim and re-charter these vessels (which there is no assurance that we could do), we expect a significant reduction in the cash flow from these vessels, which in turn would further impair our liquidity.

Furthermore, we remain uncertain as to our ability to borrow the remaining \$12.8 million approximately of undrawn amounts under our \$62.0 million revolving credit facility. Negotiations with the bank are continuing, but there is no assurance that we will be able to fully draw down this amount, if at all.

Certain of our debt arrangements, including our Facility Agreement, contain covenants that require us to maintain certain minimum financial ratios, including a minimum ratio of shareholders’ equity to total assets (starting from the third quarter of 2012), a minimum amount of working capital, and a minimum EBITDA to interest coverage ratio (starting from the third quarter of 2012). Our Facility Agreement requires that we maintain at all times a minimum amount of liquidity in the form of cash and cash equivalents equal to at least 5% of the outstanding loan at all times under such agreement. Moreover, certain of our other debt arrangements require that we maintain at all times a minimum amount of liquidity in the form of cash and cash equivalents equal to at least 5% of the total outstanding indebtedness. We are currently not in compliance with our minimum liquidity requirements under our loan agreements with West LB and Bank of Scotland

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(Junior and Senior Kamsarmax credit facilities) which results or will result in cross defaults with other loans. We have received notification from West LB that there is formal credit approval for the temporary waiver of the minimum liquidity covenant through March 31, 2012. This temporary waiver is subject to the execution of formal documentation. In addition, the adverse change in our liquidity position, absent receipt of waivers, will have a negative effect on our ability to remain in compliance with such covenants under our other loan agreements and we expect to be in breach of the minimum liquidity requirements under various other debt agreements by June 30, 2011.

As of June 30, 2011, we are still exploring financing and other options to increase our liquidity, including selling certain of our vessels, accessing the capital markets and/or incurring new indebtedness. Recently, we were unable to complete an offering of \$120.0 million of senior secured notes due 2016 due to market conditions. In addition, our proposed public offering of common shares has not proceeded. There is no assurance that we will be able to obtain financing or sell vessels on favorable terms, or at all.

In addition, on June 30, 2011, we received notification from DVB Bank, as agent of a loan agreement with DVB Bank, Nord LB and Emporiki Bank that the Company is in breach of certain covenants in its loan agreement, with regard to a dispute under the shipbuilding contract to which the loan relates. Although we believe we are not in default of the loan agreement or the shipbuilding contract, there is no assurance that we would prevail in the above mentioned dispute as to such issue. Although we are seeking and will continue to seek waivers to these covenants from our lenders, it is uncertain that we will be able to obtain such waivers. We will seek to restructure our indebtedness. If we are not able to obtain the necessary waivers and/or restructure our debt, this could lead to the acceleration of the outstanding debt under our debt agreements that contain a minimum liquidity covenant or any other covenant that may be breached, which would result in the cross acceleration of our other outstanding indebtedness. Our failure to satisfy our covenants under our debt agreements, and any consequent acceleration and cross acceleration of our outstanding indebtedness, would have a material adverse effect on our business operations, financial condition and liquidity.

All of the above raises substantial doubt regarding our ability to continue as a going concern.

Generally accepted accounting principles require that long-term debt be classified as a current liability when a covenant violation gives the lender the right to call the debt at the balance sheet date, absent a waiver. Accordingly, as of June 30, 2011, we will be required to reclassify our long term debt as current liabilities in our consolidated balance sheet if we have not received waivers in respect of the covenants that are breached at such time. The financial statements have been prepared assuming that we will continue as a going concern and do not include any adjustments that might be necessary if we are unable to continue as a going concern.

Important Factors to Consider When Evaluating Our Historical and Future Results of Operations

Charters

We have many long-established charter relationships which we believe are well regarded within the international shipping community. Our management's assessment of a charterer's financial condition and reliability is an important factor in negotiating employment of our vessels. We have established stringent requirements for selecting qualified charterers. We generate revenues by charging customers for the transportation of oil and petroleum products in our product tankers business and for a wide array of unpackaged cargo in our dry bulk business through various charter agreements. A time charter is a contract for the use of a vessel for a specific period of time during which the charterer pays all of the voyage expenses, including port and canal charges and the cost of bunkers, but the vessel owner pays the vessel operating expenses, including the cost of crewing, insuring, repairing and maintaining the vessel, the costs of spares and consumable stores and tonnage taxes. Under a spot-market charter, the vessel owner pays both the voyage expenses (less specified amounts covered by the voyage charterer) and the vessel operating expenses. Under both types of charters, we pay commissions to ship brokers depending on the number of brokers involved with arranging the charter. Vessels operating in the spot-charter market generate revenues that are less predictable than time charter revenues, but may enable us to capture increased profit margins during periods of improvements in charter rates.

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We believe that our future results of operations are largely driven by the economic, regulatory, political and governmental conditions that affect the shipping industry generally and that affect conditions in countries and markets in which our vessels engage in business. Please read the section titled “Risk Factors” for a discussion of certain risks inherent in our business.

We believe that the important measures for analyzing trends in our results of operations consist of the following:

- *Market exposure:* We manage the size and composition of our fleet by chartering our owned vessels to international charterers. In order to diversify our market risk, we attempt to achieve an appropriate balance of the composition of our vessels between wet and dry vessels.
- *Available days:* Available days are the total number of days a vessel is controlled by a company less the aggregate number of days that the vessel is off-hire due to scheduled repairs or repairs under guarantee, vessel upgrades or special surveys. The shipping industry uses available days to measure the number of days in a period during which vessels should be capable of generating revenues.
- *Operating days:* Operating days are the number of available days in a period less the aggregate number of days that the vessels are off-hire due to any reason, including lack of demand or unforeseen circumstances. The shipping industry uses operating days to measure the aggregate number of days in a period during which vessels actually generate revenues.
- *Fleet utilization:* Fleet utilization is obtained by dividing the number of operating days during a period by the number of available days during the period for the core vessels. The shipping industry uses fleet utilization to measure a company’s efficiency in finding suitable employment for its vessels and minimizing the amount of days that its vessels are off-hire for reasons other than scheduled repairs or repairs under guarantee, vessel upgrades, special surveys or vessel positioning.
- *Equivalent vessels:* Equivalent vessels is equal to the available days of the fleet divided by the number of the calendar days in the respective period.
- *TCE rates:* Time Charter Equivalent, or TCE, rates are defined as voyage, time charter and bareboat revenues, less voyage expenses and commissions during a period, divided by the number of available days during the period. The TCE rate is a standard shipping industry performance measure used primarily to compare daily earnings generated by vessels on time charters with daily earnings generated by vessels on voyage charters, because charter hire rates for vessels on voyage charters are generally not expressed in per day amounts, while charter rates for vessels on time charters generally are expressed in such amounts. The Newlead Compass was employed on bareboat charter during 2010 until December 20, 2010 and during the years ended December 31, 2009 and 2008. The Newlead Compassion was employed on bareboat charter up to June 10, 2010, and during the years ended December 31, 2009 and 2008. Accordingly, the Newlead Compass’ and the Newlead Compassion’s charter rates have been grossed up to reflect a TCE rate of approximately \$24,933 per day, assuming operating costs of \$6,700 per day, for fiscal year ended December 31, 2010, and for the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009, and for the year ended December 31, 2008, as applicable.

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Set forth below are our selected historical and statistical unaudited data as of December 31, 2010 with respect to charter coverage for our fleet that we believe may be useful in better understanding our financial position and results of operations.

	Successor		Predecessor	
	January 1 to December 31, 2010	October 14 to December 31, 2009	January 1 to October 13, 2009	Year Ended December 31, 2008
Available Days	5,722	824	2,285	3,294
Operating Days	4,963	682	1,874	3,029
Fleet utilization excluding non-core vessels	92.9%	90.6%	97.1%	99.2%
Fleet utilization dry sector	96.7%	97.5%	—	—
Fleet utilization wet sector	87.5%	76.8%	82.0%	92.0%
Equivalent vessels	15.7	10.4	8.0	9.0
Time Charter Equivalent Rate	\$ 14,942	\$ 12,466	\$ 12,277	\$ 16,518
Direct daily vessel operating expenses ⁽¹⁾	\$ 7,091	\$ 8,665	\$ 9,916	\$ 8,276

(1) Direct daily vessel operating expenses are defined as the sum of the vessel operating expenses, excluding provision for claims, and management fees, divided by the vessels calendar days. This has been adjusted to exclude the calendar days with respect to the Newlead Compass and the Newlead Compassion, during their employment on bareboat charters.

Principal Factors that Affect Our Business

The principal factors that affect our financial position, results of operations and cash flows include:

- charter rates and periods of charter hire;
- vessel operating expenses and voyage costs, which are incurred in both U.S. dollars and other currencies, primarily Etururos;
- depreciation expenses, which are a function of the cost of our vessels, significant vessel improvement costs and our vessels' estimated useful lives; and
- financing costs related to our indebtedness.

You should read the following discussion together with the information contained in the table of vessel information under Item 4. "Information on the Company — Business Overview — Our Fleet." Revenues from period charters are stable over the duration of the charter, provided there are no unexpected or periodic survey off-hire periods and there are no performance claims from the charterer or charterer defaults. We cannot guarantee that actual results will be as anticipated. Due to the recapitalization on October 13, 2009 and as part of the new management strategy, we have exited the container market and have entered into the dry bulk market to better diversify our business and focus on our "wet" and "dry" business segments. The discussions hereafter then represent only our continuing operations, except where specifically mentioned.

Revenues

Revenues are driven primarily by the number of vessels in the fleet, the number of days during which such vessels operate and the amount of daily charter rates that the vessels earn under charters, which, in turn, are affected by a number of factors, including:

- the duration of the charters;
- the level of spot market rates at the time of charter;
- decisions relating to vessel acquisitions and disposals;
- the amount of time spent positioning vessels;

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- the amount of time that vessels spend in dry–dock undergoing repairs and upgrades;
- the age, condition and specifications of the vessels; and
- the aggregate level of supply and demand in the dry bulk shipping industry.

Time charters are available for varying periods, ranging from a single trip (spot charter) to long–term, which may be many years. In general, a long–term time charter assures the vessel owner of a consistent stream of revenue. Operating the vessel in the spot market affords the owner greater spot market opportunity, which may result in high rates when vessels are in high demand or low rates when vessel availability exceeds demand. Vessel charter rates are affected by world economics, international events, weather conditions, strikes, governmental policies, supply and demand, and many other factors that might be beyond the control of management.

Commissions

Commissions are paid to brokers and are typically based on a percentage of the charter rate. A typical commission is 1.25% of the gross charter hire/freight earned (including demurrage) for each broker involved in a fixture. We are currently paying aggregate commissions ranging from 1.0% to 6.5% per vessel per fixture (including address commission, which represents money deducted from the charterer at source).

Voyage Expenses

Voyage expenses are incurred due to a vessel being en route from a loading port to a discharging port, to repair facilities or on a repositioning voyage, and include fuel (bunkers) cost, port expenses, agent’s fees, canal dues and extra war risk insurance. Under time charters, the charterer is responsible for paying voyage expenses while the vessel is on hire.

General and Administrative Expenses

These expenses include executive and director compensation (inclusive of shares granted), staff wages, legal fees, audit fees, liability insurance premium and Company administration costs.

Vessel Operating Expenses

Vessel operating expenses are the costs of operating a vessel, primarily consisting of crew wages and associated costs, insurance premiums, lubricants and spare parts, and repair and maintenance costs. Vessel operating expenses exclude fuel cost, port expenses, agents’ fees, canal dues and extra war risk insurance, which are not included in “voyage expenses.”

Certain vessel operating expenses are higher during the initial period of a vessel’s operation. Initial daily vessel operating expenses are usually higher than normal as newly acquired vessels are inspected and modified to conform to the requirements of our fleet.

Under multi–year time charters, and under short–term time charters, we pay for vessel operating expenses. Under bareboat charters, our charterers bear most vessel operating expenses, including the costs of crewing, insurance, surveys, dry–dockings, maintenance and repairs.

Depreciation

Depreciation is the periodic cost charged to our income for the reduction in usefulness and long–term value of our vessels. We depreciate the cost of our vessels over 25 to 30 years on a straight–line basis. No charge is made for depreciation of vessels under construction until they are delivered.

Amortization of Special Survey and Dry–docking Costs

Our vessels are subject to regularly scheduled dry–docking and special surveys, which are carried out every 30 or 60 months to coincide with the renewal of the related certificates issued by the Classification

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Societies, unless a further extension is obtained in rare cases and under certain conditions. The costs of dry-docking and special surveys are deferred and amortized over the above periods or to the next dry-docking or special survey date if such date has been determined. Costs incurred during the dry-docking period relating to routine repairs and maintenance are expensed. The unamortized portion of special survey and dry-docking costs for vessels sold is included as part of the carrying amount of the vessel in determining the gain/(loss) on sale of the vessel.

When vessels are acquired, the portion of the vessels' capitalized cost that relates to dry-docking or special survey is treated as a separate component of the vessels' cost and is deferred and amortized as above. This cost is determined by reference to the estimated economic benefits to be derived until the next dry-docking or special survey.

Interest and Finance Expenses

Interest expenses include interest, commitment fees, arrangement fees, amortization of deferred financing costs, amortization of the debt discount and other similar charges. Interest incurred during the construction of a newbuilding is capitalized in the cost of the newbuilding. The amount of interest expense is determined by the amount of loans and advances outstanding from time to time and interest rates. The effect of changes in interest rates may be reduced (increased) by interest rate swaps or other derivative instruments. We use interest rate swaps to hedge our interest rate exposure under our loan agreements.

Change in Fair Value of Derivatives

At the end of each quarter, the fair values of our interest rate swaps are valued to market. Changes in the fair value between quarters are recognized in the statements of operations.

Foreign Exchange Rates

Foreign exchange rate fluctuations, particularly between the Euro and the U.S. dollar, have had an impact on our vessel operating expenses and administrative expenses. We actively seek to manage such exposure. Close monitoring of foreign exchange rate trends, maintaining foreign currency accounts and buying foreign currency in anticipation of our future requirements are the main ways we manage our exposure to foreign exchange risk. See below Item 11. "Quantitative and Qualitative Disclosures about Market Risk" under "Foreign Exchange Rates."

Critical Accounting Policies

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

Our financial position, results of operations and cash flows include all expenses allocable to our business, but may not be indicative of the results we would have achieved had we operated as a public entity under our current chartering, management and other arrangements for the entire periods presented or for future periods.

Critical accounting policies are those that reflect significant judgments of uncertainties and potentially result in materially different results under different assumptions and conditions. We have described below what we believe are our most critical accounting policies, because they generally involve a comparatively higher degree of judgment in their application. For a description of our significant accounting policies, please refer to Note 2 of our consolidated financial statements included herein.

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Use of estimates

The preparation of consolidated financial statements in conformity with the U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the dates of the financial statements and the reported amounts of revenues and expenses during the reporting periods. On an ongoing basis, management evaluates the estimates and judgments, including those related to future dry-dock dates, the selection of useful lives for tangible assets, expected future cash flows from long-lived assets to support impairment tests, provisions necessary for accounts receivables, provisions for legal disputes, and contingencies. Management bases its estimates and judgments on historical experience and on various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates under different assumptions and/or conditions.

Vessels and Other Fixed Assets, net:

Vessels are stated at cost, which consists of the contract price, delivery and acquisition expenses, interest cost while under construction, and, where applicable, initial improvements. Vessels acquired through an asset acquisition are recorded at cost and vessels acquired in a business combination are stated at fair value. Subsequent expenditures for conversions and major improvements are also capitalized when they appreciably extend the life, increase the earnings capacity or improve the efficiency or safety of a vessel; otherwise, these amounts are charged to expenses as incurred. The component of each new vessel's initial capitalized cost that relates to dry-docking and special survey is calculated by reference to the related estimated economic benefits to be derived until the next scheduled dry-docking and special survey, is treated as a separate component of the vessel's cost and is accounted for in accordance with the accounting policy for dry-docking and special survey costs. Pursuant to the recapitalization on October 13, 2009, the Company's predecessor vessels were adjusted to fair value.

Depreciation of a vessel is computed using the straight-line method over the estimated useful life of the vessel, after considering the estimated salvage value of the vessel. Each vessel's salvage value is equal to the product of its lightweight tonnage and estimated scrap value per lightweight ton. Management estimates the useful life of our vessels to be at a range of 25 to 30 years from the date of its initial delivery from the shipyard.

However, when regulations place limitations over the ability of a vessel to trade, its useful life is adjusted to end at the date such regulations become effective.

Fixed assets are stated at cost. The cost and related accumulated depreciation of fixed assets sold or retired are removed from the accounts at the time of sale or retirement and any gain or loss is included in the accompanying statement of operations.

Impairment of Long-lived Assets

GAAP requires that long-lived assets and certain identifiable intangibles held and used by an entity be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. If the future net undiscounted cash flows from the assets are less than the carrying values of the asset, an impairment loss is recorded equal to the difference between the asset's carrying value and its fair value.

We concluded that events and circumstances had changed periodically that may indicate the existence of a potential impairment of our long-lived assets. As a result, we performed an impairment assessment of long-lived assets (i) as of December 31, 2008, (ii) as of September 30, 2009, (iii) as of December 31, 2009, (iv) during the year ended December 31, 2010, when certain vessels were disposed of and (v) as of December 31, 2010. The significant factors and assumptions we used in our undiscounted projected net operating cash flow analysis included, among others, operating revenues, off-hire revenues, dry-docking costs, operating expenses and management fee estimates. Revenue assumptions were based on a number factors for

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the remaining life of the vessel: (a) contracted time charter rates up to the end of life of the current contract of each vessel, (b) historical average time charter rates, (c) current market conditions and, the respective vessel's age as well as considerations such as scheduled, and (d) unscheduled off-hire revenues based on historical experience. Operating expense assumptions included an annual escalation factor. All estimates used and assumptions made were in accordance with our historical experience.

Our assessments included the evaluation of the estimated fair values for each vessel (obtained by third-party valuations for which management assumes responsibility for all assumptions and judgments) compared to the carrying value. The significant factors we used in deriving the carrying value included: net book value of the vessels, unamortized special survey and dry-docking cost. The current assumptions used and the estimates made are highly subjective, and could be negatively impacted by further significant deterioration in charter rates or vessel utilization over the remaining life of the vessels, which could require us to record a material impairment charge in future periods.

During the year ended December 31, 2010, we tested certain vessels for impairment when their sale in a future period was probable, which resulted in an impairment loss of \$15.7 million from continuing operations. Our impairment analysis as of December 31, 2009 did not result in an impairment loss. The impairment analysis as of September 30, 2009 resulted in an impairment loss of \$68.0 million from continuing operations and \$23.6 million from discontinued operations for the period from January 1, 2009 to October 13, 2009. During the year ended December 31, 2008, we recorded an impairment loss of \$30.1 million, which related to discontinued operations.

For more information please refer to Note 3 of our consolidated financial statements included herein.

Deferred Dry-docking and Special Survey Costs

Our vessels are subject to regularly scheduled dry-docking and special surveys, which are carried out every 30 or 60 months to coincide with the renewal of the related certificates issued by the Classification Societies, unless a further extension is obtained in rare cases and under certain conditions. The costs of dry-docking and special surveys are deferred and amortized over the above periods or to the next dry-docking or special survey date if such date has been determined. Unamortized dry-docking or special survey costs of vessels sold are written off to income in the year the vessel is sold. Costs incurred during the dry-docking period relating to routine repairs and maintenance are expensed. The unamortized portion of special survey and dry-docking costs for vessels sold is included as part of the carrying amount of the vessel in determining the gain/(loss) on sale of the vessel.

When vessels are acquired, the portion of the vessels' capitalized cost that relates to dry-docking or special survey is treated as a separate component of the vessels' cost and is deferred and amortized as above. This cost is determined by reference to the estimated economic benefits to be derived until the next dry-docking or special survey.

Share-based compensation

Share-based compensation reflects grants of common shares, restricted common shares and share options approved by the board of directors. The restricted common shares and share option awards are subject to applicable vesting and unvested common shares and options may be forfeited under specified circumstances. The fair values of share option grants have been calculated based on the Binomial lattice model method. The fair value of common share grants is determined by reference to the quoted share price on the date of grant.

Trade Receivables, net and Other Receivables

The amount shown as trade receivables, net at each balance sheet date includes estimated recoveries from charterers for hire, freight and demurrage billings, net of allowance for doubtful accounts. An estimate is made of the allowance for doubtful accounts based on a review of all outstanding amounts at each period, and an allowance is made for any accounts which management believes are not recoverable. Bad debts are written off in the year in which they are identified. The allowance for doubtful accounts at December 31, 2010 and 2009

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amounted to \$1.4 million and \$1.2 million, respectively, which relates to continued and discontinued operations.

Revenue Recognition

Revenues are generated by chartering our vessels to our charterers to transport petroleum products and wide array of unpackaged cargo. In recognizing revenue, we are required to make certain estimates and assumptions. Historically, differences between our estimates and actual results have not been material to our financial results.

We have provided services to our customers under the following types of contractual relationships:

Voyage Charters, which are contracts made in the spot market for the use of a vessel for a specific voyage at a specified charter rate.

Time Charters, which are contracts for the use of a vessel for a fixed period of time at a specified daily rate. All expenses related to the time charter voyages are assumed by the charterers.

Bareboat Charters, which are contracts pursuant to which the vessel owner provides the vessel to the charterer for a fixed period of time at a specified daily rate, and the customer provides for all of the vessel's operating expenses including crewing repairs, maintenance, insurance, stores lube oils and communication expenses in addition to the voyage costs (with the exception of commissions) and generally assumes all risks of operation.

Profit sharing represents our portion of the excess of the actual net daily charter rate earned by our charterers from the employment of our vessels over a predetermined base charter rate, as agreed between us and our charterers. Such profit sharing is recognized in revenue when mutually settled.

Fair Value of Financial Instruments

We have entered into various interest rate swaps agreements in order to hedge interest expense arising from our long-term borrowings detailed in Note 21 of our consolidated financial statements included herein. Under the interest rate swaps, we agree with the counter-party to exchange, at specified intervals, the difference between a fixed rate and floating rate interest amount calculated by reference to the agreed notional amount. In determining the fair value of interest rate swaps, a number of assumptions and estimates are required to be made. These assumptions include future interest rates.

These assumptions are assessed at the end of each reporting period based on available information existing at that time. Accordingly, the assumptions upon which these estimates are based are subject to change and may result in a material change in the fair value of these items.

The 7% Notes have two embedded conversion options — (1) an "Any time" conversion option and (2) a "Make Whole Fundamental Change" conversion option, which gives the holder 10% more shares upon conversion, in certain circumstances.

(1) The "Any time" conversion option meets the definition of a derivative under the Financial Accounting Standards Board's, or FASB, Accounting Standard Codification, or ASC, 815; however, this embedded conversion option meets the ASC 815-10-15 scope exception, as it is both (a) indexed to its own stock and (b) would be classified in shareholders' equity, if freestanding. As a result, this conversion option is not bifurcated and separately accounted for and is not recorded as a derivative financial instrument liability.

(2) The "Make Whole Fundamental Change" conversion option meets the definition of a derivative under ASC 815. However, this embedded conversion option does not meet the ASC 815-10-15 scope exception, since this conversion option cannot be considered indexed to its own stock. As a result, the conversion option has been bifurcated from the host contract, the 7% Notes, and separately accounted for and is recorded as a derivative financial instrument liability.

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The market price of our common shares on the date of issuance of the 7% Notes was \$15.24 and the stated conversion price is \$9.00 per share. Since the “any time” conversion option has not been bifurcated, we recorded a BCF totaling \$100.5 million, as a contra liability (discount) to the 7% Notes that will be amortized into the income statement (via interest charge) over the life of the 7% Notes. For the year ended December 31, 2010, and for the period from October 14, 2009 to December 31, 2009, \$14.4 million and \$17.0 million, respectively, of amortized BCF non-cash interest was expensed in the consolidated statement of operations.

Purchase of Vessels

When we identify any intangible assets or liabilities associated with the acquisition of a vessel, we record all identified tangible and intangible assets or liabilities at fair value. Fair value is determined by reference to market data. We value any asset or liability arising from the time or bareboat charters assumed based on the market value at the time a vessel is acquired. The amount to be recorded as an asset or liability at the date of vessel delivery is based on the difference between the current fair value of a charter with similar characteristics as the time or bareboat charter assumed and the net present value of future contractual cash flows from the time or bareboat charter contract assumed. When the net present value of the time or bareboat charter assumed is greater than the current fair value of a charter with similar characteristics, the difference is recorded as a backlog asset. When the net present value of the time or bareboat charter assumed is lower than the current fair value of a charter with similar characteristics, the difference is recorded as deferred charter revenue. Such assets and liabilities, respectively, are amortized as an increase in, or a reduction of, “Depreciation and Amortization Expense” over the remaining period of the time or bareboat charters acquired. The determination of the fair value of acquired assets and assumed liabilities requires us to make significant assumptions and estimates of many variables including market charter rates, expected future charter rates, future vessel operating expenses, the level of utilization of our vessels and our weighted average cost of capital. The use of different assumptions could result in a material change in the fair value of these items, which could have a material impact on our financial position and results of operations.

Goodwill

Goodwill acquired in a business combination initiated after June 30, 2001 is not to be amortized. Rather, the guidance requires that goodwill be tested for impairment at least annually and written down with a charge to operations if the carrying amount exceeds its implied fair value.

We evaluate goodwill for impairment using a two-step process. First, the aggregate fair value of the reporting unit is compared to its carrying amount, including goodwill. We determine the fair value based on a discounted cash flow analysis.

If the fair value of the reporting unit exceeds its carrying amount, no impairment exists. If the carrying amount of the reporting unit exceeds its fair value, then we must perform the second step in order to determine the implied fair value of the reporting unit’s goodwill and compare it with its carrying amount. The implied fair value of goodwill is determined by allocating the fair value of the reporting unit to all the assets and liabilities of that reporting unit, as if the reporting unit had been acquired in a business combination and the fair value of the reporting unit was the purchase price. If the carrying amount of the goodwill exceeds its implied fair value, then a goodwill impairment is recognized by writing the goodwill down to the implied fair value. As of December 31, 2010, the Company performed its annual goodwill impairment analysis and recorded a non-cash goodwill impairment loss of \$18.7 million.

Results of Continuing Operations

Year Ended December 31, 2010 and Year Ended December 31, 2009

Comparison between these two years is of limited value as a result of the recapitalization on October 13, 2009. The period from January 1, 2009 to October 13, 2009 (prior to the recapitalization) is reported as the predecessor period and the period from October 14, 2009 to December 31, 2009 (after the recapitalization) is reported as the successor period.

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As a result of the recapitalization and the fair value adjustments to the predecessor assets and liabilities, the successor and predecessor periods are not comparable.

The following table presents consolidated revenues and expenses information for the year ended December 31, 2010 and the periods January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009. This information was derived from the consolidated revenues and expenses accounts of the Company for the respective years/periods.

	Successor		Predecessor
	Year Ended December 31, 2010	October 14, to December 31, 2009	January 1, to October 13, 2009
OPERATING REVENUES	\$ 102,733	\$ 14,096	\$ 33,564
EXPENSES:			
Commissions	(2,345)	(407)	(769)
Voyage expenses	(18,793)	(4,634)	(8,574)
Vessel operating expenses	(39,219)	(6,530)	(22,681)
General and administrative expenses	(15,592)	(12,025)	(8,366)
Depreciation and amortization expenses	(39,558)	(4,844)	(11,813)
Impairment losses	(39,515)	—	(68,042)
Loss on sale from vessels, net	(1,560)	—	—
Management fees	(1,007)	(315)	(900)
	(157,589)	(28,755)	(121,145)
Operating loss from continuing operations	(54,856)	(14,659)	(87,581)
OTHER (EXPENSES)/INCOME, NET:			
Interest and finance expense	(44,899)	(23,996)	(10,928)
Interest income	550	236	9
Other (expense)/income, net	(5)	—	40
Change in fair value of derivatives	1,592	2,554	3,012
Total other expenses, net	(42,762)	(21,206)	(7,867)
Loss from continuing operations	(97,618)	(35,865)	(95,448)
Gain/(loss) from discontinued operations	2,769	(2,007)	(30,316)
Net loss	\$ (94,849)	\$ (37,872)	(125,764)
(Loss)/income per share:			
Basic and diluted			
Continuing operations	\$ (14.03)	\$ (6.42)	\$ (39.84)
Discontinued operations	\$ 0.40	\$ (0.36)	\$ (12.65)
Total	\$ (13.63)	\$ (6.78)	\$ (52.49)
Weighted average number of shares:			
Basic and diluted	6,958,903	5,588,937	2,395,858

Revenues

For the year ended December 31, 2010, operating revenues were \$102.7 million, and for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, operating revenues were \$33.6 million and \$14.1 million, respectively. The increase in revenue was attributable primarily to the 69.8% growth in our fleet and the corresponding increase in available and operating days by 84.0% and 94.2%, respectively, reflecting our initiatives to continue the fleet expansion strategy and bring operational,

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commercial and technical management capabilities in-house. As a result, we had on average 16.3 vessels in operation for the year ended December 31, 2010, and for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, we had on average nine and 12 vessels in operation, respectively. For the year ended December 31, 2010, and for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, our TCE rates were \$14,942 per day, \$12,277 per day and \$12,466 per day, respectively. Such increase in TCE rates reflects the favorable charters attached to the vessels that were incorporated in our fleet, which was partially offset by the decrease in the charter rates of the vessels operating on the spot market inclusive of voyage expenses.

Fleet utilization excluding non-core vessels for the year ended December 31, 2010, and for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, were 92.9%, 97.1% and 90.6%, respectively. Fleet utilization excluding non-core vessels for year ended December 31, 2010 was suppressed by 259 unemployment days attributable mainly to the adverse tanker market conditions and the corresponding decrease in demand. During the year ended December 31, 2010 and for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, 72.4%, 89.1% and 71.4%, respectively, of our fleet (excluding non-core vessels) was fixed on time charters.

Commissions

Chartering commissions were \$2.3 million during the year ended December 31, 2010, and \$0.8 million and \$0.4 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively, which corresponds to the increase in revenue (as previously discussed).

Voyage Expenses

Voyage expenses were \$18.8 million during the year ended December 31, 2010, and \$8.6 million and \$4.6 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. The increase was mainly attributable to the increase in the number of vessels operating on the spot market in 2010 as well as the significant increase of the revenue earned by the vessels operated in the spot market. The number of days for vessels operating on the spot market has increased to 1,578 days in the year ended December 31, 2010 from 871 and 429 days for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively.

Vessel Operating Expenses

Vessel operating expenses were \$39.2 million during the year ended December 31, 2010, and \$22.7 million and \$6.5 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively, reflecting the 84.0% and 94.2% growth in the available and operating days, respectively, as a result of the growth of our fleet. Excluding provision for claims, vessel operating expenses were \$37.8 million for the year ended December 31, 2010, and \$18.9 million and \$6.5 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. While the operating expenses increased in total, we achieved a 26.3% reduction in our direct daily vessel operating expenses to \$7,091 in the twelve months of 2010 from \$9,624 in the twelve months of 2009, due to the integration of operational, commercial and technical management since the second quarter of 2010, as well as incremental expenses that occurred in the third quarter of 2009 related to extensive vessel main machinery repairs.

General and Administrative Expenses

General and administrative expenses were \$15.6 million during the year ended December 31, 2010, and \$8.4 million and \$12.0 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. Excluding transaction costs, mainly relating to the dropdown transactions and the 2009 recapitalization, general and administrative expenses were \$14.3 million for year ended December 31, 2010, and \$4.9 million and \$3.1 million for the periods from January 1, 2009 to

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October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively, reflecting our growth, particularly the 211% increase in the number of personnel.

Depreciation and Amortization

Depreciation and amortization was \$39.6 million during the year ended December 31, 2010, and \$11.8 million and \$4.8 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively, reflecting the 69.8% increase in operating fleet growth, as well as the amortization of the intangible assets created as a result of the recapitalization in 2009 and the business and asset acquisitions in 2010.

Impairment Losses

In light of current market conditions, we evaluated the carrying amounts of our long-lived assets. Following our decision to sell our non-core fleet, memorandums of agreements were signed for the sale of five such vessels during the year ended December 31, 2010. Accordingly, we recorded an impairment loss of \$15.7 million based on the future cash flows that these vessels expected to generate. All five vessels were sold during the year ended December 31, 2010. Moreover, we evaluated the recoverability of goodwill in our reporting units and we recognized an impairment loss of \$18.7 million in the wet reporting unit. Furthermore, in the third quarter of 2010, we entered into an agreement for the acquisition of one 2006 built, 37,582 dwt, MR1 Tanker for approximately \$31.8 million, which was to be delivered in the fourth quarter of 2010. On December 1, 2010, we cancelled such agreement and subsequently agreed to the full and final settlement of all the claims under the subject sale and purchase contract. In compliance with the terms and conditions of this settlement agreement, dated December 21, 2010, we released to the sellers the deposit of \$3.2 million, and further incurred a termination fee of \$1.9 million which was paid in January 2011. As a consequence of the foregoing charges, the aggregate impairment loss for the year ended December 31, 2010 was \$39.5 million. Pursuant to GAAP, we evaluated the carrying amounts of our long-lived assets in light of the fiscal year 2009 market conditions. The total impairment loss for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, amounted to \$68.0 million and \$0, respectively.

Loss on sale from vessels, net

As a result of the sale and leaseback transaction, we recognized a loss of \$2.7 million related to the vessels Australia and Brazil. This loss was partially offset by a gain of \$1.1 million recorded as a result of the divestiture of the three non-core vessels in September 2010. Subsequent to the announcement on April 11, 2011 of our fourth quarter 2010 financial results, the aggregate net loss of \$1.6 million was reclassified from "Other (Expenses) / Income, net" to "Expenses". For the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, no such a loss or gain was recognized.

Management Fees

Management fees were \$1.0 million for the year ended December 31, 2010, and \$0.9 million and \$0.3 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. The decrease was due primarily to the integration of the technical management in-house, which was offset by the termination fees paid for the change of management for the Newlead Avra and the Newlead Fortune during the first quarter of 2010, and the fees paid for the termination of the management agreements for the High Rider and the Chinook during the second quarter of 2010, and for the Ostria, the Nordanvind and the High Land during the third quarter of 2010.

Interest and Finance Expense/Interest Income

Interest and finance expense was \$44.9 million during the year ended December 31, 2010, and \$10.9 million and \$24.0 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. The expense for 2010 included a \$14.4 million non-cash charge from the amortization of BCF embedded in the 7% Notes issued in October 2009 in connection

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with our 2009 recapitalization. Excluding the amortization of BCF and the \$4.0 million gain from the change in the fair value of our interest rate swaps, interest and finance expense was \$34.5 million reflecting \$588.7 million of indebtedness as of December 31, 2010, which is net of \$69.1 million of BCF related to the \$125.0 million of 7% Notes and which included, among others, approximately \$298.5 million in new loans assumed and drawdowns during the year ended December 31, 2010 related to fleet growth and our newbuilding program, \$49.0 million related to the drawdown of the new \$62.0 million revolving credit facility, as well as the \$2.4 million net proceeds from the sale and leaseback transaction. The effective interest rate was approximately 6.08% per annum and 5.81% per annum at December 31, 2010 and December 31, 2009, respectively. Furthermore, during the year ended December 31, 2010, we received interest income of \$0.6 million. Interest and finance expense for the period October 14, 2009 to December 31, 2009 included primarily the \$17.0 million amortization of BCF embedded in the 7% Notes issued in October 2009 in connection with our 2009 recapitalization, reflecting the portion of the 7% Notes that was converted in November 2009 resulting in accelerated amortization. Interest and finance expense for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, consisted of interest expenses of \$9.7 million and \$5.4 million, respectively, mainly related to the outstanding indebtedness of \$278.7 million as of December 31, 2009, which is net of \$83.6 million of BCF related to the \$125.0 million of 7% Notes.

Change in Fair Value of Derivatives

The mark to market in fair value derivative during the year ended December 31, 2010, resulted in an unrealized gain of \$1.6 million. For the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, the relative mark to market in fair value derivative resulted in an unrealized gain of \$3.0 million and \$2.6 million, respectively.

Net Loss

Loss from continuing operations was \$97.6 million for the year ended December 31, 2010, and \$95.4 million and \$35.9 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively.

The net loss for the year ended December 31, 2010, and for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, was \$94.8 million, \$125.8 million and \$37.9 million, respectively. These losses included income from discontinued operations of \$2.8 million for the year ended December 31, 2010 and losses of \$30.3 million and \$2.0 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively, which were related primarily to our strategic decision to exit from the container market.

Year Ended December 31, 2009 and Year Ended December 31, 2008

Comparison between these two years is of limited value as a result of the recapitalization on October 13, 2009. The period from January 1, 2009 to October 13, 2009 (prior to the recapitalization) is reported as the predecessor period, and the period from October 14, 2009 to December 31, 2009 (after the recapitalization), is reported as the successor period.

The successor and predecessor periods are not comparable as the successor period revenue and expense accounts include increases to certain charges, as well as the addition of the three vessels newly acquired from

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Grandunion. The increases principally relate to increased interest charges arising as a consequence of additional indebtedness associated with our recapitalization.

	<u>Successor</u>	<u>Predecessor</u>	
	October 14, 2009 to December 31, 2009 (Audited)	January 1, 2009 to October 31, 2009 (Audited)	Year Ended December 31, 2008 (Audited)
	(Expressed in thousands of U.S. dollars)		
Operating revenues	\$ 14,096	\$ 33,564	\$ 56,519
Commissions	(407)	(769)	(689)
Voyage expenses	(4,634)	(8,574)	(6,323)
Vessel operating expenses	(6,530)	(22,681)	(19,798)
General and administrative expenses	(12,025)	(8,366)	(7,816)
Depreciation and amortization expenses	(4,844)	(11,813)	(15,040)
Impairment loss	—	(68,042)	—
Management fees	(315)	(900)	(1,404)
	(28,755)	(121,145)	(51,070)
Operating (loss)/income	(14,659)	(87,581)	5,449
Interest and finance expenses, net	(23,996)	(10,928)	(15,741)
Interest income	236	9	232
Other income, net	—	40	2
Change in fair value of derivatives	2,554	3,012	(6,515)
Loss from continuing operations	(35,865)	(95,448)	(16,573)
Loss from discontinued operations	(2,007)	(30,316)	(23,255)
Net loss	\$ (37,872)	\$ (125,764)	\$ (39,828)
(Loss)/income per share			
Basic and diluted			
Continuing operations	\$ (6.42)	\$ (39.84)	\$ (6.94)
Discontinued operations	\$ (0.36)	\$ (12.65)	\$ (9.75)
Total	\$ (6.78)	\$ (52.49)	\$ (16.69)
Weighted average number of shares			
Basic and diluted	5,588,937	2,395,858	2,386,182

Revenues

For the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, total operating revenues from continuing operations were \$33.6 million and \$14.1 million, respectively. This compares to total revenues of \$56.5 million for the year ended December 31, 2008. This decrease in revenue was primarily attributable to a reduction in vessel operating days, as well as lower TCE rates. For the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009 and for the year ended December 31, 2008, our daily TCE rates were \$12,277, \$12,466 and \$16,518, respectively. The decrease in TCE rates reflects the significant exposure we had in the spot market, as seven out of the 12 vessels operated in the spot market during the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009, a consequence of the general economic environment and market conditions for the tanker market that resulted in lower charter/spot rates as well as lower utilization. Moreover, an acceleration of scheduled dry-dockings and repairs adversely impacted revenue during the periods from

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January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009. In addition, the Nordanvind did not produce revenue during any of 2009 due to dry-docking and repairs.

Fleet utilization for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009 and for the year ended December 31, 2008, was 82.0%, 82.8%, and 92.0%, respectively. The decrease in utilization was attributable to the unemployment days when the tankers operated in the spot market, as only 50% of the fleet was operating under time charters for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, compared to 85% of the fleet being fixed on time charters in 2008.

Commissions

Chartering commissions were \$0.8 million and \$0.4 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. This compares to \$0.7 million during 2008. The increase is primarily attributable to higher commissions paid due to the fact that seven out of 12 vessels were on spot charters.

Voyage Expenses

Voyage expenses were \$8.6 million and \$4.6 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. This compares to \$6.3 million during 2008. The significant increase reflects the exposure of our fleet in the spot market, as well as the increase in off-hire days, in which case we have to cover the voyages expenses as opposed to vessels hired under time charters where all expenses related to the time charter voyages are assumed by the charterers.

Vessel operating expenses

Vessel operating expenses were \$22.7 million and \$6.5 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. This compares to \$19.8 million during 2008, reflecting increased repairs, as well as the transfer of the dry bulk vessels during the period from October 14, 2009 to December 31, 2009. Moreover, during the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, vessel operating expenses include a provision for claims of \$3.7 million and \$0, respectively. There has been no provision for claims accounted for in 2008. In addition, during 2008, we had fleet running costs partially reduced by the contribution of Magnus Carriers Corporation, or Magnus Carriers, pursuant to the budget variance sharing arrangement, under the ship management agreements between certain of our vessel-owning subsidiaries and Magnus Carriers. Magnus Carriers' contribution to vessel operating expenses amounted to \$0.8 million for the year ended December 31, 2008.

General and Administrative Expenses

General and administrative expenses were \$8.4 million and \$12.0 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. This compares to \$7.8 million during 2008. This increase relates primarily to transaction costs of \$12.4 million associated with the October 13, 2009 recapitalization.

Depreciation and Amortization

Depreciation and amortization expenses were \$11.8 million and \$4.8 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. This compares to \$15.0 million during the year ended December 31, 2008. This increase was due primarily to the transfer of the three dry bulk vessels.

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Impairment Loss

Pursuant to GAAP, we evaluated the carrying amounts of our long-lived assets in light of current market conditions. The total impairment loss for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, amounted to \$68.0 million and \$0, respectively. No impairment loss was recorded in the year ended December 31, 2008. The significant factors and assumptions we used in our undiscounted projected net operating cash flow analysis included, among others, operating revenues, off-hire revenues, dry-docking costs, operating expenses and management fee estimates. Revenue assumptions were based on a number factors for the remaining life of the vessel, including: (a) contracted time charter rates up to the end of life of the current contract of each vessel; (b) historical average time charter rates; (c) current market conditions; and (d) the respective vessel's age, as well as considerations such as scheduled and unscheduled off-hire revenues based on historical experience. Operating expenses assumptions included an annual escalation factor, while estimated fair market values for each vessel were obtained by third-party valuations for which management assumes responsibility for all assumptions and judgments used. All estimates used and assumptions made were in accordance with our historical experience.

Management Fees

Management fees were \$0.9 million and \$0.3 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. This compares to \$1.4 million during 2008. This decrease was due primarily to the termination of commercial ship management agreements with Magnus Carriers on May 1, 2009, which was partially offset by the three dry bulk vessels transferred as a result of the October 13, 2009 recapitalization.

Interest and Finance Expense

Total interest and finance expenses were \$10.9 million and \$24.0 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. This compares to \$15.7 million during 2008. The primary reason for such increase relates to the amortization of the BCF of \$17.0 million of our 7% Notes during the period from October 14, 2009 to December 31, 2009, reflecting the portion of the 7% Notes that was converted in November 2009 resulting in accelerated amortization. Moreover, interest expense on loans was \$9.7 million and \$5.4 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. This compares to interest expense of \$13.4 million during 2008. This increase was due primarily to the initial issuance of the 7% Notes and the \$37.4 million credit facility in relation to the three dry bulk vessels transferred as part of the recapitalization on October 13, 2009. In particular, the increase in interest expense from October 14, 2009 to December 31, 2009 was attributable primarily to the 7% Notes, which included a \$17.0 million non-cash charge from the amortization of the BCF embedded in the 7% Notes. In addition, amortization of deferred financing costs was \$0.6 million and \$1.4 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. This compares to \$0.9 million in 2008.

Change in Fair Value of Derivatives

The mark to market of our eight interest rate swaps during the period from January 1, 2009 to October 13, 2009 resulted in an unrealized gain of \$3.0 million. The mark to market of our eight interest rate swaps and our warrants, as well as the make whole fundamental change derivative resulted in an unrealized gain of \$2.6 million for the period from October 14, 2009 to December 31, 2009. This compares to an unrealized loss during 2008 of \$6.5 million. The mark to market valuation resulted in an increase in the derivative liabilities in the balance sheet to \$17.1 million as of December 31, 2009.

Net Loss

Loss from continuing operations was \$95.4 million and \$35.9 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. This compares to a loss from continuing operations of \$16.6 million, recorded for the year ended December 31, 2008. Besides the

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significantly lower net revenues generated for the product tankers in the spot market and increased operating expenses as discussed above, the results for the period from January 1, 2009 to October 13, 2009 reflect a \$68.0 million vessel impairment charge and a \$3.7 million provision for charter claims. The results for the period from October 14, 2009 to December 31, 2009 reflect higher net interest expenses of approximately \$24.0 million as consequence of our recapitalization, primarily attributable to the 7% Notes, which included a \$17.0 million non-cash charge from the amortization of the BCF embedded in the 7% Notes as discussed above.

Furthermore, the results from January 1, 2009 to October 13, 2009 include transaction costs of \$12.4 million associated with the recapitalization.

The net loss for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009 and for the year ended December 31, 2008 was \$125.8 million, \$37.9 million and \$39.8 million, respectively. These include losses from discontinued operations of \$30.3 million and \$2.0 million for the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009, respectively and \$23.3 million for the year ended December 31, 2008, which primarily relate to our exit from the container market.

Liquidity and Capital Resources

Overview

We operate in a capital intensive industry. Our principal sources of liquidity are cash flows from operations, equity and debt. Our future liquidity requirements relate to: (i) our operating expenses; (ii) quarterly and six month payments of interest and other debt-related expenses and the repayment of principal; (iii) funding of newbuilding contracts; (iv) maintenance of minimum liquidity requirements under our credit facility agreements; (v) payments for dry-docking and special survey costs; and (vi) maintenance of cash reserves to provide for contingencies.

As of December 31, 2010, our current assets amounted to \$102.6 million, while current liabilities amounted to \$94.7 million, resulting in a positive working capital position of \$7.9 million. Our independent registered public accounting firm has indicated in their report that there is substantial doubt about our ability to continue as a going concern. Our Facility Agreement requires that we maintain at all times a minimum amount of liquidity in the form of cash and cash equivalents equal to at least 5% of the outstanding loan at all times under such agreement. Moreover, certain of our other debt arrangements require that we maintain at all times a minimum amount of liquidity in the form of cash and cash equivalents equal to at least 5% of our total outstanding indebtedness. As of June 29, 2011, we are still exploring financing and other options to increase our liquidity, including selling certain of our vessels, accessing the capital markets and/or incurring new indebtedness. Furthermore, we remain uncertain as to our ability to borrow the remaining \$12.8 million approximately of undrawn amounts under our \$62.0 million revolving credit facility. Negotiations with the bank are continuing, but there is no assurance that we will be able to fully draw down this amount, if at all. In addition, we continue to be subject to a difficult charter environment, which has negatively affected our cash flows and liquidity. We are currently not in compliance with our minimum liquidity requirements under our loan agreements with West LB and Bank of Scotland (Junior and Senior Kamsarmax credit facilities) which results or will result in cross defaults with other loans. We have received notification from West LB that there is formal credit approval for the temporary waiver of the minimum liquidity covenant through March 31, 2012. This temporary waiver is subject to the execution of formal documentation. If we are unable to devise and successfully execute a plan to increase our liquidity, we expect to be in breach of the minimum liquidity requirements under various other debt agreements by June 30, 2011. See also "Going Concern" and Note 1 to our consolidated financial statements.

As of December 31, 2010, our liquidity reflected \$110.8 million of total cash (\$67.5 million of unrestricted cash and \$43.3 million of restricted cash), compared with \$116.3 million in total cash as of December 31, 2009. The decrease of \$5.5 million in total cash was attributable primarily to vessel acquisitions and debt service which was partially offset by the proceeds from the sale of our non-core vessels of which \$32.0 million was used to pay down the related loan facility during the first quarter of 2011. Total debt on our

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balance sheet as of December 31, 2010 and December 31, 2009 was \$588.7 million and \$278.7 million, respectively, representing a \$310.0 million increase. The increase was attributable mainly to: (i) \$14.4 million amortization of the BCF attributed to the 7% Notes; (ii) the \$154.5 million assumption of loans related to the dropdown entities; (iii) the \$91.5 million assumption and drawdown of debt related to the acquisition of five dry bulk vessels completed in July 2010; (iv) the \$52.5 million assumption and drawdown of debt related to the acquisition of two Kamsarmax newbuildings; (v) the \$49.0 million drawdown of the new Marfin revolving facility; and (vi) the net proceeds of \$2.4 million from the sale and leaseback transaction. The overall increase in indebtedness was partially offset by \$34.8 million of debt amortizations including prepayments made from the proceeds generated from container vessel sales as well as the repayments for terminated loans of \$17.7 million and the capital lease payments of 1.8 million.

As a result of the subsequent financing of the Newlead Prosperity under the new FBB Credit Facility, as described in the “Indebtedness” section below, that occurred subsequent to the announcement on April 11, 2011 of the fourth quarter 2010 financial results, an amount of \$11.9 million has been reclassified from “Accounts payable, trade” to “Other non-current liabilities” on the balance sheet as of December 31, 2010.

The following table below summarizes the cash flows from our operations for each of the years ended December 31, 2010 and 2008, as well as for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009:

	Successor		Predecessor	
	Year Ended December 31, 2010	October 14, to December 31, 2009	January 1, to October 13, 2009	Year Ended December 31, 2008
Net cash (used in)/provided by operating activities	\$ (9,685)	\$ (5,869)	\$ (10,557)	\$ 2,901
Net cash (used in)/provided by investing activities	(22,189)	—	2,216	61,083
Net cash (used in)/provided by financing activities	(6,850)	112,124	4,332	(72,419)
Net (decrease)/increase in cash and cash equivalents	(38,724)	106,255	(4,009)	(8,435)
Cash and cash equivalents, beginning of year/period	106,255	—	4,009	12,444
Cash and cash equivalents, end of year/period	\$ 67,531	\$ 106,255	\$ —	\$ 4,009

Cash Flows

Net cash (used in)/provided by operating activities

Net cash used in operating activities was \$9.7 million for the year ended December 31, 2010, and \$10.6 million and \$5.9 million for the periods from January 1, 2009 to October 13, 2009 and from October 14, 2009 to December 31, 2009, respectively. In determining net cash used in operating activities, net loss is adjusted for the effects of certain non-cash items such as depreciation and amortization, impairment losses, gains and losses from sales of vessels and unrealized gains and losses on derivatives.

The cumulative effect of non-cash adjustments to reconcile net loss to net cash used in operating activities was a \$92.0 million increase for the year ended December 31, 2010 which consisted mainly of the following adjustments: \$39.5 million of impairment losses; \$30.0 million of depreciation and amortization charges; \$14.4 million from the amortization of the BCF of the 7% Notes; \$10.7 million from the amortization of the backlog asset/deferred charter revenue; \$2.7 million relating to share-based compensation; \$3.7 million of amortization of deferred finance fees; and a \$0.3 million provision for doubtful receivables. These

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adjustments were partially offset by a \$8.4 million gain from the valuation of derivatives, and a gain on vessel sales of \$0.9 million.

Furthermore, the cash outflow from operations of \$9.7 million for the year ended December 31, 2010, resulted mainly from: a \$3.5 million payment for dry-docking and special survey costs; a \$2.1 million decrease in amounts due to managing agents; a \$0.6 million increase in amounts due from managing agents; a \$0.7 million decrease in amounts due to related parties; a \$0.9 million decrease in accrued liabilities; and a \$0.8 million decrease in accounts payable. This was partially offset by a \$0.6 million decrease inventories and a \$0.7 million decrease in prepaid expenses.

For the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009, net cash used in operating activities was \$10.6 million and \$5.9 million, respectively. This compares to \$2.9 million of net cash provided by operating activities for the year ended December 31, 2008. This change was due to a larger net loss, excluding non-cash items, which was partially offset by positive cash flow changes in working capital.

Net cash (used in)/provided by investing activities

For the year ended December 31, 2010, our net cash used in investing activities was \$22.2 million. This cash outflow resulted from advances for vessels under construction of \$45.1 million, as well as vessel acquisitions of \$1.6 million, advances for vessel acquisitions of \$3.2 million and the restricted cash of \$11.0 million related to letters of guarantee issued in connection with future installments in respect of newbuildings and other vessel acquisitions, and \$0.1 million for other fixed asset acquisitions, which was partially offset by the proceeds from vessel disposals of \$37.2 million, as well as the net cash of \$1.6 million acquired through the business combination that occurred on April 1, 2010.

For the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009, our net cash provided by investing activities were \$2.2 million and \$0, respectively. This compares to net cash provided by investing activities of \$61.1 million for the year ended December 31, 2008. This decrease was due primarily to vessel disposals amounting to \$59.6 million during the year ended December 31, 2008. Proceeds from vessel disposals for the period from January 1, 2009 to October 13, 2009 amounted to \$2.3 million.

Net cash (used in)/provided by financing activities

For the year ended December 31, 2010, our net cash used in financing activities was \$6.8 million. This cash outflow resulted from the \$62.8 million net principal repayments of our debt, the increase in restricted cash of \$21.0 million mainly related to the disposal from the five non-core vessels (retention accounts) which will be used either to acquire vessels or pay down debt, the capital lease payments of \$1.8 million and the payments of deferred charges of \$8.0 million. This outflow was partially offset by the \$86.6 million proceeds from the sale and leaseback transaction. For the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009, our net cash provided by financing activities was \$4.3 million and \$112.1 million, respectively. This compares to net cash used in financing activities of \$72.4 million in the year ended December 31, 2008. The primary reason for the change was the use of \$20.0 million of the proceeds from the issuance of the \$145.0 million of 7% Notes to reduce the \$221.4 million credit facility. Cash used to repay our credit facility was the primary reason for the change in 2008.

Indebtedness

As of December 31, 2010 and December 31, 2009, our total indebtedness was approximately \$588.7 million and \$278.7 million, respectively, which is net of \$69.1 million and \$83.6 million of BCF related to the \$125.0 million of 7% Notes, respectively. Indebtedness as of December 31, 2010 reflected, among other things, the \$154.5 million assumption of loans related to the dropdown of six vessels and commercial/technical management companies completed on April 1, 2010, the \$52.5 million assumption and drawdown of debt related to the acquisition of two Kamsarmax newbuildings, the \$91.5 million assumption and drawdown of debt related to the acquisition of five dry bulk vessels completed in July 2010, the \$2.4 million net proceeds from the sale and leaseback transaction, the \$49.0 million drawdown under the new

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revolving credit facility with Marfin Egnatia Bank S.A. and \$55.9 million relating to the \$125.0 million of 7% Notes, after netting the impact of the BCF (discount) as described below under “Recapitalization”.

As of June 29, 2011, we estimated our total indebtedness to be approximately \$599.6 million, which is net of \$62.0 million of BCF related to the \$125.0 million of 7% Notes.

Recapitalization

Prior to the recapitalization on October 13, 2009, the Company was in default of its \$360.0 million fully revolving credit facility with Bank of Scotland and Nordea Bank Finland as lead arrangers and Bank of Scotland as agent which had an outstanding balance of \$221.4 million. As part of the recapitalization, our existing syndicate of lenders entered into a new \$221.4 million facility agreement, referred to herein as the “Facility Agreement”, by and among us and the banks identified therein in order to refinance our existing revolving credit facility.

The new Facility Agreement was originally payable in 19 quarterly installments of approximately \$2.0 million each, and a sum of \$163.4 million (comprised of an installment repayment of \$2.0 million and a balloon repayment of \$161.4 million) was due in October 2014. In January 2010, we paid an aggregate amount of \$9.0 million from the proceeds of the sale of the two container vessels, the Saronikos Bridge and the MSC Seine. In January 2011, we paid an aggregate amount of \$32.0 million after receiving the proceeds from the sale of the five non-core vessels. After giving effect to the application of these sale proceeds, the quarterly installments have been reduced to approximately \$1.6 million each, and a sum of \$128.8 million (comprised of a repayment installment of \$1.6 million and a balloon repayment of \$127.2 million) will be due in October 2014. As of December 31, 2010, the outstanding balance was \$184.7 million and the effective interest rate was 7.08%. As of June 29, 2011, the outstanding balance was \$149.5 million.

On April 26, 2010, we entered into a Supplemental Deed (the “Deed”) relating to this term Facility Agreement. The Deed is supplemental to the Loan Agreement dated October 13, 2009, as supplemented and amended from time to time, and was entered into among us and the banks (Bank of Scotland and Nordea Bank Finland as lead arrangers and Bank of Scotland as agent) signatory thereto. Pursuant to the terms of the Deed, the minimum liquidity amount that must be maintained under the original Deed may be applied to prepay sums outstanding under the original loan without triggering an event of default. All amounts so applied will be made available by banks for re-borrowing without restriction and will be deemed to constitute part of the minimum liquidity amount and be deemed to constitute cash for purposes of determining the minimum liquidity amount.

Our obligations under the new Facility Agreement are secured by a first priority security interest, subject to permitted liens, on all vessels in our fleet and any other vessels we subsequently acquire to be financed under this Facility Agreement. In addition, the lenders will have a first priority security interest on all earnings and insurance proceeds from our vessels, all existing and future charters relating to our vessels, our ship management agreements and all equity interests in our subsidiaries. Our obligations under the new Facility Agreement are also guaranteed by all subsidiaries that have an ownership interest in any of our vessels, excluding the three vessels transferred to us as part of the recapitalization.

Under the new terms of the Facility Agreement, amounts drawn bear interest at an annual rate equal to LIBOR plus a margin equal to:

- 1.75% if our total shareholders’ equity divided by our total assets, adjusting the book value of our fleet to its market value, is equal to or greater than 50%;
- 2.75% if our total shareholders’ equity divided by our total assets, adjusting the book value of our fleet to its market value, is equal to or greater than 27.5% but less than 50%; and
- 3.25% if our total shareholders’ equity divided by our total assets, adjusting the book value of our fleet to its market value, is less than 27.5%.

As a result of the recapitalization, new financial covenants were put in place. Except for the working capital (as defined in the loan facility) and the minimum liquidity covenants, all other covenants will become

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effective in a period ranging from 30 to 36 months from the effective date of the Facility Agreement to allow a sufficient period of time for new management to implement its business strategy. We were in compliance with the debt covenants to which we must adhere on December 31, 2010.

The following are the financial covenants to which we must adhere as of the end of each fiscal quarter, under the new Facility Agreement:

- our shareholders' equity as a percentage of our total assets, adjusting the book value of our fleet to its market value, must be no less than:
 - (a) 25% from the financial quarter ending September 30, 2012 until June 30, 2013; and
 - (b) 30% from the financial quarter ending September 30, 2013 onwards.
- we must maintain, on a consolidated basis on each financial quarter, working capital (as defined in the loan facility) of not less than zero dollars (\$0);
- we must maintain a minimum liquidity equal to at least 5% of the outstanding loan;
- the ratio of EBITDA (earnings before interest, taxes, depreciation and amortization) to interest payable must be no less than;
 - (a) 2.00 to 1.00 from the financial quarter day ending September 30, 2012 until June 30, 2013; and
 - (b) 2.50 to 1.00 from the financial quarter day ending September 30, 2013 onwards.

We assumed a \$37.4 million credit facility in relation to the three vessels transferred to us from Granunion as part of the recapitalization during the fourth quarter of 2009. The \$37.4 million credit facility was originally payable in 20 consecutive quarterly installments of \$1.56 million and a \$6.2 million balloon repayment due in October 2014. Such facility bore a margin of 3.5% above LIBOR. Subsequent to its assumption, this facility has been periodically paid down and drawn upon to minimize our cost of capital. We were paying a 1% commitment fee on the undrawn amount. This credit facility was refinanced with a new credit facility signed on May 6, 2010. For more details, please refer to the section "Dropdown of six vessels and commercial/technical management companies".

In connection with the recapitalization on October 13, 2009, we issued \$145.0 million in aggregate principal amount of 7% Notes due 2015, or the 7% Notes. The 7% Notes are convertible into common shares at a conversion price of \$9.00 per share, subject to adjustment for certain events, including certain distributions by us of cash, debt and other assets, spin offs and other events. The issuance of the 7% Notes was pursuant to the Indenture dated October 13, 2009 between us and Marfin Egnatia Bank S.A., and the Note Purchase Agreement, executed by each of Investment Bank of Greece and Focus Maritime Corp. as purchasers. Currently, Investment Bank of Greece retains \$100,000 outstanding principal amount of the 7% Notes and has received warrants to purchase up to 0.4 million common shares at an exercise price of \$24.00 per share, with an expiration date of October 13, 2015. The fair value of these warrants was determined as of October 13, 2009, and as such, is amortized over a period of six years. The remainder of the 7% Notes is owned by Focus Maritime Corp., a company controlled by Michail S. Zolotas, our Vice Chairman, President and Chief Executive Officer. All of the outstanding 7% Notes owned by Focus Maritime Corp. were pledged to, and their acquisition was financed by, Marfin Egnatia Bank S.A. \$20.0 million of the proceeds of the 7% Notes were used to partially repay a portion of our existing indebtedness and the remaining proceeds were used for general corporate purposes and to fund vessel acquisitions. The Note Purchase Agreement and the Indenture with respect to the 7% Notes contain certain covenants, including limitations on the incurrence of additional indebtedness, except for approved vessel acquisitions, and limitations on mergers and consolidations. In connection with the issuance of the 7% Notes, we entered into a Registration Rights Agreement providing the holders of the 7% Notes with certain demand and other registration rights for the common shares underlying the 7% Notes. In November 2009, Focus Maritime Corp. converted \$20.0 million of the 7% Notes into approximately 2.22 million new common shares. The \$125.0 million outstanding principal amount of our 7% Notes is reflected as \$55.9 million on our December 31, 2010 balance sheet due to the netting impact of a BCF (discount) described below and in

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Note 16 of the consolidated financial statements. As of June 29, 2011, an aggregate of \$125.0 million principal amount of the 7% Notes remain outstanding and we estimate the net outstanding amount was approximately \$63.0 million, which is net of \$62.0 million of BCF.

We have accounted for the 7% Notes as follows:

- (1) A Beneficial Conversion Feature (“BCF”); and
- (2) A “Make Whole Fundamental Change” conversion option which was valued separately.

Pursuant to GAAP, these two components factor into the valuation of the 7% Notes as follows:

- The BCF was valued at \$100.5 million and is amortized over the life of the 7% Notes as interest expense. The BCF represents the difference between the conversion price of the 7% Notes (\$9.00) and the market price of our common shares at the date of issuance (\$15.24), multiplied by 16.1 million shares, assuming full conversion of the initial \$145.0 million of 7% Notes. Assuming no further conversions of the remaining \$125.0 million of 7% Notes, the annual BCF amortization will be \$14.4 million annually; and
- The Make Whole Fundamental Change was valued at \$31,301 relating to an additional benefit of 10% of additional shares that the holders can potentially acquire when converting the 7% Notes under certain circumstances. This is also amortized over the life of the 7% Notes as an interest expense.

We use interest rate swaps to hedge our floating rate interest payment obligations for fixed rate obligations. For additional information regarding our interest rate swaps, please read Item 11. “Quantitative and Qualitative Disclosures about Market Risk — Interest Rate Exposure” herein.

Dropdown of six vessels and commercial/technical management companies

On April 1, 2010, we completed the dropdown of six vessels and Newlead Shipping and its subsidiaries, an integrated technical and commercial management company pursuant to the terms of a Securities Purchase Agreement, dated March 31, 2010 (the “Purchase Agreement”), between us and our affiliate Grandunion, and assumed \$154.5 million in vessel related indebtedness.

The \$37.4 million credit facility was refinanced with a new credit facility signed on May 6, 2010. Specifically, we entered into a facility agreement with Marfin Egnatia Bank, for a reducing revolving credit facility of up to \$65.28 million, in relation to the Grand Rodosi, the Australia, the China and the Brazil as well as Newlead Shipping, and Newlead Bulkers, which consolidated our existing \$37.4 million credit revolving facility in connection with the three vessels transferred to us as part of the recapitalization in October 2009 and the initial facility of \$35.0 million for the Grand Rodosi. This loan facility, which was periodically drawn and repaid to minimize our cost of capital, was terminated on November 23, 2010 and its outstanding balance of \$44.113 million was fully repaid through the proceeds of the sale and leaseback transaction which was completed on the same date. For more details about this transaction please see the section “Sale and leaseback transaction” below. The new credit facility, prior to repayment, was payable in 12 quarterly installments of \$1.885 million followed by 20 quarterly installments of \$2.133 million and would have been due in May 2018. Borrowings under this loan facility bore an approximate effective interest rate, including the margin, of 5.7%; of the \$65.28 million total loan, \$32.56 million bore interest at a floating rate, which would have been approximately 3.8% (assuming current LIBOR of 0.252%, plus a 3.5% margin), while \$32.72 million bore interest at a rate of 7.6% (assuming a fixed swap rate of 4.1%, plus a 3.5% margin). The loan facility included financial covenants, all as described in the loan facility, including: (i) our shareholders’ equity as a percentage of our total assets, adjusting the book value of our fleet to its market value, must be no less than: (a) 25% from the financial quarter ending September 30, 2012 until June 30, 2013; and (b) 30% from the financial quarter ending September 30, 2013 and onwards; (ii) our working capital (as defined in the loan facility), on a consolidated basis on each financial quarter, must not be less than zero dollars (\$0); (iii) we must maintain a minimum liquidity equal to at least five percent of the outstanding loan; and (iv) the ratio of EBITDA (as defined in the loan facility) to interest payable on a trailing four financial quarter basis

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must be no less than: (a) 2.00 to 1.00 from the financial quarter day ending September 30, 2012 until June 30, 2013; and (b) 2.50 to 1.00 from the financial quarter day ending September 30, 2013 and onwards.

On April 1, 2010, we assumed a Loan Agreement with Commerzbank, dated November 10, 2006, as supplemented by a First Supplemental Agreement, dated April 18, 2008, a Second Supplemental Agreement, dated April 1, 2010, and a Third Supplemental Agreement dated November 5, 2010, for a loan facility of up to \$18.0 million, in relation to the Grand Venetico. This loan facility was terminated on December 14, 2010 and its outstanding balance of \$7.875 million was fully repaid through the proceeds of the new Marfin revolving credit facility. The loan, prior to repayment, was payable in two quarterly installments of \$0.625 million, followed by a lump sum payment of \$0.75 million, followed by one installment of \$0.75 million due in December 31, 2010, and followed by a \$7.125 million balloon payment due in January 31, 2011. Borrowings under this loan facility bore an effective interest rate, including the margin, of approximately 3.0% (assuming current LIBOR of 0.252%, plus a 2.75% margin). The loan facility included, among other things, a value to loan ratio that must be at all times 143%, and a cash sweep for 50% of vessel's excess cash (all as defined in such loan facility) to be applied against the installment due in October 2010.

On April 1, 2010, we assumed a Loan Agreement with West LB, dated October 16, 2007, as novated, amended and restated on March 31, 2010, relating to a term loan facility of up to \$27.5 million in relation to the Grand Victoria. The loan is payable in 20 quarterly installments of \$0.375 million, followed by 15 quarterly installments of \$0.475 million and a balloon payment of \$12.875 million. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.5% (assuming current LIBOR of 0.252%, plus a 3.25% margin). The applicable margin is calculated as follows: (a) 3.25% per annum at any time when the vessel is not subject to an approved charter and the security cover ratio is less than 125%; (b) 3% per annum at any time when the vessel is subject to an approved charter and the security cover ratio is less than 125%; (c) 2.75% per annum at any time when the vessel is not subject to an approved charter and the security cover ratio is equal to or greater than 125%; and (d) 2.50% per annum at any time when the vessel is subject to an approved charter and the security cover ratio is equal to or greater than 125%. The vessel's excess cash is to be applied against prepayment of the balloon installment until such time as the balloon installment has been reduced to \$6.0 million, in accordance with the following, all as described in the loan facility: (i) if we are in compliance with the value to loan ratio 50% of the excess cash must be applied towards the prepayment of the loan facility; and (ii) if we are not in compliance with the value to loan ratio 100% of the excess cash must be applied towards the prepayment of the loan facility. The value to loan ratio is set at 100% until December 31, 2012 and 125% thereafter. The loan facility includes, among other things, financial covenants that include: (i) a minimum market adjusted equity ratio of 25% for the period from September 30, 2012 until June 30, 2013, increasing to 30% thereafter; (ii) a minimum liquidity equal to at least 5% of the total debt during the period the loan facility remains outstanding; (iii) working capital (as defined in the loan facility) must not be less than zero during the period the loan facility remains outstanding; and (iv) a minimum interest coverage ratio of 2:1 for the period from September 30, 2012 until June 30, 2013, increasing to 2.5:1 thereafter. On June 4, 2010, we further novated, amended and restated this Loan Agreement. The Loan Agreement was amended to reflect the renaming of the Grand Victoria to the Newlead Victoria, and of the reflagging of the vessel from Singapore to Liberia, as well as the renaming of the borrower from Grand Victoria Pte. Ltd. of Singapore to Newlead Victoria Ltd. of Liberia. As of June 29, 2011, we are not in compliance with the minimum liquidity requirement under this loan agreement and are seeking waivers in respect of such non-compliance. We have received notification from West LB that there is formal credit approval for the temporary waiver of the minimum liquidity covenant through March 31, 2012. This temporary waiver is subject to the execution of formal documentation. See "--Going Concern". As of June 29, 2011, the outstanding balance was \$26.0 million.

On April 1, 2010, we assumed a Loan Agreement with Piraeus Bank, dated March 19, 2008, as supplemented by a First Supplemental Agreement, dated February 26, 2009, and a Second Supplemental Agreement, dated March 31, 2010, for a loan of up to \$76.0 million in relation to the Hiona and the Hiotissa. The loan is payable in one quarterly installment of \$1.5 million, followed by four quarterly installments of \$1.25 million, followed by 19 quarterly installments of \$1.125 million and a balloon payment of \$37.225 million due in April 2016. Borrowings under this loan facility currently bear an effective interest rate,

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including the margin, of approximately 3.8% (assuming current LIBOR of 0.252%, plus a 3.5% margin). The loan facility includes, among other things, financial covenants, all as described in such loan facility, including: (i) the minimum net worth of the corporate guarantor's group, adjusted to the market value of the vessels, during the period the loan facility remains outstanding, must not be less than \$60.0 million, although we are not subject to such covenant through the period ending December 31, 2011; (ii) the maximum leverage of the corporate guarantor, during the period the loan facility remains outstanding, must not be more than 75%, although we are not subject to such covenant through the period ending December 31, 2011; (iii) the minimum liquidity of the corporate guarantor, during the period the loan facility remains outstanding, must be equal to at least 5% of the total outstanding debt obligations of the corporate guarantor; and (iv) the value to loan ratio must be at least 130% during the period the loan facility remains outstanding, although we are not subject to such covenant through the period ending February 28, 2012. As of June 29, 2011, the outstanding balance was \$58.6 million.

On April 1, 2010, we also assumed a Loan Agreement with Piraeus Bank, dated March 31, 2010, for a loan of up to \$21.0 million, in relation to the Grand Ocean. The loan facility is payable in one quarterly installment of \$0.85 million, followed by six quarterly installments of \$0.8 million, followed by seven quarterly installments of \$0.75 million and a balloon payment of \$10.1 million due in November 2013. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.8% (assuming current LIBOR of 0.252%, plus a 3.5% margin). The loan facility includes financial covenants, all as described in the loan facility, including: (i) the minimum net worth of the corporate guarantor, adjusted to the market value of the vessels, during the period the loan facility remains outstanding, must not be less than \$60.0 million, although we are not subject to this covenant through the period ending December 31, 2011; (ii) the maximum leverage of the corporate guarantor, during the period the loan facility remains outstanding, must not be more than 75%, although we are not subject to this covenant through the period ending December 31, 2011; (iii) the minimum liquidity of the corporate guarantor, during the period the loan facility remains outstanding, must be equal to at least 5% of the total outstanding debt obligations of the corporate guarantor; and (iv) the value to loan ratio must be at least 130% during the period the loan facility remains outstanding, although we are not subject to this covenant through the period ending February 28, 2012. As of June 29, 2011, the outstanding balance was \$17.75 million.

Total fees for the loans we entered in 2010 related to the business combination, amounted to \$4.2 million, and have been recorded as deferred charges and are being amortized over the life of the related facility. Of such fees \$3.2 million was paid in cash and an amount of \$1.0 million represents the fair value of 112,500 warrants with a strike price of \$3.00 and contractual term of 10 years.

Newbuilding program

On April 15, 2010, we assumed two facility agreements in relation to the two acquired Kamsarmaxes ("Kamsarmax Syndicate"). The senior facility agreement, which was entered into with Bank of Scotland, BTMU Capital Corporation and Bank of Ireland, is for \$66.7 million and is payable in 20 quarterly installments of \$1.52 million and a final payment of \$36.3 million due no later than October 26, 2017. Borrowings under this facility agreement bear an effective interest rate, including margin, prior to the initial delivery date (with respect to the newbuilding vessel referred to as Hull N213) and the final delivery date (with respect to the newbuilding vessel referred to as Hull N216), of 7.5% (assuming a fixed swap rate of 4.0%, plus a 3.5% margin). Thereafter, the applicable margin will be calculated based on the security coverage. For a security coverage of less than 115%, between 115% and 129.9% and greater than or equal to 130%, the applicable margin will be 3.4%, 3.2% and 2.75%, respectively. This senior facility agreement included an interest rate swap that had a maturity date of April 4, 2013. This swap was amended and extended to conform to the notional amounts, anticipated drawings and repayment schedule as per the loan facility. This amended and extended swap agreement began July 6, 2010 and has a maturity date of October 15, 2015. The notional amount is \$34.17 million, while the fixed rate of 4.0% is linked to the three-month U.S. dollar LIBOR reference rate.

The junior facility agreement, which was entered into with Bank of Scotland and BTMU Capital Corporation, is for \$13.3 million and is payable in 20 quarterly installments of \$0.13 million and a final

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payment of \$10.7 million due no later than October 26, 2017. Borrowings under this facility agreement bear an approximate effective interest rate, including margin, prior to the initial delivery date (with respect to the newbuilding vessel referred to as Hull N213) and the final delivery date (with respect to the newbuilding vessel referred to as Hull N216), of 9.5% (assuming a fixed swap rate of 4.0%, plus a 5.5% margin). Thereafter, the applicable margin will be calculated based on the security coverage. For a security coverage of less than 115%, between 115% and 129.9% and greater than or equal to 130%, the applicable margin will be 5.2%, 4.9% and 4.5%, respectively. This junior facility agreement included an interest rate swap that had a maturity date of April 4, 2013. This swap was amended and extended to conform to the notional amounts, anticipated drawings and repayment schedule as per the loan facility. This amended and extended swap agreement began July 6, 2010 and has a maturity date of October 15, 2015. The notional amount is \$13.3 million, while the fixed rate of 4.0% is linked to the three-month U.S. dollar LIBOR reference rate.

Both facility agreements include financial covenants, all as described in the loan facilities, including: (i) the security coverage must be at least 115% up to and including the second anniversary of final delivery date, 120% up to the third anniversary date, 125% up to the fourth anniversary date and 130% thereafter; (ii) the minimum liquidity of the corporate guarantor, during the period the loan facility remains outstanding, must be equal to at least 5% of the total outstanding debt obligations of the corporate guarantor; (iii) the ratio of EBITDA (as defined in the loan facility) to interest expense must be no less than: (a) 1.10 to 1.00 from the financial quarter day ending September 30, 2012; and (b) 1.20 to 1.00 from the financial quarter day ending September 30, 2013 going forward; and (iv) the equity ratio must not be less than: (a) 25% from the financial quarter day ending September 30, 2012; and (b) 30% from the financial quarter day ending September 30, 2013 onwards. As of June 29, 2011, we are not in compliance with the minimum liquidity requirement under these loan agreements and are seeking waivers in respect of such non-compliance. As of June 29, 2011, the outstanding balance of the loans was \$58.35 million.

Five vessel acquisition

In July 2010, we completed the acquisition of five dry bulk vessels, including two newbuildings and the right of first refusal for three additional newbuildings pursuant to the terms of a Securities Purchase Agreement, dated July 2, 2010 (the "July Purchase Agreement"), between us and Grandunion. Upon closing, in accordance with the July Purchase Agreement, the shares of the vessel owning subsidiaries were transferred to us. Total consideration for such shares was approximately \$147.0 million, which included approximately \$93.0 million in assumed bank debt and other liabilities. The balance will be paid towards the newbuilding installments and will be financed with committed bank and shipyard credit facilities as well as cash.

In connection with the completion of such acquisition of the five dry bulk vessels, we assumed \$86.4 million in vessel related bank indebtedness as follows:

We assumed a Loan Agreement with First Business Bank, dated July 2, 2010, as supplemented by a First Supplemental Agreement, dated October 15, 2010 and further supplemented by a Second Supplemental Agreement dated May 9, 2011, for a loan facility of up to \$24.15 million, in relation to the Grand Spartouta. The loan is payable in 19 quarterly installments of \$0.8 million followed by a \$8.95 million payment due in July 2015. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 4.3% (assuming current LIBOR of 0.252%, plus a 4.0% margin). This loan facility includes, among other things, a value to loan ratio that must at all times be at least 100% from January 1, 2012 up until December 31, 2012 and 120% up until maturity date and a cash sweep for 50% of the vessel's excess earnings (all as defined in such loan facility) to be applied against the balloon payment. This loan facility also includes, among other things, financial covenants including: (i) the minimum market adjusted equity ratio (as defined in the loan facility) must be equal at least 25% for the financial year ending December 31, 2012, although we are not subject to such covenant through the period ending December 31, 2012, and which increases to 30% annually thereafter; (ii) the minimum liquidity must be equal at least 5% of the total debt (as defined in the loan facility) during the period the loan facility remains outstanding; (iii) working capital (as defined in the loan facility) must not be less than zero dollar (\$0) during the period the loan facility remains outstanding; and (iv) the minimum interest coverage ratio (as defined in the loan facility), on a trailing four financial quarter basis must be at least 2:1 as at December 31, 2012, although we are not subject to such covenant

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through the period ending December 31, 2012, and must be at least 2.5:1 as at December 31, 2013 and annually thereafter. As of June 29, 2011, the outstanding balance of this loan was \$21.75 million.

We assumed a Loan Agreement with Emporiki Bank, dated November 29, 2006, as supplemented by a Third Supplemental Agreement, dated July 2, 2010, for a loan facility of up to \$14.75 million, in relation to the Grand Markela. The Loan Agreement was further supplemented by a Fourth Supplemental Agreement, dated September 8, 2010, to reflect the renaming of the Grand Markela to the Newlead Markela, and the change of registry of the vessel from Liberia to Marshall Islands, and it was further supplemented by a Fifth Supplemental Agreement, dated November 8, 2010. The loan was payable in four semiannual installments of \$1.17 million followed by a \$5.12 million payment due in November 2012. Borrowings under this loan facility bore an effective interest rate, including the margin, of approximately 3.3% (assuming current LIBOR of 0.252%, plus a 3.0% margin). As of the date of assumption, the outstanding balance on such loan facility was \$9.8 million. This loan facility terminated on December 14, 2010 and its outstanding balance of \$9.8 million was fully repaid through the proceeds of the new Marfin revolving credit facility. The loan facility, prior to repayment, included, among other things, financial covenants including: (i) the minimum market adjusted equity ratio (as defined in the loan facility) must be equal to at least 25% for the financial quarter day ending June 30, 2012 until the financial quarter ending June 30, 2013, increasing to 30% thereafter; (ii) the minimum liquidity must be equal to at least 5% of the total debt during the period the loan facility remains outstanding; (iii) working capital (as defined in the loan facility) must not be less than zero dollars (\$0) at each quarter end during the period the loan facility remains outstanding; and (iv) the minimum interest coverage ratio (as defined in the loan facility), on a trailing four financial quarter basis must be at least 2:1 for the financial quarter ending June 30, 2012 until the financial quarter day ending June 30, 2013 and must be at least 2.5:1 thereafter. The loan facility also included, among other things, a value to loan ratio that must be at all times 125% up until the maturity date, a cash sweep for 50% of the vessel's excess earnings (all as defined in such loan facility) to be applied towards reducing the balloon payment from the initial \$3.95 million to the amount of \$2.50 million and an average monthly balance of the earnings account held within the bank in the name of the borrower of \$0.4 million.

We assumed a Loan Agreement with EFG Eurobank, dated October 22, 2007, as supplemented by a Third Supplemental Agreement, dated July 9, 2010, for a loan facility of up to \$32.0 million, in relation to the Grand Esmeralda. The Loan Agreement was further supplemented by a Fourth Supplemental Agreement, dated August 13, 2010, to reflect the renaming of the Grand Esmeralda to the Newlead Esmeralda, and the change of registry of the vessel from Liberia to Marshall Islands. The Loan Agreement was further supplemented by a Fifth Supplemental Agreement, dated October 15, 2010, to reflect the application of \$1.13 million to the initial outstanding amount of \$14.79 million. The loan is payable in 15 quarterly installments of \$0.525 million followed by a \$5.785 million payment due in April 2014. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 4.0% (assuming current LIBOR of 0.252%, plus a 3.75% margin). This loan facility includes, among other things, a waiver to the minimum security clause for a period starting from July 1, 2010 and ending on June 30, 2011. As of the date of assumption, the outstanding balance on such loan facility was \$15.355 million. The loan facility includes, among other things, financial covenants including: (i) the minimum market adjusted equity ratio (as defined in the loan facility) must be at least 25% for the period from January 1, 2013 until December 30, 2013, increasing to 30% thereafter; (ii) the minimum liquidity must be equal to at least 5% of the total debt during the period the loan facility remains outstanding; and (iii) the minimum interest coverage ratio (as defined in the loan facility) must be equal to at least 2:1 for the period from January 1, 2013 until December 30, 2013, must be at least to 2.5:1 thereafter. As of June 29, 2011, the outstanding balance of this loan was \$12.085 million.

We assumed a Loan Agreement with DVB Bank, Nord LB and Emporiki Bank, dated July 9, 2010, as supplemented by a First Supplemental Agreement, dated July 14, 2010, a Second Supplemental Agreement, dated November 9, 2010, and a Third Supplemental Agreement, dated December 15, 2010, for a loan facility of up to \$48.0 million, in relation to two newbuilding vessels. The loan is payable, for the first vessel, in 12 quarterly installments of \$0.3625 million followed by 12 quarterly installments of \$0.3875 million followed by 15 quarterly installments of \$0.4 million, with the last installment payable together with the \$9.0 million

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balloon payment due in December 2020. The loan is payable, for the second vessel, in 12 quarterly installments of \$0.3625 million followed by 12 quarterly installments of \$0.3875 million followed by 10 quarterly installments of \$0.4 million with the last installment payable together with the \$11.0 million of the balloon payment due in December 2020. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.3% (assuming current LIBOR of 0.252%, plus a 3.0% margin). As of the date of assumption, the outstanding balance on such loan facility was \$14.1 million. The loan facility includes, among other things, financial covenants including: (i) the minimum market adjusted equity ratio (as defined in the loan facility) must be equal to at least 25% for the financial quarter day ending June 30, 2012 until the financial quarter day ending June 30, 2013, increasing to 30% thereafter; (ii) the minimum liquidity must be equal to at least 5% of the total debt during the period the loan facility remains outstanding; (iii) the ratio of EBITDA to interest payable (as both are defined in the loan facility) on a trailing four financial quarter basis must be equal to at least 2:1 for the financial quarter day ending June 30, 2012 until the financial quarter day ending June 30, 2013, and must be equal to at least 2.5:1 thereafter; (iv) at least \$5.0 million of free cash must be maintained at all times; and (v) working capital (as defined in the loan facility) must be no less than zero at each quarter end. The loan facility also includes, among other things, a value to loan ratio (as defined in the loan facility) that must at all times be equal to at least 110% over the first 5 years and 120% thereafter, a cash sweep on the earnings of the vessels, representing 100% of the excess cash flow (as defined in the loan facility) for the period commencing on the delivery date of each vessel until the relevant balloon amount is reduced to \$3.0 million and 50% of the excess cash flow of each vessel thereafter and a minimum liquidity reserve for each borrower to be kept with the agent bank of not less than \$0.5 million (applicable after each vessel's respective deliveries). As of June 29, 2011, the outstanding balance of the loan was \$23.318 million.

We assumed a Loan Agreement with Marfin Egnatia Bank, dated July 21, 2010, as novated, amended and restated by a Novation, Amendment & Restatement Agreement, dated July 21, 2010, for a reducing revolving credit facility of up to \$23.0 million. The loan was payable in 12 quarterly installments of \$0.1 million followed by a \$21.8 million payment due in October 2013. Borrowings under this loan facility bore an effective interest rate, including the margin, of approximately 4.0% (assuming current LIBOR of 0.252%, plus a 3.75% margin). As of the date of assumption, the outstanding balance on such loan facility was \$23.0 million. This loan facility terminated on November 23, 2010 and its outstanding balance of \$22.9 million was fully repaid through the proceeds of the sale and leaseback transaction which was concluded at the same date. For more details about this transaction, please see the section "Sale and leaseback transaction" below. The loan facility, prior to repayment, included financial covenants, all as described in the loan facility including: (i) our shareholders' equity as a percentage of our total assets, adjusting the book value of our fleet to its market value, must be no less than: (a) 25% from the financial quarter day ending September 30, 2012 until the financial quarter day ending June 30, 2013; and (b) 30% from the financial quarter day ending June 30, 2013 onwards; (ii) the maintenance, on a consolidated basis on each financial quarter, of working capital (as defined in the loan facility) of not less than zero dollars (\$0); (iii) the maintenance of minimum liquidity equal to at least 5% of the outstanding loan; and (iv) the maintenance of the ratio of EBITDA (as defined in the loan facility) to interest payable on a trailing four financial quarter basis of not less than: (a) 2.00 to 1.00 from the financial quarter day ending September 30, 2012 until the financial quarter day ending June 30, 2013; and (b) 2.50 to 1.00 from the financial quarter day ending June 30, 2013 onwards.

Sale and leaseback transactions

In November 2010, we entered into an agreement with Lemissoler Maritime Company W.L.L. for the sale and immediate bareboat leaseback of four dry bulk vessels comprised of three Capesize vessels, the Brazil, the Australia, and the China, as well as the Panamax vessel Grand Rodosi. Total consideration for the sale was \$86.8 million and the bareboat leaseback charter period is eight years. We retain call options to buy the vessels back during the lease period at pre-determined decreasing prices and we are obligated to repurchase the vessels for approximately \$40.0 million at the end of the lease term. The repurchase obligation can be paid partially in cash and partially in common shares. We have also secured the option to substitute one or more vessels throughout the term of the lease, subject to approval by the owners and their lenders. The aggregate

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net rate of the bareboat charters of the four vessels is approximately \$40,000 per day for the first three years, and approximately \$24,000 per day thereafter. We will continue to earn charter hire on the current time charters on the vessels. Moreover, we used the proceeds from the aforementioned sale and leaseback transaction to repay all loans outstanding on these vessels, as well as other bank debt and associated fees. As of June 29, 2011, the outstanding balance of the lease debt was \$81.839 million.

In addition, pursuant to the sale and leaseback transaction, we agreed with Lemissoler Maritime Company W.L.L. (i) to issue 36,480 common shares issuable upon execution of the agreement; (ii) on each of the first and second anniversaries of the date of the agreement, to deliver, at our option, either cash of \$182,400 or a number of common shares having a value of \$182,400, based on a common share value equal to 120% of the 30-day average immediately preceding such anniversary; and (iii) on each of the third through seventh anniversaries of the date of the agreement, to deliver, at our option, either cash of \$109,440 or a number of common shares having a value of \$109,440, based on a common share value equal to 120% of the 30-day average immediately preceding such anniversary. The cash or common shares that may be delivered on such anniversary dates are subject to downward adjustment upon the occurrence of certain events.

In June 2011, we entered into an agreement with Northern Shipping Fund LLC for the sale and immediate bareboat leaseback of the Post-Panamax dry bulk vessel, the Newlead Endurance. The consideration for the sale was \$37.0 million and the bareboat leaseback charter period is seven years. We retain call options to buy the vessel back during the lease period at pre-determined decreasing prices at the end of each of the seven years starting from the first year, and we are obligated to repurchase the vessel for approximately \$26.5 million at the end of the lease term. The repurchase obligation will be paid in cash. The net rate of the bareboat charter is \$9,500 per day throughout the lease period. We will continue to earn charter hire on the current time charter on the vessel. As of June 29, 2011, the outstanding balance of the lease debt was \$26.4 million since on the delivery date we paid an amount of \$10.4 million.

New Marfin Revolving Credit Facility

On December 10, 2010, we entered into a Loan Agreement with Marfin Egnatia Bank for a new reducing revolving credit facility of up to \$62.0 million, in order to refinance the loans of the Grand Venetico and the Newlead Markela, which were previously financed by Commerzbank and Emporiki Bank, respectively, and to finance working and investment capital needs. The facility limit is being reduced by 10 quarterly installments of \$0.1 million during the course of the term. Moreover, the provisions of the agreement include a cash sweep of all surplus of quarterly earnings of the Grand Venetico, the Newlead Markela, the Australia, the Brazil, the China and the Grand Rodosi. Borrowings under this loan facility currently bear an approximate effective interest rate, including the margin, of 5.6%; the floating portion of the approximately \$49.0 million drawn to date is approximately \$19.4 million and bears an interest rate of approximately 3.8% (assuming current LIBOR of 0.252%, plus a 3.5% margin) while the fixed portion drawn is \$29.6 million and bears an interest rate of 7.6% (assuming a current fixed swap rate of 4.1% plus a 3.5% margin). We remain uncertain as to our ability to borrow the approximately \$12.8 million of undrawn amounts under our \$62.0 million revolving credit facility. Negotiations with the bank are continuing, but there is no assurance that we will be able to fully draw down this amount, if at all. The loan facility includes financial covenants, all as described in the loan facility, including: (i) our shareholders' equity as a percentage of our total assets, adjusting the book value of our fleet to its market value, must be no less than: (a) 25% from the financial quarter day ending September 30, 2012 until the financial quarter day ending June 30, 2013; and (b) 30% from the financial quarter day ending September 30, 2013 onwards; (ii) the maintenance, on a consolidated basis on each financial quarter, of working capital (as defined in the loan facility) of not less than zero dollars (\$0); (iii) the maintenance of minimum liquidity equal to at least 5% of the outstanding loan; and (iv) the maintenance of the ratio of EBITDA (as defined in the loan facility) to interest payable on a trailing four financial quarter basis to be no less than: (a) 2.00 to 1.00 from the financial quarter day ending September 30, 2012 until the financial quarter day ending June 30, 2013; and (b) 2.50 to 1.00 from the financial quarter day ending September 30, 2013 onwards. As of June 29, 2011, the outstanding balance of the loan was \$48.97 million.

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New FBB Credit Facility

On May 9, 2011, we entered into a Loan Agreement with First Business Bank for a loan facility of up to \$12.0 million, in relation to the Newlead Prosperity, of which \$11.9 million has been drawn. The loan is payable in one balloon payment due in May 2013, unless we proceed with a successful raising of equity of at least \$40.0 million, upon the completion of which the loan must be prepaid in full. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 7.3% (assuming current LIBOR of 0.252%, plus a 7.0% margin). This loan facility, includes, among other things, a value to loan ratio that must be at least 120% from January 1, 2013 until the maturity date and financial covenants including: (i) a minimum market adjusted equity ratio (as defined in the loan facility) of 30% only for the financial year ending December 31, 2013; (ii) a requirement to maintain minimum liquidity equal to at least 5% of total debt (as defined in the loan facility) during the period the loan facility remains outstanding, although we are not subject to such covenant through the period ending December 31, 2012; (iii) a requirement to maintain working capital (as defined in the loan facility) of not less than zero dollars (\$0) during the period the loan facility remains outstanding; and (iv) a minimum interest coverage ratio (as defined in the loan facility), on a financial year basis, of 2.5:1, only for the financial year ending December 31, 2013. As of June 29, 2011, the outstanding balance of the loan was \$11.9 million.

EBITDA and adjusted EBITDA reconciliation to Net Loss

EBITDA represents net loss from continuing operations before net interest, taxes, depreciation and amortization. Adjusted EBITDA represents EBITDA before other non-cash items, including straight-line revenue, provisions for doubtful receivables, provisions for claims, changes in fair value of derivatives, impairment losses, gains and losses on sales of assets, share-based compensation expenses and operating losses for the non-core vessels. We use EBITDA and Adjusted EBITDA because we believe that each is a basis upon which our performance can be assessed and each presents useful information to investors regarding our ability to service and/or incur indebtedness. We also believe that EBITDA and Adjusted EBITDA are useful to investors because they are frequently used by securities analysts, investors and other interested parties in the evaluation of companies in our industry. EBITDA and Adjusted EBITDA have limitations as analytical tools, and should not be considered in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are: (i) EBITDA and Adjusted EBITDA do not reflect changes in, or cash requirements for, working capital needs; (ii) although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future; and (iii) EBITDA and Adjusted

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EBITDA do not reflect any cash requirements for such capital expenditures. Because of these limitations, EBITDA and Adjusted EBITDA should not be considered as a principal indicator of our performance.

	Successor		Predecessor	
	Year Ended December 31, 2010	October 14, to December 31, 2009	January 1, to October 13, 2009	Year Ended December 31, 2008
ADJUSTED EBITDA RECONCILIATION				
Net loss	\$ (94,849)	\$ (37,872)	\$ (125,764)	\$ (39,828)
Plus: (Income) / loss from discontinued operations	(2,769)	2,007	30,316	23,255
Loss from continuing operations	(97,618)	(35,865)	(95,448)	(16,573)
PLUS:				
Net interest expense	44,349	23,760	10,919	15,509
Depreciation and amortization	39,558	4,844	11,813	15,040
EBITDA	\$ (13,711)	\$ (7,261)	\$ (72,716)	\$ 13,976
Straight line revenue	467	158	—	—
Provision for doubtful receivables	391	—	217	160
Provision for claims	1,674	—	3,730	—
Change in fair value of derivatives	(1,592)	(2,554)	(3,012)	6,515
Impairment losses	39,515	—	68,042	—
Loss on sale from vessels, net	1,560	—	—	—
Share based compensation	2,680	7,898	793	1,083
Operating loss / (income) for non-core vessels	6,564	4,594	11,498	(4,298)
ADJUSTED EBITDA	\$ 37,548	\$ 2,835	\$ 8,552	\$ 17,436

EBITDA loss for the year ended December 31, 2010 was \$13.7 million, and EBITDA loss for the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009 was \$72.7 million and \$7.3 million, respectively. Adjusted EBITDA for the year ended December 31, 2010 was \$37.6 million, representing EBITDA before non-cash items such as \$39.5 million of impairment losses, \$1.6 million of non-cash gains in the fair value of derivatives, \$1.6 million of non-cash losses on the sale of vessels, \$2.7 million of share-based compensation expenses, a \$0.4 million provision for doubtful receivables, a \$1.7 million provision for claims, \$0.5 million for the straight lining of revenue, as well as operating losses relating to non-core vessels of \$6.6 million. Adjusted EBITDA for the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009 was \$8.6 million and \$2.8 million, respectively. This growth in Adjusted EBITDA was attributable primarily to the increased operational contribution from revenue related to the 69.8% operating fleet growth and the 26.3% reduction in daily vessel operating expenses to \$7,091 in year 2010 from \$9,624 in year 2009.

Adjusted EBITDA for the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009 was \$8.6 million and \$2.8 million, respectively. This compares to \$17.4 million for the year ended December 31, 2008. This decrease is mainly attributable to the 15.6% decrease in revenue as well as significantly higher voyage expenses due to the majority of the fleet operating in the spot market. Voyage expenses increased by \$6.9 million or 109.5% to \$13.2 million for the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009 compared to \$6.3 million during the year ended December 31, 2008. Additionally, vessel operating expenses increased by 47.5% to \$29.2 million for the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009 from \$19.8 million for the year ended December 31, 2008, reflecting increased repair expenses and the transfer of the dry bulk vessels. Furthermore, there were approximately \$4.8 million of expenses related to our recapitalization.

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C. Research and Development, Patents and Licenses

Not applicable.

D. Trend information

Not applicable.

E. Off-Balance Sheet Arrangements

We do not have any transactions, obligations or relationships that could be considered material off-balance sheet arrangements.

F. Tabular Disclosure of Contractual Obligations

As of December 31, 2010, our significant existing contractual obligations and contingencies consisted of our obligations as a borrower under our loan facility agreements and our capital lease obligations. In addition, we had contractual obligations under interest rate swap contracts, newbuilding agreements and office rental agreements.

<u>Contractual obligations</u>	<u>Payment Due by Period</u>				
	<u>Total</u>	<u>Less than a year</u>	<u>1-3 years</u>	<u>3-5 years</u>	<u>More than 5 years</u>
			(in 000's USD)		
Long-term debt obligation ⁽¹⁾	\$ 657,782	\$ 34,421	\$ 136,263	369,655	117,443
Interest payments	181,011	40,963	69,704	49,309	21,035
Rental agreements ⁽³⁾	5,001	423	864	891	2,823
Newbuildings and vessel future commitments	133,700	112,850	19,850	1,000	—
Total	\$ 977,494	\$ 188,657	\$ 226,681	\$ 420,855	\$ 141,301

Notes:

- (1) Refers to our obligations to repay the indebtedness outstanding as of December 31, 2010, (including long-term debts, capital lease obligations and convertible notes) assuming that we meet the covenants of our credit facilities. The amount does not reflect a debt discount (BCF) of \$69.1 million.
- (2) Refers to our expected interest payments over the term of the indebtedness outstanding as of December 31, 2010, assuming an effective interest rate of 6.37% per annum.
- (3) Refers to our obligations under the rental agreements for office space.

Commitments

(i) Rental agreements

We have entered into office and warehouse rental agreements with a related party, Terra Stabile A.E., a shareholder of which is Michail Zolotas, our Vice Chairman, President and Chief Executive Officer, at an aggregate monthly rate of approximately €26,000 as of December 31, 2010, which is expected to be paid in newly issued common shares rather than in cash. These rental agreements vary in duration with the longest agreement expiring in April 2022.

(ii) Commercial and Technical Ship Management Agreements

At December 31, 2009, the vessel-owning companies of the vessels Newlead Avra, Newlead Fortune, High Land, High Rider and Ostria had technical ship management agreements with ITM based in Dubai, each of which was cancellable by either party upon two months' notice. The agreed annual management fees were approximately \$0.17 million per vessel during each of 2010 and 2009. During the year ended December 31, 2010, the vessel owning companies of the Newlead Avra and the Newlead Fortune terminated their ship

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management agreements with ITM. Subsequently, the vessel owning companies of the vessels signed agreements for the provision of both technical and commercial ship management services with Newlead Shipping, a company that was controlled by Grandunion and that has been NewLead's subsidiary since April 1, 2010. The agreed annual management fees were approximately \$0.20 million per vessel; however, all payments to Newlead Shipping have been eliminated since the date on which Newlead Shipping became a subsidiary of NewLead.

The Chinook had a technical ship management agreement with Ernst Jacob, which was terminated upon the sale of the vessel on April 15, 2010. In January 2010, the vessel owning company of the Nordanvind also signed a technical ship management agreement with Ernst Jacob which was terminated upon the sale of the vessel on September 7, 2010. The agreed annual management fees per vessel for 2010 and 2009 were approximately €153,000 and €150,000, respectively (equal to approximately \$0.2 million).

At December 31, 2009, the Australia had a commercial and technical ship management agreement with Stamford Navigation Inc., or Stamford, and the China and the Brazil each had a commercial and technical ship management agreement with Newfront Shipping S.A., or Newfront. During the first quarter of 2010, these agreements were terminated. Subsequently, the vessel owning companies signed agreements for the provision of commercial and technical ship management services with Newlead Bulkers S.A., or Newlead Bulkers, a company which was controlled by Grandunion and currently is NewLead's subsidiary. The annual management fee under each of the agreements was approximately \$0.19 million per vessel; however, all payments to Newlead Bulkers have been eliminated since the date on which Newlead Bulkers became a subsidiary of NewLead.

Magnus Carriers Corporation ("Magnus Carriers"), a company owned by two of our former officers and directors, provided the vessel-owning companies of the Newlead Avra, Newlead Fortune, High Land, High Rider, Ostria and Chinook with non-exclusive commercial management services through commercial management agreements entered into in October 2007. These agreements were cancelled by us effective May 1, 2009.

As of December 31, 2010 and June 29, 2011, the commercial and technical management services of all of our owned and operated vessels were provided in-house by Newlead Shipping and Newlead Bulkers. Outstanding balances, either due or from managing agents and related parties as of December 31, 2010, relate to amounts generated prior to the termination of the agreements described above.

(iii) Commitment exit

In the third quarter of 2010, we entered into an agreement for the acquisition of one 2006 built, 37,582 dwt, MR1 Tanker for approximately \$31.8 million, which was to be delivered in the fourth quarter of 2010. On December 1, 2010, we cancelled such agreement and subsequently agreed to the full and final settlement of all the claims under the subject sale and purchase contract. In compliance with the terms and conditions of this agreement, dated December 21, 2010, we released to the sellers the deposit of \$3.2 million and further incurred a termination fee of \$2.0 million, which was paid in January 2011. As a result, the aggregate loss from the commitment exit of \$5.2 million was recognized in "Impairment losses" in the 2010 consolidated statement of operations.

(iv) Newbuildings

As of December 31, 2010, remaining commitments for newbuildings upon their final delivery amount to: (i) approximately \$35.0 million relating to the one Kamsarmax vessel (Hull N216, the delivery of which is expected in the fourth quarter of 2011); (ii) approximately \$29.6 million relating to the Post-Panamax, named the Newlead Endurance, the delivery of which was made in June 2011; and (iii) approximately \$46.1 million relating to the two Handysize Hulls 4023 and 4029, the deliveries of which are expected in the second half of 2011 and in the third quarter of 2012, respectively.

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Recent Accounting Pronouncements

Fair Value Disclosures

In January 2010, the FASB issued amended standards requiring additional fair value disclosures. The amended standards require disclosures of transfers in and out of Levels 1 and 2 of the fair value hierarchy, as well as requiring gross basis disclosures for purchases, sales, issuances and settlements within the Level 3 reconciliation. Additionally, the update clarifies the requirement to determine the level of disaggregation for fair value measurement disclosures and to disclose valuation techniques and inputs used for both recurring and nonrecurring fair value measurements in either Level 2 or Level 3. The new guidance was effective in the first quarter of fiscal 2010, except for the disclosures related to purchases, sales, issuance and settlements, which will be effective for us beginning in the first quarter of fiscal 2011. The adoption of the new standards did not have and is not expected to have a significant impact on our consolidated financial statements.

Supplementary Pro Forma Information for Business Combinations

In December 2010, the FASB issued an amendment to the Accounting Standards Codification regarding Business Combinations. This amendment affects any public entity as defined by Topic 805 that enters into business combinations that are material on an individual or aggregate basis. The amendments specify that if a public entity presents comparative financial statements, the entity should disclose revenue and earnings of the combined entity as though the business combination(s) that occurred during the current year had occurred as of the beginning of the comparable prior annual reporting period only. The amendments in this Update also expand the supplemental pro forma disclosures under Topic 805 to include a description of the nature and amount of material, nonrecurring pro forma adjustments directly attributable to the business combination included in the reported pro forma revenue and earnings. The amendments are effective for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2010. Early adoption is permitted. We adopted these new requirements in fiscal year 2010.

ASU 2010–28, Intangibles — Goodwill and Other (Topic 350): When to Perform Step 2 of the Goodwill Impairment Test for Reporting Units with Zero or Negative Carrying Amounts (a consensus of the FASB Emerging Issues Task Force)

In December 2010, the FASB issued Accounting Standards Update (ASU) No. 2010–28, *Intangibles — Goodwill and Other (Topic 350): When to Perform Step 2 of the Goodwill Impairment Test for Reporting Units with Zero or Negative Carrying Amounts*. This ASU contains the final consensus reached by the EITF meeting on November 19, 2010. The EITF consensus affects all entities that have recognized goodwill and have one or more reporting units whose carrying amount for purposes of performing Step 1 of the goodwill impairment test is zero or negative. The EITF decided to amend Step 1 of the goodwill impairment test so that for those reporting units, an entity is required to perform Step 2 of the goodwill impairment test if it is more likely than not that a goodwill impairment exists. For public entities, the amendments in this Update are effective for fiscal years, and interim periods within those years, beginning after December 15, 2010. Early adoption is not permitted. For nonpublic entities, the amendments are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011. Nonpublic entities may early adopt the amendments using the effective date for public entities. We do not expect the adoption of the Accounting Standards update will have a material impact on our consolidated financial statements.

Subsequent events

In accordance with the board resolutions dated November 13, 2009, an annual restricted share grant in an aggregate amount of 8,335 restricted common shares was issued to the independent directors of the Board on February 1, 2011. These restricted common shares vest 100% on the first anniversary date of the grant. Moreover, the Company, in accordance with the 2005 equity incentive plan, granted to its employees an aggregate amount of 365,250 common shares with an effective grant date of April 1, 2011. These common

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shares vest 100% on the second anniversary date of the grant and are subject to forfeiture in accordance with the terms of the Plan.

In February 2011, the Newlead Compass (72,934 dwt) and the Newlead Compassion (72,782 dwt) were each chartered-out for a five-year period. The Newlead Compassion commenced its charter in May 2011, while the Newlead Compass is expected to commence its charter during the third quarter of 2011. The net daily charter-out rate for each vessel will be \$11,700 for the first year, \$13,650 for the second, third and fourth years and \$15,600 for the fifth year. In addition, during the term of the charters, we will have a profit-sharing interest equal to 50% of the actual earnings of the charterer up to \$26,000 per day and 30% above such amount.

In March 2011, we announced that two of our product tankers, the Hiona and the Hiotissa, will participate in the Handymax Tanker Pool of Scorpio Management ("SHTP"), a major tanker pool with more than 30 vessels currently participating. The Hiona (37,337 dwt, 2003-built) is expected to enter in the second quarter of 2011 and the Hiotissa (37,329 dwt, 2004-built) entered the SHTP pool in April 2011 and will both participate in the SHTP for a minimum of one year.

On April 29, 2011, the vessel M/V Grand Venetico was renamed to M/V Newlead Venetico.

On May 9, 2011, we entered into a Loan Agreement with First Business Bank for a loan facility of up to \$12.0 million, in relation to the Newlead Prosperity, of which \$11.9 million has been drawn. The loan is payable in one balloon payment due in May 2013, unless we proceed with a successful raising of equity of at least \$40.0 million, upon the completion of which the loan should be prepaid in full. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 7.3% (assuming current LIBOR of 0.252%, plus a 7.0% margin). This loan facility, includes, among other things, a value to loan ratio that must be 120% from January 1, 2013 until the maturity date and financial covenants including: (i) a minimum market adjusted equity ratio (as defined in the loan facility) of 30% only for the financial year ending December 31, 2013; (ii) a requirement to maintain minimum liquidity equal to at least 5% of total debt (as defined in the loan facility) during the period the loan facility remains outstanding, although we are not subject to such covenant through the period ending December 31, 2012; (iii) a requirement to maintain working capital (as defined in the loan facility) of not less than zero dollars (\$0) during the period the loan facility remains outstanding; and (iv) a minimum interest coverage ratio (as defined in the loan facility), on a financial year basis, of 2.5:1, only for the financial year ending December 31, 2013.

On May 10, 2011, we completed the acquisition of the Newlead Prosperity.

In June 2011, the Post-Panamax newbuilding vessel, named the Newlead Endurance, was delivered.

G. Safe Harbor

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

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Item 6. Directors, Senior Management and Employees

A. Directors and Senior Management

Set forth below are the names, ages and positions of our directors and executive officers and their respective terms of service to the Company. Our board of directors is elected on a staggered basis, and each director elected holds office until his successor has been duly elected, except in the event of his death, resignation, removal or the earlier termination of his office. The primary business address of each of our executive officers and directors is 83 Akti Miaouli & Flessa Street, Piraeus Greece, 185 38.

Name	Age	Position
Nicholas G. Fistes	52	Class I Director and Chairman since October 13, 2009
Michail S. Zolotas	37	Class I Director and Deputy Chairman, President and CEO since October 13, 2009
Allan L. Shaw	47	Class II Director, and Chief Financial Officer since October 13, 2009
Masaaki Kohsaka	77	Class II Director since October 13, 2009
Dr. John Tzoannos	67	Class II Director since April 1, 2010
Spyros Gianniotis	51	Class III Director since October 13, 2009
Apostolos I. Tsitsirakis	42	Class III Director since October 13, 2009
Panagiotis Skiadas	40	Class III Director since June 2005
Panagiotis Peter Kallifidas	41	Corporate Secretary since January 1, 2010
George Fragos	46	Chief Operating Officer since October 13, 2009
Sozon Alifragkis	42	Senior Vice President and Chief Commercial Office since October 13, 2009

Our board of directors is divided into three classes, as nearly equal in number as possible, with each director serving a three-year term and one class being elected at each year's annual meeting of shareholders. The term of the Class II Directors expires at our annual meeting in 2011, the term of the Class I Directors expires at our annual meeting in 2012 and the term of the Class III Directors expires at our annual meeting in 2013.

Set forth below is certain biographical information about each of these individuals, who were newly appointed on the date of the recapitalization.

Nicholas G.Fistes Director, Executive Chairman

Nicholas G. Fistes began his career as a Naval Architect and Marine Engineer in charge of worldwide new construction and shipbuilding with Ceres Hellenic Shipping Enterprises Ltd., or Ceres. He later became the Chief Executive Officer of Ceres (2004–2005), one of the largest ship management companies in the world, managing various types of ships including crude oil tankers, chemical tankers, LNG ships and dry bulk carriers. Mr. Fistes also served as Chief Executive Officer of Seachem Tankers Ltd. (1993–1996), a commercial chemical tanker operating company and as Chief Executive Officer of Coeclerici Ceres Bulk Carriers, a bulk carrier shipping company (2002–2003). He served on the Executive Committee of Euronav NV from 2006 to 2008. He was also a Board Member of the shipmanagement companies Ceres LNG Services Ltd. and Ceres Hellas Maritime Company from 2004 to 2006. In 2006, together with Michail Zolotas, Mr. Fistes founded Grandunion Inc., or Grandunion, a shipholding company, where he holds the position of Chairman. From March 2007 until 2009, he was the Chairman of the International Association of Independent Tanker Owners (INTERTANKO) and serves on the Board of the Hellenic Marine Environment Protection Association (HELMEPA). He is a member of a number of industry-related associations including the Executive Committee of the International Association of Dry Cargo Shipowners (INTERCARGO) and the American Bureau of Shipping (ABS). Mr. Fistes serves on the Hellenic Committees for Det Norske Veritas (DNV), Registro Italiano Navale (RINA) and the Korean Register of Shipping (KR). Mr. Fistes also serves on the

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Mediterranean Committee for the China Classification Society (CCS). Mr. Fistes holds a Bachelor of Science Degree in Naval Architecture and Shipbuilding from Newcastle Upon-Tyne University and a Master's of Science Degree in Ocean Systems Management from the Massachusetts Institute of Technology.

Michail S.Zolotas

Director, President and Chief Executive Officer

Michael S. Zolotas has long-standing experience in the shipping sector. As a third generation ship-owner, he has over 18 years of experience in commercial, operational and technical management in the shipping industry. Mr. Zolotas has already managed over 75 vessels in less than 15 years. Prior to October 2009, Mr. Zolotas was Chief Executive Officer of Grandunion, a private ship management company with 40 vessels under management. Mr. Zolotas founded Grandunion together with Mr. Nicholas G. Fistes in 2006. As Chief Executive Officer of Grandunion, Mr. Zolotas bought and sold more than 60 vessels, including newbuildings. Today, he still serves as Chief Executive Officer of Grandunion. From 1999 until 2006, Mr. Zolotas was General Manager of Stamford Navigation Inc. In less than seven years, Mr. Zolotas, managed to expand the fleet of Stamford Navigation Inc. from two to 30 vessels, ranging from 17,000 dwt to 170,000 dwt, including newbuildings. Mr. Zolotas joined Stamford Navigation Inc. as a superintendent engineer in 1997. He commenced his career spending three years in sea service and, after the completion of his sea service, he was involved in the technical management of Stamford Navigation Inc. especially in newbuildings supervision and repairs and conversion of the fleet in operation. Mr. Zolotas is a member of the Hellenic and Black Sea Mediterranean Committee of Bureau Veritas, China Classification Society (CCS) Mediterranean Committee and Registro Italiano Navale (RINA) Committee. From 2001 to 2007, he served on the board of the CTM Pool. Mr. Zolotas holds a B.E. in Mechanical Engineering from Stevens Institute of Technology.

Allan L. Shaw

Director, Chief Financial Officer

Allan L. Shaw has over 20 years of financial management experience and began his career at Deloitte & Touche where he became a manager. Mr. Shaw was a member of the Board of Directors from 1996 until 2002 and Chief Financial Officer from 1996 until 2001 of Viatel Inc., an international telecommunications company. After Viatel Inc., he served as the Chief Financial Officer and Executive Management Board Member of Serono International S.A., a global biotechnology company from 2002 to 2004. Mr. Shaw is the founder and Senior Managing Director of Shaw Strategic Capital LLC, an international financial advisory firm, and has served as a member of Navios Maritime Holdings Inc.'s Board of Directors from 2005 to 2010. Mr. Shaw was appointed to the Board of Directors and named Chief Financial Officer of NewLead Holdings Ltd. on October 13, 2009. Mr Shaw holds a Professional Director Certification from the College of Corporate Directors, a public company director education and credentialing organization. Mr. Shaw, a United States Certified Public Accountant, received a Bachelor of Science degree from the State University of New York, Oswego in 1986.

Spyros Gianniotis

Director

Spyros Gianniotis has worked in various positions in major banks throughout Greece and the United States for over 24 years. From 1989 until 2001, Mr. Gianniotis held positions at Citigroup in Athens, Piraeus and New York. In 2001, Mr. Gianniotis became the Assistant General Manager, Head of Shipping at Piraeus Bank S.A. In 2008, Mr. Gianniotis became the Chief Financial Officer of Aegean Marine Petroleum Network Inc., a position he currently holds. Mr. Gianniotis holds a B.A. from Queens College, CUNY, an MSc from Maritime College, SUNY and an MBA from Wagner College. He joined NewLead's Board of Directors in October 2009.

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Masaaki Kohsaka **Director**

Masaaki Kohsaka has over 50 years of experience in the maritime sector in virtually every phase of operations and management. He has served in advisory roles for Grandunion since 2007. In 1995, Mr. Kohsaka served as the Managing Director, Planning Department and Cruise Department and Executive Officer of Owners Division of Showa Line Ltd. Prior to that position, he served as the Director and General Manager, Planning Department at Showa Line Ltd. in charge of newbuildings, sale and purchase, shipmanagement, insurance and legal matters. Masaaki Kohsaka started his career in 1959 in the Liner Department of Nissan Steamship Co. Ltd. He was a Member of the Tokyo Maritime Arbitration Commission from 1991 through 1997 and was a Maritime Arbitrator from 1991 through 2010. Masaaki Kohsaka is a graduate of The Faculty of Law, Hitotsubashi University in Tokyo. He joined NewLead's Board of Directors in October 2009.

Panagiotis Skiadas **Director**

Panagiotis Skiadas has served as a member of our board of directors since the closing of our initial public offering in June 2005. He is currently the Environmental Manager of VIOHALCO S.A., a holding company of the largest Greek metals processing group that incorporates approximately 90 companies and accounts for approximately 10% of Greece's total exports. Within that role, Mr. Skiadas is responsible for all environmental and climate change issues as well as certain energy related matters. Prior to joining VIOHALCO in April 2006, Mr. Skiadas performed a similar role for a subsidiary of VIOHALCO, ELVAL S.A. He has also served as the Section Manager of Environmental Operations for the Organizational Committee of Olympic Games in Athens in 2004. Mr. Skiadas holds a Bachelor of Science from the University of Florida and a Master's degree in Engineering from the Massachusetts Institute of Technology in Environmental Engineering.

Apostolos I. Tsitsirakis **Director**

Apostolos I. Tsitsirakis has long worked within the maritime industry in both London and Piraeus. He is the founder and currently serves as President of Maritime Capital Management Ltd., a private consulting and management firm with particular emphasis on the shipping and international oil businesses. From 1997 to 2003, Mr. Tsitsirakis was affiliated with a family ship-owning and management company where he held the position of Director of Marine Operations. Mr. Tsitsirakis has served on the Board of Directors of Aegean Marine Petroleum Inc., and has participated as a partner and investor in Fleet Acquisition LLC, the fleet acquisition company that formed Genco Shipping. Mr. Tsitsirakis received an MBA from Webster University in London. He joined NewLead's Board of Directors in October 2009.

Dr. John Tzoannos **Director**

Dr. John Tzoannos has served as a member of our board of directors since April 1, 2010. He has had a long career working in the field of economics, maritime trade and academics. Dr. Tzoannos has served as a member of the Hellenic Parliament and numerous Parliamentary Committees and programs. He has been a noted academic lecturer for over 25 years and has been published in academic journals throughout the EU on such topics as Applied Economics, Shipping Policy, Financial Structure of Companies and mergers and acquisitions. He has been affiliated with the Athens University of Economics and Business, where he taught as a Full Professor since 1977. Dr. Tzoannos recently retired after serving for five years as the Secretary General of the Ministry of Economy Competitiveness and Shipping for Greece. He received his formal education in England, with his undergraduate work completed at the University of Manchester, Masters Degree in Economics and Econometrics from the University of Southampton and finally his Ph.D. in Industrial Economics from the University of Birmingham.

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Panagiotis Peter Kallifidas **General Counsel and Corporate Secretary**

Peter Kallifidas has been NewLead's general counsel since December 1, 2009 and was appointed as the Company's corporate secretary on January 1, 2010. Prior to NewLead, Mr. Kallifidas served as general counsel for Fairport Shipping Limited/Commercial S.A. from July 2002 to November 2009. From August 1996 to June 2002, Mr. Kallifidas was a member of the in-house legal team of Dioryx Maritime Corporation/Liquimar Tankers Management Inc. Mr. Kallifidas received his law degree from the Law School of the Aristotle University of Thessaloniki in Greece and a Masters degree in Maritime Law from the University of Southampton in the United Kingdom. Mr. Kallifidas has been admitted to practice before the Athens Bar Association since 1995.

Sozon A. Alifragis **Senior Vice President and Chief Commercial Officer**

Sozon A. Alifragis has over a decade of experience in the maritime industry. He has served as Commercial Director of Grandunion Inc. as well as Director of Commercial Operations of Newfront Shipping S.A., Newlead Shipping S.A. and Stamford Navigation S.A. in charge of Commercial, Commercial Operations and Insurance and Claims Departments. Mr. Alifragis has also served in top management positions within Ceres Hellenic Shipping S.A. and has worked with Odfjell Tankers in Bergen and within the Commercial Operations Departments at Seachem Tankers in Houston. Mr. Alifragis holds a degree in Electrical and Computer Engineering from Aristotle University of Thessaloniki, Greece, an MSc. in Shipping Trade and Finance from City University, London and a Postgraduate degree in Maritime Law from London Guildhall University. He is a member of the Technical Chamber of Greece as well as a member of INTERTANKO Insurance and Legal Committee. Since 2005, Mr. Alifragis has also been a Fellow Member of the Institute of Chartered Shipbrokers.

George Fragos **Chief Operating Officer**

George Fragos has over 20 years of shipping and shipmanagement experience with various vessel types including crude/product tankers, chemical carriers, bulk carriers, LNG tankers and passenger ships. Mr. Fragos joined Ceres Hellenic Shipping in 1990 as superintendent engineer and was promoted to senior and top management positions within the group and its affiliated companies. Mr. Fragos has served in such roles as Technical Manager and Technical Director of the passenger shipping company, Director of Newbuilding Projects, Marine Division Director, Fleet Director of Euronav Shipmanagement Hellas and Chief Executive Officer of Gaslog Investments. Mr. Fragos has also served on the Board of Ceres Hellas, Ceres LNG, and Egypt LNG. In 2007, Mr. Fragos became Director of the Tanker Division of Grandunion, as well as Managing Director of the tanker shipmanagement company within Grandunion Group. In 2008, he became the Chief Executive Officer of the affiliate tanker shipowning venture, Tankunion Inc. Mr. Fragos has previously been a member of INTECARGO Safety and Technical Committee and is presently a member of the Business Advisory Committee of Athens Laboratory of Business Administration's "MBA in Shipping" program. Mr. Fragos graduated with a degree in Mechanical Engineering from the National Technical University of Athens.

B. Compensation

We paid our officers and directors aggregate compensation of approximately \$1,441,071 for the year ended December 31, 2010, \$2,466,416 and \$413,789 for the periods of January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009, respectively. In addition, share-based compensation costs for the year ended December 31, 2010 was \$2,680,247. In addition, each director will be reimbursed for out-of-pocket expenses incurred while attending any meeting of the board of directors or any board committee. These reimbursed amounts aggregated to \$21,183 for the year ended December 31, 2010.

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On October 13, 2009, we entered into an employment agreement with Mr. Allan L. Shaw to employ him as our Chief Financial Officer. This agreement has an initial term of three years unless terminated earlier in accordance with the terms of such agreement. The initial term shall be automatically extended for successive one year terms unless we or Mr. Shaw gives notice of non-renewal at least 180 days prior to the expiration of the initial term or such one year extension to the initial term. Mr. Shaw was also granted 166,667 of our restricted common shares subject to applicable vesting periods, as mentioned below. Mr. Shaw has been granted 250,000 options at an exercise price of \$19.80 subject to applicable vesting periods.

C. Board Practices

Board Classes

Our board of directors currently consists of eight members. Our directors serve until their successors are appointed or they resign, unless their office is earlier vacated in accordance with our bye-laws or with the provisions of the BCA. Each of the directors has served in his respective capacity since his election, which for all directors, except Panagiotis Skiadas and Dr. John Tzoannos, was October 13, 2009. Mr. Skiadas and Dr. Tzoannos have served as members of the board since June 2005 and April 2010, respectively. Our board of directors is divided into three classes, as nearly equal in number as possible, with each director serving a three-year term and one class being elected at each year's annual meeting of shareholders. The term of the Class II Directors expires at our annual meeting in 2011, the term of the Class I Directors expires at our annual meeting in 2012 and the term of the Class III Directors expires at our annual meeting in 2013. At each succeeding annual general meeting, successors to the class of directors whose term expires at that annual general meeting shall be elected for a three year term.

Committees of the Board of Directors

We have established an Audit Committee comprised of our four independent directors responsible for reviewing our accounting controls and recommending to the board of directors the engagement of our outside auditors. The current members of our audit committee are Messrs. Spyros Gianniotis (Chairman), Apostolos I. Tsitsirakis, Panagiotis Skiadas and Dr. John Tzoannos. We have also established a Compensation Committee comprised of three independent directors responsible for reviewing the compensation of our senior management, officers and board of directors. The current members of our Compensation Committee are Messrs. Apostolos I. Tsitsirakis (Chairman), Spyros Gianniotis and Panagiotis Skiadas. We have also established a Governance and Nominating Committee comprised of four independent directors responsible for identifying candidates who are eligible to serve as members of the board of directors and considering matters of corporate governance generally. The current members of our Governance and Nominating Committee comprise Messrs. Dr. John Tzoannos, Panagiotis Skiadas (Chairman), Apostolos I. Tsitsirakis and Spyros Gianniotis.

There are no service contracts between us and any of our directors providing for benefits upon termination of their employment or service. Please see the information contained under "Item. 7B Related Party Transactions" regarding transactions between us and any of our directors.

D. Employees

See "Item 4 — Information on the Company — Business Overview — Crewing and Employees."

E. Share ownership

The following table sets forth information with respect to the beneficial ownership of our common shares as of June 29, 2011 for:

- each person known by us to own beneficially more than 5% of our shares;
- each of our directors and executive officers who beneficially own our shares; and
- all directors and executive officers as a group.

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Beneficial ownership includes voting or investment power with respect to the securities. Except as indicated below, and subject to applicable community property laws, the persons named in the table have or share the voting and investment power with respect to all shares shown as beneficially owned by them. In computing the number of common shares beneficially owned by a person listed below and the percentage ownership of such person, common shares underlying options, warrants or convertible securities held by each such person that are exercisable or convertible within 60 days of June 29, 2011 are deemed outstanding, but are not deemed outstanding for computing the percentage ownership of any other person. Percentage of beneficial ownership is based on 7,737,999 shares outstanding on June 29, 2011. Unless otherwise specified, the business address of each of the individuals set forth below 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38.

Unless otherwise indicated, NewLead believes that all persons named in the table have sole voting and investment power with respect to all common shares beneficially owned by them.

Identity of Person or Group	Shares Beneficially Owned	
	Number	Percentage
Executive Officers and Directors		
Michail S. Zolotas ⁽¹⁾⁽²⁾⁽³⁾⁽⁴⁾	19,623,106	90.8%
Nicholas G. Fistes ⁽²⁾⁽³⁾⁽⁴⁾	3,523,105	45.5%
Allan L. Shaw ⁽⁵⁾	166,667	2.2%
Masaaki Kohsaka	7,084	*
Spyros Gianniotis	7,084	*
Apostolos I. Tsitsirakis	7,084	*
Dr. John Tzoannos	7,084	*
Panagiotis Skiadas	17,084	*
Panagiotis Peter Kallifidas	*	*
George Fragos	*	*
Sozon Alifragkis	*	*
Directors and Executive Officers as a Group ⁽¹⁾⁽²⁾⁽³⁾⁽⁴⁾⁽⁵⁾	19,835,192	91.8%

* Less than one percent

- (1) Includes 13,877,778 common shares underlying the 7% Notes beneficially owned by Focus Maritime Corp., a Marshall Islands corporation. Focus Maritime Corp. is wholly-owned by Michail S. Zolotas. Focus Maritime's business address is 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38. The foregoing information was derived from a Schedule 13G/A filed by Grandunion with the SEC on September 16, 2010.
- (2) Grandunion is a Marshall Islands corporation, which is wholly owned by Nicholas G. Fistes and Michail S. Zolotas, who each own 50% of the issued and outstanding capital stock of Grandunion. Grandunion's business address is 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38. The foregoing information was derived from a Schedule 13D/A filed with the SEC on September 16, 2010.
- (3) Includes 1,463,631 common shares beneficially owned by Rocket Marine Inc. that are subject to a voting agreement with Grandunion, over which Grandunion has voting power.
- (4) Includes 3,523,105 common shares beneficially owned by Grandunion.
- (5) Does not include 250,000 restricted common shares underlying options issued pursuant to the Company's Equity Incentive Plan.

On August 3, 2010, the Company effected a 1-for-12 reverse share split of its common shares to consolidate every 12 common shares of NewLead into one common share, par value of \$0.01 per share. All common share amounts in the table above give retrospective effect to such reverse share split.

Item 7. Major Shareholders and Related Party Transactions

A. Major Shareholders

The following table sets forth information regarding the owners of more than 5% of our common shares, par value \$0.01 per share, that we are aware of as of June 29, 2011. On June 29, 2011, there were 7,737,999

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common shares outstanding. None of these shareholders have voting rights that differ from any other shareholder.

Identity of Person or Group	Shares Beneficially Owned	
	Number	Percentage
Principal Shareholders		
Focus Maritime Corp. ⁽¹⁾	16,100,001	74.5%
Grandunion Inc. ⁽²⁾⁽³⁾	3,523,105	45.5%
Rocket Marine Inc. ⁽⁴⁾	1,463,631	18.9%
S. Goldman Advisors, LLC ⁽⁵⁾	656,233	8.5%
Investment Bank of Greece, S.A. ⁽⁶⁾	427,778	5.5%

- (1) Includes 13,877,778 common shares underlying the 7% Notes. Focus Maritime Corp., a Marshall Islands corporation, is wholly owned by Michail S. Zolotas. Focus Maritime's business address is 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38. The foregoing information was derived from a Schedule 13G/A filed by Grandunion with the SEC on September 16, 2010.
- (2) Grandunion is a Marshall Islands corporation, which is wholly owned by Nicholas G. Fistes and Michail S. Zolotas, who each own 50% of the issued and outstanding capital stock of Grandunion. Grandunion's business address is 83 Akti Miaouli & Flessa Street, Piraeus Greece 185 38. The foregoing information was derived from a Schedule 13D/A filed with the SEC on September 16, 2010.
- (3) Includes 1,463,631 common shares beneficially owned by Rocket Marine Inc. that are subject to a voting agreement with Grandunion, over which Grandunion has voting power.
- (4) Rocket Marine Inc., a Marshall Islands corporation, is a wholly owned subsidiary of Aries Energy Corporation, which is also a Marshall Islands corporation. Mons Bolin, the Company's former Chief Executive Officer, President and former member of the board of directors, and Captain Gabriel Petridis, the Company's former Chairman, each own 50% of the issued and outstanding capital stock of Aries Energy Corporation. Each of Aries Energy Corporation, Mons Bolin and Captain Gabriel Petridis disclaims beneficial ownership of such shares, except to the extent of their pecuniary interest therein. The principal business address for each of Aries Energy Corporation, Mr. Bolin and Cpt. Petridis is 18 Zerva Nap. Street, Glyfada, Athens Greece 166 75. The foregoing information was derived from a Schedule 13G/A filed with the SEC on October 16, 2009.
- (5) Includes 529,167 common shares underlying warrants, the beneficial ownership of which is shared by Mr. Sheldon Goldman and S. Goldman Advisors, LLC, or Goldman Advisors. Mr. Goldman is the sole member and senior managing director of Goldman Advisors and he has sole power to vote or to direct the vote and to dispose or to direct the disposition of 127,066 common shares. Goldman Advisors and Mr. Goldman may be deemed to share the power to vote or to direct the vote and to dispose or to direct the disposition of the 529,167 common shares beneficially owned by Goldman Advisors. The principal business address of S. Goldman Advisors, LLC and Mr. Goldman is 825 Third Avenue, 34th Floor, New York, NY, 10022. The foregoing information was derived from a Schedule 13D filed with the SEC on December 23, 2010.
- (6) Includes 416,667 common shares underlying warrants and 11,111 common shares underlying the 7% Notes. Represents shares owned by Investment Bank of Greece, S.A., or IBG, and Marfin Popular Bank Public Co., Ltd., or Marfin Popular. Marfin Popular is deemed to beneficially own such shares as a result of its approximately 96% ownership of IBG. The principal business address of IBG is 24B Kifissias Avenue, Maroussi, Athens Greece 151 25. The principal business address of Marfin Popular is 154 Limassol Avenue, Nicosia, 2025, Cyprus. The foregoing information was derived from a Schedule 13G/A filed with the SEC on April 13, 2011.

On April 1, 2010, the Company completed the acquisition of six vessels (four dry bulk vessels and two product tankers) and Newlead Shipping and its subsidiaries, an integrated technical and commercial management company, pursuant to the terms of the Purchase Agreement. In exchange for shares of the subsidiaries acquired, the Company assumed approximately \$161.0 million of bank debt, accounts payable and accrued liabilities net of cash acquired and paid Grandunion an additional consideration of \$5.3 million, which consisted of \$100,000 in cash as well as 700,214 common shares, reflecting 737,037 common shares initially issued to complete the acquisition and the subsequent cancellation of 36,823 of these common shares to maintain the aggregate consideration in accordance with the terms of the Purchase Agreement as a result of assuming a higher amount of liabilities. The foregoing information was derived from a Schedule 13D/A filed with the SEC on September 16, 2010. The common shares are subject to a Lock-Up Agreement, dated

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April 1, 2010, pursuant to which the shares were restricted from disposition or any other transfer for the one year period ended April 1, 2011.

On August 3, 2010, the Company effected a 1-for-12 reverse share split of its common shares to consolidate every 12 common shares of NewLead into one common share, par value of \$0.01 per share. All common share amounts in the table above give retrospective effect to such reverse share split.

B. Related Party Transactions

Consistent with Bermuda law requirements, our bye-laws require any director who has a potential conflict of interest to identify and declare the nature of the conflict to our board of directors. Our bye-laws additionally provide that related party transactions must be approved by independent and disinterested directors.

Grandunion Inc.

Nicholas G. Fistes, our Chairman, and Michail S. Zolotas, our Deputy Chairman, Chief Executive Officer and President, are the sole stockholders and the chairman and chief executive officer, respectively, of Grandunion. On October 13, 2009, Grandunion transferred 100% ownership in three dry bulk carriers, the China, the Australia and the Brazil (which transaction included assets with a carrying value of approximately \$75.3 million and the assumption of a credit facility of \$37.4 million and other liabilities, for a net value of \$35.0 million) to the Company in exchange for 1,581,483 newly issued common shares of the Company.

As part of the same transaction, a voting agreement between Grandunion and Rocket Marine was entered into for which Grandunion transferred 222,223 of the Company's common shares to Rocket Marine, a company controlled by two of our former directors and principal shareholders, in exchange for Grandunion's control over the voting rights relating to the shares owned by Rocket Marine and its affiliates. There are 1,463,631 common shares subject to the voting agreement. The voting agreement is in place for as long as Rocket Marine owns the common shares. The voting agreement contains a lock-up period until December 31, 2011, which, in the case of transfer or sale by Rocket Marine, requires the approval of Grandunion.

In connection with the recapitalization, we issued \$145.0 million in aggregate principal amount of 7% Notes. The 7% Notes are convertible into common shares at a conversion price of \$9.00 per share, subject to adjustment for certain events, including certain distributions by the Company of cash, debt and other assets, spin-offs and other events. The issuance of the 7% Notes was pursuant to an Indenture dated October 13, 2009 between us and Marfin Egnatia Bank S.A., and a Note Purchase Agreement, executed by each of Investment Bank of Greece and Focus Maritime Corp., as purchasers. In connection with the issuance of the 7% Notes, we entered into a Registration Rights Agreement providing certain demand and other registration rights for the common shares underlying the 7% Notes. In November 2009, Focus Maritime Corp., a company controlled by Mr. Zolotas, our Vice Chairman, President and Chief Executive Officer, converted \$20.0 million of the 7% Notes into approximately 2.2 million new common shares. Accordingly, in the aggregate, \$125.0 million of the 7% Notes remain outstanding. As a result of this conversion, Focus Maritime Corp. as at December 31, 2010 owned approximately 30% of the Company's outstanding common shares. The 7% Notes are convertible at any time and if fully converted, following the conversion of 2.2 million shares, would result in the issuance of approximately 13.9 million newly issued common shares. Currently, Investment Bank of Greece retains \$100,000 outstanding principal amount of the 7% Notes and has received warrants to purchase up to 416,667 common shares at an exercise price of \$24.00 per share, with an expiration date of October 13, 2015. The remainder (\$124.9 million) is owned by Focus Maritime Corp. All of the outstanding 7% Notes owned by Focus Maritime Corp. were pledged to, and their acquisition was financed by, Marfin Egnatia Bank S.A. The Note Purchase Agreement and the Indenture with respect to the 7% Notes contain certain covenants, including limitations on the incurrence of additional indebtedness, except in connection with approved vessel acquisitions, and limitations on mergers and consolidations.

In April 2010, we completed the acquisition of six vessels (four dry bulk vessels and two product tankers) and Newlead Shipping and its subsidiaries, an integrated technical and commercial management company, from Grandunion. For more details please refer to Note 5 of the accompanying consolidated

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financial statements. In July 2010, we completed the acquisition of five dry bulk vessels from Grandunion including two newbuildings with long term quality time charters. Total consideration for the acquisition of the five vessels was approximately \$147.0 million, which included approximately \$93.0 million in assumed bank debt and other liabilities. The balance, representing newbuilding commitments, will be financed with committed bank and shipyard credit facilities, as well as with cash from our balance sheet.

Management Services and Commissions

Magnus Carriers, a company owned by two of our former officers and directors, is a company that provided commercial management services to certain vessel-owning companies at a commission of 1.25% of hires and freights earned by the vessels, or fees of \$7,000 per month per vessel where no 1.25% commission was payable. In addition, Magnus Carriers was entitled commission of 1% on the sale or purchase price in connection with a vessel sale or purchase. These agreements were cancelled by us on May 1, 2009. For the year ended December 31, 2010, for the period January 1, 2009 to October 13, 2009, for the period October 14, 2009 to December 31, 2009 and for the year ended December 31 2008, these commissions and management fees were \$0.13 million, \$0.41 million, \$0 and approximately \$1.69 million, respectively (figures include continuing and discontinued operations).

Sea Breeze

As part of attaining revenue (commissions) for our vessels, we contracted with a related entity, Sea Breeze Ltd., of which one of our former directors is a shareholder. In addition, we paid 1% of the purchase price brokerage commission on the sale of the Saronikos Bridge and the MSC Seine, respectively. For the year ended December 31, 2010, for the period January 1, 2009 to October 13, 2009, for the period October 14, 2009 to December 31, 2009 and for the year ended December 31 2008, the commissions amounted to \$0.11 million, \$0.07 million, \$0.05 million and \$0, respectively (figures include continuing and discontinued operations).

Newfront — Stamford

At December 31, 2009, the vessel Australia had technical ship management and commercial management agreements with Stamford and Newfront, and the vessels China and Brazil had technical ship management and commercial management agreements with Newfront. Stamford and Newfront are both related parties with common shareholders. The agreed annual management fees were approximately \$185,000 per vessel. During the first quarter of 2010, these agreements were terminated. Subsequently, the vessel owning companies have signed agreements with Newlead Bulkers for the provision of commercial and technical ship management services (see below). For the year ended December 31, 2010, for the period January 1, 2009 to October 13, 2009 and for the period October 14, 2009 to December 31, 2009, the management fees for Newfront were approximately \$0.05 million, \$0 and \$0.08 million, respectively, and for Stamford were approximately \$0.03 million, \$0, and \$0.04 million, respectively. There was no ship management agreement with Newfront or Stamford during the year ended December 31, 2008.

Newlead Bulkers S.A.

Since April 1, 2010, Newlead Bulkers has been our subsidiary as a result of its acquisition from Grandunion described in Note 5 of the accompanying consolidated financial statements and, consequently, any transactions with the rest of the group are fully eliminated since that date. Until March 31, 2010, when it was a related party due to the existence of common shareholders, Newlead Bulkers assumed the commercial and technical ship management services for the Australia, the China and the Brazil. The management fees for the year ended December 31, 2010 were \$0.06 million.

As of December 31, 2010 and June 29, 2011, the commercial and technical management services of all of our owned and operated vessels were provided in-house by Newlead Shipping and Newlead Bulkers.

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Newlead Shipping S.A.

Since April 1, 2010, Newlead Shipping has been our subsidiary as a result of its acquisition from Grandunion described in Note 5 of the accompanying consolidated financial statements and, consequently, any transactions with the rest of the group are fully eliminated since that date. Until March 31, 2010, when it was a related party due to the existence of common shareholders, Newlead Shipping assumed the commercial and technical ship management services for the Newlead Avra and the Newlead Fortune. The management fees for the year ended December 31, 2010 were \$0.04 million.

As of December 31, 2010 and June 29, 2011, the commercial and technical management services of all of our owned and operated vessels were provided in-house by Newlead Shipping and Newlead Bulkers.

Terra Stabile A.E.

We lease office as well as warehouse spaces in Piraeus, Greece from Terra Stabile A.E., a shareholder of which is Michail Zolotas, our President, Chief Executive Officer and Vice Chairman. In November 2009, we entered with the landowner into a 12-year lease agreement in relation to the office space and on April 28, 2010 we entered into a 12-year lease agreement for the warehouse space (see Note 22 of the accompanying consolidated financial statements). Total rent for the year ended December 31, 2010 was approximately \$0.34 million.

Domina Petridou O.E.

We leased office space in Glyfada, Greece from Domina Petridou O.E., a company of which one of our former directors is a shareholder. In November 2005, we entered into a 10-year lease agreement with the landowner. In October 2007, we entered into an additional nine-year lease agreement with the landowner. These agreements were terminated in 2009 and in the first quarter of 2010 respectively (see Note 18 of the accompanying consolidated financial statements). Total rent for the year ended December 31, 2010, for the periods January 1, 2009 to October 13, 2009, and October 14, 2009 to December 31, 2009 and for the year ended December 31, 2008 amounted to approximately \$0.02 million, \$0.11 million, \$0.03 million and \$0.15 million, respectively.

Aries Energy Corporation

On April 15, 2010, the Company completed the acquisition of two Kamsarmaxes under construction for an aggregate consideration of approximately \$112.7 million (including the assumption of newbuilding contract commitments and debt related to the two Kamsarmaxes) in exchange for the vessel Chinook as part of the same transaction. The purchase was completed pursuant to the terms of a Securities Purchase Agreement, dated February 18, 2010, with Aries Energy Corporation, a company with a common shareholder, and Bhatia International PTE Ltd., an unrelated third party. Gabriel Petrides, a former Board member and an affiliate of Rocket Marine, one of our principal stockholders, is one of the principals of Aries Energy Corporation, one of the sellers of these vessels. The vote on Rocket Marine's shares is controlled by Grandunion pursuant to a voting agreement, and Mr. Petrides left our board in October 2009. Accordingly, even though Rocket Marine is a principal stockholder, neither it nor Mr. Petrides has the ability to influence us. We believe that the negotiations were conducted at arm's length and that the sale price is no less favorable than would have been achieved through arm's length negotiations with a wholly unaffiliated third party.

Transaction with other related party

During the year ended December 31, 2008, the Company paid a commission on the sale of the Arius of approximately \$0.2 million to a brokerage firm, of which one of our former directors is a shareholder.

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Item 8. Financial Information

A. Consolidated Statements and Other Financial Information

See Item 18.

Legal Proceedings Against Us

From time to time in the future, we may be subject to legal proceedings and claims in the ordinary course of business, principally personal injury and property casualty claims. Those claims, even if lacking merit, could result in the expenditure of significant financial and managerial resources. Current legal proceedings of which we are aware are as follows:

- The charterers of the vessel Newlead Avra notified the Company in October 2008 of their intention to pursue the following claims and notified the appointment of an arbitrator in relation to them:
 - a) Damages suffered by sub-charterers of the vessel in respect of remaining on board cargo at New York in September 2007;
 - b) Damages suffered by sub-charterers of the vessel as a result of a change in management and the consequent dispute regarding oil major approval from October 2007; and
 - c) Damages suffered by sub-charterers of the vessel resulting from a grounding at Houston in October 2007.

We do not anticipate any amount in excess of the amount accrued to be material to the consolidated financial statements.

- The charterers of the Newlead Fortune notified the Company in October 2008 of their intention to pursue the following claims, and notified the appointment of an arbitrator in relation to them:
 - a) Damages as a result of a change in management and the consequent dispute regarding oil major approval from October 2007; and
 - b) Damages resulting from the creation of Hydrogen Sulphide in the vessel's tanks at two ports in the United States.

We do not anticipate any amount in excess of the amount accrued to be material to the consolidated financial statements.

- The vessel Grand Rodosi was involved in a collision in October 2010 with the fishing vessel "Apollo S". As of December 31, 2010, the Company is not able to reliably measure the expected possible losses. However, any amounts to be claimed are 100% covered by the P&I Club:
 - a) Value of "Apollo S" plus expenses — the Company has a provided guarantee for A\$19,321,242;
 - b) Damage to wharf — the Company has a provided guarantee for A\$3,387,500; and
 - c) Pollution cleanup costs — the Company has a provided guarantee for A\$500,000.
- The charterers of the Newlead Esmeralda notified the Company in November 2010 of their intention to pursue the following claim. After discussions with charterers, in March 2011, and following discussions, an agreement was reached that neither party would seek security in the future for the claims relating to the grounding that occurred in March 2010. Based on advice of counsel, we believe the charterer's chances of success are remote. Below is a list of the claims:
 - a) Damages for lost income as a result of cargo that was not able to be loaded, subsequent to vessel's grounding in March 2010;
 - b) Damages resulting from the prolonged storage costs due to the inability to place cargo on board the vessel; and
 - c) Anticipated costs.

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Other than as described above, we have not been involved in any legal proceedings which may have, or have had a significant effect on our financial statements, nor are we aware of any proceedings that are pending or threatened which may have a significant effect on our financial statements.

Dividend Policy

On September 12, 2008, we determined to suspend payment of our quarterly dividend, effective immediately. The decision followed our management's strategic review of our business and reflected our focus on improving our long-term strength and operational results. We will make dividend payments to our shareholders only if our board of directors, acting in its sole discretion, determines that such payments would be in our best interest and in compliance with relevant legal and contractual requirements. The principal business factors that our board of directors expects to consider when determining the timing and amount of dividend payments will be our earnings, financial condition and cash requirements at the time. Currently, the principal contractual and legal restrictions on our ability to make dividend payments are those contained in our fully revolving credit facility agreement, and those created by Bermuda law.

Our debt agreements contain covenants that limit our ability to pay dividends. For example, our credit facility with Marfin Egnatia Bank S.A. prohibits us from paying dividends without our lender's consent, and the Facility Agreement only permits the payment of dividends if we meet certain ratios. Our facility agreements further require us to maintain specified financial ratios and minimum liquidity and working capital amounts. In March 2008, pursuant to the condition imposed by our lenders in connection with the relaxation of the interest coverage ratio under our credit facility, our board of directors suspended the payment of quarterly dividends commencing with the dividend in respect of the fourth quarter of 2007. We resumed the payment of dividends with a dividend of \$1.20 per share in respect of the first quarter of 2008. In September 2008, our board of directors suspended the payment of quarterly dividends commencing with the dividend in respect of the second quarter of 2008. Our board of directors may review and amend our dividend policy from time to time in light of our plans for future growth and other factors.

Under Bermuda law, a company may not declare or pay dividends if there are reasonable grounds for believing either that the company is, or would after the payment be, unable to pay its liabilities as they become due, or that the realizable value of its assets would thereby be less than the sum of its liabilities, its issued share capital (the total par value of all outstanding shares) and share premium accounts (the aggregate amount paid for the subscription for its shares in excess of the aggregate par value of such shares). If the realizable value of our assets decreases, in order for us to pay dividends, we may require our shareholders to approve resolutions reducing our share premium account by transferring an amount from such account to our contributed surplus account.

B. Significant Changes

Not applicable.

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Item 9. The Offer and Listing

A. Offer and Listing Details

Currently, the principal trading market for our securities, which includes our common shares, is the NASDAQ Global Select Market under the symbol "NEWL."

The following table sets forth, for the periods indicated, the reported high and low market prices of our common shares on the NASDAQ Global Select Market. The following prices reflect the 1-for-12 reverse split of our common shares on August 3, 2010.

On June 29, 2011, the closing price of our common shares was \$1.86.

	<u>High</u>	<u>Low</u>
For the Fiscal Year Ended December 31, 2006	\$ 177.60	\$ 108.84
For the Fiscal Year Ended December 31, 2007	\$ 125.40	\$ 70.92
For the Fiscal Year Ended December 31, 2008	\$ 93.24	\$ 3.72
For the Fiscal Year Ended December 31, 2009	\$ 19.68	\$ 3.84
For the Fiscal Year Ended December 31, 2010	\$ 12.60	\$ 2.26
For the Quarter Ended		
March 31, 2009	\$ 19.68	\$ 3.84
June 30, 2009	\$ 13.20	\$ 4.32
September 30, 2009	\$ 10.44	\$ 6.72
December 31, 2009	\$ 16.56	\$ 8.76
March 31, 2010	\$ 11.76	\$ 7.80
June 30, 2010	\$ 12.60	\$ 7.56
September 30, 2010	\$ 9.37	\$ 4.24
December 31, 2010	\$ 4.99	\$ 2.26
March 31, 2011	\$ 2.88	\$ 2.05
For the Month Ended		
January 31, 2011	\$ 2.88	\$ 2.35
February 28, 2011	\$ 2.75	\$ 2.35
March 31, 2011	\$ 2.58	\$ 2.05
April 30, 2011	\$ 2.30	\$ 1.99
May 31, 2011	\$ 2.26	\$ 2.01
June 30, 2011 (through June 29, 2011)	\$ 2.30	\$ 1.69

B. Plan of Distribution

Not applicable.

C. Markets

See Item 9.A. above.

D. Selling Shareholders

Not applicable.

E. Dilution

Not applicable.

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F. Expenses of the issue

Not applicable.

Item 10. Additional Information

A. Share Capital

Not applicable.

B. Memorandum and Articles of Association

The following description of our share capital summarizes the material terms of our Memorandum of Association and our bye-laws. Under our Memorandum of Association, as amended, our authorized capital consists of 500 million preference shares, par value \$0.01 per share, and 1 billion common shares, par value of \$0.01 per share.

Common Shares

Our Memorandum of Association and bye-laws were amended on August 26, 2009 to increase the authorized share capital of the Company to 1,000,000,000 common shares and 500,000,000 preference shares.

Holders of common shares have no pre-emptive, subscription, redemption, conversion or sinking fund rights. Holders of common shares are entitled to one vote for each share held of record on all matters submitted to a vote of our shareholders. Holders of common shares have no cumulative voting rights. Holders of common shares are entitled to dividends if and when they are declared by our board of directors, subject to any preferred dividend right of holders of any preference shares. Directors to be elected by holders of common shares require a plurality of votes cast at a meeting at which a quorum is present. For all other matters, unless a different majority is required by law or our bye-laws, resolutions to be approved by holders of common shares require approval by a majority of votes cast at a meeting at which a quorum is present.

Upon our liquidation, dissolution or winding up, our common shareholders will be entitled to receive, ratably, our net assets available after the payment of all our debts and liabilities and any preference amount owed to any preference shareholders.

The rights of our common shareholders, including the right to elect directors, are subject to the rights of any series of preference shares we may issue in the future.

Preference Shares

Under the terms of our bye-laws, our board of directors has authority to issue up to 500 million "blank check" preference shares in one or more series and to fix the rights, preferences, privileges and restrictions of the preference shares, including voting rights, dividend rights, conversion rights, redemption terms (including sinking fund provisions) and liquidation preferences and the number of shares constituting a series or the designation of a series.

The rights of holders of our common shares will be subject to, and could be adversely affected by, the rights of the holders of any preference shares that we may issue in the future. Our board of directors may designate and fix rights, preferences, privileges and restrictions of each series of preference shares which are greater than those of our common shares. Our issuance of preference shares could, among other things:

- restrict dividends on our common shares;
- dilute the voting power of our common shares;
- impair the liquidation rights of our common shares; and
- discourage, delay or prevent a change of control of our Company.

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Our board of directors does not at present intend to seek shareholder approval prior to any issuance of currently authorized preference shares, unless otherwise required by applicable law or NASDAQ requirements. Although we currently have no plans to issue preference shares, we may issue them in the future.

Reverse share split

On July 27, 2010, we announced that a 1-for-12 reverse share split of our common shares had been approved by our board of directors and by written consent of a majority of shareholders, effective upon the opening of the markets on August 3, 2010. The reverse share split consolidated every 12 common shares into one common share, with par value of \$0.01 per share. Our number of authorized common shares and preference shares were not affected by the reverse split. In respect to the underlying common shares associated with stock options and any derivative securities, such as warrants and convertible notes, the conversion and exercise prices and number of common shares issued have been adjusted in accordance with the 1:12 ratio for all periods presented. As a result of the reverse share split, the number of the Company's common shares outstanding was reduced from 88,363,265 to 7,327,934 shares, which takes into account the rounding up of all fractional shares to the nearest whole share. Due to such reverse share split, earnings per share, convertible notes, warrants and stock options have been adjusted retrospectively as well.

Registration Rights

Certain of our shareholders have registration rights as described below.

We entered into a Registration Rights Agreement, dated September 16, 2009, with Grandunion and Rocket Marine in connection with a securities purchase agreement, dated the same date, with Grandunion. Subject to the terms of the Registration Rights Agreement, at any time after December 31, 2011, Grandunion and Rocket Marine may demand that we file a registration statement, request that we file a registration statement on Form F-3 if we are entitled to use such form, or request that their purchased common shares be covered by a registration statement that we are otherwise filing (i.e., piggy-back registration). Pursuant to the Registration Rights Agreement, as of April 30, 2011, we received a notice from Rocket Marine waiving its rights to require us to file a registration statement prior to June 30, 2011 in respect of the 222,223 common shares that were transferred to Rocket Marine as part of our 2009 recapitalization.

We entered into a Registration Rights Agreement, dated April 1, 2010, with Grandunion in connection with a securities purchase Registration Rights Agreement, dated as of March 31, 2010, with Grandunion. Subject to the terms of the agreement, at any time after April 1, 2011, Grandunion may demand that we file a registration statement, request that we file a registration statement on Form F-3 if we are entitled to use such form, or request that their purchased common shares be covered by a registration statement that we are otherwise filing (i.e., piggy-back registration).

We entered into a Registration Rights Agreement, dated October 13, 2009, with Investment Bank of Greece and Focus Maritime Corp. in connection with the issuance of our 7% Notes. Subject to the terms of this agreement, upon the request of the majority of the holders of the transfer restricted securities (as defined therein), we are required to file a shelf registration statement covering the transfer restricted securities within 30 days. The holders may also request that their transfer restricted securities be covered by a registration statement that we are otherwise filing for the purpose of a firm-commitment, underwritten public offering of common shares (i.e., piggy-back registration). A registration statement covering, among other securities, approximately 2.22 million common shares that were issued in November 2009 as a result of the conversion of \$20.0 million in aggregate principal amount of the 7% Notes, was declared effective by the SEC on May 21, 2010.

We entered into a Registration Rights Agreement, dated January 2, 2010, with S. Goldman Advisors, LLC, in connection with the registration of 208,334 common shares and 416,667 common stock underlying warrants issued to the advisors. Subject to the terms of this agreement, upon the request of the majority of the holders of the transfer restricted securities (as defined therein), we are required to file a shelf registration statement covering the transfer restricted securities within 30 days. The holders may also request that their transfer restricted securities be covered by a registration statement that we are otherwise filing for the purpose

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of a firm-commitment, underwritten public offering of common shares (i.e., piggy-back registration). A registration statement covering, among other securities, the 208,334 common shares and 416,667 common stock underlying warrants, was declared effective by the SEC on May 21, 2010.

Treasury Shares

Our bye-laws were amended at our 2008 annual general meeting to allow our board of directors, at its discretion and without the sanction of a resolution of our shareholders, to authorize the acquisition by us of our shares, to be held as treasury shares. Our board of directors may, at its discretion and without the sanction of a resolution of our shareholders, authorize the acquisition by us of our own shares, to be held as treasury shares, upon such terms as the board of directors may in its discretion determine, provided always that such acquisition is effected in accordance with the provisions of the BCA. The Company will be entered in the register of members as a shareholder in respect of the shares held as treasury shares and will be its own shareholder but subject always to the provisions of the BCA. The Company will not exercise any rights and will not enjoy or participate in any of the rights attaching to those shares save as expressly provided for in the BCA. Subject as otherwise provided in our bye-laws in relation to our shares generally, any shares held by the Company as treasury shares will be at the disposal of the board of directors, which may hold all or any of such shares, dispose of or transfer all or any of such shares for cash or other consideration, or cancel all or any of such shares.

Dividends

Under Bermuda law, a company may not declare or pay dividends if there are reasonable grounds for believing either that the company is, or would after the payment be, unable to pay its liabilities as they become due, or that the realizable value of its assets would thereby be less than the sum of its liabilities, its issued share capital (the total par value of all outstanding shares) and share premium accounts (the aggregate amount paid for the subscription for its shares in excess of the aggregate par value of such shares). If the realizable value of our assets decreases, our ability to pay dividends may require our shareholders to approve resolutions reducing our share premium account by transferring an amount to our contributed surplus account. There are no restrictions on our ability to transfer funds (other than funds denominated in Bermuda dollars) in and out of Bermuda or to pay dividends to U.S. residents who are holders of our common shares.

Anti-Takeover Effects of Provisions of Our Constitutional Documents

Several provisions of our bye-laws may have anti-takeover effects. These provisions are intended to avoid costly takeover battles, lessen our vulnerability to a hostile change of control and enhance the ability of our board of directors to maximize shareholder value in connection with any unsolicited offer to acquire us. However, these anti-takeover provisions, which are summarized below, could also discourage, delay or prevent (1) the recapitalization, amalgamation or acquisition of our company by means of a tender offer, a proxy contest or otherwise, that a shareholder may consider in its best interest and (2) the removal of our incumbent directors and executive officers.

Blank Check Preference Shares

Under the terms of our bye-laws, subject to applicable legal or NASDAQ requirements, our board of directors has authority, without any further vote or action by our shareholders, to issue up to 500 million preference shares with such rights, preferences and privileges as our board may determine. Our board of directors may issue preference shares on terms calculated to discourage, delay or prevent a change of control of our company or the removal of our management.

Classified Board of Directors

Our bye-laws provide for the division of our board of directors into three classes of directors, with each class as nearly equal in number as possible, serving staggered, three year terms. One-third (or as near as possible) of our directors will be elected each year. Our bye-laws also provide that directors may only be

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removed for cause upon the vote of the holders of no less than 80% of our outstanding common shares. These provisions could discourage a third party from making a tender offer for our shares or attempting to obtain control of our company. It could also delay shareholders who do not agree with the policies of the board of directors from removing a majority of the board of directors for two years.

Business Combinations

Although the BCA does not contain specific provisions regarding “business combinations” between companies organized under the laws of Bermuda and “interested shareholders,” we have included these provisions in our bye-laws. Specifically, our bye-laws contain provisions which prohibit us from engaging in a business combination with an interested shareholder for a period of three years after the date of the transaction in which the person became an interested shareholder, unless, in addition to any other approval that may be required by applicable law:

- prior to the date of the transaction that resulted in the shareholder becoming an interested shareholder, our board of directors approved either the business combination or the transaction that resulted in the shareholder becoming an interested shareholder;
- upon consummation of the transaction that resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least 85% of our voting shares outstanding at the time the transaction commenced; or
- after the date of the transaction that resulted in the shareholder becoming an interested shareholder, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders by the affirmative vote of at least 80% of our outstanding voting shares that are not owned by the interested shareholder.

For purposes of these provisions, a “business combination” includes recapitalizations, amalgamations, consolidations, exchanges, asset sales, leases, certain issues or transfers of shares or other securities and other transactions resulting in a financial benefit to the interested shareholder. An “interested shareholder” is any person or entity that beneficially owns 15% or more of our outstanding voting shares and any person or entity affiliated with or controlling or controlled by that person or entity, except that so long as Rocket Marine owns 15% or more of our outstanding voting shares, Rocket Marine shall not be an interested shareholder unless it acquires additional voting shares representing 8% or more of our outstanding voting shares.

Election and Removal of Directors

Our bye-laws do not permit cumulative voting in the election of directors. Our bye-laws require shareholders wishing to propose a person for election as a director (other than persons proposed by our board of directors) to give advance written notice of nominations for the election of directors. Our bye-laws also provide that our directors may be removed only for cause and only upon the affirmative vote of the holders of at least 80% of our outstanding common shares, voted at a duly authorized meeting of shareholders called for that purpose, provided that notice of such meeting is served on such director at least 14 days before the meeting. These provisions may discourage, delay or prevent the removal of our incumbent directors.

Shareholder Meetings

Under our bye-laws, annual meetings of shareholders will be held at a time and place selected by our board of directors each calendar year. Special meetings of shareholders may be called by our board of directors at any time and must be called at the request of shareholders holding at least 10% of our paid-up share capital carrying the right to vote at general meetings. Under our bye-laws, at least 15 days, but not more than 60 days notice of an annual meeting or any special meeting must be given to each shareholder entitled to vote at that meeting. Under Bermuda law, accidental failure to give notice will not invalidate proceedings at a meeting. Our board of directors may set a record date between 15 and 60 days before the date of any meeting to determine the shareholders who will be eligible to receive notice and vote at the meeting.

Limited Actions by Shareholders

Any action required or permitted to be taken by our shareholders must be effected at an annual or special meeting of shareholders or by majority written consent without a meeting. Our bye-laws provide that, subject to certain exceptions and to the rights granted to shareholders pursuant to the BCA, only our board of directors may call special meetings of our shareholders and the business transacted at a special meeting is limited to the purposes stated in the notice for that meeting. Accordingly, a shareholder may be prevented from calling a special meeting for shareholder consideration of a proposal over the opposition of our board of directors and shareholder consideration of a proposal may be delayed until the next annual meeting.

Subject to certain rights set out in the BCA, our bye-laws provide that shareholders are required to give advance notice to us of any business to be introduced by a shareholder at any annual meeting. The advance notice provisions provide that, for business to be properly introduced by a shareholder when such business is not specified in the notice of meeting or brought by or at the direction of our board of directors, the shareholder must have given our secretary notice not less than 90 nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting of the shareholders. In the event the annual meeting is called for a date that is not within 30 days before or after such anniversary date, the shareholder must give our secretary notice not later than 10 days following the earlier of the date on which notice of the annual meeting was mailed to the shareholders or the date on which public disclosure of the annual meeting was made. The chairman of the meeting may, if the facts warrant, determine and declare that any business was not properly brought before such meeting and such business will not be transacted.

Amendments to Bye-Laws

Our bye-laws require the affirmative vote of the holders of not less than 80% of our outstanding voting shares to amend, alter, change or repeal the following provisions in our bye-laws:

- the classified board and director election and removal provisions;
- the percentage of approval required for our shareholders to amend our bye-laws;
- the limitations on business combinations between us and interested shareholders;
- the provisions requiring the affirmative vote of the holders of not less than 80% of our outstanding voting shares to amend the foregoing provisions; and
- the limitations on shareholders' ability to call special meetings, subject to certain rights guaranteed to shareholders under the BCA.

These requirements make it more difficult for our shareholders to make changes to the provisions in our bye-laws that could have anti-takeover effects.

C. Material contracts

Please refer to Item 5 — “Operating and Financial Review and Prospects” for a discussion of our long-term debt, Item 4 — “Information on the Company” for a discussion of various agreements relating to our recapitalization and certain vessel transactions and Item 10 — “Additional Information” for a discussion of our registration rights agreements.

D. Exchange controls

The Company has been designated as a non-resident of Bermuda for exchange control purposes by the Bermuda Monetary Authority.

The transfer of shares between persons regarded as resident outside Bermuda for exchange control purposes and the issuance of common shares to or by such persons may be effected without specific consent under the Bermuda Exchange Control Act of 1972 and regulations thereunder. Issues and transfers of Common Shares involving any person regarded as resident in Bermuda for exchange control purposes require specific prior approval under the Bermuda Exchange Control Act of 1972.

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Subject to the foregoing, there are no limitations on the rights of owners of our common shares to hold or vote their shares. Because the Company has been designated as a non-resident for Bermuda exchange control purposes, there are no restrictions on its ability to transfer funds in and out of Bermuda or to pay dividends to United States residents who are holders of our common shares, other than in respect of local Bermuda currency.

In accordance with Bermuda law, share certificates may be issued only in the names of corporations or individuals. In the case of an applicant acting in a special capacity (for example, as an executor or trustee), certificates may, at the request of the applicant, record the capacity in which the applicant is acting. Notwithstanding the recording of any such special capacity, the Company is not bound to investigate or incur any responsibility in respect of the proper administration of any such estate or trust.

The Company will take no notice of any trust applicable to any of its shares or other securities whether or not it had notice of such trust.

As an “exempted company,” the Company is exempt from Bermuda laws which restrict the percentage of share capital that may be held by non-Bermudians, but as an exempted company, the Company may not participate in certain business transactions including: (i) the acquisition or holding of land in Bermuda (except that required for its business and held by way of lease or tenancy for terms of not more than 21 years) without the express authorization of the Bermuda legislature; (ii) the taking of mortgages on land in Bermuda to secure an amount in excess of \$50,000 without the consent of the Minister of Finance of Bermuda; (iii) the acquisition of securities created or issued by, or any interest in, any local company or business, other than certain types of Bermuda government securities or securities of another “exempted company,” exempted partnership or other corporation or partnership resident in Bermuda but incorporated abroad; or (iv) the carrying on of business of any kind in Bermuda, except insofar as may be necessary for the carrying on of its business outside Bermuda or under a license granted by the Minister of Finance of Bermuda.

There is a statutory remedy under Section 111 of the Companies Act 1981 which provides that a shareholder may seek redress in the Bermuda courts as long as such shareholder can establish that the Company’s affairs are being conducted, or have been conducted, in a manner oppressive or prejudicial to the interests of some part of the shareholders, including such shareholder. However, this remedy has not yet been interpreted by the Bermuda courts.

The Bermuda government actively encourages foreign investment in “exempted” entities like the Company that are based in Bermuda but do not operate in competition with local business. In addition to having no restrictions on the degree of foreign ownership, the Company is subject neither to taxes on its income or dividends nor to any exchange controls in Bermuda. In addition, there is no capital gains tax in Bermuda, and profits can be accumulated by the Company, as required, without limitation. There is no income tax treaty between the United States and Bermuda pertaining to the taxation of income other than applicable to insurance enterprises.

E. Taxation

The following is a discussion of the material Bermuda and United States federal income tax considerations with respect to the Company and the beneficial owners of our common shares (referred to herein as “holders”). This discussion does not purport to deal with the tax consequences of owning or disposing of common shares to all categories of investors, some of which, such as dealers or traders in securities, investors whose functional currency is not the United States dollar and investors that own, actually or under applicable constructive ownership rules, 10% or more of our common shares, may be subject to special rules. This discussion deals only with holders who hold the common shares as a capital asset. Holders of common shares are encouraged to consult their own tax advisors concerning the overall tax consequences arising in their own particular situation under United States federal, state, local or foreign law of the ownership of common shares.

Bermuda Tax Considerations

As of the date of this document, we are not subject to taxation under the laws of Bermuda, and distributions to us by our subsidiaries also are not subject to any Bermuda tax. As of the date of this document, there is no Bermuda income, corporation or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by non-residents of Bermuda in respect of capital gains realized on a disposition of our common shares or in respect of distributions by us with respect to our common shares. This discussion does not, however, apply to the taxation of persons ordinarily resident in Bermuda. Bermuda holders should consult their own tax advisors regarding possible Bermuda taxes with respect to dispositions of, and distributions on, our common shares.

United States Federal Income Tax Considerations

The following are the material United States federal income tax consequences to us of our activities and to U.S. Holders and Non-U.S. Holders, each as defined below, of our common shares. The following discussion of United States federal income tax matters is based on the United States Internal Revenue Code of 1986, or the Code, judicial decisions, administrative pronouncements, and existing and proposed regulations issued by the United States Department of the Treasury, all of which are subject to change, possibly with retroactive effect. In addition, the following discussion does not address any United States estate or gift, state, local or non-United States tax consequences, or any tax consequences of the newly enacted Medicare tax on investment income. The discussion below is based, in part, on the description of our business as described in “Business — Information on the Company” above and assumes that we conduct our business as described in that section. Except as otherwise noted, this discussion is based on the assumption that we will not maintain an office or other fixed place of business within the United States. References in the following discussion to “we” and “us” are to NewLead Holdings Ltd. and its subsidiaries on a consolidated basis.

United States Federal Income Taxation of Our Company

Taxation of Operating Income: In General

We earn substantially all of our income from the use of vessels, from the hiring or leasing of vessels for use on a time, voyage or bareboat charter basis or from the performance of services directly related to those uses, which we refer to as “shipping income.”

Fifty percent of shipping income that is attributable to transportation that begins or ends, but that does not both begin and end, in the United States constitutes income from sources within the United States, which we refer to as “U.S.-source shipping income.”

Shipping income attributable to transportation that both begins and ends in the United States is considered to be 100% from sources within the United States. We are not permitted by law to engage in transportation that produces income which is considered to be 100% from sources within the United States.

Shipping income attributable to transportation exclusively between non-U.S. ports is not considered to be 100% derived from sources outside the United States. Shipping income derived from sources outside the United States is not subject to any United States federal income tax.

In the absence of exemption from tax under Section 883, our gross U.S. source shipping income is subject to a 4% tax imposed without allowance for deductions as described below.

Exemption of Operating Income from United States Federal Income Taxation

Under Section 883 of the Code, a foreign corporation will be exempt from United States federal income taxation on its U.S.-source shipping income if:

- (1) it is organized in a qualified foreign country, which is one that grants an “equivalent exemption” to corporations organized in the United States in respect of such category of the shipping income for which exemption is being claimed under Section 883 and which we refer to as the “Country of Organization Test”; and

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- (2) Either
- (A) more than 50% of the value of its stock is beneficially owned, directly or indirectly, by individuals who are “residents” of a qualified foreign country, which we refer to as the “50% Ownership Test,” or
 - (B) its stock is “primarily and regularly traded on an established securities market” in its country of organization, in another qualified foreign country or in the United States, which we refer to as the “Publicly Traded Test.”

The Country of Organization Test is satisfied since we are incorporated in Bermuda, and each of our subsidiaries is incorporated in the Bermuda, the Marshall Islands, Liberia, or Panama all of which are qualified foreign countries in respect of each category of shipping income we currently earn and expect to earn in the future. Therefore, we and our subsidiaries are exempt from United States federal income taxation with respect to our U.S.-source shipping income as we and each of our subsidiaries meet either of the 50% Ownership Test or the Publicly Traded Test. Under a special attribution rule of Section 883, each of our Subsidiaries is deemed to have satisfied the 50% Ownership Test if we satisfy such test or the Publicly Traded Test.

We believe we currently satisfy the 50% Ownership Test. However, we may have difficulty satisfying such test in the future if our common shares become more widely held.

With respect to the Publicly Traded Test, the Treasury Regulations provide, in pertinent part, that stock of a foreign corporation is considered to be “primarily traded” on an established securities market if the number of shares of each class of stock that are traded during any taxable year on all established securities markets in that country exceeds the number of shares in each such class that are traded during that year on established securities markets in any other single country. Our common shares, which are our sole class of issued and outstanding stock, are “primarily traded” on the NASDAQ Global Select Market, which is an established securities market in the United States.

Under the Treasury Regulations, our common shares are considered to be “regularly traded” on an established securities market if one or more classes of our shares representing more than 50% of our outstanding shares, by total combined voting power of all classes of shares entitled to vote and total value, is listed on an established securities market, which we refer to as the listing threshold. Since our common shares are our sole class of issued and outstanding stock and are listed on the NASDAQ Global Select Market, we meet the listing threshold.

It is further required that with respect to each class of stock relied upon to meet the listing threshold (i) such class of the stock is traded on the market, other than in minimal quantities, on at least 60 days during the taxable year or 1/6 of the days in a short taxable year; and (ii) the aggregate number of shares of such class of stock traded on such market is at least 10% of the average number of shares of such class of stock outstanding during such year or as appropriately adjusted in the case of a short taxable year. We satisfy these trading frequency and trading volume tests. Even if this were not the case, the Treasury Regulations provide that the trading frequency and trading volume tests will be deemed satisfied if, as is currently the case with our common shares, such class of stock is traded on an established market in the United States and such stock is regularly quoted by dealers making a market in such stock.

Notwithstanding the foregoing, the Treasury Regulations provide, in pertinent part, that our shares are not to be considered to be “regularly traded” on an established securities market for any taxable year in which 50% or more of the vote and value of our outstanding common shares are owned, actually or constructively under specified stock attribution rules, on more than half the days during the taxable year by persons who each own 5% or more of the vote and value of our outstanding common shares, which we refer to as the “5 Percent Override Rule.”

To determine the persons who own 5% or more of the vote and value of our shares, or “5% Shareholders,” the Treasury Regulations permit us to rely on those persons that are identified on Form 13G and Form 13D filings with the SEC, as having a 5% or more beneficial interest in our common shares. The

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Treasury Regulations further provide that an investment company which is registered under the Investment Company Act of 1940, as amended, will not be treated as a 5% Shareholder for such purposes.

In the event the 5 Percent Override Rule is triggered, the Treasury Regulations provide that the 5 Percent Override Rule does not apply if we can establish in conformity with the Treasury Regulations that within the group of 5% Shareholders, sufficient shares are owned by qualified shareholders for purposes of Section 883 to preclude non-qualified shareholders in such group from owning 50% or more of the value of our shares for more than half the number of days during such year.

In the event that the 5 Percent Override Rule is triggered, we believe that, within the group of 5% Shareholders, sufficient shares will be owned by qualified shareholders for purposes of Section 883 to have precluded non-qualified shareholders in such group from owning 50% or more of the value of our shares for more than half the number of days during the relevant taxable years. We believe that, either (i) the 5 Percent Override Rule will not be triggered or (ii) if the 5 Percent Override Rule is triggered, sufficient shares will be owned by qualified shareholders for purposes of Section 883 to preclude non-qualified 5% Shareholders from owning 50% or more of the value of our shares for more than half the number of days during the relevant taxable years; however, there can be no assurance in this regard. In order to qualify for the exception to the 5 Percent Override Rule, sufficient 5% Shareholders that are qualified shareholders would have to comply with certain documentation and certification requirements designed to substantiate their identity as qualified shareholders. We believe that these requirements have been satisfied in the past, and we intend to cause these requirements to be satisfied in the future, as required, although there can be no assurance that we will be successful in this regard.

Even though we believe that we will be able to qualify for the benefits of Section 883, we can provide no assurance that we will be able to continue to so qualify in the future.

Taxation in the Absence of Section 883 Exemption

To the extent the benefits of Section 883 are unavailable, our U.S. source shipping income, to the extent not considered to be “effectively connected” with the conduct of a U.S. trade or business, as described below, would be subject to a 4% tax imposed by Section 887 of the Code on a gross basis, without the benefit of deductions. Since under the sourcing rules described above, no more than 50% of our shipping income would be treated as being derived from U.S. sources, the maximum effective rate of U.S. federal income tax on our shipping income would never exceed 2% under the 4% gross basis tax regime.

To the extent the benefits of the Section 883 exemption are unavailable and our U.S. source shipping income is considered to be “effectively connected” with the conduct of a U.S. trade or business, as described below, any such “effectively connected” U.S. source shipping income, net of applicable deductions, would, in lieu of the 4% gross basis tax described above, be subject to the U.S. federal corporate income tax currently imposed at rates of up to 35%. In addition, we may be subject to the 30% “branch profits” tax on earnings effectively connected with the conduct of such trade or business, as determined after allowance for certain adjustments, and on certain interest paid or deemed paid attributable to the conduct of our U.S. trade or business.

Our U.S. source shipping income would be considered “effectively connected” with the conduct of a U.S. trade or business only if:

- we have, or are considered to have, a fixed place of business in the United States involved in the earning of shipping income; and
- substantially all of our U.S. source shipping income is attributable to regularly scheduled transportation, such as the operation of a vessel that follows a published schedule with repeated sailings at regular intervals between the same points for voyages that begin or end in the United States.

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We do not have, or permit circumstances that would result in our having, a fixed place of business in the United States involved in the earning of shipping income and therefore, we believe that none of our U.S. source shipping income will be “effectively connected” with the conduct of a U.S. trade or business.

United States Taxation of Gain on Sale of Vessels

Regardless of whether we qualify for exemption under Section 883, we will not be subject to United States federal income taxation with respect to gain realized on a sale of a vessel, provided the sale is considered to occur outside of the United States under United States federal income tax principles. In general, a sale of a vessel will be considered to occur outside of the United States for this purpose if title to the vessel, and risk of loss with respect to the vessel, pass to the buyer outside of the United States. It is expected that any sale of a vessel by us will be considered to occur outside of the United States.

United States Federal Income Taxation of U.S. Holders

As used herein, the term “U.S. Holder” means a beneficial owner of common shares that is a United States citizen or resident for United States federal income tax purposes, corporation or other entity treated as a corporation for United States federal income tax purposes that is created or organized under the laws of the United States or its political subdivisions, an estate the income of which is subject to United States federal income taxation regardless of its source, or a trust if a court within the United States is able to exercise primary jurisdiction over the administration of the trust and one or more United States persons have the authority to control all substantial decisions of the trust.

If a partnership (including an entity or arrangement treated as a partnership for United States federal income tax purposes) holds our common shares, the tax treatment of a partner will generally depend upon the status of the partner, upon the activities of the partnership and upon certain determinations made at the partner level. If you are a partner in a partnership holding our common shares, you are encouraged to consult your tax advisor.

Distributions

Subject to the discussion of passive foreign investment companies below, any distributions made by us with respect to our common shares to a U.S. Holder will generally constitute dividends, which may be taxable as ordinary income or “qualified dividend income” as described in more detail below, to the extent of our current or accumulated earnings and profits, as determined under United States federal income tax principles. Distributions in excess of our earnings and profits as so determined will be treated first as a nontaxable return of capital to the extent of the U.S. Holder’s tax basis in his common shares on a dollar-for-dollar basis and thereafter as capital gain. We do not expect to calculate our earnings and profits under U.S. federal income tax principles. Therefore, a U.S. Holder should expect that any distributions will be treated as a dividend even if such distributions would otherwise be treated as a non-taxable return of capital or as capital gain under the rules described above. Because we are not a United States corporation, U.S. Holders that are corporations will not be entitled to claim a dividends received deduction with respect to any distributions they receive from us. Dividends paid with respect to our common shares will generally be treated as “passive category income” or, in the case of certain types of U.S. Holders “general category income” for purposes of computing allowable foreign tax credits for United States foreign tax credit purposes.

Dividends paid on our common shares to a U.S. Holder who is an individual, trust or estate (a “U.S. Individual Holder”) will generally be treated as “qualified dividend income” that is taxable to such U.S. Individual Holders at preferential tax rates (through 2012) provided that (1) the common shares are readily tradable on an established securities market in the United States (such as the NASDAQ Global Select Market, on which our common shares are traded); (2) we are not a passive foreign investment company for the taxable year during which the dividend is paid or the immediately preceding taxable year (which we do not believe we are, have been or will be); and (3) the U.S. Individual Holder has owned the common shares for more than 60 days in the 121-day period beginning 60 days before the date on which the common shares becomes ex-dividend. Legislation has been previously introduced in the U.S. Congress which, if enacted in its

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present form, would preclude our dividends from qualifying for such preferential rates prospectively from the date of the enactment. Therefore, there is no assurance that any dividends paid on our common shares will be eligible for these preferential rates in the hands of a U.S. Individual Holder. Any dividends paid by the Company which are not eligible for these preferential rates will be taxed as ordinary income to a U.S. Individual Holder.

Special rules may apply to any “extraordinary dividend” generally, a dividend in an amount which is equal to or in excess of ten percent of a shareholder’s adjusted basis (or fair market value in certain circumstances) in a common share paid by us. If we pay an “extraordinary dividend” on our common shares that is treated as “qualified dividend income,” then any loss derived by a U.S. Individual Holder from the sale or exchange of such common shares will be treated as long-term capital loss to the extent of such dividend.

Sale, Exchange or other Disposition of Common Shares

Assuming we do not constitute a passive foreign investment company for any taxable year, a U.S. Holder generally recognizes taxable gain or loss upon a sale, exchange or other disposition of our common shares in an amount equal to the difference between the amount realized by the U.S. Holder from such sale, exchange or other disposition and the U.S. Holder’s adjusted tax basis in such stock. Such gain or loss is treated as long-term capital gain or loss if the U.S. Holder’s holding period is greater than one year at the time of the sale, exchange or other disposition. A U.S. Holder’s adjusted tax basis in our common shares generally will equal the U.S. Holder’s cost in acquiring our common shares, subject to the adjustments described above. Such capital gain or loss is generally treated as U.S.-source income or loss, as applicable, for U.S. foreign tax credit purposes. A U.S. Holder’s ability to deduct capital losses is subject to certain limitations.

Passive Foreign Investment Company Status and Significant Tax Consequences

Special United States federal income tax rules apply to a U.S. Holder that holds stock in a foreign corporation classified as a passive foreign investment company for United States federal income tax purposes. In general, we are treated as a passive foreign investment company with respect to a U.S. Holder if, for any taxable year in which such holder held our common shares, either

- at least 75% of our gross income for such taxable year consists of passive income (e.g., dividends, interest, capital gains and rents derived other than in the active conduct of a rental business), or
- at least 50% of the average value of the assets held by the corporation during such taxable year produce, or are held for the production of, passive income.

For purposes of determining whether we are a passive foreign investment company, we are treated as earning and owning our proportionate share of the income and assets, respectively, of any of our subsidiary corporations in which we own at least 25% of the value of the subsidiary’s stock. Income earned, or deemed earned, by us in connection with the performance of services would not constitute passive income. By contrast, rental income would generally constitute “passive income” unless we were treated under specific rules as deriving our rental income in the active conduct of a trade or business.

Based on our current operations and future projections, we do not believe that we have been or are, nor do we expect to become, a passive foreign investment company with respect to any taxable year. Although there is no legal authority directly on point, and we are not relying upon an opinion of counsel on this issue, our belief is based principally on the position that, for purposes of determining whether we are a passive foreign investment company, the gross income we derive or are deemed to derive from the time chartering and voyage chartering activities of our wholly-owned subsidiaries should constitute services income, rather than rental income. Correspondingly, such income should not constitute passive income, and the assets that we or our wholly-owned subsidiaries own and operate in connection with the production of such income, in particular, the vessels, should not constitute passive assets for purposes of determining whether we are a passive foreign investment company. We believe there is substantial legal authority supporting our position consisting of case law and Internal Revenue Service pronouncements concerning the characterization of income derived from time charters and voyage charters as services income for other tax purposes. However, in

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the absence of any legal authority specifically relating to the statutory provisions governing passive foreign investment companies, the Internal Revenue Service or a court could disagree with our position. In addition, although we intend to conduct our affairs in a manner to avoid being classified as a passive foreign investment company with respect to any taxable year, we cannot assure you that the nature of our operations will not change in the future.

If we were to be treated as a passive foreign investment company, special and adverse United States federal income tax rules would apply to a U.S. Holder of our shares. Among other things, the distributions a U.S. Holder received with respect to our shares and gains, if any, a U.S. Holder derived from his sale or other disposition of our shares would be taxable as ordinary income (rather than as qualified dividend income or capital gain, as the case may be), would be treated as realized ratably over his holding period in our common shares, and would be subject to an additional interest charge. However, a U.S. Holder might be able to make certain tax elections which ameliorate these consequences. In addition, if we were treated as a passive foreign investment company, a U.S. Holder of our shares would be subject to special information reporting requirements with respect to its investment in our shares.

United States Federal Income Taxation of “Non–U.S. Holders”

A beneficial owner of common shares that is not a U.S. Holder or a partnership (including an entity or arrangement treated as a partnership for United States federal income tax purposes) is referred to herein as a “Non–U.S. Holder.”

Dividends on Common Shares

Non–U.S. Holders generally are not subject to United States federal income tax or withholding tax on dividends received from us with respect to our common shares, unless that income is effectively connected with the Non–U.S. Holder’s conduct of a trade or business in the United States. If the Non–U.S. Holder is entitled to the benefits of a United States income tax treaty with respect to those dividends, that income is taxable only if it is attributable to a permanent establishment maintained by the Non–U.S. Holder in the United States.

Sale, Exchange or Other Disposition of Common Shares

Non–U.S. Holders generally are not subject to United States federal income tax or withholding tax on any gain realized upon the sale, exchange or other disposition of our common shares, unless:

- the gain is effectively connected with the Non–U.S. Holder’s conduct of a trade or business in the United States. If the Non–U.S. Holder is entitled to the benefits of an income tax treaty with respect to that gain, that gain is taxable only if it is attributable to a permanent establishment maintained by the Non–U.S. Holder in the United States; or
- the Non–U.S. Holder is an individual who is present in the United States for 183 days or more during the taxable year of disposition and other conditions are met.

If the Non–U.S. Holder is engaged in a United States trade or business for United States federal income tax purposes, the income from the common shares, including dividends and the gain from the sale, exchange or other disposition of the stock that is effectively connected with the conduct of that trade or business is generally subject to regular United States federal income tax in the same manner as discussed in the previous section relating to the taxation of U.S. Holders. In addition, if you are a corporate Non–U.S. Holder, your earnings and profits that are attributable to the effectively connected income, which are subject to certain adjustments, may be subject to an additional branch profits tax at a rate of 30%, or at a lower rate as may be specified by an applicable income tax treaty.

Backup Withholding and Information Reporting

In general, dividend payments or other taxable distributions and payment of the proceeds from the sale or other disposition of our common shares made within the United States to a U.S. Holder, other than an exempt

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U.S. Holder (such as a corporation) that properly certifies as to its exempt status, will be subject to information reporting requirements. Such payments will be subject to backup withholding tax if you are a not a non-exempt U.S. Holder and you:

- fail to provide an accurate taxpayer identification number;
- are notified by the Internal Revenue Service that you have failed to report all interest or dividends required to be shown on your federal income tax returns; or
- in certain circumstances, fail to comply with applicable certification requirements.

Non-U.S. Holders may be required to establish their exemption from information reporting and backup withholding by certifying their status on IRS Form W-8BEN, W-8ECI or W-8IMY, as applicable.

If you are a Non-U.S. Holder and you sell your common shares to or through a United States office or broker, the payment of the proceeds is subject to both United States backup withholding and information reporting unless you certify that you are a non-U.S. person, under penalties of perjury, or you otherwise establish an exemption. If you sell your common shares through a non-United States office of a non-United States broker and the sales proceeds are paid to you outside the United States then information reporting and backup withholding generally will not apply to that payment. However, United States information reporting requirements, but not backup withholding, will apply to a payment of sales proceeds, even if that payment is made to you outside the United States, if you sell your common shares through a non-United States office of a broker that is a United States person or has some other contacts with the United States.

Backup withholding tax is not an additional tax. Rather, you generally may obtain a refund of any amounts withheld under backup withholding rules that exceed your income tax liability by timely filing a refund claim with the Internal Revenue Service.

Information Reporting Regarding Non-U.S. Accounts

Pursuant to recently enacted legislation, effective for tax years beginning after March 18, 2010, individuals who are U.S. Holders, and who hold “specified foreign financial assets” (as defined in section 6038D of the Code), including stock of a non-U.S. corporation that is not held in an account maintained by a U.S. “financial institution” (as defined in section 6038D of the Code), whose aggregate value exceeds \$50,000 during the tax year, will be required to attach to their tax returns for the year the information described in section 6038D of the Code. An individual who fails to timely furnish the required information generally will be subject to a penalty, unless the failure is shown to be due to reasonable cause and not due to willful neglect. Additionally, in the event a U.S. Holder does not file such a report, the statute of limitations on the assessment and collection of U.S. federal income taxes of such U.S. Holder for the related tax year may not close before such report is filed. To the extent provided in U.S. Treasury regulations or other guidance, these reporting obligations will apply to any U.S. entity which is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets, in the same manner as if such entity were an individual.

F. Dividends and paying agents

Not applicable.

G. Statement by experts

Item 4.B — “Information on the Company — Business Overview — Industry” in this Annual Report on Form 20-F and the statistical and graphical information contained therein and in any other instance where Drewry Shipping Consultants Ltd. has been identified as the source of information included in this Annual Report on Form 20-F have been reviewed by Drewry, which has confirmed to us that they accurately describe our industry, subject to the availability and reliability of the data supporting the statistical information presented in this Annual Report on Form 20-F.

H. Documents on display

We file annual reports and other information with the SEC. You may read and copy any document we file with the SEC at its public reference room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You may also obtain copies of this information by mail from the public reference section of the SEC, 100 F Street, N.E., Room 1580, Washington, D.C. 20549, at prescribed rates. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room. Our SEC filings are also available to the public at the web site maintained by the SEC at <http://www.sec.gov>, as well as on our website at <http://www.newleadholdings.com>.

I. Subsidiary information

Not applicable.

Item 11. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Exposure

Debt Instruments:

NewLead's exposure to interest rate risk, which could impact our results of operations, relates to our floating rate debt outstanding. The interest rate related to our total debt outstanding is based on the floating three month U.S. LIBOR plus, a specific margin for each credit facility. Our objective is to minimize our interest expenses while managing the exposure of our financial condition to interest rate risk, through our financing activities and, when deemed appropriate, through the use of designated interest rate swaps.

As of December 31, 2010, we had \$588.7 million of total indebtedness which is net of \$69.1 million of BCF related to the 125.0 million of the 7% Notes. The interest on the credit facilities are at floating rates and, therefore, changes in interest rates would have an effect on our interest expense. The interest rate on the 7% Notes is fixed and, therefore, there is no associated market risk. Excluding the 7% Notes, our total indebtedness as of December 31, 2010 and December 31, 2009 was \$532.8 million and \$237.3 million, respectively (reflecting \$55.9 million and \$41.4 million, respectively, in respect of the \$125.0 million of 7% Notes, after the netting impact of the BCF). As of December 31, 2010, we had \$447.9 million of floating rate indebtedness out of our total indebtedness of \$532.8 million. Of our floating rate indebtedness, as of December 31, 2010, \$259.6 million was fixed with interest rate swaps.

For the year ended December 31, 2010, a 1% increase and decrease in LIBOR would have resulted in an increase or decrease of approximately \$1.7 million in our interest expense on the unhedged portion of drawings under the terms of our existing credit facilities.

Interest rate swaps:

As of December 31, 2010, in order to effectively manage our interest rate risk, we had the following interest rate swaps outstanding:

- On July 5, 2006, we entered into interest rate swaps with five banks on identical terms. These five swaps had an effective date of July 3, 2006 and a maturity date of April 4, 2011. Under the terms of the swap agreements, we paid a fixed interest rate of 5.63% per annum on a total of \$100.0 million of our long-term debt. These swap agreements matured and fully settled.
- On April 3, 2008, we entered into a floored swap transaction with one bank and a simultaneous swap and cap transaction with another bank. These two synthetic swaps had an effective date of April 3, 2008 and maturity dates of April 3, 2011 and April 4, 2011, respectively. Under the terms of the floored swap agreement, we paid a fixed interest rate of 4.285% per annum on a total of \$23.3 million of our long term debt. Under the terms of the swap and cap transactions, we paid a fixed interest rate of 4.14% on a total of \$23.3 million of our long-term debt and we have limited our interest rate exposure to 4.14% on an additional amount of \$23.3 million. These swap agreements matured and fully settled.

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- In connection with the recapitalization, we entered into a credit facility and an interest rate swap with Marfin Egnatia Bank. On May 6, 2010, we refinanced this credit facility (see Note 12 of our consolidated financial statements). The aforementioned swap was re-attached to the new credit facility and has a termination date of September 2, 2014. Under the terms of the swap agreement, we pay a fixed interest rate of 4.08% per annum on the notional amount of the swap.
- In connection with the acquisition of the two Kamsarmaxes, we assumed two interest rate swaps with the Bank of Scotland both of which had maturity dates of April 4, 2013. Under the terms of the swap agreements, we paid a fixed interest rate of 3.973% per annum. These swaps were amended and extended to conform to the notional amounts, anticipated drawings and repayment schedule as per the loan facilities. The amended and extended swap agreements began on July 6, 2010 and have maturity dates on October 15, 2015 and a fixed interest rate of 4.01% per annum on the notional amount of the swaps.

As of December 31, 2010 and June 29, 2011, the notional amount of the abovementioned interest rate swaps was \$259.6 million and \$94.8 million, respectively.

Foreign Exchange Rate Exposure

Our vessel-owning subsidiaries generate revenues in U.S. dollars but incur certain of expenses in other currencies, primarily Euros. During the year ended December 31, 2010, the value of the U.S. dollar reached highs of \$1.46 and lows of \$1.19 compared to the Euro, and as a result, an adverse or positive movement could increase our expenses. During the year ended December 31, 2010, the effect was minimal.

Item 12. Description of Securities Other than Equity Securities

Not applicable.

PART II

Item 13. Defaults, Dividend Arrearages and Delinquencies

Neither we nor any of our subsidiaries have been subject to a material default in the payment of principal, interest, a sinking fund or purchase fund installment or any other material default that was not cured within 30 days. In addition, the payment of our dividends is not and has not been in arrears or has not been subject to a material delinquency that was not cured within 30 days.

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

Not applicable.

Item 15. Controls and Procedures

(a) Disclosure Controls and Procedures

The Company's management, with the participation of the CEO and CFO, evaluated the effectiveness of the Company's disclosure controls and procedures (as defined by Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act) as of December 31, 2010. Based upon their evaluation, the CEO and CFO have concluded that, as of such date, the Company's disclosure controls and procedures were effective to provide reasonable assurance that the information required to be disclosed by the Company in reports filed under the Exchange Act, is: (1) recorded, processed, summarized and reported within the time period specified in the SEC's rules and forms and (2) accumulated and communicated to our management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure. The Company further believes that a system of controls, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the controls are met, and no evaluation of

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controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected.

(b) Management's Annual Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities and Exchange Act of 1934, as amended. The Company's internal control over financial reporting is a process designed by, or under the supervision of, the Company's CEO and CFO, and is effected by the Company's Board of Directors, management, and other personnel, to provide reasonable assurance regarding the reliability of Company's financial reporting and the preparation of Company's consolidated financial statements for external reporting purposes in accordance with GAAP. Internal control over financial reporting includes those policies and procedures that:

- (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the Company;
- (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures are being made only in accordance with authorizations of management and directors of the Company; and
- (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on interim or annual consolidated financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Under the supervision and with the participation of our CEO and CFO, our management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2010, based on the criteria for effective internal control over financial reporting set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in "Internal Control-Integrated Framework". As a result of this assessment, management has concluded that, as of December 31, 2010, the Company's internal control over financial reporting was effective.

(c) Attestation report of the independent registered public accounting firm

The effectiveness of the Company's internal control over financial reporting as of December 31, 2010, has been audited by PricewaterhouseCoopers S.A., an independent registered public accounting firm, as stated in their report which appears herein.

(d) Changes in internal control over financial reporting

The Company has made the following changes in internal control over financial reporting during the year ended December 31, 2010 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting:

During 2010, we have appointed new external consultants to assist us with completing our implementation of comprehensive system of internal controls over financial closing and reporting. Furthermore, we have hired a new internal auditor with sufficient experience in the shipping industry and, in particular, in U.S. listed companies. We have also hired senior accounting staff with GAAP expertise as well as with expertise in U.S. listed companies. As a result of these actions, we have enhanced our monitoring controls over the financial statement closing process, which has resulted in a more rigorous process to determine the appropriate accounting treatment of non-routine and complex transactions to ensure complete and accurate reporting of such transactions in compliance with GAAP.

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Item 16A. Audit Committee Financial Expert

We have established an audit committee comprised of four members, which is responsible for reviewing our accounting controls and recommending to the board of directors the engagement of our outside auditors. Each member is an independent director under the corporate governance rules of the NASDAQ Global Market that are applicable to us. The members of the audit committee are Messrs. Spyros Gianniotis, Apostolos I. Tsitsirakis, Dr. John Tzoannos and Panagiotis Skiadas. Mr. Gianniotis serves as the “audit committee financial expert” as defined in the instructions to Item 16.A. in the Form 20-F.

Item 16B. Code of Ethics

As a foreign private issuer, we are exempt from the rules of the NASDAQ Global Market that require the adoption of a code of ethics. However, we have voluntarily adopted a code of ethics that applies to our principal executive officer, principal financial officer and persons performing similar functions. We will provide any person a hard copy of our code of ethics free of charge upon written request. Shareholders may direct their requests to the Company at 83 Akti Miaouli & Flessa Street, 185 38 Piraeus Greece, Attn: Corporate Secretary.

Item 16C. Principal Accountant Fees and Services

Audit Fees

Our principal accountants for the fiscal years ended December 31, 2010 and 2009 were PricewaterhouseCoopers S.A. Our audit fees for 2010 and 2009 were €378,000 and €295,000, respectively.

Audit-Related Fees

We did not incur audit-related fees for 2010 and 2009.

Tax Fees

We did not incur tax fees for 2010 or 2009.

All Other Fees

We did not incur any other fees for 2010 or 2009.

Our audit committee pre-approves all audit, audit-related and non-audit services not prohibited by law to be performed by our independent registered public accounting firm and associated fees prior to the engagement of the independent auditor with respect to such services.

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

Not applicable.

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

None.

Item 16F. Changes in Registrant’s Certifying Accountant

Not applicable.

Item 16G. Corporate Governance

We have certified to NASDAQ that our corporate governance practices are in compliance with, and are not prohibited by, the laws of Bermuda. Therefore, we are exempt from many of NASDAQ’s corporate governance practices other than the requirements regarding the submission of a listing agreement, notification of material non-compliance with NASDAQ corporate governance practices and the establishment and

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composition of an audit committee and a formal written audit committee charter. The practices that we follow in lieu of NASDAQ's corporate governance rules are described below.

- We have a board of directors with a majority of independent directors which holds at least one annual meeting at which only independent directors are present, consistent with NASDAQ corporate governance requirements. We are not required under Bermuda law to maintain a board of directors with a majority of independent directors, and we cannot guarantee that we will always in the future maintain a board of directors with a majority of independent directors.
- We have a Governance and Nominating committee comprised of independent directors that is responsible for identifying and recommending potential candidates to become board members and recommending directors for appointment to the board and board committees. Shareholders may also identify and recommend potential candidates to become board members in writing. No formal written charter has been prepared or adopted because this process is outlined in our by-laws.
- In lieu of obtaining an independent review of related party transactions for conflicts of interests, consistent with Bermuda law requirements, our by-laws require any director who has a potential conflict of interest to identify and declare the nature of the conflict to our board of directors at the first meeting of the board of directors. Our by-laws additionally provide that related party transactions must be approved by independent and disinterested directors.
- In lieu of obtaining shareholder approval prior to the issuance of securities, we were required to obtain the consent of the Bermuda Monetary Authority as required by Bermuda law before we issued securities. We have obtained a blanket consent from the Bermuda Monetary Authority. If we choose to issue additional securities, we will not be required to obtain any further consent so long as our common shares are listed.
- As a foreign private issuer, we are not required to solicit proxies or provide proxy statements to NASDAQ pursuant to NASDAQ corporate governance rules or Bermuda law. Consistent with Bermuda law, we will notify our shareholders of meetings between 15 and 60 days before the meeting. This notification will contain, among other things, information regarding business to be transacted at the meeting. In addition, our by-laws provide that shareholders must give us advance notice to properly introduce any business at a meeting of the shareholders. Our by-laws also provide that shareholders may designate a proxy to act on their behalf (in writing or by telephonic or electronic means as approved by our board from time to time).

Other than as noted above, we are in full compliance with all other applicable NASDAQ corporate governance standards.

PART III

Item 17. Financial Statements

See Item 18.

Item 18. Financial Statements

The financial information required by this Item, together with the related report of PricewaterhouseCoopers S.A. thereon, is filed as part of this annual report.

Item 19. Exhibits

- 1.1 Amended and Restated Memorandum of Association of NewLead Holdings Ltd. (Previously filed as Exhibit 99.1 to the Company's Report on Form 6-K, filed on September 30, 2009, and hereby incorporated by reference.)
- 1.2 Certificate of Incorporation on Change of Name (Previously filed as Exhibit 1.1 to the Company's Report on Form 6-K, filed on January 8, 2010, and hereby incorporated by reference.)
- 1.3 Amended and Restated Bye-laws of the Company (Previously filed as Exhibit 3.1 to the Company's Report on Form 6-K, filed on January 27, 2010, and hereby incorporated by reference.)
- 2.1 Indenture, dated as of October 13, 2009, between the Company and Marfin Egnatia Bank S.A. (Previously filed as Exhibit 99.1 to the Company's Report on Form 6-K, filed on October 22, 2009, and hereby incorporated by reference.)
- 2.2 Form of Note Purchase Agreement, dated October 13, 2009, among the Company, each of the purchasers listed on the signature thereto, and Marfin Egnatia Bank S.A. (Previously filed as Exhibit 99.2 to the Company's Report on Form 6-K, filed on October 22, 2009, and hereby incorporated by reference.)
- 2.3 Form of 7% Convertible Senior Note Due 2015, dated as of October 13, 2009, made by the Company (Previously filed as Exhibit 99.3 to the Company's Report on Form 6-K, filed on October 22, 2009, and hereby incorporated by reference.)
- 2.4 Warrant Certificate, dated October 13, 2009 from the Company to Investment Bank of Greece (Previously filed as Exhibit 99.8 to the Company's Report on Form 6-K, filed on October 22, 2009, and hereby incorporated by reference.)
- 4.1 Form of Equity Incentive Plan (Previously filed as Exhibit 10.6 to the Company's 10.6 to the Company's registration statement on Form F-1/A (Registration No. 333-124952) and hereby incorporated by reference.)
- 4.2 Amendment to Equity Incentive Plan (Previously filed as Exhibit 4.9 to the Company's Annual Report on Form 20-F, filed on June 26, 2009 and hereby incorporated by reference.)
- 4.3 Amendment to Equity Incentive Plan, dated October 14, 2010.
- 4.4 Fifth Supplemental Agreement, dated June 11, 2008, between the Company and The Bank of Scotland relating to the Credit Agreement, dated April 3, 2006 among the Company and The Bank of Scotland and Nordea Bank Finland as joint lead arrangers (Previously filed as Exhibit 4.7 to the Company's Annual Report on Form 20-F, filed on June 30, 2008, and hereby incorporated by reference.)
- 4.5 Sixth Supplemental Agreement, dated June 24, 2009, between the Company and The Bank of Scotland relating to a Credit Agreement, dated April 3, 2006, among the Company and The Bank of Scotland and Nordea Bank Finland as joint lead arrangers (Previously filed as Exhibit 4.8 to the Company's Annual Report on Form 20-F, filed on June 26, 2009, and hereby incorporated by reference.)
- 4.6 \$145 Million Convertible Bond Commitment Letter, dated July 15, 2009, between Investment Bank of Greece and the Company (Previously filed as Exhibit 99.F to the Schedule 13D of Grandunion Inc., filed on September 28, 2009, and hereby incorporated by reference.)
- 4.7 Financial Agreement, dated August 18, 2009, among Marfin Bank, Australia Holdings Ltd., China Holdings Ltd. and Brazil Holdings Ltd. (Previously filed as Exhibit 10.1 to the Company's Report on Form 6-K, filed on January 27, 2010, and hereby incorporated by reference.)

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- 4.8 Registration Rights Agreement, dated September 16, 2009 among Grandunion Inc., Rocket Marine Inc. and the Company (Previously filed as Exhibit 99.D to the Schedule 13D (Amendment No. 1) of Grandunion Inc. and Focus Maritime Corp., filed on October 22, 2009, and hereby incorporated by reference.)
- 4.9 Voting Agreement, dated September 16, 2009 among Grandunion Inc., Rocket Marine Inc. Gabriel Petrides, Mons S. Bolin and Aries Energy Corporation and acknowledged by the Company (Previously filed as Exhibit 99.B to the Schedule 13D of Grandunion Inc., filed on September 28, 2009, and hereby incorporated by reference.)
- 4.10 Lock-Up Agreement, dated September 16, 2009, among Grandunion Inc., Rocket Marine Inc., Gabriel Petrides, Mons S. Bolin and Aries Energy Corporation and acknowledged by the Company (Previously filed as Exhibit 99.C to the Schedule 13D of Grandunion Inc., filed on September 28, 2009 and hereby incorporated by reference.)
- 4.10 Lock-Up Agreement, dated September 16, 2009, among Grandunion Inc., Rocket Marine Inc., Gabriel Petrides, Mons S. Bolin and Aries Energy Corporation and acknowledged by the Company (Previously filed as Exhibit 99.D to the Schedule 13D of Grandunion Inc., filed on September 28, 2009 and hereby incorporated by reference.)
- 4.11 Lock-Up Agreement, dated September 16, 2009, between Grandunion Inc. and the Company (Previously filed as Exhibit 99.E to the Schedule 13D of Grandunion Inc., filed on September 28, 2009 and hereby incorporated by reference.)
- 4.12 Facility Agreement, dated October 13, 2009, among the Company, Bank of Scotland plc, Nordea Bank Finland plc, London Branch, HSH Nordbank AG, The Governor and the Company of the Bank of Ireland, Sumitomo Mitsui Banking Corporation, Brussels Branch, Bayerische Hypo-und Vereinsbank AG, Commerzbank Aktiengesellschaft, General Electric Capital Corporation, Natixis and Swedbank AB (publ) (Previously filed as Exhibit 99.5 to the Company's Report on Form 6-K, filed on October 22, 2009, and hereby incorporated by reference.)
- 4.13 Warrant Purchase Agreement, dated October 13, 2009, between the Company and Investment Bank of Greece (Previously filed as Exhibit 99.6 to the Company's Report on Form 6-K, filed on October 22, 2009 and hereby incorporated by reference.)
- 4.14 Warrant Agreement, dated October 13, 2009, between the Company and Investment Bank of Greece (Previously filed as Exhibit 99.7 to the Company's Report on Form 6-K, filed on October 22, 2009 and hereby incorporated by reference.)
- 4.15 Registration Rights Agreement, dated October 13, 2009, among Investment Bank of Greece, Focus Maritime Corp. and the Company (Previously filed as Exhibit 99.4 to the Company's Report on Form 6-K, filed on October 22, 2009 and hereby incorporated by reference.)
- 4.16 \$80 Million Secured Senior and Junior Term Loan Facility Commitment Letter, dated February 19, 2009 between Bank of Scotland and the Company, as guarantor (Previously filed as Exhibit 4.16 to the Company's Annual Report on Form 20-F, filed on March 18, 2010, and hereby incorporated by reference.)
- 4.17 Escrow Agreement, dated April 1, 2010, between the Company and Grandunion Inc. and Computershare Trust Company N.A. (Previously filed as Exhibit 10.1 to the Company's Report on Form 6-K, filed on April 26, 2010, and hereby incorporated by reference.)
- 4.18 Registration Rights Agreement, dated April 1, 2010, between the Company and Grandunion Inc. (Previously filed as Exhibit 10.2 to the Company's Report on Form 6-K, filed on April 26, 2010 and hereby incorporated by reference.)
- 4.19 Second Supplemental Agreement, dated April 1, 2010, in relation to the Loan Agreement, dated November 10, 2006, between the Company and Commerzbank, for a loan facility of up to \$18.0 million. (Previously filed as Exhibit 10.4 to the Company's Report on Form 6-K, filed on April 26, 2010, and hereby incorporated by reference.)
- 4.20 Loan Agreement, dated March 19, 2008, between the Company and Piraeus Bank, for a loan of up to \$76.0 million. (Previously filed as Exhibit 10.6 to the Company's Report on Form 6-K, filed on April 26, 2010 and hereby incorporated by reference.)

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- 4.21 Second Supplemental Agreement, dated March 31, 2010, relating to the Loan Agreement dated March 19, 2008, between the Company and Piraeus Bank, for a loan of up to \$76.0 million. (Previously filed as Exhibit 10.7 to the Company's Report on Form 6-K, filed on April 26, 2010, and hereby incorporated by reference.)
- 4.22 Loan Agreement, dated March 31, 2010, between the Company and Piraeus Bank, for a loan of up to \$21.0 million. (Previously filed as Exhibit 10.8 to the Company's Report on Form 6-K, filed on April 26, 2010, and hereby incorporated by reference.)
- 4.23 Financial Agreement dated March 31, 2010, between the Company and Marfin Egnatia Bank S.A. for a credit facility up to \$35.0 million. (Previously filed as Exhibit 10.9 to the Company's Report on Form 6-K, filed on April 26, 2010, and hereby incorporated by reference.)
- 4.24 Senior Facility Agreement dated April 15, 2010, among the Company, Bank of Scotland, BTMU Capital Corporation and Bank of Ireland, for a loan up to \$66.7 million. (Previously filed as Exhibit 10.1 to the Company's Report on Form 6-K, filed on July 19, 2010, and hereby incorporated by reference.)
- 4.25 Junior Facility Agreement dated April 15, 2010, among the Company, Bank of Scotland and BTMU Capital Corporation for a loan up to \$13.3 million. (Previously filed as Exhibit 10.2 to the Company's Report on Form 6-K, filed on July 19, 2010, and hereby incorporated by reference.)
- 4.26 Supplemental Deed dated April 26, 2010, among the Company, Bank of Scotland plc and Nordea Bank Finland plc, relating to a \$221.4 million term loan facility. (Previously filed as Exhibit 10.3 to the Company's Report on Form 6-K, filed on July 19, 2010, and hereby incorporated by reference.)
- 4.27 Financial Agreement dated May 6, 2010, between the Company and Marfin Egnatia Bank S.A. for a credit facility up to \$65.28 million. (Previously filed as Exhibit 10.4 to the Company's Report on Form 6-K, filed on July 19, 2010, and hereby incorporated by reference.)
- 4.28 Loan Agreement, dated October 16, 2007, as novated, amended and restated March 31, 2010, between the Company and West LB, and as further novated, amended and restated on June 4, 2010, relating to a term loan facility of up to \$27.5 million. (Previously filed as Exhibit 10.5 to the Company's Report on Form 6-K, filed on July 19, 2010 and hereby incorporated by reference.)
- 4.29 Loan Agreement dated July 2, 2010, with First Business Bank for a loan facility of up to \$24.15 million. (Previously filed as Exhibit 10.1 to the Company's Report on Form 6-K, filed on September 21, 2010, and hereby incorporated by reference.)
- 4.30 Third Supplemental Agreement dated July 2, 2010, relating to the \$14.75 million loan facility with Emporiki Bank. (Previously filed as Exhibit 10.3 to the Company's Report on Form 6-K, filed on September 21, 2010 and hereby incorporated by reference.)
- 4.31 Fourth Supplemental Agreement dated September 8, 2010, relating to the \$14.75 million loan facility with Emporiki Bank. (Previously filed as Exhibit 10.4 to the Company's Report on Form 6-K, filed on September 21, 2010 and hereby incorporated by reference.)
- 4.32 Loan Agreement dated October 22, 2007, with EFG Eurobank for a loan facility of up to \$32.0 million. (Previously filed as Exhibit 10.5 to the Company's Report on Form 6-K, filed on September 21, 2010 and hereby incorporated by reference.)
- 4.33 Third Supplemental Agreement dated July 9, 2010, relating to the \$32.0 million loan facility with EFG Eurobank. (Previously filed as Exhibit 10.6 to the Company's Report on Form 6-K, filed on September 21, 2010, and hereby incorporated by reference.)
- 4.34 Fourth Supplemental Agreement dated August 13, 2010 relating to the \$32.0 million loan facility with EFG Eurobank. (Previously filed as Exhibit 10.7 to the Company's Report on Form 6-K, filed on September 21, 2010, and hereby incorporated by reference.)
- 4.35 Loan Agreement dated July 9, 2010, with DVB Bank, Nord LB and Emporiki Bank for a loan facility of up to \$48.0 million. (Previously filed as Exhibit 10.8 to the Company's Report on Form 6-K, filed on September 21, 2010 and hereby incorporated by reference.)
- 4.36 First Supplemental Agreement dated July 14, 2010, relating to the \$48.0 million loan facility with DVB Bank, Nord LB and Emporiki Bank. (Previously filed as Exhibit 10.9 to the Company's Report on Form 6-K, filed on September 21, 2010, and hereby incorporated by reference.)

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- 4.37 Loan Agreement dated December 10, 2010, with Marfin Egnatia Bank for a reducing revolving credit facility of up to \$62.0 million. (Previously filed as Exhibit 10.1 to the Company's Report on Form 6-K, filed on January 11, 2011 and hereby incorporated by reference.)
- 4.38 Second Supplemental Agreement dated November 9, 2010, relating to the \$48.0 million loan facility with DVB Bank, Nord LB and Emporiki Bank. (Previously filed as Exhibit 10.2 to the Company's Report on Form 6-K, filed on January 11, 2011 and hereby incorporated by reference.)
- 4.39 Third Supplemental Agreement dated December 15, 2010, relating to the \$48.0 million loan facility with DVB Bank, Nord LB and Emporiki Bank. (Previously filed as Exhibit 10.3 to the Company's Report on Form 6-K, filed on January 11, 2011, and hereby incorporated by reference.)
- 4.40 Third Supplemental Agreement, dated November 5, 2010, in relation to the Loan Agreement, dated November 10, 2006, between the Company and Commerzbank, for a loan facility of up to \$18.0 million.
- 4.41 First Supplemental Agreement, dated October 15, 2010, in relation to Loan Agreement with First Business Bank dated July 2, 2010, for a loan facility of up to \$24.15 million.
- 4.42 Loan Agreement dated May 9, 2011, with First Business Bank for a loan facility of up to \$12.0 million.
- 4.43 Second Supplemental Agreement, dated May 9, 2011, in relation to the Loan Agreement dated July 2, 2010, with First Business Bank, for a loan facility of up to \$24.15 million.
- 4.44 Fifth Supplemental Agreement dated November 8, 2010, relating to the \$14.75 million loan facility with Emporiki Bank.
- 4.45 Fifth Supplemental Agreement dated October 15, 2010, relating to the \$32.0 million loan facility with EFG Eurobank.
- 4.46 Amendment to Escrow Agreement, dated July 2, 2010, between the Company and Grandunion Inc. and Computershare Trust Company N.A.
- 4.47 Bareboat Agreement, dated November 23, 2010, between the Grand Rodosi Inc. and Prime Hill Maritime Ltd.
- 4.48 Bareboat Agreement, dated November 23, 2010, between Australia Holdings Ltd. and Prime Mountain Maritime Ltd.
- 4.49 Bareboat Agreement, dated November 23, 2010, between Brazil Holdings Ltd. and Prime Lake Maritime Ltd.
- 4.50 Bareboat Agreement, dated November 23, 2010, between China Holdings Ltd. and Prime Time Maritime Ltd.
- 4.51 Shares Issuance Agreement, dated January 20, 2011, between the Company and Lemissoler Corporate Management Ltd.
- 4.52 Bareboat Agreement, dated June 8, 2011, between Curby Navigation Ltd. and Endurance Shipping LLC.
- 8.1 List of Subsidiaries
- 12.1 Rule 13a-14(a)/15d-14(a) Certification of the Company's Chief Executive Officer.
- 12.2 Rule 13a-14(a)/15d-14(a) Certification of the Company's Chief Financial Officer.
- 13.1 Certification of the Company's Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 13.2 Certification of the Company's Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 15.1 Consent of PricewaterhouseCoopers S.A.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

**To the Board of Directors and Shareholders of
NewLead Holdings Ltd.:**

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, changes in shareholders' equity and of cash flows present fairly, in all material respects, the financial position of NewLead Holdings Ltd. and its subsidiaries (the "Company") (Successor) at December 31, 2010 and December 31, 2009 and the results of their operations and their cash flows for the year ended December 31, 2010, and for the period from October 14, 2009 to December 31, 2009, in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2010, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in "Management's Annual Report on Internal Control over Financial Reporting", appearing under Item 15(b) of the Company's 2010 Annual Report on Form 20-F. Our responsibility is to express opinions on these financial statements and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinion.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has incurred a net loss and has negative cash flows from operations that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to this matter are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers S.A.
Athens, Greece.
June 30, 2011

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

**To the Board of Directors and Shareholders of
NewLead Holdings Ltd.:**

In our opinion, the accompanying consolidated statements of operations, changes in shareholders' equity and of cash flows present fairly, in all material respects, the results of operations and cash flows of NewLead Holdings Ltd. and its subsidiaries (the "Company") (Predecessor) for the period from January 1, 2009 to October 13, 2009 and for the year ended December 31, 2008, in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers S.A.
Athens, Greece.

March 18, 2010, except with respect to the effects of the reverse stock split discussed in Note 1,
as to which the date is December 29, 2010.

NEWLEAD HOLDINGS LTD.
CONSOLIDATED BALANCE SHEETS
 (All amounts expressed in thousands of U.S. dollars except share amounts)

	Note	As of December 31, 2010	As of December 31, 2009
ASSETS			
Current assets			
Cash and cash equivalents		\$ 67,531	\$ 106,255
Restricted cash	7	12,606	403
Trade receivables, net		6,025	4,572
Other receivables		2,333	496
Due from related parties		100	40
Inventories	8	2,986	3,085
Prepaid expenses		1,909	1,082
Due from managing agents		587	8
Backlog asset	9	8,492	5,528
Total current assets		102,569	121,469
Restricted cash	7	30,700	9,668
Vessels under construction	10	32,253	—
Assets held for sale		—	8,250
Vessels and other fixed assets, net	11	455,416	253,115
Goodwill	6	81,590	86,036
Backlog asset	9	46,165	—
Deferred charges, net	12	13,040	6,831
Total non-current assets		659,164	363,900
Total assets		\$ 761,733	\$ 485,369
LIABILITIES AND SHAREHOLDERS' EQUITY			
Current liabilities			
Current portion of long-term debt	15	\$ 26,773	\$ 14,240
Accounts payable, trade	13	35,876	11,048
Accrued liabilities	14	17,370	16,957
Capital lease obligations	17	7,648	—
Deferred charter revenue	9	476	—
Deferred income		880	226
Derivative financial instruments	21	5,319	9,687
Due to related parties		115	234
Due to managing agent		282	1,868
Total current liabilities		94,739	54,260
Non-current liabilities			
Derivative financial instruments	21	4,642	7,407
Senior convertible 7% notes, net	16	55,877	41,430
Capital lease obligations	17	77,319	—
Unearned profit	17	10,399	—
Deferred charter revenue	9	91	—
Deferred income		1,325	730
Other non-current liabilities		20,665	—
Long-term debt	15	421,042	223,030
Total non-current liabilities		591,360	272,597
Total liabilities		686,099	326,857
Commitments and contingencies	22		
Shareholders' equity			
Preference Shares, \$0.01 par value, 500 million shares authorized, none issued		—	—
Common Shares, \$0.01 par value, 1 billion shares authorized, 7.3 million and 6.6 million shares issued and outstanding as of December 31, 2010 and December 31, 2009, respectively		74	67
Additional paid-in capital		208,281	196,317
Accumulated deficit		(132,721)	(37,872)
Total shareholders' equity		75,634	158,512
Total liabilities and shareholders' equity		\$ 761,733	\$ 485,369

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

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NEWLEAD HOLDINGS LTD.
CONSOLIDATED STATEMENTS OF OPERATIONS
(All amounts expressed in thousands of U.S. dollars except share and per share amounts)

	Note	Successor		Predecessor	
		Year Ended December 31, 2010	October 14, to December 31, 2009	January 1, to October 13, 2009	Year Ended December 31, 2008
OPERATING REVENUES		\$ 102,733	\$ 14,096	\$ 33,564	\$ 56,519
EXPENSES:					
Commissions		(2,345)	(407)	(769)	(689)
Voyage expenses		(18,793)	(4,634)	(8,574)	(6,323)
Vessel operating expenses		(39,219)	(6,530)	(22,681)	(19,798)
General and administrative expenses		(15,592)	(12,025)	(8,366)	(7,816)
Depreciation and amortization expenses		(39,558)	(4,844)	(11,813)	(15,040)
Impairment losses	3, 6, 22	(39,515)	—	(68,042)	—
Loss on sale from vessels, net		(1,560)	—	—	—
Management fees		(1,007)	(315)	(900)	(1,404)
		(157,589)	(28,755)	(121,145)	(51,070)
Operating (loss) / income from continuing operations		(54,856)	(14,659)	(87,581)	5,449
OTHER (EXPENSES) / INCOME, NET:					
Interest and finance expense	15	(44,899)	(23,996)	(10,928)	(15,741)
Interest income		550	236	9	232
Other (expense) / income, net		(5)	—	40	2
Change in fair value of derivatives	21	1,592	2,554	3,012	(6,515)
Total other expenses, net		(42,762)	(21,206)	(7,867)	(22,022)
Loss from continuing operations		(97,618)	(35,865)	(95,448)	(16,573)
Income/(loss) from discontinued operations	25	2,769	(2,007)	(30,316)	(23,255)
Net loss		\$ (94,849)	\$ (37,872)	\$ (125,764)	\$ (39,828)
(Loss) / income per share:					
Basic and diluted					
Continuing operations		\$ (14.03)	\$ (6.42)	\$ (39.84)	\$ (6.94)
Discontinued operations		\$ 0.40	\$ (0.36)	\$ (12.65)	\$ (9.75)
Total		\$ (13.63)	\$ (6.78)	\$ (52.49)	\$ (16.69)
Weighted average number of shares:					
Basic and diluted		6,958,903	5,588,937	2,395,858	2,386,182

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

NEWLEAD HOLDINGS LTD.
CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
 (All amounts expressed in thousands of U.S. dollars except share amounts)

	<u>Note</u>	<u>Common Shares</u>	<u>Share Capital</u>	<u>Additional Paid-in Capital</u>	<u>Accumulated Deficit</u>	<u>Total Shareholders' Equity</u>
Balance at January 1, 2008						
(Predecessor)		2,385	\$ 24	\$ 115,828	\$ (8,733)	\$ 107,119
Net loss		—	—	—	(39,828)	(39,828)
Issuance of common shares	18, 19	29	0	4	—	4
Share-based compensation	18	—	—	1,083	—	1,083
Dividends paid		—	—	(2,862)	—	(2,862)
Balance at December 31, 2008						
(Predecessor)		2,414	24	114,053	(48,561)	65,516
Net loss		—	—	—	(125,764)	(125,764)
Issuance of common shares	18, 19	7	1	—	—	1
Share-based compensation	18	—	—	793	—	793
Balance at October 13, 2009						
(Predecessor)		2,421	\$ 25	\$ 114,846	\$ (174,325)	\$ (59,454)
(Successor)						
Change in control — basis adjustment		—	\$ —	\$ (77,978)	\$ 174,325	\$ 96,347
Contribution of vessels	19	1,582	16	34,981	—	34,997
Beneficial conversion feature on the convertible senior 7% notes	16	—	—	100,536	—	100,536
Conversion of the convertible senior 7% notes (\$20m)	16, 19	2,222	22	19,978	—	20,000
Net loss		—	—	—	(37,872)	(37,872)
Share-based compensation	18, 19	390	4	3,954	—	3,958
Balance at December 31, 2009						
(Successor)		6,615	67	196,317	(37,872)	158,512
Net loss		—	—	—	(94,849)	(94,849)
Issuance of common shares	18, 19	13	0	—	—	0
Shares issued for business acquisition	5, 19	700	7	5,203	—	5,210
Warrants	12, 21	—	—	4,081	—	4,081
Share-based compensation	18	—	—	2,680	—	2,680
Balance at December 31, 2010						
(Successor)		7,328	\$ 74	\$ 208,281	\$ (132,721)	\$ 75,634

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

NEWLEAD HOLDINGS LTD.
CONSOLIDATED STATEMENTS OF CASH FLOWS
 (All amounts expressed in thousands of U.S. dollars)

	Successor		Predecessor	
	Year Ended December 31, 2010	October 14, to December 31, 2009	January 1, to October 13, 2009	Year Ended December 31, 2008
OPERATING ACTIVITIES:				
Net loss	\$ (94,849)	\$ (37,872)	\$ (125,764)	\$ (39,828)
Adjustments to reconcile net loss to net cash (used in) / provided by operating activities:				
Depreciation and amortization	30,028	3,656	17,368	30,493
Impairment losses	39,515	—	91,601	30,075
Provision for doubtful receivables	316	—	292	1,018
Amortization and write-off of deferred financing costs	3,728	1,391	555	1,333
Amortization of deferred charter revenue	(3,194)	—	(1,694)	(8,115)
Amortization of backlog asset	13,890	1,992	—	—
Amortization of the beneficial conversion feature	14,442	17,000	—	—
Change in fair value of derivative financial instruments	(8,449)	(2,554)	(3,012)	6,515
Payments for dry-docking / special survey costs	(3,548)	(1,040)	(4,306)	(2,159)
Share-based compensation	2,680	3,958	793	1,083
Warrants compensation expense	—	3,940	—	—
Loss / (gain) on sale from vessels	(938)	—	5,584	(13,569)
(Increase) decrease in:				
Trade receivables	(927)	(783)	(1,480)	(1,332)
Other receivables	676	89	1,704	(1,256)
Inventories	617	(110)	(1,489)	745
Prepaid expenses	700	20	(135)	714
Due from/to managing agent	(2,712)	455	1,759	654
Due from/to related parties	(668)	—	49	(643)
Increase (decrease) in:				
Accounts payable, trade	(823)	991	6,546	(4,822)
Accrued liabilities	(938)	4,571	2,206	2,479
Deferred income	769	(1,573)	(1,134)	(484)
Net cash (used in) / provided by operating activities	(9,685)	(5,869)	(10,557)	2,901
INVESTING ACTIVITIES:				
Vessel acquisitions	(1,601)	—	—	—
Vessels under construction	(45,126)	—	—	—
Advances for vessel acquisitions	(3,177)	—	—	—
Restricted cash	(11,033)	—	—	1,548
Cash acquired through business acquisition, net of cash paid	1,561	—	—	—
Other fixed asset acquisitions	(76)	—	(63)	(27)
Proceeds from the sale of vessels	37,263	—	2,279	59,562
Net cash (used in) / provided by investing activities	(22,189)	—	2,216	61,083
FINANCING ACTIVITIES:				
Principal repayments of long-term debt	(482,243)	(57,400)	(2,280)	(61,090)
Proceeds from long-term debt	419,445	35,840	—	—
Proceeds from senior convertible 7% notes, net	—	140,718	—	—
Restricted cash for debt repayment	(21,038)	(8,173)	6,612	(8,471)
Proceeds from the sale and leaseback of vessels	86,800	—	—	—
Capital lease payments	(1,833)	—	—	—
Payments for deferred charges	(7,982)	—	—	—
Shareholders contribution	—	1,139	—	—
Proceeds from issuance of common shares	1	—	—	4
Dividends paid	—	—	—	(2,862)
Net cash (used in) / provided by financing activities	(6,850)	112,124	4,332	(72,419)
Net (decrease) / increase in cash and cash equivalents	(38,724)	106,255	(4,009)	(8,435)
Cash and cash equivalents				
Beginning of year / period	106,255	—	4,009	12,444
End of year / period	\$ 67,531	\$ 106,255	\$ —	\$ 4,009
Supplemental Cash Flow information:				
Interest paid	\$ 23,684	\$ 663	\$ 13,140	\$ 13,453
Issuance of common shares for business combination	\$ 5,210	—	—	—
Issuance of warrants for deferred charges	\$ 957	—	—	—
Assets disposed in connection with assumed acquisitions	\$ 8,501	—	—	—
Assets acquired and liabilities assumed under asset acquisitions:				
– Acquired advances for vessels under construction	\$ 29,315	—	—	—
– Vessels and other fixed assets, net acquired	\$ 81,110	—	—	—
– Long-term debt assumed	\$ 118,868	—	—	—
Acquired other assets / liabilities, net	\$ 40,098	—	—	—
Assets acquired and liabilities assumed under business acquisitions:				
– Vessels and other fixed assets, net acquired	\$ 143,808	—	—	—
– Long-term debt assumed	\$ 154,475	—	—	—
– Other assets and liabilities, net acquired	\$ 36	—	—	—

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

NEWLEAD HOLDINGS LTD.
Notes to the Consolidated Financial Statements

(All amounts expressed in thousands of U.S. dollars except share and per share data and where otherwise specified)

1. DESCRIPTION OF BUSINESS

NewLead Holdings Ltd. (the “Company” or “NewLead”) was incorporated on January 12, 2005 under the name “Aries Maritime Holdings Limited” and, on December 21, 2009, upon receipt of shareholder approval, the Company changed its name to NewLead Holdings Ltd.

The Company’s principal business is the acquisition and operation of vessels. NewLead conducts its operations through the vessel-owning companies whose principal activity is the ownership and operation of product tankers and dry bulk vessels that transport a variety of refined petroleum products and a wide array of unpackaged cargo world-wide.

On July 27, 2010, NewLead announced that a 1-for-12 reverse share split of its common shares had been approved by the Company’s Board of Directors and by written consent of a majority of shareholders, effective upon the opening of the markets on August 3, 2010. The reverse share split consolidated every 12 common shares into one common share, with par value of \$0.01 per share. The number of authorized common shares and preferred shares of NewLead were not affected by the reverse split. In respect to the underlying common shares associated with share options and any derivative securities, such as warrants and convertible notes, the conversion and exercise prices and number of common shares issued have been adjusted retrospectively in accordance to the 1:12 ratio for all periods presented. Due to such reverse share split, earnings per share, convertible notes, warrants and share options have been adjusted retrospectively as well. The consolidated financial statements for the year ended December 31, 2010 (Successor), for the periods October 14 to December 31, 2009 (Successor), January 1 to October 13, 2009 (Predecessor), and the year ended December 31, 2008 (Predecessor) reflect the reverse share split.

On October 13, 2009, the Company completed an approximately \$400,000 recapitalization, which resulted in Grandunion Inc. (“Grandunion”) acquiring control of the Company. Pursuant to the Stock Purchase Agreement entered into on September 16, 2009, Grandunion, a company controlled by Michail S. Zolotas and Nicholas G. Fistes, acquired 1,581,483 newly issued common shares of the Company in exchange for three dry bulk carriers. Of such shares, 222,223 were transferred to Rocket Marine Inc. (“Rocket Marine”), a company controlled by two former directors and principal shareholders in the Company, in exchange for Rocket Marine and its affiliates entering into a voting agreement with Grandunion. Under this voting agreement, Grandunion controls the voting rights relating to the shares owned by Rocket Marine and its affiliates. As at December 31, 2010, Grandunion owned approximately 28% of the Company’s shares and, as a result of the voting agreement, controls the vote of approximately 48% of the Company’s outstanding common shares.

In connection with the recapitalization, the Company issued \$145,000 in aggregate principal amount of 7% senior unsecured convertible notes due 2015 (the “7% Notes”). The 7% Notes are convertible into common shares at a conversion price of \$9.00 per share, subject to adjustment for certain events, including certain distributions by the Company of cash, debt and other assets, spin offs and other events. The issuance of the 7% Notes was pursuant to an Indenture dated October 13, 2009 between the Company and Marfin Egnatia Bank S.A., and a Note Purchase Agreement, executed by each of Investment Bank of Greece and Focus Maritime Corp. as purchasers. In connection with the issuance of the 7% Notes, the Company entered into a Registration Rights Agreement providing certain demand and other registration rights for the common shares underlying the 7% Notes. In November 2009, Focus Maritime Corp., a company controlled by Mr. Zolotas, the Company’s Vice Chairman, President and Chief Executive Officer, converted \$20,000 of the 7% Notes into approximately 2.2 million new common shares. As a result, in the aggregate, \$125,000 of the 7% Notes remain outstanding. As a result of this conversion, Focus Maritime Corp. as at December 31, 2010 owned approximately 30% of the Company’s outstanding common shares. The 7% Notes are convertible at any time and if fully converted, following the issuance of 2.2 million shares, would result in the issuance of an

NEWLEAD HOLDINGS LTD.

Notes to the Consolidated Financial Statements

(All amounts expressed in thousands of U.S. dollars except share and per share data and where otherwise specified)

additional 13.9 million newly issued common shares. Currently, Investment Bank of Greece retains \$100 outstanding principal amount of the 7% Notes and has received warrants to purchase up to 416,667 common shares at an exercise price of \$24.00 per share, with an expiration date of October 13, 2015. The remainder (\$124,900) is owned by Focus Maritime Corp. All of the outstanding 7% Notes owned by Focus Maritime Corp. were pledged to, and their acquisition was financed by, Marfin Egnatia Bank S.A. The Note Purchase Agreement and the Indenture with respect to the 7% Notes contain certain covenants, including limitations on the incurrence of additional indebtedness, except in connection with approved vessel acquisitions, and limitations on mergers and consolidations.

On April 1, 2010, the Company acquired in the business combination Newlead Shipping S.A. (“Newlead Shipping”), an integrated technical and commercial management company that manages oil tankers as well as dry bulk vessels through its subsidiaries. It provides a broad spectrum of technical and commercial management to all segments of the maritime shipping industry resulting in the Company discontinuing the outsourcing of such services. Newlead Shipping holds the following accreditations:

- ISO 9001 from American Bureau of Shipping Quality Evaluations for a quality management system, by consistently providing service that meets customer and applicable statutory and regulatory requirements, and by enhancing customer satisfaction through, among other things, processes for continual improvement;
- ISO 14001 from American Bureau of Shipping for environmental management, including policies and objectives targeting legal and other requirements; and
- Certificate of Company Compliance by the American Bureau of Shipping for safety, quality and environmental requirements of the ABS HSQE guide.

Going concern

Over the past several months, the Company has experienced a decline in its liquidity and cash flows, which has affected, and which management expects will continue to affect, its ability to satisfy the Company’s obligations. Recently, charter rates for product tankers and bulkers have experienced a high degree of volatility. Currently, charter rates for product tankers are significantly lower than applicable historical averages and charter rates for bulkers, after showing signs of stabilization for a period, have declined to historical lows.

Furthermore, recent economic conditions have caused certain of the Company’s charterers to experience financial difficulties as well. This has resulted in an increase in the time it takes the Company to realize its receivables. In certain instances, the Company’s charterers have been unable to fulfill their obligations under their charters. One of the Company’s charterers, who is chartering three of its vessels, is having difficulty performing its obligations and, since the end of March 2011, has been late on a number of payments causing the Company to arrest vessels which are owned by the particular charterer and/or by such charterer’s affiliated companies on two occasions in order to collect payment. These vessels are chartered out at rates significantly above market, and if the Company is forced to reclaim and re-charter these vessels (which there is no assurance that the Company could do), management expects a significant reduction in the cash flow from these vessels, which in turn would further impair Newlead’s liquidity.

Furthermore, the Company remains uncertain as to its ability to borrow the remaining \$12.8 million approximately of undrawn amounts under the \$62.0 million revolving credit facility. Negotiations with the bank are continuing, but there is no assurance that the Company will be able to fully draw down this amount, if at all.

NEWLEAD HOLDINGS LTD.

Notes to the Consolidated Financial Statements

(All amounts expressed in thousands of U.S. dollars except share and per share data and where otherwise specified)

Certain of the Company's debt arrangements, including the Facility Agreement, contain covenants that require the Company to maintain certain minimum financial ratios, including a minimum ratio of shareholders' equity to total assets (starting from the third quarter of 2012), a minimum amount of working capital, and a minimum EBITDA to interest coverage ratio (starting from the third quarter of 2012). The Facility Agreement requires that the Company maintains at all times a minimum amount of liquidity in the form of cash and cash equivalents equal to at least 5% of the outstanding loan at all times under such agreement. Moreover, certain of the Company's other debt arrangements require that the Company maintains at all times a minimum amount of liquidity in the form of cash and cash equivalents equal to at least 5% of the Company's total outstanding indebtedness. The Company is currently not in compliance with the minimum liquidity requirements under its loan agreements with West LB and Bank of Scotland (Junior and Senior Kamsarmax credit facilities) which results or will result in cross defaults with other loans. The Company has received notification from West LB that there is formal credit approval for the temporary waiver of the minimum liquidity covenant through March 31, 2012. This temporary waiver is subject to the execution of formal documentation. In addition, the adverse change in the Company's liquidity position, absent receipt of waivers, will have a negative effect on its ability to remain in compliance with such covenants under its other loan agreements and management expects that the Company will be in breach of the minimum liquidity requirements under various other debt agreements by June 30, 2011.

As of June 30, 2011, management is still exploring financing and other options to increase the Company's liquidity, including selling certain of its vessels, accessing the capital markets and/or incurring new indebtedness. Recently, the Company was unable to complete an offering of \$120,000 of senior secured notes due 2016 due to market conditions. In addition, the Company's proposed public offering of common shares has not proceeded. There is no assurance that the Company will be able to obtain financing or sell vessels on favorable terms, or at all.

In addition, on June 30, 2011, the Company received notification from DVB Bank, as agent of a loan agreement with DVB Bank, Nord LB and Emporiki Bank that the Company is in breach of certain covenants in its loan agreement, with regard to a dispute under the shipbuilding contract to which the loan relates. Although the Company believes it is not in default of the loan agreement or the shipbuilding contract, there is no assurance that it would prevail in the above mentioned dispute as to such issue. Although the Company is seeking and will continue to seek waivers to these covenants from its lenders, it is uncertain that Newlead will be able to obtain such waivers. Management will seek to restructure the Company's indebtedness. If the Company is not able to obtain the necessary waivers and/or restructure its debt, this could lead to the acceleration of the outstanding debt under its debt agreements that contain a minimum liquidity covenant, or any other covenant that may be breached, which would result in the cross acceleration of its other outstanding indebtedness. The Company's failure to satisfy its covenants under its debt agreements, and any consequent acceleration and cross acceleration of its outstanding indebtedness, would have a material adverse effect on the Company's business operations, financial condition and liquidity.

All of the above raises substantial doubt regarding the Company's ability to continue as a going concern.

Generally accepted accounting principles require that long-term debt be classified as a current liability when a covenant violation gives the lender the right to call the debt at the balance sheet date, absent a waiver. Accordingly, as of June 30, 2011, the Company will be required to reclassify its long term debt as current liabilities in its consolidated balance sheet if the Company has not received waivers in respect of the covenants that are breached at such time. The financial statements have been prepared assuming that the Company will continue as a going concern and do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

NEWLEAD HOLDINGS LTD.

Notes to the Consolidated Financial Statements

(All amounts expressed in thousands of U.S. dollars except share and per share data and where otherwise specified)

2. SUBSIDIARIES INCLUDED IN THE CONSOLIDATED FINANCIAL STATEMENTS

NewLead's subsidiaries included in these consolidated financial statements were as follows:

Company Name	Country of Incorporation	Nature / Vessel Name	Successor	Predecessor
			Periods that vessel operated	Periods that vessel operated
1. Land Marine S.A.	Marshall Islands	Vessel owning company ⁽¹⁾	10/14/2009 – 9/15/2010	3/07/2003 – 10/13/2009
2. Rider Marine S.A.	Marshall Islands	Vessel owning company ⁽²⁾	10/14/2009 – 4/22/2010	3/18/2003 – 10/13/2009
3. Ostria Waves Ltd.	Marshall Islands	Vessel owning company ⁽³⁾	10/14/2009 – 9/07/2010	5/25/2004 – 10/13/2009
4. Altius Marine S.A.	Marshall Islands	Newlead Avra ⁽⁴⁾	10/14/2009 – 12/31/2010	6/24/2004 – 10/13/2009
5. Fortius Marine S.A.	Marshall Islands	Newlead Fortune ⁽⁵⁾	10/14/2009 – 12/31/2010	8/02/2004 – 10/13/2009
6. Ermina Marine Ltd.	Marshall Islands	Vessel owning company ⁽⁶⁾	10/14/2009 – 9/07/2010	12/09/2004 – 10/13/2009
7. Chinook Waves Corporation	Marshall Islands	Vessel owning company ⁽⁷⁾	10/14/2009 – 4/15/2010	11/30/2005 – 10/13/2009
8. Compass Overseas Ltd.	Bermuda	M/T Newlead Compass ⁽⁸⁾	10/14/2009 – 12/31/2010	2/14/2006 – 10/13/2009
9. Compassion Overseas Ltd.	Bermuda	M/T Newlead Compassion	10/14/2009 – 12/31/2010	6/16/2006 – 10/13/2009
10. Australia Holdings Ltd.	Liberia	M/V Australia	10/14/2009 – 12/31/2010	—
11. Brazil Holdings Ltd.	Liberia	M/V Brazil	10/14/2009 – 12/31/2010	—
12. China Holdings Ltd.	Liberia	M/V China	10/14/2009 – 12/31/2010	—
13. Curby Navigation Ltd.	Liberia	Hull S-1125 ⁽⁹⁾	—	—
14. Newlead Victoria Ltd.	Liberia	M/V Newlead Victoria ⁽¹⁰⁾	4/01/2010 – 12/31/2010	—
15. Grand Venetico Inc.	Marshall Islands	M/V Grand Venetico	4/01/2010 – 12/31/2010	—
16. Grand Oceanos Inc.	Liberia	M/V Grand Oceanos	4/01/2010 – 12/31/2010	—
17. Grand Rodosi Inc.	Liberia	M/V Grand Rodosi	4/01/2010 – 12/31/2010	—
18. Challenger Enterprises Ltd.	Liberia	M/V Hiona	4/01/2010 – 12/31/2010	—
19. Crusader Enterprises Ltd.	Liberia	M/V Hiotissa	4/01/2010 – 12/31/2010	—
20. Newlead Shipping S.A.	Panama	Management company	—	—
21. Newlead Bulkers S.A.	Liberia	Management company	—	—
22. Santa Ana Waves Corporation	Marshall Islands	Vessel owning company ⁽¹¹⁾	—	—
23. Makassar Marine Ltd.	Marshall Islands	Vessel owning company ⁽¹²⁾	10/14/2009 – 1/07/2010	7/15/2005 – 10/13/2009
24. Seine Marine Ltd.	Marshall Islands	Vessel owning company ⁽¹³⁾	10/14/2009 – 1/20/2010	4/26/2005 – 10/13/2009
25. Vintage Marine S.A.	Marshall Islands	Vessel owning company ⁽¹⁴⁾	—	8/05/2004 – 6/11/2008
26. Jubilee Shipholding S.A.	Marshall Islands	Vessel owning company ⁽¹⁵⁾	—	7/26/2004 – 6/29/2009
27. Olympic Galaxy Shipping Ltd.	Marshall Islands	Vessel owning company ⁽¹⁶⁾	—	4/28/2004 – 6/02/2008
28. Dynamic Maritime Co.	Marshall Islands	Vessel owning company ⁽¹⁷⁾	—	6/01/2004 – 4/30/2008
29. AMT Management Ltd.	Marshall Islands	Management company	—	—
30. Newlead Holdings (ex Aries Maritime) (US) LLC	United States of America	Operating company ⁽¹⁸⁾	—	—
31. Abroad Consulting Ltd.	Marshall Islands	Operating company ⁽¹⁹⁾	—	—
32. Leading Marine Consultants Inc.	Marshall Islands	Operating company	—	—
33. Ayasha Trading Corporation	Liberia	M/V Newlead Tomi	12/03/2010 – 12/31/2010	—
34. Bethune Properties S.A.	Liberia	Hull N216	—	—
35. Grand Esmeralda Inc.	Liberia	M/V Newlead Esmeralda	7/09/2010 – 12/31/2010	—
36. Grand Markela Inc.	Liberia	M/V Newlead Markela	7/02/2010 – 12/31/2010	—
37. Grand Spartounta Inc.	Marshall Islands	M/V Grand Spartounta	7/02/2010 – 12/31/2010	—
38. Newlead Progress Inc.	Marshall Islands	Vessel owning company	—	—
39. Newlead Prosperity Inc.	Marshall Islands	M/V Newlead Prosperity	10/01/2010 – 12/31/2010	—
40. Grand Affection S.A.	Marshall Islands	Hull 4023	—	—
41. Grand Affinity S.A.	Marshall Islands	Hull 4029	—	—
42. Newlead Stride Inc.	Marshall Islands	Vessel owning company	—	—
43. Grand Victoria Pte Ltd.	Singapore	Vessel owning company ⁽²⁰⁾	—	—
44. Newlead Bulker Holdings Inc.	Marshall Islands	Sub-holding company ⁽²¹⁾	—	—
45. Newlead Tanker Holdings Inc.	Marshall Islands	Sub-holding company ⁽²¹⁾	—	—
46. Mote Shipping Ltd.	Malta	Vessel owning company ⁽²²⁾	—	—
47. Statesman Shipping Ltd.	Malta	Vessel owning company ⁽²²⁾	—	—
48. Trans Continent Navigation Ltd.	Malta	Vessel owning company ⁽²²⁾	—	—
49. Trans State Navigation Ltd.	Malta	Vessel owning company ⁽²²⁾	—	—
50. Bora Limited	British Virgin Islands	Vessel owning company ⁽²²⁾	—	—

1) M/T High Land was sold on September 15, 2010.

2) M/T High Rider was sold and delivered to its new owners on April 22, 2010.

3) M/T Ostria was sold on September 7, 2010.

NEWLEAD HOLDINGS LTD.

Notes to the Consolidated Financial Statements

(All amounts expressed in thousands of U.S. dollars except share and per share data and where otherwise specified)

- 4) M/T Altius was renamed to M/T Newlead Avra on February 14, 2010.
- 5) M/T Fortius was renamed to M/T Newlead Fortune on March 11, 2010.
- 6) M/T Nordanvind was sold on September 7, 2010.
- 7) M/T Chinook was sold and delivered to its new owners on April 15, 2010.
- 8) M/T Stena Compass was renamed M/T Newlead Compass on December 22, 2010.
- 9) On March 30, 2010, NewLead acquired Curby Navigation Ltd., a company which was incorporated on December 30, 2009.
- 10) M/V Grand Victoria was renamed M/V Newlead Victoria on June 4, 2010.
- 11) The Company was dissolved on November 9, 2010.
- 12) M/V Saronikos Bridge was sold on January 7, 2010.
- 13) M/V MSC Seine was sold on January 20, 2010.
- 14) M/T Arius was sold on June 11, 2008.
- 15) M/V Ocean Hope was sold on June 29, 2009.
- 16) M/V Energy 1 was sold was June 2, 2008.
- 17) M/V MSC Oslo was sold on April 30, 2008.
- 18) Aries Maritime (US) LLC was incorporated on October 23, 2008, as a representative office in the United States. The company changed its name to Newlead Holdings (US) LLC on January 19, 2010.
- 19) The Company was dissolved on June 15, 2010.
- 20) Previous owner of M/V Grand Victoria which was renamed Newlead Victoria (see item 10 above).
- 21) Wholly owned entities of Newlead Holdings Ltd. both incorporated on October 21, 2010.
- 22) Vessels M/T High Land, M/T High Rider, M/T Altius, M/T Fortius and M/T Ostria were transferred from Trans Continent Navigation Ltd, Mote Shipping Ltd, Statesman Shipping Ltd, Trans State Navigation Ltd and Bora Limited to Altius Marine S.A., Land Marine S.A., Rider Marine S.A., Fortius Marine S.A. and Ostria Waves Ltd in November, July, August, November 2005 and January 2007, respectively. The original acquisitions for these vessels were made on June 24, 2004, on March 7, 2003, on March 18, 2003, on August 2, 2004 and on May 25, 2004, respectively.

3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation:

The accompanying consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

The financial statements for periods prior to October 14, 2009, as labelled “Predecessor”, reflect the consolidated financial position, results of operations and cash flows of the 12 vessel-owning subsidiaries of NewLead. Please refer to Note 1 about the recapitalization transaction that gave rise to the “Predecessor” transaction.

The financial statements for the period from October 14, 2009 to December 31, 2009, as labelled “Successor”, reflect the consolidated financial position, results of operations and cash flows of the predecessor 11 vessel-owning subsidiaries and the three vessel-owning subsidiaries contributed by Grandunion.

The financial statements for the the year ended December 31, 2010, as labelled “Successor”, reflect the consolidated financial position, results of operations and cash flows of the predecessor 11 vessel-owning subsidiaries and the 14 vessel-owning subsidiaries, three of which were contributed by Grandunion, six of which were acquired through a business combination (see Note 5), three of which were acquired in July 2010 (see Note 11) and one newbuilding vessel and one leased vessel which both started their operations in the fourth quarter 2010.

Furthermore, certain other subsidiaries are included in the consolidated financial statements, as described in Note 2.

NEWLEAD HOLDINGS LTD.

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(All amounts expressed in thousands of U.S. dollars except share and per share data and where otherwise specified)

Certain immaterial reclassifications to the prior years/periods presentation have been made to conform to the current year presentation.

Principles of Consolidation:

The accompanying consolidated financial statements represent the consolidation of the accounts of the Company and its wholly-owned subsidiaries. The subsidiaries are fully consolidated from the date on which control is transferred to the Company.

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

All inter-company balances and transactions have been eliminated upon consolidation.

Use of Estimates:

The preparation of consolidated financial statements in conformity with the U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the dates of the financial statements and the reported amounts of revenues and expenses during the reporting periods. On an on-going basis, management evaluates the estimates and judgments, including those related to future dry-dock dates, the selection of useful lives for tangible assets, expected future cash flows from long-lived assets to support impairment tests, provisions necessary for accounts receivables, provisions for legal disputes, and contingencies. Management bases its estimates and judgments on historical experience and on various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates under different assumptions and/or conditions.

Foreign Currency Transactions:

The functional currency of the Company is the U.S. dollar because the Company's vessels operate in international shipping markets, and therefore primarily transact business in U.S. dollars. The accounting records of the Company's subsidiaries are maintained in U.S. dollars. Transactions involving other currencies during a year are converted into U.S. dollars using the exchange rates in effect at the time of the transactions. At the balance sheet dates, monetary assets and liabilities, which are denominated in other currencies, are translated to reflect the period-end exchange rates. Resulting gains or losses are reflected in the accompanying consolidated statements of operations.

Cash and Cash Equivalents:

The Company considers highly liquid investments, such as time deposits and certificates of deposit, with an original maturity of three months or less to be cash equivalents.

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Restricted Cash:

Restricted cash includes additional minimum cash deposits required to be maintained with certain banks under the Company's borrowing arrangements. In addition, it includes cash collateralized as well as retention accounts and letters of guarantee, which are used to fund the debt service payments coming due in accordance with borrowing facility arrangements and the acquisition of vessels. The funds can only be used for the purposes of interest payments and loan repayments.

Trade Receivables, Net and Other Receivables:

The amount shown as trade receivables, net at each balance sheet date includes estimated recoveries from charterers for hire, freight and demurrage billings, net of allowance for doubtful accounts. An estimate is made of the allowance for doubtful accounts based on a review of all outstanding amounts at each period, and an allowance is made for any accounts which management believes are not recoverable. Bad debts are written off in the year in which they are identified. The allowance for doubtful accounts at December 31, 2010, and 2009 amounted to \$1,410 and \$1,150, respectively, and relates to continuing and discontinued operations. Other receivables relates to claims for hull and machinery and loss of hire insurers.

Inventories:

Inventories, which comprise bunkers, lubricants, provisions and stores remaining on board the vessels at period end, are valued at the lower of cost and market value as determined using the first in-first out method.

Vessels and Other Fixed Assets, net:

Vessels are stated at cost, which consists of the contract price, delivery and acquisition expenses, interest cost while under construction, and, where applicable, initial improvements. Vessels acquired through an asset acquisition or through a business combination are stated at fair value. Subsequent expenditures for conversions and major improvements are also capitalized when they appreciably extend the life, increase the earning capacity or improve the efficiency or safety of a vessel; otherwise, these amounts are charged to expenses as incurred. The component of each new vessel's initial capitalized cost that relates to dry-docking and special survey is calculated by reference to the related estimated economic benefits to be derived until the next scheduled dry-docking and special survey, is treated as a separate component of the vessel's cost and is accounted for in accordance with the accounting policy for dry-docking and special survey costs. Pursuant to the recapitalization on October 13, 2009, the Company's predecessor vessels were adjusted to fair value.

Depreciation of a vessel is computed using the straight-line method over the estimated useful life of the vessel, after considering the estimated salvage value of the vessel. Each vessel's salvage value is equal to the product of its lightweight tonnage and estimated scrap value per lightweight ton. Management estimates the useful life of the Company's vessels to be at a range of 25 to 30 years from the date of its initial delivery from the shipyard.

However, when regulations place limitations over the ability of a vessel to trade, its useful life is adjusted to end at the date such regulations become effective.

Fixed assets are stated at cost. The cost and related accumulated depreciation of fixed assets sold or retired are removed from the accounts at the time of sale or retirement and any gain or loss is included in the accompanying statement of operations.

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Depreciation of fixed assets is computed using the straight-line method. Annual depreciation rates, which approximate the useful life of the assets, are:

Furniture, fixtures and equipment:	5 years
Computer equipment and software:	5 years

Assets held for sale/Discontinued operations:

Long-lived assets are classified as “Assets held for sale” when the following criteria are met: management has committed to a plan to sell the asset; the asset is available for immediate sale in its present condition; an active program to locate a buyer and other actions required to complete the plan to sell the asset have been initiated; the sale of the asset is probable, and transfer of the asset is expected to qualify for recognition as a completed sale within one year; the asset is being actively marketed for sale at a price that is reasonable in relation to its current fair value and actions required to complete the plan indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn. Assets classified as held for sale are measured at the lower of their carrying amount or fair value less cost to sell. These assets are not depreciated once they meet the criteria to be held for sale. During the period October 14, 2009 to December 31, 2009, the Company discontinued its container operations by committing to sell its remaining two container vessels and exiting from the market. As of December 31, 2010 and 2009, assets held for sale, net totaled to \$0 and \$8,250, respectively.

The Company reports discontinued operations when the operations and cash flows of a component, usually a vessel, have been (or will be) eliminated from the ongoing operations of the Company, and the Company will not have any significant continuing involvement in the operations of the component after its disposal. All assets held for sale are considered discontinued operations for all periods presented.

Accounting for Special Survey and Dry-docking Costs:

The Company’s vessels are subject to regularly scheduled dry-docking and special surveys, which are carried out every 30 or 60 months to coincide with the renewal of the related certificates issued by the Classification Societies, unless a further extension is obtained in rare cases and under certain conditions. The costs of dry-docking and special surveys are deferred and amortized over the above periods or to the next dry-docking or special survey date if such date has been determined.

Costs incurred during the dry-docking period relating to routine repairs and maintenance are expensed. The unamortized portion of special survey and dry-docking costs for vessels sold is included as part of the carrying amount of the vessel in determining the gain/(loss) on sale of the vessel.

When vessels are acquired, the portion of the vessels’ capitalized cost that relates to dry-docking or special survey is treated as a separate component of the vessels’ cost and is deferred and amortized as above. This cost is determined by reference to the estimated economic benefits to be derived until the next dry-docking or special survey.

Impairment of Long-lived Assets:

The standard requires that long-lived assets and certain identifiable intangibles held and used by an entity be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. If the future net undiscounted cash flows from the assets are less than the carrying values of the asset, an impairment loss is recorded equal to the difference between the asset’s carrying value and its fair value.

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The Company concluded that events and circumstances had changed periodically that may indicate the existence of a potential impairment of its long-lived assets. As a result, the Company performed an impairment assessment of long-lived assets (i) as of December 31, 2008, (ii) as of September 30, 2009, (iii) as of December 31, 2009, (iv) during the year ended December 31, 2010, when certain vessels were disposed of, and (v) as of December 31, 2010. The significant factors and assumptions the Company used in undiscounted projected net operating cash flow analysis included, among others, operating revenues, off-hire revenues, dry-docking costs, operating expenses and management fee estimates. Revenue assumptions were based on a number of factors for the remaining life of the vessel: (a) contracted time charter rates up to the end of life of the current contract of each vessel, (b) historical average time charter rates, (c) current market conditions and (d) the respective vessel's age as well as considerations such as scheduled and unscheduled off-hire revenues based on historical experience. Operating expense assumptions included an annual escalation factor. All estimates used and assumptions made were in accordance with the Company's historical experience.

The Company's assessment included its evaluation of the estimated fair values for each vessel (obtained by third-party valuations for which management assumes responsibility for all assumptions and judgments) compared to the carrying value. The significant factors the Company used in deriving the carrying value included: net book value of the vessels, unamortized special survey and dry-docking cost. The current assumptions used and the estimates made are highly subjective, and could be negatively impacted by further significant deterioration in charter rates or vessel utilization over the remaining life of the vessels, which could require the Company to record a material impairment charge in future periods.

During the year ended December 31, 2010, when certain vessels were disposed of, and as of December 31, 2010, the Company tested its vessels for impairment, which resulted in an impairment loss of \$15,662 from continuing operations. The Company's impairment analysis as of December 31, 2009 did not result in an impairment loss. The impairment analysis as of September 30, 2009 resulted in an impairment loss of \$68,042 from continuing operations and \$23,559 from discontinued operations for the period from January 1, 2009 to October 13, 2009. During the year ended December 31, 2008, the Company recorded an impairment loss of \$30,075, which related to discontinued operations.

Goodwill:

Goodwill acquired in a business combination initiated after June 30, 2001 is not to be amortized. Rather, the guidance requires that goodwill be tested for impairment at least annually and written down with a charge to operations if the carrying amount exceeds its implied fair value.

The Company evaluates goodwill for impairment using a two-step process. First, the aggregate fair value of the reporting unit is compared to its carrying amount, including goodwill. The Company determines the fair value based on a discounted cash flow analysis.

If the fair value of the reporting unit exceeds its carrying amount, no impairment exists. If the carrying amount of the reporting unit exceeds its fair value, then the Company must perform the second step in order to determine the implied fair value of the reporting unit's goodwill and compare it with its carrying amount. The implied fair value is determined by allocating the fair value of the reporting unit to all the assets and liabilities of that reporting unit, as if the reporting unit had been acquired in a business combination and the fair value of the reporting unit was the purchase price. If the carrying amount of the goodwill exceeds its implied fair value, then a goodwill impairment is recognized by writing the goodwill down to the implied fair value. As of December 31, 2010, the Company performed its annual goodwill impairment analysis and recorded a non-cash goodwill impairment loss of \$18,726.

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Backlog asset/Deferred charter revenue:

Where the Company identifies any assets or liabilities associated with the acquisition of a vessel, the Company typically records all such identified assets or liabilities at fair value. Fair value is determined by reference to market data. The Company values any asset or liability arising from the time or bareboat charters assumed based on the market value at the time a vessel is acquired. The amount to be recorded as an asset or liability at the date of vessel delivery is based on the difference between the current fair value of a charter with similar characteristics as the time charter assumed and the net present value of future contractual cash flows from the time charter contract assumed. When the present value of the time charter assumed is greater than the current fair value of a charter with similar characteristics, the difference is recorded as a backlog asset. When the net present value of the time or bareboat charter assumed is lower than the current fair value of a charter with similar characteristics, the difference is recorded as deferred charter revenue. Such assets and liabilities, respectively, are amortized as an increase in, or a reduction of, "Depreciation and Amortization Expense" over the remaining period of the time or bareboat charters acquired.

Provisions:

The Company, in the ordinary course of business, is subject to various claims, suits and complaints. Management provides for a contingent loss in the financial statements if the contingency has been incurred at the date of the financial statements and the amount of the loss can be reasonably estimated. In accordance with the guidance issued by the Financial Accounting Standards Board ("FASB") in accounting for contingencies, if the Company has determined that the reasonable estimate of the loss is a range and there is no best estimate amount within the range, the Company will provide the lower amount of the range. See Note 22 "Commitments and Contingent Liabilities" for further discussion.

The Company participates in Protection and Indemnity (P&I) insurance plans provided by mutual insurance associations known as P&I clubs. Under the terms of these plans, participants may be required to pay additional premiums (supplementary calls) to fund operating deficits incurred by the clubs ("back calls"). Obligations for back calls are accrued annually based on information provided by the clubs and when the obligations are probable and estimable.

Leases:

Leases are classified as capital leases whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee. All other leases are classified as operating leases. The Company records vessels under capital leases as fixed assets at the lower of the present value of the minimum lease payments at inception of the lease or the fair value of the vessel. Vessels under capital leases are amortized over the estimated remaining useful life of the vessel for capital leases which provide for transfer of title of the vessel, similar to that used for other vessels of the Company. The current portion of capitalized lease obligations are reflected in the balance sheet in "Capital lease obligations, current" and remaining long-term capitalized lease obligations are presented as "Capital lease obligations, non-current". Payments made for operating leases are expensed on a straight-line basis over the term of the lease. Office and warehouse rental expense is recorded in "General and administrative expenses" in the consolidated statements of operations.

Financing Costs:

Fees incurred for obtaining new debt or refinancing existing debt are deferred and amortized over the life of the related debt, using the effective interest rate method. Any unamortized balance of costs relating to debt repaid or refinanced is expensed in the period the repayment or refinancing is made.

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Fees incurred in a refinancing of existing debt continue to be amortized over the remaining term of the new debt where there is a modification of the debt. Fees incurred in a refinancing of existing loans where there is an extinguishment of the old debt are written off and included in the debt extinguishment gain or loss.

Interest Expense:

Interest costs are generally expensed as incurred and include interest on loans, financing costs, amortization and write-offs and a beneficial conversion feature ("BCF"). Interest costs incurred while a vessel is being constructed are capitalized.

Accounting for Revenue and Expenses:

The Company generates its revenues from charterers for the charter hire of its vessels. Vessels are chartered using either time and bareboat charters, where a contract is entered into for the use of a vessel for a specific period of time and a specified daily charter hire rate, or voyage charters, where a contract is made in the spot market for the use of a vessel for a specific voyage for a specified charter rate. If a charter agreement exists, price is fixed, service is provided and collection of the related revenue is reasonably assured and revenue is recognized as it is earned rateably on a straight-line basis over the duration of the period of each time charter as adjusted for the off-hire days that the vessel spends undergoing repairs, maintenance and upgrade work depending on the condition and specification of the vessel and address commissions. A voyage is deemed to commence upon the completion of discharge of the vessel's previous cargo and is deemed to end upon the completion of the discharge of the current cargo.

Profit sharing represents the Company's portion of the excess of the actual net daily charter rate earned by the Company's charterers from the employment of the Company's vessels over a predetermined base charter rate, as agreed between the Company and its charterers. Such profit sharing is recognized in revenue when mutually settled.

Demurrage income represents payments by the charterer to the vessel owner when loading or discharging time exceeded the stipulated time in the voyage charter and is recognized as incurred.

Deferred income represents cash received on charter agreement prior to the balance sheet date and is related to revenue not meeting the criteria for recognition.

Voyage Expenses:

Voyage expenses comprise all expenses related to each particular voyage, including time charter hire paid and voyage freight paid bunkers, port charges, canal tolls, cargo handling, agency fees and brokerage commissions.

Vessel Operating Expenses:

Vessel operating expenses consist of all expenses relating to the operation of vessels, including crewing, repairs and maintenance, insurance, stores and lubricants and miscellaneous expenses such as communications. Vessel operating expenses exclude fuel cost, port expenses, agents' fees, canal dues and extra war risk insurance, which are included in "voyage expenses."

Insurance Claims:

Insurance claims represent the claimable expenses, net of deductibles, which are probable to be recovered from insurance companies. Any costs to complete the claims are included in accrued liabilities. The Company

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accounts for the cost of possible additional call amounts under its insurance arrangements in accordance with the accounting guidance for contingencies based on the Company's historical experience and the shipping industry practices. These claims are included in the consolidated balance sheet line item "Other receivables".

Pension and Retirement Benefit Obligations—Crew:

The crew on board the companies' vessels serve in such capacity under short-term contracts (usually up to seven months) and accordingly, the vessel-owning companies are not liable for any pension or post retirement benefits.

Repairs and Maintenance:

Expenditure for routine repairs and maintenance of the vessels is charged against income in the period in which it is incurred. Major vessel improvements and upgrades are capitalized to the cost of vessel.

Derivative Financial Instruments:

Derivative financial instruments are recognized in the balance sheets at their fair values as either assets or liabilities. Changes in the fair value of derivatives that are designated and qualify as cash flow hedges, and that are highly effective, are recognized in other comprehensive income. If derivative transactions do not meet the criteria to qualify for hedge accounting, any unrealized changes in fair value are recognized immediately in the statement of operations.

Amounts receivable or payable arising on the termination of interest rate swap agreements qualifying as hedging instruments are deferred and amortized over the shorter of the life of the hedged debt or the hedge instrument.

The Company has entered into various interest rate swap agreements (see Note 21) that did not qualify for hedge accounting. As such, the fair value of these agreements and changes therein are recognized in the balance sheets and statements of operations, respectively.

Share-based Compensation:

The standard requires the Company to measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award (with limited exceptions). The grant-date fair value of employee share options and similar instruments are estimated using option-pricing models adjusted for the unique characteristics of those instruments. The cost is recognized over the period during which an employee is required to provide service in exchange for the award — the requisite service period (usually the vesting period). No compensation cost is recognized for equity instruments for which employees do not render the requisite service. Employee share purchase plans will not result in recognition of compensation cost if certain conditions are met. If an equity award is modified after the grant date, incremental compensation cost will be recognized in an amount equal to the excess of the fair value of the modified award over the fair value of the original award immediately before the modification.

Warrants:

The Company initially measures warrants at fair value. If warrants meet accounting criteria for equity classification then there is no other measurement subsequent to their issue. If based on their contractual terms warrants need to be recorded as derivative liabilities, then they are remeasured to fair value at each reporting period with changes recognized in the statements of operations.

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Segment Reporting:

Operating segments, as defined, are components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing performance. Based on the Company's methods of internal reporting, management structure and after the transfer of the three dry bulk vessels, the Company now has two reportable segments: Wet Operations (consisting of tankers transporting several different refined petroleum products simultaneously in segregated, coated cargo tanks) and Dry Operations (consists of transportation and handling of bulk cargoes through ownership, operation and trading of vessels).

(Loss)/Income per Share:

The Company has presented (loss)/income per share for all periods presented based on the weighted average number of its outstanding common shares at the reported periods. There are no dilutive or potentially dilutive securities, accordingly there is no difference between basic and diluted net loss per share.

4. RECENT ACCOUNTING PRONOUNCEMENTS

Fair Value Disclosures

In January 2010, the FASB issued amended standards requiring additional fair value disclosures. The amended standards require disclosures of transfers in and out of Levels 1 and 2 of the fair value hierarchy, as well as requiring gross basis disclosures for purchases, sales, issuances and settlements within the Level 3 reconciliation. Additionally, the update clarifies the requirement to determine the level of disaggregation for fair value measurement disclosures and to disclose valuation techniques and inputs used for both recurring and nonrecurring fair value measurements in either Level 2 or Level 3. The Company adopted the new guidance effective in the first quarter of fiscal 2010, except for the disclosures related to purchases, sales, issuance and settlements, which were effective for the Company beginning in the first quarter of fiscal 2011. The adoption of the new standard did not have a significant impact on the Company's consolidated financial statements.

Supplementary Pro Forma Information for Business Combinations

In December 2010, the FASB issued an amendment of the Accounting Standards Codification regarding Business Combinations. This amendment affects any public entity as defined by ASC 805 that enters into business combinations that are material on an individual or aggregate basis. The amendments specify that if a public entity presents comparative financial statements, the entity should disclose revenue and earnings of the combined entity as though the business combination(s) that occurred during the current year had occurred as of the beginning of the comparable prior annual reporting period only. The amendments in this Update also expand the supplemental pro forma disclosures under ASC 805 to include a description of the nature and amount of material, nonrecurring pro forma adjustments directly attributable to the business combination included in the reported pro forma revenue and earnings. The amendments are effective for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2010. Early adoption is permitted. The adoption of the new standard did not have any impact on the Company's consolidated financial statements.

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ASU 2010–28, Intangibles — Goodwill and Other (Topic 350): When to Perform Step 2 of the Goodwill Impairment Test for Reporting Units with Zero or Negative Carrying Amounts (a consensus of the FASB Emerging Issues Task Force)

In December 2010, the FASB issued Accounting Standards Update (ASU) No. 2010–28, Intangibles — Goodwill and Other (Topic 350): When to Perform Step 2 of the Goodwill Impairment Test for Reporting Units with Zero or Negative Carrying Amounts. This ASU contains the final consensus reached by the EITF on November 19, 2010. The EITF consensus affects all entities that have recognized goodwill and have one or more reporting units whose carrying amount for purposes of performing Step 1 of the goodwill impairment test is zero or negative. The EITF decided to amend Step 1 of the goodwill impairment test so that for those reporting units, an entity is required to perform Step 2 of the goodwill impairment test if it is more likely than not that a goodwill impairment exists. For public entities, the amendments in this Update are effective for fiscal years, and interim periods within those years, beginning after December 15, 2010. Early adoption is not permitted. For nonpublic entities, the amendments are effective for fiscal years, and interim periods within those years, beginning after December 15, 2011. Nonpublic entities may early adopt the amendments using the effective date for public entities. The Company does not expect the adoption of the Accounting Standards update will have a material impact on the Company's consolidated financial statements.

5. BUSINESS COMBINATION

On April 1, 2010, NewLead completed the 100% acquisition of six vessels (four dry bulk vessels and two product tankers) and Newlead Shipping and its subsidiaries, an integrated technical and commercial management company, pursuant to the terms of a Securities Purchase Agreement, dated March 31, 2010 (the "Purchase Agreement"), between NewLead and Grandunion. Newlead Bulkers S.A., or Newlead Bulkers, is a subsidiary of Newlead Shipping that was acquired as part of this transaction, and provides technical and commercial management services to our dry bulk vessels. In exchange for shares of the subsidiaries acquired, NewLead assumed approximately \$161,000 of bank debt, accounts payable and accrued liabilities, net of cash acquired, and paid Grandunion an additional consideration of \$5,310 which consisted of \$100 in cash, as well as 700,214 common shares (the "Shares") to Grandunion, reflecting the 737,037 Shares initially issued to complete the acquisition and the subsequent cancellation of 36,823 of these Shares to maintain the aggregate consideration in accordance with the terms of the Purchase Agreement as a result of assuming a higher amount of liabilities. The Company valued the Shares issued at \$7.44 per common share, which represents the market price less a discount for the Lock-Up Agreement. The Shares were subject to a Lock-Up Agreement, dated April 1, 2010, pursuant to which the Shares were restricted from disposition or any other transfer for the one year period which ended April 1, 2011.

NEWLEAD HOLDINGS LTD.**Notes to the Consolidated Financial Statements**

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The acquisition was accounted for under the acquisition method of accounting and, accordingly, the assets acquired and liabilities assumed were recorded at their fair values. The Company has estimated the fair values of the assets acquired and liabilities assumed at the date of acquisition as follows:

	<u>Fair value on acquisition date</u>
Cash and cash equivalents	\$ 1,661
Trade and other receivables, net	1,342
Inventories	349
Prepaid expenses	950
Backlog asset	9,833
Vessels	143,808
Restricted cash	34
Total assets	157,977
Accounts payable	7,417
Accrued liabilities	1,105
Deferred income	352
Due to related parties, net	547
Deferred charter revenue	3,051
Bank debt	154,475
Total liabilities	166,947
Fair value of net liabilities	8,970
Fair value of additional consideration	5,310
Goodwill	\$ 14,280

The excess of the fair value of total liabilities assumed over total assets acquired and other consideration resulted in a premium (goodwill) and recorded in the line "Goodwill" in the Company's consolidated balance sheet. Goodwill has been allocated to the dry and wet segments, based on the fair values of the vessels, at approximately 52% and 48%, respectively. The goodwill balance arose primarily as a result of the synergies existing within the acquired business and also the synergies expected to be achieved as a result of combining the six vessels and Newlead Shipping and its subsidiaries with the rest of the Company.

Direct acquisition costs of approximately \$1,300 were fully expensed.

The following paragraph includes pro forma consolidated financial information and reflects the results of operations for the years ended December 31, 2010 and 2009, as if the acquisition had been consummated as of January 1, 2009 and after giving effect to acquisition accounting adjustments. These pro forma results have been prepared for comparative purposes only and do not purport to be indicative of what operating results would have been had the acquisition actually taken place as of January 1, 2009. In addition, these results are not intended to be a projection of future results and do not reflect any synergies that might be achieved from the combined operations. The actual results of the operations of the six vessels and the two management companies are included in the consolidated financial statements of the Company only from the date of the acquisition.

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If the business combination had taken place on January 1, 2009, the Company's operating revenues would have been approximately \$60,300 for the period January 1, 2009 to October 13, 2009 and approximately \$21,500 for the period October 14, 2009 to December 31, 2009, and net loss would have been approximately \$133,400 for the period January 1, 2009 to October 13, 2009 and approximately \$40,000 for the period October 14, 2009 to December 31, 2009, including \$30,316 and \$2,007, respectively, loss from discontinued operations. Furthermore, operating revenues would have been approximately \$112,400 for the year ended December 31, 2010 and net loss (including \$2,769 gain from discontinued operations) would have been approximately \$107,200 for the year ended December 31, 2010. The contribution of this business combination since the acquisition date was as follows: (a) approximately \$31,200 in operating revenues and (b) approximately \$2,100 in net loss.

6. GOODWILL

The 2009 recapitalization, described in Note 1, was recorded as follows:

1. The transfer of the three vessels –the Australia, the Brazil and the China– to NewLead from Grandunion was accounted for as an asset acquisition and at historical book value, since control over the vessels did not change.
2. The acquisition of the predecessor entity was accounted for under the acquisition method of accounting and, accordingly, these assets and liabilities assumed were recorded at their fair values. The Company utilized a combination of valuation methods, such as the market approach and the income approach, in order to determine the fair values of the predecessor vessels' time charters attached, the charter free values of the vessels and the calculation of the equity consideration. The fair value of the entity as a business was determined based on its capitalization on October 13, 2009. The excess of the purchase price over the fair value of the assets acquired and liabilities assumed resulted in a premium (goodwill) of \$86,036 and was recorded in the line "Goodwill" in the Company's consolidated balance sheet. Goodwill has been allocated to the wet and dry reporting units, based on the fair values of the vessels, at approximately 76% and 24%, respectively.

The basis adjustments, presented in the following table, result from the Company's assessment of the estimated fair values for each vessel, (obtained by third-party valuations for which management assumes responsibility for all assumptions and judgements) compared to the carrying value. The significant factors the Company used in deriving the carrying value included: net book value of the vessels, unamortized special survey and dry-docking cost and deferred revenue. The Company believes that the resulting balance sheet reflects the fair value of the assets and liabilities at the change of control date of October 13, 2009.

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The following table shows the roll forward of the balance sheet of NewLead (Predecessor) as of October 13, 2009 to NewLead (Successor) on October 13, 2009 and is being presented solely to reflect the change of control and contribution from Grandunion:

	October 13, 2009		October 13, 2009			
	Predecessor		Successor			
	Carrying Value A	Basis Adjustments B	Value of Assets and Liabilities Acquired C=A+B	Contributions from Grandunion (at historical basis) (5) D	Financing Activities (7) E	Post Recapitalized Carrying Values F=C+D+E
Cash and cash equivalents	\$ —	\$ —	\$ —	\$ 1,139	\$ 131,544(8)	\$ 132,683
Restricted cash	1,898	—	1,898	—	(1,498)(7)	400
Trade receivables, net	3,721	—	3,721	—	—	3,721
Other receivables	584	—	584	—	—	584
Inventories	2,713	—	2,713	262	—	2,975
Prepaid expenses	1,102	—	1,102	—	—	1,102
Backlog asset	—	7,520(2)	7,520	—	—	7,520
Total current assets	10,018	7,520	17,538	1,401	130,046	148,985
Vessels and other fixed assets, net	185,813	2,587(1)	188,400	75,289	—	263,689
Restricted cash	—	—	—	—	10,672(7)	10,672
Deferred charges, net	1,018	(1,018)(3)	—	—	8,222(8)	8,222
Goodwill	—	86,036	86,036	—	—	86,036
Total non-current assets	186,831	87,605	274,436	75,289	18,894	368,619
Total assets	\$ 196,849	\$ 95,125	\$ 291,974	\$ 76,690	\$ 148,940	\$ 517,604
Current portion of long-term debt	\$ (221,430)	\$ —	\$ (221,430)	\$ (6,240)	\$ 193,430(7)	\$ (34,240)
Accounts payable, trade	(10,146)	—	(10,146)	—	—	(10,146)
Accrued liabilities	(11,794)	—	(11,794)	(298)	—	(12,092)
Deferred income	(673)	—	(673)	(887)	—	(1,560)
Derivative financial instruments	(9,439)	—	(9,439)	(2,295)	—	(11,734)
Deferred charter revenue	(1,222)	1,222(4)	—	—	—	—
Due to managing agent	(1,599)	—	(1,599)	—	—	(1,599)
Total current liabilities	(256,303)	1,222	(255,081)	(9,720)	193,430	(71,371)
Deferred income	—	—	—	(813)	—	(813)
Derivative financial instruments	—	—	—	—	(3,971)(8)	(3,971)
7% Convertible senior notes, net	—	—	—	—	(44,433)(8)	(44,433)
Long-term debt	—	—	—	(31,160)	(193,430)(7)	(224,590)
Total non-current liabilities	—	—	—	(31,973)	(241,834)	(273,807)
Total liabilities	(256,303)	1,222	(255,081)	(41,693)	(48,404)	(345,178)
Share capital	(24)	—	(24)	(16)	—	(40)
Additional paid-in capital	(114,847)	(96,347)	(36,869)	(34,981)	(100,536)	(172,386)
Accumulated deficit	174,325(6)	—	—	—	—	—
Total shareholders' equity	59,454	(96,347)	(36,893)	(34,997)	(100,536)	(172,426)
Total liabilities and shareholders' equity	\$ (196,849)	\$ (95,125)	\$ (291,974)	\$ (76,690)	\$ (148,940)	\$ (517,604)

(1) Vessels and other fixed assets, net were adjusted to fair value.

(2) Backlog asset which relates to charter-out contracts were determined to have a fair value.

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- (3) Deferred charges were valued at \$0.
- (4) Deferred charter revenue was valued at \$0.
- (5) The assets and liabilities of the three vessel owning companies brought into the Company from Grandunion were recorded at their historical cost.
- (6) Accumulated deficit was transferred to additional paid-in capital.
- (7) The Company's existing syndicate of lenders entered into the new Facility Agreement, dated October 13, 2009, which resulted in the classification of the debt according to the contractual terms. As a result of the new Facility Agreement, the Company complied with its covenants, described in Note 15, and on the recapitalization date the Company's debt was reclassified between its long and short term components based on its contractual terms, while the agreement requires restricted cash of 5%.
- (8) Represents the issuance of the 7% Notes, described in Note 1, net of discounts. For the detailed components of the 7% Notes see discussion in Note 16.

As a result of the 2009 recapitalization and the business combination described in Note 5, the reconciliation of the carrying amount of Goodwill as of December 31, 2010 and 2009, is as follows:

	<u>2010</u>	<u>2009</u>
SUCCESSOR		
Balance at January 1,	\$ 86,036	\$ —
Goodwill acquired during the year (Note 5)	14,280	86,036
Impairment losses	(18,726)	—
Balance at December 31,	\$ 81,590	\$ 86,036

Management performed its annual impairment testing of goodwill as at December 31, 2010. Prior to the performance of the impairment test, goodwill at the wet and dry reporting units amounted to \$72,692 and \$27,624, respectively. The Company evaluated goodwill for impairment using a two-step process. First, the aggregate fair value of the reporting unit was compared to its carrying amount, including goodwill. The Company determines the fair value based on discounted cash flow analysis. The fair value for goodwill impairment testing was estimated using the expected present value of future cash flows, and using judgments and assumptions that management believes were appropriate in the circumstances. The future cash flows from operations were determined by considering the charter revenues from existing time charters for the fixed fleet days and an estimated daily time charter equivalent for the unfixed days based on a combination of Newlead's remaining charter agreement rates and the most recent 10-year average historical one year time charter rates available for each type of vessel, by applying a discount factor to the latter rates to reflect the ability of the vessels to earn such charter rates according to their age in the future. Expenses are forecasted with reference to the historic absolute and relative levels of expenses the Company has incurred in generating revenue in each reporting unit, and operating strategies and specific forecasted operating expenses to be incurred, are forecasted by applying an inflation rate of 2% considering the economies of scale due the Company's growth. The weighted average cost of capital (WACC) used was 9%.

Under the first step, the fair value of the dry reporting unit exceeded its carrying amount thus no impairment existed and the Company did not proceed to step two. On the contrary, the carrying amount of the wet reporting unit exceeded its fair value, and, therefore, the Company performed the second step in order to determine the implied fair value of the wet reporting unit's goodwill and compare it with its carrying amount. The carrying amount of the goodwill of \$72,692 exceeded its implied fair value of \$53,966. As a result, the Company recorded an impairment loss related to goodwill of the wet reporting unit of \$18,726 during the year ended December 31, 2010 which is recorded in "Impairment losses" line item in the accompanying consolidated statements of operations.

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7. RESTRICTED CASH

	<u>As of December 31, 2010</u>	<u>As of December 31, 2009</u>
Minimum Liquidity	\$ 250	\$ 403
Retention of proceeds from sale of vessels	1,323	—
Letters of guarantee for hull and vessels	11,033	—
Short term restricted cash accounts	12,606	403
Minimum Liquidity	—	9,668
Retention of proceeds from sale of vessels	30,669	—
Letters of guarantee	31	—
Long term restricted cash accounts	30,700	9,668
	\$ 43,306	\$ 10,071

8. INVENTORIES

	<u>As of December 31, 2010</u>	<u>As of December 31, 2009</u>
Bunkers	\$ 1,656	\$ 2,075
Lubricants	1,330	953
Other	—	57
	\$ 2,986	\$ 3,085

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9. BACKLOG ASSET/DEFERRED CHARTER REVENUE

The movement of the backlog asset and the deferred charter revenue as of December 31, 2010 had as follows:

	<u>Backlog Asset</u>	<u>Deferred Charter Revenue</u>
PREDECESSOR		
Balance at January 1, 2008	\$ —	\$ 11,031
Amortization	—	(8,115)
Balance at December 31, 2008	—	2,916
Additions	—	—
Amortization	—	(1,694)
Balance at October 13, 2009	—	1,222
SUCCESSOR		
Additions	—	—
Change in control — basis adjustment	7,520	(1,222)
Amortization	(1,992)	—
Balance at December 31, 2009	5,528	—
Business combination (Note 5)	9,833	3,051
Additions	53,186	710
Amortization	(13,890)	(3,194)
Balance at December 31, 2010	\$ 54,657	\$ 567
Current	\$ 8,492	\$ 476
Non-current	\$ 46,165	\$ 91

As a result of the business combination disclosed in Note 5, the transaction related to the Kamsarmax vessels described in Note 10, and the July 2010 vessel acquisition of five dry bulk vessels described in Note 11, the Company acquired backlog assets of \$9,833, \$27,677 and \$25,509, respectively.

Future amortization expense in aggregate will be \$8,492, \$8,697, \$6,584, \$6,242 and \$6,020 over the next five years, respectively, and \$18,622 thereafter. Future amortization income of deferred charter revenue in aggregate will be \$476 and \$91 over the next two years, respectively.

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10. VESSELS UNDER CONSTRUCTION

Vessels under construction were as follows as of December 31, 2010:

	<u>Kamsarmax Vessels</u>	<u>Post- Panamax Vessel</u>	<u>Handysize Vessels</u>	<u>Total</u>
Balance January 1, 2010	\$ —	\$ —	\$ —	\$ —
Advance payments in cash	27,500	7,400	7,900	42,800
Acquired advances for vessels under construction	19,727	—	9,588	29,315
Capitalized expenses	3,027	398	738	4,163
Transfer to vessels' cost	(44,025)	—	—	(44,025)
Balance December 31, 2010	\$ 6,229	\$ 7,798	\$ 18,226	\$ 32,253

On March 30, 2010, the Company entered into a Stock Purchase Agreement for the purchase of a 92,000 deadweight ton (“dwt”) newbuild Post-Panamax vessel from a first-class shipyard in South Korea for \$37,000. The vessel, named the Newlead Endurance, was delivered in June 2011. As of December 31, 2010, remaining commitments until delivery amount to approximately \$29,600.

On April 15, 2010, the Company completed the acquisition of two Kamsarmaxes under construction for an aggregate consideration of approximately \$112,700 (including the assumption of newbuilding contract commitments and debt related to the two Kamsarmaxes) in exchange for the vessel Chinook as part of the same transaction.

The purchase was completed pursuant to the terms of a Securities Purchase Agreement (“SPA”), dated February 18, 2010, with Aries Energy Corporation, a company with a common shareholder, and Bhatia International PTE Ltd., an unrelated third party. Aries Energy Corporation and Bhatia International PTE Ltd. jointly owned all of share capital of Ayasha Trading Corp. and Bethune Properties S.A. Each of these companies had a shipbuilding contract for the construction of a Kamsarmax vessel with Cosco Dalian Shipyard Co. Ltd. Hull N213, named the Newlead Tomi, was delivered in the fourth quarter of 2010 and Hull N216 is expected to be delivered in the fourth quarter of 2011. The two vessels under construction have attached time charters. As part of the SPA, the Company received the two Hulls, assumed the related debt in exchange and transferred the vessel Chinook to Aries Energy Corporation and Bhatia International PTE Ltd. The Company also reimbursed the sellers for certain expenses incurred on its behalf. As of December 31, 2010, remaining commitments for Hull N216 amounted to approximately \$35,000.

This transaction was accounted for as a non-monetary exchange and NewLead recognized assets of \$49,905, which consisted of vessels under construction of \$19,727, backlog assets of \$27,677 and certain advance payments of \$2,501. In exchange for these assets, the Company surrendered the Chinook with a fair value of \$8,500 and assumed liabilities which consisted of the existing bank debt of \$32,500 (refer to Note 15), interest rate swap liabilities of \$4,385 and other liabilities of \$4,520.

As further explained in Note 11 “Vessels and Other Fixed Assets, Net”, in July 2010, the Company completed the acquisition of five dry bulk vessels, including two newbuildings, and recognized purchase option liabilities of \$3,973, with respect to the charterers’ 50% purchase option on these two hulls. The fair value as of the acquisition date of these two newbuildings was \$9,588. The two Handysize Hulls 4023 and 4029 are expected to be delivered in the second half of 2011 and in the third quarter of 2012, respectively. Remaining commitments upon delivery for both vessels amount to an aggregate of approximately \$46,100.

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11. VESSELS AND OTHER FIXED ASSETS, NET

On April 15, 2010, the Company completed the acquisition of two Kamsarmaxes under construction for an aggregate consideration of approximately \$112,700 (including the assumption of newbuilding contract commitments and debt related to the two Kamsarmaxes) in exchange for the vessel Chinook as part of the same transaction. On April 22, 2010, the Company sold the High Rider to an unrelated third party for an aggregate purchase price resulting in gross proceeds to the Company of approximately \$6,700. The gain on the sale of the High Rider amounted to \$49.

In July 2010, the Company completed the acquisition of five dry bulk vessels, including two newbuildings, from Grandunion. Pursuant to the purchase agreement, the entire transaction, which was an asset acquisition, aggregated to approximately \$147,000, which included assumption of bank debt, other liabilities, net and newbuildings' commitments assumed. The fair values acquired consisted of vessels of \$58,110, vessels under construction of \$9,588, backlog assets of \$25,509, a deferred charter revenue liability of \$710, bank debt of \$86,368, purchase option liabilities of \$3,973 and net other liabilities of \$2,156.

In September 2010, the Company sold to unrelated third parties the Ostria and the Nordanvind, for total gross consideration of approximately \$16,300 resulting in an aggregate gain on the sale of the vessels of \$1,045. Also, in September 2010, the Company sold the High Land for a gross consideration of approximately \$4,500. The gain on the sale of the vessel amounted to \$74.

During the third quarter of 2010, the Company entered into an agreement for the acquisition of one 2003 built, 34,682 dwt, Handysize dry bulk vessel. The vessel, named the Newlead Prosperity, was delivered in early October 2010 and was initially bareboat chartered up to March 15, 2011, with an obligation to conclude the purchase latest by the end of the charter period. By an addendum signed on March 11, 2011 the parties agreed to extend initially the charter period until April 8, 2011, while by a second addendum signed on April 7, 2011, the charter period is extended until May 6, 2011. On May 10, 2011, the Company completed the acquisition of the vessel. Total consideration for the acquisition of this vessel was approximately \$24,500. \$23,000 was outstanding as of December 31, 2010, of which \$11,079 is included in "Accounts payable, trade" whereas \$11,921 is included in "Other non-current liabilities".

On June 10, 2009, the Company sold the Ocean Hope to an unrelated party for net proceeds of approximately \$2,300. The loss on the sale of the vessel amounted to approximately \$5,600. The Company paid 4% of the purchase price as sales commission to Braemar Seascope Limited, an unrelated company. The Company also paid a 1% commission to a brokerage firm, of which one of the former Company's directors is a shareholder.

On April 30, 2008 and June 2, 2008, the Company sold both the MSC Oslo and its sister ship, the Energy 1, to an unrelated party for net proceeds totalling approximately \$19,700 and \$18,500, respectively. The gain on the sale of the MSC Oslo amounted to approximately \$2,900 and the gain on the sale of the Energy 1 amounted to approximately \$2,100. The Company paid 1% of the purchase price as sales commission to Magnus Carriers Corporation ("Magnus Carriers").

On June 11, 2008, the Company sold the Arius to an unrelated party for net proceeds of approximately \$21,400. The gain on the sale of the vessel amounted to approximately \$8,600. The Company paid 1% of the purchase price as sales commission to Magnus Carriers, a related company. The Company also paid a 1% commission to a brokerage firm, of which one of the former Company's directors is a shareholder (refer to Note 22).

The results of the above sold vessels, during 2009 and 2008, until the date of their delivery to their new owners, have been reported as discontinued operations in the accompanying statements of operations and cash

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flows (see Note 25). On October 13, 2009, Grandunion (an affiliate Company) transferred three dry bulk carriers to the Company with a net historical basis of \$75,289.

The table below presents the movement of “Vessels and Other Fixed Assets, Net” as of December 31, 2010:

Cost	<u>Vessels</u>	<u>Leased Vessels</u>	<u>Dry Docking</u>	<u>Special Survey</u>	<u>Other Fixed Assets</u>	<u>Total</u>
PREDECESSOR						
Balance at January 1, 2008	\$ 479,172	\$ —	\$ 17,321	\$ 7,856	\$ 183	\$ 504,532
Additions	—	—	1,140	1,019	27	2,186
Disposals — Discontinued operations	(69,003)	—	(6,450)	(822)	—	(76,275)
Balance at December 31, 2008	410,169	—	12,011	8,053	210	430,443
Additions	—	—	4,761	1,358	63	6,182
Disposals — Discontinued operations	(17,224)	—	(484)	(421)	—	(18,129)
Balance at October 13, 2009	392,945	—	16,288	8,990	273	418,496
SUCCESSOR						
Additions	—	—	1,333	—	—	1,333
Additions — Contribution from Grandunion	98,985	—	5,767	—	—	104,752
Change in control — basis adjustment	(82,870)	—	(16,288)	(8,990)	(273)	(108,421)
Transfer to assets held for sale	(8,400)	—	—	—	—	(8,400)
Balance at December 31, 2009	400,660	—	7,100	—	—	407,760
Business combination	143,050	—	—	—	758	143,808
Additions	82,711	—	3,548	—	76	86,335
Transfer from Vessels Under Construction	44,025	—	—	—	—	44,025
Disposals	(34,338)	—	(1,332)	—	—	(35,670)
Transfers from Vessels to Leased Vessels	(87,291)	87,000	—	—	—	(291)
Balance at December 31, 2010	\$ 548,817	\$ 87,000	\$ 9,316	\$ —	\$ 834	\$ 645,967
Accumulated Depreciation and Amortization						
PREDECESSOR						
Balance at January 1, 2008	\$ (89,788)	\$ —	(9,597)	\$ (4,249)	\$ (60)	\$ (103,694)
Depreciation and Amortization for the year	(25,437)	—	(3,775)	(1,242)	(39)	(30,493)
Disposals	25,753	—	3,959	570	—	30,282
Impairment Loss	(30,075)	—	—	—	—	(30,075)
Balance at December 31, 2008	(119,547)	—	(9,413)	(4,921)	(99)	(133,980)
Depreciation and Amortization for the period	(14,073)	—	(2,050)	(1,071)	(174)	(17,368)
Impairment loss	(91,601)	—	—	—	—	(91,601)
Disposals	9,361	—	484	421	—	10,266
Balance at October 13, 2009	(215,860)	—	(10,979)	(5,571)	(273)	(232,683)
SUCCESSOR						
Additions — Contribution from Grandunion	(27,894)	—	(1,569)	—	—	(29,463)
Change in control — basis adjustment	94,184	—	10,979	5,571	273	111,007
Depreciation and Amortization for the period	(3,187)	—	(469)	—	—	(3,656)
Transfer to assets held for sale	150	—	—	—	—	150
Balance at December 31, 2009	(152,607)	—	(2,038)	—	—	(154,645)
Depreciation and Amortization for the year	(26,139)	(841)	(2,781)	—	(408)	(30,169)
Impairment loss (note 3)	(15,662)	—	—	—	—	(15,662)
Accumulated Depreciation of Leasedback Vessels	8,104	—	—	—	—	8,104
Disposals	1,664	—	157	—	—	1,821
Balance at December 31, 2010	\$ (184,640)	\$ (841)	\$ (4,662)	\$ —	\$ (408)	\$ (190,551)
PREDECESSOR						
Net book value — January 1, 2008	\$ 389,384	\$ —	\$ 7,724	\$ 3,607	\$ 123	\$ 400,838
Net book value — December 31, 2008	\$ 290,622	\$ —	\$ 2,598	\$ 3,132	\$ 111	\$ 296,463
Net book value — October 13, 2009	\$ 177,085	\$ —	\$ 5,309	\$ 3,419	\$ —	\$ 185,813
SUCCESSOR						
Net book value — December 31, 2009	\$ 248,053	\$ —	\$ 5,062	\$ —	\$ —	\$ 253,115
Net book value — December 31, 2010	\$ 364,177	\$ 86,159	\$ 4,654	\$ —	\$ 426	\$ 455,416

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12. DEFERRED CHARGES, NET

The movement of the deferred charges, net, as of December 31, 2010 is as follows:

	<u>Financing Costs</u>	<u>Other Costs</u>	<u>Total</u>
PREDECESSOR			
Net Book Value at January 1, 2008	\$ 2,906	\$ —	\$ 2,906
Amortization	(850)	—	(850)
Write-offs	(483)	—	(483)
Net Book Value at December 31, 2008	1,573	—	1,573
Amortization	(555)	—	(555)
Net Book Value at October 13, 2009	\$ 1,018	\$ —	\$ 1,018
SUCCESSOR			
Change in control — basis adjustment	\$ (1,018)	\$ —	\$ (1,018)
Additions (Note 6)	8,222	—	8,222
Amortization	(1,391)	—	(1,391)
Net Book Value at December 31, 2009	6,831	—	6,831
Additions	9,778	255	10,033
Amortization	(2,368)	—	(2,368)
Write-offs	(1,360)	—	(1,360)
Transfer to Vessels Under Construction	(96)	—	(96)
Net Book Value at December 31, 2010	\$ 12,785	\$ 255	\$ 13,040

Total fees for the loans the Company entered during the year ended December 31, 2010, related to the business combination, amounted to \$4,169 and they have been recorded as deferred charges and amortized over the life of their related facility. Of such fees \$3,213 was paid in cash and an amount of \$956 represents the fair value of 112,500 warrants with a strike price of \$3.00 and contractual term of 10 years.

Total fees paid for the new or modified loans related to the acquisition of five dry bulk vessels completed in July 2010, amounted to \$2,180 and they have been recorded as deferred charges and amortized over the life of the related facility. Of such fees, \$2,148 were paid in cash.

Total fees of \$8,222 for the year ended December 31, 2009 relate to the issuance of the 7% Notes, net of discounts (refer to Notes 6 and 16).

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13. ACCOUNTS PAYABLE, TRADE

Accounts payable, trade, as of December 31, 2010 and 2009 are analyzed as follows:

	<u>As of December 31, 2010</u>	<u>As of December 31, 2009</u>
Suppliers	\$ 14,420	\$ 6,316
Vessel purchase obligation	11,079	—
Agents	803	261
Other creditors	9,574	4,471
	<u>\$ 35,876</u>	<u>\$ 11,048</u>

14. ACCRUED LIABILITIES

Accrued liabilities as of December 31, 2010 and 2009 are analyzed as follows:

	<u>As of December 31, 2010</u>	<u>As of December 31, 2009</u>
Accrued interest	\$ 7,977	\$ 5,267
Accrued claims	1,521	4,152
Other accrued expenses	7,872	7,538
	<u>\$ 17,370</u>	<u>\$ 16,957</u>

15. LONG-TERM DEBT

Below is a summary of the long-term portion and current portion of long-term debt as at December 31, 2010 and 2009:

Description	2010			2009		
	<u>Long-term</u>	<u>Current Portion</u>	<u>Total</u>	<u>Long-term</u>	<u>Current Portion of Long-term</u>	<u>Total</u>
Syndicate Facility Agreement	\$ 177,062	\$ 7,639	\$ 184,701	\$ 193,430	\$ 8,000	\$ 201,430
Marfin Credit Facilities	48,970	—	48,970	29,600	6,240	35,840
West LB Bank Credit Facility	24,875	1,500	26,375	—	—	—
Piraeus Bank Credit Facilities	71,700	7,950	79,650	—	—	—
Kamsarmax syndicate facilities agreements	49,203	3,297	52,500	—	—	—
FBB Credit Facility	20,150	3,200	23,350	—	—	—
EFG Eurobank Credit Facility	11,035	2,100	13,135	—	—	—
Handysize Syndicate Facility Agreement	18,047	1,087	19,134	—	—	—
Balance December 31, 2010	\$ 421,042	\$ 26,773	\$ 447,815	\$ 223,030	\$ 14,240	\$ 237,270

As of December 31, 2010, the Company was in compliance with its covenants, as applicable.

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(a) Syndicate Facility Agreement

Prior to the recapitalization on October 13, 2009, the Company was in default of its \$360,000 fully revolving credit facility with Bank of Scotland and Nordea Bank Finland as lead arrangers and Bank of Scotland as agent which had an outstanding balance of \$221,400. As part of the recapitalization, the Company's existing syndicate of lenders entered into a new \$221,400 facility agreement, referred to herein as the "Facility Agreement", by and among the Company and the banks identified therein in order to refinance the Company's existing revolving credit facility.

The new Facility Agreement was originally payable in 19 quarterly installments of approximately \$2,000 each, and a sum of \$163,430 (comprising of an installment of \$2,000 and a balloon repayment of \$161,430) due in October 2014. In January 2010, the Company paid to the bank an aggregate amount of \$9,000 after receiving the proceeds from the sale of the two container vessels, the Saronikos Bridge and the MSC Seine. In January 2011, the Company paid an aggregate amount of \$31,992 after the proceeds received from the sale of the five non-core vessels, the High Rider, the High Land, the Chinook, the Ostria and the Nordanvind. Giving effect to the application of these sale proceeds, the quarterly installments have been reduced to approximately \$1,593 each, and a sum of \$128,814 (comprised of a repayment installment of \$1,593 and a balloon repayment of \$127,221) due in October 2014. As of December 31, 2010, the outstanding balance was \$184,701 and the effective interest rate was 7.08%.

On April 26, 2010, the Company entered into a Supplemental Deed (the "Deed") relating to this term Facility Agreement. The Deed is supplemental to the Loan Agreement dated October 13, 2009, as supplemented and amended from time to time, and was entered into among the Company and the banks (Bank of Scotland and Nordea Bank Finland as lead arrangers and Bank of Scotland as agent) signatory thereto. Pursuant to the terms of the Deed, the minimum liquidity amount that must be maintained under the original Deed may be applied to prepay sums outstanding under the original loan without triggering an event of default. All amounts so applied will be made available by banks for re-borrowing without restriction and will be deemed to constitute part of the minimum liquidity amount and be deemed to constitute cash for purposes of determining the minimum liquidity amount.

The Company's obligations under the new Facility Agreement are secured by a first priority security interest, subject to permitted liens, on all vessels in the Company's fleet and any other vessels the Company subsequently acquires to be financed under this Facility Agreement. In addition, the lenders will have a first priority security interest on all earnings and insurance proceeds from the Company's vessels, all existing and future charters relating to the Company's vessels, the Company's ship management agreements and all equity interests in the Company's subsidiaries. The Company's obligations under the new Facility Agreement are also guaranteed by all subsidiaries that have an ownership interest in any of the Company's vessels, excluding the three vessels transferred to the Company as part of the recapitalization.

Under the new terms of the Facility Agreement, amounts drawn bear interest at an annual rate equal to LIBOR plus a margin equal to:

- 1.75% if the Company's total shareholders' equity divided by the Company's total assets, adjusting the book value of the Company's fleet to its market value, is equal to or greater than 50%;
- 2.75% if the Company's total shareholders' equity divided by the Company's total assets, adjusting the book value of the Company's fleet to its market value, is equal to or greater than 27.5% but less than 50%; and
- 3.25% if the Company's total shareholders' equity divided by the Company's total assets, adjusting the book value of the Company's fleet to its market value, is less than 27.5%.

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As a result of the recapitalization, new financial covenants were put in place. Except for the working capital (as defined in the loan facility) and the minimum liquidity covenants, all other covenants will become effective in a period ranging from 30 to 36 months from the effective date of the Facility Agreement to allow a sufficient period of time for new management to implement its business strategy. The Company was in compliance with its debt covenants on December 31, 2010.

The following are the financial covenants to which the Company must adhere as of the end of each fiscal quarter, under the new Facility Agreement:

- the Company's shareholders' equity as a percentage of the Company's total assets, adjusting the book value of the Company's fleet to its market value, must be no less than:
 - (a) 25% from the financial quarter ending September 30, 2012 until June 30, 2013; and
 - (b) 30% from the financial quarter ending September 30, 2013 onwards.
- the Company must maintain, on a consolidated basis on each financial quarter, working capital (as defined in the loan facility) of not less than zero dollars (\$0);
- the Company must maintain a minimum requirement equal to at least 5% of the outstanding loan; and
- the Company's ratio of EBITDA (earnings before interest, taxes, depreciation and amortization) to interest payable must be no less than:
 - (a) 2.00 to 1.00 from the financial quarter day ending September 30, 2012 until June 30, 2013; and
 - (b) 2.50 to 1.00 from the financial quarter day ending September 30, 2013 onwards.

(b) Marfin Credit Facilities

The Company assumed a \$37,400 credit facility in relation to the three vessels transferred from Grandunion as part of the recapitalization in the fourth quarter of 2009. The \$37,400 credit facility was originally payable in 20 consecutive quarterly installments of \$1,560 and a \$6,200 balloon repayment due in October 2014. Such facility bears margin of 3.5% above LIBOR. Subsequent to its assumption, this facility has been periodically paid down and drawn upon to minimize the Company's cost of capital. The Company was paying a 1% commitment fee on the undrawn amount.

On May 6, 2010, the Company refinanced this credit facility with a new credit facility. Specifically, the Company entered into a facility agreement with Marfin Egnatia Bank, for a reducing revolving credit facility of up to \$65,280, in relation to the Grand Rodosi, the Australia, the China and the Brazil as well as Newlead Shipping and Newlead Bulkers, which consolidated, the Company's existing \$37,400 credit revolving facility in connection with the three vessels transferred to it as part of the recapitalization in October 2009 and the initial facility of \$35,000 for the Grand Rodosi. The new credit facility was payable in 12 quarterly installments of \$1,885 followed by 20 quarterly installments of \$2,133 and would have been due in May 2018. Borrowings under this loan facility bore an approximate effective interest rate, including the margin, of 5.7%; of the \$65,280 total loan \$32,560 and bore interest at a floating rate, which would have been approximately 3.8% (assuming current LIBOR of 0.252%, plus a 3.5% margin) while \$32,720 bore interest at a rate of 7.6% (assuming a fixed swap rate of 4.1%, plus a 3.5% margin). The loan facility includes financial covenants, all as described in the loan facility including: (i) the Company's shareholders' equity as a percentage of its total assets, adjusting the book value of the fleet to its market value, must be no less than: (a) 25% from the financial quarter ending September 30, 2012 until June 30, 2013; and (b) 30% from the financial quarter ending September 30, 2013 and onwards; (ii) Company's working capital, on a consolidated basis on each financial quarter, (as defined in the loan facility) must not be less than zero dollars (\$0); (iii) the Company

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must maintain a minimum liquidity requirement equal to at least five percent of the outstanding loan; and (iv) the ratio of EBITDA (as defined in the loan facility) to interest payable on a trailing four financial quarter basis must be no less than: (a) 2.00 to 1.00 from the financial quarter day ending September 30, 2012 until June 30, 2013; and (b) 2.50 to 1.00 from the financial quarter day ending September 30, 2013 and onwards.

The Company assumed a Loan Agreement with Marfin Egnatia Bank, dated July 21, 2010, as novated, amended and restated by a Novation, Amendment & Restatement Agreement, dated July 21, 2010 for a reducing revolving credit facility of up to \$23,000. The loan was payable in 12 quarterly installments of \$100 followed by a \$21,800 payment due in October 2013. Borrowings under this loan facility bore an effective interest rate, including the margin, of approximately 4.0% (assuming current LIBOR of 0.252%, plus a 3.75% margin). The loan facility included financial covenants, all as described in the loan facility including: (i) the Company's shareholders' equity as a percentage of the Company's total assets, adjusting the book value of the fleet to the market value, must be no less than: (a) 25% from the financial quarter day ending September 30, 2012 until the financial quarter day ending June 30, 2013; and (b) 30% from the financial quarter day ending June 30, 2013 onwards; (ii) Company's working capital, on a consolidated basis on each financial quarter, (as defined in the loan facility) must not be less than zero dollars (\$0); (iii) the Company must maintain the minimum liquidity requirement equal to at least five percent of the outstanding loan; and (iv) the maintenance of the ratio of EBITDA (as defined in the loan facility) to interest payable on a trailing four financial quarter basis to be no less than: (a) 2.00 to 1.00 from the financial quarter day ending September 30, 2012 until the financial quarter day ending June 30, 2013; and (b) 2.50 to 1.00 from the financial quarter day ending June 30, 2013 onwards. As of the date of assumption the outstanding balance on such loan facility was \$23,000.

Both loan facilities noted above terminated on November 23, 2010 and their outstanding balances of \$44,113 and \$22,900, respectively, were fully repaid through the proceeds of the sale and leaseback transaction which concluded at the same date (for more details about this transaction refer to Note 17).

On December 10, 2010, the Company entered into a Loan Agreement with Marfin Egnatia Bank, for a new reducing revolving credit facility of up to \$62,000, in order to refinance the loans of the Grand Venetico and the Newlead Markela, which were previously financed by Commerzbank and Emporiki Bank, respectively, and to finance the working and investment capital needs. The facility limit is being reduced by 10 quarterly installments of \$100 during the course of the term. Moreover, the provisions of the agreement include a cash sweep of all surplus of quarterly earnings of the Grand Venetico, the Newlead Markela, the Australia, the Brazil, the China and the Grand Rodosi. Borrowings under this loan facility currently bear an approximate effective interest rate, including the margin, of 5.6%: the floating portion of the approximately \$49,000 drawn to date is approximately \$19,400 and bears an interest rate of approximately 3.8% (assuming current LIBOR of 0.252%, plus a 3.5% margin), while the fixed portion drawn is \$29,600 and bears an interest rate of 7.6% (assuming a current fixed swap rate of 4.1% plus a 3.5% margin). The loan facility includes financial covenants, all as described in the loan facility including: (i) the Company's shareholders' equity as a percentage of its total assets, adjusting the book value of its fleet to its market value, must be no less than: (a) 25% from the financial quarter day ending September 30, 2012 until the financial quarter day ending June 30, 2013; and (b) 30% from the financial quarter day ending September 30, 2013 onwards; (ii) the maintenance, on a consolidated basis on each financial quarter, of working capital (as defined in the loan facility) of not less than zero dollars (\$0); (iii) the maintenance of minimum liquidity equal to at least five percent of the outstanding loan; and (iv) the maintenance of the ratio of EBITDA (as defined in the loan facility) to interest payable on a trailing four financial quarter basis to be no less than: (a) 2.00 to 1.00 from the financial quarter day ending September 30, 2012 until the financial quarter day ending June 30, 2013; and (b) 2.50 to 1.00 from the financial quarter day ending June 30, 2013 onwards. As of December 31, 2010, the outstanding balance on such loan facility was \$48,970.

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(c) Commerzbank Credit Facility

On April 1, 2010, the Company assumed a Loan Agreement with Commerzbank, dated November 10, 2006, as supplemented by a First Supplemental Agreement, dated April 18, 2008, a Second Supplemental Agreement, dated April 1, 2010, and a Third Supplemental Agreement, dated November 5, 2010, for a loan facility of up to \$18,000 in relation to M/V Grand Venetico. This loan facility terminated on December 14, 2010 and its outstanding balance of \$7,875 was fully repaid through the proceeds of the new Marfin revolving credit facility. The loan, prior to repayment, was payable in two quarterly installments of \$625, followed by a lump sum payment of \$750, followed by one installment of \$750 due in December 31, 2010, and followed by a \$7,125 balloon payment due in January 31, 2011. Borrowings under this loan facility bore an effective interest rate, including the margin, of approximately 3.0% (assuming current LIBOR of 0.252%, plus a 2.75% margin). The loan facility, included, among other things, a value to loan ratio that must be at all times 143%, and a cash sweep for 50% of vessel's excess cash (all as defined in such loan facility) to be applied against the installment due in October 2010. As of April 1, 2010, the outstanding balance on such loan facility was \$9,875.

(d) West LB Bank Credit Facility

On April 1, 2010, the Company assumed a Loan Agreement with West LB, dated October 16, 2007, as novated, amended and restated on March 31, 2010, relating to a term loan facility of up to \$27,500 in relation to the Grand Victoria. The loan is payable in 20 quarterly installments of \$375 followed by 15 quarterly installments of \$475 and a balloon payment of \$12,875. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.5% (assuming current LIBOR of 0.252%, plus a 3.25% margin).

The applicable margin is calculated as follows: (a) 3.25% per annum at any time when the vessel is not subject to an approved charter and the security cover ratio is less than 125%; (b) 3% per annum at any time when the vessel is subject to an approved charter and the security cover ratio is less than 125%; (c) 2.75% per annum at any time when the vessel is not subject to an approved charter and the security cover ratio is equal to or greater than 125%; and (d) 2.50% per annum at any time when the vessel is subject to an approved charter and the security cover ratio is equal to or greater than 125%. The vessel's excess cash is to be applied against prepayment of the balloon installment until such time as the balloon installment has been reduced to \$6,000, in accordance with the following, all as described in the loan facility: (i) if the Company is in compliance with the value to loan ratio 50% of the excess cash is to be applied towards prepayment of the loan facility; and (ii) if the Company is not in compliance with the value to loan ratio, 100% of the excess cash must be applied towards the prepayment of the loan facility. The value to loan ratio is set at 100% until December 31, 2012 and 125% thereafter. The loan facility, includes, among other things, financial covenants including: (i) a minimum market adjusted equity ratio of 25% for the period from September 30, 2012 until June 30, 2013, increasing to 30% thereafter; (ii) a minimum liquidity equal to at least 5% of the total debt during the period the loan facility remains outstanding; (iii) working capital (as defined in the loan facility) must be not less than zero dollars (\$0) during the period the loan facility remains outstanding; and (iv) a minimum interest coverage ratio of 2:1 for the period from September 30, 2012 until June 30, 2013, increasing to 2.5:1 thereafter. On June 4, 2010, the Company further novated, amended and restated this Loan Agreement. The Loan Agreement was amended to reflect the renaming of the Grand Victoria to the Newlead Victoria, and of the reflagging of the vessel from Singapore to Liberia, as well as the renaming of the borrower from Grand Victoria Pte. Ltd. of Singapore to Newlead Victoria Ltd. of Liberia. As of June 29, 2011, the Company is not in compliance with the minimum liquidity requirement under this loan agreement and is seeking waivers in respect of such non-compliance. The Company has received notification from West LB that there is formal credit approval for the temporary waiver of the minimum liquidity covenant

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through March 31, 2012. This temporary waiver is subject to the execution of formal documentation. See Note 1 above. As of December 31, 2010, the outstanding balance was \$26,375.

(e) Piraeus Bank Credit Facilities

On April 1, 2010, the Company assumed a Loan Agreement with Piraeus Bank, dated March 19, 2008, supplemented by a First Supplemental Agreement, dated February 26, 2009, and a Second Supplemental Agreement, dated March 31, 2010, for a loan of up to \$76,000 in relation to the Hiona and the Hiotissa. The loan is payable in one quarterly installment of \$1,500, followed by four quarterly installments of \$1,250, followed by 19 quarterly installments of \$1,125 and a balloon payment of \$37,225 due in April 2016. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.8% (assuming current LIBOR of 0.252%, plus a 3.5% margin). The loan facility includes, among other things, financial covenants, all as described in such loan facility, including: (i) the minimum net worth of the corporate guarantor's group, adjusted to the market value of the vessels, during the period the loan facility remains outstanding, must not be less than \$60,000, although the Company is not subject to such covenant through the period ending December 31, 2011; (ii) the maximum leverage of the corporate guarantor, during the period the loan facility remains outstanding, must not be more than 75%, although the Company is not subject to such covenant through the period ending December 31, 2011; (iii) the minimum liquidity of the corporate guarantor, during the period the loan facility remains outstanding, must be equal to at least 5% of the total outstanding debt obligations of the corporate guarantor; and (iv) value to loan ratio must be at least 130% during the period the loan facility remains outstanding, although the Company is not subject to such covenant through the period ending February 28, 2012.

As of December 31, 2010, the outstanding balance was \$61,100.

On April 1, 2010, the Company also assumed a Loan Agreement with Piraeus Bank, dated March 31, 2010, for a loan of up to \$21,000 relating to the Grand Ocean. The loan facility is payable in one quarterly installment of \$850, followed by six quarterly installments of \$800, followed by seven quarterly installments of \$750, and a balloon payment of \$10,100 due in November 2013. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.8% (assuming current LIBOR of 0.252%, plus a 3.5% margin). The loan facility includes financial covenants, all as described in the loan facility, including: (i) the minimum net worth of the corporate guarantor, adjusted to the market value of the vessels, during the period the loan facility remains outstanding, must not be less than \$60,000, although the Company is not subject to the covenant through the period ending December 31, 2011; (ii) the maximum leverage of the corporate guarantor, during the period the loan facility remains outstanding, must not be more than 75%, although the Company is not subject to this covenant through the period ending December 31, 2011; (iii) the minimum liquidity of the corporate guarantor, during the period the loan facility remains outstanding, must be equal to at least 5% of the total outstanding debt obligations of the corporate guarantor; and (iv) the value to loan ratio must be at least 130% during the period the loan facility remains outstanding, although the Company is not subject to the covenant through the period ending February 28, 2012. As of December 31, 2010, the outstanding balance was \$18,550.

(f) Kamsarmax Syndicate Facility Agreements

On April 15, 2010, the Company assumed two facility agreements in relation to the two acquired Kamsarmaxes ("Kamsarmax Syndicate"). The senior facility agreement which was entered into with Bank of Scotland, BTMU Capital Corporation and Bank of Ireland, is for \$66,700 and is payable in 20 quarterly installments of \$1,520 and a final payment of \$36,300 due no later than October 26, 2017. Borrowings under this facility agreement bear an effective interest rate, including margin, prior to the initial delivery date (with

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respect to the newbuilding vessel referred to as Hull N213) and the final delivery date (with respect to the newbuilding vessel referred to as Hull N216), of 7.5% (assuming a fixed swap rate of 4.0%, plus a 3.5% margin). Thereafter, the applicable margin will be calculated based on the security coverage. For a security coverage of less than 115%, between 115% and 129.9% and greater than or equal to 130%, the applicable margin will be 3.4%, 3.2% and 2.75%, respectively. This senior facility agreement included an interest rate swap that had a maturity date of April 4, 2013. This swap was amended and extended to conform to the notional amounts, anticipated drawings and repayment schedule as per the loan facility. This amended and extended swap agreement began July 6, 2010 and has a maturity date of October 15, 2015. The notional amount is \$34,167 while the fixed rate of 4.0% is linked to the three-month U.S. dollar LIBOR reference rate.

The junior facility agreement which was entered into with Bank of Scotland and BTMU Capital Corporation is for \$13,300 and is payable in 20 quarterly installments of \$130 and a final payment of \$10,700 due no later than October 26, 2017. Borrowings under this facility agreement bear an approximate effective interest rate, including margin, prior to the initial delivery date (with respect to the newbuilding vessel referred to as Hull N213) and the final delivery date (with respect to the newbuilding vessel referred to as Hull N216), of 9.5% (assuming a fixed swap rate of 4.0%, plus a 5.5% margin). Thereafter, the applicable margin will be calculated based on the security coverage. For a security coverage of less than 115%, between 115% and 129.9% and greater than or equal to 130%, the applicable margin will be 5.2%, 4.9% and 4.5%, respectively. This junior facility agreement included an interest rate swap that had a maturity date of April 4, 2013. This swap was amended and extended to conform to the notional amounts, anticipated drawings and repayment schedule as per the loan facility. This amended and extended swap agreement began July 6, 2010 and has a maturity date of October 15, 2015. The notional amount is \$13,333 while the fixed rate of 4.0% is linked to the three-month U.S. dollar LIBOR reference rate.

Both facility agreements include financial covenants, all as described in the loan facilities including: (i) the security coverage must be at least 115% up to and including the second anniversary of final delivery date, 120% up to the third anniversary date, 125% up to the fourth anniversary date and 130% thereafter; (ii) the minimum liquidity of the corporate guarantor, during the period the loan facility remains outstanding, must be equal to at least 5% of the total outstanding debt obligations of the corporate guarantor; (iii) the ratio of EBITDA (as defined in the loan facility) to interest expense must be no less than: (a) 1.10 to 1.00 from the financial quarter day ending September 30, 2012; and (b) 1.20 to 1.00 from the financial quarter day ending September 30, 2013 going forward; and (iv) the equity ratio must not be less than: (a) 25% from the financial quarter day ending September 30, 2012; and (b) 30% from the financial quarter day ending September 30, 2013 onwards. As of June 29, 2011, the Company is not in compliance with the minimum liquidity requirement under these loan agreements and is seeking waivers in respect of such non-compliance. See Note 1 above. As of December 31, 2010, the outstanding balance of both loans was \$52,500.

(g) First Business Bank (FBB) Credit Facility

On July 2, 2010, the Company assumed a Loan Agreement with First Business Bank, dated July 2, 2010, as supplemented by a First Supplemental Agreement, dated October 15, 2010, and further supplemented by a Second Supplemental Agreement dated May 9, 2011, for a loan facility of up to \$24,150, in relation to the Grand Spartounta. The loan is payable in 19 quarterly installments of \$800 followed by a \$8,950 payment due in July 2015. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 4.3% (assuming current LIBOR of 0.252%, plus a 4.0% margin). This loan facility includes, among other things, a value to loan ratio that must at all times be at least 100% from January 1, 2012 up until December 31, 2012 and 120% up until maturity date and a cash sweep for 50% of the vessel's excess earnings (all as defined in such loan facility) to be applied against the balloon payment. This loan facility also includes, among other things, financial covenants including: (i) the minimum market adjusted equity ratio (as defined in

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the loan facility) must be equal to at least 25% for the financial year ending December 31, 2012, although the Company is not subject to such covenant for the period through December 31, 2012, and which increases to 30%, annually thereafter; (ii) the minimum liquidity must be equal to at least 5% of the total debt (as defined in the loan facility) during the period the loan facility remains outstanding, although the Company is not subject to such covenant through December 31, 2012; (iii) working capital (as defined in the loan facility) must not be less than zero dollars (\$0) during the period the loan facility remains outstanding; and (iv) the minimum interest coverage ratio (as defined in the loan facility), on a trailing four financial quarter basis must be at least 2:1 as at December 31, 2012, although the Company is not subject to such covenant through December 31, 2012, and must be at least 2.5:1 as at December 31, 2013 and annually thereafter. As of December 31, 2010, the outstanding balance of the loan was \$23,350.

(h) Emporiki Bank Credit Facility

On July 2, 2010, the Company assumed a Loan Agreement with Emporiki Bank, dated November 29, 2006, as supplemented by a Third Supplemental Agreement, dated July 2, 2010, for a loan facility of up to \$14,750, in relation to the Grand Markela. The Loan Agreement was further supplemented by a Fourth Supplemental Agreement, dated September 8, 2010, to reflect the renaming of the Grand Markela to the Newlead Markela, and the change of registry of the vessel from Liberia to Marshall Islands, and it was further supplemented by a Fifth Supplemental Agreement, dated November 8, 2010. The loan was payable in four semi annual installments of \$1,170 followed by a \$5,120 payment due in November 2012. Borrowings under this loan facility bore an effective interest rate, including the margin, of approximately 3.3% (assuming current LIBOR of 0.252%, plus a 3.0% margin). As of the date of assumption, the outstanding balance on such loan facility was \$9,800. This loan facility terminated on December 14, 2010 and its outstanding balance of \$9,800 was fully repaid through the proceeds of the new Marfin revolving credit facility. The loan facility, prior to repayment, included, among other things, financial covenants including: (i) the minimum market adjusted equity ratio (as defined in the loan facility) must be equal to at least 25% for the financial quarter day ending June 30, 2012 until the financial quarter ending June 30, 2013, increasing to 30% thereafter; (ii) the minimum liquidity must be equal to at least 5% of the total debt during the period the loan facility remains outstanding; (iii) working capital (as defined in the loan facility) must not be less than zero dollars (\$0) at each quarter end during the period the loan facility remains outstanding; and (iv) the minimum interest coverage ratio (as defined in the loan facility), on a trailing four financial quarter basis must be at least 2:1 for the financial quarter day ending June 30, 2012 until the financial quarter ending June 30, 2013, and must be at least 2.5:1 thereafter. As of September 30, 2010, the outstanding balance of the loan was \$9,800. The loan facility also included, among other things, a value to loan ratio that must be at all times 125% up until the maturity date, a cash sweep for 50% of the vessel's excess earnings (all as defined in such loan facility) to be applied towards reducing the balloon payment from the initial \$3,950 to the amount of \$2,500 and an average monthly balance of the earnings account held within the bank in the name of the borrower of \$400.

(i) EFG Eurobank Credit Facility

On July 9, 2010, the Company assumed a Loan Agreement with EFG Eurobank, dated October 22, 2007, as supplemented by a Third Supplemental Agreement, dated July 9, 2010, for a loan facility of up to \$32,000, in relation to the Grand Esmeralda. The Loan Agreement was further supplemented by a Fourth Supplemental Agreement, dated August 13, 2010, to reflect the renaming of the Grand Esmeralda to the Newlead Esmeralda, and the change of registry of the vessel from Liberia to Marshall Islands. The Loan Agreement was further supplemented by a Fifth Supplemental Agreement, dated October 15, 2010, to reflect the application of \$1,130 to the initial outstanding amount of \$14,790. The loan is payable in 15 quarterly installments of \$525 followed by a \$5,785 payment due in April 2014. Borrowings under this loan facility

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currently bear an effective interest rate, including the margin, of approximately 4.0% (assuming current LIBOR of 0.252%, plus a 3.75% margin). This loan facility includes, among other things, a waiver to the minimum security clause for a period starting from July 1, 2010 and ending on the June 30, 2011. As of the date of assumption, the outstanding balance on such loan facility was \$15,355.

The loan facility includes, among other things, financial covenants including: (i) the minimum market adjusted equity ratio (as defined in the loan facility) must be at least 25% for the period from January 1, 2013 until December 30, 2013, increasing to 30% thereafter; (ii) the minimum liquidity must be equal to at least 5% of the total debt during the period the loan facility remains outstanding; and (iii) the minimum interest coverage ratio (as defined in the loan facility) must be equal to at least 2:1 for the period from January 1, 2013 until December 30, 2013, and must be at least 2.5:1 thereafter. As of December 31, 2010, the outstanding balance of the loan was \$13,135.

(j) Handysize Syndicate Facility Agreement

On July 9, 2010, the Company assumed a Loan Agreement signed with DVB Bank, Nord LB and Emporiki Bank, dated July 9, 2010, as supplemented by a First Supplemental Agreement, dated July 14, 2010, a Second Supplemental Agreement, dated November 9, 2010, and a Third Supplemental Agreement, dated, December 15, 2010, for a loan facility of up to \$48,000, in relation to two newbuilding vessels. The loan is payable, for the first vessel, in 12 quarterly installments of \$362.5 followed by 12 quarterly installments of \$387.5 followed by 15 quarterly installments of \$400, with the last installment payable together with the \$9,000 balloon payment due in December 2020. The loan is payable, for the second vessel, in 12 quarterly installments of \$362.5, followed by 12 quarterly installments of \$387.5, followed by 10 quarterly installments of \$400, with the last installment payable together with the \$11,000 of the balloon payment due in December 2020. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 3.3% (assuming current LIBOR of 0.252%, plus a 3.0% margin). As of the date of assumption, the outstanding balance on such loan facility was \$14,100. The loan facility, includes, among other things, financial covenants including: (i) the minimum market adjusted equity ratio (as defined in the loan facility) must be equal to at least 25% for the financial quarter day ending June 30, 2012 until the financial quarter day ending June 30, 2013, increasing to 30% thereafter; (ii) the minimum liquidity must be equal to at least 5% of the total debt during the period the loan facility remains outstanding; (iii) the ratio of EBITDA to interest payable (as both are defined in the loan facility), on a trailing four financial quarter basis must be equal to at least 2:1 for the financial quarter day ending June 30, 2012 until the financial quarter day ending June 30, 2013, and must be equal to at least 2.5:1 thereafter; (iv) at least \$5,000 of free cash must be maintained at all times; and (v) working capital (as defined in the loan facility) must be no less than zero dollars (\$0) at each quarter end. As of December 31, 2010, the outstanding balance of the loan was \$19,134. The loan facility also includes, among other things, a value to loan ratio (as defined in the loan facility) that must at all times be equal to at least 110% over the first five years and 120% thereafter, a cash sweep on the earnings of the vessels, representing 100% of the excess cash flow (as defined in the loan facility) for the period commencing on the delivery date of each vessel until the relevant balloon amount is reduced to \$3,000 and 50% of the excess cash flow of each vessel thereafter and a minimum liquidity reserve for each borrower to be kept with the agent bank of not less than \$500 (applicable after each vessel's respective deliveries).

NEWLEAD HOLDINGS LTD.

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(All amounts expressed in thousands of U.S. dollars except share and per share data and where otherwise specified)

The amounts shown as interest and finance expense in the statements of operations are analyzed as follows:

	Successor		Predecessor	
	Year Ended December 31, 2010	October 14, 2009 to December 31, 2009	January 1, 2009 to October 13, 2009	Year Ended December 31, 2008
Interest expense	\$ 25,492	\$ 5,416	\$ 9,711	\$ 13,413
Amortization of deferred charges	3,728	1,391	555	850
Amortization of the beneficial conversion feature (Note 16)	14,442	17,000	—	—
Other expenses	1,237	189	662	1,478
	\$ 44,899	\$ 23,996	\$ 10,928	\$ 15,741

The effective interest rate at December 31, 2010 was approximately 6.08% per annum (December 31, 2009: 5.81%, December 31, 2008: 5.76%). Capitalized interest for the year ended December 31, 2010 amounted to \$902 (\$0 for the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009 and for the year ended December 31, 2008, respectively).

As at December 31, 2010, repayments of the long-term debt are as follows:

December 31, 2011	\$ 26,773
December 31, 2012	30,345
December 31, 2013	89,526
December 31, 2014	184,358
December 31, 2015	52,554
Thereafter	64,259
	\$ 447,815

16. SENIOR CONVERTIBLE 7% NOTES

In connection with the recapitalization on October 13, 2009, the Company issued \$145,000 in aggregate principal amount of 7% senior unsecured convertible notes ("7% Notes") due 2015. The 7% Notes are convertible into common shares at a conversion price of \$9.00 per share ("Any time" conversion option), subject to adjustment for certain events, including certain distributions by the Company of cash, debt and other assets, spin offs and other events. The issuance of the 7% Notes was pursuant to the Indenture dated October 13, 2009 between the Company and Marfin Egnatia Bank S.A., and the Note Purchase Agreement, executed by each of Investment Bank of Greece and Focus Maritime Corp. as purchasers. Currently, Investment Bank of Greece retains \$100 outstanding principal amount of the 7% Notes and has received warrants (for more details see Note 21). The remainder of the 7% Notes is owned by Focus Maritime Corp., a company controlled by Michail S. Zolotas, the Company's Vice Chairman, President and Chief Executive Officer and a member of its board of directors. All of the outstanding 7% Notes owned by Focus Maritime Corp. were pledged to, and their acquisition was financed by, Marfin Egnatia Bank S.A. \$20,000 of the proceeds of the 7% Notes were used to partially repay a portion of existing indebtedness and the remaining proceeds were used for general corporate purposes and to fund vessel acquisitions. The Note Purchase Agreement and the Indenture with respect to the 7% Notes contain certain covenants, including limitations on the incurrence of additional indebtedness, except for approved vessel acquisitions, and limitations on mergers

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and consolidations. In connection with the issuance of the 7% Notes, the Company entered into a Registration Rights Agreement providing the holders of the 7% Notes with certain demand and other registration rights for the common shares underlying the 7% Notes.

In November 2009, Focus Maritime Corp. converted \$20,000 of the 7% Notes into approximately 2.22 million new common shares. Accordingly, in the aggregate, \$125,000 of the 7% Notes remain outstanding as at December 31, 2010.

The 7% Notes had two embedded conversion options — (1) An “Any time” conversion option and (2) A “Make Whole Fundamental Change” conversion option, which gives the holder 10% more shares upon conversion, in certain circumstances.

(1) The “Any time” conversion option meets the definition of a derivative under the FASB’s ASC 815 however, this embedded conversion option meets the ASC 815–10–15 scope exception, as it is both (1) indexed to its own stock and (2) would be classified in shareholders’ equity, if freestanding. As a result, this conversion option is not bifurcated and separately accounted for and is not recorded as a derivative financial instrument liability.

(2) The “Make Whole Fundamental Change” conversion option meets the definition of a derivative under ASC 815. This embedded conversion option does not meet the ASC 815–10–15 scope exception, since this conversion option cannot be considered indexed to its own stock. As a result, the conversion option has been bifurcated from the host contract, the 7% Notes, and separately accounted for and is recorded as a derivative financial instrument liability.

The Company’s market price on the date of issuance was \$15.24 and the stated conversion price is \$9.00 per share. The Company recorded a BCF, totaling \$100,536, as a contra liability (discount) that will be amortized into the income statement (via interest charge) over the life of the 7% Notes. For the year ended December 31, 2010, \$14,442 of the BCF was amortized and reflected as interest expense in the statement of operations (\$17,000 for the period from October 14, 2009 to December 31, 2009).

The amount regarding the 7% Notes presented in the consolidated balance sheets is analyzed as follows:

	<u>7% Notes</u>
7% Notes — initially issued	\$ (145,000)
Partial conversion of the convertible senior notes	20,000
7% Notes — outstanding	(125,000)
Beneficial Conversion Feature	100,536
Amortization of the Beneficial Conversion Feature	(17,000)
Make whole fundamental change	34
Balance at December 31, 2009	(41,430)
Amortization of the Beneficial Conversion Feature	(14,442)
Make whole fundamental change	(5)
Balance at December 31, 2010	\$ (55,877)

17. CAPITAL LEASE OBLIGATIONS

In November 2010, the Company entered into an agreement with Lemissoler Maritime Company W.L.L. for the sale and immediate bareboat leaseback of four dry bulk vessels comprised of three Capesize vessels, the Brazil, the Australia, and the China, as well as the Panamax vessel Grand Rodosi. Total consideration for

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the sale was \$86,800 and the bareboat leaseback charter period is eight years. NewLead retains call options to buy the vessels back during the lease period at pre-determined decreasing prices and is obligated to repurchase the vessels for approximately \$40,000 at the end of the lease term. The repurchase obligation can be paid partially in cash and partially in common shares, at the Company's option.

The Company concluded that it has retained substantially all of the benefits and risks associated with such vessels and has treated the transaction merely as financing, resulting in an immediate loss of \$2,728 (for those vessels where their fair value was below their carrying amount) and deferred gain of \$10,540 (for those vessels where their fair values was above their carrying amount) which is amortized over the life of each vessel. Such amortization for the year ended December 31, 2010 amounted to \$141, therefore, the unamortized portion as of December 31, 2010 amounted to \$10,399.

The annual future minimum lease payments under the capital leases, for the vessels described above, together with the present value of the net minimum lease payments required to be made after December 31, 2010, are as follows:

Description	Amount
December 31, 2011	\$ 14,592
December 31, 2012	14,592
December 31, 2013	13,619
December 31, 2014	8,755
December 31, 2015	8,755
Thereafter	64,807
Total minimum lease payments	125,120
Less: imputed interest	(40,153)
Present value of minimum lease payments	84,967
Current portion of capitalized lease obligations	7,648
Long term capitalized lease obligations	\$ 77,319

The Company, pursuant to the sale leaseback transaction, entered into an agreement with Lemissoler Maritime Company W.L.L.: (i) to issue 36,480 common shares issuable upon execution of the agreement; (ii) on each of the first and second anniversaries of the date of the agreement, to deliver, at the Company's option, either cash of \$182,400 or a number of common shares having a value of \$182,400, based on a common share value equal to 120% of the 30-day average immediately preceding such anniversary; and (iii) on each of the third through seventh anniversaries of the date of the agreement, to deliver, at the Company's option, either cash of \$109,400 or a number of common shares having a value of \$109,400, based on a common share value equal to 120% of the 30-day average immediately preceding such anniversary. The cash or common shares that may be delivered on such anniversary dates are subject to downward adjustment upon the occurrence of certain events.

18. SHARE BASED COMPENSATION*Equity Incentive Plan*

The Company's 2005 Equity Incentive Plan (the "Plan") is designed to provide certain key persons, on whose initiative and efforts the successful conduct of the Company depends, with incentives to: (a) enter into and remain in the service of the Company, (b) acquire a proprietary interest in the success of the Company, (c) maximize their performance, and (d) enhance the long-term performance of the Company.

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On May 29, 2009, the Company amended the Plan to: (a) increase the number of common shares reserved for issuance to 83,334 in order for the Company to best compensate its officers, directors and employees, and (b) ensure that no incentive share options shall be granted under the Plan from and following May 29, 2009.

On December 22, 2009, the Company's new management further amended the Plan to increase the number of common shares reserved for issuance to 583,334 to better enable the Company to offer equity incentives to its officers, directors and other employees.

In addition, the Company may grant restricted common shares and share options to third parties and to employees outside of the Plan.

Restricted Common Shares

The Company measures share-based compensation cost at grant date, based on the estimated fair value of the restricted common share awards, which is determined by the closing price of the Company's common shares as quoted on the Nasdaq Stock Market on the grant date and recognizes the cost as expense on a straight-line basis over the requisite service period.

During the year ended December 31, 2010 (Successor), the Company recognized compensation cost related to the Company's restricted shares of \$1,838. During the periods October 14 to December 31, 2009 (Successor), January 1 to October 13, 2009 (Predecessor), and for the year ended December 31, 2008 (Predecessor), the Company recognized compensation cost related to the Company's restricted shares of \$3,552, \$680, and \$1,040, respectively

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A summary of the activity for restricted share awards during the year ended December 31, 2010, the periods October 14 to December 31, 2009, January 1 to October 13, 2009 and the year ended December 31, 2008 is as follows:

	<u>Number of Shares</u>	<u>Weighted Average Fair Values</u>	<u>Weighted Average Vesting Period (Years)</u>
Outstanding and non-vested shares, as of January 1, 2008			
(Predecessor)	8,334	\$ 103.68	0.8
Granted ⁽¹⁾	28,750	38.88	1.2
Vested	(17,084)	70.08	—
Outstanding and non-vested shares, as of December 31, 2008			
(Predecessor)	20,000	39.36	1.6
Granted ⁽²⁾	7,293	15.24	0.0
Vested	(27,293)	32.87	—
Outstanding and non-vested shares, as of October 13, 2009			
(Predecessor)	—	—	0.0
Granted ⁽³⁾	390,001	15.13	0.8
Vested	(208,334)	15.24	—
Outstanding and non-vested shares, as of December 31, 2009			
(Successor)	181,667	15.01	1.8
Granted ⁽⁴⁾	12,085	11.04	1.2
Outstanding and non-vested shares, as of December 31, 2010			
(Successor)	193,752	\$ 14.76	1.7

(1) 18,750 shares vest over a three-year period, 8,334 shares had immediate vesting and 1,666 shares vests over a two-year period. Vesting for these shares was accelerated on the date of recapitalization.

(2) Vested on the date of the recapitalization.

(3) 208,334 shares had immediate vesting, 166,667 have a two-year vesting schedule (at January 1, 2011, and 2012), while 15,000 vests in three years (at January 1, 2011, 2012, and 2013).

(4) 6,668 shares were granted on January 1, 2010 and vest over a one year period (January 1, 2011). 5,417 shares were granted on April 15, 2010 out of which 3,750 vest in three years (at January 1, 2011, 2012 and 2013) and 1,667 vest over a one year period (January 1, 2011).

Compensation cost of \$660 related to non-vested shares will be primarily recognized up to December 31, 2012.

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Share options

The summary of share option awards is summarized as follows (in thousands except per share data):

	<u>Number of Options</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Fair Value</u>	<u>Weighted Average Vesting Period (Years)</u>
Outstanding, as of January 1, 2008 (Predecessor)	—	\$ —	\$ —	—
Granted ⁽¹⁾	25,000	104.00	6.20	3.0
Outstanding, as of December 31, 2008 (Predecessor)	25,000	104.00	6.20	3.0
Outstanding, as of October 13, 2009 (Predecessor)	25,000	104.00	6.20	3.0
Granted ⁽²⁾	250,000	19.80	6.25	3.0
Outstanding, as of December 31, 2009 (Successor)	275,000	27.45	6.24	3.0
Outstanding, as of December 31, 2010 (Successor)	275,000	27.45	6.99	3.0
Exercisable at December 31, 2010	129,167	\$ 36.10	\$ 6.90	—

(1) In 2008, the Company granted 25,000 share options to purchase common shares subject to a vesting period of three annual equal installments. The fair value of these share option awards has been calculated based on the Binomial lattice model method. The Company used this model given that the options granted are exercisable at a specified time after vesting period (up to 10 years). The assumptions utilized in the Binomial lattice valuation model for the share option included a dividend yield of 5% and an expected volatility of 43%. For the first two vesting dates, the risk-free interest rate was 3.8% and the fair value per share option amounted to \$6.60 with an expected life of 6 years. For the third vesting date, the risk-free interest rate was 4.6% with an expected life of 10 years, while the fair value per share option amounted to \$5.40. On October 13, 2009, all these shares were vested due to the recapitalization.

(2) In 2009, the Company granted 250,000 share options to purchase common shares, which vest equally over 36 months and are subject to accelerated vesting upon certain circumstances. The fair value of these share option awards has been calculated based on the Binomial lattice model method. The Company used this model given that the options granted are exercisable at a specified time after vesting period (through five years from October 13, 2009). Pursuant to the Board of Directors resolution dated October 14, 2010, the exercisable period of these share options extended for additional five years, i.e. until October 13, 2019. The additional cost of \$59 will be expensed in the statement of operations according to the vesting schedule of the options. The assumptions utilized in the Binomial lattice valuation model for the share option included a dividend yield of 0% and an expected volatility of 90%. The risk-free interest rate was 2.3% and the weighted average fair value per share option amounted to \$6.25.

During the year ended December 31, 2010 (Successor), the Company recognized share-based compensation cost of \$842. During the periods October 14 to December 31, 2009 (Successor), January 1 to October 13, 2009 (Predecessor), and the year ended December 31, 2008 (Predecessor), the Company recognized share-based compensation cost of \$406, \$113 and \$43, respectively.

Unrecognized compensation of \$372 will be recognized in future years to the date of the full vesting of all share options, September 30, 2012.

The weighted average contractual life of the share options outstanding as of December 31, 2010 was 8.7 years.

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As of December 31, 2010, the intrinsic value of the Company's share options was \$0, since the share price of the Company's common shares was less than the exercise price.

19. COMMON SHARES AND DIVIDENDS

Common Shares

As a result of the business combination that occurred on April 1, 2010 (refer to Note 5 "Business Combination"), the Company's share capital was increased by 700 thousand shares, which reflected the consideration transferred to Grandunion to complete the business combination.

As a result of the issuance of restricted shares during the year ended December 31, 2010, the periods October 14, 2009 to December 31, 2009, January 1, 2009 to October 13, 2009, and for the year ended December 31, 2008, the Company's share capital was increased (amounts in thousand shares) by 13, 390, 7, and 29, respectively.

As a result of the 2009 recapitalization and the partial conversion of the 7% Notes, during the period October 14 to December 31, 2009 the Company's share capital was also increased by 1,582 and 2,222 thousand shares, respectively.

Dividends

During the years ended December 31, 2010 and 2009, the Company did not pay dividends as a result of the decision in September 2008 by the board of directors to suspend the payment of cash dividends. During the year ended December 31, 2008, the Company paid dividends of \$1.20 per share (approximately \$2,900) to existing shareholders.

It is noted that a reverse share split on the Company's shares was announced with an effective date August 3, 2010 (refer to Note 1 "Description of Business").

20. SEGMENT INFORMATION

The Company has two reportable segments from which it derives its revenues: Wet Operations and Dry Operations. The reportable segments reflect the internal organization of the Company and are strategic businesses that offer different products and services. The Wet Operations typically consists of tankers transporting several different refined petroleum products simultaneously in segregated, coated cargo tanks, while the Dry Operations consist of transportation and handling of bulk cargoes through ownership, operation, and trading of vessels.

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The Company measures segment performance based on loss from continuing operations. Inter-segment sales and transfers are not significant and have been eliminated and are not included in the following tables. Summarized financial information concerning each of the Company's reportable segments is as follows:

	Wet			Dry			Total		
	Successor		Predecessor	Successor		Predecessor	Successor		Predecessor
	Year Ended December 31, 2010	October 14, to December 31, 2009	January 1, to October 13, 2009	Year Ended December 31, 2010	October 14, to December 31, 2009	January 1, to October 13, 2009	Year Ended December 31, 2010	October 14, to December 31, 2009	January 1, to October 13, 2009
Operating revenue	\$ 45,601	\$ 9,201	\$ 33,564	\$ 57,599	\$ 4,895	\$ —	\$ 103,200	\$ 14,096	\$ 33,564
Commissions	(1,268)	(292)	(769)	(1,077)	(115)	—	(2,345)	(407)	(769)
Voyage expenses	(17,495)	(4,548)	(8,574)	(1,298)	(86)	—	(18,793)	(4,634)	(8,574)
Vessel operating expenses	(18,046)	(4,694)	(22,681)	(21,173)	(1,836)	—	(39,219)	(6,530)	(22,681)
General and administrative expenses	(6,045)	(1,766)	(4,553)	(5,136)	(540)	—	(11,181)	(2,306)	(4,553)
Management fees	(829)	(194)	(900)	(178)	(121)	—	(1,007)	(315)	(900)
Other income/(expense), net	2	—	40	(7)	—	—	(5)	—	40
Operating (loss) / income before depreciation and amortization	1,920	(2,293)	(3,873)	28,730	2,197	—	30,650	(96)	(3,873)
Depreciation and amortization expense	(18,992)	(2,989)	(11,813)	(20,566)	(1,855)	—	(39,558)	(4,844)	(11,813)
Impairment losses	(39,515)	—	(68,042)	—	—	—	(39,515)	—	(68,042)
Segment operating (loss) / income	(56,587)	(5,282)	(83,728)	8,164	342	—	(48,423)	(4,940)	(83,728)
Transaction costs	(931)	(6,702)	(3,442)	(409)	(2,234)	—	(1,340)	(8,936)	(3,442)
Straight line revenue	—	—	—	(467)	—	—	(467)	—	—
Compensation costs	(1,444)	(587)	(371)	(1,236)	(196)	—	(2,680)	(783)	(371)
Provision for doubtful receivables	(204)	—	—	(187)	—	—	(391)	—	—
Gain / (loss) on sale from vessels	1,168	—	—	(2,728)	—	—	(1,560)	—	—
Interest and finance expense, net	(22,939)	(18,372)	(10,928)	(21,960)	(5,624)	—	(44,899)	(23,996)	(10,928)
Interest income	336	177	9	214	59	—	550	236	9
Change in fair value of derivatives	1,179	1,537	3,012	413	1,017	—	1,592	2,554	3,012
Loss from continuing operations	\$ (79,422)	\$ (29,229)	\$ (95,448)	\$ (18,196)	\$ (6,636)	\$ —	\$ (97,618)	\$ (35,865)	\$ (95,448)
Total assets	\$ 262,967	\$ 388,832	—	\$ 498,766	\$ 96,537	—	\$ 761,733	\$ 485,369	—
Goodwill	\$ 53,966	\$ 65,768	—	\$ 27,624	\$ 20,268	—	\$ 81,590	\$ 86,036	—
Long lived assets	\$ 171,948	\$ 179,516	—	\$ 315,721	\$ 73,599	—	\$ 487,669	\$ 253,115	—

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	<u>Wet</u>	<u>Dry</u>	<u>Total</u>
	<u>Year Ended</u>	<u>Predecessor</u>	<u>Year Ended</u>
	<u>December 31,</u>	<u>Year Ended</u>	<u>December 31,</u>
	<u>2008</u>	<u>December 31,</u>	<u>2008</u>
	<u>2008</u>	<u>2008</u>	<u>2008</u>
Operating revenue	\$ 56,519	\$ —	\$ 56,519
Commissions	(689)	—	(689)
Voyage expenses	(6,323)	—	(6,323)
Vessel operating expenses	(19,798)	—	(19,798)
General and administrative expenses	(6,733)	—	(6,733)
Management fees	(1,404)	—	(1,404)
Other expense, net	2	—	2
Operating (loss) / income before depreciation and amortization	21,574	—	21,574
Depreciation and amortization expense	(15,040)	—	(15,040)
Impairment losses	—	—	—
Segment operating (loss) / income	6,534	—	6,534
Transaction costs	—	—	—
Straight line revenue	—	—	—
Compensation costs	(1,083)	—	(1,083)
Provision for doubtful receivables	—	—	—
Gain on sale from vessels	—	—	—
Interest and finance expense, net	(15,741)	—	(15,741)
Interest income	232	—	232
Change in fair value of derivatives	(6,515)	—	(6,515)
Loss from continuing operations	\$ (16,573)	\$ —	\$ (16,573)

Segment Operating Revenue by Charterers

The Company reports financial information and evaluates its revenues by total charter revenues. Although revenue can be identified for different types of charters, management does not identify expenses, profitability or other financial information for different charters.

During the year ended December 31, 2010, the Company received 43% of its revenue from continuing operations from three charterers (23%, 10% and 10%, respectively). During the period January 1 to October 13, 2009, the Company received 65% of its revenue from continuing operations from three charterers (32%, 17%, and 16%, respectively). During the period October 14 to December 31, 2009, the Company received 55% of its revenue from continuing operations from three charterers (22%, 21%, and 12%, respectively). During the year ended December 31, 2008, the Company received 65% of its revenue from continuing operations from three charterers (35%, 19% and 11%, respectively).

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21. FINANCIAL INSTRUMENTS

The principal financial assets of the Company consist of cash and cash equivalents, trade receivables and other assets. The principal financial liabilities of the Company consist of long-term bank loans, the 7% Notes, capital lease obligations, accounts payable and accrued liabilities.

Fair Values

Derivative financial instruments are stated at their fair values. The carrying amounts of the following financial instruments approximate their fair values: cash and cash equivalents and restricted cash accounts, trade and other receivables, due to / from managing agent, capital lease obligations and trade and other payables. The fair values of long-term loans approximate the recorded values, generally, due to their variable interest rates. The 7% Notes have a fixed rate and their fair value of \$125,488 was determined based on quoted market prices.

Warrant Derivative Liability

The Company recorded the warrant derivative liability at fair value, in the consolidated balance sheet for the year ended December 31, 2009 under "Derivative financial instruments", with changes in fair value recorded in "Change in fair value of derivatives" in the consolidated statements of income.

During the fourth quarter of 2009, the Company authorized the issuance to a third party, a six-year warrant to purchase 416,667 common shares for advisory services provided in connection with the recapitalization.

In connection with the issuance of the 7% Notes, the Company issued to the Investment Bank of Greece warrants to purchase up to 416,667 common shares at an exercise price of \$24.00 per share, with an expiration date of October 13, 2015, which resulted in \$3,940 of debt issuance cost that were recorded as deferred issuance cost. These warrants were fair valued as of October 13, 2009 and are amortized over a period of six years. The warrants are marked to market at every reporting date.

For the period from October 14, 2009 to December 31, 2009, the total fair value change on warrants amounted to approximately \$2,636 (\$0 for the period ended January 1, 2009 to October 13, 2009 and \$0 for the year ended December 31, 2008). For the period from January 1, 2010 to September 29, 2010, the total fair value change on warrants was a gain of \$1,855. On September 30, 2010, the Company and the warrant holders amended certain terms of the warrants and the amended warrants now qualify for equity classification. Upon the amendment, the amended warrants were remeasured at fair value, which included the cash paid to certain warrant holders. The amendment resulted in the warrant liability of \$3,124 being reclassified to Additional Paid-in Capital in Shareholders Equity. An additional consulting expense of \$600 was recognized in the statement of operations for the year ended December 31, 2010 to amend the warrants.

Interest Rate Risk

Interest rate risk arises on bank borrowings. The Company monitors the interest rate on borrowings closely to ensure that the borrowings are maintained at favorable rates. The interest rates relating to the long-term loans are disclosed in Note 15, "Long-term Debt".

Concentration of Credit Risk

The Company believes that no significant credit risk exists with respect to the Company's cash due to the spread of this risk among various different banks and the high credit status of these counter-parties. The

NEWLEAD HOLDINGS LTD.

Notes to the Consolidated Financial Statements

(All amounts expressed in thousands of U.S. dollars except share and per share data and where otherwise specified)

Company is also exposed to credit risk in the event of non-performance by counter-parties to derivative instruments. However, the Company limits this exposure by entering into transactions with counter-parties that have high credit ratings. Credit risk with respect to trade accounts receivable is reduced by the Company by chartering its vessels to established international charterers.

Interest Rate Swaps

Outstanding swap agreements involve both the risk of a counter-party not performing under the terms of the contract and the risk associated with changes in market value. The Company monitors its positions, the credit ratings of counter-parties and the level of contracts it enters into with any one party. The counter-parties to these contracts are major financial institutions. The Company has a policy of entering into contracts with counter-parties that meet stringent qualifications and, given the high level of credit quality of its derivative counter parties, the Company does not believe it is necessary to obtain collateral arrangements.

The Company has entered into various interest rate swap agreements in order to hedge the interest expense arising from the Company's long-term borrowings detailed in Note 15. The interest rate swaps allow the Company to raise long-term borrowings at floating rates and swap them into effectively fixed rates. Under the interest rate swaps, the Company agrees with the counter-party to exchange, at specified intervals, the difference between a fixed rate and floating rate interest amount calculated by reference to the agreed notional amount.

The details of the Company's swap agreements are as follows:

Counter-party

Interest rate swaps	Value Date	Termination Date	Contract Notional Amount	Fixed Rate	Floating Rate	Fair Value	
						As of December 31,	As of December 31,
						2010	2009
SMBC Bank	7/3/2006	4/4/2011	\$ 20,000	5.63%	3-month LIBOR	\$ (277)	\$ (1,475)
Bank of Ireland	7/3/2006	4/4/2011	\$ 20,000	5.63%	3-month LIBOR	(277)	(1,484)
HSH Nordbank	7/3/2006	4/4/2011	\$ 20,000	5.63%	3-month LIBOR	(277)	(1,483)
Nordea Bank	7/3/2006	4/4/2011	\$ 20,000	5.63%	3-month LIBOR	(277)	(1,481)
Bank of Scotland	7/3/2006	4/4/2011	\$ 20,000	5.63%	3-month LIBOR	(277)	(1,481)
Nordea Bank*	4/3/2008	4/4/2011	\$ 23,333	4.14%	3-month LIBOR	(233)	(1,195)
Bank of Scotland**	4/3/2008	4/3/2011	\$ 46,667	4.28%	3-month LIBOR	(242)	(1,249)
Marfin Egnatia Bank***	9/2/2009	9/2/2014	\$ 37,400	4.08%	3-month LIBOR	(1,931)	(1,926)
Bank of Scotland	7/6/2010	10/15/15	\$ 63,636	4.01%	3-month LIBOR	(5,027)	—
Bank of Scotland	7/6/2010	10/15/15	\$ 13,333	4.01%	3-month LIBOR	(1,143)	—
						\$ (9,961)	\$ (11,774)

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	<u>Fair Value</u>	
	<u>As of December 31, 2010</u>	<u>As of December 31, 2009</u>
Short-term	\$ (5,319)	\$ (9,687)
Long-term	(4,642)	(2,087)
	<u>\$ (9,961)</u>	<u>\$ (11,774)</u>

* Synthetic swap including interest rate cap detailed as follows:

<u>Counter-party</u>	<u>Value Date</u>	<u>Termination Date</u>	<u>Notional Amount</u>	<u>Cap</u>
Nordea	4/3/08	4/4/11	\$ 23,333	4.14%

** Synthetic swap including interest rate floor detailed as follows:

<u>Counter-party</u>	<u>Value Date</u>	<u>Termination Date</u>	<u>Notional Amount</u>	<u>Floor</u>
Bank of Scotland	4/3/08	4/3/11	\$ 23,333	4.285%

*** As part of the contribution from Grandunion on October 13, 2009, the Company assumed a \$37,400 interest rate swap by Marfin Egnatia Bank.

The total fair value change of the interest rate swaps indicated above is reflected in interest expense within the consolidated statements of operations. These amounts were a gain of \$367 for the year ended December 31, 2010, a gain of \$3,012 and \$2,554 for the periods from January 1, 2009 to October 13, 2009 and October 14, 2009 to December 31, 2009, respectively. For the year ended December 31, 2008 the amount was a loss of \$6,515. The related asset or liability is shown under derivative financial instruments in the balance sheet.

Fair Value Hierarchy

The guidance on fair value, prescribes methods for measuring fair value, establishes a fair value hierarchy based on the inputs used to measure fair value and expands disclosures about the use of fair value measurements.

The following tables present the Company's assets and liabilities that are measured at fair value on a recurring basis and are categorized using the fair value hierarchy. The fair value hierarchy has three levels based on the reliability of the inputs used to determine fair value.

	<u>Total</u>	<u>Quoted Prices in Active Markets for Identical Assets (Level 1)</u>	<u>Significant Other Observable Inputs (Level 2)</u>	<u>Significant Unobservable Inputs (Level 3)</u>
December 31, 2009				
Liabilities				
Interest rate swaps	\$ 11,774	\$ —	\$ 11,774	\$ —
Warrants	\$ 5,273	\$ —	\$ 5,273	\$ —
Make Whole Fundamental Change	\$ 42	\$ —	\$ 42	\$ —
December 31, 2010				
Liabilities				
Interest rate swaps	\$ 9,961	\$ —	\$ 9,961	\$ —
Make Whole Fundamental Change	\$ 0	\$ —	\$ 0	\$ —

NEWLEAD HOLDINGS LTD.**Notes to the Consolidated Financial Statements**

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The Company's derivative instruments are valued using pricing models and the Company generally uses similar models to value similar instruments. Where possible, the Company verifies the values produced by its pricing models to market prices. Valuation models require a variety of inputs, including contractual terms, market prices, yield curves, credit spreads, measures of volatility, and correlations of such inputs. The Company's derivatives trade in liquid markets, and as such, model inputs can generally be verified and do not involve significant management judgment. Such instruments are typically classified within Level 2 of the fair value hierarchy.

22. COMMITMENTS AND CONTINGENT LIABILITIES**(1) Commitments****Rental Agreements**

During the first quarter of 2010, the Company terminated two office rental agreements with a related party, Domina Petridou O.E, a company with common shareholders (see Note 24). These rental agreements had a monthly rate of €4,000 each, plus stamp duties, with duration until November 2015 and September 2016, respectively.

The Company has entered into office and warehouse rental agreements with a related party, Terra Stabile A.E., a shareholder of which is Michail Zolotas, the Company's Vice Chairman, President and Chief Executive Officer, (see Note 24) at a monthly rate of approximately €26,000, which is expected to be paid in shares rather than in cash. These rental agreements vary in duration; the longest agreement will expire in April 2022.

The committed rent payments for Terra Stabile A.E. as of December 31, 2010 were:

December 31, 2011	\$ 423
December 31, 2012	429
December 31, 2013	435
December 31, 2014	442
December 31, 2015	449
Thereafter	2,823
	\$ 5,001

Commercial and Technical Ship Management Agreements

At December 31, 2009, the vessel-owning companies of the Newlead Ayra, the Newlead Fortune, the High Land, the High Rider and the Ostria had technical ship management agreements with International Tanker Management Limited ("ITM") based in Dubai which were cancellable by either party with two-month notice. The agreed annual management fees were approximately \$165 per vessel, for both, 2010 and 2009. During the year ended December 31, 2010, the vessel owning companies of the Newlead Avra and the Newlead Fortune terminated their ship management agreements with ITM. Accordingly, the vessel owning companies of the vessels have signed agreements for the provision of both technical and commercial ship management services with Newlead Shipping S.A., a company that was controlled by Grandunion and that has been NewLead's subsidiary since the April 1, 2010 transaction. The agreed annual management fees were approximately \$197 per vessel; however, all payments to Newlead Shipping have been eliminated since the date on which Newlead Shipping became a subsidiary of Newlead.

The Chinook had a technical ship management agreement with Ernst Jacob Ship Management GmbH ("Ernst Jacob") which was terminated upon the sale of the vessel on April 15, 2010. In January 2010, the

NEWLEAD HOLDINGS LTD.

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vessel owning company of the Nordanvind also signed a technical ship management agreement with Ernst Jacob which was terminated upon the sale of the vessel on September 7, 2010. The agreed annual management fees per vessel for 2010 and 2009 were approximately €153,000 and €150,000, respectively (equal to approximately \$200).

At December 31, 2009, the Australia had a commercial and technical ship management agreement with Stamford Navigation Inc., or Stamford, and the China and Brazil each had a commercial and technical ship management agreement with Newfront Shipping S.A., or Newfront. During the first quarter of 2010, these agreements were terminated. Subsequently, the vessel owning companies signed agreements for the provision of commercial and technical ship management services with Newlead Bulkers S.A., or Newlead Bulkers, a company which was controlled by Grandunion and currently is NewLead's subsidiary. The annual management fee under each of these agreements was approximately \$19 per vessel; however, all payments to Newlead Shipping have been eliminated since the date on which Newlead Bulkers became a subsidiary of NewLead.

Magnus Carriers Corporation ("Magnus Carriers"), a company owned by two of the Company's former officers and directors, provided the ship-owning companies of the Newlead Avra, the Newlead Fortune, the High Land, the High Rider, the Ostria and the Chinook with non-exclusive commercial management services through commercial management agreements entered into in October 2007. These agreements were cancelled by the Company effective May 1, 2009.

As of December 31, 2010, the commercial and technical management services of all the Company's owned and operated vessels are provided in-house by Newlead Shipping and Newlead Bulkers. Outstanding balances, either due or from managing agents and related parties as at December 31, 2010, relate to amounts generated prior to the termination of the agreements described above.

Commitment exit

In the third quarter of 2010, the Company entered into an agreement for the acquisition of one 2006 built, 37,582 dwt, MR1 Tanker for approximately \$31,800, which was to be delivered in the fourth quarter of 2010. On December 1, 2010, the Company cancelled such agreement and subsequently agreed a mutual settlement in full and final settlement of all the claims under the subject sale and purchase contract. In compliance with the terms and conditions of this settlement agreement, dated December 21, 2010, the Company released to the sellers the deposit of \$3,177 and further incurred a termination fee of \$1,950, which was paid in January 2011.

Newbuildings

As of December 31, 2010, remaining commitments for newbuildings upon their final delivery was \$110,700 (please refer to Note 10).

(2) Contingencies

The Company is involved in various disputes and arbitration proceedings arising in the ordinary course of business. Provisions have been recognized in the financial statements for all such proceedings in which the Company believes that a liability may be probable, and for which the amounts are reasonably estimable, based upon facts known at the date the financial statements were prepared. For the period ended December 31, 2010, the Company has provided in respect of all claims an amount equal to \$5,380 (amount includes continuing

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and discontinued operations). Other than those listed below, there are no material legal proceedings to which the Company is a party other than routine litigation incidental to the Company's business:

- The charterers of the Newlead Avra notified the Company in October 2008 of their intention to pursue the following claims and notified the appointment of an arbitrator in relation to them:
 - a) Damages suffered by sub-charterers of the vessel relating to remaining on board cargo in New York in September 2007;
 - b) Damages suffered by sub-charterers of the vessel as a result of a change in management and the consequent dispute regarding oil major approval from October 2007; and
 - c) Damages suffered by sub-charterers of the vessel resulting from grounding in Houston in October 2007.

The Company does not anticipate any amount in excess of the amount accrued to be material to the consolidated financial statements.

- The charterers of the Newlead Fortune notified the Company in October 2008 of their intention to pursue the following claims, and notified the appointment of an arbitrator in relation to them:
 - a) Damages as a result of a change in management and the consequent dispute regarding oil major approval from October 2007; and
 - b) Damages resulting from the creation of hydrogen sulphide in the vessel's tanks at two ports in the United States.

The Company does not anticipate any amount in excess of the amount accrued to be material to the consolidated financial statements.

- The vessel Grand Rodosi was involved in a collision in October 2010 with the fishing vessel "Apollo S". As of December 31, 2010, the Company is not able to reliably measure the expected possible losses. However, any amounts to be claimed are 100% covered by the P&I Club:
 - a) Value of "Apollo S" plus expenses — the Company has a provided guarantee for A\$19,321,242;
 - b) Damage to wharf — the Company has a provided guarantee for A\$3,387,500; and
 - c) Pollution cleanup costs — the Company has a provided guarantee for A\$500,000.
- The charterers of the Newlead Esmeralda notified the Company in November 2010 of their intention to pursue the following claim. After discussions with the charterers in March 2011, an agreement was reached that neither party would seek security in the future for the claims relating to the grounding that occurred in March 2010. Based on advice of counsel, the Company believes the charterer's chances of success are remote. Below is a list of the claims:
 - a) Damages for lost income as a result of cargo that was not able to be loaded, subsequent to vessel's grounding in March 2010;
 - b) Damages resulting from the prolonged storage costs due to the inability to place cargo on board the vessel; and
 - c) Anticipated costs.

The Company accrues for the cost of environmental liabilities when management becomes aware that a liability is probable and is able to reasonably estimate the probable exposure. Currently, management is not

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aware of any such claims or contingent liabilities, which should be disclosed, or for which a provision should be established in the accompanying consolidated financial statements. The Company's protection and indemnity (P&I) insurance coverage for pollution is \$1,000,000 per vessel per incident.

23. TAXATION

The Company is not subject to tax on international shipping income in its respective jurisdictions of incorporation or in the jurisdictions in which their respective vessels are registered. However, the vessel-owning companies' vessels are subject to tonnage taxes, which have been included in the vessel operating expenses in the accompanying statements of operations.

Pursuant to the U.S. Internal Revenue Code (the "Code"), U.S.-source income from the international operation of vessels is generally exempt from U.S. tax if the company operating the vessels meets certain requirements. Among other things, in order to qualify for this exemption, the company operating the vessels must be incorporated in a country which grants an equivalent exemption from income taxes to U.S. corporations.

All of the Company's ship-operating subsidiaries satisfy these initial criteria. In addition, these companies must be more than 50% owned by individuals who are residents, as defined, in the countries of incorporation or another foreign country that grants an equivalent exemption to U.S. corporations. These companies also currently satisfy the more than 50% beneficial ownership requirement. In addition, should the beneficial ownership requirement not be met, the management of the Company believes that by virtue of a special rule applicable to situations where the ship operating companies are beneficially owned by a publicly traded company like the Company, the more than 50% beneficial ownership requirement can also be satisfied based on the trading volume and the anticipated widely-held ownership of the Company's shares, but no assurance can be given that this will remain so in the future, since continued compliance with this rule is subject to factors outside of the Company's control.

24. TRANSACTIONS INVOLVING RELATED PARTIES

Management Services and Commissions

Magnus Carriers, a company owned by two of our former officers and directors, is a company that provided commercial management services to certain Company's vessel-owning companies at a commission of 1.25% of hires and freights earned by the vessels, or fees of \$7 per month per vessel where no 1.25% commission was payable. In addition, Magnus Carriers was entitled to a commission of 1% on the sale or purchase price in connection with a vessel sale or purchase. These agreements were cancelled by the Company on May 1, 2009. For the year ended December 31, 2010, for the period January 1, 2009 to October 13, 2009, for the period October 14, 2009 to December 31, 2009 and for the year ended December 31 2008, these commissions and management fees were \$135, \$413, \$0 and approximately \$1,687, respectively (figures include continuing and discontinued operations).

Sea Breeze

As part of attaining revenue (commissions) for the Company's vessels, the Company contracted with a related entity, Sea Breeze Ltd., of which one of the former Company's directors is a shareholder. In addition, the Company paid 1% of the purchase price brokerage commission on the sale of the Saronikos Bridge and the MSC Seine, respectively. For the year ended December 31, 2010, for the period January 1, 2009 to October 13, 2009, for the period October 14, 2009 to December 31, 2009 and for the year ended December 31

NEWLEAD HOLDINGS LTD.

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2008, the commissions amounted to \$111, \$74, \$53 and \$0, respectively (figures include continuing and discontinued operations).

Newfront — Stamford

At December 31, 2009, the vessel Australia had technical ship management and commercial management agreements with Stamford and Newfront, and the vessels China and Brazil had technical ship management and commercial management agreements with Newfront. Stamford and Newfront are both related parties with common shareholders. The agreed annual management fees were approximately \$185 per vessel. During the first quarter of 2010, these agreements were terminated. Accordingly, the vessel owning companies signed agreements with Newlead Bulkers S.A. for the provision of commercial and technical ship management services (see below). For the year ended December 31, 2010, for the period January 1, 2009 to October 13, 2009 and for the period October 14, 2009 to December 31, 2009, the management fees for Newfront were approximately \$50, \$0 and \$81, respectively, and for Stamford were approximately \$28, \$0, and \$40, respectively. There was no ship management agreement with Newfront or Stamford during the year ended December 31, 2008.

Newlead Bulkers S.A.

Since April 1, 2010, Newlead Bulkers S.A. has been a subsidiary of the Company as a result of its acquisition from Grandunion described in Note 5 above and, consequently, any transactions with the rest of the group are fully eliminated since that date. Until March 31, 2010, when it was a related party due to the existence of common shareholders, Newlead Bulkers S.A. assumed the commercial and technical ship management services for the Australia, the China and the Brazil. The management fees for the year ended December 31, 2010 were \$59.

Newlead Shipping S.A.

Since April 1, 2010, Newlead Shipping S.A. has been a subsidiary of the Company as a result of its acquisition from Grandunion described in Note 5 above and, consequently, any transactions with the rest of the group are fully eliminated since that date. Until March 31, 2010, when it was a related party due to the existence of common shareholders, Newlead Shipping S.A. assumed the commercial and technical ship management services for the Newlead Avra and the Newlead Fortune. The management fees for the year ended December 31, 2010 were \$36.

Grandunion Inc.

In April 2010, the Company completed the acquisition of six vessels (four dry bulk vessels and two product tankers) and Newlead Shipping and its subsidiaries, an integrated technical and commercial management company, from Grandunion. For more details please refer to Note 5. In July 2010, the Company completed the acquisition of five dry bulk vessels from Grandunion including two newbuildings with long term quality time charters. See Note 11 for more details.

Terra Stabile A.E.

The Company leases office as well as warehouse spaces in Piraeus, Greece from Terra Stabile A.E., a shareholder of which is Michail Zolotas, the Company's Vice Chairman, President, Chief Executive Officer and member of the Company's Board of Directors. In November 2009, the Company entered with the landowner into a 12-year lease agreement in relation to the office space and on April 28, 2010 the Company

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entered into a 12-year lease agreement for the warehouse space (see Note 22). Total rent for the year ended December 31, 2010 was approximately \$340.

Domina Petridou O.E.

The Company leased office space in Glyfada, Greece from Domina Petridou O.E., a company of which one of the former Company's directors is a shareholder. In November 2005, the Company entered into a 10-year lease agreement with the landowner. In October 2007, the Company entered into an additional nine-year lease agreement with the landowner. These agreements were terminated in 2009 and in the first quarter of 2010 respectively (see Note 18). Total rent for the year ended December 31, 2010, for the periods January 1, 2009 to October 13, 2009, and October 14, 2009 to December 31, 2009 and for the year ended December 31, 2008 amounted to approximately \$17, \$113, \$25 and \$150, respectively.

Aries Energy Corporation

On April 15, 2010, the Company completed the acquisition of two Kamsarmaxes under construction for an aggregate consideration of approximately \$112,700 (including the assumption of newbuilding contract commitments and debt related to the two Kamsarmaxes) in exchange for the vessel Chinook as part of the same transaction. The purchase was completed pursuant to the terms of a Securities Purchase Agreement, dated February 18, 2010, with Aries Energy Corporation, a company with a common shareholder, and Bhatia International PTE Ltd., an unrelated third party. Gabriel Petrides, a former Board member and an affiliate of Rocket Marine, one of the Company's principal stockholders, is one of the principals of Aries Energy Corporation, one of the sellers of these vessels. The vote on Rocket Marine's shares is controlled by Grandunion pursuant to a voting agreement, and Mr. Petrides left the Company's board in October 2009. Accordingly, even though Rocket Marine is a principal stockholder, neither it nor Mr. Petrides has the ability to influence the Company. Management believes that the negotiations were conducted at arm's length and that the sale price is no less favorable than would have been achieved through arm's length negotiations with a wholly unaffiliated third party.

Transaction with other related party

During the year ended December 31, 2008, the Company paid a commission on the sale of the Arius of approximately \$200 to a brokerage firm, of which one of the former Company's directors is a shareholder.

25. DISCONTINUED OPERATIONS

From 2005 until 2008, the Company owned a number of container vessels, chartering them to its customers (the "Container Market"). During 2008 and the first half of 2009, the Company sold three container vessels and a product tanker to unaffiliated purchasers for approximately \$61,900. The gain on sale of these vessels was \$7,985.

On January 7, 2010, the Company sold the Saronikos Bridge to an unrelated party for net proceeds of \$5,348. The gain on the sale of the vessel amounted to \$1,226. The Company paid 1% of the purchase price as sales commission to a brokerage firm, of which one of the former Company's directors is a shareholder (refer to Note 24). The Company also paid a 1% commission to two unrelated brokerage firms, respectively, as well as, a 1% address commission.

On January 20, 2010, the Company sold the MSC Seine to an unrelated party for net proceeds of \$5,399. The gain on the sale of the vessel amounted to \$1,271. The Company paid 1% of the purchase price as sales commission to a brokerage firm, of which one of the former Company's directors is a shareholder (refer to

NEWLEAD HOLDINGS LTD.

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Note 24). The Company also paid a 1% commission to two unrelated brokerage firms, respectively, as well as, a 1% address commission.

The Company determined that the sale of these vessels met the requirements as discontinued operations, which are reflected in the Company's consolidated statements of income for all periods presented.

The following table represents the revenues and net income from discontinued operations:

	Successor		Predecessor	
	Year Ended December 31, 2010	October 14, 2009 to December 31, 2009	January 1, 2009 to October 13, 2009	Year Ended December 31, 2008
Operating Revenues	\$ 1,207	\$ 1,591	\$ 11,679	\$ 22,777
Net income / (loss)	\$ 2,769	\$ (2,007)	\$ (30,316)	\$ (23,255)

The reclassification to discontinued operations had no effect on the Company's previously reported consolidated net income. In addition to the financial statements themselves, certain disclosures have been modified to reflect the effects of these reclassifications on those disclosures.

26. SUBSEQUENT EVENTS

a) In February 2011, the Newlead Compass (72,934 dwt) and the Newlead Compassion (72,782 dwt) each have been chartered-out for a five-year period. The Newlead Compassion commenced its charter in May 2011 while the Newlead Compass is expected to commence its charter during the third quarter of 2011. The net daily charter-out rate for each vessel will be \$11.70 for the first year, \$13.65 for the second, third and fourth year and \$15.60 for the fifth year. In addition, during the term of the charters, NewLead will have a profit-sharing interest equal to 50% of the actual earnings up to \$26.00 per day and 30% above such amount.

b) In accordance with the board resolutions dated November 13, 2009, an annual restricted share grant in an aggregate amount of 8,335 restricted common shares was issued to the independent directors of the Board on February 1, 2011. These restricted common shares vest 100% on the first anniversary date of the grant. Moreover, the Company, in accordance with the 2005 equity incentive plan granted to its employees an aggregate amount of 365,250 common shares with an effective grant date April 1, 2011. These common shares vest 100% on the second anniversary date of the grant.

c) In March 2011, the Company announced that two of its product tankers, the Hiona and the Hiotissa, will participate in Scorpio's Handymax Tanker Pool ("SHTP"), a major tanker pool with more than 30 vessels currently participating. The Hiona (37,337 dwt, 2003-built) is expected to enter in the second quarter of 2011 and the Hiotissa (37,329 dwt, 2004-built) entered SHTP pool in April 2011 and both will participate for a minimum of one year.

d) On April 29, 2011, the vessel M/V Grand Venetico was renamed to M/V Newlead Venetico.

e) On May 9, 2011, the Company entered into a Loan Agreement with First Business Bank for a loan facility of up to \$12,000, in relation to the Newlead Prosperity, out of which \$11,921 has been drawn. The loan is payable in one balloon payment due in May 2013, unless the Company proceeds with a successful raising of equity of at least \$40,000 upon completion of which the loan must be prepaid in full. Borrowings under this loan facility currently bear an effective interest rate, including the margin, of approximately 7.3% (assuming current LIBOR of 0.252%, plus a 7.0% margin). This loan facility, includes, among other things, a value to loan ratio that must be at least 120% from January 1, 2013 until maturity date and financial covenants including: (i) a minimum market adjusted equity ratio (as defined in the loan facility) of 30% only for the financial year ending December 31, 2013; (ii) liquidity of not less than 5% of the total debt (as defined in the

NEWLEAD HOLDINGS LTD.

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loan facility) during the period the loan facility remains outstanding, , although the Company is not subject to such covenant throughout December 31, 2012; (iii) working capital (as defined in the loan facility) to be not less than zero dollars (\$0) during the period the loan facility remains outstanding; and (iv) a minimum interest coverage ratio (as defined in the loan facility), on a financial year basis of 2.5:1, only for the financial year ending December 31, 2013.

f) In June 2011, the Post Panamax newbuilding vessel, named the Newlead Endurance, was delivered from a Korean shipyard. The Company financed the vessel through a combination of cash from the balance sheet and a sale and bareboat leaseback transaction pursuant to an agreement with Northern Shipping Fund LLC. The consideration for the sale was \$37,000 and the bareboat leaseback charter period is seven years. NewLead retains call options to buy the vessel back during the lease period at pre-determined decreasing prices, at the end of each of the seven years starting from the first year, and it is obligated to repurchase the vessel for approximately \$26,500 at the end of the lease term. The repurchase obligation will be paid in cash. The net rate of the bareboat charter is \$9.5 per day throughout the lease period. NewLead will continue to earn charter hire on the current time charter on the vessel.

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SIGNATURES

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

NEWLEAD HOLDINGS LTD.

By: /s/ Michail Zolotas
Michail Zolotas
Chief Executive Officer

Dated: June 30, 2011

**NEWLEAD HOLDINGS LTD.
AMENDMENT
TO
2005 EQUITY INCENTIVE PLAN**

1) Section 1.3

The first sentence of Section 1.3 is hereby revised by also permitting the grant of options (other than incentive stock options) to "Consultants" of the Company.

Dated: 5th November, 2010
Commerzbank Aktiengesellschaft
as Bank
– and –
Grand Venetico Inc.
as Borrower
– and –
NewLead Holdings Ltd.
as Corporate Guarantor
– and –
Newlead Bulkers S.A.
as Approved Manager

THIRD SUPPLEMENTAL AGREEMENT
in relation to a Loan Agreement dated 10th November, 2006
for a secured loan facility of US\$18,000,000



Theo V. Sioufas & Co.
Law Offices
Piraeus

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THIS AGREEMENT is made this 5th day of November, 2010

B E T W E E N

- (1) **Grand Venetico Inc.**, as Borrower;
- (2) **Commerzbank Aktiengesellschaft**, as Bank; and
- (3) **NewLead Holdings Ltd.**, a company duly incorporated under the laws of Bermuda, having its registered office at Canon's Court, 22 Victoria Street, Hamilton, Bermuda (hereinafter called the "**Corporate Guarantor**", which expression shall include its successors in title); and
- (4) **Newlead Bulkers S.A.**, a company duly incorporated under the laws of the Republic of Liberia, having its registered office at 80 Broad Street, Monrovia, Liberia (the "**Approved Manager**", which expression shall include its successors in title);

AND IS SUPPLEMENTAL to a loan agreement dated 10th November, 2006 made between (1) **Grand Venetico Inc.**, a Marshall Islands corporation, as Borrower (therein and hereinafter called the "**Borrower**") and (2) **Commerzbank Aktiengesellschaft**, as lender (therein and hereinafter called the "**Bank**"), as amended and/or supplemented by (i) a First Supplemental Agreement dated 18th April, 2008 (the "**First Supplemental Agreement**") and (ii) a Second Supplemental Agreement dated 1st April, 2010 (the "**Second Supplemental Agreement**"), each made between (inter alios) the Bank and the Borrower (the said loan agreement as amended by the First Supplemental Agreement and the Second Supplemental Agreement and as the same may from time to time be further amended and/or supplemented is hereinafter called the "**Principal Agreement**"), on the terms and conditions of which the Bank made available to the Borrower a loan of Eighteen million United States Dollars (US \$18,000,000).

W H E R E A S :

- (A) pursuant to a Drawdown Notice from the Borrower to the Bank, the Bank has advanced to the Borrower the full amount of the Commitment on 13th November, 2006 namely Eighteen million United States Dollars (US \$18,000,000) (as the Borrower and the Corporate Guarantor hereby jointly and severally acknowledge);
- (B) the outstanding amount in respect of the Loan immediately prior to the date of this Agreement is US\$8,625,000 (United States Dollars Eight million six hundred twenty five thousand) as the Borrower and the Corporate Guarantor hereby jointly and severally acknowledge); and
- (C) the Borrower and (inter alia) the Corporate Guarantor have requested the Bank to consent to:
 - (a) the amendment of the repayment schedule of the Loan; and
 - (b) the amendment of the Principal Agreement as set out in Clause 5 hereof;

and the Bank has agreed so to do conditionally upon terms that (inter alia) the Principal Agreement shall be amended in the manner hereinafter set out. NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

- 1.1 Words and expressions defined in the Principal Agreement and not otherwise defined herein (including the Recitals hereto) shall have the same meanings when used in this Agreement.
- 1.2 In addition, in this Agreement the words and expressions specified below shall have the meanings attributed to them below:
- “**Effective Date**” means the date, not being later than 5th November, 2010 (or such later date as the Bank may agree) upon which all the conditions contained in Clause 4 shall have been satisfied and this Agreement shall become effective; and
- “**Loan Agreement**” means the Principal Agreement as hereby amended and as the same may from time to time be further amended and/or supplemented.
- 1.3 In this Agreement:
- (a) Where the context so admits words importing the singular number only shall include the plural and vice versa and words importing persons shall include firms and corporations;
 - (b) clause headings are inserted for convenience of reference only and shall be ignored in construing this Agreement;
 - (c) references to Clauses are to clauses of this Agreement save as may be otherwise expressly provided in this Agreement; and
 - (d) all capitalised terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Principal Agreement.

2. Representations and warranties

- 2.1 The Borrower and the Corporate Guarantor hereby jointly and severally represent and warrant to the Bank as at the date hereof that the representations and warranties set forth in the Principal Agreement and the Security Documents (updated mutatis mutandis to the date of this Agreement) are (and will be on the Effective Date) true and correct as if all references therein to “this Agreement” were references to the Principal Agreement as amended and supplemented by this Agreement.
- 2.2 In addition to the above the Borrower and the Corporate Guarantor hereby jointly and severally represent and warrant to the Bank as at the date of this Agreement that:

- a. each of the corporate Security Parties is duly formed, is validly existing and in good standing under the laws of the place of its incorporation has full power to carry on its business as it is now being conducted and to enter into and perform its obligations under the Principal Agreement and this Agreement and has complied with all statutory and other requirements relative to its business and does not have an established place of business in any part of the United Kingdom or the USA;
 - b. all necessary licences, consents and authorities, governmental or otherwise under this Agreement and the Principal Agreement have been obtained and, as of the date of this Agreement, no further consents or authorities are necessary for any of the Security Parties to enter into this Agreement or otherwise perform its obligations hereunder;
 - c. this Agreement constitutes the legal, valid and binding obligations of the Security Parties thereto enforceable in accordance with its terms;
 - d. the execution and delivery of, and the performance of the provisions of this Agreement do not, and will not contravene any applicable law or regulation existing at the date hereof or any contractual restriction binding on any of the Security Parties or its respective constitutional documents;
 - e. no action, suit or proceeding is pending or threatened against any of the Borrower and the Corporate Guarantor or its assets before any court, board of arbitration or administrative agency which could or might result in any material adverse change in the business or condition (financial or otherwise) of the Borrower or the Corporate Guarantor; and
 - f. none of the Borrower and the Corporate Guarantor is and at the Effective Date will be in default under any agreement by which it is or will be at the Effective Date bound or in respect of any financial commitment, or obligation.
- 3. Agreement of the Bank**

3.1 The Bank, relying upon each of the representations and warranties set out in Clause 2 hereby agree with the Borrower, subject to and upon the terms and conditions of this Agreement and in particular, but without limitation, subject to the fulfilment of the conditions precedent set out in Clause 4, to consent to the amendment of the repayment schedule of the Loan and that the Principal Agreement be amended in the manner more particularly set out in Clause 5.1.

4. Conditions

4.1 The agreement of the Bank contained in Clause 3.1 shall be expressly subject to the fulfilment of the conditions set out in this Clause and further subject to the condition that:

- a. the Bank shall have received on or before the Effective Date in form and substance satisfactory to the Bank and its legal advisers:
 - i. a certificate of good standing or equivalent document issued by the competent authorities of the place of its incorporation in respect of each of the Borrower and the Corporate Guarantor;
 - ii. certificates of Incumbency issued by the appropriate officer of each corporate Security Party confirming that:
 - iii. the written resolutions adopted on 31st March, 2010 by all the members of the Board of Directors of the Borrower and Minutes of the Extraordinary Meeting of the Shareholders of the Borrower duly convened and held on 1st day of April, 2010;
 - iv. the written resolutions adopted on 31st March, 2010 by all the members of the Board of Directors of the Corporate Guarantor; and
 - v. Minutes of the Meeting of the Board of Directors of the Approved Manager duly convened and held on 31st day of March, 2010 remain in full force as of the date hereof and have not been amended or rescinded and that the any power of attorney issued by each corporate Security Party on 1st April, 2010 authorising appropriate officers or attorneys to (inter alia) sign, execute and deliver any supplementary and/or amendatory agreement of the Loan Agreement or other evidence of such approvals and authorisations as shall be acceptable to the Bank;
 - vi. all documents evidencing any other necessary action or approvals or consents with respect to this Agreement;
 - vii. such favourable legal opinions from lawyers acceptable to the Bank and its legal advisors on such matters concerning the laws of Bermuda and such other relevant jurisdiction as the Bank shall require; and
 - viii. the Vessel is managed by the Approved Manager on terms and conditions approved by the Bank.
- b. the Borrower shall have repaid to the Bank on the date hereof part of the Loan in the amount of \$750,000 (Seven hundred and fifty thousand Dollars).

5. Variations to the Principal Agreement

- 5.1 In consideration of the agreement of the Bank contained in Clause 3.1, the Borrower and the Corporate Guarantor hereby jointly and severally agree with the Bank that (subject to the satisfaction of the conditions precedent contained in Clause 4) with

effect from the Effective Date, the provisions of the Principal Agreement shall be varied and/or amended and/or supplemented as follows:

- a. The definition of Clause 1.2 of the Principal Agreement referred to hereinbelow shall be deleted and replaced by the following:
- i. ““Final Maturity Date” by:

““**Final Maturity Date**” means the 31st day of January, 2011.”;

- b. with effect from the Effective Date clause 4.1 of the Principal Agreement is hereby amended to read as follows:
“**4.1 Repayment**

The outstanding amount of the Loan (being on 1st October, 2010 in the principal sum of \$7,875,000) (Dollars Seven million eight hundred seventy five thousand) shall be repaid by the Borrower in one amount on the Final Maturity Date, on which date the Borrower shall also pay to the Bank any and all other monies then payable and outstanding under this Agreement and the other Security Documents.”; and

- c. with effect from the Effective Date paragraph (c) of clause 15.1 of the Principal Agreement is hereby amended to read as follows:
(c) *be sent:*
- (i) *if to be sent to any Security Party, to:*

*c/o Newlead Bulkers S.A.
83 Akti Miaouli and Flessa Street,
185 38 Piraeus, Greece,
Fax No.: +30 21300148209
Attention: Chief Financial Officer*

- (ii) *in the case of the Bank at:*

*COMMERZBANK AKTIENGESELLSCHAFT,
Asset Based Finance — Shipping,
Domstraße 18 D — 20095, Hamburg,
Federal Republic of Germany
Fax No. : (+0049) 40 37699 — 649
Attention: Mr. Claas Ringleben*

*(interest rate fixing and payment matters to be addressed attention Loan Administration, Fax. no. +49 40 3683 2049)
or to such other person, address or fax number as is notified by the relevant Security Party or the Bank (as the case may be) to the other parties to this Agreement and, in*

the case of any such change of address or fax number notified to the Bank, the same shall not become effective until notice of such change is actually received by the Bank and a copy of the notice of such change is signed by the Bank.”; and

- d. with effect from the Effective Date all references in the Principal Agreement to “**this Agreement**”, “**hereunder**” and the like in the Principal Agreement and “**the Agreement**” and in the Security Documents shall be construed as references to the Principal Agreement as amended and/or supplemented by this Agreement.

6. Entire agreement and amendment

- 6.1 The Principal Agreement, the Security Documents, and this Agreement represent the entire agreement among the parties hereto with respect to the subject matter hereof and supersede any prior expressions of intent or understanding with respect to this transaction and may be amended only by an instrument in writing executed by the parties to be bound or burdened thereby.
- 6.2 This Agreement is supplementary to and incorporated in the Principal Agreement, all terms and conditions whereof, including, but not limited to, provisions on payments, calculation of interest and Events of Default, shall apply to the performance and interpretation of this Agreement.

7. Continuance of Principal Agreement and the Security Documents

- 7.1 Save for the alterations to the Principal Agreement made or deemed to be made pursuant to this Agreement and such further modifications (if any) thereto as may be necessary to make the same consistent with the terms of this Agreement the Principal Agreement shall remain in full force and effect and the security constituted by the Security Documents executed by the Borrower and the other Security Parties shall continue and remain valid and enforceable.

8. Fees and expenses

- 8.1 The Borrower agrees to pay to the Bank upon demand on a full indemnity basis and from time to time all costs, charges and expenses (including legal fees) incurred by the Bank in connection with the negotiation, preparation, execution and enforcement or attempted enforcement of this Agreement and any document executed pursuant thereto and/or in preserving or protecting or attempting to preserve or protect the security created hereunder and/or under the Security Documents.
- 8.2 The Borrower and the Corporate Guarantor jointly and severally covenant and agree to pay and discharge all stamp duties, registration and recording fees and charges and any other charges whatsoever and wheresoever payable or due in respect of this Agreement and/or any document executed pursuant hereto.

9. Miscellaneous

- 9.1 The provisions of Clause 13 (Assignment, Participation and Lending Branch) and Clause 15.1 (Notices) (as hereby amended) of the Principal Agreement shall apply to this Agreement as if the same were set out herein in full.
- 9.2 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Agreement.

10. Applicable law and jurisdiction

- 10.1 This Agreement shall be governed by and construed in accordance with English Law.
- 10.2 For the exclusive benefit of each Creditor, each of the Borrower and the Corporate Guarantor agrees that any legal action or proceedings arising out or in connection with this Agreement against the Borrower and the Corporate Guarantor (or any of them) or any of their respective assets may be brought in the English Courts. Each of the Borrower and the Corporate Guarantor irrevocably and unconditionally submits to the jurisdiction of such courts and irrevocably designates, appoints and empowers Messrs. **Cheeswrights** (attention: Mr. Nigel P. Ready) at their office for the time being at Bankside House, 107 Leadenhall Street, London EC3A 4HA, England, to receive for it and on its behalf, service of process issued out of the English courts in any such legal action or proceedings. Finally, each of the Borrower and the Corporate Guarantor hereby waives any objections to the inconvenience of England as a forum.
- 10.3 The submission to the jurisdiction of the English Courts shall not (and shall not be construed so as to) limit the right of the Bank to take proceedings against the Security Parties (or any of them) in the courts of any other competent jurisdiction or to serve process in any other manner permitted by law nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.
- 10.4 The parties further agree that subject to Clause 10.3 the Courts of England shall have exclusive jurisdiction to determine any claim which the Borrower and the Corporate Guarantor (or any of them) may have against the Bank arising out of or in connection with this Agreement and each of the Borrower and the Corporate Guarantor hereby waives any objections to proceedings with respect to this Agreement in such courts on the grounds of venue or inconvenient forum.
- 10.5 If it is decided by the Bank that any such proceedings should be commenced in any other country, then any objections as to the jurisdiction or any claim as to the inconvenience of the forum is hereby waived by each of the Borrower and the Corporate Guarantor and it is agreed and undertaken by each of the Security Parties to instruct lawyers in that country to accept service of legal process and not to contest the validity of such proceedings as far as the jurisdiction of the court or

courts involved is concerned and each of the Security Parties agrees that any judgement or order obtained in an English court shall be conclusive and binding on the Security Parties (and each of them) and shall be enforceable without review in the courts of any other jurisdiction.

10.6 In this Clause 10 “**proceedings**” means proceedings of any kind, including an application for a provisional or protective measure.
IN WITNESS whereof the parties hereto have caused this Agreement to be duly executed the date first above written.

EXECUTION PAGE

THE BORROWER

SIGNED by)
Mr. Michail Livanos)
for and on behalf of)
GRAND VENETICO INC.) /s/ Michail Livanos
of Marshall Islands, in the presence of:)
Attorney-in-fact

Witness: /s/ Peter Kallifidas

Name: Peter Kallifidas
Address: 83 Akti Miaouli and Flessa Street,
Piraeus, Greece
Occupation: Attorney-at-Law

THE CORPORATE GUARANTOR

SIGNED by)
Mr. Peter Kallifidas)
for and on behalf of)
NewLead Holdings Ltd.,) /s/ Peter Kallifidas
of Bermuda, in the presence of:)
Attorney-in-fact

Witness: /s/ Michail Livanos

Name: Michail Livanos
Address: 83 Akti Miaouli and Flessa Street,
Piraeus, Greece
Occupation: Attorney-at-Law

THE APPROVED MANAGER

SIGNED by)
Mr. Michail Livanos)
for and on behalf of)
NEWLEAD BULKERS S.A.) /s/ Michail Livanos
of Liberia, in the presence of:)
Attorney-in-fact

Witness: /s/ Peter Kallifidas

Name: Peter Kallifidas
Address: 83 Akti Miaouli and Flessa Street,
Piraeus, Greece
Occupation: Attorney-at-Law

THE BANK

SIGNED by)
Mr. Charalambos V. Sioufas)
for and on behalf of)
COMMERZBANK AKTIENGESELLSCHAFT)
in the presence of:)

/s/ Charalambos V. Sioufas
Attorney-in-fact

Witness: /s/ Efstratios Kalantzis
Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Street,
Piraeus, Greece
Occupation: Attorney-at-Law

Dated: 15th October, 2010
FBB–FIRST BUSINESS BANK S.A.
(as lender)
– and –
GRAND SPARTOUNTA INC.
(as Borrower)
– and –
NEWLEAD HOLDINGS LTD.
(as Corporate Guarantor)
– and –
NEWLEAD BULKERS S.A.
(as Manager)

FIRST SUPPLEMENTAL AGREEMENT
in relation to a Loan Agreement
dated 2nd July, 2010
for a loan facility of up to US\$24,150,000



Theo V. Sioufas & Co.
Law Offices
Piraeus

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THIS AGREEMENT is made this 15th day of October, 2010
BETWEEN

- (1) **FBB–FIRST BUSINESS BANK S.A.**, a bank incorporated in the Republic of Greece with its head office at 91 Michalakopoulou Street, 11528 Athens, Greece, acting through its office at 62, Notara and Sotiros Dios streets, 185 35 Piraeus, Greece (the “**Bank**” which expression shall include its successors and assigns);
- (2) **GRAND SPARTOUNTA INC.**, a company incorporated in the Republic of The Marshall Islands , having its registered office at Trust Company Complex, Ajeltake Island, Majuro, Marshall Islands MH 96960 (hereinafter called the “**Borrower**”, which expression shall include its successors); and
- (3) **NEWLEAD HOLDINGS LTD.**, a company duly incorporated under the laws of Bermuda, having its registered office at Canon’s Court, 22 Victoria Street, Hamilton, Bermuda and listed and trading in the NASDAQ Stock Exchange, New York (hereinafter called the “**Corporate Guarantor**”, which expressions shall include its successors in title); and
- (4) **NEWLEAD BULKERS S.A.**, a company duly incorporated under the laws of the Republic of Liberia having its registered office at 80 Broad Street, Monrovia, Liberia and an office established in Greece (83 Akti Miaouli and Flessa Street, GR 185.38 Piraeus) pursuant to the Greek laws 89/67, 378/68, 27/75 and 814/79 (the “**Manager**”, which expression shall include its successors in title);

AND IS SUPPLEMENTAL to a loan agreement dated 2nd July, 2010 made between (1) the Bank, as lender and (2) the Borrower, as borrower (the “**Principal Agreement**”), on the terms and conditions of which the Bank has advanced to the Borrower a secured loan facility of up to Twenty four million one hundred fifty thousand United States Dollars (US\$24,150,000) (the “**Loan**”) for the purposes therein specified (the Principal Agreement as hereby amended and as the same may hereinafter be further amended and/or supplemented is hereinafter called the “**Loan Agreement**”).

W H E R E A S :

- (A) the Borrower, the Corporate Guarantor and the Manager hereby jointly and severally acknowledge and confirm that (a) the Bank has advanced to the Borrower the full amount of the Loan in the principal amount of Twenty four million one hundred fifty thousand United States Dollars (US\$23,350,000) in one advance and (b) as the date hereof the amount of **Twenty three million three hundred fifty thousand United States Dollars** remains outstanding;
- (B) pursuant to a Corporate Guarantee dated 2nd July, 2010 and granted by the Corporate Guarantor (the “**Corporate Guarantee**”) the Corporate Guarantor irrevocably and unconditionally guaranteed the due and timely repayment of the Loan and interest and default interest accrued thereon and the performance of all the obligations of the

Borrower under the Principal Agreement and the Security Documents executed in accordance thereto; and

- (C) the Borrower and (inter alia) the Corporate Guarantor have requested the Bank to consent to the amendment of certain provisions of the Principal Agreement as set out in Clause 5 hereof and the Bank has agreed so to do conditionally upon terms that (inter alia) the Principal Agreement shall be amended in the manner hereinafter set out.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

1.1 Words and expressions defined in the Principal Agreement and not otherwise defined herein (including the Recitals hereto) shall have the same meanings when used in this Agreement.

1.2 In addition, in this Agreement the words and expressions specified below shall have the meanings attributed to them below:

“**Effective Date**” means the date, not being later than 2nd July, 2010; and

“**Loan Agreement**” means the Principal Agreement as hereby amended and as the same may from time to time be further amended and/or supplemented;

1.3 In this Agreement:

(a) Where the context so admits words importing the singular number only shall include the plural and vice versa and words importing persons shall include firms and corporations;

(b) clause headings are inserted for convenience of reference only and shall be ignored in construing this Agreement;

(c) references to Clauses are to clauses of this Agreement save as may be otherwise expressly provided in this Agreement; and

(d) all capitalised terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Principal Agreement.

2. Representations and warranties

2.1 The Borrower, the Corporate Guarantor and the Manager hereby jointly and severally represent and warrant to the Bank as at the date hereof that the representations and warranties set forth in the Principal Agreement and the Security Documents (updated mutatis mutandis to the date of this Agreement) are (and will be on the Effective Date) true and correct as if all references therein to “this Agreement” were references to the Principal Agreement as amended and supplemented by this Agreement.

- 2.2 In addition to the above the Borrower, the Manager and the Corporate Guarantor hereby jointly and severally represent and warrant to the Bank as at the date of this Agreement that:
- a. each of the corporate Security Parties is duly formed, is validly existing and in good standing under the laws of the place of its incorporation has full power to carry on its business as it is now being conducted and to enter into and perform its obligations under the Principal Agreement and this Agreement and has complied with all statutory and other requirements relative to its business and does not have an established place of business in any part of the United Kingdom or the USA;
 - b. all necessary licences, consents and authorities, governmental or otherwise under this Agreement and the Principal Agreement have been obtained and, as of the date of this Agreement, no further consents or authorities are necessary for any of the Security Parties to enter into this Agreement or otherwise perform its obligations hereunder;
 - c. this Agreement constitutes the legal, valid and binding obligations of the Security Parties thereto enforceable in accordance with its terms;
 - d. the execution and delivery of, and the performance of the provisions of this Agreement do not, and will not contravene any applicable law or regulation existing at the date hereof or any contractual restriction binding on any of the Security Parties or its respective constitutional documents;
 - e. no action, suit or proceeding is pending or threatened against any of the Borrower, the Manager and the Corporate Guarantor or its assets before any court, board of arbitration or administrative agency which could or might result in any material adverse change in the business or condition (financial or otherwise) of the Borrower, the Manager or the Corporate Guarantor; and
 - f. none of the Borrower, the Manager and the Corporate Guarantor is and at the Effective Date will be in default under any agreement by which it is or will be at the Effective Date bound or in respect of any financial commitment, or obligation.

3. Agreement of the Bank

- 3.1 The Bank, relying upon each of the representations and warranties set out in Clause 2 hereby agree with the Borrower, subject to and upon the terms and conditions of this Agreement and in particular, but without limitation, subject to the fulfilment of the conditions precedent set out in Clause 4, to consent to the amendment of the Principal Agreement as set out in Clause 5 hereof and the Bank has agreed so to do conditionally upon terms that (inter alia) the Principal Agreement shall be amended in the manner hereinafter set out.

4. Conditions

- 4.1 The agreement of the Bank contained in Clause 3.1 shall be expressly subject to the fulfilment of the conditions set out in this Clause and further subject to the condition that the Bank shall have received on or before the Effective Date in form and substance satisfactory to the Bank and its legal advisers:
- a. a certificate of good standing or equivalent document issued by the competent authorities of the place of its incorporation in respect of each of the Borrower and the Corporate Guarantor;
 - b. certificates of Incumbency issued by the appropriate officer of each corporate Security Party confirming that:
 - (i) the Minutes of the Meeting of the Board of Directors duly convened and held on 2nd day of July, 2010 by all the members of the Board of Directors of the Borrower and Minutes of the Extraordinary Meeting of the Shareholders of the Borrower duly convened and held on 2nd day of July, 2010 at 18:30,
 - (ii) the written resolutions adopted on 2nd day of July, 2010 by all the members of the Board of Directors of the Corporate Guarantor and
 - (iii) the Minutes of the Meeting of the Board of Directors of the Approved Manager duly convened and held on 2nd day of July, 2010,remain in full force as of the date hereof and have not been amended or rescinded and that the any power of attorney issued by each corporate Security Party on 2nd July, 2010 authorising appropriate officers or attorneys to (inter alia) sign, execute and deliver any supplementary and/or amendatory agreement of the Loan Agreement or other evidence of such approvals and authorisations as shall be acceptable to the Bank;
 - c. all documents evidencing any other necessary action or approvals or consents with respect to this Agreement; and
 - d. such favourable legal opinions from lawyers acceptable to the Bank and its legal advisors on such matters concerning the laws of Bermuda and such other relevant jurisdiction as the Bank shall require.

5. Variations to the Principal Agreement

- 5.1 In consideration of the agreement of the Bank contained in Clause 3.1, the Borrower and the Corporate Guarantor hereby jointly and severally agree with the Bank that (subject to the satisfaction of the conditions precedent contained in Clause 4) with effect from the Effective Date, the provisions of the Principal Agreement shall be varied and/or amended and/or supplemented as follows:

- a. with effect from the Effective Date definition “**Operating Expenses**” in Clause 1.2 of the Principal Agreement shall be amended to read as follows:

“**Operating Expenses**” means the expenses for crewing, victualling, insuring, maintenance (including dry-docking and special survey cost and expenses), spares, management, voyage expenses and provisions for claims, unscheduled repairs and doubtful receivables, general and administrative expenses and any other relevant expenses necessary for the commercial operation of the Vessel which are reasonably incurred for a vessel of the size and type of the Vessel;

- b. with effect from the Effective Date Clause 8.1(a) of the Principal Agreement shall be amended to read as follows:

“(a) **Financial Statements**: prepare or procure to be prepared and furnished to the Bank, in form and substance satisfactory to the Bank, with (i) annual, audited (by auditors acceptable to the Bank) financial statements (including balance sheet and profit and loss accounts) of the Newlead Corporate Guarantor (including the Borrower) as soon as practicable but not later than 210 days after the end of the financial year to which they relate, prepared in accordance with GAAP (ii) quarterly management accounts of the Newlead Corporate Guarantor and (iii) annual cash flow statement of the Borrower within 90 days from the end of each fiscal year;”;

- c. with effect from the Effective Date Clause 8.6(a)(i) of the Principal Agreement shall be amended to read as follows:

“(i) at least 10% of the total issued share capital of Newlead is directly held by Grandunion Inc., of Marshall Islands, into which Messrs. Michael Zolotas and Nikolaos Fistes hold and shall hold throughout the Security Period at least 50.1% of its total issued share capital;”;

- d. with effect from the Effective Date definition “**Excess Earnings**” in Clause 8.7 of the Principal Agreement shall be amended to read as follows:

““**Excess Earnings**” means as at any Relevant Period, an amount calculated in accordance with the formula: $\text{Excess Earnings} = \text{Total Income} - (\text{Operating Expenses for the Relevant Period plus Debt Service plus } \$500,000 \text{ payable to the Newlead Corporate Guarantor by the Borrower representing interest pursuant to the Bond Issue by the NewLead Corporate Guarantor})$;”;

e. with effect from the Effective Date Schedule 2 of the Principal Agreement shall be amended to read as follows:

“SCHEDULE 2”
Form of Compliance Certificate

To: **FBB—First Business Bank S.A.**
62, Notara and Sotiros Dios streets,
Piraeus GR 185 35, Greece
(the “**Bank**”)

From: **Newlead Holdings Ltd.**, of Bermuda
c/o Newfront Shipping S.A.,
83 Akti Miaouli and Flessa Street,
185 38 Piraeus, Greece,
Attention: Chief Financial Officer

Dated: [•]

Dear Sirs

Re: Term loan facility of up to US\$24,150,000 — Loan Agreement dated 2nd July, 2010 made between (A) Grand Spartounta Inc. (the “Borrower”) and (B) the Bank (the “Loan Agreement”), as amended from time to time.

1 We refer to the Loan Agreement. This is a Compliance Certificate. Terms defined in the Loan Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

2 We refer to clause 8.6 of the Loan Agreement and hereby certify that:

(1) **Equity Ratio**

Requirement: Equity Ratio of not less than [25%] [30%].

Actual Equity Ratio: []

Satisfied [YES] : [NO]

(2) **Minimum Liquidity**

Actual Minimum Liquidity: []

Requirement: maintain on a consolidated basis the Minimum Liquidity (as defined in the Corporate Guarantee).

Satisfied [YES] : [NO]

(3) **Working Capital**

Requirement: maintain on a consolidated basis Working Capital of not less than zero Dollars (\$0).

Satisfied [YES] : [NO]

(4) **Interest Coverage**

Actual Interest Coverage ratio: []

Requirement: maintain a ratio of EBITDA to interest payable on a trailing four (4) financial quarter basis of not less than [2.0] [2.50] to 1.0.

Satisfied [YES] : [NO]

(5) **Security Value Maintenance**

Actual Security Value/Security Requirement:

Requirement: Security Value is not less than the Security Requirement.

Satisfied [YES] : [NO]

3 We confirm that no Default is continuing; [If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.]

4 appendix 1 hereto contains a comprehensive list of all Group Members as at the date hereof and the jurisdictions in which they are incorporated and an up-to-date corporate structure chart for the Group;

5 the representations set out in clause 6 of the Loan Agreement are true and accurate with reference to all facts and circumstances now existing and all required authorisations have been obtained and are in full force and effect; and

[State any exceptions/qualifications to the above statements]

[Attach list of current Group Members and current corporate structure chart]

Chief Financial Officer";

f. with effect from the Effective Date Clause 8.6(e) of the Principal Agreement shall be deleted;

g. with effect from the Effective Date, all references in the Principal Agreement to "this Agreement", "hereunder" and the like and in the Security Documents to the "Loan Agreement" or the "Agreement" shall be construed

as references to the Principal Agreement as amended and/or supplemented by this Agreement; and

- h. the definition “**Security Documents**” with effect as from the date hereof shall be deemed to include the Security Documents as amended and/or supplemented in pursuance to the terms hereof as well as any document or documents (including if the context requires the Loan Agreement) that may now or hereafter be executed as security for the repayment of the Loan, interest thereon and any other moneys payable by the Borrower under the Principal Agreement and the Security Documents (as herein defined) as well as for the performance by the Borrower and the other Security Parties (as herein defined) of all obligations, covenants and agreements pursuant to the Principal Agreement this Agreement and/or the Security Documents.

6. Entire agreement and amendment

- 6.1 The Principal Agreement, the Security Documents, and this Agreement represent the entire agreement among the parties hereto with respect to the subject matter hereof and supersede any prior expressions of intent or understanding with respect to this transaction and may be amended only by an instrument in writing executed by the parties to be bound or burdened thereby.
- 6.2 This Agreement is supplementary to and incorporated in the Principal Agreement, all terms and conditions whereof, including, but not limited to, provisions on payments, calculation of interest and Events of Default, shall apply to the performance and interpretation of this Agreement.

7. Continuance of Principal Agreement and the Security Documents

Save for the alterations to the Principal Agreement made or deemed to be made pursuant to this Agreement and such further modifications (if any) thereto as may be necessary to make the same consistent with the terms of this Agreement the Principal Agreement shall remain in full force and effect and the security constituted by the Security Documents executed by the Borrower and the other Security Parties shall continue and remain valid and enforceable.

8. Continuance and reconfirmation of the Corporate Guarantee

The Corporate Guarantor hereby confirms that, notwithstanding the variation to the Principal Agreement contained herein, the provisions of the Corporate Guarantee executed by the Corporate Guarantor shall remain in full force and effect as guarantee of the obligations of the Borrower under the Principal Agreement as amended hereby and in respect of all sums due to the Bank under the Principal Agreement (as so amended) and the Security Documents.

9. Fees and expenses

- 9.1 The Borrower and the Corporate Guarantor jointly and severally covenant and agree to pay and discharge all upon demand on a full indemnity basis and from time to time all costs, charges and expenses (including legal fees) incurred by the Bank in connection with the negotiation, preparation, execution and enforcement or attempted enforcement of this Agreement and any document executed pursuant thereto and/or in preserving or protecting or attempting to preserve or protect the security created hereunder and/or under the Security Documents.
- 9.2 The Borrower and the Corporate Guarantor jointly and severally covenant and agree to pay and discharge all stamp duties, registration and recording fees and charges and any other charges whatsoever and wheresoever payable or due in respect of this Agreement and/or any document executed pursuant hereto.

10. Miscellaneous

- 10.1 The provisions of Clause 13 (Assignment, Participation and Lending Branch) and Clause 15.1 (Notices) of the Principal Agreement shall apply to this Agreement as if the same were set out herein in full.

11. Applicable law and jurisdiction

- 11.1 This Agreement shall be governed by and construed in accordance with English Law.
- 11.2 For the exclusive benefit of the Bank, each of the Security Parties agrees that any legal action or proceedings arising out or in connection with this Agreement against the Security Parties (or any of them) or any of their respective assets may be brought in the English Courts. Each of the Security Parties irrevocably and unconditionally submits to the jurisdiction of such courts and irrevocably designates, appoints and empowers Messrs. **Cheeswrights, Notaries Public**, at their office for the time being at Bankside House, 107 Leadenhall Street, London EC3A 4HA, England, to receive for it and on its behalf, service of process issued out of the English courts in any such legal action or proceedings, who is hereby authorised to accept such service, which shall be deemed to be good service on each of the Security Parties. Finally, each of the Security Parties hereby waives any objections to the inconvenience of England as a forum.
- (a) The submission to the jurisdiction of the English Courts shall not (and shall not be construed so as to) limit the right of the Bank to take proceedings against the Security Parties (or any of them) in the courts of any other jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.
- (b) The parties further agree that subject to sub-Clause 16.2(b) the Courts of England shall have exclusive jurisdiction to determine any claim which Security Parties

(or any of them) may have against the Bank arising out of or in connection with this Agreement and each of the Security Parties (or any of them) hereby waives any objections to proceedings with respect to this Agreement in such courts on the grounds of venue or inconvenient forum.

- 11.3 If it is decided by the Bank that any such proceedings should be commenced in any other country, then any objections as to the jurisdiction or any claim as to the inconvenience of the forum is hereby waived by each of the Security Parties and it is agreed and undertaken by each of the Security Parties to instruct lawyers in that country to accept service of legal process and not to contest the validity of such proceedings as far as the jurisdiction of the court or courts involved is concerned and each of the Security Parties agrees that any judgement or order obtained in an English court shall be conclusive and binding on the Security Parties (and each of them) and shall be enforceable without review in the courts of any other jurisdiction.
- 11.4 Mr. Panagiotis–Peter Kallifidas, an attorney at law, presently of 83 Akti Miaouli and Flessa Street, 185 38 Piraeus, Greece, is hereby appointed by each of the Security Parties as agent to accept service (hereinafter “**Process Agent in Greek proceedings**”) upon whom any judicial process in respect of proceedings in Greece may be served and any process notice, judicial or extra-judicial request, demand for payment, payment order, foreclosure proceedings, notarial announcement of claim, notice, request, demand or other communication under this Agreement or any of the Security Documents. In the event that the Process Agent in Greek proceedings (or any substitute process agent notified to the Bank in accordance with the foregoing) cannot be found at the address specified above (or, as the case may be, notified to the Bank), which will be conclusively proved by a deed of a process server to the effect that the Process Agent in Greek proceedings was not found at such address, any process notice, judicial or extra-judicial request, demand for payment, payment order, foreclosure proceedings, notarial announcement of claim or other communication to be sent to any Security Party may be validly notified in accordance with the relevant provisions of the Hellenic Code on Civil Procedure.
- 11.5 In this Clause 10 “**proceedings**” means proceedings of any kind, including an application for a provisional or protective measure.
IN WITNESS whereof the parties hereto have caused this Agreement to be duly executed the date first above written.

EXECUTION PAGE

THE BORROWER

SIGNED by)
Mr. Michail Livanos)
for and on behalf of)
Grand Spartounta Inc.,)
of The Marshall Islands, in the presence of:)

/s/ Michail Livanos
Attorney-in-Fact

Witness: /s/ Efstratios Kalantzis
Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney-at-law

THE CORPORATE GUARANTOR

SIGNED by)
Mr. Panagiotis-Peter Kallifidas)
for and on behalf of)
NewLead Holdings Ltd.,)
of Bermuda, in the presence of:)

/s/ Panagiotis-Peter Kallifidas
Attorney-in-fact

Witness: /s/ Efstratios Kalantzis
Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney-at-law

THE MANAGER

SIGNED by)
Mr. Panagiotis–Peter Kallifidas)
for and on behalf of)
Newleads Bulkers S.A.,)
of Liberia, in the presence of:)

/s/ Panagiotis–Peter Kallifidas
Attorney–in–Fact

Witness: /s/ Efstratios Kalantzis
Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney–at–law

THE BANK

SIGNED by)
Mr. Nikolaos Vougioukas)
for and on behalf of)
FBB–FIRST BUSINESS BANK S.A.)
in the presence of:)

/s/ Nikolaos Vougioukas
Attorney–in–Fact

Witness: /s/ Efstratios Kalantzis
Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney–at–law

Dated: 9th May, 2011
FBB–FIRST BUSINESS BANK S.A.
– and –
NEWLEAD PROSPERITY INC.

LOAN AGREEMENT
relating to a term loan facility of up to US\$12,000,000



Theo V. Sioufas & Co.
Law Offices
Piraeus

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THIS AGREEMENT is dated 9th day May, 2011 made BETWEEN:

1. **FBB–FIRST BUSINESS BANK S.A.**, a bank incorporated in the Republic of Greece with its head office at 91 Michalakopoulou Street, 11528 Athens, Greece, acting except otherwise herein provided, through its office at 62, Notara and Sotiros Dios streets, 185 35 Piraeus, Greece, as lender (hereinafter called the “**Bank**”, which expression shall include its successors and assigns); and
2. **NEWLEAD PROSPERITY INC.**, a company organised and existing under the laws of the Republic of The Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Island, Majuro, Marshall Islands MH 96960, as borrower (hereinafter called the “**Borrower**”, which expression shall include its successors)

AND IT IS HEREBY AGREED as follows:

1. PURPOSE, DEFINITIONS AND INTERPRETATION

- 1.1 **Purpose:** This Agreement sets out the terms and conditions upon and subject to which the Bank agrees to make available to the Borrower a term loan of up to the lesser of: (a) \$12,000,000 (Dollars twelve million), (b) 55% of the Market Value of the Prosperity Vessel and (b) 55% of the Purchase Price of the Prosperity Vessel, by way of one (1) Advance for the purpose of financing part of the Purchase Price of the Prosperity Vessel by the Borrower pursuant to the Bareboat Charterparty.
- 1.2 **Definitions:** In this Agreement, unless the context otherwise requires each term or expression defined in the recital of the parties, in this Clause and in Clause 11.1 shall have the meaning given to it in the recital of the parties, in this Clause and:
“**Accounts**” means together the Prosperity Earnings Account, the Spartounta Earnings Account and the Retention Account, and “**Account**” means any of them as the context may require;
“**Accounts Pledge Agreements**” means together the Prosperity Accounts Pledge Agreement and the Spartounta Accounts Pledge Agreement and
“**Accounts Pledge Agreement**” means either of them as the context may require;
“**Advance**” means each borrowing of a proportion of the Commitment by the Borrower or (as the context may require) the principal amount of such borrowing outstanding at any relevant time hereunder;

“Aggregate Indebtedness” means the aggregate of (a) the Loan outstanding under this Agreement and (b) the principal loan amount outstanding under the Spartounta Loan Agreement;

“Availability Period” means the period starting on the date hereof and ending on the 31st day of May, 2011 or until such later date as the Bank may agree in writing or on such earlier date (if any), (i) on which the whole of the Commitment has been advanced by the Bank to the Borrower, or (ii) on which the Commitment is fully cancelled or reduced to zero pursuant to Clauses 9.8 or 12.1, 12.2 or any other Clause of this Agreement;

“Bank” means the Bank as specified in Recital (1) of this Agreement and includes its successors in title and transferees;

“Banking Day” means a day on which dealings in deposits in Dollars are carried on in the London Interbank Market and (other than Saturday or Sunday) on which banks are open for business in London, New York City, Piraeus and Athens (or any other relevant place of payment under Clause 5);

“Bareboat Charterparty” means dated 24th September, 2010 entered into between Seller, as owners and the Borrower, as charterers, and the Borrower, as buyers in respect of the sale by Seller and the purchase by the Borrower of the Prosperity Vessel and any and all addenda thereto;

“Borrowed Money” means Indebtedness in respect of (i) money borrowed or raised and debit balances at banks, (ii) any bond, note, loan stock, debenture or similar debt instrument, (iii) acceptance or documentary credit facilities, (iv) receivables sold or discounted (otherwise than on a non-recourse basis), (v) deferred payments for assets or services acquired, (vi) finance leases and hire purchase contracts, (vii) swaps, forward exchange contracts, futures and other derivatives, (viii) any other transaction (including without limitation forward sale or purchase agreements) having the commercial effect of a borrowing or raising of money or of any of (ii) to (vii) above and (ix) guarantees in respect of Indebtedness of any person falling within any of (i) to (viii) above;

“Borrower” means the Borrower as specified in the preamble of this Agreement;

“Charterparty Assignment” in relation to a Vessel means the assignment of any Long Charterparty relevant to such Vessel, executed or (as the context may require) to be executed by the Owner in favor of the Bank, in form and substance as the Bank may approve or require as the same may from time to time be amended and/or supplemented (together the **“Charterparties Assignments”**);

“Charterparty Assignment Acknowledgement” means the acknowledgement of notice of the assignment in respect of the relevant Long Charterparty to be given by the relevant charterer, in the form scheduled to the relevant Charterparty Assignment (together the **“Charterparties Assignments Acknowledgements”**);

“Classification” in relation to each Vessel means the classification specified to in the Mortgage registered or to be registered on such Vessel with the relevant Classification Society or, in either case, such other classification as the Bank shall, at the request of the Owner of such Vessel, have agreed in writing to be treated as the Classification for the purposes of the Security Documents;

“Classification Society” means, in respect of each Vessel, RINA, American Bureau of Shipping, Lloyds Register of Shipping, Bureau Veritas, Det Norske Veritas, NKK or such other classification society which is a member of IACS and which the Bank shall, at the request of the Owner of such Vessel, have agreed in writing to be treated as the Classification Society for the purposes of the Security Documents;

“Compliance Certificate” means a certificate substantially in a form satisfactory to the Bank signed by the chief financial officer of the Group or, if the CFO is not available a director of the Newlead Corporate Guarantor;

“Corporate Guarantees” means together the Newlead Corporate Guarantee and the Spartounta Corporate Guarantee and any other guarantee to be given by any other Corporate Guarantor, and **“Corporate Guarantee”** means any of them as the context may require;

“Corporate Guarantors” means together the Newlead Corporate Guarantor and the Spartounta Owner and any other person nominated by the Borrower and acceptable to the Bank which may give a Corporate Guarantee and **“Corporate Guarantor”** means any of them as the context may require;

“Default” means any Event of Default or any event which with the giving of notice or lapse of time (or any combination thereof) would constitute an Event of Default;

“Default Rate” means that rate of interest per annum which is determined in accordance with the provisions of Clause 3.4;

“Delivery” means the delivery of the Prosperity Vessel from the Seller to, and the acceptance of the Prosperity Vessel by, the Borrower pursuant to the Bareboat Charterparty;

“Delivery Date” means the date on which the Prosperity Vessel is unconditionally delivered to and accepted by the Borrower under the Bareboat Charterparty;

“DOC” means a document of compliance issued to an Operator in accordance with rule 13 of the ISM Code;

“Dollar” and “\$” mean the lawful currency of the United States of America and in respect of all payments to be made under any of the Security Documents means funds which are for same day settlement in the New York Clearing House Interbank Payments System (or such other U.S. dollar funds as may at the relevant time be customary for the settlement of international banking transactions denominated in Dollars);

“Drawdown Date” means the day, being a Banking Day, on which the Loan is or, as the context may require, shall be advanced to the Borrower;

“Drawdown Notice” means a notice substantially in the terms of Schedule 1;

“Earnings” means in relation to a Vessel all earnings of such Vessel, both present or future, including all freight, hire and passage moneys, compensation payable to the Owner in the event of requisition of such Vessel for hire, remuneration for salvage and towage services, demurrage and detention moneys, contributions of any nature whatsoever in respect of general average, damages for breach (or payments for variation or termination) of any charterparty or other contract for the employment of such Vessel and any other earnings whatsoever due or to become due to the Owner in respect of such Vessel and all sums recoverable under the Insurances in respect of loss of Earnings and includes, if and whenever such Vessel is employed on terms whereby any and all such moneys as aforesaid are pooled or shared with any other person, that proportion of the net receipts of the relevant pooling or sharing agreement which is attributable to such Vessel;

“Earnings Accounts” means together the Prosperity Earnings Account and the Spartounta Earnings Account and **“Earnings Account”** means either of them as the context may require;

“Encumbrance” means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest, title retention, arrest, seizure or other encumbrance of any kind securing or any right conferring a priority of payment in respect of any obligation of any person;

“Environmental Affiliate” means any agent or employee of the Borrower or any other Relevant Party or any person having a contractual relationship with the

Borrower or any other Relevant Party in connection with any Relevant Ship or her operation or the carriage of cargo thereon;

“Environmental Approval” means any consent, authorisation, licence or approval of any governmental or public body or authorities or courts applicable to any Relevant Ship or her operation or the carriage of cargo thereon and/or passengers therein and/or provisions of goods and/or services on or from the Relevant Ship required under any Environmental Law;

“Environmental Laws” means all national, international and state laws, rules, regulations, treaties and conventions applicable to any Relevant Ship pertaining to the pollution or protection of human health or the environment including, without limitation, the carriage or Materials of Environmental Concern and actual or threatened emissions, spills, releases or discharges of Materials of Environmental Concern and actual or threatened emissions, spills, releases or discharges of Materials of Environmental Concern from any Relevant Ship;

“Environmental Claim” means (i) any claim by, or directive from, any applicable governmental, judicial or other regulatory authority alleging breach of, or non-compliance with, any Environmental Laws or Environmental Approvals or otherwise howsoever relating to or arising out of an Environmental Incident or (ii) any claim by any other third party howsoever relating to or arising out of an Environmental Incident (and, in each such case, “claim” shall mean a claim for damages, clean-up costs, compliance, remedial action or otherwise);

“Environmental Incident” means (i) any release of Material of Environmental Concern from either Vessel, (ii) any incident in which Material of Environmental Concern is released from a vessel other than the Vessels and which involves collision between either Vessel and such other vessel or some other incident of navigation or operation, in either case, where a Vessel, the Owner thereof and/or the Manager of such Vessel are actually at fault or otherwise liable (in whole or in part) or (iii) any incident in which Material of Environmental Concern is released from a vessel other than a Vessel and where a Vessel is actually liable to be arrested as a result and/or where the Owner thereof and/or the Manager of such Vessel are actually at fault or otherwise liable;

“Event of Default” means any events or circumstances set out in Clause 9.1 to 9.7 (incl.) or described as such in any other of the Security Documents;

“Expenses” means the aggregate at any relevant time (to the extent that the same have not been received or recovered by the Bank) of:

- (a) all losses, liabilities, costs, charges, expenses, damages and outgoings of whatever nature, (including, without limitation, Taxes, repair costs, registration fees and insurance premiums, crew wages, repatriation expenses and seamen's pension fund dues) suffered, incurred, charged to or paid or committed to be paid by the Bank in connection with the exercise of the powers referred to in or granted by any of the Security Documents or otherwise payable by the Borrower in accordance with the terms of any of the Security Documents;
- (b) the expenses referred to in Clause 10.2; and
- (c) interest on all such losses, liabilities, costs, charges, expenses, damages and outgoings from, in the case of Expenses referred to in sub-paragraph (b) above, the date on which such Expenses were demanded by the Bank from the Borrower and in all other cases, the date on which the same were suffered, incurred or paid by the Bank until the date of receipt or recovery thereof (whether before or after judgement) at the Default Rate (as conclusively certified by the Bank save in case of manifest error);

"Final Maturity Date" means in relation to the Loan the date falling twenty four (24) months after the Drawdown Date;

"Flag State" in relation to each Vessel means the Republic of Liberia or such other state or territory proposed in writing by the Borrower to the Bank and approved (at its reasonable discretion) by the Bank, as being the "Flag State" of such Vessel for the purposes of the Security Documents;

"GAAP" means generally accepted accounting principles in the United States of America;

"General Assignments" means together the Prosperity General Assignment and the Spartounta General Assignment and **"General Assignment"** means either of them as the context may require;

"Governmental Withholdings" means withholdings and any restrictions or conditions resulting in any charge whatsoever imposed, either now or hereafter, by any sovereign state or by any political sub-division or taxing authority of any sovereign state;

"Group" means the Newlead Corporate Guarantor and its Subsidiaries (whether direct or indirect and including, but not limited to, the Borrower) from time to time

during the Security Period and “**member of the Group**” shall be construed accordingly;

“**Indebtedness**” means any obligation for the payment or repayment of money, whether as principal or as surety, whether present or future, actual or contingent;

“**Insurances**” means in respect of a Vessel all policies and contracts of insurance and reinsurances for captive company, if applicable, (including, without limitation, all entries of such Vessel in a protection and indemnity, war risks or other mutual insurance association) which are from time to time in place or taken out or entered into by or for the benefit of its Owner (whether in the sole name of its Owner or in the joint names of its Owner and the Bank) in respect of such Vessel and its earnings or otherwise howsoever in connection with such Vessel and all benefits of such policies and/or contracts (including all claims of whatsoever nature and return of premiums);

“**Interest Payment Date**” means in respect of the Loan or any part thereof in respect of which a separate Interest Period is fixed the last day of the relevant Interest Period and in case of any Interest Period longer than three (3) months the date(s) falling at successive three (3) monthly intervals during such longer Interest Period and the last day of such Interest Period;

“**Interest Period**” means in relation to the Loan or any part thereof, each period for the calculation of interest in respect of the Loan or such part ascertained in accordance with Clauses 3.2 and 3.3;

“**ISM Code**” means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention constituted pursuant to Resolution A.741 (18) of the International Maritime Organisation and incorporated into the Safety of Life at Sea Convention 1974 and includes any amendments or extensions thereto and any regulation issued pursuant thereto;

“**ISPS Code**” means the International Ship and Port Security Code of the International Maritime Organization and includes any amendments or extensions thereto and any regulation issued pursuant thereto;

“**ISSC**” in relation to a Vessel means an International Ship Security Certificate issued in respect of such Vessel pursuant to the ISPS Code;

“**Lending Branch**” means the office of the Bank appearing at the beginning of this Agreement or any other office of the Bank designated by the Bank as the Lending Branch by notice to the Borrower;

“LIBOR” means, for an Interest Period:

- (a) the offered rate (if any) per annum for deposits in Dollars for such amount and for such period which is the rate, for such period, appearing on the relevant page of the Reuter BBA LIBOR01 at or about 11 a.m. London time on the Quotation Day (or, if the Bank shall have made a determination pursuant to Clause 3.6 such later time (not being later than 1 p.m. (London time) on the first day of such period) as the Bank may determine) (and, for the purposes of this Agreement, “Reuter BBA LIBOR01” means the display designated as “LIBOR01” on the Reuters Service or such other page as may replace LIBOR01 on that service for the purpose of displaying rates comparable to that rate or on such other service as may be nominated by the British Bankers’ Association as the information vendor for the purpose of displaying the British Bankers’ Association Interest Settlement Rates for Dollars); and
- (b) if on such date no rate is quoted on Reuter BBA page LIBOR01, or if the rate quoted on Reuter BBA page LIBOR01 does not reflect the Bank’s cost of funding, LIBOR for such period shall be the rate per annum determined by the Bank to be the arithmetic mean (rounded upwards, if necessary, to the nearest one–sixteenth of one per cent.) of the rates per annum as the rate at which deposits in Dollars are offered to the Bank by leading banks in the London Interbank Market at the Bank’s request at or about 11:00 a.m. (London time) on the second Banking Day before the first day of such period in an amount approximately equal to the amount in relation to which LIBOR is to be determined for a period equivalent to such period and for delivery on the first Banking Day of it; if such rate cannot be obtained or determined or does not adequately represent the Bank’s cost of funding, then the provisions of clause 3.6 are applicable;

“Loan” means the aggregate principal amount borrowed by the Borrower in respect of the Commitment or (as the context may require) the principal amount thereof owing to the Bank under this Agreement at any relevant time;

“Long Charterparty” in relation to a Vessel means any bareboat or time charter or contract of affreightment, agreement or related document in respect of the employment of such Vessel whether now existing or hereinafter entered into by the Owner thereof, as owner, and a charterer (of the approval of the Bank) for a period of at least 12 months and with rates and terms of the Bank’s approval (and shall include any addenda thereto);

“Management Agreement” in relation to each Vessel means the operating agreement made or to be made between the Owner thereof, as owner of such Vessel and the Manager providing (inter alia) for the Manager to manage such Vessel;

“Manager” in relation to each Vessel means for the time being **Newlead Bulkera S.A.**, a company duly incorporated under the laws of the Republic of Liberia having its registered office at 80 Broad Street, Monrovia, Liberia and an office established in Greece (83 Akti Miaouli and Flessa Street, GR 185.38 Piraeus) pursuant to the Greek laws 89/67, 378/68, 27/75 and 814/79 or any other person appointed by the Owner thereof, with the consent of the Bank, as the manager of such Vessel, and includes its successors in title;

“Manager’s Undertaking” in relation to each Vessel means an undertaking executed or (as the context may require) to be executed by the Manager in favour of the Bank, in form and substance as the Bank may approve or require as the same may from time to time be amended and/or supplemented (together, the **“Manager’s Undertakings”**);

“Margin” means seven per cent (7%) per annum; and

“Market Value” in relation to a Vessel means the market value of such Vessel as determined in accordance with Clause 8.2(b);

“Material of Environmental Concern” means and includes pollutants, contaminants, toxic substances, oil as defined in the United States Oil Pollution Act of 1990 and all hazardous substances as defined in the United States Comprehensive Environmental Response, Compensation and Liability Act 1980;

“Month” means a period beginning in one calendar month and ending in the next calendar month on the day numerically corresponding to the day of the calendar month on which it started provided that (i) if there is no such numerically corresponding day, it shall end on the last Banking Day in such next calendar month and (ii) if such numerically corresponding day is not a Banking Day, the period shall end on the next following Banking Day in the same calendar month but if there is no such Banking Day it shall end on the preceding Banking Day and “months” and “monthly” shall be construed accordingly;

“Mortgages” means together the Prosperity Mortgage and the Spartounta Mortgage and **“Mortgage”** means either of them as the context may require;

“Newlead Corporate Guarantor” means **NewLead Holdings Ltd.**, a company duly incorporated under the laws of Bermuda, whose registered office is at Canon’s Court, 22 Victoria Street, Hamilton, Bermuda, and include its successors;

“Newlead Corporate Guarantee” means a guarantee given or, as the context may require, to be given by the Newlead Corporate Guarantor, as security for (inter alia) the Outstanding Indebtedness and any and all other obligations of the Borrower under the Loan Agreement and the Security Documents, in form and substance as the Bank may approve or require as the same may from time to time be amended and/or supplemented;

“Operator” in relation to a Vessel means any person who is from time to time during the Security Period concerned in the operation of such Vessel and falls within the definition of **“Company”** set out in rule 1.1.2. of the ISM Code;

“Outstanding Indebtedness” means the aggregate of (a) the Loan and interest accrued and accruing thereon (b) the Expenses and (c) all other sums of money from time to time owing by the Borrower to the Bank, including, without limitation, default interest, damages, indemnities, costs, expenses, whether actually or contingently under this Agreement and the other Security Documents;

“Operating Expenses” in relation to a Vessel means the expenses for crewing, victualling, insuring, maintenance (including dry-docking and special survey cost and expenses), spares, management, general and administrative expenses and any other relevant expenses necessary for the commercial operation of such Vessel which are reasonably incurred for a vessel of the size and type of such Vessel;

“Owner” in relation to a Vessel means the registered owner thereof as specified in the definition of such Vessel in this clause 1.2;

“Permitted Encumbrance” means any Encumbrance in favour of the Bank created pursuant to the Security Documents and Permitted Liens;

“Permitted Lien” means any lien on a Vessel for master’s, officers’ or crew’s wages outstanding in the ordinary course of trading, any lien for salvage and any ship repairer’s or outfitter’s possessory lien for a sum not (except with the prior written consent of the Bank) exceeding the Major Casualty (as defined in the relevant Mortgage);

“Pledgor(s)” means the person(s) acceptable to the Bank who shall execute the Shares Pledge Agreement;

“Prosperity Accounts Pledge Agreement” means an agreement to be entered into between the Borrower and the Bank for the creation of a first priority pledge over the Prosperity Earnings Account and the Retention Account in favour of the Bank, in form and substance as the Bank may approve or require as the same may from time to time be amended and/or supplemented;

“Prosperity Earnings Accounts” means the interest bearing account opened or, as the context may require to be opened with the Bank at the Lending Branch in the name of the Borrower or such other account with any other branch or any other bank, as may be required by and at the discretion of the Bank, to which (inter alia) all Earnings of the Prosperity Vessel are to be paid in accordance with Clauses 11.5 and 8.5(b) and includes any sub-accounts thereof and any other account designated in writing by the Bank to be the Earnings Account in relation to such Vessel for the purposes of this Agreement;

“Prosperity General Assignment” means the first priority general assignment of all the Insurances and Earnings and Requisition Compensation of the Prosperity Vessel in form and substance as the Bank may approve or require as the same may from time to time be amended and/or supplemented, and respective notices of assignment;

“Prosperity Mortgage” means the first preferred Liberian ship mortgage on the Prosperity Vessel to be executed by the Borrower in favour of the Bank, in form and substance as the Bank may approve or require as the same may from time to time be amended and/or supplemented;

“Purchase Price” means the amount appearing in Clause 33 of the Bareboat Charterparty i.e. Twenty four million five hundred thousand Dollars (\$24,500,000) out of which the amount of Thirteen million six hundred nineteen thousand Dollars (\$13,619,000) remains outstanding on the date hereof, as same shall be deducted in accordance with the clause 33 of the Bareboat Charterparty until the Delivery Date, and is payable to the Seller upon Delivery of the Prosperity Vessel on the Delivery Date;

“Quotation Day” means, in respect of any period in respect of which LIBOR falls to be determined under this Agreement, the second Banking Day before the first day of such period;

“Receiving Bank” means Deutsche Bank Trust Co. Americas (ex. Bankers Trust Company, New York), SWIFT address BKTRUS33, or such other bank in New York as the Bank may notify to the Borrower;

“Registry” in relation to a Vessel means the offices of such registrar, commissioner or representative of the Flag State who is duly authorised to register such Vessel, her Owner’s title to such Vessel and the relevant Mortgage over such Vessel under the laws and flag of the Flag State;

“Related Company” means any company member of the Group or other entity of which such company is a Subsidiary and any Subsidiary of any such company or entity;

“Relevant Party” means each Owner, the relevant Owner’s Related Companies, any other Security Party and any Security Party’s Related Companies;

“Relevant Ship” means the Vessels and any other vessel from time to time (whether before or after the date of this Agreement) owned, managed or crewed by, or chartered to, any Relevant Party;

“Requisition Compensation” in relation to a Vessel means all sums of money or other compensation from time to time payable by reason of requisition of such Vessel otherwise than by requisition for hire;

“Retention Account” means an interest bearing account of the Borrower opened (or as the context may require) to be opened by the Borrower with the Bank or such other branch of the Bank or any other bank as may be required by and at the discretion of the Bank and designated **“Newlead Prosperity Inc. — Retention Account”** and includes any other account designated by the Bank to be a Retention Account for the purposes of this Agreement;

“Security Documents” means the documents referred to in Clause 11.1 and (where the context so permits) this Agreement and (b) any and every other document as may have been or shall from time to time after the date of this Agreement executed to guarantee and/or to secure the whole or any part of the Outstanding Indebtedness and/or any and all other obligations of the Borrower to the Bank pursuant to this Agreement (whether or not any such document also secures moneys from time to time owing pursuant to any other document or agreement);

“Security Party” means the Borrower, the Corporate Guarantors, the Manager, the Owners and any other person (other than the Bank) which is or may become a party to any of the Security Documents;

“Security Period” means the period commencing on the date hereof and terminating on the date upon which the Loan together with all interest thereon and all other

moneys payable to the Bank under this Agreement and the Security Documents have been repaid in full to the Bank;

“Security Requirement” means the amount in Dollars (as certified by the Bank whose certificate shall, in the absence of manifest error, be conclusively binding on the Borrower) which is at any relevant time during the Security Period one hundred and twenty percent (120%) of the Aggregate Indebtedness;

Provided that during the period from the Drawdown Date to 31st December, 2012 the Security Requirement is hereby waived;

“Security Value” means the amount in Dollars (as certified by the Bank whose certificate shall, in the absence of manifest error, be conclusive and binding on the Borrower) which, at any relevant time is the aggregate of (a) the aggregate Market Value of the Vessels as most recently determined in accordance with Clause 8.2(b), (b) the market value of any additional security provided to the Bank pursuant to Clause 8.2(a) (if any) and/or pursuant to Clause 8.2(a) of the Spartounta Loan Agreement (if any);

“Seller” means Prelude Shipmanagement Ltd., of Marshall Islands;

“Shares Pledge Agreement” in relation to the Borrower means the pledge agreement to be executed by the Pledgor(s) in favour of the Bank, whereby the Pledgors shall pledge all the issued share capital of the Borrower, in form and substance as the Bank may approve or require, as the same may from time to time be amended and/or supplemented;

“SMC” means a safety management certificate issued in respect of each Vessel in accordance with rule 13 of the Code;

“Spartounta Accounts Pledge Agreement” means an agreement to be entered into between the Spartounta Owner and the Bank for the creation of a second priority pledge over the Spartounta Earnings Account in favour of the Bank, in form and substance as the Bank may approve or require as the same may from time to time be amended and/or supplemented;

“Spartounta Loan Agreement” means the loan agreement dated 2nd July, 2010, as amended, made between the Spartounta Owner, as borrower, and the Bank, as lender, for a secured loan facility of \$24,150,000 out of which the amount of Twenty one million seven hundred fifty (\$21,750,000) is outstanding at the date hereof (the **“Spartounta Loan”**);

“Spartouta Owner“ means **Grand Spartouta Inc.**, a company organised and existing under the laws of the Republic of Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960;

“Spartouta Corporate Guarantee” means a guarantee given or, as the context may require, to be given by the Spartouta Owner, as security for (inter alia) the Outstanding Indebtedness and any and all other obligations of the Borrower under the Loan Agreement and the Security Documents, in form and substance as the Bank may approve or require as the same may from time to time be amended and/or supplemented;

“Spartouta Earnings Account” means the interest bearing account opened with the Bank at the Lending Branch in the name of the Borrower pursuant to the provisions of the Spartouta Loan Agreement or such other account with any other branch or any other bank, as may be required by and at the discretion of the Bank, to which (inter alia) all Earnings of the Spartouta Vessel are to be paid in accordance with Clauses 8.5.(b), 11.5 and 8.5(b) of the Spartouta Loan Agreement and includes any sub-accounts thereof and any other account designated in writing by the Bank to be the Earnings Account in relation to such Vessel for the purposes of this Agreement and the Spartouta Loan Agreement;

“Spartouta General Assignment” means the second priority general assignment of all the Insurances and Earnings and Requisition Compensation of the Spartouta Vessel, in form and substance as the Bank may approve or require as the same may from time to time be amended and/or supplemented, and respective notices of assignment;

“Spartouta Mortgage” means the second preferred Liberian ship mortgage on the Spartouta Vessel to be executed by the Spartouta Owner in favour of the Bank in form and substance as the Bank may approve or require as the same may from time to time be amended and/or supplemented;

“Subsidiary” of a person means any company or entity directly or indirectly controlled by such person, and for this purpose “control” means either ownership of more than fifty percent (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity or the power to direct its policies and management, whether by contract or otherwise;

“Taxes” includes all present and future taxes, levies, imposts, duties, fees or charges of whatever nature together with interest thereon and penalties in respect thereof

(except taxes concerning the Bank and imposed on the overall net income of the Bank) and “**Taxation**” shall be construed accordingly; “**Commitment**” means the total amount which the Bank agreed to lend to the Borrower under Clause 2.1 as reduced by any relevant term of this Agreement;

“**Total Loss**” in relation to a Vessel means (a) actual, constructive, compromised or arranged total loss of such Vessel; or (b) requisition for title or other compulsory acquisition of such Vessel otherwise than by requisition for hire; or (c) hijacking, theft, condemnation, capture, seizure, detention, arrest or confiscation of such Vessel by any government or by any person acting or purporting to act on behalf of any government, unless such Vessel is released and restored to the Owner thereof within sixty (60) days after the occurrence thereof; and

“**Vessels**” means together:

- (a) the bulk carrier “**NEWLEAD SPARTOUNTA**”, built in Italy by Fincantieri Margnera in 1989, presently lawfully registered under the laws and flag of the Republic of Liberia in the ownership of the Spartounta Owner, and propelled by one oil internal combustion engine of 17,800 HP together with all her boats, engines, machinery tackle outfit spare gear fuel consumable and other stores belongings and appurtenances whether on board or ashore and whether now owned or hereafter acquired and all the additions, improvements and replacements in or on the above described vessel (herein, the “**Spartounta Vessel**”); and
- (b) the bulk carrier “**NEWLEAD PROSPERITY**”, built by Tianjin Xingang Shipbuilding Heavy Industries Co., Ltd. in China in 2003, purchased by the Borrower pursuant to the Bareboat Charterparty and which upon Delivery shall be lawfully registered under the laws and flag of the Republic of Liberia in the ownership of the Borrower and propelled by one oil internal combustion engine of 7,650 KW together with all her boats, engines, machinery tackle outfit spare gear fuel consumable and other stores belongings and appurtenances whether on board or ashore and whether now owned or hereafter acquired and all the additions, improvements and replacements in or on the above described vessel (herein, the “**Prosperity Vessel**”); and

“**Vessel**” means either of them as the context may require.

1.3 **Interpretation:** In this Agreement:

- (a) clause headings and the table of contents are inserted for convenience of reference only and shall be ignored in the interpretation of this Agreement;
- (b) subject to any specific provision of this Agreement or of any assignment and/or participation or syndication agreement of any nature whatsoever, reference to each of the parties hereto and to the other Security Documents shall be deemed to be reference to and/or to include, as appropriate, their respective successors and permitted assigns;
- (c) reference to a person shall be construed as including reference to an individual, firm, company, corporation, unincorporated body of persons or any State or any agency thereof;
- (d) where the context so admits, words in the singular include the plural and vice versa;
- (e) the words “including” and “in particular” shall not be construed as limiting the generality of any foregoing words;
- (f) references to (or to any specified provisions of) this Agreement and all documents referred to in this Agreement shall be construed as references to this Agreement, that provision or that document as are in force for the time being and as are amended and/or supplemented from time to time;
- (g) reference to this Agreement includes all the terms of this Agreement and any Schedules, Annexes or Appendices to this Agreement, which form an integral part of same;
- (h) reference to Clauses, Sub–Clauses and Schedules are to Clauses, Sub–Clauses and Schedules in this Agreement;
- (i) reference to the opinion of the Bank or a determination or acceptance by the Bank or to documents, acts, or persons acceptable or satisfactory to the Bank or the like shall be construed as reference to opinion, determination, acceptance or satisfaction of the Bank at the sole discretion of the Bank and such opinion, determination, acceptance or satisfaction of the Bank shall be binding on the Borrower (save for manifest error and as provided otherwise herein);
- (j) references to a “**regulation**” include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force

- (k) of law) of any agency, authority, central bank or government department or any self regulatory or other national or supra-national authority; references to any person include such person's assignees and successors in title;
- (l) reference to a "guarantee" include references to an indemnity or other assurance against financial loss including, without limitation, an obligation to purchase assets or services as a consequence of a default by any other person to pay any Indebtedness and "guaranteed" shall be construed accordingly; and
- (m) references to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended.

2. **THE FACILITIES**

2.1 **The Loan**

- (a) **Commitment to Lend:** The Bank, relying upon (inter alia) each of the representations and warranties set forth in Clause 6 and in each of the other Security Documents, agrees to lend to the Borrower, upon and subject to the terms of this Agreement, a term loan in the principal sum of up to \$12,000,000 (Twelve million Dollars) as set out in clause 1.1.
- (b) **Number and Purpose of Advances Agreed:** The Commitment shall be advanced to the Borrower in one (1) Advance and shall be used for the purpose set forth in Clause 1.1.
- (c) **Termination of the Commitment:** Any part of the Commitment undrawn and uncanceled at the end of the relevant Availability Period shall thereupon be automatically cancelled.

2.2 **Drawdown Notice and commitment to Borrow:** Subject to the terms and conditions of this Agreement, the Commitment shall be made to the Borrower following receipt by the Bank from the Borrower of a Drawdown Notice not later than 10 a.m. (London time) on the second Banking Day before the date on which such drawdown is intended to be made. A Drawdown Notice shall be effective on actual receipt thereof by the Bank and, once given, shall, subject as provided in Clause 3.6, be irrevocable.

2.3 **Disbursement of the Loan:** Upon receipt of a Drawdown Notice complying with the terms of this Agreement the Bank shall, subject to the provisions of Clause 7, on the

- date specified in such Drawdown Notice, make the Commitment available to the Borrower.
- 2.4 **Application of Proceeds:** The Borrower undertakes with the Bank to use the Loan only for the purposes stated in Clause 1.1 provided that, without prejudice to the Borrower's obligations under Clause 8.1(e), the Bank shall have no responsibility for the application of the proceeds thereof by the Borrower, and the Bank shall not be under any obligation to monitor the Borrower's compliance with this undertaking and no breach of this undertaking shall affect the Borrower's other obligations hereunder.
- 2.5 **Evidence:** It is hereby expressly agreed and admitted by the Borrower that (save in case of manifest error) abstracts or photocopies of the books of the Bank as well as statements of accounts or a certificate signed by an authorised officer of the Bank shall be conclusive binding and full evidence on the Borrower as to the existence and/or the amount of the at any time Outstanding Indebtedness, of any amount due under this Agreement, of the applicable interest rate or Default Rate or any other rate provided for or referred to in this Agreement, the Interest Period, the value of additional securities under Clause 8.2(a), the payment or non payment of any amount. Nevertheless, enforcement procedures or any other Court or out-of-court procedure can be commenced by the Bank on the basis of the above mentioned means of evidence including written statements or certificates of the Bank.
3. **INTEREST**
- 3.1 **Normal Interest Rate:** The Borrower shall pay interest on the Loan (or as the case may be, each portion thereof to which a different Interest Period relates) in respect of each Interest Period related thereto on each Interest Payment Date. The interest rate for the calculation of interest shall be the rate per annum determined by the Bank to be the aggregate of (i) the Margin and (ii) LIBOR for that Interest Period.
- 3.2 **Selection of Interest Period:** The Borrower may by notice received by the Bank not later than 10 a.m. (London time) on the second Banking Day before the beginning of each Interest Period specify (subject to Clause 3.3 below) whether such Interest Period shall have a duration of one (1) or three (3) or six (6) or nine (9) months (subject to market availability) (or such other period as may be requested by the Borrower and as the Bank, in its sole discretion, may agree to).
- 3.3 **Duration of Interest Period:** Every Interest Period shall, subject to market availability to be conclusively determined by the Bank, be of the duration specified by the Borrower pursuant to Clause 3.2 but so that:

- (a) the initial Interest Period in respect of the Loan will commence on the date on which the Loan is advanced and each subsequent Interest Period will commence forthwith upon the expiry of the previous Interest Period;
 - (b) the expression “**Interest Period in respect of the Loan**” when used in this Agreement refers to the Interest Period in respect of the balance of the Loan;
 - (c) if the Borrower fails to specify the duration of an Interest Period in accordance with the provisions of Clause 3.2 and this Clause 3.3, such Interest Period shall have a duration of three (3) months unless another period shall be agreed between the Bank and the Borrower provided, always, that such period (whether of three (3) months or of different duration) shall comply with this Clause 3.3; and
 - (d) if the Bank determines that funds for the duration of an Interest Period specified by the Borrower in accordance with Clause 3.2 are not readily available, then that Interest Period shall have such duration as the Bank, in consultation with the Borrower, may determine; provided always that:
 - (i) any Interest Period which commences on the last day of a calendar month, and any Interest Period which commences on the day on which there is no numerically corresponding day in the calendar month during which such Interest Period is due to end, shall end on the last Banking Day of the calendar month during which such Interest Period is due to end; and
 - (ii) if the last day of an Interest Period is not a Banking Day the Interest Period shall be extended until the next following Banking Day unless such next following Banking Day falls in the next calendar month in which case such Interest Period shall be shortened to expire on the preceding Banking Day.
- 3.4 **Default Interest:** If the Borrower fails to pay any sum (including, without limitation, any sum payable pursuant to this Clause 3.4) on its due date for payment under any of the Security Documents, the Borrower shall pay interest on such sum from the due date up to the date of actual payment (as well after as before judgement) at the rate determined by the Bank pursuant to this Clause 3.4. The period beginning on such due date and ending on such date of payment shall be divided into successive periods of not more than three (3) months as selected by the Bank each of which (other than the first, which shall commence on such due date) shall commence on

the last day of the preceding such period. The rate of interest applicable to each such period shall be the aggregate (as determined by the Bank) of (i) two per cent (2%) per annum, (ii) the Margin and (iii) subject to clause 3.6, LIBOR for such period, as conclusively determined by the Bank, save for manifest error. Such interest shall be due and payable on the last day of each such period as determined by the Bank and each such day shall, for the purposes of this Agreement, be treated as an Interest Payment Date. In case that a payment is made in default for any amount, the Interest Periods will be determined by the Bank at its discretion including the amounts for which there is no default, even if the Bank has not (yet) exercised its rights pursuant to Clause 9.8(b) of the Agreement. Interest payable by the Borrower as aforesaid shall be compounded semi-annually (or if the period fixed by the Bank is longer, at the end of such longer period) and shall be payable on demand.

3.5 **Notification of Interest and Interest Rate:** The Bank shall notify the Borrower promptly of the duration of each Interest Period and of each rate of interest determined by it under this Clause 3 without prejudice to the right of the Bank to make determinations at its sole discretion. However, omission of the Bank to make such notification (without the application of the Borrower) will not constitute and will not be interpreted as if to constitute a breach of obligation of the Bank except in case of willful misconduct.

3.6 **Market disruption — Non Availability**

(a) **Market Disruption Event:** If and whenever, at any time prior to the commencement of any Interest Period, the Bank (in its reasonable discretion) shall have determined (which determination shall be conclusive) that a Market Disruption Event has occurred in relation to the Loan for any such Interest Period, then the Bank shall forthwith give notice thereof (a “**Determination Notice**”) to the Borrower and the rate of interest on the Loan (or the relevant part thereof) for that Interest Period shall be the percentage rate per annum which is the sum of:

- (i) the Margin; and
- (ii) the rate which expresses as a percentage rate per annum the cost to the Bank of funding the Loan (or the relevant part thereof) from whatever source it may reasonably select.

- (b) Meaning of “Market Disruption Event”: In this Agreement “**Market Disruption Event**” means:
- (i) at or about noon on the Quotation Day for the relevant Interest Period Interbank Rate is not available; and/or
 - (ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Bank determines (in its sole discretion) that the cost to it of obtaining matching deposits in the London Interbank Market to fund the Loan (or the relevant part thereof) for such Interest Period would be in excess of the Interbank Rate; and
 - (iii) before close of business in London on the Quotation Day for the relevant Interest Period, deposits in Dollars are not available to the Bank in the London Interbank Market in the ordinary course of business in sufficient amounts to fund the Loan (or the relevant part thereof) for such Interest Period.
- (c) Alternative basis of interest or funding:
- (i) If a Market Disruption Event occurs and the Bank or the Borrower so requires, the Bank and the Borrower shall enter into negotiations (for a period of not more than five (5) days (the “**Negotiation Period**”)) after the giving of the relevant Determination Notice with a view to agreeing a substitute basis for determining the rate of interest.
 - (ii) Any alternative basis agreed pursuant to paragraph (i) above shall be binding on the Bank and all Security Parties.
- (d) Alternative basis of interest in absence of agreement: If the Bank and the Borrower will not enter into negotiations as provided in clause 3.6(c)(i) or if an alternative interest rate or alternative basis is not agreed within the Negotiation Period, and the relevant circumstances are continuing at the end of the Negotiation Period, then the Bank shall set the following Interest Period and an interest rate representing the cost of funding of the Bank in Dollars of the Loan (or the relevant part thereof) plus the Margin for such Interest Period; if the relevant circumstances are continuing at the end of the Interest Period so set by the Bank, the Bank shall continue to set the following Interest Period and an interest rate representing its cost of funding in Dollars of the Loan (or the relevant part thereof) plus the Margin for such Interest Period.

- (e) Notice of prepayment: If the Borrower does not agree with an interest rate set by the Bank under Clause 3.6(d), the Borrower may give the Bank not less than 5 Banking Days' notice of its intention to prepay the Loan at the end of the interest period set by the Bank.
- (f) Prepayment; termination of Commitment: A notice under Clause 3.6(e) shall be irrevocable; and on the last Banking Day of the interest period set by the Bank, the Borrower shall prepay (without premium or penalty) the Loan, together with accrued interest thereon at the applicable rate plus the Margin and the balance of the Outstanding Indebtedness.
- (g) Application of prepayment: The provisions of Clause 4 shall apply in relation to the prepayment made hereunder.

4. REPAYMENT — PREPAYMENT

- 4.1 **Repayment of the Loan.** The Borrower shall and it is expressly undertaken by the Borrower to repay the Loan in one amount on the Final Maturity Date together with accrued interest thereon and the balance of the Outstanding Indebtedness; provided, that if the Final Maturity Date shall become due on a day which is not a Banking Day, the due date therefore shall be extended to the next succeeding Banking Day unless such Banking Day falls in the next calendar month, in which event such due date shall be the immediately preceding Banking Day.
 - 4.2 **Voluntary Prepayment.** The Borrower shall have the right, upon giving the Bank not less than five (5) Banking Days' notice in writing, to prepay, without penalty or prepayment fee, part or all of the Loan, in each case together with all unpaid interest accrued thereon and all other sums of money whatsoever due and owing from the Borrower to the Bank hereunder or pursuant to the other Security Documents and all interest accrued thereon, provided, that:
 - (a) the giving of such notice by the Borrower will irrevocably commit the Borrower to prepay such amount as stated in such notice;
 - (b) such prepayment may take place only on the last day of an Interest Period in respect of the Loan provided, however, that if the Borrower shall request consent to make such prepayment on another day and the Bank shall accede to such request (it being in the sole discretion of the Bank to decide whether or not to do so) the Borrower will pay in addition to the amount to be prepaid, any such sum as may be payable to the Bank pursuant to Clause 10.1;
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- (c) each such prepayment shall be in an amount of One hundred thousand Dollars (\$100,000) or a whole multiple thereof or the balance of the Loan and will be applied by the Bank in or towards prepayment of the Loan;
 - (d) every notice of prepayment shall be effective only on actual receipt (including by fax) by the Bank, shall be irrevocable and shall oblige the Borrower to make such prepayment on the date specified;
 - (e) no amount prepaid may be re-borrowed; and
 - (f) the Borrower may not prepay the Loan or any part thereof save as expressly provided in this Agreement.
- 4.3 **Compulsory Prepayment in case of Total Loss or sale of the Prosperity Vessel.**
- (a) On the Prosperity Vessel becoming a Total Loss:
 - (i) prior to the advancing of the Commitment, the obligation of the Bank to advance the Commitment shall immediately cease and the Commitment shall be reduced to zero; or
 - (ii) in case the Commitment has been already advanced, the Borrower shall prepay the Outstanding Indebtedness the latest on the date falling one hundred and eighty (180) days after that on which the Total Loss occurred or, if earlier, on the date upon which the insurance proceeds in respect of such Total Loss are or Requisition Compensation is received by the Borrower (or the Bank pursuant to the Security Documents) and any surplus of such insurance proceeds shall be applied by the Bank in accordance with the provisions of clause 4.3 of the Spartounta Loan Agreement in or towards prepayment of the Outstanding Indebtedness (as defined in the Spartounta Loan Agreement).
- For the purpose of this Agreement:
- (aa) an actual total loss of a Vessel shall be deemed to have occurred at the actual date and time such Vessel was lost but in the event of the date of the loss being unknown then the actual total loss shall be deemed to have occurred on the date on which such Vessel was last reported;
 - (bb) a constructive total loss shall be deemed to have occurred at the earlier of (a) date and time notice of abandonment of a Vessel is given to the insurers of such Vessel and (b) date and time claim for

insurance indemnity has been submitted to the insurers of such Vessel and in any case no later than sixty (60) days from the date of occurrence of the total loss and regardless of whether notice of abandonment of such Vessel has been given to the insurers of such Vessel or claim for insurance indemnity has been submitted to the insurers of such Vessel;

- (cc) a compromised or arranged total loss of a Vessel shall be deemed to have occurred on the date on which a binding agreement as to such compromised or arranged total loss has been entered into by the insurers of such Vessel and the Owner and in any case no later than sixty (60) days from the date of occurrence of the total loss and regardless of whether claim for insurance indemnity has been submitted to the insurers of such Vessel or a binding agreement as to such total loss has been entered into by the insurers of the Vessel and the Owner;
- (dd) Compulsory Acquisition of a Vessel shall be deemed to have occurred on the date upon which the relevant requisition for title or other compulsory acquisition occurs; and
- (ee) hijacking, theft, condemnation, capture, seizure, detention, arrest, or confiscation of a Vessel by any government or by any person acting or purporting to act on behalf of any government, which deprives the Owner thereof of the use of such Vessel for more than sixty (60) days shall be deemed to occur upon the expiry of the period of sixty (60) days after the date upon which the relevant hijacking, theft, condemnation, capture, seizure, detention, arrest or confiscation occurred.
- (b) In case of sale or other disposal of the Prosperity Vessel, immediately upon completion of such sale or other disposal, the Borrower shall prepay the Outstanding Indebtedness in full and any surplus of such insurance proceeds shall be applied by the Bank in accordance with the provisions of clause 4.3 of the Spartounta Loan Agreement in or towards prepayment of the Outstanding Indebtedness (as defined in the Spartounta Loan Agreement).

4.4 Compulsory Prepayment in case of capital raising.

The Borrower hereby undertakes to procure that in the event that the Newlead Corporate Guarantor proceeds with a successful raising of equity through a stock

exchange of at least Forty million Dollars (\$40,000,000) or with the issuance of a bond or a junk bond for at least Forty million Dollars (\$40,000,000), upon completion of such equity raising part of relevant proceeds will be utilised to prepay the Outstanding Indebtedness in full. In case of such prepayment and the Borrower is requesting the Bank to discharge the second preferred Liberian ship mortgage registered or to be registered over the Prosperity Vessel in security of the Borrower's obligations under its guarantee granted or to be granted in security of the obligations of the Spartounta Owner under the Spartounta Loan Agreement, the Bank will consider such request subject to (a) prepayment to the Bank of an amount to be agreed between the Bank and the Borrower, which amount will be applied by the Bank in or towards prepayment of the Spartounta Loan and/or (b) provision to the Bank, to the satisfaction of the Bank, such further security for the Outstanding Indebtedness (as defined in the Spartounta Loan Agreement) as shall be acceptable to the Bank at its discretion.

4.5 Compulsory Prepayment in case of Total Loss, sale or other disposal of the Spartounta Vessel

- (a) In case of Total Loss or sale or other disposal of the Spartounta Vessel, the insurance or, as the case may be, sale or other disposal proceeds of such Vessel shall be applied by the Bank in accordance with the provisions of clause 4.3 of the Spartounta Loan Agreement in or towards prepayment of the Outstanding Indebtedness (as defined in the Spartounta Loan Agreement) and any surplus of such proceeds shall be applied by the Bank in accordance with the provisions of clause 4.3 in or towards prepayment of the Outstanding Indebtedness.
- (b) In case the Borrower is requesting the Bank to discharge the Second Spartounta Mortgage, the Bank will consider such request subject to (a) prepayment to the Bank of an amount to be agreed between the Bank and the Borrower, which amount will be applied by the Bank in or towards prepayment of the Spartounta Loan and (b) provision to the Bank, to the satisfaction of the Bank, such further security for the Outstanding Indebtedness as shall be acceptable to the Bank at its discretion.

4.6 Amounts payable on prepayment

Any prepayment of all or part of the Loan under this Agreement shall be made together with (a) accrued interest on the amount to be prepaid to the date of such prepayment (calculated, in the case of a prepayment pursuant to Clause 3.6 at a rate

equal to the aggregate of the Margin and the cost to the Bank of funding the Loan), (b) any additional amount payable under Clause 5.3 and (c) all other sums payable by the Borrower to the Bank under this Agreement or any of the other Security Documents including, without limitation, any amounts payable under Clause 10.

5. PAYMENTS, TAXES, ACCOUNTS AND COMPUTATION

5.1 Payments — No set-off or Counterclaims

- (a) The Borrower acknowledges that in performing its obligations under this Agreement, the Bank will be incurring liabilities to third parties in relation to the funding of amounts to the Borrower, such liabilities matching the liabilities of the Borrower to the Bank and that it is reasonable for the Bank to be entitled to receive payments from the Borrower gross on the due date in order that the Bank is put in a position to perform its matching obligations to the relevant third parties. Accordingly, all payments to be made by the Borrower under this Agreement and/or any of the other Security Documents shall be made in full, without any set-off or counterclaim whatsoever and, subject as provided in Clause 5.3, free and clear of any deductions or withholdings or Governmental Withholdings whatsoever, as follows:
- (i) in Dollars, not later than 10.00 a.m. (London time) on the Banking Day (in Athens, London and New York City) on which the relevant payment is due under the terms of this Agreement; and
 - (ii) to the Receiving Bank for the account of the Bank, Account No. 04416740, SWIFT Code: FBBGGRAA, reference: **Newlead Prosperity Inc.– Loan Agreement**”, provided, however, that the Bank shall have the right to change the place of account for payment, upon fifteen (15) Banking Days’ prior written notice to the Borrower.
- (b) If at any time it shall become unlawful or impracticable for the Borrower to make payment under this Agreement to the relevant account or bank referred to in Clause 5.1(a), the Borrower may request and the Bank may agree to alternative arrangements for the payment of the amounts due by the Borrower to the Bank under this Agreement or the other Security Documents.

- 5.2 Payments on Banking Days:** All payments due shall be made on a Banking Day. If the due date for payment falls on a day which is not a Banking Day, the due payment or payments shall be made on the next following Banking Day unless such Banking Day falls in the next calendar month in which case payment shall be made on the immediately preceding Banking Day.

- 5.3 **Gross Up:** If at any time any law, regulation, regulatory requirement or requirement of any governmental authority, monetary agency, central bank or the like compels the Borrower to make payment subject to Governmental Withholdings, or any other deduction or withholding, (excluding tax withholdings on the Bank's overall net income) the Borrower shall pay to the Bank such additional amounts as may be necessary to ensure that there will be received by the Bank a net amount equal to the full amount which would have been received had payment not been made subject to such Governmental Withholdings or other deduction or withholding. The Borrower shall indemnify the Bank against any losses or costs incurred by the Bank by reason of any failure of the Borrower to make any such deduction or withholding or by reason of any increased payment not being made on the due date for such payment. The Borrower shall, not later than thirty (30) days after each deduction, withholding or payment of any Governmental Withholdings, forward to the Bank official receipts and any other documentary receipts and any other documentary evidence reasonably required by the Bank in respect of the payment made or to be made of any deduction or withholding or Governmental Withholding. The obligations of the Borrower under this provision shall, subject to applicable law, remain in force notwithstanding the repayment of the Loan and the payment of all interest due thereon pursuant to the provisions of this Agreement.
- 5.4 **Mitigation:** If circumstances arise which would result in an increased amount being payable by the Borrower under this Clause then, without in any way limiting the rights of the Bank under this Clause, the Bank shall use reasonable endeavours to transfer its obligations, liabilities and rights under this Loan and the Security Documents to another office or financial institution not affected by the circumstances, but the Bank shall not take any such action if in its opinion, to do so would or might:
- (a) have an adverse effect on its business, operations or financial condition; or
 - (b) involve it in any activity which is unlawful or prohibited or any activity that is contrary to, or inconsistent, with any regulation; or
 - (c) involve it in any expense (unless indemnified to its reasonable satisfaction) or tax disadvantage.
- 5.5 **Tax credits:** If the Bank receives for its own account a repayment or credit in respect of tax on account for which the Borrower has made an increased payment under this Clause, it shall pay to the Borrower a sum equal to the repayment or credit received, provided, always, that:

- (a) the Bank shall not be obliged to allocate this transaction any part of a tax repayment or credit which is referable to a number of transactions;
 - (b) nothing in this Clause shall oblige the Bank to arrange its tax affairs in any particular manner, to claim any type of relief, credit, allowance or deduction instead of, or in priority to, another or to make any such claim within any particular time;
 - (c) nothing in this Clause shall oblige the Bank to make a payment which exceed any repayment or credit in respect of tax on account of which the Borrower has made an increased payment under this Clause; and
 - (d) any allocation or determination made by the Bank under or in connection with this Clause shall be binding on the Borrower.
- 5.6 **Loan Account:** All sums advanced by the Bank to the Borrower under this Agreement and all interest accrued thereon and all other amounts due under this Agreement from time to time and all repayments and/or payments thereof shall be debited and credited respectively to a separate memorandum account maintained by the Bank in accordance with its usual practices in the name of the Borrower. The Bank may, however, in accordance with its usual practices or for its accounting needs, maintain more than one account, consolidate or separate them but all such accounts shall be considered parts of one single memorandum account maintained under this Agreement. In case that a ship mortgage in the form of Account Current is granted as security under this Agreement, the account(s) referred to in this Clause shall be the Account Current referred to in the mortgage.
- 5.7 **Certificates Conclusive:** It is hereby expressly agreed and admitted by the Borrower that abstracts or photocopies or other reproductions of the books of the Bank as well as statements of accounts or a certificate signed by an authorised officer of the Bank shall (save for manifest error) be conclusive, binding and full evidence on the Borrower as to the existence and/or the amount of the at any time Outstanding Indebtedness, of any amount due under this Agreement, of the applicable Interest Rate or Default Rate or any other rate provided for or referred to in this Agreement, the Interest Period, the value of additional securities under Clause 8.2(a) and the payment or non payment of any amount.
- 5.8 **Computation:** All interest and other payments payable by reference to a rate per annum under this Agreement shall accrue from day to day and be calculated on the basis of actual days elapsed and a 360 day year.
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6. REPRESENTATIONS AND WARRANTIES

6.1 **Continuing representations and warranties.** The Borrower hereby represents and warrants to the Bank that:

- (a) **Due Incorporation/Valid Existence:** the Borrower and each of the other Security Parties is duly incorporated and validly existing and in good standing under the laws of their respective countries of incorporation and have power to own their respective property and assets, to carry on their respective business as the same are now being lawfully conducted and to purchase, own, finance and operate vessels, as well as to undertake the obligations which they have undertaken or shall undertake pursuant to the Security Documents to which it is a party;
- (b) **Due Corporate Authority:** the Borrower has power to execute, deliver and perform its obligations under the Security Documents to which it is a party and to borrow the Commitment and each of the other Security Parties has power to execute and deliver and perform its obligations under the Security Documents to which it is or is to be a party; all necessary corporate, shareholder and other action has been taken to authorize the execution, delivery and performance of the same and no limitation on the powers of the Borrower to borrow will be exceeded as a result of borrowing the Loan;
- (c) **Litigation:** no litigation, arbitration, tax claim or administrative proceeding involving a potential liability of the Borrower or any other Security Party in excess of \$500,000 is current or pending or (to its or its officers' knowledge) threatened against the Borrower or any other Security Party, which, if adversely determined, would have a materially adverse effect on the business assets or the financial condition of any of them;
- (d) **No conflict with other obligations:** the execution and delivery of, the performance of their respective obligations under, and compliance with the provisions of, the Security Documents by the relevant Security Parties will not (i) contravene any existing applicable law, statute, rule or regulation or any judgment, decree or permit to which the Borrower or any other Security Party is subject, (ii) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which the Borrower or any other Security Party is a party or is subject to or by which it or any of its property is bound, (iii) contravene or conflict with any provision of the memorandum and articles of association/articles of incorporation/by-laws/statutes or other constitutional documents of the

Borrower or any other Security Party or (iv) result in the creation or imposition of or oblige the Borrower or any other Security Party to create any Encumbrance (other than a Permitted Encumbrance) on any of the undertakings, assets, rights or revenues of the Borrower or any other Security Party;

- (e) Financial Condition: the financial condition of the Borrower and of the other Security Parties has not suffered any material deterioration since that condition was last disclosed to the Bank;
- (f) No Immunity: neither the Borrower nor any other Security Party nor any of their respective assets are entitled to immunity on the grounds of sovereignty or otherwise from any legal action or proceeding (which shall include, without limitation, suit, attachment prior to judgement, execution or other enforcement);
- (g) Shipping Company: the Borrower is a shipping company involved in the owning of ships engaged in international voyages and earning profits in free foreign currency;
- (h) Licences/Authorisation: every consent, authorisation, licence or approval of, or registration with or declaration to, governmental or public bodies or authorities or courts required by any Security Party to authorize, or required by any Security Party in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of each of the Security Documents or the performance by each Security Party of its obligations under the Security Documents has been obtained or made and is in full force and effect and there has been no default in the observance of any of the conditions or restrictions (if any) imposed in, or in connection with, any of the same;
- (i) Perfected Securities: when duly executed, the Security Documents will create a perfected security interest in favour of the Bank, with the intended priority, in or over the assets and revenues intended to be covered, valid and enforceable against the Borrower and the other relevant Security Parties;
- (j) No Notarisation/Filing/Recording: save for the registration of the relevant Mortgage in the relevant Registry, it is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of this Agreement or any of the other Security Documents that it or they or any other instrument be notarised, filed, recorded, registered or enrolled in any court, public office or

- elsewhere or that any stamp, registration or similar tax or charge be paid on or in relation to this Agreement or the other Security Documents;
- (k) **Validity and Binding effect:** the Security Documents constitute (or upon their execution — and in the case of each Mortgage upon its registration at the relevant Registry — will constitute) valid and legally binding obligations of the relevant Security Parties enforceable against the Borrower and the other Security Parties in accordance with their respective terms and that there are no other agreements or arrangements which may adversely affect or conflict with the Security Documents or the security thereby created;
 - (l) **Valid Choice of Law:** the choice of law agreed to govern this Agreement and/or any other Security Document and the submission to the jurisdiction of the courts agreed in each of the Security Documents are or will be, on execution of the respective Security Documents, valid and binding on the Borrower and any other Security Party which is or is to be a party thereto; and
 - (m) **Shareholdings:** the Borrower is an indirectly wholly-owned Subsidiary of the Newlead Corporate Guarantor and shall remain so throughout the Security Period.
- 6.2 **Initial representations and warranties.** The Borrower hereby further represents and warrants to the Bank that:
- (a) **Direct obligations — Pari Passu:** the obligations of the Borrower under this Agreement are direct, general and unconditional obligations of the Borrower and rank at least pari passu with all other present and future unsecured and unsubordinated Indebtedness of the Borrower with the exception of any obligations which are mandatorily preferred by law;
 - (b) **Information:** all information, accounts, statements of financial position, exhibits and reports furnished by or on behalf of the Security Parties to the Bank in connection with the negotiation and preparation of this Agreement and each of the other Security Documents are true and accurate in all material respects and not misleading, do not omit material facts and all reasonable enquiries have been made to verify the facts and statements contained therein; to the knowledge of the Directors/Officers of the Borrower, there are no other facts the omission of which would make any fact or statement therein misleading and, in the case of accounts and statements of financial

- position, they have been prepared in accordance with generally accepted accounting principles which have been consistently applied;
- (c) **No Default:** no Default has occurred and is continuing;
 - (d) **No Taxes:** no Taxes are imposed by deduction, withholding or otherwise on any payment to be made by any Security Party under this Agreement and/or any other of the Security Documents or are imposed on or by virtue of the execution or delivery of this Agreement and/or any other of the Security Documents or any document or instrument to be executed or delivered hereunder or thereunder. In case that any Tax exists now or will be imposed in the future, it will be borne by the Borrower;
 - (e) **No Default under other Indebtedness:** to the knowledge of the Directors/Officers of the Borrower and the other Security Parties, none of the Borrower and the other Security Parties is in Default under any agreement relating to Indebtedness to which it is a party or by which it may be bound;
 - (f) **Ownership/Flag/Seaworthiness/Class/Insurance of the Vessels:** each Vessel is:
 - (i) in the absolute and free from Encumbrances (other than in favour of the Bank) ownership of the Owner thereof who will on and after the Drawdown Date be the sole legal and beneficial owner of such Vessel;
 - (ii) registered in the name of the Owner thereof through the Registry under the laws and flag of the Flag State;
 - (iii) operationally seaworthy and in every way fit for service;
 - (iv) classed with the relevant Classification with the relevant Classification Society, free of all recommendations and qualifications of such Classification Society affecting her class;
 - (v) insured in accordance with the provisions of this Agreement; and
 - (vi) managed by the Manager;
 - (g) **No Charter:** unless otherwise permitted in writing by the Bank, neither Vessel will on or before the Drawdown Date be subject to any charter or contract nor to any agreement to enter into any charter or contract which, if entered into after the Drawdown Date would have required the consent of the Bank under any of the Security Documents and there will not on or before

- the Drawdown Date be any agreement or arrangement whereby the Earnings of either Vessel may be shared with any other person;
- (h) No Encumbrances: neither Vessel, nor her Earnings, Requisition Compensation or Insurances nor any other properties or rights which are, or are to be, the subject of any of the Security Documents nor any part thereof will be subject to any Encumbrances other than Permitted Encumbrances;
 - (i) Compliance with Environmental Laws and Approvals: except as may already have been disclosed by the Borrower in writing to, and acknowledged in writing by, the Bank:
 - (i) the Borrower and its Related Companies have complied with the provisions of all Environmental Laws;
 - (ii) the Borrower and its Related Companies have obtained all Environmental Approvals and are in compliance with all such Environmental Approvals; and
 - (iii) neither the Borrower nor any of its Related Companies have received notice of any Environmental Claim relating to an amount exceeding \$500,000 that the Borrower or any of its Related Companies are not in compliance with any Environmental Law or any Environmental Approval;
 - (j) No Environmental Claims
 - (i) except as may already have been disclosed by the Borrower in writing to, and acknowledged in writing by, the Bank:
 - aa) and there is no Environmental Claim exceeding \$500,000 pending or, to the best of the Borrower's knowledge and belief, threatened against the Owners (or either of them) or the Vessels (or either of them) or the Owners' Related Companies or any other Relevant Ship; and
 - bb) there has been no emission, spill, release or discharge of a Material of Environmental Concern from the Vessels (or either of them) and or any other vessel owned by, managed or crewed by or chartered to the Owners (or either of them) or, as the case may be, the Manager which could give rise to an Environmental Claim exceeding \$500,000;

- (k) Copies true and complete: the copies of each of the Management Agreements delivered or to be delivered to the Bank pursuant to clause 7.2 are, or will when delivered be, true and complete copies of such documents; such documents will when delivered constitute valid and binding obligations of the parties thereto enforceable in accordance with their respective terms and there will have been no amendments or variations thereof or defaults thereunder;
- (l) DOC and SMC: the Operator complies with the requirements of the ISM Code, has obtained a DOC for itself, and in relation to each Vessel, has obtained an SMC in respect of such Vessel issued pursuant to the ISM Code
- (m) ISPS Code: each Owner has obtained a valid and current ISSC in respect of its Vessel and such Vessel is in compliance with the ISPS Code; and
- (n) No Default under Bareboat Charterparty: the Borrower is in not default under any of its obligations under the Bareboat Charterparty;
- (o) Bareboat Charterparty Valid: the copy of the Bareboat Charterparty delivered to the Bank is a true and complete copy of such document constituting valid and binding obligations of the parties thereto enforceable in accordance with its terms and no amendments thereto or variations thereof shall have been (or will be) agreed nor shall any action been taken by the parties thereto which would in any way render such document inoperative or unenforceable;
- (p) No Rebates: there will be no commissions, rebates premiums or other payments by or to or on account of the Borrower or any other Security Party or, to the knowledge of the Borrower, any other person in connection with the Bareboat Charterparty other than as shall be disclosed to the Bank by the Borrower in writing.
- (q) Money laundering — acting for own account: The Borrower confirms that, by entering into this Agreement and the other Security Documents, it is acting on its own behalf and for its own account and it is obtaining the Loan for its own account and the borrowing of the Commitment and the performance and discharge of the Borrower's obligations and liabilities under this Agreement and the other Security Documents to which it is or is to be a party and other arrangements effected or contemplated by this Agreement will not involve or lead to contravention of any law, official, requirement or other regulatory measure or procedure implemented to combat "money laundering" as defined in Article 1 of the Directive (91/308/EEC) of the Council of the European Community or any Pertinent Jurisdiction.

- 6.3 **Representations Correct.** At the time of entering into this Agreement all above representations and warranties or any other information given by the Borrower to the Bank are true and accurate.
- 6.4 **Repetition of Representations and Warranties.** The representations and warranties in this Clause 6 shall be deemed to be repeated by the Borrower on the Drawdown Date and on each Interest Payment Date throughout the Security Period.
7. **CONDITIONS PRECEDENT**
- 7.1 **Conditions precedent to the execution of this Agreement:** The Borrower shall provide the Bank prior to the execution of this Agreement the following documents and evidence in form and substance satisfactory to the Bank:
- (a) a duly certified true copy of the Articles of Incorporation and By-Laws or the Memorandum and Articles of Association, or of any other constitutional documents, as the case may be, of each corporate Security Party;
 - (b) a recent certificate of incumbency of each corporate Security Party issued by the appropriate authority or, as appropriate, signed by the secretary or a director thereof, stating the officers and the directors of each of them;
 - (c) minutes of separate meetings of the directors and shareholders of each corporate Security Party at which there was approved (inter alia) the entry into, execution, delivery and performance of this Agreement, the other Security Documents and any other documents executed or to be executed pursuant hereto or thereto to which the relevant corporate Security Party is or is to be a party;
 - (d) the original of any power(s) of attorney and any further evidence of the due authority of any person signing this Agreement, the other Security Documents, the Management Agreements and any other documents executed or to be executed pursuant hereto or thereto on behalf of any corporate person;
 - (e) a copy of the Bareboat Charterparty certified as true and complete by the legal counsel of the Borrower;
 - (f) evidence that all necessary licences, consents, permits and authorisations (including exchange control ones) have been obtained by any Security Party for the execution, delivery, validity, enforceability, admissibility in evidence

- (g) and the due performance of the respective obligations under or pursuant to this Agreement and the other Security Documents;
 - (g) any other documents or recent certificates or other evidence which would be required by the Bank in relation to any corporate Security Party evidencing that the relevant Security Party has been properly established, continues to exist validly and to be in good standing; and
 - (h) a declaration signed by the shareholders of any corporate Security Party stating respectively the full names of the person or persons beneficially entitled as shareholders/ stockholders of the entire issued and outstanding shares/ stock of each of them.
- 7.2 **Conditions precedent to the making of the Commitment.** The obligations of the Bank to make available the Commitment or any part thereof is subject to the further condition that the Bank on or before the Drawdown Date shall have received the following documents and evidence in form and substance satisfactory to the Bank:
- (a) each of the Corporate Guarantees, Accounts Pledge Agreements, Mortgages, General Assignments, any Charterparty Assignment(s), Shares Pledge Agreement and the Manager's Undertakings duly executed;
 - (b) evidence to the full satisfaction of the Bank, proving the Seller's title to the Vessel free of any Encumbrances, debts or claims of any nature whatsoever;
 - (c) duly certified copies of corporate documentation of the Seller — comparable at the discretion of the Bank to that provided in Clause 7.1 — proving the due incorporation and existence of the Seller and the due authorisation of the sale of the Prosperity Vessel and the execution of all documents required in connection therewith;
 - (d) duly certified copy of the Bill of Sale, the protocol of delivery and acceptance of the Prosperity Vessel as well as of all other Seller's documents.
 - (e) evidence that no Encumbrances are registered against the Prosperity Vessel on her previous register;
 - (f) evidence that the Purchase Price of the Prosperity Vessel has been (or upon her Delivery will have been) paid in full in accordance with the provisions of the Bareboat Charterparty;
 - (g) evidence that each Vessel is or, as the case may be, shall be duly registered in the ownership of the Owner thereof through the relevant Registry and under

- (h) the laws and flag of the Flag State, free from any Encumbrances save for Permitted Encumbrances; evidence that each Mortgage has been or, as the case may be, will be, registered against the relevant Vessel through the relevant Registry under the laws and flag of the Flag State;
- (i) evidence in form and substance satisfactory to the Bank that each Vessel has been or will — on the Drawdown Date — be insured in accordance with the insurance requirements provided for in Schedule 3 of this Agreement, to be followed by full copies of cover notes, policies, certificates of entry or other contracts of insurance and irrevocable authority is hereby given to the Bank at any time at its discretion to obtain copies of the policies, certificates of entry or other contracts of insurance from the insurers and/or obtain any information in relation to the Insurances effected or to be effected in respect of the relevant Vessel;
- (j) if the Bank so requires, a report signed by an independent firm of marine insurance brokers appointed by the Bank at the expense of the Borrower confirming the adequacy of the Insurances maintained on each Vessel;
- (k) certified true copy of the Management Agreement in respect of each Vessel;
- (l) all necessary confirmations by insurers of each Vessel that they will issue letters of undertaking and endorse notice of assignment and loss payable clauses on the Insurances, in form and substance satisfactory to the Bank in its sole discretion;
- (m) evidence dated not more than three (3) Banking Days from the Delivery Date from the Classification Society of each Vessel that such Vessel is classed with the Classification with the Classification Society, and remains free from any requirements or recommendations affecting her class;
- (n) evidence that the trading certificates of each Vessel are valid and in force;
- (o) the Drawdown Notice duly executed and issued;
- (p) if the Bank so requires, a satisfactory to the Bank physical condition survey report on each Vessel together with a comprehensive record inspection from a surveyor appointed by the Bank, at the Borrower's expense;
- (q) two (2) valuations of each Vessel, at the Borrower's expense, as at a date determined by the Bank but in any event before the relevant drawdown,

prepared on the basis specified in Clause 8.2 by major shipbrokers appointed and/or approved by the Bank in form and substance satisfactory to the Bank in its sole discretion;

- (r) evidence satisfactory to the Bank that the Operator complies with the requirements of the ISM Code, has obtained a DOC for itself, and in relation to each Vessel, has obtained an SMC in respect of such Vessel issued pursuant to the ISM Code;
- (s) a copy of the ISSC issued pursuant to the ISPS Code in respect of each Vessel, certified as true and in effect by the Borrower and the Manager;
- (t) payment of any fees due from the Borrower to the Bank pursuant to the terms of Clause 10.8 or any other provision of the Security Documents;
- (u) evidence that the Prosperity Earnings Account and the Retention Account have been duly opened and all mandate forms, signature cards and authorities have been duly delivered; and
- (v) due authorisation in form and substance satisfactory to the Bank authorising the Bank to have access and/or obtain any copies of class records or other information at its discretion from the Classification Society of each Vessel;
- (w) entry by the Borrower to a second supplemental agreement to the Spartounta Loan Agreement and execution by the Borrower of the collateral security documents referred to therein.

- 7.3 **No change of circumstances:** The obligation of the Bank to make the Commitment or any part thereof is subject to the further condition that at the time of the giving of the Drawdown Notice and on the Drawdown Date:
- (a) the representations and warranties set out in Clause 6 and in each of the Security Documents are true and correct on and as of each such time as if each was made with respect to the facts and circumstances existing at such time;
 - (b) no Default shall have occurred and be continuing or would result from the drawdown; and
 - (c) the Bank shall be satisfied that there has been no change in the ownership, management, operations and/or material adverse change in the financial condition of any Security Party which (change) might, in the sole opinion of the Bank, be detrimental to the interests of the Bank.

- 7.4 **General Conditions:** The obligation of the Bank to make the Commitment first to be drawn or any part thereof is subject to the further condition that the Bank, prior to or simultaneously with the relevant drawdown, shall have received:
- (a) draft opinions from lawyers appointed by the Bank and draft opinions from the Security Parties' legal counsel as to all the matters referred to in Clauses 6.1(a) and (b) and all such aspects of law as the Bank shall deem relevant to this Agreement and the other Security Documents and any other documents executed pursuant hereto or thereto and any further legal or other expert opinion as the Bank at its sole discretion may require;
 - (b) confirmation from any agents nominated in this Agreement and elsewhere in the other Security Documents for the acceptance of any notice or service of process, that they consent to such nomination; and
 - (c) an undertaking of the Borrower that it shall execute a receipt in writing in form and substance satisfactory to the Bank including an acknowledgement and admission of the Borrower to the effect that the Loan was drawn by the Borrower and a declaration by the Borrower that all conditions precedent have been fulfilled, that there is no Event of Default and that all the representations and warranties are true and correct.
- 7.5 **Waiver of conditions precedent:** The conditions specified in this Clause 7 are inserted solely for the benefit of the Bank and may be waived by the Bank in whole or in part and with or without conditions.
- 7.6 **Conditions subsequent:** Original opinions within 15 days after the Drawdown Date from lawyers appointed by the Bank as to all matters referred to in Clauses 6.1(a) and (b) and all such aspects of law as the Bank shall deem relevant to this Agreement and the other Security Documents and any other documents executed pursuant hereto or thereto and any further legal or other expert opinion as the Bank at its sole discretion may require.
- 8. COVENANTS**
- 8.1 **General:** The Borrower hereby undertakes with the Bank that, from the date of this Agreement and as long as any moneys are due and/or owing and/or outstanding under this Agreement or any of the other Security Documents, it will:
- (a) **Financial Statements:** prepare or procure to be prepared and furnished to the Bank, in form and substance satisfactory to the Bank, with
 - (i) annual, audited (by Price Waterhouse Coopers or any other reputable firm of auditors

acceptable to the Bank) consolidated financial statements (including balance sheet and profit and loss accounts) of the Newlead Corporate Guarantor (including the Owners) as soon as practicable but not later than 210 days after the end of the financial year to which they relate, prepared in accordance with GAAP and audited combined or consolidated financial statements or information in respect of the Group and (ii) annual management prepared financial statements of the Borrower as soon as practicable but not later than 210 days after the end of the financial year;

- (b) Financial Information: provide the Bank from time to time as the Bank may request and in form and substance satisfactory to the Bank with information on the financial conditions, actual and projected for the following 12 month period, cash flow position, commitments and operations of each Security Party, including cash flow analysis and voyage accounts of each Vessel with a breakdown of income and running expenses showing net trading profit, trade payables and trade receivables, such financial details to be certified by one of the directors of the relevant company or the chief financial officer of the Borrower as to their correctness and promptly inform the Bank of all major financial developments and any other Borrowed Money involving or related to the Borrower and the Newlead Corporate Guarantor or any of them; and
- (c) Notice on adverse change or Default: immediately inform the Bank upon becoming aware of any occurrence which might materially and adversely affect the ability of the Borrower or any other Security Party to perform its respective obligations under this Agreement and/or any of the other Security Documents and, without limiting the generality of the foregoing, will inform the Bank of any Default forthwith upon becoming aware thereof and will from time to time, if so requested by the Bank, confirm to the Bank in writing that, save as otherwise stated in such confirmation, no Default has occurred and is continuing;
- (d) Consents and licences: without prejudice to Clauses 6 and 7, obtain or cause to be obtained, maintain in full force and effect and comply in all material respects with the conditions and restrictions (if any) imposed in, or in connection with, every consent, authorisation, licence or approval of governmental or public bodies or authorities or courts and do or cause to be done, all other acts and things which may from time to time be necessary or desirable under applicable law for the continued due performance of all the obligations of the Security Parties under each of the Security Documents;

- (e) Use of proceeds: use the Loan exclusively for the purposes specified in Clause 1.1;
 - (f) Information on the employment of each Vessel: provide the Bank from time to time as the Bank may request with information on the employment of each Vessel and of any Relevant Ship as well as on the terms and conditions of any charterparty, contract of affreightment, agreement or related document in respect of the employment of each Vessel and of any Relevant Ship, such information to be certified by one of the directors of the Owner thereof as to their correctness;
 - (g) Pari passu: ensure that its obligations under this Agreement shall, without prejudice to the provisions of Clause 8.3, at all times rank at least pari passu with all its other present and future unsecured and unsubordinated Indebtedness with the exception of any obligations which are mandatorily preferred by law and not by contract;
 - (h) Delivery of reports: deliver to the Bank as many copies as the Bank may reasonably require of every report, circular, notice or like document issued by any Security Party to its shareholders or creditors generally;
 - (i) Obligations under Security Documents: duly and punctually perform each of the obligations expressed to be assumed by it under the Security Documents;
 - (j) Payment on demand: pay to the Bank on demand any sum of money which is payable by the Borrower to the Bank under this Agreement but in respect of which it is not specified in any other Clause when it is due and payable; and
 - (k) Know your customer and money laundering compliance: provide the Bank with such documents and evidence as the Bank shall from time to time require, based on law and regulations applicable from time to time and the Bank's own internal guidelines applicable from time to time to identify the Borrower and the other Security Parties, including the ultimate legal and beneficial owner or owners of such entities, and any other persons involved or affected by the transaction(s) contemplated by this Agreement.
- 8.2 **Security value maintenance**
- (a) Security shortfall: If at any time during the Security Period the Security Value shall be less than the applicable Security Requirement, the Bank may

give notice to the Borrower requiring that such deficiency be remedied and then the Borrower shall either:

- (i) prepay within a period of thirty (30) days of the date of receipt by the Borrower of the Bank's said notice such sum in Dollars as will result in the applicable Security Requirement after such prepayment (taking into account any other repayment of the Loan made between the date of the notice and the date of such prepayment) being equal to the Security Value; or
 - (ii) within thirty (30) days of the date of receipt by the Borrower of the Bank's said notice constitute to the satisfaction of the Bank such further security for the Outstanding Indebtedness as shall be acceptable to the Bank having a value for security purposes (as determined by the Bank 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 applicable Security Requirement as at such date. Such additional security shall be constituted by:
 - a) additional pledged cash deposits in favour of the Bank in an amount equal to the amount which would be required to be prepaid under Clause 8.2(a)(i) with the Bank and in an account and manner to be determined by the Bank; and/or
 - b) any other security acceptable to the Bank at its absolute discretion to be provided in a manner determined by the Bank.
- The provisions of Clause 4.3 and 4.6 shall apply to prepayments under Clause 8.2(a)(i).
- (b) Valuation of Vessels: Each Vessel shall, for the purposes of this Clause 8.2, be valued in Dollars, prior to the Drawdown Date and thereafter as and when the Bank shall require (but at least once per year) by one (1) first class independent firm of internationally known shipbrokers appointed by the Bank such valuation to be made without, unless required by the Bank, physical inspection, and on the basis of a sale for prompt delivery for cash at arms length on normal commercial terms as between a willing buyer and a willing seller, without taking into account the benefit or the burden of any charterparty concerning such Vessel. Such valuation shall constitute the value of each Vessel for the purposes of this Clause 8.2 and shall be binding upon

- the parties hereto until such time as any further such valuation in respect of such Vessel shall be obtained.
- (c) **Information:** The Borrower undertakes to the Bank to supply to the Bank and to any such shipbrokers such information concerning each Vessel and its condition as such shipbrokers may reasonably require for the purpose of making any such valuation.
 - (d) **Costs:** All costs in connection with the Bank obtaining each valuation of the Vessels referred to in Clause 8.2(b), and 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 Clause 8.2(a)(ii) shall be borne by the Borrower.
 - (e) **Valuation of additional security:** For the purpose of this Clause 8.2, the market value of any additional security provided or to be provided to the Bank shall be determined by the Bank in its absolute discretion.
 - (f) **Documents and evidence:** In connection with any additional security provided in accordance with this Clause 8.2, the Bank shall be entitled to receive such evidence and documents of the kind referred to in Clause 7 as may in the Bank's opinion be appropriate and such favorable legal opinions as the Bank shall in its absolute discretion require.
- 8.3 **Negative undertakings:** The Borrower undertakes with the Bank that, from the date of this Agreement and so long as any moneys are owing under the Security Documents and while all or any part of the Outstanding Indebtedness remains outstanding, it will not, without the prior written consent of the Bank:
- (a) **Negative pledge:** permit any Encumbrance (other than a Permitted Encumbrance) to subsist, arise or be created or extended over all or any part of its present or future undertakings, assets, rights or revenues to secure or prefer any present or future Indebtedness or other liability or obligation of such Borrower or any other person;
 - (b) No merger: merge or consolidate with any other person;
 - (c) **Disposals:** sell, transfer, abandon, lend or otherwise dispose of or cease to exercise direct control over any part (being either alone or when aggregated with all other disposals falling to be taken into account pursuant to this Clause 8.3(c) material in the opinion of the Bank in relation to the undertakings, assets, rights and revenues of such Borrower) of its present or future undertaking, assets, rights or revenues (otherwise than by transfers,

- sales or disposals for full consideration in the ordinary course of trading) whether by one or a series of transactions related or not;
- (d) Other business: undertake any business other than the ownership and operation of its Vessel and the chartering of its Vessel to third parties;
 - (e) Acquisitions: acquire any further assets other than its Vessel and rights arising under contracts entered into by or on behalf of such Borrower in the ordinary course of its business of owning, operating and chartering its Vessel;
 - (f) Other obligations: incur any obligations except for obligations arising under the Security Documents or contracts entered into in the ordinary course of its business of owning, operating and chartering its Vessel (and for the purposes of this Clause 8.3(f) fees to be paid pursuant to the Management Agreements shall be considered as permitted obligations);
 - (g) No borrowing: incur any Borrowed Money except for Borrowed Money pursuant to the Security Documents;
 - (h) Repayment of borrowings: repay the principal of, or pay interest on or any other sum in connection with, any of its Borrowed Money except for Borrowed Money pursuant to the Security Documents;
 - (i) Guarantees: issue any guarantees or indemnities or otherwise become directly or contingently liable for the obligations of any person, firm, or corporation except pursuant to the Security Documents and except for guarantees (up to Two hundred thousand Dollars (\$200,000)) or indemnities from time to time required in the ordinary course by any protection and indemnity or war risks association with which its Vessel is entered, guarantees required to procure the release of its Vessel from any arrest, detention, attachment or levy or guarantees or undertakings required for the salvage of its Vessel);
 - (j) Loans: make any loans or grant any credit (save for normal trade credit in the ordinary course of business) to any person or agree to do so;
 - (k) Sureties: permit any Indebtedness of such Borrower to any person (other than the Bank) to be guaranteed by any person (save, in the case of the Borrower, for guarantees or indemnities from time to time required in the ordinary course by any protection and indemnity or war risks association with which its Vessel is entered, guarantees required to procure the release of

- its Vessel from any arrest, detention, attachment or levy or guarantees or undertakings required for the salvage of its Vessel);
- (l) Share capital and distribution: purchase or otherwise acquire for value any shares of its capital or declare or distribute any of its present or future assets, undertakings, rights or revenues to any of its shareholders or pay any dividends (save for dividends paid with the prior written consent of the Bank);
 - (m) Subsidiaries: without the prior written consent of the Bank form or acquire any Subsidiaries;
 - (n) Maintenance of Business Structure: not change the nature, organisation and conduct of its business as Owner of its Vessel or carry on any business other than the business carried on the date hereof;
 - (o) Maintenance of Legal Structure: ensure that none of the documents defining the constitution of the Borrower shall be altered in any manner whatsoever without the prior written consent of the Bank (such consent not to be unreasonably withheld);
 - (p) Control: ensure that, throughout the Security Period, no change shall be made directly or indirectly in the ownership, beneficial ownership, control or management of the Owners (or either of them) or any share therein or of the Vessels (or either of them) from that evidenced to the Bank at the date of this Agreement without the prior written consent of the Bank (which shall not be unreasonably withheld);
 - (q) No Freight Derivatives: not (without the prior written consent of the Bank) enter into any freight derivatives or any other instruments which have the effect of hedging forward exposures to freight derivatives.
- 8.4 **Covenants Concerning the Vessels**: The Borrower hereby further undertakes and agrees with the Bank that it will:
- (a) Conveyance on default: and will procure that where a Vessel is (or is to be) sold in exercise of any power conferred on the Bank, the Owner of such Vessel execute, forthwith upon request by the Bank, such form of conveyance of such Vessel as the Bank may require;

- (b) Ownership/Management/Control: ensure that each Vessel is registered under the laws of the Flag State and thereafter maintain her present ownership, management, control and beneficial ownership;
- (c) Class: ensure that each Vessel will maintain its Classification free of overdue recommendations, notations or average damage affecting class or permitted by the relevant Classification Society and provide the Bank on demand with copies of all class and trading certificates of each Vessel;
- (d) Insurances: ensure that all Insurances (as defined in the relevant Mortgage/General Assignment) of each Vessel are maintained and comply with all insurance requirements specified in Schedule 3 of this Agreement and in the relevant Mortgage, including a MII, which the Bank may at any time effect on such terms and with such insurers as shall from time to time be determined by the Bank, and in case of failure of the relevant Owner to maintain its Vessel so insured, ensure and procure that the relevant Owner authorises the Bank (and such authorisation is hereby expressly given to the Bank by the Borrower) to have the right but not the obligation to effect such Insurances on behalf of such Owner (and in case that any Vessel remains in port for an extended period) to effect port risks insurances at the cost of the Borrower which, if paid by the Bank, shall be Expenses;
- (e) Transfer/Encumbrances: not without the prior written consent of the Bank sell or otherwise dispose of its Vessel or any share therein or create or agree to create or permit to subsist any Encumbrance over its Vessel (or any share or interest therein) other than Encumbrances created or to be created pursuant to the Security Documents;
- (f) Not imperil Flag, Ownership, Insurances: ensure that each Vessel is maintained and trades in conformity with the laws of the Flag State or of its owning company, the requirements of the Insurances and nothing is done or permitted to be done which could endanger the flag of either Vessel or its unencumbered (other than Encumbrances in favour of the Bank and Encumbrances permitted by this Agreement) ownership or its Insurances;
- (g) Mortgage: execute, and/or procure the execution and registration of, each Mortgage over each Vessel under the laws of the Flag State and always comply and/or procure compliance with all the covenants provided for in the relevant Mortgage;

- (h) Assignment of Earnings: assign or agree to assign otherwise than to the Bank the Earnings or any part thereof;
- (i) Chartering: (a) not without the prior written consent of the Bank (such consent not to be unreasonably withheld) enter into or agree to enter into in respect of the employment of its Vessel on demise charter for any period and (b) promptly advise the Bank on the entering into by an Owner of any Long Charterparty;
- (j) Manager: not without the prior written consent of the Bank (and then only subject to such conditions as the Bank may impose) appoint a manager of its Vessel (other than the Manager) or terminate or amend the terms of any Management Agreement;
- (k) Compliance with Environmental Laws: comply with, and procure that all Environmental Affiliates of any Relevant Party comply with, all Environmental Laws including without limitation, requirements relating to manning and establishment of financial responsibility and to obtain and comply with, and procure that all Environmental Affiliates of such Relevant Party obtain and comply with, all Environmental Approvals and to notify the Bank forthwith:
 - (i) of any Environmental Claim for an amount or amounts in aggregate exceeding \$500,000 made against the Vessels (or either of them) and/or any Relevant Ship and/or her respective Owners (or either of them); and
 - (ii) upon becoming aware of any incident which may give rise to an Environmental Claim and to keep the Bank advised in writing of the relevant Owner's response to such Environmental Claim on such regular basis and in such detail as the Bank shall require;
- (l) Vessel's Inspection: permit the Bank, at the Borrower's expense: (i) by surveyors or other persons appointed by the Bank to board the Vessels (or either of them) at all reasonable times for the purpose of inspecting her condition or for the purpose of satisfying itself in regard to proposed or executed repairs and to afford all proper facilities for such inspection and (ii) at any time by financial or insurance advisors or other persons appointed by the Bank to review the operating and insurance records of the Owners (or either of them) and/or the Vessels (or either of them);

- (m) Banking operations: ensure that all banking operations in connection with the Vessels are carried out through the Lending Branch;
 - (n) Compliance with ISM Code and ISPS Code: procure that the Manager and any Operator:
 - (iii) will comply with and ensure that each of the Vessels and any Operator by no later than the Drawdown Date complies with the requirements of the ISM Code, including (but not limited to) the maintenance and renewal of valid certificates pursuant thereto throughout the Security Period;
 - (iv) immediately inform the Bank if there is any threatened or actual withdrawal of an Owner's, the Manager's or an Operator's DOC or the SMC in respect of either Vessel;
 - (v) promptly inform the Bank upon the issue to an Owner, the Manager or any Operator of a DOC and to either Vessel of an SMC or the receipt by either Owner, the Manager or any Operator of notification that its application for the same has been refused;
 - (vi) maintain and procure to be maintained at all times a valid and current ISSC in respect of each Vessel;
 - (vii) immediately notify the Bank in writing of any actual or threatened withdrawal, suspension, cancellation or modification of the ISSC in respect of either Vessel; and
 - (viii) procure that each Vessel will comply at all times with the ISPS Code.
- 8.5 **Validity of Securities — Earnings — Taxes etc.:** The Borrower hereby further undertakes and agrees with the Bank that it will:
- (a) Validity: ensure and procure that all governmental or other consents required by law and/or any other steps required for the validity, enforceability and legality of this Agreement and the other Security Documents are maintained in full force and effect and/or appropriately taken;
 - (b) Earnings: ensure and procure that, unless and until directed by the Bank otherwise (i) all the Earnings of each Vessel shall be paid to the relevant Earnings Account and (ii) the persons from whom the Earnings are from time to time due are irrevocably instructed to pay them to such Earnings Account or to such other account in the name of the relevant Owner as shall be from

- time to time determined by the Bank in accordance with the provisions hereof and of the relevant Security Documents;
- (c) Taxes: pay all Taxes, assessments and other governmental charges when the same fall due, except to the extent that the same are being contested in good faith by appropriate proceedings and adequate reserves have been set aside for their payment if such proceedings fail; and
 - (d) Additional Documents: from time to time and within ten (10) days after the Bank's request execute and deliver to the Bank or procure the execution and delivery to the Bank of all such documents as shall be deemed desirable at the reasonable discretion of the Bank for giving full effect to this Agreement, and for perfecting, protecting the value of or enforcing any rights or securities granted to the Bank under any one or more of this Agreement, the other Security Documents and any other documents executed pursuant hereto or thereto and in case that any conditions precedent (with the Bank's consent) have not been fulfilled prior to the Drawdown Date, such conditions shall be complied with within fourteen (14) days of the Drawdown Date (unless the Bank agrees otherwise in writing) and failure to comply with this covenant shall be an Event of Default, provided, however, that following the Borrower's/Guarantors' request, the Bank, if it considers it appropriate or necessary, may grant a reasonable extension to the aforementioned periods in case the Borrower cannot disclose/provide the requested information/document, under the circumstances arising at the time of the Bank's request and within the time limit specified hereinabove.
- 8.6 **Additional Financial Covenants — Compliance Certificate.**
- (a) Financial Covenants of the Newlead Corporate Guarantor: The Borrower hereby covenants and undertakes with the Bank, that until the Outstanding Indebtedness has been paid and discharged in full, it will procure and ensure that:
 - (i) at least 10% of the total issued share capital of the Newlead Corporate Guarantor is directly or indirectly held by Messrs. Michael Zolotas and Nikolaos Fistes throughout the Security Period;
 - (ii) Mr. Nikolaos Fistes to remain Chairman and Michael Zolotas to remain Vice Chairman and CEO of the Newlead Corporate Guarantor throughout the Security Period; and

- (iii) the Newlead Corporate Guarantor shall comply with all its obligations under this Agreement including, without limitation, the financial covenants set forth in clause 5.3 of the Newlead Corporate Guarantee.
- (b) **Compliance:** The compliance of the Newlead Corporate Guarantor with the covenants set out in this clause 8.6 shall be determined by the Bank in its sole discretion on the basis of calculations made by the Bank at any time by reference to the then latest consolidated financial statements of the Group delivered to the Bank pursuant to clause 8.1(a). For the avoidance of doubt it is hereby agreed and acknowledged that the Bank shall be entitled to make any such determinations and/or calculations at any time, without regard to when any such financial statements are due to be delivered or have been actually delivered to the Bank pursuant to clause 8.1(a).
- (c) **Calculations:** For the purposes of clause 8.6: (a) no item shall be deducted or credited more than once in any calculation; and (b) any amount expressed in a currency other than Dollars shall be converted into Dollars in accordance with the GAAP consistently applied.
- (d) **Compliance Certificate:** The Borrower shall deliver to the Bank at the end of each financial year, and at the same time as the audited financial statements referred to in clause 8.1(a)(i), a certified true copy of the Compliance Certificate issued and signed by the Newlead Corporate Guarantor's Chief Financial Officer certifying that the covenants contained in Clause 5.3 of the Newlead Corporate Guarantee are being complied with and providing full calculations supporting such compliance derived from the then latest financial statements of the Group as lodged with the Securities and Exchange Commission of the United States by way of Form 6K/20F, such certificate to be substantially in the form agreed by the Bank set out in Schedule 2.
- (e) **Additional financial covenants and guarantees:** It is hereby expressly agreed that in case the Newlead Corporate Guarantor accepts other or more financial covenants and additional guarantees under loan agreements with other banks or financial institutions which are more restrictive than those contained in this Agreement, the Borrower shall procure that this Agreement and the Newlead Corporate Guarantee to be amended in order such more restrictive or additional financial covenants to be included herein and in the Newlead Corporate Guarantee.

- 8.7 **Covenants for the Securities Parties.** The Borrower hereby further undertakes and agrees with the Bank that it will ensure and procure that all other Security Parties and each of them duly and punctually comply with the covenants in Clauses 8.1 to 8.6, which are applicable to them/it mutatis mutandis.
9. **EVENTS OF DEFAULT**
There shall be an Event of Default whenever an event described in Clauses 9.1 to 9.7 occurs:
- 9.1 **Non Performance of Obligations**
- (a) the Borrower fails to pay on its due date, any sum due from the Borrower under this Agreement and/or any of the other Security Documents to which it is a party at the time, in the currency and in the manner stipulated herein and/or any of the other Security Documents to which it is a party, or, in the case of any sum payable on demand, within three (3) Banking Days of such demand; or
 - (b) the Borrower fails to observe and perform any one or more of the covenants, terms or obligations contained in this Agreement and/or any other Security Document to which it is a party relating to the Insurances; or
 - (c) the Borrower commits any breach of or omits to observe any of the covenants, terms, obligations or undertakings under this Agreement and/or any of the other Security Documents to which it is a party (other than failure to pay any sum when due or to comply with any obligation concerning the Insurances) and, in respect of any such breach or omission which in the opinion of the Bank is capable of remedy, such action as the Bank may require shall not have been taken within ten (10) Banking Days of the Bank notifying the Borrower of such required action to remedy the breach or omission; or
- 9.2 **Events affecting the Security Parties**
- (a) any Security Party is adjudicated or found bankrupt or insolvent or any judgement or order is made by any competent court or resolution passed by or petition (which is not in the reasonable opinion of the Bank frivolous and is not being contested in good faith by such Security Party) presented for the winding-up or dissolution of any Security Party or for the appointment of a liquidator, trustee, receiver, administrator or conservator of the whole or any part of the undertakings, assets, rights or revenues of any Security Party; or

- (b) any Security Party becomes or is deemed to be insolvent or suspends payment of its debts or is (or is deemed to be) unable to or admits inability to pay its debts as they fall due or proposes or enters into any composition, compromise or other arrangement for the benefit of its creditors generally or good faith proceedings are commenced in relation to any Security Party under any law, regulation or procedure relating to reconstruction or readjustment of debts; or
- (c) an encumbrancer takes possession or a receiver or similar officer is appointed of the whole or any part of the undertakings, assets, rights or revenues of any Security Party or a distress, execution, sequestration or other process is levied or enforced upon or sued out against any of the undertakings, assets, rights or revenues of any Security Party and is not discharged within twenty (20) Banking Days; or
- (d) all or a material part of the undertakings, assets, rights or revenues of any Security Party are seized, nationalised, expropriated or compulsorily acquired by or under the authority of any government; or
- (e) any event occurs or (unless contested in good faith) proceeding is taken with respect to any Security Party in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events mentioned in Clauses 9.2(a) to 9.2(d); or
- (f) any Security Party suspends or ceases or threatens to suspend or cease to carry on its business; or
- (g) there occurs, in the reasonable opinion of the Bank, a materially adverse change in the financial condition of any Security Party, which jeopardises or imperils (or may, in the Bank's opinion, jeopardise or imperil) the rights conferred to the Bank under the Security Documents; or
- (h) any other event occurs or circumstances arise which, in the reasonable opinion of the Bank, materially and adversely affects either (i) the ability of any Security Party to perform all or any of its obligations under or otherwise to comply with the terms of this Agreement and/or any of the other Security Documents, or (ii) the security created by this Agreement and/or any of the Security Documents; or
- (i) (without the prior written consent of the Bank which shall not be unreasonably withheld) there is any change in the beneficial ownership of the

- shares in the Borrower or the Spartounta Corporate Guarantor, which is not otherwise permitted under the terms of this Agreement; or
- (j) the Newlead Corporate Guarantor ceases, without the Bank's prior written consent, to be a listed company on NASDAQ stock exchange; or
- 9.3 **Representations Incorrect:** any representation or warranty made or deemed to be made or repeated by or in respect of any Security Party in or pursuant to this Agreement or any of the other Security Documents or in any notice, certificate or statement referred to in or delivered under this Agreement or any of the other Security Documents is or proves to have been incorrect in any material respect, which jeopardises or imperils (or may, in the Bank's opinion, jeopardise or imperil) the rights conferred to the Bank under any of the Security Documents; or
- 9.4 **Cross-default:** any Indebtedness of the Security Parties (or any of them) related to an aggregate amount exceeding \$1,000,000 (One million Dollars) is not paid when due or becomes due and payable, or any creditor of the Security Parties (or any of them) becomes entitled to declare any such Indebtedness due and payable prior to the date when it would otherwise have become due, or any guarantee or indemnity given or any obligation or covenant undertaken or agreement made by the Security Parties (or any of them) in respect of Indebtedness is not honoured when due unless the relevant Security Party shall have satisfied the Bank that such Indebtedness will not affect or prejudice in any way such Security Party's ability to pay its debts as they fall due; or
- 9.5 **Events in relation to the Security Documents**
- (a) this Agreement or any of the other Security Documents shall at any time and for any reason become invalid or unenforceable or otherwise cease to remain in full force and effect, or if the validity or enforceability of any of the Security Documents shall at any time and for any reason be contested by any party thereto (other than the Bank), or if any such party shall deny that it has any, or any further, liability thereunder or it becomes impossible or unlawful for the Borrower to fulfil any of its covenants and obligations contained in this Agreement or any of the Security Documents or for the Bank to exercise the rights vested in it thereunder or otherwise; or
- (b) any consent, authorisation, licence or approval of, or registration with or declaration to, governmental or public bodies or authorities or courts required by the Borrower to authorise or otherwise in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of this

Agreement and/or any of the other Security Documents or the performance the Borrower of its obligations under this Agreement and/or any of the other Security Documents is modified in a manner unacceptable to the Bank or is not granted or is revoked or terminated or expires and is not renewed or otherwise ceases to be in full force and effect; or

- (c) any Encumbrance (other than Permitted Liens) in respect of any of the property (or part thereof) which is the subject of the Security Documents (or any of them) becomes enforceable; or

9.6 **Events concerning the Vessels**

- (a) either Vessel becomes a Total Loss or is involved in an incident which in the reasonable opinion of the Bank may result in such Vessel being subsequently determined to be a Total Loss and the insurance indemnity is not paid by the insurers to the Bank under the relevant General Assignment within a period of one hundred eighty (180) days from the date on which the incident which may result in such Vessel being subsequently determined to be a Total Loss occurred; or
- (b) either Vessel ceases to be managed by the Manager (for any reason other than the reason of a Total Loss or sale of such Vessel) without the approval of the Bank (such approval not to be unreasonably withheld) and the relevant Borrower fails to appoint a substitute Manager within ten (10) Banking Days after the termination of the relevant Management Agreement with the previous Manager; or
- (c) either Vessel is arrested, confiscated, seized, taken in execution, impounded, forfeited, detained in exercise or purported exercise of any possessory lien or other claim and the Owner thereof shall fail to procure the release of such Vessel within a period of thirty (30) Banking Days thereafter; or
- (d) (without prejudice to the generality of sub-Clause 9.1(b) and (c)) for any reason whatsoever the provisions of Clause 8.4(o) are not complied with and/or either Vessel ceases to comply with the ISM Code and/or the ISPS Code; or
- (e) the registration of either Vessel under the laws and flag of the Flag State is cancelled or terminated without the prior written consent of the Bank or, if the Prosperity Vessel is only provisionally registered on the Delivery Date and is not permanently registered under the laws and flag of her Flag State at

least fifteen (15) days prior to the deadline for completing such permanent registration;; or

9.7 **Environmental Events**

- (a) any Relevant Party and/or the Manager and/or any of their respective Environmental Affiliates fails to comply with any Environmental Law or any Environmental Approval or either Vessel or any Relevant Ship is involved in any incident which gives rise or which may give rise to any Environmental Claim, if in any such case, such non compliance or incident or the consequences thereof could (in the reasonable opinion of the Bank) be expected to have a material adverse effect on the business assets, operations, property or financial condition of the Borrower or any other Security Party or on the security created by any of the Security Documents; or
- (b) any Security Party or any other person fails or omits to comply with any requirements of the protection and indemnity association or other insurer with which either Vessel is entered for insurance or insured against protection and indemnity risks (including oil pollution risks) to the effect that any cover in relation to either Vessel (including without limitation, liability for Environmental Claims arising in jurisdictions where such Vessel operates or trades) is or may be liable to cancellation, qualification or exclusion at any time; or

9.8 **Consequences of Default:** The Bank may without prejudice to any other rights of the Bank (which will continue to be in force concurrently with the following), at any time after the happening of an Event of Default:

- (a) by notice to the Borrower declare that the obligation of the Bank to make the Commitment (or any part thereof) available shall be terminated; and/or
- (b) by notice to the Borrower declare that the Loan and all interest and commitment commission accrued and all other sums payable under this Agreement and the other Security Documents have become due and payable, whereupon the same shall, immediately or in accordance with the terms of such notice, become due and payable without any further diligence, presentment, demand of payment, protest or notice or any other procedure from the Bank which are expressly waived by the Borrower; and/or
- (c) put into force and exercise all or any of the rights, powers and remedies possessed by it under this Agreement and/or under any other Security Document and/or as mortgagee of each of the Vessels, mortgagee, chargee or

assignee or as the beneficiary of any other property right or any other security (as the case may be) over the assets charged or assigned to it under the Security Documents or otherwise (whether at law, by virtue of any of the Security Documents or otherwise);

9.9 **Insolvency Events of Default**

If an event occurs in respect of the Borrower or the other Security Parties of the type described in Clause 9.2(a) to (e) (except (i) in the case when a petition was presented or proceedings were commenced or a suit or writ were issued by a third party and the Borrower or the relevant Security Party is defending itself in bona fide and (ii) in the case that such events mentioned in Clause 9.2 relate to only a part of the undertakings, assets, rights or revenues which in the opinion of the Bank does not affect the ability of the Borrower or the relevant Security Party to perform its respective obligations under this Agreement and/or the other Security Documents) the obligation of the Bank to make the Loan available shall terminate immediately upon receipt by the Bank of the relevant information (as such receipt shall be conclusively certified by a certificate of the Bank) and all amounts payable under sub-clause 9.8(b) above shall become immediately due and payable without any notice or other formality which is hereby expressly waived by the Borrower.

9.10 **Proof of Default**

It is agreed that (i) the non-payment of any sum of money in time will be proved conclusively by mere passage of time and (ii) the occurrence of this (non payment) shall be proved conclusively by a mere written statement of the Bank (save for manifest error).

9.11 **Exclusion of Bank's liability**

Neither the Bank nor any receiver or manager appointed by the Bank, shall have any liability to the Borrower or another Security Party:

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

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

10. INDEMNITIES — EXPENSES — FEES

- 10.1 **Indemnity:** The Borrower shall on demand (and it is hereby expressly undertaken by the Borrower to) indemnify the Bank, without prejudice to any of the other rights of the Bank under any of the Security Documents, against any loss (including loss of Margin, save in the case under paragraph (c) hereinbelow) or expense which the Bank shall certify as sustained or incurred as a consequence of:
- (a) any default in payment by any of the Security Parties of any sum under any of the Security Documents when due;
 - (b) the occurrence of any Event of Default;
 - (c) any prepayment of the Loan or part thereof being made under Clauses 4.3, 8.2(a) or 12 or any other repayment of the Loan or part thereof being made otherwise than on an Interest Payment Date relating to the part of the Loan prepaid or repaid; or
 - (d) the Commitment not being advanced for any reason (excluding any default by the Bank) after the Drawdown Notice relative thereto has been given,
- including, in any such case, but not limited to, any loss or expense sustained or incurred in maintaining or funding the Loan or any part thereof or in liquidating or re-employing deposits from third parties acquired to effect or maintain the Loan or any part thereof.
- 10.2 **Expenses:** The Borrower shall (and it is hereby expressly undertaken by the Borrower to) pay to the Bank on demand:
- (a) **Initial and Amendment expenses:** all expenses (including legal, printing and out-of-pocket expenses) reasonably incurred by the Bank in connection with the negotiation, preparation and execution of this Agreement and the other Security Documents and of any amendment or extension of or the granting of any waiver or consent under this Agreement and/or any of the Security Documents and/or in connection with any proposal by the Borrower to constitute additional security pursuant to Clause 8.2(a), whether any such security shall in fact be constituted or not;

- (b) **Enforcement expenses:** all expenses (including legal and out-of-pocket expenses) incurred by the Bank in contemplation of, or otherwise in connection with, the enforcement of, or preservation of any rights under, this Agreement and/or any of the other Security Documents, or otherwise in respect of the moneys owing under this Agreement and/or any of the other Security Documents or the contemplation or preparation of the above, whether they have been effected or not; and
- (c) **MII costs:** reimburse the Bank on demand for any and all costs incurred by the Bank (as supported by vouchers/invoices) in effecting and keeping effected a MII for an amount of 110% of the aggregate of the Loan, which the Bank may at any time effect on such terms, in such amounts and with such insurers as shall from time to time be determined by the Bank, provided, however, that the Bank shall in its absolute discretion appoint and instruct in respect of the MII the insurance brokers in respect of such insurance and provided, further, that in the event that the Bank effects any such insurance on the basis of any mortgagee's open cover, the Borrower shall pay on demand to the Bank their proportion of premium due in respect of the Vessels (or either of them) for which such insurance cover has been effected by the Bank, and any certificate of the Bank in respect of any such premium due by the Borrower (as supported by the necessary invoices/vouchers) shall (save for manifest error) be conclusive and binding upon the Borrower; and
- (d) **Other expenses:** any and all other Expenses.
- All expenses payable pursuant to this Clause 10.2 shall be paid together with Value Added Tax (if any) thereon.
- 10.3 **Stamp duty:** The Borrower shall pay any and all stamp, registration and similar taxes or charges (including those payable by the Bank excluding income taxes on the overall net income of the Bank) imposed by governmental authorities in relation to this Agreement and any of the other Security Documents, and shall indemnify the Bank against any and all liabilities with respect to, or resulting from delay or omission on the part of the Borrower to pay such stamp, taxes or charges.
- 10.4 **Environmental Indemnity:** The Borrower shall indemnify the Bank on demand and hold the Bank harmless from and against all costs, expenses, payments charges, losses, demands, liabilities, actions, proceedings (whether civil or criminal) penalties, fines, damages, judgements, orders, sanctions or other outgoings of whatever nature which may be suffered, incurred or paid by, or made or asserted against the Bank at any time, whether before or after the repayment in full of principal and interest

under this Agreement, relating to, or arising directly or indirectly in any manner or for any cause or reason out of an Environmental Claim made or asserted against the Bank.

- 10.5 **Currencies:** If any sum due from the Borrower under any of the Security Documents or any order or judgement given or made in relation hereto has to be converted from the currency (the “**first currency**”) in which the same is payable under the relevant Security Document or under such order or judgement into another currency (the “**second currency**”) for the purpose of (i) making or filing a claim or proof against the Borrower or any other Security Party, as the case may be, or (ii) obtaining an order or judgement in any court or other tribunal or (iii) enforcing any order or judgement given or made in relation to any of the Security Documents, the Borrower shall (and it is hereby expressly undertaken by the Borrower to) indemnify and hold harmless the Bank from and against any loss suffered as a result of any difference between (a) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (b) the rate or rates of exchange at which the Bank may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgement, claim or proof. The term “**rate of exchange**” includes any premium and costs of exchange payable in connection with the purchase of the first currency with the second currency.
- 10.6 **Maintenance of the Indemnities:** The indemnities contained in this Clause 10 shall apply irrespective of any indulgence granted to the Borrower or any other party from time to time and shall continue to be in full force and effect notwithstanding any payment in favour of the Bank and any sum due from the Borrower under this Clause 10 will be due as a separate debt and shall not be affected by judgement being obtained for any other sums due under any one or more of this Agreement, the other Security Documents and any other documents executed pursuant hereto or thereto.
- 10.7 **Communications Indemnity:** It is hereby agreed in connection with communications that:
- (a) Express authority is hereby given by the Borrower to the Bank to accept (at the sole discretion of the Bank) all tested or untested communications given by facsimile or otherwise, regarding any or all of the notices, requests, instructions or other communications under this Agreement, subject to any restrictions imposed by the Bank relating to such communications including, without limitation (if so required by the Bank), the obligation to confirm such communications by letter.

- (b) The Borrower shall recognise any and all of the said notices, requests, instructions or other communications as legal, valid and binding, when these notices, requests, instructions or communications come from the fax numbers mentioned in Clause 15.1 or any other fax usually used by it or its managing company.
- (c) The Borrower hereby assumes full responsibility for the execution of the said notices, requests, instructions or communications by the Bank and promises and recognises that the Bank shall not be held responsible for any loss, liability or expense that may result from such notices, requests, instructions or other communications. It is hereby undertaken by the Borrower to indemnify in full the Bank from and against all actions, proceedings, damages, costs, claims, demands, expenses and any and all direct and/or indirect losses which the Bank may suffer, incur or sustain by reason of the Bank following such notices, requests, instructions or communications.
- (d) With regard to notices, requests, instructions or communications issued by electronic and/or mechanical processes (e.g. by facsimile, but not by email), the risk of equipment malfunction, including, without limitation, paper shortage, transmission errors, omissions and distortions is assumed fully and accepted by the Borrower, save in case of Bank's wilful misconduct and/or gross negligence.
- (e) The risks of misunderstandings and errors of notices, requests, instructions or communications being given as mentioned above, are for the Borrower and the Bank will be indemnified in full pursuant to this Clause save in case of Bank's wilful misconduct.
- (f) The Bank shall have the right to ask the Borrower to furnish any information the Bank may require to establish the authority of any person purporting to act on behalf of the Borrower for these notices, requests, instructions or communications but it is expressly agreed that there is no obligation for the Bank to do so. The Bank shall be fully protected in, and the Bank shall incur no liability to the Borrower for acting upon the said notices, requests, instructions or communications which were believed by the Bank in good faith to have been given by the Borrower or by any of its authorised representative(s).
- (g) It is undertaken by the Borrower to safeguard the function and the security of the electronic and mechanical appliance(s) such as fax(es) (but not email) etc., as well as the code word list, if any, and to take adequate precautions to

protect such code word list from loss and to prevent its terms becoming known to any persons not directly concerned with its use. The Borrower shall hold the Bank harmless and indemnified from all claims, losses, damages and expenses which the Bank may incur by reason of the failure of the Borrower to comply with the obligations under this Clause and/or this Agreement.

10.8 **Arrangement Fee.** The Borrower has, or as the case may be, shall pay to the Bank on or before the date hereof an arrangement fee in the amount of One hundred twenty thousand Dollars (\$120,000). The fee referred to in this Clause 10.8 is not refundable and shall be payable by the Borrower to the Bank whether or not any part of the Commitment is ever advanced.

11. SECURITY, APPLICATION, SET-OFF AND ACCOUNTS

11.1 **Securities:** As security for the due and punctual repayment of the Loan and payment of interest thereon as provided in this Agreement and of all other Outstanding Indebtedness, the Borrower shall ensure and procure that the following Security Documents are duly executed and, where required, registered in favour of the Bank in form and substance satisfactory to the Bank at the time specified herein or otherwise as required by the Bank and ensure that such security consists, on the Drawdown Date, of:

- (a) each Mortgage duly registered over the relevant Vessel through the relevant Registry;
- (b) the General Assignments;
- (c) the Corporate Guarantees;
- (d) the Manager's Undertakings;
- (e) the Accounts Pledge Agreements;
- (f) the Shares Pledge Agreement; and
- (g) in case either Vessel is chartered under a Long Charterparty, on the Drawdown Date or at any time thereafter, the relevant Charterparty Assignment and the Charterparty Assignment Acknowledgement.

11.2 **Maintenance of Securities:** It is hereby undertaken by the Borrower that the Security Documents shall both at the date of execution and delivery thereof and so long as any moneys are owing and/or due under this Agreement or under the other

Security Documents be valid and binding obligations of the respective Security Parties thereto and rights of the Bank enforceable in accordance with their respective terms and that they will (unless otherwise provided in this Agreement), at the expense of the Borrower, execute, sign, perfect and do any and every such further assurance, document, act, omission or thing as in the opinion of the Bank (as supported by any appropriate legal opinions) may be necessary or desirable for perfecting the security contemplated or constituted by the Security Documents.

- 11.3 **Application of funds:** All moneys received by the Bank under or pursuant to any of the Security Documents and expressed to be applicable in accordance with this Clause 11.3 shall be applied by the Bank in the following manner:
- (a) **Firstly** in or towards payment of Expenses and all sums other than principal or interest which may be due to the Bank under this Agreement and the other Security Documents or any of them at the time of application;
 - (b) **Secondly** in or towards payment of any default interest;
 - (c) **Thirdly** in or towards payment of any arrears of interest (other than default interest) due in respect of the Loan or any part thereof;
 - (d) **Fourthly** in or towards repayment of the Loan whether the same is due and payable or not;
 - (e) **Fifthly** in or towards payment to the Bank for any loss suffered by reason of any such payment in respect of principal not being effected on an Interest Payment Date relating to the part of the Loan repaid; and
 - (f) **Sixthly** the surplus (if any) shall be paid to the Borrower or to whomsoever else shall be entitled to receive such surplus.
- 11.4 **Set off:** Express authority is hereby given by the Borrower to the Bank without prejudice to any of the rights of the Bank at law, contractually or otherwise, at any time after an Event of Default has occurred and is continuing but without notice to the Borrower:
- (a) to apply any credit balance standing upon any account of the Borrower with any branch of the Bank and in whatever currency in or towards satisfaction of any sum due to the Bank from the Borrower under this Agreement and/or any of the other Security Documents;

- (b) in the name of the Borrower and/or the Bank to do all such acts and execute all such documents as may be necessary or expedient to effect such application; and
- (c) to combine and/or consolidate all or any accounts in the name of the Borrower with the Bank.
- (d) For all or any of the above purposes authority is hereby given to the Bank to purchase with the monies standing to the credit of any such account or accounts such other currencies as may be necessary to effect such application. The Bank shall not be obliged to exercise any right given by this Clause.

11.5 Prosperity Earnings Account and Retention Account

- (a) The Borrower shall procure that all moneys payable in respect of the Earnings of the Prosperity Vessel shall be paid to the Prosperity Earnings Account free from Encumbrances. Unless and until an Event of Default shall occur (whereupon the provisions of Clause 11.3 shall be applicable) no monies shall be withdrawn from the Prosperity Earnings Account save as hereinafter provided:
 - (i) first: in payment of any and all sums whatsoever due and payable to the Bank hereunder (such sums to be paid in such order as the Bank may in its sole discretion elect);
 - (ii) second: during each month of the Security Period (but by no later than, in the case of the first such month, the date falling thirty (30) days after the Drawdown Date and, in the case of each subsequent month, the same date of that month), the Borrower shall cause to be transferred from the Prosperity Earnings Account to the Retention Account out of the aggregate amount of the Earnings of the Prosperity Vessel received in the Prosperity Earnings Account during the preceding month the relevant fraction of the amount of interest on the Loan falling due on the next due date for payment of interest under this Agreement.
The expression "**relevant fraction**" in relation to an amount of interest on the Loan falling due for payment means a fraction (which shall be notified by the Bank to the Borrower at the beginning of each Interest Period) where the numerator is always one (1) and where the denominator shall always be three (3) except in the case of an Interest

- Period of less than three months, in which case the denominator shall be the number of months comprised in such Interest Period; and
- (iii) third: any balance shall be released to the Borrower.
 - (b) If the aggregate amount of the Earnings of the Prosperity Vessel received in the Prosperity Earnings Account is insufficient in any month for the required transfer to be made from the Prosperity Earnings Account to the Retention Account in accordance with Clause 11.5(a), the Borrower shall make up the amount of such insufficiency on demand from the Bank, but, without prejudice to its right to make such demand, the Bank may elect to make up the whole or any part of such insufficiency by increasing the amount of any transfer to be made in accordance with Clause 11.5(a)(ii) from the aggregate amount of such Earnings received in the next or subsequent months.
 - (c) Until the occurrence of an Event of Default (or an event which, with the giving of notice and/or lapse of time or other applicable condition, might constitute an Event of Default), the Bank shall on each Interest Payment Date for the payment of interest under this Agreement apply in accordance with the provisions of Clause 8.1 the relevant part of the balance then standing to the credit of the Retention Account as shall be required to make payment of interest then due under the terms of this Agreement and such transfer shall constitute a pro tanto satisfaction of the Borrower's obligations to pay such interest then due under this Agreement.
 - (d) Any amounts for the time being standing to the credit of the Retention Account shall bear interest at the rate from time to time offered by the Bank to its customers for Dollar deposits of similar amounts and for periods similar to those for which such amounts are likely to remain standing to the credit of the Retention Account. Such interest shall, provided that the foregoing provisions of this Clause 11.5 shall have been complied with and provided that no Event of Default (or event which, with the giving of notice and/or lapse of time or other applicable condition, might constitute an Event of Default) shall have occurred, be released to the Borrower.
 - (e) Nothing herein contained shall be deemed to affect the absolute obligation of the Borrower to pay interest on and to repay the Loan as provided in Clauses 3 and 4 or shall constitute a manner or postponement thereof.
 - (f) The Borrower hereby irrevocably authorises the Bank to make from the Prosperity Earnings Account any and all above payments as and when the

- same fall due or at any time thereafter. The Bank shall advise the Borrower in respect of any such payment.
- (g) The Borrower will comply with any written requirement of the Bank from time to time as to the location or re-location of the Prosperity Earnings Account and the Retention Account (or either of them) and will from time to time enter into such documentation as the Bank may reasonably require in order to create or maintain in favour of the Bank an Encumbrance in the Prosperity Earnings Account and the Retention Account, all at cost and expense of the Borrower.
 - (h) The Borrower hereby covenants with the Bank that the Prosperity Earnings Account, the Retention Account and any moneys therein shall not be charged, assigned, transferred or pledged nor shall there be granted by the Borrower or suffered to arise any third party rights over or against the whole or any part of the Prosperity Earnings Account other than in favour of the Bank.
 - (i) The Prosperity Earnings Account shall be operated in accordance with the Bank's usual terms and conditions (full knowledge of which the Borrower hereby acknowledges) and subject to the Bank's usual charges levied on such accounts and/or transactions conducted on such accounts (as from time to time notified by the Bank to the Borrower).
 - (j) The Borrower hereby warrants that sufficient monies to meet the payment of interest accrued on the Loan will be accumulated each and every month in the Retention Account.
 - (k) After the occurrence of an Event of Default the Bank shall be entitled, but not bound, to apply the balance (if any) including any accrued interest standing to the credit of the Prosperity Earnings Account and the Retention Account in accordance with the provisions of Clause 11.3.
 - (l) Upon payment in full of all principal, interest and all other amounts due to the Bank under the terms of this Agreement and the other Security Documents, any balance then standing to the credit of the Retention Account and/or the Prosperity Earnings Account shall be released and paid to the Borrower or to whomsoever else may be entitled to receive such balance.

12. UNLAWFULNESS, INCREASED COSTS

- 12.1 **Unlawfulness:** If any change in, or introduction of, any law, regulation or regulatory requirement or any request of any central bank, monetary, regulatory or other

authority or any order of any court renders it unlawful or contrary to any such regulation, requirement, request or order for the Bank to make available the Commitment (or any part thereof) or to maintain or fund the Loan, notice shall be given promptly by the Bank to the Borrower and, if the Commitment or any part thereof has been made available by the Bank to the Borrower, the Borrower shall be obliged to prepay the Loan in accordance with the terms of this Agreement, together with accrued interest thereon to the date of prepayment and all other sums payable by the Borrower under this Agreement and the obligations of the Bank shall thereupon terminate, whereupon the Bank shall give prompt notice to the Borrower of such termination.

- 12.2 **Mitigation:** If circumstances arise which would result in a notification by the Bank to the Borrower under this Clause then, without in any way limiting the rights of the Bank under this Clause, the Bank shall use reasonable endeavours to transfer its obligations, liabilities and rights under this Agreement and the Security Documents to another office or financial institution not affected by the circumstances, but the Bank shall be under no obligation to take any such action if in its opinion, to do so would or might:
- (a) have an adverse effect on its business, operations or financial condition; or
 - (b) involve it in any activity which is unlawful or prohibited or any activity that is contrary to, or inconsistent, with any regulation; or
 - (c) involve it in any expense (unless indemnified to its reasonable satisfaction) or tax disadvantage.
- 12.3 **Increased Cost:** If the result of any change in, or in the interpretation or application of, or the introduction of, any law or any regulation, directive, request or requirement (whether or not having the force of law, but, if not having the force of law, with which the Bank or, as the case may be, its holding company habitually complies), including (without limitation) those relating to Taxation, capital adequacy, any type of liquidity, reserve assets, cash ratio deposits and special deposits, or other banking or monetary controls or requirements which affect the manner in which the Bank allocates capital resources to its obligations hereunder (including, without limitation, those resulting from the implementation or application of or compliance with any amendment of the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basle Committee on Banking Supervision in June 2004 as implemented in the European Union by the Capital Requirements Directive (2006/48/EC and 2006/49/EC) or any amendatory or substitute agreement in respect thereof including, without

limitation, the proposed new Basle Capital Accord ("Basle III") or any other law or regulation which implements Basel II) is to:

- (a) subject the Bank to Taxes or change the basis of Taxation of the Bank with respect to any payment under any of the Security Documents (other than Taxes or Taxation on the overall net income, profits or gains of the Bank imposed in the jurisdiction in which its principal or lending office under this Agreement is located); and/or
- (b) increase the cost to, or impose an additional cost on, the Bank or its holding company in making or keeping available the Commitment or maintaining or funding the Loan; and/or
- (c) reduce the amount payable or the effective return to the Bank under any of the Security Documents; and/or
- (d) reduce the Bank's or its holding company's rate of return on its overall capital by reason of a change in the manner in which it is required to allocate capital resources to the Bank's obligations under any of the Security Documents; and/or
- (a) require the Bank or its holding company to make a payment or forgo a return on or calculated by reference to any amount received or receivable by the Bank under any of the Security Documents; and/or
- (e) require the Bank to incur or sustain a loss (including any loss of future potential profits) by reason of being obliged to deduct all or part of the Commitment or the Loan from its capital for regulatory purposes,

then and in each case (subject to Clause 12.6) the Borrower shall pay to the Bank, from time to time, upon demand, such additional moneys as shall indemnify the Bank for any increased or additional cost, reduction, payment, foregone return or loss whatsoever.

- 12.4 **Claim for increased cost:** The Bank will promptly notify the Borrower of any intention to claim indemnification pursuant to Clause 12.3 and such notification will be a conclusive and full evidence binding on the Borrower as to the amount of any increased cost or reduction and the method of calculating the same (save in case of manifest error). A claim under Clause 12.3 may be made at any time and must be discharged by the Borrower within fifteen (15) Banking Days of demand. It shall not be a defence to a claim by the Bank under this Clause 12.3 that any increased cost or reduction could have been avoided by the Bank. Any amount due from the

Borrower under Clause 12.3 shall be due as a separate debt and shall not be affected by judgement being obtained for any other sums due under or in respect of this Agreement.

- 12.5 **Option to prepay:** If any additional amounts are required to be paid by the Borrower to the Bank by virtue of Clause 12.3, the Borrower shall be entitled, on giving the Bank not less than three (3) days prior notice in writing, to prepay the Loan and accrued interest thereon, together with all other Outstanding Indebtedness on the tenth (10th) Banking Day from the date of receipt of such notice by the Bank. Any such notice, once given, shall be irrevocable.
- 12.6 **Exception:** Nothing in Clause 12.3 shall entitle the Bank to receive any amount in respect of compensation for any such liability to Taxes, increased or additional cost, reduction, payment, foregone return or loss to the extent that the same is subject of an additional payment under Clause 5.3.
- 13. ASSIGNMENT, PARTICIPATION, LENDING BRANCH**
- 13.1 **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the Bank and the Borrower and their respective successors and permitted assigns.
- 13.2 **No Assignment by the Borrower:** The Borrower and any other Security Parties may not assign or transfer any of their respective rights and/or obligations under this Agreement or any of the other Security Documents or any documents executed pursuant to this Agreement and/or the other Security Documents.
- 13.3 **Assignment by the Bank:**
- (a) The Bank may, at any time and without the consent of the Borrower freely assign, transfers or in any other manner grants participation in respect of all or any of part of its rights and benefits hereunder and under the Security Documents or freely grant participations in its interest in the Loan to (in any of the foregoing cases) any subsidiary or holding company of the Bank or to any subsidiary of such holding company or to another affiliate of the Bank.
 - (b) The Bank may, subject to first obtaining the written consent of the Borrower (such consent not to be unreasonably withheld and the request for which shall be promptly responded to by the Borrower), at any time assign all or any of its rights and benefits hereunder and the Security Documents or grant participations in its interest in the Loan to (in any of the foregoing cases) any prime bank(s) with shipping experience.

- 13.4 Any cost of such assignment or transfer or granting participation shall be for the account of the Bank.
- 13.5 **Documentation:** If the Bank assigns, transfers or in any other manner grants participation in respect of all or any part of its rights or benefits or transfers all or any of its obligations as provided in this Clause 13 the Borrower undertakes, immediately on being requested to do so by the Bank, to enter into and procure that each Security Party enters into such documents as may be necessary or desirable to transfer to the assignee, transferee or participant all or the relevant part of the interest of the Bank in the Security Documents and all relevant references in this Agreement to the Bank shall thereafter be construed as a reference to the Bank and/or assignee, transferee or participant of the Bank to the extent of their respective interests and, in the case of a transfer of all or part of the obligations of the Bank, the Borrower shall thereafter look only to the assignee, transferee or participant in respect of that proportion of the obligations of the Bank under this Agreement assumed by such assignee, transferee or participant. The Borrower hereby expressly consents to any subsequent transfer of the rights and obligations of the Bank and undertakes that it shall join in and execute such supplemental or substitute agreements as may be necessary to enable the Bank to assign and/or transfer and/or grant participation in respect of its rights and obligations to another branch or to one or more banks or financial institutions in a syndicate or otherwise.
- 13.6 **Disclosure of information:** All information furnished to the Bank by the Borrower pursuant to this Agreement (and which is not at any time in the public domain) shall be treated as confidential by the Bank. Such information regarding the Security Parties may be disclosed by the Bank (i) to agents, professional advisers, bank inspectors and employees of the Bank to the extent required for the proper fulfilment of their obligations under or in relation to this Agreement, (ii) to any potential assignee or participant of the Bank subject to the prior written consent of the Borrower (such consent not to be unreasonably withheld) in respect of the assignments and participations pursuant to this Clause 13 and (iii) as may be required in order to enforce the provisions of the Security Documents and/or by law or governmental regulations or authority or by litigation. Any disclosure of information under this Clause 13 shall always be subject to an obligation of confidentiality by the person to whom the disclosure is made.
- 13.7 **Change of Lending Branch:** The Bank shall be at liberty to transfer the Loan to any branch or branches, and upon notification of any such transfer, the word "Bank" in this Agreement and in the other Security Documents shall mean the Bank, acting

- through such branch or branches and the terms and provisions of this Agreement and of the other Security Documents shall be construed accordingly.
- 14. MISCELLANEOUS**
- 14.1 **Cumulative Remedies:** The rights and remedies of the Bank contained in this Agreement and the other Security Documents are cumulative and not neither exclusive of each other nor of any other rights or remedies conferred by law.
- 14.2 **Waivers:** No failure, delay or omission by the Bank to exercise any right, remedy or power vested in the Bank under this Agreement and/or the other Security Documents or by law shall impair such right or power, or be construed as a waiver of, or as an acquiescence in any default by the Borrower, nor shall any single or partial exercise by the Bank of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy. In the event of the Bank on any occasion agreeing to waive any such right, remedy or power, or consent to any departure from the strict application of the provisions of this Agreement or of any other Security Document, such waiver shall not in any way prejudice or affect the powers conferred upon the Bank under this Agreement and the other Security Documents or the right of the Bank thereafter to act strictly in accordance with the terms of this Agreement and the other Security Documents. No modification or waiver by the Bank of any provision of this Agreement or of any of the other Security Documents nor any consent by the Bank to any departure therefrom by any Security Party shall be effective unless the same shall be in writing and then shall only be effective in the specific case and for the specific purpose for which given. No notice to or demand on any such party in any such case shall entitle such party to any other or further notice or demand in similar or other circumstances.
- 14.3 **Integration of Terms:** This Agreement contains the entire agreement of the parties and its provisions supersede the provisions of the commitment letter dated 15th April, 2011 (save for the provisions thereof which relate to fees) any and all other prior correspondence and oral negotiation by the parties in respect of the matters regulated by this Agreement.
- 14.4 **Amendments:** This Agreement and any other Security Documents shall not be amended or varied in their respective terms by any oral agreement or representation or in any other manner other than by an instrument in writing of even date herewith or subsequent hereto executed by or on behalf of the parties hereto or thereto.

- 14.5 **Invalidity of Terms:** In the event of any provision contained in one or more of this Agreement, the other Security Documents and any other documents executed pursuant hereto or thereto being invalid, illegal or unenforceable in any respect under any applicable law in any jurisdiction whatsoever, such provision shall be ineffective as to the jurisdiction only without affecting the remaining provisions hereof or thereof. If, however, this event becomes known to the Bank prior to the drawdown of the Commitment or of any part thereof the Bank shall be entitled to refuse drawdown until this discrepancy is remedied. In case that the invalidity of a part results in the invalidity of the whole agreement, it is hereby agreed that there will exist a separate obligation of the Borrower for the prompt payment to the Bank of all the Outstanding Indebtedness. Where, however, the provisions of any such applicable law may be waived, they are hereby waived by the parties hereto to the full extent permitted by the law to the intent that this Agreement, the other Security Documents and any other documents executed pursuant hereto or thereto shall be deemed to be valid binding and enforceable in accordance with their respective terms.
- 14.6 **Inconsistency of Terms:** In the event of any inconsistency between the provisions of this Agreement and the provisions of any other Security Document the provisions of this Agreement shall prevail.
- 14.7 **Language and genuineness of documents**
- (a) **Language:** All certificates, instruments and other documents to be delivered under or supplied in connection with this Agreement or any of the other Security Documents shall be in the English language.
 - (b) **Certification of documents:** Any copies of documents delivered to the Bank shall be duly certified as true, complete and accurate copies by appropriate authorities or legal counsel practicing in Greece or otherwise as it will be acceptable to the Bank at the sole discretion of the Bank.
 - (c) **Certification of signature:** Signatures on Board or shareholder resolutions, Secretary's certificates and any other documents are, at the discretion of the Bank, to be verified for their genuineness by appropriate Consul or other competent authority.
- 14.8 **Further assurances:** The Borrower undertakes that the Security Documents shall both at the date of execution and delivery thereof and so long as any moneys are owing under any of the Security Documents be valid and binding obligations of the respective parties thereto and enforceable in accordance with their respective terms

and that it will (unless otherwise provided herein), at its expense, execute, sign, perfect and do, and will procure the execution, signing, perfecting and doing by each of the other Security Parties of, any and every such further assurance, document, act or thing as in the reasonable opinion of the Bank may be necessary or desirable for perfecting the security contemplated or constituted by the Security Documents.

14.9 **Third Party rights:** No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

15. NOTICES AND OTHER MATTERS

15.1 **Notices:** Every notice, request, demand or other communication under the Agreement or, unless otherwise provided therein, under any of the other Security Documents shall.

- (a) be in writing delivered personally or by first-class prepaid letter (airmail if available), or shall be served through a process server or subject to Clause 10.7 by fax;
- (b) be deemed to have been received, subject as otherwise provided in this Agreement or the relevant Security Document, in the case of a fax, at the time of dispatch as per transmission report (provided in either case that if the date of despatch is not a business day in the country of the addressee it shall be deemed to have been received at the opening of business on the next such business day), and in the case of a letter when delivered or served personally or five (5) days after it has been put into the post; and
- (c) be sent:
 - (i) if to be sent to any Security Party, to:

c/o NewLead Bulklers S.A.
83 Akti Miaouli and Flessa Street,
185 38 Piraeus, Greece,
Fax No.: +30 213 014 8209
Attention: Chief Financial Officer

- (ii) in the case of the Bank at:

FBB—First Business Bank S.A.
62, Notara and Sotiros Dios streets,
185 35 Piraeus, Greece
Fax No. (+30 210) 4132 058

Attention: The Manager

or to such other person, address or fax number as is notified by the relevant Security Party or the Bank (as the case may be) to the other parties to this Agreement and, in the case of any such change of address or fax number notified to the Bank, the same shall not become effective until notice of such change is actually received by the Bank and a copy of the notice of such change is signed by the Bank.

15.2 Confidentiality

- (a) Each of the parties hereto agrees and undertakes to keep confidential any documentation and any confidential information concerning the business, affairs, directors or employees of the other which comes into its possession during this Agreement and not to use any such documentation, information for any purpose other than for which it was provided.
- (b) The Borrower acknowledges and accepts that the Bank may be required by law, regulation or regulatory requirement or any request of any central bank or any court order to disclose information and deliver documentation relating to the Borrower and the transactions and matters in relation to this Agreement and/or the other Security Documents to governmental or regulatory agencies and authorities.
- (c) The Borrower acknowledges and accepts that in case of occurrence of any of the Events of Default the Bank may disclose information and deliver documentation relating to the Borrower and the transactions and matters in relation to this Agreement and/or the other Security Documents to third parties to the extent that this is necessary for the enforcement or the contemplation of enforcement of the Bank's rights or for any other purpose for which in the opinion of the Bank, such disclosure would be useful or appropriate for the interests of the Bank or otherwise and the Borrower expressly authorises any such disclosure and delivery.
- (d) The Borrower acknowledges and accepts that the Bank may be prohibited to disclosing information to the Borrower by reason of law or duties of confidentiality owed or to be owed to other persons.

16. APPLICABLE LAW AND JURISDICTION

16.1 Law:

- (a) This Agreement shall be governed by and construed in accordance with English Law.
- (b) For the purposes of enforcement in Greece, it is hereby expressly agreed that English law as the governing law of the Loan Agreement will be proved by an affidavit of a solicitor from an English law firm to be appointed by the Bank and the said affidavit shall constitute full and conclusive evidence binding on the Borrower but the Borrower shall be allowed to rebut such evidence save for witness.

16.2 Submission to Jurisdiction

- (a) For the exclusive benefit of the Bank, the Borrower agrees that any legal action or proceedings arising out or in connection with this Agreement against the Borrower or any of its assets may be brought in the English Courts. The Borrower irrevocably and unconditionally submits to the jurisdiction of such courts and irrevocably designates, appoints and empowers Messrs. **Cheeswrights, Notaries Public**, at their office for the time being at Bankside House, 107 Leadenhall Street, London EC3A 4HA, England, to receive for it and on its behalf, service of process issued out of the English courts in any such legal action or proceedings, provided, however, that the Borrower further agrees that in the event that (i) Messrs. **Cheeswrights, Notaries Public**, close or fail to maintain a business presence in England, or (ii) the Bank, in its sole discretion, shall determine that service of process on the said agents is not feasible or may be insufficient under the Laws of England, then any summons, writ or other legal process issued against them in England may be served upon Messrs. The Law Debenture Corporate Services Limited, Fifth Floor, 100 Wood Street, London EC2V 7EX, England (hereinafter called the “**Process Agent for English Proceedings**”), or their successors, who are hereby authorised to accept such service, which shall be deemed to be good service on the Borrower. The Borrower hereby irrevocably agrees to maintain a Process Agent for English Proceedings throughout the Security Period and hereby agrees that in the event that (aa) Messrs. The Law Debenture Corporate Services Limited close or fail to maintain a business presence in England, or (bb) the Bank in its sole discretion, shall determine that service of process on Messrs. The Law Debenture Corporate Services Limited is not feasible or may be insufficient under the

Laws of England, then the Borrower, within five (5) days after written notice from the Bank, shall appoint a substitute Process Agent for English Proceedings acceptable to the Bank and if the Borrower fails to make such appointment within the said five days period, the Bank may appoint such substitute Process Agent for English Proceedings and the Bank is hereby irrevocably authorised to effect such appointment on Borrower's behalf. The appointment of the Process Agent for English Proceedings shall be valid and binding from the date notice of such appointment is given by the Bank to the Borrower in accordance with Clause 15.1. The foregoing shall not limit the right of the Bank to start proceedings in any other country or to serve process in any other manner permitted by law. Finally, the Borrower hereby waives any objections to the inconvenience of England as a forum.

- (a) The submission to the jurisdiction of the English Courts shall not (and shall not be construed so as to) limit the right of the Bank to take proceedings against the Borrower in the courts of any other competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.
- (b) The parties further agree that subject to Clause 16.2(b) the Courts of England shall have exclusive jurisdiction to determine any claim which the Borrower may have against the Bank arising out of or in connection with this Agreement and the Borrower hereby waives any objections to proceedings with respect to this Agreement in such courts on the grounds of venue or inconvenient forum.

16.3 Proceedings in any other country:

- (a) Clause 16.2 is for the exclusive benefit of the Bank which reserves the rights:
 - (i) to commence proceedings in relation to any matter which arises out of or in connection with this Agreement in the courts of any country other than England and which have or claim jurisdiction to that matter; and
 - (ii) 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.
- (b) If it is decided by the Bank that any such proceedings should be commenced in any other country, then any objections as to the jurisdiction or any claim as to the inconvenience of the forum is hereby waived by the Borrower and it is agreed and undertaken by the Borrower to instruct lawyers in that country to

accept service of legal process and not to contest the validity of such proceedings as far as the jurisdiction of the court or courts involved is concerned and the Borrower agrees that any judgment or order obtained in an English court shall be conclusive and binding on the Borrower and shall be enforceable without review in the courts of any other jurisdiction.

- 16.4 **Process Agent:** Mr. Peter Kallifidas, an Attorney-at-Law, presently of 83 Akti Miaouli and Flessa street, GR 18535 Piraeus, Greece, is hereby appointed by the Borrower as agent to accept service (hereinafter "**Process Agent**") upon whom any judicial process in respect of proceedings in Greece (including but without limitation any documents initiating legal proceedings) may be served and any notice, request, demand or other communication under this Agreement or any of the Security Documents. In the event that the Process Agent (or any substitute process agent notified to the Bank in accordance with the foregoing) cannot be found at the address specified above (or, as the case may be, notified to the Bank), which will be conclusively proved by a deed of a process server to the effect that the Process Agent was not found at such address, the Bank shall have the right to serve the documents either on the Process Agent at such address or at any address where the Process Agent may be found or in accordance with the procedure provided by the relevant provisions on service of process provided by the Hellenic Procedural Code.
- 16.5 **Meaning of "proceedings":** In this Clause 16 "**proceedings**" means proceedings of any kind, including an application for a provisional or protective measure.

IN WITNESS whereof the parties hereto have caused this Agreement to be duly executed on the date first above written.

SCHEDULE 1

FORM OF DRAWDOWN NOTICE

(referred to in Clause 2.3)

To: **FBB–First Business Bank S.A.**
62, Notara and Sotiros Dios streets,
185 35 Piraeus, Greece
(the “**Bank**”)

Re: Term loan facility of up to US\$12,000,000 — Loan Agreement dated [●] May, 2011 made between (A) **Newlead Prosperity Inc.** (the “**Borrower**”) [●] May, 2011 and (B) the Bank (the “**Loan Agreement**”).

We refer to the Loan Agreement and hereby give you notice that we wish to borrow as follows:

- (a) the amount of (\$[●]) (Dollars [●] million) in respect of the Commitment;
- (b) Drawdown Date: [●], [●];
- (c) duration of the Interest Period in respect of the Loan shall be [●] months/shall terminate on [●]; and
- (d) Payment instructions: The funds should be credited/remitted to ([●][●] *[name and number of account]* [●]) with [●], New York, USA.

We confirm that:

- (a) no event or circumstance has occurred and is continuing which constitutes a Default;
- (b) the representations and warranties contained in Clause 6 of the Loan Agreement and the representations and warranties contained in each of the other Security Documents are true and correct at the date hereof as if made with respect to the facts and circumstances existing at such date;
- (c) the borrowing to be effected by the drawing of the Commitment will be within our corporate powers, has been validly authorised by appropriate corporate action and will not cause any limit on our borrowings (whether imposed by statute, regulation, agreement or otherwise) to be exceeded; and

(d) to the best of our knowledge and belief there has been no material adverse change in our financial position or in the consolidated financial position of ourselves and the other Security Parties from that described by us to the Bank in the negotiation of the Loan Agreement.
Words and expressions defined in the Loan Agreement shall have the same meanings when used herein.

SIGNED by)
Mr.)
for and on behalf of)
NEWLEAD PROSPERITY INC.,)
of Marshall Islands, in the presence of:)

Witness:

Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Street
Piraeus, Greece
Occupation: Attorney-at-law

SCHEDULE 2
Form of Compliance Certificate

To: **FBB–First Business Bank S.A.**
(the “**Bank**”)

From: **NewLead Holdings Ltd.**
(the “**Company**”)

Re: Term loan facility of up to US\$12,000,000 — Loan Agreement dated [●] May, 2011 made between (A) **Newlead Prosperity Inc.** (the “**Borrower**”) and (B) the Bank (the “**Loan Agreement**”).

Date [] 20[]

Dear Sirs

We refer to the Loan Agreement. Words and expressions whose meanings are defined in the Loan Agreement shall have the same meanings when used herein.

We hereby confirm that [except as stated below] as at the date hereof to the best of our knowledge and belief after due inquiry:–

1. all the Borrower’s undertakings in the Loan Agreement set out in clause 8.6 are being fully complied with and, in particular, by reference to the latest [audited][unaudited] financial statements, management accounts and all other current relevant information available to us on a consolidated basis:

- a) the Equity Ratio for the Financial Year ending on [•] is [•] [not less than, **30%**];
- b) the amount maintained as at the date hereof in accounts held in the names of the Borrower and/or the Company or any of them with the Bank, as cash balances is \$[•], which is at least equal 5% of the Group’s total Indebtedness as at the relevant time; *
- c) for the Financial Year ending on [•] on a consolidated basis, Working Capital is not less than [•] [zero Dollars (\$0)]; and
- d) the market value adjusted net worth of the Group is [•]*; and

- e) the ratio of EBITDA to Net Interest Expense for the Financial Year ending on [•] is [•] [not less **2.50** to **1.00**];
:
2. at least 10% of the total issued share capital of the Company is directly or indirectly held by Messrs. Michael Zolotas and/or Nikolaos Fistes;
 3. Mr. Nicholas G. Fistes remain Chairman and Mr. Michail S. Zolotas remain Vice Chairman and Chief Executive Officer of Company and retain executive power.
 4. no Default has occurred;
 5. appendix 1 hereto contains a comprehensive list of all Group Members as at the date hereof and the jurisdictions in which they are incorporated and an up-to-date corporate structure chart for the Group; and
 6. the representations set out in clause 6 of the Loan Agreement are true and accurate with reference to all facts and circumstances now existing and all required authorisations have been obtained and are in full force and effect; and

[State any exceptions/qualifications to the above statements]

[Attach list of current Group Members and current corporate structure chart]

Yours faithfully,

NEWLEAD HOLDINGS LTD.

By _____

Name:

[Chief Financial Officer]

[Director :]

* Subject to the waivers referred to in clause 5.3(a), (b) and (d) of the Newlead Corporate Guarantee.

SCHEDULE 3
INSURANCE REQUIREMENTS

This Schedule is an integral part of the Agreement to which it is attached.

1. DEFINITIONS

- 1.1 Words and expressions used in this Schedule shall have the meanings given thereto in the agreement to which this Schedule is attached and the following expressions shall have the meanings listed below:
- “**Approved Brokers**” means such firm of insurance brokers, appointed by the Owner, as may from time to time be approved by the Bank in writing for the purposes of this Schedule;
- “**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 Vessel in consequence of her insured value being less than the value at which the Vessel is assessed for the purpose of such claims;
- “**Insurance Requirements**” means all the terms and conditions in this Schedule or any other provision concerning Insurances in any other Clause of the agreement to which this Schedule is attached and all such terms and conditions are an integral part of the agreement to which they are attached;
- “**Insurances**” in respect of a Vessel means all policies and contracts of insurance (including, without limitation, all entries of such Vessel in a protection and indemnity, war risks or other mutual insurance association) which are from time to time in place or taken out or entered into by or for the benefit of the Owner owning such Vessel (whether in the sole name of its Owner or in the joint names of its Owner and the Bank) in respect of such Vessel and its earnings or otherwise howsoever in connection with such Vessel and all benefits of such policies and/or contracts (including all claims of whatsoever nature and return of premiums);
- “**Loss Payable Clauses**” means the provisions regulating the manner of payment of sums receivable under the Insurances which are to be incorporated in the relevant insurance document, such Loss Payable Clauses to be in the forms set out in paragraph 4 of this Schedule, or such other form as the Bank may from time to time agree in writing;

“**Owner**” means the owner of a Vessel which should be insured and be maintained insured pursuant to these Insurance Requirements in accordance with any agreement to which these Insurance Requirements are attached;

“**Protection and Indemnity Risks**” means the usual risks covered by an English protection and indemnity association including the proportion (if any) not recoverable in the case of collision under the ordinary collision clause; and

“**Protection and Indemnity Risks**” means the usual risks (including oil pollution and freight, demurrage and defence cover) covered by a protection and indemnity association which is a member of the International Group of P&I Clubs (including, without limitation, 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 therein of Clause 1 of the Institute Time Clauses (Hulls) (1/10/83) or the Institute Amended Running Down Clause (1/10/71) or (with respect to insurances commencing on or after (1/11/95)) the Institute Time Clauses (1/11/95) which may be insured by entry with such association or any equivalent provision); and

“**War Risks**” includes excess risks, the risk of war and terrorism excluded from protection and indemnity with a separate limit, mines, blocking and trapping, missing vessel, confiscation and all risks excluded by Clause 24 of the Institute Time Clauses (Hulls) (1/11/95).

2. **INSURANCES TO BE EFFECTED AND MAINTAINED**

2.1 The insurance which must be effected and maintained in accordance with the provisions of the agreement to which these Insurance Requirements are attached should be in the name of the Owner and as follows:

(a) Hull and Machinery

insurance against fire and usual marine risks on an agreed value basis, on a full cover/all risks basis according to English or American Hull Clauses with a reasonable deductible and upon such terms as shall from time to time be approved in writing by the Bank; and

(b) War Risks Insurance

insurance against War risks according to the London Institute War Clauses, on an agreed value basis attaching also the so called war protection clauses.

In this case crew war liabilities insurance shall also have to be effected separately; and

(c) Increased Value

increased Value insurance (Total Loss only, including Excess Liabilities) as per the applicable English or American Institute Clauses (Disbursement/Increased Value/ Excess Liabilities) up to an amount not exceeding the Insurance Amount specified in Clause 3.3 below; and

(d) Protection and Indemnity

insurance against protection and indemnity risks for the full value and tonnage of the Vessel insured (as approved in writing by the Bank) according to the relevant rules and deductibles provided thereof for all risks including Pollution (and if the Vessel is passenger ship including liability towards third parties which is not covered by the War Risk Insurance) insured by P+I Clubs, members of the International Group of Protection and Indemnity Associations. If any risks are excluded or the deductibles as provided by the rules have been altered, the written consent of the Bank shall have to be previously required. In case that crew liabilities (including without limitation loss of life, injury or illness) have been entirely excluded from the association cover or insured on a deductible excess basis, (always subject to the prior written consent of the Bank) such liabilities shall have to be further insured separately with other underwriters acceptable to the Bank and upon such terms as shall from time to time be approved in writing by the Bank; and

(e) FD & D Insurance

Freight, Demurrage and Defense insurance as per the terms and conditions of a mutual club or association acceptable to the Bank; and

(f) Pollution Liability Insurance

an extra insurance in respect of excess Oil Pollution Liability (including –if the Vessel insured is a tanker– the Civil Liability Convention certificate) including full cover of pollution risks for the amount up to the maximum commercially available limit and upon such terms as shall be commercially available and accepted by the Bank; and

(g) USA Pollution Risk Insurance

(in case that the Vessel is scheduled to operate within or nearby USA jurisdiction) to cover and keep such Vessel covered with an extra insurance in respect of oil pollution liability for an amount and upon such terms as required by international and national law regulations and shall from time to time be required by the Bank; and

Mortgagee's Interest Insurance — Mortgagee's Additional Perils (Pollution) Interest Insurance

- (i) a Mortgagee's Interest Insurance (herein "MII"), which the Mortgagee may from time to time effect in respect of the Vessel upon such terms as it shall deem desirable and in an amount of not less than 110% of the Loan (ii) if the Bank so requires, a Mortgagee's Interest Additional Perils (Pollution) insurance (herein "MAPI"), which the Bank may from time to time effect in respect of the Vessel upon such terms as it shall deem desirable and in an amount of not less than 110% of the Loan, including mortgagee's asset protection (pollution) cover or other similar insurance in respect of any pollution claims against the Vessel upon such terms as shall from time to time be determined by the Bank, provided, however, that the Bank shall in its absolute discretion appoint and instruct in respect of any such MII and such MAPI the insurance brokers in respect of each such Insurance. and (iii) any other insurance cover which the Bank, after notice to the Owner of the Vessel, may from time to time effect in respect of the Vessel and/or in respect of its interest or potential third party liability as mortgagee of the Vessel as it shall deem desirable and reasonable having regard to any limitations in respect of amount or extent of cover which may from time to time be applicable to any of the Insurances; and

(h) Other Insurance

insurance in respect of such other matters of whatsoever nature and howsoever arising in respect of which the Bank would at any time require at their discretion the Vessel to be insured.

3. TERMS AND OBLIGATIONS FOR EFFECTING AND MAINTAINING INSURANCES

- 3.1 The Insurances to be effected in such currency as the Bank may approve and through the Approved Brokers (other than the mortgagee's interest insurance which shall be effected through brokers nominated by the Bank) and with such insurance companies and/or underwriters as shall from time to time be approved in writing by

- the Bank, provided, however, that the insurances against war risks, protection and indemnity, FD & D cover or other mutual insurance risks may be effected by the entry of the Vessel with such war, protection and indemnity or other mutual insurance associations as shall from time to time be approved in writing by the Bank.
- 3.2 The Insurances to be effected and maintained free of cost and expense to the Bank and in the sole name of the Owner or, if so required by the Bank, in the joint names of the Owner and the Bank (but without liability on the part of the Bank for premiums or calls). All insurances to be in form and substance and under terms satisfactory to the Bank and with insurers acceptable to the Bank.
- 3.3 Unless otherwise agreed in writing by the Bank:
- (a) The amount in respect of which the Insurances should be effected shall be an amount (Insurance Amount) which will be (aa) in respect of Hull and Machinery Insurance the greater of the Market Value of the Vessel insured for the time being and 125% of an amount (the “**Amount of Debt**”) equal to (i) the Loan if the agreement to which these Insurance Requirements are attached is a Loan Agreement or (ii) the Maximum Limit of the Facility if the agreement to which these Insurance Requirements are attached is an Overdraft Facility or a Facility for Issue of Guarantees or Letters of Credit; and (bb) in respect of Protection and Indemnity, FD&D, and Mortgagee’s Interest Insurance.
 - (b) In case that the Amount of Debt is secured by more than one Vessels the above percentages should be covered by the aggregate of the Insurances in respect of all such Vessels.
 - (c) In case that the Vessel insured secures by its Insurances Amounts of Debt under more than one agreements then the above percentages apply to the aggregate of all the Amounts of Debt under all the agreements.
- 3.4 Any person which is obliged under the agreement to which these Insurance Requirements are attached to effect and maintain the Insurances, it will be obliged and it hereby undertakes, jointly and severally with any other person having the same obligation to (and will ensure that the Owner, if it is a different person shall):
- (a) procure and ensure that the Approved Brokers and/or the Club Managers, as the case may be, shall send to the Bank a letter of undertaking in respect of the Insurances in form and substance satisfactory to the Bank and Notice of Cancellation as per Clause 4(d) below. The Approved Brokers’ Letter of Undertaking shall be compatible with the form recommended by Lloyd’s

Insurance Brokers Committee, or any subsequent LIBC form. Such brokers to further undertake to give immediate notice of any insurance being subject to the Condition Survey Warranty (J.H.115) and/or Structural Conditions Warranty (J.H.722) and/or the Classification Clause (Hulls) 29/6/89, 30 days prior to the attachment date of any insurance bearing any of these warranties;

- (b) (if any of the Insurances form part of a fleet cover), procure that the Approved Brokers shall undertake to the Bank that they shall neither set off against any claims in respect of the Vessel insured any premiums due in respect of other vessels under such fleet cover or any premiums due for other insurances, nor cancel the insurance for reasons of non-payment of premiums for other vessels under such fleet cover or of premiums for such other insurances, and shall undertake to issue a separate policy in respect of the Vessel insured if and when so requested by the Bank;
- (c) punctually pay all premiums, calls, contributions or other sums payable in respect of all Insurances and produce all relevant receipts or other evidence of payment when so required by the Bank;
- (d) at least fourteen (14) days before the Insurances expire, notify the Bank of the names of the brokers and/or the war risks and protection and indemnity risks associations proposed to be employed by the Owner for the purposes of the renewal of such Insurances and of the amounts in which such Insurances are proposed to be renewed and the risks to be covered and, subject to compliance with any requirements of the Bank under the Insurance Requirements, procure that appropriate instructions for the renewal of such Insurances on the terms so specified are given to the Approved Brokers and/or to the approved war risks and protection and indemnity risks associations at least ten (10) days before the relevant Insurances expire, and that the Approved Brokers and/or the approved war risks and protection and indemnity risks associations will at least seven (7) days before such expiry (or within such shorter period as the Bank may from time to time agree) confirm in writing to the Bank as and when such renewals have been effected in accordance with the instructions so given;
- (e) arrange for the execution and delivery of such guarantees or indemnities as may from time to time be required by any protection and indemnity or war risks association;
- (f) deposit with the Approved Brokers (or procure the deposit of) all slips, cover notes, policies, certificates of entry or other instruments of insurance from

time to time issued and procure that the interest of the Bank shall be endorsed thereon by incorporation of the relevant Loss Payable Clause and by means of a notice of assignment (signed by the Owner) in the form set out in Paragraph 4 of this Schedule or in such other form as may from time to time be agreed in writing by the Bank, and that the Bank shall be furnished with pro forma copies thereof and a letter or letters of undertaking from the Approved Brokers in such form as shall from time to time be required by the Bank;

- (g) procure that any protection and indemnity and/or war risks associations and/or Hull and Machinery and/or any other insurance company or underwriters in which the Vessel insured is for the time being entered and/or insured shall endorse the relevant Loss Payable Clause on the relevant certificate of entry or policy and shall furnish the Bank with a copy of such certificate of entry or policy and a letter or letters of undertaking in such form as shall from time to time be required by the Bank;
- (h) (if so requested by the Bank, but at the cost of the Owner) furnish the Bank from time to time with a detailed report signed by an independent firm of marine insurance brokers appointed by the Bank dealing with the Insurances maintained on the Vessel insured and stating the opinion of such firm as to the adequacy thereof;
- (i) do all things necessary and provide all documents, evidence and information to enable the Bank to collect or recover any moneys which shall at any time become due in respect of the Insurances;
- (j) ensure that the Vessel insured shall not be employed otherwise than in conformity with the terms of the Insurances (including any warranties express or implied therein) without first obtaining the consent of the insurers to such employment and complying with such requirements as to extra premium or otherwise as the insurers may prescribe;
- (k) apply all sums receivable under the Insurances which are paid to the Owner in accordance with the Loss Payable Clauses in repairing all damage and/or in discharging the liability in respect of which such sums shall have been received;
- (l) (in case that the Vessel is scheduled to operate or operates within or nearby USA jurisdiction) make all the Protection & Indemnity Club US Voyage

- Quarterly Declarations for each quarter in time and send copies of same to the Bank; and
- (m) Fleet Cover is permitted only subject to the prior written approval of the Bank, to the conditions set out in 3.4(b) above and the Bank' prior express written approval of fleet aggregate deductibles.

4. LOSS PAYABLE CLAUSES AND CANCELLATION CLAUSE

4.1 The Loss Payable Clauses to be attached to the relevant Insurances should be substantially in the following form:

(A) Hull and Machinery (Marine and War Risks)

It is noted that by a Deed of General Assignment and a first priority statutory ship Mortgage dated, 2011 granted by, of..... (the "Owner") in favour of **FBB-First Business Bank S.A.**, acting for the time being through its office at 62, Notara & Sotiros Dios Streets, 185 35 Piraeus, Greece (the "Mortgagees") all the Owner's rights, title and interest in and to all policies and contracts of insurance from time to time taken out or entered into by or for the benefit of the Owner in respect of its Liberian flag m/v "[●]" (the "Vessel") and accordingly:

- (a) all claims hereunder in respect of an actual or constructive or compromised or arranged total loss, and all claims in respect of a major casualty (that is to say any casualty to the Vessel in respect whereof the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds Five hundred thousand Dollars (\$500,000) or the equivalent thereof in any other currency) shall be paid in full to **FBB-First Business Bank S.A.**, acting for the time being through its office at 62, Notara & Sotiros Dios Streets, 185 35 Piraeus, Greece (the "Mortgagee"), or to its order; and
- (a) all other claims hereunder shall be paid in full to the Owner or to its order, unless and until the Mortgagee shall have notified the insurers hereunder to the contrary, whereupon all such claims shall be paid to the Mortgagee, or to its order.

(B) Protection and Indemnity Risks

Payment of any recovery which [●], of [●] (the "Owner") is entitled to make out of the funds of the Association in respect of any liability, costs or expenses incurred by

the Owner, shall be made to the Owner or to its order, unless and until the Association receives notice to the contrary from **FBB–First Business Bank S.A.**, acting for the time being through its office at 62, Notara & Sotiros Dios Streets, 185 35 Piraeus, Greece (the “**Mortgagee**”), in which event all recoveries shall thereafter be paid to the Mortgagee, or to its order; provided that no liability whatsoever shall attach to the Association, its managers or its agents for failure to comply with the latter obligation until the expiry of two clear business days from the receipt of such notice.

4.2 Notice of Cancellation

The Owner to procure that Notice of Cancellation of Insurances be given to the Mortgagee along the following terms:

Notice of Cancellation of Insurances will be given to **FBB–First Business Bank S.A.**, acting for the time being through its office at 62, Notara & Sotiros Dios Streets, 185 35 Piraeus, Greece, (the “**Mortgagee**”) in any of the following cases:

- (a) immediately if any material changes are proposed to be made in the terms of the Insurances or if the insurers cease to be insurers for any purposes connected with the Insurances;
- (b) not later than fourteen (14) days prior to the expiry of any of the Insurances if instructions have not been received for the renewal thereof and, in the event of instructions being received to renew, of the details thereof;
- (c) immediately if any instructions or notices are received by insurers with regard to the cancellation or invalidity of any of the Insurances aforesaid; and
- (d) immediately if the insurers give notice of their intention to cancel the Insurances, provided that the insurers will not exercise any rights of cancellation by reason of unpaid premiums without giving the Mortgagee fourteen (14) days, from the receipt of such notice in which to remit the sums due.

4.3 Notice of Assignment

The Notice of Assignment shall be in the following form:

Form of Notice of Assignment — First Mortgage
(for attachment by way of endorsement to the Policy)

[●], of [●] (the “Owner”) the owner of the m/v “[●]” registered under [●] flag, (the “Vessel”) HEREBY GIVE NOTICE that by a Deed of General Assignment made the [●] day of [●], 2011 and entered into by us with **FBB—First Business Bank S.A.** (the “Mortgagee”) there has been assigned by us to the Mortgagee, as first Mortgagee and first Assignee of the Vessel all rights, title and interest in and to all policies and contracts of insurance from time to time taken out or entered into by or for the benefit of the Owner, including, but not limited to, the insurances constituted by the Policy whereon this notice is endorsed and the Owner has authorised the Mortgagee to have access and/or obtain any copies of the Policy(ies), certificate(s) of entry and/or other information from the insurers.

Dated [●], 2011

For and on behalf of

The Owner

By: _____

Attorney-in-fact

EXECUTION PAGE

SIGNED)
for and on behalf of)
NEWLEAD PROSPERITY INC.,)
of Marshall Islands,)
by Mr. Panagiotis–Peter Kallifidas)
its duly authorised Attorney–in–fact)
in the presence of:)

 /s/ Panagiotis–Peter Kallifidas
Attorney–in–Fact

Witness: /s/ Charalampos V. Sioufas

Name: Charalampos V. Sioufas
Address: 13 Defteras Merarchias Street
Piraeus, Greece
Occupation: Attorney–at–law

SIGNED)
for and on behalf of)
FBB–FIRST BUSINESS BANK S.A.)
by Mr. Nikolaos Vougoukas)
its duly authorised Attorney–in–fact)
in the presence of:)

 /s/ Nikolaos Vougoukas
Attorney–in–Fact

Witness: /s/ Charalampos V. Sioufas

Name: Charalampos V. Sioufas
Address: 13 Defteras Merarchias Street
Piraeus, Greece
Occupation: Attorney–at–law

Dated: 9th May, 2011
FBB–FIRST BUSINESS BANK S.A.
(as lender)
– and –
GRAND SPARTOUNTA INC.
(as Borrower)
– and –
NEWLEAD HOLDINGS LTD. and
NEWLEAD PROSPERITY INC.
(as Corporate Guarantors)
– and –
NEWLEAD BULKERS S.A.
(as Manager)
– and –
NEWLEAD BULKER HOLDINGS INC.
(as Pledgor)

SECOND SUPPLEMENTAL AGREEMENT
in relation to a Loan Agreement
dated 2nd July, 2010
for a loan facility of up to US\$24,150,000



Theo V. Sioufas & Co.
Law Offices
Piraeus

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THIS AGREEMENT is made this 9th day of May, 2011

B E T W E E N

- (1) **FBB–FIRST BUSINESS BANK S.A.**, a bank incorporated in the Republic of Greece with its head office at 91 Michalakopoulou Street, 11528 Athens, Greece, acting through its office at 62, Notara and Sotiros Dios streets, 185 35 Piraeus, Greece (the “**Bank**” which expression shall include its successors and assigns);
- (2) **GRAND SPARTOUNTA INC.**, a company incorporated in the Republic of The Marshall Islands, having its registered office at Trust Company Complex, Ajeltake Island, Majuro, Marshall Islands MH 96960 (hereinafter called the “**Borrower**”, which expression shall include its successors);
- (3) **NEWLEAD HOLDINGS LTD.**, a company duly incorporated under the laws of Bermuda whose registered office is at Canon’s Court, 22 Victoria Street, Hamilton, Bermuda, which is listed and trading in the NASDAQ Stock Exchange, New York (hereinafter called the “**Newlead Corporate Guarantor**”, which expressions shall include its successors in title);
- (4) **NEWLEAD PROSPERITY INC.**, a company organised and existing under the laws of the Republic of The Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Island, Majuro, Marshall Islands MH 96960 (the “**Collateral Corporate Guarantor**”, which expression shall include its successors and together with the Newlead Corporate Guarantor hereinafter together called the “**Corporate Guarantors**” and “**Corporate Guarantor**” either of them);
- (5) **NEWLEAD BULKERS S.A.**, a company duly incorporated under the laws of the Republic of Liberia having its registered office at 80 Broad Street, Monrovia, Liberia and an office established in Greece (83 Akti Miaouli and Flessa Street, GR 185.38 Piraeus) pursuant to the Greek laws 89/67, 378/68, 27/75 and 814/79 (the “**Manager**”, which expression shall include its successors in title); and
- (6) **NEWLEAD BULKER HOLDINGS INC.**, a company incorporated in the Republic of The Marshall Islands, having its registered office at Trust Company Complex, Ajeltake Island, Majuro, Marshall Islands MH 96960 (the “**Pledgor**” which expression shall include its successors)

AND IS SUPPLEMENTAL to a loan agreement dated 2nd July, 2010 made between (1) the Bank, as lender and (2) the Borrower, as borrower, as amended and/or supplemented by a First Supplemental Agreement thereto dated 15th October, 2010 and made between (inter alios) the Bank, the Borrower and the Newlead Corporate Guarantor (the “**Principal Agreement**”), on the terms and conditions of which the Bank has advanced to the Borrower a secured loan facility of up to Twenty four million one hundred fifty thousand United States Dollars (US\$24,150,000) (the “**Loan**”) for the purposes therein specified (the Principal Agreement as hereby amended and as the same may hereinafter be further amended and/or supplemented is hereinafter called the “**Loan Agreement**”).

WHEREAS :

- (A) the Borrower, the Corporate Guarantors, the Pledgor and the Manager hereby jointly and severally acknowledge and confirm that:
- (a) the Bank has advanced to the Borrower the full amount of the Loan in the principal amount of Twenty four million one hundred fifty thousand United States Dollars (US\$24,150,000) in one advance; and
 - (b) as the date hereof the amount of **twenty one million seven hundred fifty thousand United States Dollars** (US\$21,750,000) remains outstanding;
- (B) pursuant to a Corporate Guarantee dated 16th July, 2010 and granted by the Newlead Corporate Guarantor as amended and/or supplemented by a Guarantee Supplement and Amendment dated 15th October 2010 (the "**Newlead Corporate Guarantee**") the Newlead Corporate Guarantor irrevocably and unconditionally guaranteed the due and timely repayment of the Loan and interest and default interest accrued thereon and the performance of all the obligations of the Borrower under the Principal Agreement and the Security Documents executed in accordance thereto; and
- (C) The Borrower and (inter alia) Newlead Corporate Guarantor have requested the Bank to consent to:
- (a) the amendment of the shareholders structure of the Borrower by adding the Pledgor, a corporation directly and fully-owned by the Newlead Corporate Guarantor, which in turn will be the sole shareholder of the Borrower;
 - (b) the transfer by the Newlead Corporate Guarantor to the Pledgor of all its right, title and interest in the authorised and issued share capital of the Borrower;
 - (c) the amendment of Clauses 5.1 (h), 5.2 (j), 5.3(a)(i), 5.3(b) and 5.3(d)(i) as provided in the Newlead Guarantee Supplement and Amendment No. 2 (as hereinafter defined);
 - (d) the waiver to the covenants of the Borrower under Clause 8.2 (a) of the Principal Agreement for the period starting from the date hereof until the 31st December, 2012;
and the Bank has agreed so to do against:
 - (aa) an increase in loan margin to four per cent (4%) per annum for the whole Security Period;
 - (bb) the Collateral Corporate Guarantor executing and delivering in favour of the Bank an irrevocable and unconditional Guarantee (the "**Collateral Corporate Guarantee**") in security of all the obligations of the Borrower under the Principal Agreement and the Security Documents and, in security of Collateral Corporate Guarantor's obligations under the Collateral Guarantee,

the Collateral Corporate Guarantor will sign, execute and deliver and, where appropriate, register in favour of the Bank (inter alia):

- (i) a second preferred Liberian ship mortgage (hereinafter referred to as the “**Collateral Mortgage**”) on the Collateral Vessel (as hereinafter defined);
- (ii) a second priority General Assignment (the “**Collateral General Assignment**”) of the Earnings, Insurances and Requisition Compensation in respect of the Collateral Vessel in favour of the Bank;
- (iii) a second priority Account Pledge Agreement to be entered into between the Collateral Owner and the Bank for the creation of a second priority pledge over the Collateral Guarantor Earnings Account (as hereinafter defined) (the “**Collateral Account Pledge Agreement**”); and
- (iv) a letter of undertaking and subordination (the “**Collateral Manager’s Undertaking**”) executed by the Manager whereby the Manager shall (inter alia) subordinate any and all claims it may have against the Collateral Corporate Guarantor and/or the Collateral Vessel to the claims of the Bank hereunder and the Security Documents, all in form and substance satisfactory to the Bank as well as all notices and other documents relevant to such Collateral Mortgage, Collateral Account Pledge Agreement, Collateral Manager’s Undertaking and Collateral General Assignment, all in form and substance satisfactory to the Bank; and

(cc) the amendment of the Principal Agreement in the manner set forth herein

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

1.1 Words and expressions defined in the Principal Agreement and not otherwise defined herein (including the Recitals hereto) shall have the same meanings when used in this Agreement.

1.2 In addition, in this Agreement the words and expressions specified below shall have the meanings attributed to them below:

“**Additional Security Documents**” means the Collateral Corporate Guarantee, the Collateral General Assignment, the Collateral Account Pledge Agreement, the Collateral Manager’s Undertaking, the Collateral Mortgage, the Shares Pledge Agreement, the Spartouta Mortgage Amendment No. 1 and the Newlead Guarantee Supplement and Amendment No. 2;

“Effective Date” means the date hereof (or such later date as the Bank may agree) upon which all the conditions contained in Clause 4 shall have been satisfied and this Agreement shall become effective;

“Collateral Corporate Guarantee” means a guarantee and/or indemnity given or, as the context may require, to be given by the Collateral Corporate Guarantor in form and substance satisfactory to the Bank as security for the Outstanding Indebtedness and any and all other obligations of the Borrower under the Loan Agreement;

“Collateral General Assignment” means in relation to the Collateral Vessel, the second priority deed of Assignment of the Earnings, Insurances and Requisition Compensation (as such terms are therein defined) to be executed by the Collateral Corporate Guarantor in favour of the Bank, in form and substance as the Bank shall require as the same may from time to time be supplemented and/or amended;

“Collateral Mortgage” means the second preferred Liberian Islands ship mortgage on the Collateral Vessel executed or (as the context may require) to be executed by the Collateral Corporate Guarantor in favour of the Bank in form satisfactory to the Bank;

“Collateral Account Pledge Agreement” means an agreement to be entered into between the Collateral Corporate Guarantor and the Bank for the creation of a second priority pledge over the Collateral Guarantor Earnings Account in favour of the Bank, in form and substance as the Bank may approve or require as the same may from time to time be amended and/or supplemented;

“Collateral Earnings Account” means the interest bearing account opened or, as the context may require to be opened with the Bank at the Lending Branch in the name of the Collateral Corporate Guarantor or such other account with any other branch or any other bank, as may be required by and at the discretion of the Bank, to which (inter alia) all Earnings of the Collateral Vessel are to be paid in accordance with the provisions of the Prosperity Loan Agreement and includes any sub-accounts thereof and any other account designated in writing by the Bank to be the Earnings Account in relation to such Vessel for the purposes of the Prosperity Loan Agreement;

“Collateral Manager’s Undertaking” means a letter of undertaking and subordination executed by the Manager whereby the Manager shall (inter alia) subordinate any and all claims it may have against the Collateral Corporate Guarantor and/or the Collateral Vessel to the claims of the Bank hereunder and the Security Documents,

“Collateral Vessel” means the bulk carrier **“NEWLEAD PROSPERITY”**, built by Tianjin Xingang Shipbuilding Heavy Industries Co., Ltd. in China in 2003 and which upon delivery to the Collateral Corporate Guarantor shall be lawfully registered under the laws and flag of the Republic of Liberia in the ownership of the Corporate Guarantor and propelled by one oil internal combustion engine of 7,650 KW together with all her boats, engines, machinery tackle outfit spare gear fuel consumable and other stores belongings and appurtenances whether on board or ashore and whether now owned or

hereafter acquired and all the additions, improvements and replacements in or on the above described vessel;

“**Loan Agreement**” means the Principal Agreement as hereby amended and as the same may from time to time be further amended and/or supplemented;

“**Newlead Guarantee Supplement and Amendment No. 2**” means the Supplement and Amendment No. 2 to the Newlead Corporate Guarantee, to be executed by the Newlead Corporate Guarantor, in form acceptable to the Bank;

“**Prosperity Loan Agreement**” means the Loan Agreement entered or to be entered into (A) the Collateral Corporate Guarantor, as borrower and (B) the Bank, as lender in relation to a loan facility of up to \$12,000,000;

“**Shares Pledge Agreement**” in relation to the Borrower means the pledge agreement to be executed by the Pledgor in favour of the Bank, whereby the Pledgor shall pledge all the authorised and issued share capital of the Borrower, in form satisfactory to the Bank; and

“**Spartounta Mortgage Amendment No. 1**” means the Amendment No. 1 to the first preferred Liberian Naval mortgage registered over the Liberian flag m/v “NEWLEAD SPARTOUNTA” owned by the Borrower in favour of the Bank, whereby the said first mortgage shall be amended, executed or (as the context may require) to be executed by the Borrower in favour of the Bank in form satisfactory to the Bank;

1.3 In this Agreement:

- (a) Where the context so admits words importing the singular number only shall include the plural and vice versa and words importing persons shall include firms and corporations;
- (b) clause headings are inserted for convenience of reference only and shall be ignored in construing this Agreement;
- (c) references to Clauses are to clauses of this Agreement save as may be otherwise expressly provided in this Agreement; and
- (d) all capitalised terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Principal Agreement.

2. Representations and warranties

2.1 The Borrower, the Corporate Guarantors, the Pledgor and the Manager hereby jointly and severally represent and warrant to the Bank as at the date hereof that the representations and warranties set forth in the Principal Agreement and the Security Documents (updated mutatis mutandis to the date of this Agreement) are (and will be on the Effective Date) true and correct as if all references therein to “this Agreement”

were references to the Principal Agreement as amended and supplemented by this Agreement.

- 2.2 In addition to the above the Borrower, the Manager, the Pledgor and the Corporate Guarantors hereby jointly and severally represent and warrant to the Bank as at the date of this Agreement that:
- a. each of the corporate Security Parties is duly formed, is validly existing and in good standing under the laws of the place of its incorporation has full power to carry on its business as it is now being conducted and to enter into and perform its obligations under the Principal Agreement, this Agreement and the Additional security Documents and has complied with all statutory and other requirements relative to its business;
 - b. all necessary licences, consents and authorities, governmental or otherwise under this Agreement and the Principal Agreement, this Agreement and the Additional Security Documents have been obtained and, as of the date of this Agreement, no further consents or authorities are necessary for any of the Security Parties to enter into this Agreement and the Additional Security Documents or otherwise perform its obligations hereunder;
 - c. this Agreement constitutes and each of the Additional Security Documents on the execution thereof will constitute the legal, valid and binding obligations of the Security Parties thereto enforceable in accordance with its terms;
 - d. the execution and delivery of, and the performance of the provisions of this Agreement and the Additional Security Documents do not, and will not contravene any applicable law or regulation existing at the date hereof or any contractual restriction binding on any of the Security Parties or its respective constitutional documents;
 - e. no action, suit or proceeding is pending or threatened against any of the Borrower, the Manager, the Pledgor and the Corporate Guarantors or their respective assets before any court, board of arbitration or administrative agency which could or might result in any material adverse change in the business or condition (financial or otherwise) of the Borrower, the Manager, the Pledgor or the Corporate Guarantors;
 - f. none of the Borrower, the Pledgor, the Manager and the Corporate Guarantors is and at the Effective Date will be in default under any agreement by which it is or will be at the Effective Date bound or in respect of any financial commitment, or obligation; and
 - g. the Collateral Vessel on the Effective Date will be:

- (i) in the absolute and free from Encumbrances (other than in favour of the Bank) ownership of the owner thereof who will on and after her delivery be the sole legal and beneficial owner of such Vessel;
 - (ii) registered in the name of the owner thereof through the Ships Registry of Monrovia under the laws and flag of Liberia;
 - (iii) operationally seaworthy and in every way fit for service;
 - (iv) classed with a Classification Society member of IACS, which has been approved by the Bank in writing and such classification is and will be free of all requirements and recommendations of such Classification Society;
 - (v) insured in accordance with the provisions of the Prosperity Loan Agreement and the relevant Mortgage; and
 - (vi) managed by the Manager;
- 2.3 The representations and warranties of the Borrower, the Manager, the Pledgor and the Corporate Guarantors in this Agreement shall survive the execution of this Agreement and shall be deemed to be repeated at the commencement of each Interest Period.

3. Agreement of the Bank

- 3.1 The Bank, relying upon each of the representations and warranties set out in Clause 2 hereby agrees with the Borrower, subject to and upon the terms and conditions of this Agreement and in particular, but without limitation, subject to the fulfilment of the conditions precedent set out in Clause 4, to consent to:
- a. the amendment of the shareholders structure of the Borrower by adding the Pledgor, a corporation directly and fully-owned by the Newlead Corporate Guarantor, which in turn will be the sole shareholder of the Borrower;
 - b. the transfer by the Newlead Corporate Guarantor to the Pledgor of all its right, title and interest in the authorised and issued share capital of the Borrower; and
 - c. the amendment of Clauses 5.1 (h), 5.2 (j), 5.3(a)(i), 5.3(b) and 5.3(d)(i) as provided in the Newlead Guarantee Supplement and Amendment No. 2 executed or to be executed on the date hereof by the Newlead Corporate Guarantor;
 - d. the waiver to the covenants of the Borrower under Clause 8.2 (a) of the Principal Agreement for the period starting from the date hereof until the 31st December, 2012; and
 - e. the amendment of the Principal Agreement as set out in Clause 5 hereof.

4. Conditions

- 4.1 The agreement of the Bank contained in Clause 3.1 shall be expressly subject to the fulfilment of the conditions set out in this Clause and further subject to the condition that the Bank shall have received on or before the Effective Date in form and substance satisfactory to the Bank and its legal advisers:
- (a) a duly certified true copy of the Articles of Incorporation and By-Laws or the Memorandum and Articles of Association, or of any other constitutional documents, as the case may be, of the Pledgor and the Collateral Corporate Guarantor;
 - (b) a certificate of good standing or equivalent document issued by the competent authorities of the place of its incorporation in respect of the Borrower and the other corporate Security Parties;
 - (c) certified and duly legalised copies of resolutions passed at separate meetings of the Directors and the shareholders of the Pledgor and the Collateral Corporate Guarantor (and of any corporate shareholder thereof) evidencing approval of this Agreement and of such of the Additional Security Documents to which is or is to be a party and authorising appropriate officers or attorneys to execute the same and to sign all notices required to be given under this Agreement on its behalf or other evidence of such approvals and authorisations as shall be acceptable to the Bank;
 - (d) the original of any power(s) of attorney issued in favour of any person executing this Agreement or any of the Additional Security Documents on behalf of the Pledgor and the Collateral Corporate Guarantor;
 - (e) a recent certificate of incumbency of the Pledgor and the Collateral Corporate Guarantor signed by the secretary or a director thereof, stating the officers and the directors and the shareholders of each of them;
 - (f) all documents evidencing any other necessary action or approvals or consents with respect to this Agreement and the Additional Security Documents;
 - (g) such favourable legal opinions from lawyers acceptable to the Bank and its legal advisors on such matters concerning the laws of Liberia or Marshall Islands and such other relevant jurisdiction as the Bank shall require;
 - (h) evidence that the Collateral Vessel is on her delivery to the Collateral Corporate Guarantor:
 - (aa) in the absolute and free from Encumbrances (save those in favour of the Bank) ownership of the Collateral Corporate Guarantor who is the sole legal and beneficial owner of the Vessel;
-

- (bb) registered in the name of the Collateral Corporate Guarantor at the port of Monrovia under the laws and flag of Liberia;
- (cc) operationally seaworthy and in every way fit for service;
- (dd) insured in accordance with the provisions of the Prosperity Loan Agreement and the relevant Mortgage;
- (ff) managed by the Approved Manager; and
- (gg) in full compliance with the ISM Code and the ISPS Code.
- (i) each of the Additional Security Documents duly executed by the respective parties thereto and, where appropriate, duly registered in favour of the Bank;
- (j) evidence satisfactory to the Bank that the Collateral Mortgage has been duly registered on the Collateral Vessel as a second preferred Liberian ship Mortgage in favour of the Bank in accordance with the laws of Liberia;
- (k) all necessary confirmation by the Collateral Vessel's insurers that they will issue their letters of undertaking and endorse notices of assignment and loss payable clauses on the insurances, satisfactory to the Bank in its sole discretion;
- (l) payment of any and all fees payable by the Borrower in accordance with Clause 9. hereof;
- (m) certificates of Incumbency issued by the appropriate officer of each of the Borrower, the Newlead Corporate Guarantor and the Manager confirming that:
 - (i) the Minutes of the Meeting of the Board of Directors duly convened and held on 2nd day of July, 2010 by all the members of the Board of Directors of the Borrower and Minutes of the Extraordinary Meeting of the Shareholders of the Borrower duly convened and held on 2nd day of July, 2010 at 18:30,
 - (ii) the written resolutions adopted on 2nd day of July, 2010 by all the members of the Board of Directors of the Newlead Corporate Guarantor and
 - (iii) the Minutes of the Meeting of the Board of Directors of the Manager duly convened and held on 2nd day of July, 2010,remain in full force as of the date hereof and have not been amended or rescinded and that the any power of attorney issued by each corporate Security Party on 2nd July, 2010 authorising appropriate officers or attorneys to (inter alia) sign, execute and deliver any supplementary and/or

amendatory agreement of the Principal Agreement or other evidence of such approvals and authorisations as shall be acceptable to the Bank; and

- (n) any and all other documents evidencing the transfer by the Newlead Corporate Guarantor to the Pledgor of all its right, title and interest in the authorised and issued share capital of the Borrower;
- (o) the original share certificates of the Borrower issued in the name of the Pledgor;
- (p) if the Bank so requires, a report signed by an independent firm of marine insurance brokers appointed by the Bank at the expense of the Corporate Guarantor confirming the adequacy of the Insurances maintained on the Collateral Vessel;
- (q) certified true copy of the Management Agreement in respect of the Collateral Vessel;
- (r) evidence from the Classification Society of the Collateral Vessel that such Vessel is classed with the Classification with the Classification Society, and remains free from any requirements or recommendations affecting her class;
- (s) evidence that the trading certificates of the Collateral Vessel are valid and in force;
- (t) if the Bank so requires, a satisfactory to the Bank physical condition survey report on the Collateral Vessel together with a comprehensive record inspection from a surveyor appointed by the Bank, at the Corporate Guarantor's expense;
- (u) two (2) valuations of the Collateral Vessel, at the Corporate Guarantor's expense, as at a date determined by the Bank but in any event before the date hereof, prepared on the basis specified in Clause 8.2 of the Principal Agreement by major shipbrokers appointed and/or approved by the Bank in form and substance satisfactory to the Bank in its sole discretion; and
- (v) a copy of the Bareboat Charterparty (as defined in the Prosperity Loan Agreement) certified as true and complete by the legal counsel of the Corporate Guarantor;

5. Variations to the Principal Agreement

In consideration of the agreement of the Bank contained in Clause 3.1, the Borrower and the Corporate Guarantor hereby jointly and severally agree with the Bank that (subject to the satisfaction of the conditions precedent contained in Clause 4), the provisions of the Principal Agreement shall be varied and/or amended and/or supplemented as follows:

5.1 With effect from the Effective Date the following definitions shall be inserted in Clause 1.2 of the Principal Agreement in alphabetical order to read as follows:

“Additional Security Documents” means the Collateral Corporate Guarantee, the Collateral General Assignment, the Collateral Account Pledge Agreement, the Collateral Manager’s Undertaking, the Collateral Mortgage and the Shares Pledge Agreement;

“Collateral Account Pledge Agreement” means an agreement to be entered into between the Collateral Corporate Guarantor and the Bank for the creation of a second priority pledge over the Collateral Earnings Account in favour of the Bank, in form and substance as the Bank may approve or require as the same may from time to time be amended and/or supplemented;

“Collateral Corporate Guarantee” means a guarantee and/or indemnity given or, as the context may require, to be given by the Collateral Corporate Guarantor in form and substance satisfactory to the Bank as security for the Outstanding Indebtedness and any and all other obligations of the Borrower under the Loan Agreement;

“Collateral Corporate Guarantor” means **NEWLEAD PROSPERITY INC.**, a company organised and existing under the laws of the Republic of The Marshall Islands and having its registered office at Trust Company Complex, Ajeltake Island, Majuro, Marshall Islands MH 96960;

“Collateral Earnings Account” means the interest bearing account opened or, as the context may require to be opened with the Bank at the Lending Branch in the name of the Collateral Corporate Guarantor or such other account with any other branch or any other bank, as may be required by and at the discretion of the Bank, to which (inter alia) all Earnings of the Collateral Vessel are to be paid in accordance with the provisions of the Prosperity Loan Agreement and includes any sub-accounts thereof and any other account designated in writing by the Bank to be the Earnings Account in relation to such Vessel for the purposes of the Prosperity Loan Agreement;

“Collateral General Assignment” means in relation to the Collateral Vessel, the second priority deed of Assignment of the Earnings, Insurances and Requisition Compensation (as such terms are therein defined) to be executed by the Collateral Corporate Guarantor in favour of the Bank, in form and substance as the Bank shall require as the same may from time to time be supplemented and/or amended;

“Collateral Manager’s Undertaking” means a letter of undertaking and subordination executed by the Manager whereby the Manager shall (inter alia) subordinate any and all claims it may have against the Collateral Corporate Guarantor and/or the Collateral Vessel to the claims of the Bank hereunder and the Security Documents,

“Collateral Mortgage” means the second preferred Liberian Islands ship mortgage on the Collateral Vessel executed or (as the context may require) to be executed by the Collateral Corporate Guarantor in favour of the Bank in form satisfactory to the Bank;

“Collateral Vessel” means the bulk carrier **“NEWLEAD PROSPERITY”**, built by Tianjin Xingang Shipbuilding Heavy Industries Co., Ltd. in China in 2003 and which upon delivery to the Collateral Corporate Guarantor shall be lawfully registered under the laws and flag of the Republic of Liberia in the ownership of the Corporate Guarantor and propelled by one oil internal combustion engine of 7,650 KW together with all her boats, engines, machinery tackle outfit spare gear fuel consumable and other stores belongings and appurtenances whether on board or ashore and whether now owned or hereafter acquired and all the additions, improvements and replacements in or on the above described vessel;

“Newlead Guarantee Supplement and Amendment No. 2” means the Supplement and Amendment No. 2 to the Newlead Corporate Guarantee, to be executed by the Newlead Corporate Guarantor, in form acceptable to the Bank.

“Pledgor” means Newlead Bulker Holdings Inc., a company incorporated in the Republic of The Marshall Islands, having its registered office at Trust Company Complex, Ajeltake Island, Majuro, Marshall Islands MH 96960, who shall execute, the Shares Pledge Agreement;

“Prosperity Loan Agreement” means the Loan Agreement entered or to be entered into (A) the Collateral Corporate Guarantor, as borrower and (B) the Bank, as lender in relation to a loan facility of up to \$12,000,000;”

“Shares Pledge Agreement” in relation to the Borrower means the pledge agreement to be executed by the Pledgor in favour of the Bank, whereby the Pledgor shall pledge all the authorised and issued share capital of the Borrower, in form satisfactory to the Bank;

“Spartounta Mortgage Amendment No. 1” means the Amendment No. 1 to the first preferred Liberian Naval mortgage registered over the **“NEWLEAD SPARTOUNTA”** owned by the Borrower in favour of the Bank, whereby the said first mortgage shall be amended, executed or (as the context may require) to be executed by the Borrower in favour of the Bank in form satisfactory to the Bank;

5.2 With effect as from the date hereof, the following definitions set out in Clause 1.2 of the Principal Agreement shall be deleted and shall be replaced as follows:

“Corporate Guarantor(s)” means the Newlead Corporate Guarantor, the Collateral Corporate Guarantor and any other person nominated by the Borrower and acceptable to the Bank which may give a Corporate Guarantee;

“Corporate Guarantee(s)” means the Collateral Corporate Guarantee, the Newlead Corporate Guarantee and or any guarantee given or, as the context may require, to be given by a Corporate Guarantor in form and substance satisfactory to the Bank as a

security for the Outstanding Indebtedness and any and all other obligations of the Borrower under this Agreement;”

“**Margin**” means as from the 4th April 2011 and until the end of the Security Period four per cent (4.0%) per annum; and

“**Mortgages**” means the (a) first preferred Liberian mortgage of the Borrower’s Vessel executed by the Borrower in favour of the Bank as amended and/or supplemented by the Spartounta Mortgage Amendment No. 1 and (b) the Collateral Mortgage and “**Mortgage**” means either of them;”

“**Newlead Corporate Guarantee**” means the irrevocable and unconditional guarantee dated 16th July 2010 as amended by a Guarantee Supplement and Amendment dated 15th October 2010 executed by the Newlead Corporate Guarantor as security for (inter alia) the Outstanding Indebtedness and any and all other obligations of the Borrower under the Loan Agreement and the Security Documents as amended and/ or supplemented by the Guarantee Supplement and Amendment;

“**Security Documents**” means this Agreement, the Mortgages, the Additional Security Documents, the General Assignment, the Guarantees, the Manager’s Undertakings, the Shares Pledge Agreement, the documents listed in Clause 11.1 and any and every other document as may have been or shall from time to time after the date of this Agreement be executed to guarantee and/or to secure the whole or any part of the Outstanding Indebtedness and/or any and all other obligations of the Borrower to the Bank pursuant to this Agreement (whether or not any such document also secures moneys from time to time owing pursuant to any other document or agreement);

“**Vessels**” means together:

- (i) the bulk carrier “**NEWLEAD SPARTOUNTA**”, built Italy by Fincantieri Margnera in 1989, presently lawfully registered under the laws and flag of the Republic of Liberia in the ownership of the Borrower, and propelled by one oil internal combustion engine of 17,800 HP together with all her boats, engines, machinery tackle outfit spare gear fuel consumable and other stores belongings and appurtenances whether on board or ashore and whether now owned or hereafter acquired and all the additions, improvements and replacements in or on the above described vessel (the “**Borrower’s Vessel**”); and
- (ii) the bulk carrier “**NEWLEAD PROSPERITY**”, built by Tianjin Xingang Shipbuilding Heavy Industries Co., Ltd. in China in 2003 and which upon delivery to the Collateral Corporate Guarantor shall be lawfully registered under the laws and flag of the Republic of Liberia in the ownership of the Corporate Guarantor and propelled by one oil internal combustion engine of 7,650 KW together with all her boats, engines, machinery tackle outfit spare gear fuel consumable and other stores belongings and appurtenances whether on board or ashore and whether now owned or hereafter acquired and all the

additions, improvements and replacements in or on the above described vessel (the “**Collateral Vessel**”);
and “**Vessel**” means either of them;

5.3. With effect as from the Effective Date, **Clause 4.3 (Compulsory Prepayment in case of Total Loss or sale of the Vessel)** of the Principal Agreement shall be deleted in its entirety and shall be substituted by the following:

“4.3 (A) **Compulsory Prepayment in case of Total Loss or sale of the Borrower’s Vessel**
(a) **Total Loss**

On the Borrower’s Vessel becoming a Total Loss or suffering damage or being involved in an incident which in the reasonable opinion of the Bank may result in such Vessel being subsequently determined to be a Total Loss:

- (i) *prior to the advancing of the Commitment, the obligation of the Bank to advance the Commitment shall immediately cease and the Commitment shall be reduced to zero; or*
- (ii) *in case the Commitment has been already advanced, the Borrower shall prepay the Outstanding Indebtedness the latest on the date falling one hundred eighty (180) days after that on which the Total Loss occurred or, if earlier, on the date upon which the insurance proceeds in respect of such Total Loss are or Requisition Compensation is received by the Borrower (or the Bank pursuant to the Security Documents) and any surplus of such insurance proceeds shall be applied by the Bank in accordance with the provisions of clause 4.3 of the Loan Agreement in or towards prepayment of the Outstanding Indebtedness.*

For the purpose of this Agreement:

- (aa) *an actual total loss of a Vessel shall be deemed to have occurred at the actual date and time such Vessel was lost but in the event of the date of the loss being unknown then the actual total loss shall be deemed to have occurred on the date on which such Vessel was last reported;*
- (bb) *a constructive total loss shall be deemed to have occurred at the earlier of (a) date and time notice of abandonment of a Vessel has been given to the insurers of such Vessel and (b) date and time claim for insurance indemnity has been submitted to the insurers of such Vessel and in any case no later than sixty (60) days from the date of occurrence of the total loss and regardless of whether notice of abandonment of such Vessel has been given to the insurers of such Vessel or claim for insurance indemnity has been submitted to the insurers of such Vessel;*

- (cc) *a compromised or arranged total loss shall be deemed to have occurred on the date on which a binding agreement as to such compromised or arranged total loss has been entered into by the insurers of a Vessel and the Owner and in any case no later than sixty (60) days from the date of occurrence of the total loss and regardless of whether claim for insurance indemnity has been submitted to the insurers of such Vessel or a binding agreement as to such total loss has been entered into by the insurers of such Vessel and the Owner;*
- (dd) *requisition for title or other compulsory acquisition of a Vessel shall be deemed to have occurred on the date upon which the relevant requisition for title or other compulsory acquisition occurs; and*
- (ee) *hijacking, theft, condemnation, capture, seizure, detention, arrest, or confiscation of such Vessel by any government or by any person acting or purporting to act on behalf of any government, which deprives the Borrower of the use of such Vessel for more than thirty (30) days shall be deemed to occur upon the expiry of the period of thirty (30) days after the date upon which the relevant hijacking, theft, condemnation, capture, seizure, detention, arrest or confiscation occurred.*
- (b) *Sale or other disposal of the Borrower's Vessel*

In case of sale or other disposal of the Borrower's Vessel, immediately upon completion of such sale or other disposal, the Borrower shall prepay the Outstanding Indebtedness and any surplus of such proceeds shall be applied by the Bank in accordance with the provisions of clause 4.3 of the Prosperity Loan Agreement towards prepayment of the Outstanding Indebtness (as defined in the Prosperity Loan Agreement).

- (B) *Compulsory Prepayment in case of sale or other disposal of the Collateral Vessel*
 - (a) *Total Loss*

In case of Total Loss or sale or other disposal of the Collateral Vessel, the insurance or, as the case may be, sale or other disposal proceeds of such Vessel shall be applied by the Bank in accordance with the provisions of clause 4.3 of the Prosperity Loan Agreement in or towards prepayment of the Outstanding Indebtedness (as defined in the Prosperity Loan Agreement) and any surplus of such proceeds shall be applied by the Bank in accordance with the provisions of clause 4.3 in or towards prepayment of the Outstanding Indebtedness.

- (b) *Sale of other disposal of the Collateral Vessel*

In case the Borrower is requesting the Bank to discharge the Collateral Mortgage, the Bank will consider such request subject to (a) prepayment to the Bank of an amount to be agreed between the Bank and the Collateral Corporate Guarantor, which amount will be applied by the Bank in or towards prepayment of the Outstanding Indebtedness and (b) provision to the Bank, to the satisfaction of the Bank, such further security for the Outstanding Indebtedness as shall be acceptable to the Bank at its discretion.

5.4 With effect from the Effective Date the following shall be added at the end of para (a) of Clause 8.2 of the Principal Agreement:

“Provided however that subject to no Default then existing this covenant shall not be applicable to the Borrower throughout the period terminating on the 31st December 2012”

5.5 With effect from the Effective Date sub para (i) of para (a) (**Financial Covenants of the Newlead Corporate Guarantor**) of Clause 8.6 (**Additional Financial Covenants — Compliance Certificate**) shall be deleted and replaced by the following:

“at least 10% of the total issued share capital of the Newlead Corporate Guarantor is directly or indirectly held Messrs. Michael Zolotas and Nikolaos Fistes throughout the Security Period.”;

5.6 With effect from the date of execution of the Principal Agreement the following Schedule shall be appended as Schedule 3 of the Principal Agreement (which shall be made an integral part thereof) and which shall read as follows:

**“SCHEDULE 3
INSURANCE REQUIREMENTS”**

This Schedule is an integral part of the Agreement to which it is attached.

1. DEFINITIONS

1.1 *Words and expressions used in this Schedule shall have the meanings given thereto in the agreement to which this Schedule is attached and the following expressions shall have the meanings listed below:*

“Approved Brokers” means such firm of insurance brokers, appointed by the Owner, as may from time to time be approved by the Bank in writing for the purposes of this Schedule;

“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 Vessel in consequence of her insured value being less than the value at which the Vessel is assessed for the purpose of such claims;

“Insurance Requirements” means all the terms and conditions in this Schedule or any other provision concerning Insurances in any other Clause of the agreement to which this Schedule

is attached and all such terms and conditions are an integral part of the agreement to which they are attached;

“Insurances” in respect of a Vessel means all policies and contracts of insurance (including, without limitation, all entries of such Vessel in a protection and indemnity, war risks or other mutual insurance association) which are from time to time in place or taken out or entered into by or for the benefit of the Owner owning such Vessel (whether in the sole name of its Owner or in the joint names of its Owner and the Bank) in respect of such Vessel and its earnings or otherwise howsoever in connection with such Vessel and all benefits of such policies and/or contracts (including all claims of whatsoever nature and return of premiums);

“Loss Payable Clauses” means the provisions regulating the manner of payment of sums receivable under the Insurances which are to be incorporated in the relevant insurance document, such Loss Payable Clauses to be in the forms set out in paragraph 4 of this Schedule, or such other form as the Bank may from time to time agree in writing;

“Owner” means the owner of a Vessel which should be insured and be maintained insured pursuant to these Insurance Requirements in accordance with any agreement to which these Insurance Requirements are attached;

“Protection and Indemnity Risks” means the usual risks covered by an English protection and indemnity association including the proportion (if any) not recoverable in the case of collision under the ordinary collision clause; and

“Protection and Indemnity Risks” means the usual risks (including oil pollution and freight, demurrage and defence cover) covered by a protection and indemnity association which is a member of the International Group of P&I Clubs (including, without limitation, 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 therein of Clause 1 of the Institute Time Clauses (Hulls) (1/10/83) or the Institute Amended Running Down Clause (1/10/71) or (with respect to insurances commencing on or after (1/11/95)) the Institute Time Clauses (1/11/95) which may be insured by entry with such association or any equivalent provision); and

“War Risks” includes excess risks, the risk of war and terrorism excluded from protection and indemnity with a separate limit, mines, blocking and trapping, missing vessel, confiscation and all risks excluded by Clause 24 of the Institute Time Clauses (Hulls) (1/11/95).

2. INSURANCES TO BE EFFECTED AND MAINTAINED

2.1 The insurance which must be effected and maintained in accordance with the provisions of the agreement to which these Insurance Requirements are attached should be in the name of the Owner and as follows:

(a) Hull and Machinery

insurance against fire and usual marine risks on an agreed value basis, on a full cover/all risks basis according to English or American Hull Clauses with a reasonable deductible and upon such terms as shall from time to time be approved in writing by the Bank; and

(b) War Risks Insurance

insurance against War risks according to the London Institute War Clauses, on an agreed value basis attaching also the so called war protection clauses. In this case crew war liabilities insurance shall also have to be effected separately; and

(c) Increased Value

increased Value insurance (Total Loss only, including Excess Liabilities) as per the applicable English or American Institute Clauses (Disbursement/Increased Value/ Excess Liabilities) up to an amount not exceeding the Insurance Amount specified in Clause 3.3 below; and

(d) Protection and Indemnity

insurance against protection and indemnity risks for the full value and tonnage of the Vessel insured (as approved in writing by the Bank) according to the relevant rules and deductibles provided thereof for all risks including Pollution (and if the Vessel is passenger ship including liability towards third parties which is not covered by the War Risk Insurance) insured by P+I Clubs, members of the International Group of Protection and Indemnity Associations. If any risks are excluded or the deductibles as provided by the rules have been altered, the written consent of the Bank shall have to be previously required. In case that crew liabilities (including without limitation loss of life, injury or illness) have been entirely excluded from the association cover or insured on a deductible excess basis, (always subject to the prior written consent of the Bank) such liabilities shall have to be further insured separately with other underwriters acceptable to the Bank and upon such terms as shall from time to time be approved in writing by the Bank; and

(e) FD & D Insurance

Freight, Demurrage and Defense insurance as per the terms and conditions of a mutual club or association acceptable to the Bank; and

(f) Pollution Liability Insurance

an extra insurance in respect of excess Oil Pollution Liability (including –if the Vessel insured is a tanker– the Civil Liability Convention certificate) including full cover of pollution risks for the amount up to the maximum commercially available limit and upon such terms as shall be commercially available and accepted by the Bank; and

(g) USA Pollution Risk Insurance

(in case that the Vessel is scheduled to operate within or nearby USA jurisdiction) to cover and keep such Vessel covered with an extra insurance in respect of oil pollution liability for an amount and upon such terms as required by international and national law regulations and shall from time to time be required by the Bank; and

Mortgagee's Interest Insurance — Mortgagee's Additional Perils (Pollution) Interest Insurance

(i) a Mortgagee's Interest Insurance (herein "MII"), which the Mortgagee may from time to time effect in respect of the Vessel upon such terms as it shall deem desirable and in an amount of not less than 110% of the Loan (ii) if the Bank so requires, a Mortgagee's Interest Additional Perils (Pollution) insurance (herein "MAPI"), which the Bank may from time to time effect in respect of the Vessel upon such terms as it shall deem desirable and in an amount of not less than 110% of the Loan, including mortgagee's asset protection (pollution) cover or other similar insurance in respect of any pollution claims against the Vessel upon such terms as shall from time to time be determined by the Bank, provided, however, that the Bank shall in its absolute discretion appoint and instruct in respect of any such MII and such MAPI the insurance brokers in respect of each such Insurance. and (iii) any other insurance cover which the Bank, after notice to the Owner of the Vessel, may from time to time effect in respect of the Vessel and/or in respect of its interest or potential third party liability as mortgagee of the Vessel as it shall deem desirable and reasonable having regard to any limitations in respect of amount or extent of cover which may from time to time be applicable to any of the Insurances; and

(h) Other Insurance

insurance in respect of such other matters of whatsoever nature and howsoever arising in respect of which the Bank would at any time require at their discretion the Vessel to be insured.

3. TERMS AND OBLIGATIONS FOR EFFECTING AND MAINTAINING INSURANCES

- 3.1 *The Insurances to be effected in such currency as the Bank may approve and through the Approved Brokers (other than the mortgagee's interest insurance which shall be effected through brokers nominated by the Bank) and with such insurance companies and/or underwriters as shall from time to time be approved in writing by the Bank, provided, however, that the insurances against war risks, protection and indemnity, FD & D cover or other mutual insurance risks may be effected by the entry of the Vessel with such war, protection and indemnity or other mutual insurance associations as shall from time to time be approved in writing by the Bank.*
- 3.2 *The Insurances to be effected and maintained free of cost and expense to the Bank and in the sole name of the Owner or, if so required by the Bank, in the joint names of the Owner and the*

Bank (but without liability on the part of the Bank for premiums or calls). All insurances to be in form and substance and under terms satisfactory to the Bank and with insurers acceptable to the Bank.

3.3 Unless otherwise agreed in writing by the Bank:

- (a) The amount in respect of which the Insurances should be effected shall be an amount (Insurance Amount) which will be (aa) in respect of Hull and Machinery Insurance the greater of the Market Value of the Vessel insured for the time being and 125% of an amount (the “**Amount of Debt**”) equal to (i) the Loan if the agreement to which these Insurance Requirements are attached is a Loan Agreement or (ii) the Maximum Limit of the Facility if the agreement to which these Insurance Requirements are attached is an Overdraft Facility or a Facility for Issue of Guarantees or Letters of Credit; and (bb) in respect of Protection and Indemnity, FD&D, and Mortgagee’s Interest Insurance.
- (b) In case that the Amount of Debt is secured by more than one Vessels the above percentages should be covered by the aggregate of the Insurances in respect of all such Vessels.
- (c) In case that the Vessel insured secures by its Insurances Amounts of Debt under more than one agreements then the above percentages apply to the aggregate of all the Amounts of Debt under all the agreements.

3.4 Any person which is obliged under the agreement to which these Insurance Requirements are attached to effect and maintain the Insurances, it will be obliged and it hereby undertakes, jointly and severally with any other person having the same obligation to (and will ensure that the Owner, if it is a different person shall):

- (a) procure and ensure that the Approved Brokers and/or the Club Managers, as the case may be, shall send to the Bank a letter of undertaking in respect of the Insurances in form and substance satisfactory to the Bank and Notice of Cancellation as per Clause 4(d) below. The Approved Brokers’ Letter of Undertaking shall be compatible with the form recommended by Lloyd’s Insurance Brokers Committee, or any subsequent LIBC form. Such brokers to further undertake to give immediate notice of any insurance being subject to the Condition Survey Warranty (J.H.II5) and/or Structural Conditions Warranty (J.H.722) and/or the Classification Clause (Hulls) 29/6/89, 30 days prior to the attachment date of any insurance bearing any of these warranties;
- (b) (if any of the Insurances form part of a fleet cover), procure that the Approved Brokers shall undertake to the Bank that they shall neither set off against any claims in respect of the Vessel insured any premiums due in respect of other vessels under such fleet cover or any premiums due for other insurances, nor cancel the insurance for reasons of non-payment of premiums for other vessels under such fleet cover or of premiums for such other insurances, and shall undertake to issue a separate policy in respect of the Vessel insured if and when so requested by the Bank;

- (c) *punctually pay all premiums, calls, contributions or other sums payable in respect of all Insurances and produce all relevant receipts or other evidence of payment when so required by the Bank;*
- (d) *at least fourteen (14) days before the Insurances expire, notify the Bank of the names of the brokers and/or the war risks and protection and indemnity risks associations proposed to be employed by the Owner for the purposes of the renewal of such Insurances and of the amounts in which such Insurances are proposed to be renewed and the risks to be covered and, subject to compliance with any requirements of the Bank under the Insurance Requirements, procure that appropriate instructions for the renewal of such Insurances on the terms so specified are given to the Approved Brokers and/or to the approved war risks and protection and indemnity risks associations at least ten (10) days before the relevant Insurances expire, and that the Approved Brokers and/or the approved war risks and protection and indemnity risks associations will at least seven (7) days before such expiry (or within such shorter period as the Bank may from time to time agree) confirm in writing to the Bank as and when such renewals have been effected in accordance with the instructions so given;*
- (e) *arrange for the execution and delivery of such guarantees or indemnities as may from time to time be required by any protection and indemnity or war risks association;*
- (f) *deposit with the Approved Brokers (or procure the deposit of) all slips, cover notes, policies, certificates of entry or other instruments of insurance from time to time issued and procure that the interest of the Bank shall be endorsed thereon by incorporation of the relevant Loss Payable Clause and by means of a notice of assignment (signed by the Owner) in the form set out in Paragraph 4 of this Schedule or in such other form as may from time to time be agreed in writing by the Bank, and that the Bank shall be furnished with pro forma copies thereof and a letter or letters of undertaking from the Approved Brokers in such form as shall from time to time be required by the Bank;*
- (g) *procure that any protection and indemnity and/or war risks associations and/or Hull and Machinery and/or any other insurance company or underwriters in which the Vessel insured is for the time being entered and/or insured shall endorse the relevant Loss Payable Clause on the relevant certificate of entry or policy and shall furnish the Bank with a copy of such certificate of entry or policy and a letter or letters of undertaking in such form as shall from time to time be required by the Bank;*
- (h) *(if so requested by the Bank, but at the cost of the Owner) furnish the Bank from time to time with a detailed report signed by an independent firm of marine insurance brokers appointed by the Bank dealing with the Insurances maintained on the Vessel insured and stating the opinion of such firm as to the adequacy thereof;*

- (i) do all things necessary and provide all documents, evidence and information to enable the Bank to collect or recover any moneys which shall at any time become due in respect of the Insurances;
- (j) ensure that the Vessel insured shall not be employed otherwise than in conformity with the terms of the Insurances (including any warranties express or implied therein) without first obtaining the consent of the insurers to such employment and complying with such requirements as to extra premium or otherwise as the insurers may prescribe;
- (k) apply all sums receivable under the Insurances which are paid to the Owner in accordance with the Loss Payable Clauses in repairing all damage and/or in discharging the liability in respect of which such sums shall have been received;
- (l) (in case that the Vessel is scheduled to operate or operates within or nearby USA jurisdiction) make all the Protection & Indemnity Club US Voyage Quarterly Declarations for each quarter in time and send copies of same to the Bank; and
- (m) Fleet Cover is permitted only subject to the prior written approval of the Bank, to the conditions set out in 3.4(b) above and the Bank' prior express written approval of fleet aggregate deductibles.

4. LOSS PAYABLE CLAUSES AND CANCELLATION CLAUSE

4.1 The Loss Payable Clauses to be attached to the relevant Insurances should be substantially in the following form:

(A) Hull and Machinery (Marine and War Risks)

It is noted that by a Deed of General Assignment and a first priority statutory ... ship Mortgage and a Deed of covenant supplemental thereto, both dated, granted by ..., of... (the "Owner") in favour of **FBB–First Business Bank S.A.**, acting for the time being through its office at 62, Notara & Sotiros Dios Streets, 185 35 Piraeus, Greece (the "Mortgagees") all the Owner's rights, title and interest in and to all policies and contracts of insurance from time to time taken out or entered into by or for the benefit of the Owner in respect of its Liberian flag m/v "[●]" (the "Vessel") and accordingly:

- (a) all claims hereunder in respect of an actual or constructive or compromised or arranged total loss, and all claims in respect of a major casualty (that is to say any casualty to the Vessel in respect whereof the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds Five hundred thousand Dollars (\$500,000) or the equivalent thereof in any other currency) shall be paid in full to **FBB–First Business Bank S.A.**, acting for the time being through its office at 62, Notara & Sotiros Dios Streets, 185 35 Piraeus, Greece (the "Mortgagee"), or to its order; and

(a) all other claims hereunder shall be paid in full to the Owner or to its order, unless and until the Mortgagee shall have notified the insurers hereunder to the contrary, whereupon all such claims shall be paid to the Mortgagee, or to its order.

(B) *Protection and Indemnity Risks*

Payment of any recovery which [●], of [●] (the “Owner”) is entitled to make out of the funds of the Association in respect of any liability, costs or expenses incurred by the Owner, shall be made to the Owner or to its order, unless and until the Association receives notice to the contrary from **FBB–First Business Bank S.A.**, acting for the time being through its office at 62, Notara & Sotiros Dios Streets, 185 35 Piraeus, Greece (the “Mortgagee”), in which event all recoveries shall thereafter be paid to the Mortgagee, or to its order; provided that no liability whatsoever shall attach to the Association, its managers or its agents for failure to comply with the latter obligation until the expiry of two clear business days from the receipt of such notice.

4.2 Notice of Cancellation

The Owner to procure that Notice of Cancellation of Insurances be given to the Mortgagee along the following terms:

Notice of Cancellation of Insurances will be given to **FBB–First Business Bank S.A.**, acting for the time being through its office at 62, Notara & Sotiros Dios Streets, 185 35 Piraeus, Greece, (the “Mortgagee”) in any of the following cases:

- (a) immediately if any material changes are proposed to be made in the terms of the Insurances or if the insurers cease to be insurers for any purposes connected with the Insurances;
- (b) not later than fourteen (14) days prior to the expiry of any of the Insurances if instructions have not been received for the renewal thereof and, in the event of instructions being received to renew, of the details thereof;
- (c) immediately if any instructions or notices are received by insurers with regard to the cancellation or invalidity of any of the Insurances aforesaid; and
- (d) immediately if the insurers give notice of their intention to cancel the Insurances, provided that the insurers will not exercise any rights of cancellation by reason of unpaid premiums without giving the Mortgagee fourteen (14) days, from the receipt of such notice in which to remit the sums due.

4.3 Notice of Assignment

The Notice of Assignment shall be in the following form:

Form of Notice of Assignment — First Mortgage
(for attachment by way of endorsement to the Policy)

[●], of [●] (the “**Owner**”) the owner of the m/v “[●]” registered under [●] flag, (the “**Vessel**”) HEREBY GIVE NOTICE that by a Deed of General Assignment made the [●] day of [●], and entered into by us with **FBB—First Business Bank S.A.** (the “**Mortgagee**”) there has been assigned by us to the Mortgagee, as first Mortgagee and first Assignee of the Vessel all rights, title and interest in and to all policies and contracts of insurance from time to time taken out or entered into by or for the benefit of the Owner, including, but not limited to, the insurances constituted by the Policy whereon this notice is endorsed and the Owner has authorised the Mortgagee to have access and/or obtain any copies of the Policy(ies), certificate(s) of entry and/or other information from the insurers.

Dated [●], 2011

For and on behalf of

The Owner

By: _____

Attorney-in-fact”

5.7 With effect from the date hereof Clause 16.4 of the Principal Agreement shall be read as follows:

“16.4 Mr. Panagiotis—Peter Kallifidas, an attorney at law, presently of 83 Akti Miaouli and Flessa Street, 185 38 Piraeus, Greece, is hereby appointed by each of the Security Parties as agent to accept service (hereinafter “**Process Agent in Greek proceedings**”) upon whom any judicial process in respect of proceedings in Greece may be served and any process notice, judicial or extra-judicial request, demand for payment, payment order, foreclosure proceedings, notarial announcement of claim, notice, request, demand or other communication under this Agreement or any of the Security Documents. In the event that the Process Agent in Greek proceedings (or any substitute process agent notified to the Bank in accordance with the foregoing) cannot be found at the address specified above (or, as the case may be, notified to the Bank), which will be conclusively proved by a deed of a process server to the effect that the Process Agent in Greek proceedings was not found at such address, any process notice, judicial or extra-judicial request, demand for payment, payment order, foreclosure proceedings, notarial announcement of claim or other communication to be sent to any Security Party may be validly notified in accordance with the relevant provisions of the Hellenic Code on Civil Procedure.”

5.8 With effect as from the Effective Date all references in the Principal Agreement and the Security Documents to:

(a) “**Corporate Guarantor**” and to “**Owner**” shall be deemed to include the Collateral Corporate Guarantor;

(b) “**this Agreement**”, “**hereunder**” and the like and in the Security Documents to the “**Agreement**” shall be construed as references to the Principal Agreement as amended and/or supplemented by this Agreement; and

- (c) **“General Assignment”, “Insurances”, “Earnings”, “Mortgage” and “Vessel”** shall be construed as references to the Vessels as herein defined;
 - (d) **“Grandunion” and “Grandunion Corporate Guarantee”** as well as the definition thereof shall be deleted; and
 - (e) **“this Agreement”, “hereunder”** and the like and in the Security Documents to the **“Loan Agreement”** as references to the Principal Agreement as amended and/or supplemented by this Agreement.
- 5.9 With effect from the Effective Date all obligations imposed upon the Borrower in relation to the Borrower’s Vessel under the Principal Agreement shall be deemed to be imposed upon the Collateral Corporate Guarantor as owner of the Collateral Vessel.
- 5.10 The definition **“Security Documents”** with effect as from the date hereof shall be construed as references to the Security Documents as amended and/or supplemented by this Agreement and shall be deemed to include the Additional Security Documents and any document or documents (including if the context requires the Loan Agreement) that may now or hereafter be executed as security for the repayment of the Loan, interest thereon and any other moneys payable by the Borrower under the Principal Agreement and the Security Documents (as herein defined) as well as for the performance by the Borrower and the other Security Parties (as herein defined) of all obligations, covenants and agreements pursuant to the Principal Agreement, this Agreement and/or the Security Documents.

6. Entire agreement and amendment

- 6.1 The Principal Agreement, the Security Documents, and this Agreement represent the entire agreement among the parties hereto with respect to the subject matter hereof and supersede any prior expressions of intent or understanding with respect to this transaction and may be amended only by an instrument in writing executed by the parties to be bound or burdened thereby.
- 6.2 This Agreement is supplementary to and incorporated in the Principal Agreement, all terms and conditions whereof, including, but not limited to, provisions on payments, calculation of interest and Events of Default, shall apply to the performance and interpretation of this Agreement.

7. Continuance of Principal Agreement and the Security Documents

Save for the alterations to the Principal Agreement made or deemed to be made pursuant to this Agreement and such further modifications (if any) thereto as may be necessary to make the same consistent with the terms of this Agreement the Principal Agreement shall remain in full force and effect and the security constituted by the Security Documents executed by the Borrower and the other Security Parties shall continue and remain valid and enforceable.

8. Continuance and reconfirmation of the Newlead Corporate Guarantee

The Newlead Corporate Guarantor hereby confirms that, notwithstanding the variation to the Principal Agreement contained herein, the provisions of the Newlead Corporate Guarantee executed by the Newlead Corporate Guarantor shall remain in full force and effect as guarantee of the obligations of the Borrower under the Principal Agreement as amended hereby and in respect of all sums due to the Bank under the Principal Agreement (as so amended) and the Security Documents.

9. Fees and expenses

- 9.1 The Borrower and the Corporate Guarantors jointly and severally covenant and agree to pay and discharge all upon demand on a full indemnity basis and from time to time all costs, charges and expenses (including legal fees) incurred by the Bank in connection with the negotiation, preparation, execution and enforcement or attempted enforcement of this Agreement and any document executed pursuant thereto and/or in preserving or protecting or attempting to preserve or protect the security created hereunder and/or under the Security Documents.
- 9.2 The Borrower and the Corporate Guarantors jointly and severally covenant and agree to pay and discharge all stamp duties, registration and recording fees and charges and any other charges whatsoever and wheresoever payable or due in respect of this Agreement and/or any document executed pursuant hereto.

10. Miscellaneous

- 10.1 The provisions of Clause 13 (Assignment, Participation and Lending Branch) and Clause 15.1 (Notices) of the Principal Agreement shall apply to this Agreement as if the same were set out herein in full.

11. Applicable law and jurisdiction

- 11.1 This Agreement shall be governed by and construed in accordance with English law and Clause 16 (Applicable Law and Jurisdiction) of the Principal Agreement shall extend and apply to this Agreement as if the same were (mutatis mutandis) herein expressly set forth.
- 11.2 Mr. Panagiotis–Peter Kallifidas, an attorney at law, presently of 83 Akti Miaouli and Flessa Street, 185 38 Piraeus, Greece, is hereby appointed by each of the Security Parties as agent to accept service (hereinafter “**Process Agent in Greek proceedings**”) upon whom any judicial process in respect of proceedings in Greece may be served and any process notice, judicial or extra–judicial request, demand for payment, payment order, foreclosure proceedings, notarial announcement of claim, notice, request, demand or other communication under this Agreement or any of the Security Documents. In the event that the Process Agent in Greek proceedings (or any substitute process agent notified to the Bank in accordance with the foregoing) cannot be found at the address specified above (or, as the case may be, notified to the

Bank), which will be conclusively proved by a deed of a process server to the effect that the Process Agent in Greek proceedings was not found at such address, any process notice, judicial or extra-judicial request, demand for payment, payment order, foreclosure proceedings, notarial announcement of claim or other communication to be sent to any Security Party may be validly notified in accordance with the relevant provisions of the Hellenic Code on Civil Procedure.

11.3 In this Clause 11 **“proceedings”** means proceedings of any kind, including an application for a provisional or protective measure.
IN WITNESS whereof the parties hereto have caused this Agreement to be duly executed the date first above written.

EXECUTION PAGE

THE BORROWER

SIGNED by)
Mr. Panagiotis–Peter Kallifidas)
for and on behalf of)
Grand Spartounta Inc.,) /s/ Panagiotis–Peter Kallifidas

of The Marshall Islands, in the presence of:) Attorney–in–Fact

Witness: /s/ Efstratios Kalantzis

*Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney–at–law*

THE CORPORATE GUARANTORS

SIGNED by)
Mr. Panagiotis–Peter Kallifidas)
for and on behalf of)
NewLead Holdings Ltd.,) /s/ Panagiotis–Peter Kallifidas

of Bermuda, in the presence of:) Attorney–in–fact

Witness: /s/ Efstratios Kalantzis

*Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney–at–law*

SIGNED by)
Mr. Panagiotis–Peter Kallifidas)
for and on behalf of)
NEWLEAD PROSPERITY INC.,) /s/ Panagiotis–Peter Kallifidas

of Marshall Islands, in the presence of:) Attorney–in–fact

Witness: /s/ Efstratios Kalantzis

Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney-at-law

THE MANAGER

SIGNED by)
Mr. Panagiotis-Peter Kallifidas)
for and on behalf of)
Newleads Bulkers S.A.,)

/s/ Panagiotis-Peter Kallifidas

of Liberia, in the presence of:)

Attorney-in-Fact

Witness: /s/ Efstratios Kalantzis

Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney-at-law

THE PLEDGOR

SIGNED by)
Mr. Panagiotis-Peter Kallifidas)
for and on behalf of)
Newlead Bulker Holdings Inc.,)

/s Panagiotis-Peter Kallifidas

of the Marshall Islands, in the presence of:)

Attorney-in-Fact

Witness: /s/ Efstratios Kalantzis

Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney-at-law

THE BANK

SIGNED by)
Mr. Nikolaos Vougioukas)
for and on behalf of)
FBB-FIRST BUSINESS BANK S.A.)
in the presence of:)

/s/ Nikolaos Vougioukas

Attorney-in-Fact

Witness: /s/ Efstratios Kalantzis

Name: Efstratios Kalantzis

*Address: 13 Defteras Merarchias Str.
Piraeus, Greece*

Occupation: Attorney-at-law

Dated: 8th November, 2010
EMPORIKI BANK OF GREECE S.A.
(as lender)
– and –
GRAND MARKELA INC.
(as Borrower)
– and –
NEWLEAD HOLDINGS LTD.
(as Corporate Guarantor and Pledgor)
– and –
NEWLEAD BULKERS S.A.
(as Approved Manager)

FIFTH SUPPLEMENTAL AGREEMENT
in relation to a Loan Agreement
dated 29th November, 2006
for a loan facility of up to US\$14,750,000



Theo V. Sioufas & Co.
Law Offices
Piraeus

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THIS AGREEMENT is made this 8th day of November, 2010

B E T W E E N

- (1) **EMPORIKI BANK OF GREECE S.A.**, a banking societe anonyme duly incorporated under the laws of Greece, having its registered office at 11 Sofokleous Street, Athens, Greece, acting for the purposes of this Agreement through its office at 1 Korai Street, Athens, Greece (the **"Bank"** which expression shall include its successors and assigns);
- (2) **GRAND MARKELA INC.**, a company incorporated in the Republic of Liberia, having its registered office at 80 Broad Street, Monrovia, Liberia, as borrower (hereinafter called the **"Borrower"**, which expression shall include its successors); and
- (3) **NEWLEAD HOLDINGS LTD.**, a company duly incorporated under the laws of Bermuda, having its registered office at Canon's Court, 22 Victoria Street, Hamilton, Bermuda and listed and trading in the NASDAQ Stock Exchange, New York (hereinafter called the **"Corporate Guarantor"** and sometimes the **"Pledgor"**, which expressions shall include its successors in title); and

- (4) **NEWLEAD BULKERS S.A.**, a company duly incorporated under the laws of the Republic of Liberia having its registered office at 80 Broad Street, Monrovia, Liberia and an office established in Greece (83 Akti Miaouli and Flessa Street, GR 185.38 Piraeus) pursuant to the Greek laws 89/67, 378/68, 27/75 and 814/79 (the **"Approved Manager"**, which expression shall include its successors in title);

AND IS SUPPLEMENTAL to a loan agreement dated 29th November, 2006 made between (1) the Bank, as lender and (2) the Borrower, as borrower, as amended and/or supplemented by:

- (a) a First Supplemental Agreement dated 7th August, 2009 and made between (inter alios) the Bank and the Borrower (the **"First Supplemental Agreement"**);
 - (b) a Second Supplemental Agreement dated 9th April, 2010 and made between (inter alios) the Bank, the Borrower and the Approved Manager (the **"Second Supplemental Agreement"**); and
 - (c) a Third Supplemental Agreement dated 2nd July, 2010 and made between (inter alios) the Bank, the Borrower, the Corporate Guarantor and the Approved Manager, (the **"Third Supplemental Agreement"**) and
 - (d) a Fourth Supplemental Agreement dated 8th September, 2010 and made between (inter alios) the Bank, the Borrower, the Corporate Guarantor and the Approved Manager, (the **"Fourth Supplemental Agreement"**)
- on the terms and conditions of which the Bank has advanced to the Borrower a secured multi-currency loan facility of up to Fourteen million seven hundred fifty thousand United States Dollars (US\$14,750,000) or the equivalent thereof in an Optional Currency (the **"Loan"**) for

the purposes therein specified (the said Loan Agreement as amended and/or supplemented by the First Supplemental Agreement, the Second Supplemental Agreement, the Third Supplemental Agreement and the Fourth Supplemental Agreement is hereinafter called the **“Principal Agreement”**) (the Principal Agreement as hereby amended and as the same may hereinafter be further amended and/or supplemented is hereinafter called the **“Loan Agreement”**).

WHEREAS:

- (A) the Borrower, the Corporate Guarantor and the Approved Manager hereby jointly and severally acknowledge and confirm that (a) the Bank has advanced to the Borrower the full amount of the Loan in the principal amount of United States Dollars Fourteen million seven hundred fifty thousand (US\$14,750,000) in one advance and (b) as the date hereof the amount of (US\$9,800,000) (US Dollars nine million eight hundred thousand) remains outstanding;
- (B) pursuant to a Corporate Guarantee dated 2nd July, 2010 and granted by the Corporate Guarantor (the **“Corporate Guarantee”**) the Corporate Guarantor irrevocably and unconditionally guaranteed the due and timely repayment of the Loan and interest and default interest accrued thereon and the performance of all the obligations of the Borrower under the Principal Agreement and the Security Documents executed in accordance thereto;
- (C) pursuant to a Shares Pledge Agreement dated 2nd July, 2010 executed by the Pledgor, as Pledgor, in favour of the Bank, the Pledgor pledged all the issued share capital of the Borrower in favour of the Bank (the **“Shares Pledge Agreement”**); and
- (D) the Borrower, the Approved Manager and the Corporate Guarantor have requested the Bank to consent to the amendment of the Principal Agreement as set out in Clause 5 hereof and the Bank has agreed so to do conditionally upon terms that (inter alia) the Principal Agreement shall be amended in the manner hereinafter set out.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

- 1.1 Words and expressions defined in the Principal Agreement and not otherwise defined herein (including the Recitals hereto) shall have the same meanings when used in this Agreement.
- 1.2 In addition, in this Agreement the words and expressions specified below shall have the meanings attributed to them below:

“Effective Date” means the date, not being later than 2nd July, 2010 (or such later date as the Bank may agree) upon which all the conditions contained in Clause 4 shall have been satisfied and this Agreement shall become effective; and

“Loan Agreement” means the Principal Agreement as hereby amended and as the same may from time to time be further amended and/or supplemented.

1.3 In this Agreement:

- (a) Where the context so admits words importing the singular number only shall include the plural and vice versa and words importing persons shall include firms and corporations;
- (b) clause headings are inserted for convenience of reference only and shall be ignored in construing this Agreement;
- (c) references to Clauses are to clauses of this Agreement save as may be otherwise expressly provided in this Agreement; and
- (d) all capitalised terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Principal Agreement.

2. **Representations and warranties**

2.1 The Borrower, the Corporate Guarantor and the Approved Manager hereby jointly and severally represent and warrant to the Bank as at the date hereof that the representations and warranties set forth in the Principal Agreement and the Security Documents (updated mutatis mutandis to the date of this Agreement) are (and will be on the Effective Date) true and correct as if all references therein to “this Agreement” were references to the Principal Agreement as amended and supplemented by this Agreement.

2.2 In addition to the above the Borrower, the Approved Manager and the Corporate Guarantor hereby jointly and severally represent and warrant to the Bank as at the date of this Agreement that:

- a. each of the corporate Security Parties is duly formed, is validly existing and in good standing under the laws of the place of its incorporation has full power to carry on its business as it is now being conducted and to enter into and perform its obligations under the Principal Agreement and this Agreement and has complied with all statutory and other requirements relative to its business and does not have an established place of business in any part of the United Kingdom or the USA;
- b. all necessary licences, consents and authorities, governmental or otherwise under this Agreement and the Principal Agreement have been obtained and, as of the date of this Agreement, no further consents or authorities are necessary for any of the Security Parties to enter into this Agreement or otherwise perform its obligations hereunder;
- c. this Agreement constitutes the legal, valid and binding obligations of the Security Parties thereto enforceable in accordance with its terms;

- d. the execution and delivery of, and the performance of the provisions of this Agreement do not, and will not contravene any applicable law or regulation existing at the date hereof or any contractual restriction binding on any of the Security Parties or its respective constitutional documents;
- e. no action, suit or proceeding is pending or threatened against any of the Borrower, the Approved Manager and the Corporate Guarantor or its assets before any court, board of arbitration or administrative agency which could or might result in any material adverse change in the business or condition (financial or otherwise) of the Borrower, the Approved Manager or the Corporate Guarantor; and
- f. none of the Borrower, the Approved Manager and the Corporate Guarantor is and at the Effective Date will be in default under any agreement by which it is or will be at the Effective Date bound or in respect of any financial commitment, or obligation.

3. Agreement of the Bank

- 3.1 The Bank, relying upon each of the representations and warranties set out in Clause 2 hereby agree with the Borrower, subject to and upon the terms and conditions of this Agreement and in particular, but without limitation, subject to the fulfilment of the conditions precedent set out in Clause 4, to consent to the amendment of the Principal Agreement as set out in Clause 5 hereof and the Bank has agreed so to do conditionally upon terms that (inter alia) the Principal Agreement shall be amended in the manner hereinafter set out.

4. Conditions

- 4.1 The agreement of the Bank contained in Clause 3.1 shall be expressly subject to the fulfilment of the conditions set out in this Clause and further subject to the condition that the Bank shall have received on or before the Effective Date in form and substance satisfactory to the Bank and its legal advisers:
- a. a certificate of good standing or equivalent document issued by the competent authorities of the place of its incorporation in respect of each of the Borrower and the Corporate Guarantor;
 - b. certificates of Incumbency issued by the appropriate officer of each corporate Security Party confirming that:
 - (i) the written resolutions adopted on 31st August, 2010 by all the members of the Board of Directors of the Borrower and Minutes of the Extraordinary Meeting of the Shareholders of the Borrower duly convened and held on 1st day of September, 2010,

- (ii) the written resolutions adopted on 31st day of August, 2010 by all the members of the Board of Directors of the Corporate Guarantor and
- (iii) the Minutes of the Meeting of the Board of Directors of the Approved Manager duly convened and held on 15th day of March, 2010, remain in full force as of the date hereof and have not been amended or rescinded and that the any power of attorney issued by each corporate Security Party on 1st September, 2010 authorising appropriate officers or attorneys to (inter alia) sign, execute and deliver any supplementary and/or amendatory agreement of the Loan Agreement or other evidence of such approvals and authorisations as shall be acceptable to the Bank;
- c. the Corporate Guarantee shall be amended as provided in the Guarantee Supplement and Amendment thereto signed by the parties thereto on the date hereof;
- d. all documents evidencing any other necessary action or approvals or consents with respect to this Agreement; and
- e. such favourable legal opinions from lawyers acceptable to the Bank and its legal advisors on such matters concerning the laws of Bermuda and such other relevant jurisdiction as the Bank shall require.

5. Variations to the Principal Agreement

5.1 In consideration of the agreement of the Bank contained in Clause 3.1, the Borrower and the Corporate Guarantor hereby jointly and severally agree with the Bank that (subject to the satisfaction of the conditions precedent contained in Clause 4) with effect from the Effective Date, the provisions of the Principal Agreement shall be varied and/or amended and/or supplemented as follows:

- a. with effect from the Effective Date clause 8.1(a) of the Principal Agreement shall be amended to read as follows:
“(a) Financial Statements: prepare or procure to be prepared and furnished to the Bank, in form and substance satisfactory to the Bank, with (i) annual, audited (by auditors acceptable to the Bank) consolidated financial and cash flow statements (including balance sheet and profit and loss accounts) of the Guarantor (including the Borrower) as soon as practicable but not later than 180 days after the end of the financial year to which they relate, prepared in accordance with GAAP together with a Compliance Certificate to be provided by the Guarantor and signed by one director of the Guarantor, setting out (in reasonable detail) computations as to compliance with Clause 5.3 (Additional Financial covenants–Compliance Certificate) of the Corporate Guarantee as at the date at which those financial and cash flow statements were drawn up and (ii) as soon as the same become available, but in any event within 90 days

after the end of each financial half-year, the Borrower's semi-annual management accounts for that financial half-year and the Guarantor's semi-annual interim Financial Statement for that financial half-year and (iii) as soon as practically the same become available, but in any event within 90 days after the end of each financial quarter, the Corporate Guarantor's quarterly financial statements

- b. with effect from the Effective Date all references in the Principal Agreement to **“this Agreement”**, **“hereunder”** and the like and in the Security Documents to the **“Loan Agreement”** or the **“Agreement”** shall be construed as references to the Principal Agreement as amended and/or supplemented by this Agreement; and
- c. the definition **“Security Documents”** with effect as from the date hereof shall be deemed to include the Security Documents as amended and/or supplemented in pursuance to the terms hereof as well as any document or documents (including if the context requires the Loan Agreement) that may now or hereafter be executed as security for the repayment of the Loan, interest thereon and any other moneys payable by the Borrower under the Principal Agreement and the Security Documents (as herein defined) as well as for the performance by the Borrower and the other Security Parties (as herein defined) of all obligations, covenants and agreements pursuant to the Principal Agreement this Agreement and/or the Security Documents.

6. Entire agreement and amendment

- 6.1 The Principal Agreement, the Security Documents, and this Agreement represent the entire agreement among the parties hereto with respect to the subject matter hereof and supersede any prior expressions of intent or understanding with respect to this transaction and may be amended only by an instrument in writing executed by the parties to be bound or burdened thereby.
- 6.2 This Agreement is supplementary to and incorporated in the Principal Agreement, all terms and conditions whereof, including, but not limited to, provisions on payments, calculation of interest and Events of Default, shall apply to the performance and interpretation of this Agreement.

7. Continuance of Principal Agreement and the Security Documents

Save for the alterations to the Principal Agreement made or deemed to be made pursuant to this Agreement and such further modifications (if any) thereto as may be necessary to make the same consistent with the terms of this Agreement the Principal Agreement shall remain in full force and effect and the security constituted by the Security Documents executed by the Borrower and the other Security Parties shall continue and remain valid and enforceable.

8. Continuance and reconfirmation of the Corporate Guarantee

The Corporate Guarantor hereby confirms that, notwithstanding the variation to the Principal Agreement contained herein, the provisions of the Corporate Guarantee executed by the Corporate Guarantor shall remain in full force and effect as guarantee of the obligations of the Borrower under the Principal Agreement as amended hereby and in respect of all sums due to the Bank under the Principal Agreement (as so amended) and the Security Documents.

9. Fees and expenses

- 9.1 The Borrower and the Corporate Guarantor jointly and severally covenant and agree to pay and discharge all upon demand on a full indemnity basis and from time to time all costs, charges and expenses (including legal fees) incurred by the Bank in connection with the negotiation, preparation, execution and enforcement or attempted enforcement of this Agreement and any document executed pursuant thereto and/or in preserving or protecting or attempting to preserve or protect the security created hereunder and/or under the Security Documents.
- 9.2 The Borrower and the Corporate Guarantor jointly and severally covenant and agree to pay and discharge all stamp duties, registration and recording fees and charges and any other charges whatsoever and wheresoever payable or due in respect of this Agreement and/or any document executed pursuant hereto.

10. Miscellaneous

- 10.1 The provisions of Clause 13 (Assignment, Participation and Lending Branch) and Clause 15.1 (Notices) of the Principal Agreement shall apply to this Agreement as if the same were set out herein in full.

11. Applicable law and jurisdiction

- 11.1 This Agreement shall be governed by and construed in accordance with Hellenic Law and in particular with the provisions of (i) Act of the Monetary Committee under Serial No. 187/1978 (as amended), (ii) the provisions of L.D. dated 17.7/13.8.1923 on "Special Provisions on Societes Anonymes" and (iii) the special terms set out in the resolutions of the Bank of Greece or any other competent Authority. Moreover, the Borrower hereby acknowledges and declares that it is fully familiar with the General Transaction Terms of the Bank and it is hereby agreed that the said General Transaction Terms shall be deemed an integral part of this Agreement.
- 11.2 For the exclusive benefit of the Bank, each of the Borrower and the Corporate Guarantor hereby (i) irrevocably submits to the non exclusive jurisdiction of the Courts of Piraeus in Greece and (ii) agrees that any summons, writ, judicial or extra-judicial notice, protest, payment order, order for payment, order for enforcement, announcement of claim or other legal process issued against it in Greece shall be served upon the Process Agent, who is hereby authorised to accept such service,

which shall be deemed to be good service on each of the Borrower and the Corporate Guarantor.

- (a) The submission to the jurisdiction of the Courts of Piraeus shall not (and shall not be construed so as to) limit the right of the Bank to take proceedings against the Borrower and/or the Corporate Guarantor in the courts of any other jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.
 - (b) The parties further agree that subject to sub-Clause 16.2(b) the Courts of Piraeus shall have exclusive jurisdiction to determine any claim which the Borrower may have against the Bank arising out of or in connection with this Agreement and each of the Borrower and the Corporate Guarantor hereby waives any objections to proceedings with respect to this Agreement in such courts on the grounds of venue or inconvenient forum.
- 11.3 If it is decided by the Bank that any such proceedings should be commenced in any other country, then any objections as to the jurisdiction or any claim as to the inconvenience of the forum is hereby waived by each of the Borrower and the Corporate Guarantor and it is agreed and undertaken by each of the Security Parties to instruct lawyers in that country to accept service of legal process and not to contest the validity of such proceedings as far as the jurisdiction of the court or courts involved is concerned and each of the Security Parties agrees that any judgement or order obtained in an English court shall be conclusive and binding on the Security Parties (and each of them) and shall be enforceable without review in the courts of any other jurisdiction.
- 11.4 Mr. Panagiotis–Peter Kallifidas, an attorney at law, presently of 83 Akti Miaouli and Flessa Street, 185 38 Piraeus, Greece, is hereby appointed by the Borrower as agent to accept service (hereinafter “**Process Agent**”) upon whom any judicial process in respect of proceedings in Greece may be served and any process notice, judicial or extra-judicial request, demand for payment, payment order, foreclosure proceedings, notarial announcement of claim, notice, request, demand or other communication under this Agreement or any of the Security Documents. In the event that the Process Agent (or any substitute process agent notified to the Bank in accordance with the foregoing) cannot be found at the address specified above (or, as the case may be, notified to the Bank), which will be conclusively proved by a deed of a process server to the effect that the Process Agent was not found at such address, any process notice, judicial or extra-judicial request, demand for payment, payment order, foreclosure proceedings, notarial announcement of claim or other communication to be sent to any Security Party may be validly notified in accordance with the relevant provisions of the Hellenic Code on Civil Procedure.
- 11.5 In this Clause 10 “**proceedings**” means proceedings of any kind, including an application for a provisional or protective measure.
-

IN WITNESS whereof the parties hereto have caused this Agreement to be duly executed the date first above written.

EXECUTION PAGE

THE BORROWER

SIGNED by)
Mr. Michail Livanos)
for and on behalf of)
Grand Markela Inc.,) /s/ Michail Livanos
of Liberia, in the presence of:) Attorney-in-Fact

Witness: /s/ Efstratios Kalantzis

*Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney-at-law*

THE CORPORATE GUARANTOR/PLEDGOR

SIGNED by)
Mr. Panagiotis-Peter Kallifidas)
for and on behalf of)
NewLead Holdings Ltd.,) /s/ Panagiotis-Peter Kallifidas
of Bermuda, in the presence of:) Attorney-in-fact

Witness: /s/ Efstratios Kalantzis

*Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney-at-law*

THE APPROVED MANAGER

SIGNED by)
Mr. Panagiotis–Peter Kallifidas)
for and on behalf of)
Newleads Bulkers S.A.)

/s/ Panagiotis–Peter Kallifidas

of Liberia, in the presence of:)

Attorney–in–Fact

Witness: /s/ Efstratios Kalantzis

*Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney–at–law*

THE BANK

SIGNED by)
Mrs. Christina Margelou)
and Mrs. Chrysoula Voulgari)
for and on behalf of)
EMPORIKI BANK OF GREECE S.A.)
in the presence of:)

/s/ Christina Margelou

Attorney–in–Fact

/s/ Chrysoula Voulgari

Attorney–in–Fact

Witness: /s/ Efstratios Kalantzis

*Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney–at–law*

Dated: 15th October, 2010
EFG EUROBANK ERGASIAS S.A.
(as lender)
– and –
GRAND ESMERALDA INC.
(as Borrower)
– and –
NEWLEAD HOLDINGS LTD.
(as Corporate Guarantor)
– and –
NEWLEAD BULKERS S.A.
(as Approved Manager)

FIFTH SUPPLEMENTAL AGREEMENT
in relation to a Loan Agreement
dated 22nd October, 2007
for a loan facility of up to US\$32,000,000



Theo V. Sioufas & Co.
Law Offices
Piraeus

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THIS AGREEMENT is made this 15th day of October, 2010

B E T W E E N

- (1) **EFG EUROBANK ERGASIAS S.A.**, a banking societe anonyme duly incorporated under the laws of Greece, having its registered office at 8 Othonos Street, Athens, Greece, acting for the purposes of this Agreement through its office at 83 Akti Miaouli & Flessa Street, Piraeus, Greece (the **"Bank"**, which expression shall include its successors and assignees);
- (2) **GRAND ESMERALDA INC.**, a company incorporated in the Republic of Liberia, having its registered office at 80 Broad Street, Monrovia, Liberia, and established in Marshall Islands as Foreign Maritime Entity, as borrower (hereinafter called the **"Borrower"**, which expression shall include its successors in title); and
- (3) **NEWLEAD HOLDINGS LTD.**, a company duly incorporated under the laws of Bermuda, having its registered office at Canon's Court, 22 Victoria Street, Hamilton, Bermuda and listed and trading in the NASDAQ Stock Exchange, New York (hereinafter called the **"Corporate Guarantor"**, which expression shall include its successors in title); and
- (4) **NEWLEAD BULKERS S.A.**, a company duly incorporated under the laws of the Republic of Liberia having its registered office at 80 Broad Street, Monrovia, Liberia and an office established in Greece (83 Akti Miaouli and Flessa Street, GR 185.38 Piraeus) pursuant to the Greek laws 89/67, 378/68, 27/75 and 814/79 (the **"Approved Manager"**, which expression shall include its successors in title);

AND IS SUPPLEMENTAL to:

- (i) a loan agreement dated 22nd October, 2007 made between (1) the Bank and (2) the Borrower and others, as joint and several borrowers (the **"Initial Borrowers"**), as amended and/or supplemented by:
 - (a) a First Supplemental Agreement dated 15th June, 2009 and made between (inter alios) the Bank and the Initial Borrowers (the **"First Supplemental Agreement"**); and
 - (b) a Second Supplemental Agreement dated 28th June, 2010 and made between (inter alios) the Bank and the Initial Borrowers, (the **"Second Supplemental Agreement"**); and
 - (c) a Third Supplemental Agreement dated 9th July, 2010 and made between (inter alios) the Bank and the Borrower, the Corporate Guarantor and the Approved Manager (the **"Third Supplemental Agreement"**); and
 - (d) a Fourth Supplemental Agreement dated 13th August, 2010 and made between (inter alios) the Bank and the Borrower, the Corporate Guarantor and the Approved Manager (the **"Fourth Supplemental Agreement"**);

on the terms and conditions of which the Bank has advanced to the Initial Borrowers, on a joint and several basis, a loan of up to Thirty two million Dollars (\$32,000,000) (the "**Loan**") for the purposes therein specified;

(the said Loan Agreement as amended and/or supplemented by the First Supplemental Agreement, the Second Supplemental Agreement, the Third Supplemental Agreement and the Fourth Supplemental Agreement is hereinafter called the "**Principal Agreement**") (the Principal Agreement as hereby amended and as the same may hereinafter be amended and/or supplemented is hereinafter called the "**Loan Agreement**"); and

- (ii) a 1992 ISDA Master Agreement dated 22nd October 2007 made between the Initial Borrowers, as Party B and the Bank, as Party A, as amended and/or supplemented by the First Supplemental Agreement, the Second Supplemental Agreement, the Third Supplemental Agreement and the Fourth Supplemental Agreement (the "**Principal Master Agreement**").

W H E R E A S :

- (A) the Borrower, the Corporate Guarantor and the Approved Manager hereby jointly and severally acknowledge and confirm that (a) the Bank has advanced to the Initial Borrowers, on a joint and several basis, the full amount of the Loan in the principal amount of United States Dollars Thirty two million (US\$32,000,000) in one advance and (b) as the date hereof the amount of **US\$14,790,000 (United States Dollars Fourteen Million Seven Hundred Ninety Thousand)** remains outstanding;
- (B) pursuant to a Corporate Guarantee dated 9th July 2010 and granted by the Corporate Guarantor (the "**Corporate Guarantee**") the Corporate Guarantor irrevocably and unconditionally guaranteed the due and timely repayment of the Loan and interest and default interest accrued thereon and the performance of all the obligations of the Borrower under the Principal Loan Agreement, the Principal Master Agreement and the Security Documents executed in accordance thereto;
- (C) the Borrower, the Approved Manager and the Corporate Guarantor have requested the Bank to consent to the amendment of the Principal Agreement as set out in Clause 5 hereof and the Bank has agreed so to do conditionally upon terms that (inter alia) the Principal Agreement shall be amended in the manner hereinafter set out.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

- 1.1 Words and expressions defined in the Principal Agreement and not otherwise defined herein (including the Recitals hereto) shall have the same meanings when used in this Agreement.
- 1.2 In addition, in this Agreement the words and expressions specified below shall have the meanings attributed to them below:
“**Effective Date**” means the 9th July, 2010;
“**Loan Agreement**” means the Principal Agreement as hereby amended and as the same may from time to time be further amended and/or supplemented; and
“**Master Agreement**” means the Principal Master Agreement as hereby amended and as the same may from time to time be further amended and/or supplemented.
- 1.3 In this Agreement:
- (a) Where the context so admits words importing the singular number only shall include the plural and vice versa and words importing persons shall include firms and corporations;
 - (b) clause headings are inserted for convenience of reference only and shall be ignored in construing this Agreement;
 - (c) references to clauses are to clauses of this Agreement save as may be otherwise expressly provided in this Agreement; and
 - (d) all capitalised terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Principal Agreement.

2. Representations and warranties

- 2.1 The Borrower, the Corporate Guarantor and the Approved Manager hereby jointly and severally represent and warrant to the Bank as at the date hereof that the representations and warranties set forth in the Principal Agreement and the Security Documents (updated mutatis mutandis to the date of this Agreement) are (and will be on the Effective Date) true and correct as if all references therein to “this Agreement” were references to the Principal Agreement as amended and supplemented by this Agreement.
- 2.2 In addition to the above the Borrower, the Approved Manager and the Corporate Guarantor hereby jointly and severally represent and warrant to the Bank as at the date of this Agreement that:

- (a) each of the corporate Security Parties is duly formed, is validly existing and in good standing under the laws of the place of its incorporation has full power to carry on its business as it is now being conducted and to enter into and perform its obligations under the Principal Agreement and this Agreement and has complied with all statutory and other requirements relative to its business;
 - (b) all necessary licences, consents and authorities, governmental or otherwise under this Agreement and the Principal Agreement have been obtained and, as of the date of this Agreement, no further consents or authorities are necessary for any of the Security Parties to enter into this Agreement or otherwise perform its obligations hereunder;
 - (c) this Agreement constitutes the legal, valid and binding obligations of the Security Parties thereto enforceable in accordance with its terms;
 - (d) the execution and delivery of, and the performance of the provisions of this Agreement do not, and will not contravene any applicable law or regulation existing at the date hereof or any contractual restriction binding on any of the Security Parties or its respective constitutional documents;
 - (e) none of the Borrowers and the other Security Parties is and at the Effective Date will be in default under any agreement by which it is or will be at the Effective Date bound or in respect of any financial commitment, or obligation
 - (f) no action, suit or proceeding is pending or threatened against any of the Borrower, the Approved Manager and the Corporate Guarantor or its assets before any court, board of arbitration or administrative agency which could or might result in any material adverse change in the business or condition (financial or otherwise) of the Borrower, the Approved Manager or the Corporate Guarantor; and
 - (g) none of the Borrower, the Approved Manager and the Corporate Guarantor is and at the Effective Date will be in default under any agreement by which it is or will be at the Effective Date bound or in respect of any financial commitment, or obligation;
- 3. Agreement of the Bank**

The Bank, relying upon each of the representations and warranties set out in clause 2 hereby agree with the Borrower, subject to and upon the terms and conditions of this Agreement and in particular, but without limitation, subject to the fulfilment of the conditions precedent set out in clause 4 to consent to the amendment of the Principal Agreement and the Principal Master Agreement in the manner more particularly set out in clause 5.1.

4. Conditions

- 4.1 The agreement of the Bank contained in clause 3.1 shall be expressly subject to the fulfilment of the conditions set out in this clause and further subject to the condition that the Bank shall have received on or before the Effective Date in form and substance satisfactory to the Bank and its legal advisers:
- (a) a certificate of good standing or equivalent document issued by the competent authorities of the place of its incorporation in respect of each of the Borrower and the Corporate Guarantor;
 - (b) certificates of Incumbency issued by the appropriate officer of each corporate Security Party confirming that:
 - (i) the written resolutions adopted on 11th August, 2010 by all the members of the Board of Directors of the Borrower and Minutes of the Extraordinary Meeting of the Shareholders of the Borrower duly convened and held on 11th day of August, 2010;
 - (ii) the written resolutions adopted on 10th day of August, 2010 by all the members of the Board of Directors of the Corporate Guarantor; and
 - (iii) the Minutes of the Meeting of the Board of Directors of the Approved Manager duly convened and held on 17th day of March, 2010 remain in full force as of the date hereof and have not been amended or rescinded and that the any power of attorney issued by RIDER each corporate Security Party on 10th August, 2010 authorising appropriate officers or attorneys to (inter alia) sign, execute and deliver any supplementary and/or amendatory agreement of the Loan Agreement or other evidence of such approvals and authorisations as shall be acceptable to the Bank;
 - (c) all documents evidencing any other necessary action or approvals or consents with respect to this Agreement; and
 - (d) such favourable legal opinions from lawyers acceptable to the Bank and its legal advisors on such matters concerning the laws of Bermuda and such other relevant jurisdiction as the Bank shall require.

5. Variations to the Principal Agreement

- 5.1 In consideration of the agreement of the Bank contained in clause 3.1, the Borrower, the Approved Manager and the Corporate Guarantor hereby jointly and severally agree with the Bank that (subject to the satisfaction of the conditions precedent contained in clause 4) with effect from the Effective Date, the provisions of the Principal Agreement shall be varied and/or amended and/or supplemented as follows:

- (a) with effect from 15th October, 2010 the amount of Dollars One million one hundred thirty thousand (\$1,130,000) currently standing to the credit of the Retention Account shall be applied (at the Borrower's request) towards pro-rata reduction of the Balloon Instalment and the outstanding Repayment Instalments, as a result of which the first paragraph of clause 4.1 (**Repayment**) of the Principal Agreement shall be amended to read as follows (with effect as of the date of such application):

“4.1 Repayment

The Borrower shall and it is expressly undertaken by the Borrower to repay the Loan amounting as of 15th October, 2010 in the principal sum Dollars Thirteen million six hundred sixty thousand (\$13,660,000) by:

- (a) *fifteen (15) consecutive quarterly repayment instalments (the “**Repayment Instalments**”), each to be repaid on each of the Repayment Dates, so that the first Repayment Instalment be repaid on the 24th October, 2010 and each of the subsequent ones consecutively falling due for payment on each of the dates falling three (3) months after the immediately proceeding Repayment Date with the last (the 15th) of such Repayment Instalments falling due for payment on the Final Maturity Date; subject to the provisions of this Agreement, the amount of each such Repayment Instalment shall be \$525,000 (Five hundred twenty five thousand Dollars); and*
- (b) *a final balloon instalment of Five million seven hundred eighty five thousand Dollars (\$5,785,000) (the “**Balloon Instalment**”), which shall be repayable together with the last (the 15th) Repayment Instalment on the Final Maturity Date;”;*
- (b) with effect from the Effective Date clause 8.1(a) of the Principal Agreement shall be amended to read as follows:
- “(a) **Financial Statements**: *prepare or procure to be prepared and furnished to the Bank, in form and substance satisfactory to the Bank, with (i) annual, audited (by auditors acceptable to the Bank) consolidated financial statements (including balance sheet and profit and loss accounts) of the Group and the Borrower as soon as practicable but not later than 180 days after the end of the financial year to which they relate, prepared in accordance with GAAP (ii) quarterly management accounts of the Corporate Guarantor and (iii) annual cash flow statement of the Borrower within 90 days from the end of each fiscal year;”;*
- (c) with effect from the Effective Date clause 8.10(a)(v) of the Principal Agreement shall be amended to read as follows:
- “(v) *deliver to the Bank a Compliance Certificate at the same time as the audited financial statements referred to in clause 8.1(a), a certified true copy of the*

Compliance Certificate issued and signed by the Corporate Guarantor's Chief Financial Officer certifying that the covenants contained in clause 5.3 of the Corporate Guarantee are being complied with and providing full calculations supporting such compliance derived from the then latest financial statements of the Group as lodged with the Securities and Exchange Commission of the United States by way of Form 6K/20F, such certificate to be substantially in the form agreed by the Bank set out in Schedule 2.”;

(d) with effect from the Effective Date definition “EBITDA” in clause 8.11 of the Principal Agreement shall be amended to read as follows:

“**EBITDA**” means, in respect of any period, the consolidated profit on ordinary activities of the Group before Taxation for such period:

(a) adjusted to exclude interest receivable and interest payable and other similar income or costs to the extent not already excluded;

(b) adjusted to exclude any gain or loss realised on the disposal of fixed assets (whether tangible or intangible);

(c) after adding back depreciation and amortisation;

(d) adjusted to exclude any exceptional or extraordinary costs or income; and

(e) after deducting any profit arising out of the release of any provisions against a liability or charge (excluding in this context the release of any provisions against liabilities or charges relating to exceptional or extraordinary items);”;

(e) with effect from the Effective Date Schedule 2 of the Principal Agreement shall be amended to read as follows:

“SCHEDULE 2

Form of Compliance Certificate

To: **EFG Eurobank Ergasias S.A.**
83 Akti Miaouli and Flessa Street,
Piraeus GR 185 38, Greece
Attention: the Manager

From: **Newlead Holdings Ltd., of Bermuda**
c/o Newlead Bulkers S.A.,
83 Akti Miaouli and Flessa Street,
185 38 Piraeus, Greece,

Dated: [•]

Dear Sirs

Re: US\$32,000,000 loan agreement dated 22nd October, 2007 (the "Loan Agreement") made between (1) Grand Esmeralda Inc. and other (as borrowers) and (2) EFG Eurobank Ergasias S.A. (as lender), as amended from time to time.

1 We refer to the Loan Agreement. This is a Compliance Certificate. Terms defined in the Loan Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

2 We refer to clause 8.11, 8.4(c) and 8.9(b) of the Loan Agreement and hereby certify that:

(1) **Equity Ratio**

Requirement: Equity Ratio of not less than [25%] [30%].

Actual Equity Ratio: []

Satisfied [YES] : [NO]

(2) **Minimum Liquidity of the Group**

Actual Minimum Liquidity: []

Requirement: maintain on a consolidated basis the Minimum Liquidity (as defined in the Corporate Guarantee).

Satisfied [YES] : [NO]

(3) **Minimum Liquidity under clause 8.9(b):**

Actual Minimum Liquidity: []

Requirement: maintain on a consolidated basis the Minimum Liquidity (as defined in the Loan Agreement).

Satisfied [YES] : [NO]

(4) **Interest Coverage**

Actual Interest Coverage ratio: []

Requirement: maintain a ratio of EBITDA to interest payable of not less than [2.0] [2.50] to 1.0.

Satisfied [YES] : [NO]

(5) **Security Value Maintenance**

Actual Security Value/Security Requirement:

Requirement: Security Value is not less than the Security Requirement.

Satisfied [YES] : [NO]

- 3 *We confirm that no Default is continuing [If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.]*
- 4 *appendix 1 hereto contains a comprehensive list of all Group Members as at the date hereof and the jurisdictions in which they are incorporated and an up-to-date corporate structure chart for the Group;*
- 5 *the representations set out in clause 7 of the Loan Agreement are true and accurate with reference to all facts and circumstances now existing and all required authorisations have been obtained and are in full force and effect; and*
[State any exceptions/qualifications to the above statements]

[Attach list of current Group Members and current corporate structure chart]

Chief Financial Officer”:

- (f) With effect from the Effective Date, the definition and all references in the Principal Agreement to **“this Agreement”**, **“hereunder”** and the like and in the Security Documents to the **“Loan Agreement”** shall be construed as references to the Principal Agreement as amended and/or supplemented by this Agreement;
- (g) with effect from the Effective Date, the definition **“Security Documents”** shall be deemed to include the Security Documents as amended and/or supplemented in pursuance to the terms hereof as well as any document or documents (including if the context requires the Loan Agreement) that may now or hereafter be executed as security for the repayment of the Loan, interest thereon and any other moneys payable by the Bank under the Principal Agreement and the Security Documents (as herein defined) as well as for the performance by the Borrower and the other Security Parties (as herein defined) of all obligations, covenants and agreements pursuant to the Principal Agreement this Agreement and/or the Security Documents;
- e. with effect from the Effective Date, all references to definitions of **“this Agreement”**, **“the Master Agreement”** **“hereunder”** and the like and in the Security Documents to the **“Loan Agreement”** and **“the Master Agreement”** shall be construed as references to the Principal Agreement, or as the case may be, the Principal Master Agreement as amended and/or supplemented by this Agreement.

- 5.2 With effect from the Effective Date the provisions of the Principal Master Agreement shall be varied and/or amended and/or supplemented by inserting after the words "Party A (as lender)" in the last line of the definition of "Loan Facility" in Part 5, paragraph (e) of the Schedule to the Principal Master Agreement the words:

"and as further amended by a First Supplemental Agreement dated 15th June 2009, a Second Supplemental Agreement dated 28th June, 2010 both made between the Initial Borrowers, as Party B and the Bank, as Party A, a Third Supplemental Agreement dated 9th July 2010 and a Fourth Supplemental Agreement dated 13th August 2010 and a Fifth Supplemental Agreement dated 15th October, 2010, all made between the Borrower, as Party B and the Bank, as Party A."

6. Entire agreement and amendment

- 6.1 The Principal Agreement, the Security Documents, and this Agreement represent the entire agreement among the parties hereto with respect to the subject matter hereof and supersede any prior expressions of intent or understanding with respect to this transaction and may be amended only by an instrument in writing executed by the parties to be bound or burdened thereby.
- 6.2 This Agreement is supplementary to and incorporated in the Principal Agreement, all terms and conditions whereof, including, but not limited to, provisions on payments, calculation of interest and Events of Default, shall apply to the performance and interpretation of this Agreement.

7. Continuance of Principal Agreement and the Security Documents

Save for the alterations to the Principal Agreement made or deemed to be made pursuant to this Agreement and such further modifications (if any) thereto as may be necessary to make the same consistent with the terms of this Agreement the Principal Agreement shall remain in full force and effect and the security constituted by the Security Documents executed by the Borrower and the other Security Parties shall continue and remain valid and enforceable.

8. Continuance and reconfirmation of the Corporate Guarantee

The Corporate Guarantor hereby confirms that, notwithstanding the variation to the Principal Agreement contained herein, the provisions of the Corporate Guarantee executed by the Corporate Guarantor shall remain in full force and effect as guarantee of the obligations of the Borrower under the Principal Agreement as amended hereby and in respect of all sums due to the Bank under the Principal Agreement (as so amended) and the Security Documents.

9. Fees and expenses

- 8.1 The Borrower and the Corporate Guarantor jointly and severally covenant and agree to pay and discharge all upon demand on a full indemnity basis and from time to time

all costs, charges and expenses (including legal fees) incurred by the Bank in connection with the negotiation, preparation, execution and enforcement or attempted enforcement of this Agreement and any document executed pursuant thereto and/or in preserving or protecting or attempting to preserve or protect the security created hereunder and/or under the Security Documents.

- 8.2 The Borrower and the Corporate Guarantor jointly and severally covenant and agree to pay and discharge all stamp duties, registration and recording fees and charges and any other charges whatsoever and wheresoever payable or due in respect of this Agreement and/or any document executed pursuant hereto.

10. Miscellaneous

- 10.1 The provisions of clause 15.1 of the Principal Agreement shall extend and apply to the giving or making of notices or demands hereunder as if the same were expressly stated herein save that notices or demands hereunder as regards the Borrower should be sent to such address or facsimile number as the Borrower have advised in writing to the Bank on the date of the Principal Agreement.

- 10.2 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Agreement.

11. Entire Agreement and Amendment; Effect on Principal Agreement

- 11.1 The Principal Agreement, the Principal Master Agreement, the Security Documents and this Agreement represent the entire agreement among the parties hereto with respect to the subject matter hereof and supersede any prior expressions of intent or understanding with respect to this transaction and may be amended only by an instrument in writing executed by the party or parties to be bound or burdened thereby.

- 11.2 Except to the extent that each of the Principal Agreement and the Principal Master Agreement is expressly amended or supplemented by this Agreement, all terms and conditions of the Principal Agreement remain in full force and effect. This Agreement is supplementary to and incorporated in the Principal Agreement, all terms and conditions whereof, including, but not limited to, provisions on payments, calculation of interest and Events of Default, shall apply to the performance and interpretation of this Agreement.

- 11.3 No waiver of any such right, remedy or power, or any consent to any departure from the strict application of the provisions of this Agreement, the Loan Agreement, Principal Master Agreement or of any other Security Document shall in any way prejudice or affect the powers conferred upon the Bank under this Agreement, the Loan Agreement, Principal Master Agreement and the other Security Documents or the right of the Bank thereafter to act strictly in accordance with the terms of this Agreement, the Loan Agreement, Principal Master Agreement and the other Security Documents nor shall, any delay or omission by the Bank to exercise any right, remedy or power vested in the Bank under this Agreement, the Loan Agreement,

Principal Master Agreement and/or the other Security Documents or by law, impair such right or power, or be construed as a waiver of, or as an acquiescence in any default by the Borrower and/or any other Security Party, nor shall any single or partial exercise by the Bank of any power, right or remedy preclude any other or further exercise thereof or the exercise of any other power, right or remedy.

12. Applicable law and Jurisdiction

This Supplemental Agreement shall be governed by and construed in accordance with English law. The provisions of clause 15.2 (Process Agent) as hereby amended, clause 16.1 (Law and Jurisdiction) and clause 16.2 (Submission to Jurisdiction) of the Principal Agreement shall extend and apply to this Supplemental Agreement as if the same were (mutatis mutandis) herein expressly set forth.

IN WITNESS whereof the parties hereto have caused this Agreement to be duly executed the date first above written.

EXECUTION PAGE

THE BORROWER

SIGNED by)
Mr. Panagiotis–Peter Kallifidas)
for and on behalf of)
Grand Esmeralda Inc.,)
of Liberia, in the presence of:)

/s/ Panagiotis–Peter Kallifidas
Attorney–in–Fact

Witness: /s/ Efstratios Kalantzis
Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney–at–law
THE CORPORATE GUARANTOR

SIGNED by)
Mr. Panagiotis–Peter Kallifidas)
for and on behalf of)
NewLead Holdings Ltd.,)
of Bermuda, in the presence of:)

/s/ Panagiotis–Peter Kallifidas
Attorney–in–fact

Witness: /s/ Efstratios Kalantzis
Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney–at–law

THE APPROVED MANAGER

SIGNED by)
Mr. Panagiotis–Peter Kallifidas)
for and on behalf of)
Newlead Bulkers S.A.,)
of Liberia, in the presence of:)

/s/ Panagiotis–Peter Kallifidas
Attorney–in–Fact

Witness: /s/ Efstratios Kalantzis
Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney–at–law

THE BANK

SIGNED by)
Mrs. Stavroula Ydreou)
and Mr. Athanassios Doudoulas)
for and on behalf of)
EFG EUROBANK ERGASIAS S.A.)
in the presence of:)

/s/ Stavroula Ydreou
Attorney–in–Fact

/s/ Athanassios Doudoulas
Attorney–in–Fact

Witness: /s/ Efstratios Kalantzis
Name: Efstratios Kalantzis
Address: 13 Defteras Merarchias Str.
Piraeus, Greece
Occupation: Attorney–at–law

**AMENDMENT TO
ESCROW AGREEMENT**

This Amendment to Escrow Agreement (this "Amendment"), dated as of July 2nd, 2010, is among NewLead Holdings Ltd., a Bermuda corporation ("NewLead"), Grandunion, Inc., a Marshall Islands corporation ("Grandunion") and Computershare Trust Company, N.A., a national banking association ("Computershare").

1. Reference to Escrow Agreement. Reference is made to the Escrow Agreement dated as of April 1, 2010, by and among NewLead, Grandunion and Computershare (the "Escrow Agreement"). Terms defined in the Escrow Agreement and not otherwise defined herein are used herein with the meanings so defined.

2. Amendment to Section 1(b) of Escrow Agreement. Section 1(b) of the Escrow Agreement is hereby deleted in its entirety and replaced with the following:

"(b) "**Claims**" means any claims to the Holdback Shares asserted against Grandunion (i) pursuant to Section 2.3 of the Purchase Agreement or (ii) pursuant to Section 2.3 of the Securities Purchase Agreement dated as of July 2nd, 2010, between NewLead and Grandunion (the "**Additional Purchase Agreement**")."

3. Amendment to Section 8 of Escrow Agreement. Section 8 of the Escrow Agreement is hereby deleted in its entirety and replaced with the following:

"8. **No Limitation.** NewLead's rights and recourses against Grandunion with respect to any Claims under Section 2.3 of the Purchase Agreement or under Section 2.3 of the Additional Purchase Agreement shall not be replaced, limited or deemed to be waived, in whole or in part, by the exercise of NewLead's rights and recourses under this Agreement or any other terms and conditions of this Agreement except to the extent of any payment made by the Escrow Agent to NewLead pursuant hereto following delivery of a Loss Notice in respect of a Claim."

4. Miscellaneous. Except as otherwise set forth herein, the Escrow Agreement shall remain in full force and effect without change or modification. This Amendment may be executed in any number of counterparts, which together shall constitute one instrument, and shall bind and inure to the benefit of the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

NEWLEAD HOLDINGS LTD.

By: /s/ Allan Shaw

Name: Allan Shaw
Title: CFO / Director

Address for Notice:
83 Akti Miaouli & Flessa Str.
Piraeus 185 38 Greece
Facsimile No.: 30 (210) 898 3788
Telephone No.: 30 210 898 3787
Attn: Allan Shaw

With a copy to: Mintz, Cohn, Ferris, Glovsky, and Popeo, P.C.
666 Third Avenue, New York, NY 10017
Facsimile: (212) 983-3115
Telephone: (212) 692-6768

GRANDUNION, INC.

By: /s/ Michail S. Zolotas

Name: Michail S. Zolotas
Title: Director

Address for Notice:
Akti Miaouli 83 & Flessa 1-7
Piraeus 185 38, Greece
Facsimile No.: +30 (213) 014-8019
Telephone No.: +30 (210) 428-8520
Attn: Michail Zolotas

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1. Shipbroker		BIMCO STANDARD BAREBOAT CHARTER CODE NAME: "BARECON 2001" 	
		2. Place and date <p style="text-align: right; font-size: 1.2em;">23 NOVEMBER 2010 </p>	
3. Owner/Head-Charterers/Place of business (Cl. 3) PRIME HILL MARITIME LTD Trust Company Complex Ajeltake Road Ajeltake Island MH96960, Marshall Islands		4. Bareboat Sub-Charterers/Place of business (Cl. 1) GRAND RODOSI INC. 80 Broad Street Monrovia Liberia	
5. Vessel's name, call sign and flag (Cl. 1 and 3) GRAND RODOSI, A8LF4, LIBERIA			
6. Type of Vessel BULK CARRIER		7. GT/NT 37,519/22,604	
8. When/Where built 1990, ULSAN, KOREA		9. Total DWT (abt.) in metric tons on summer freeboard 68,788	
10. Classification Society (Cl. 3) BUREAU VERITAS		11. Date of last special survey by the Vessel's classification society 19 FEBRUARY 2009	
12. Further particulars of Vessel (also indicate minimum number of months' validity of class certificates agreed acc. to Cl. 3) LOA: 225.00m, BEAM: 32.20m, HYUNDAI MAN B&W / 6S60 MC CLASS CERTIFICATES VALID			
13. Port or Place of delivery (Cl. 3) WORLDWIDE		14. Time for delivery (Cl. 4) See Clause 34	15. Cancelling date (Cl. 5) See Clause 36
16. Port or Place of redelivery (Cl. 15) WORLDWIDE		17. No. of months' validity of trading and class certificates upon redelivery (Cl. 15) VALID AT AS THE TIME OF DELIVERY.	
18. Running days' notice if other than stated in Cl. 4 N/A		19. Frequency of dry-docking (Cl. 10(g)) AS PER CLASS REQUIREMENTS	
20. Trading limits (Cl. 6) WORLDWIDE WITHIN INSTITUTE WARRANTY LIMITS BUT HEAD-CHARTERERS TO BE INFORMED IN ADVANCE FOR ANY CALL TO ISRAEL, CUBA AND NORTH CYPRUS			
21. Charter period (Cl. 2) 96 MONTHS FROM DELIVERY		22. Charter hire (Cl. 11) SEE CLAUSE 40	
23. New class and other safety requirements (state percentage of Vessel's insurance value acc. to Box 29)(Cl. 10(a)(ii)) N/A			
24. Rate of interest payable acc. to Cl. 11 (f) and, if applicable, acc. to PART IV N/A		25. Currency and method of payment (Cl. 11) USD/BANK TRANSFER	

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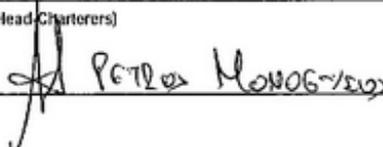
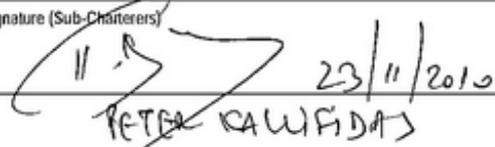


"BARECON 2001" STANDARD BAREBOAT CHARTER

PART I

26. Place of payment; also state beneficiary and bank account (Cl. 11) Account Name: PRIME MARITIME HOLDING LTD IBAN No.: GR5802803140000000280587428 Bank: Marfin Egnatia Bank SA SWIFT: EGNAGR2T	27. Bank guarantee/bond (sum and place) (Cl. 24) (optional) N/A
28. Mortgage(s), if any (state whether 12(a) or (b) applies; if 12(b) applies state date of Financial Instrument and name of Mortgagee(s)/Place of business) (Cl. 12) See Clause 56	29. Insurance (hull and machinery and war risks) (state value acc. to Cl. 13(f) or, if applicable, acc. to Cl. 14(b)) (also state if Cl. 14 applies) See Clause 47
30. Additional insurance cover, if any, for Owners' account limited to (Cl. 13(b)) or, if applicable, Cl. 14(a))	31. Additional insurance cover, if any, for Charterers' account limited to (Cl. 13(b)) or, if applicable, Cl. 14(a))
32. Latent defects (only to be filled in if period other than stated in Cl. 3) N/A	33. Brokerage commission and to whom payable (Cl. 27) N/A
34. Grace period (state number of clear banking days) (Cl. 28) See Clauses 53, 54 and 55	35. Dispute Resolution (state 30(a), 30(b) or 30(c); if 30(c) agreed Place of Arbitration <u>must</u> be stated (Cl. 30) London Arbitration
36. War cancellation (indicate countries agreed) (Cl. 28(f)) N/A	
37. Newbuilding Vessel (indicate with "yes" or "no" whether PART III applies) (optional) NO	38. Name and place of Builders (only to be filled in if PART III applies) N/A
39. Vessel's Yard Building No. (only to be filled in if PART III applies) N/A	40. Date of Building Contract (only to be filled in if PART III applies) N/A
41. Liquidated damages and costs shall accrue to (state party acc. to Cl. 1) a) N/A b) N/A c) N/A	
42. Hire/Purchase agreement (indicate with "yes" or "no" whether PART IV applies) (optional) NO	43. Bareboat Charter Registry (indicate with "yes" or "no" whether PART V applies) (optional) NO
44. Flag and Country of the Bareboat Charter Registry (only to be filled in if PART V applies) N/A	45. Country of the Underlying Registry (only to be filled in if PART V applies) N/A
46. Number of additional clauses covering special provisions, if agreed Additional Clauses 32 to 65 inclusive, as attached hereto.	

PREAMBLE - It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include PART I and PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict but no further. It is further mutually agreed that PART III and/or PART IV and/or PART V shall only apply and only form part of this Charter if expressly agreed and stated in Boxes 37, 42 and 43. If PART III and/or PART IV and/or PART V apply, it is further agreed that in the event of a conflict of conditions, the provisions of PART I and PART II shall prevail over those of PART III and/or PART IV and/or PART V to the extent of such conflict but no further.

Signature (Owners/Head Charterers) 	Signature (Sub-Charterers) 
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PART II
"BARECON 2001" Standard Bareboat Charter

<p>1. Definitions</p> <p>In this Charter, the following terms shall have the meanings hereby assigned to them: "The Owners" shall mean the party identified in <u>Box 3</u>; "The Charterers" shall mean the party identified in <u>Box 4</u>; "The Vessel" shall mean the vessel named in <u>Box 5</u> and with particulars as stated in <u>Boxes 6 to 12</u>; "Financial Instrument" means the mortgage, deed of covenant or other such financial security instrument as annexed to this Charter and stated in <u>Box 28</u>. Any references herein to "this Charter", "the Owner" and "the Charterers" shall be interpreted and construed to be a reference to "this Sub-Charter", the Head-Charterers" and the "Sub-Charterers" respectively, as the context may require.</p> <p>2. Charter Period</p> <p>In consideration of the hire detailed in <u>Box 22</u>, the Owners have agreed to let and the Charterers have agreed to hire the Vessel for the period stated in <u>Box 21</u> ("The Charter Period").</p> <p>3. Delivery (See Clauses 34, 36, 37, 38) <i>(not applicable when Part III applies, as indicated in <u>Box 37</u>)</i> (a)—The Owners shall before and at the time of delivery exercise due diligence to make the Vessel seaworthy and in every respect ready in hull, machinery and equipment for service under this Charter. The Vessel shall be delivered by the Owners and taken over by the Charterers at the port or place indicated in <u>Box 13</u> in such ready-to-berth as the Charterers may direct. (b)—The Vessel shall be properly documented on delivery in accordance with the laws of the flag State indicated in <u>Box 5</u> and the requirements of the classification society stated in <u>Box 10</u>. The Vessel upon delivery shall have her survey cycles up-to-date and trading and class certificates valid for at least the number of months agreed in <u>Box 12</u>. (c)—The delivery of the Vessel by the Owners and the taking over of the Vessel by the Charterers shall constitute a full performance by the Owners of all the Owners' obligations under this Clause 3, and thereafter the Charterers shall not be entitled to make or assert any claim against the Owners on account of any conditions, representations or warranties expressed or implied with respect to the Vessel but the Owners shall be liable for the cost of but not the time for repairs or renewals occasioned by latent defects in the Vessel, her machinery or appurtenances, existing at the time of delivery under this Charter, provided such defects have manifested themselves within twelve (12) months after delivery unless otherwise provided in <u>Box 32</u>.</p> <p>4. Time for Delivery <i>(not applicable when Part III applies, as indicated in <u>Box 37</u>)</i> The Vessel shall not be delivered before the date indicated in <u>Box 14</u> without the Charterers' consent and the Owners shall exercise due diligence to deliver the Vessel not later than the date indicated in <u>Box 15</u>. Unless otherwise agreed in <u>Box 18</u>, the Owners shall give the Charterers not less than thirty (30) running days' preliminary and not less than fourteen (14) running days' definite notice of the date on which the Vessel is expected to be ready for delivery. The Owners shall keep the Charterers closely advised of possible changes in the Vessel's position.</p> <p>5. Cancelling (See Clause 36) <i>(not applicable when Part III applies, as indicated in <u>Box 37</u>)</i> (a)—Should the Vessel not be delivered latest by the cancelling date indicated in <u>Box 15</u>, the Charterers shall have the option of cancelling this Charter by giving the Owners notice of cancellation within thirty-six (36) running hours after the cancelling date stated in <u>Box 15</u>, failing which this Charter shall remain in full force and effect.</p>	<p>(b)—If it appears that the Vessel will be delayed beyond the cancelling date, the Owners may, as soon as they are in a position to state with reasonable certainty the day on which the Vessel should be ready, give notice thereof to the Charterers asking whether they will exercise their option of cancelling, and the option must then be declared within one hundred and sixty-eight (168) running hours of the receipt by the Charterers of such notice or within thirty-six (36) running hours after the cancelling date, whichever is the earlier. If the Charterers do not then exercise their option of cancelling, the seventh day after the readiness date stated in the Owners' notice shall be substituted for the cancelling date indicated in <u>Box 15</u> for the purpose of this Clause 5. (c)—Cancellation under this Clause 5 shall be without prejudice to any claim the Charterers may otherwise have on the Owners under this Charter.</p> <p>6. Trading Restrictions</p> <p>The Vessel shall be employed in lawful trades for the carriage of suitable lawful merchandise within the trading limits indicated in <u>Box 20</u>. The Charterers undertake not to employ the Vessel or suffer the Vessel to be employed otherwise than in conformity with the terms of the contracts of insurance (including any warranties expressed or implied therein) without first obtaining the consent of the insurers to such employment and complying with such requirements as to extra premium or otherwise as the insurers may prescribe. The Charterers also undertake not to employ the Vessel or suffer her employment in any trade or business which is forbidden by the law of any country to which the Vessel may sail or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render her liable to condemnation, destruction, seizure or confiscation. Notwithstanding any other provisions contained in this Charter it is agreed that nuclear fuels or radioactive products or waste are specifically excluded from the cargo permitted to be loaded or carried under this Charter. This exclusion does not apply to radio-isotopes used or intended to be used for any industrial, commercial, agricultural, medical or scientific purposes provided the Owners' prior approval has been obtained to loading thereof.</p> <p>7. Surveys on Delivery and Redelivery <i>(not applicable when Part III applies, as indicated in <u>Box 37</u>)</i> The Owners and Charterers shall each appoint surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of delivery and redelivery hereunder. The Owners shall bear all expenses of the On-hire Survey including loss of time, if any, and the Charterers shall bear all expenses of the Off-hire Survey including loss of time, if any, at the daily equivalent to the rate of hire or pro rata thereof.</p> <p>8. Inspection</p> <p>The Owners shall have the right at any time after giving reasonable notice to the Charterers to inspect or survey the Vessel or instruct a duly authorised surveyor to carry out such survey on their behalf:- (a) to ascertain the condition of the Vessel and satisfy themselves that the Vessel is being properly repaired and maintained, so that it maintains her classification status with the classification society free from overdue recommendations affecting the same. The costs and fees for such inspection or survey shall be paid by the Owners unless the Vessel is found to require repairs or maintenance in order to achieve the condition so provided; (b) in dry-dock if the Charterers have not dry-docked her in accordance with <u>Clause 10(g)</u>. The costs and fees for such inspection or survey shall be paid by the Charterers; and</p>	<p>69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138</p>
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PART II
"BARECON 2001" Standard Bareboat Charter

(c) for any other commercial reason they consider necessary (provided it does not unduly interfere with the commercial operation of the Vessel). The costs and fees for such inspection and survey shall be paid by the Owners.	139 140 141 142 143	or authority thereof, to enable the Vessel, without penalty or charge, lawfully to enter, remain at, or leave any port, place, territorial or contiguous waters of any country, state or municipality in performance of this Charter without any delay. This obligation shall apply whether or not such requirements have been lawfully imposed by such government or division or authority thereof.	205 206 207 208 209 210 211 212
All time used in the Charterers' account and form part of the Charter Period.	144	The Charterers shall make and maintain all arrangements by bond or otherwise as may be necessary to satisfy such requirements at the Charterers' sole expense and the Charterers shall indemnify the Owners against all consequences whatsoever (including loss of time) for any failure or inability to do so.	213 214 215 216 217 218
The Charterers shall also permit the Owners to inspect the Vessel's log books whenever requested and shall whenever required by the Owners furnish them with full information regarding any casualties or other accidents or damage to the Vessel.	147 148 149 150 151	(b) <u>Operation of the Vessel</u> - The Charterers shall at their own expense and by their own procurement man, victual, navigate, operate, supply, fuel and, whenever required, repair the Vessel during the Charter Period and they shall pay all charges and expenses of every kind and nature whatsoever incidental to their use and operation of the Vessel under this Charter, including annual flag State fees and any foreign general municipality and/or state taxes. The Master, officers and crew of the Vessel shall be the servants of the Charterers for all purposes whatsoever, even if for any reason appointed by the Owners.	219 220 221 222 223 224 225 226 227 228 229 230
9. Inventories, Oil and Stores	152	Charterers shall comply with the regulations regarding officers and crew in force in the country of the Vessel's flag or any other applicable law. Vessel not to force ice or follow icebreaker or enter ice-bound port. Charterers to follow for entire duration of the Charter (including any extension) Rightship vetting.	231 232 233
A complete inventory of the Vessel's entire equipment, outfit including spare parts, appliances and of all consumable stores on board the Vessel shall be made by the Charterers in conjunction with the Owners on delivery and again on redelivery of the Vessel. The Charterers and the Owners, respectively, shall at the time of delivery and redelivery take over and pay-for-all bunkers, lubricating oil, unbrokech provisions, paints, ropes and other consumable stores (excluding - including spare parts) in the said Vessel at the then-current market-prices at the ports of delivery and redelivery, respectively. The Charterers shall ensure that all spare parts listed in the inventory and used during the Charter Period are replaced at their expense prior to redelivery of the Vessel. The Head Charterers will deliver to the Sub Charterers the remaining on board bunkers and lubricants at the time of delivery at no cost. The Sub Charterers will redeliver the Vessel with same quantities and grades of bunkers and lubricants as on delivery. The Head Charterers at the time of redelivery will pay for the remaining bunkers at prices as per last invoice.	153 154 155 156 157 158 159 160 161 162 163 164 165 166 167	(c) The Charterers shall keep the Owners and the mortgagee(s) advised of the intended employment, planned dry-docking and major repairs of the Vessel, as reasonably required.	234 235 236 237
10. Maintenance and Operation (See also Clause 42)	168	(d) <u>Flag and Name of Vessel</u> - During the Charter Period, the Charterers shall have the liberty to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag. The Charterers shall also have the liberty, with the Owners' consent, which shall not be unreasonably withheld, to change the flag and/or the name of the Vessel during the Charter Period. Painting and re-painting, instalment and re-instalment, registration and re-registration, if required by the Owners, shall be at the Charterers' expense and time.	238 239 240 241 242 243 244 245 246 247 248
(a) <u>Maintenance and Repairs</u> - During the Charter Period the Vessel shall be in the full possession and at the absolute disposal for all purposes of the Charterers and under their complete control in every respect. The Charterers shall maintain the Vessel, her machinery, boilers, appurtenances and spare parts in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice and, except as provided for in Clause 14(f), if applicable, at their own expense they shall at all times keep the Vessel's Class fully up to date with the Classification Society indicated in Box 10 and maintain all other necessary certificates in force at all times.	169 170 171 172 173 174 175 176 177 178 179 180 181 182	(e) <u>Changes to the Vessel</u> - Subject to Clause 10(a)(i) and Clause 46, the Charterers shall make no structural changes in the Vessel or changes in the machinery, boilers, appurtenances or spare parts thereof without in each instance first securing the Owners' written approval thereof. If the Owners so agree, the Charterers shall, if the Owners so require, restore the Vessel to its former condition before the termination of this Charter.	249 250 251 252 253 254 255 256
(ii) <u>New Class and Other Safety Requirements</u> - In the event of any improvement, structural changes or new equipment becoming necessary for the continued operation of the Vessel by reason of new class requirements or by compulsory legislation costing (excluding the Charterers' loss of time) more than the percentage stated in Box 23, or if Box 23 is left blank, 5 per cent of the Vessel's insurance value as stated in Box 29, then the extent, if any, to which the rate of hire shall be varied and the ratio in which the cost of compliance shall be shared between the parties concerned in order to achieve a reasonable distribution thereof as between the Owners and the Charterers having regard, inter alia, to the length of the period remaining under this Charter shall, in the absence of agreement, be referred to the dispute resolution method agreed in Clause 30. (See Clause 45)	183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200	(f) <u>Use of the Vessel's Outfit, Equipment and Appliances</u> - The Charterers shall have the use of all outfit, equipment, and appliances on board the Vessel at the time of delivery, provided the same or their substantial equivalent shall be returned to the Owners on redelivery in the same good order and condition as when received, ordinary wear and tear excepted. The Charterers shall from time to time during the Charter Period replace such items of equipment as shall be so damaged or worn as to be unfit for use. The Charterers are to procure that all repairs to or replacement of any damaged, worn or lost parts or equipment be effected in such manner (both as regards workmanship and quality of materials) as not to diminish the value of the Vessel. The Charterers have the right to fit additional equipment at their expense and risk but the Charterers shall remove such equipment and fittings at the end of the period if	257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273
(iii) <u>Financial Security</u> - The Charterers shall maintain financial security or responsibility in respect of third party liabilities as required by any government, including federal, state or municipal or other division	201 202 203 204		



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"BARECON 2001" Standard Bareboat Charter

requested by the Owners. Any equipment including radio equipment on hire on the Vessel at time of delivery shall be kept and maintained by the Charterers and the Charterers shall assume the obligations and liabilities of the Owners under any lease contracts in connection therewith and shall reimburse the Owners for all expenses incurred in connection therewith, also for any new equipment required in order to comply with radio regulations.	274 275 276 277 278 279 280 281 282	provisions of the Financial Instrument and agree to acknowledge this in writing in any form that may be required by the mortgagee(s). The Owners warrant that they have not effected any mortgage(s) other than stated in Box 28 and that they shall not agree to any amendment of the mortgage(s) referred to in Box 28 or effect any other mortgage(s) without the prior consent of the Charterers, which shall not be unreasonably withheld.	346 347 348 349 350 351 352 353 354
(g) <u>Periodical Dry-Docking</u> - The Charterers shall dry-dock the Vessel and clean and paint her underwater parts whenever the same may be necessary, but not and as per Class requirements less than once during the period stated in Box 19 or, if Box 19 has been left blank, every sixty (60) calendar months after delivery or such other period as may be required by the Classification Society or flag State.	283 284 285 286 287 288 289	*) (Optional, Clauses 12(a) and 12(b) are alternatives; indicate alternative agreed in Box 28).	355 356
11. Hire (See also Clause 40)	290	13. Insurance and Repairs (See also Clause 47)	357
(a) The Charterers shall pay hire due to the Owners punctually in accordance with the terms of this Charter in respect of which time shall be of the essence.	291 292 293	(a) During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against hull and machinery, war and Protection and Indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with sub-clause 10(a)(iii)) in such form as the Owners shall in writing approve, which approval shall not be un-reasonably withheld. Such insurances shall be arranged by the Charterers to protect the interests of both the Owners and the Charterers and the mortgagee(s) (if any), and The Charterers shall be at liberty to protect under such insurances the interests of any managers they may appoint. Insurance policies shall cover the Owners and the Charterers according to their respective interests. Subject to the provisions of the Financial Instrument, if any, and the approval of the Owners and the insurers, the Charterers shall effect all insured repairs and shall undertake settlement and reimbursement from the insurers of all costs in connection with such repairs as well as insured charges, expenses and liabilities to the extent of coverage under the insurances herein provided for.	358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380
(b) The Charterers shall pay to the Owners for the hire of the Vessel a lump sum in the amount indicated in Box 22 which shall be payable not later than every thirty (30) running days in advance, the first lump sum being payable on the date and hour of the Vessel's delivery to the Charterers. Hire shall be paid continuously throughout the Charter Period.	294 295 296 297 298 299 300	The Charterers also to remain responsible for and to effect repairs and settlement of costs and expenses incurred thereby in respect of all other repairs not covered by the insurances and/or not exceeding any possible franchise(s) or deductibles provided for in the insurances.	381 382 383 384 385 386
(c) Payment of hire shall be made in cash without discount in the currency and in the manner indicated in Box 25 and at the place mentioned in Box 26.	301 302 303	All time used for repairs under the provisions of sub-clause 13(a) and for repairs of latent defects according to Clause 3(a) above, including any deviation, shall be for the Charterers' account.	387 388 389 390
(d) Final payment of hire, if for a period of less than thirty (30) running days, shall be calculated proportionally according to the number of days and hours remaining before redelivery and advance payment to be effected accordingly.	304 305 306 307 308	(b) If the conditions of the above insurances permit additional insurance to be placed by the parties, such cover shall be limited to the amount for each party set out in Box 30 and Box 31, respectively. The Owners or the Charterers as the case may be shall immediately furnish the other party with particulars of any additional insurance effected, including copies of any cover notes or policies and the written consent of the insurers of any such required insurance in any case where the consent of such insurers is necessary.	391 392 393 394 395 396 397 398 399 400
(e) Should the Vessel be lost or missing, hire shall cease from the date and time when she was lost or last heard of. The date upon which the Vessel is to be treated as lost or missing shall be ten (10) days after the Vessel was last reported or when the Vessel is posted as missing by Lloyd's, whichever occurs first. Any hire paid in advance to be adjusted accordingly.	309 310 311 312 313 314 315	(c) The Charterers shall upon the request of the Owners, provide information and promptly execute such documents as may be required to enable the Owners to comply with the insurance provisions of the Financial Instrument. Security Documents referred to in Part A of Schedule I of the Additional Clauses.	401 402 403 404 405
(f) Any delay in payment of hire shall entitle the Owners to interest at the rate per annum as agreed in Box 24. If Box 24 has not been filled in, the three months interbank offered rate in London (LIBOR or its successor) for the currency stated in Box 25, as quoted by the British Bankers' Association (BBA) on the date when the hire fell due, increased by 2 per cent., shall apply.	316 317 318 319 320 321 322	(d) Subject to the provisions of the Financial Instrument, if any, should the Vessel become an actual, constructive, compromised or agreed total loss under the insurances required under sub-clause 13(a), all insurance payments for such loss shall be paid to the Owners who shall distribute the moneys between the Owners and the Charterers according to their respective interests. The Charterers undertake to notify the Owners and the mortgagee(s), if any, of any occurrences in consequence of which the Vessel is likely to become a total loss as defined in this Clause.	406 407 408 409 410 411 412 413 414 415 416
(g) Payment of interest due under sub-clause 11(f) shall be made within seven (7) running days of the date of the Owners' invoice specifying the amount payable or, in the absence of an invoice, at the time of the next hire payment date.	323 324 325 326 327	(e) The Owners shall upon the request of the Charterers, promptly execute such documents as may	417 418
12. Mortgage (See Clause 56)	328		
(only to apply if Box 28 has been appropriately filled in)	329		
*) (a) The Owners warrant that they have not effected any mortgage(s) of the Vessel and that they shall not effect any mortgage(s) without the prior consent of the Charterers, which shall not be unreasonably withheld.	330 331 332 333		
*) (b) The Vessel chartered under this Charter is financed by a mortgage according to the Financial Instrument. The Charterers undertake to comply, and provide such information and documents to enable the Owners to comply, with all such instructions or directions in regard to the employment, insurances, operation, repairs and maintenance of the Vessel as laid down in the Financial Instrument or as may be directed from time to time during the currency of the Charter by the mortgagee(s) in conformity with the Financial Instrument. The Charterers confirm that, for this purpose, they have acquainted themselves with all relevant terms, conditions and	334 335 336 337 338 339 340 341 342 343 344 345		





PART II
"BARECON 2001" Standard Bareboat Charter

any loss, damage or expense incurred by the Owners arising out of or in relation to the operation of the Vessel by the Charterers, and against any lien of whatsoever nature arising out of an event occurring during the Charter Period. If the Vessel be arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Charterers, the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail. Without prejudice to the generality of the foregoing, the Charterers agree to indemnify the Owners against all consequences or liabilities arising from the Master, officers or agents signing Bills of Lading or other documents.	562 563 564 565 566 567 568 569 570 571 572 573 574 575 576	contain a paramount clause incorporating any legislation relating to carrier's liability for passengers and their luggage compulsorily applicable in the trade; if no such legislation exists, the passenger tickets shall incorporate the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, and any protocol thereto.	632 633 634 635 636 637 638
(b) If the Vessel be arrested or otherwise detained by reason of a claim or claims against the Owners, the Owners shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail. In such circumstances the Owners shall indemnify the Charterers against any loss, damage or expense incurred by the Charterers (including hire paid under this Charter) as a direct consequence of such arrest or detention.	577 578 579 580 581 582 583 584 585 586	*) Delete as applicable.	639
18. Lien The Owners to have a lien upon all cargoes, sub-hires and sub-freights belonging or due to the Charterers or any sub-charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.	587 588 589 590 591 592 593	24. Bank Guarantee (Optional, only to apply if Box 27 filled in) The Charterers undertake to furnish, before delivery of the Vessel, a first class bank guarantee or bond in the sum and at the place as indicated in Box 27 as guarantee for full performance of their obligations under this Charter.	640 641 642 643 644 645 646
19. Salvage All salvage and towage performed by the Vessel shall be for the Charterers' benefit and the cost of repairing damage occasioned thereby shall be borne by the Charterers.	594 595 596 597 598	25. Requisition/Acquisition (a) In the event of the Requisition for Hire of the Vessel by any governmental or other competent authority (hereinafter referred to as "Requisition for Hire") irrespective of the date during the Charter Period when "Requisition for Hire" may occur and irrespective of the length thereof and whether or not it be for an indefinite or a limited period of time, and irrespective of whether it may or will remain in force for the remainder of the Charter Period, this Charter shall not be deemed thereby or thereupon to be frustrated or otherwise terminated and the Charterers shall continue to pay the stipulated hire in the manner provided by this Charter until the time when the Charter would have terminated pursuant to any of the provisions hereof always provided however that in the event of "Requisition for Hire" any Requisition Hire or compensation received or receivable by the Owners shall be payable to the Charterers during the remainder of the Charter Period or the period of the "Requisition for Hire" whichever be the shorter.	647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666
20. Wreck Removal In the event of the Vessel becoming a wreck or obstruction to navigation the Charterers shall indemnify the Owners against any sums whatsoever which the Owners shall become liable to pay and shall pay in consequence of the Vessel becoming a wreck or obstruction to navigation.	599 600 601 602 603 604 605	(b) In the event of the Owners being deprived of their ownership in the Vessel or requisition for title by any governmental or other competent authority (hereinafter referred to as "Compulsory Acquisition"), then, irrespective of the date during the Charter Period when "Compulsory Acquisition" may occur, this Charter shall be deemed terminated as of the date of such "Compulsory Acquisition". In such event Charter Hire to be considered as earned and to be paid up to the date and time of such "Compulsory Acquisition". See Clause 48.	667 668 669 670 671 672 673 674 675 676 677
21. General Average The Owners shall not contribute to General Average.	606 607	26. War (a) For the purpose of this Clause, the words "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.	678 679 680 681 682 683 684 685 686 687 688 689 690 691 692
22. Assignment, Sub-Charter and Sale - See Clauses 42 and 62 (a) The Charterers shall not assign this Charter nor sub-charter the Vessel on a bareboat basis except with the prior consent in writing of the Owners, which shall not be unreasonably withheld, and subject to such terms and conditions as the Owners shall approve. (b) The Owners shall not sell the Vessel during the currency of this Charter except with the prior written consent of the Charterers, which shall not be unreasonably withheld, and subject to the buyer accepting an assignment of this Charter.	608 609 610 611 612 613 614 615 616 617 618	(b) The Vessel, unless the written consent of the Owners be first obtained, shall not continue to or go through any port, place, area or zone (whether of land or sea), or any waterway or canal, where it reasonably appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Owners, may be, or are likely to be, exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, the Owners shall have the right to require the Vessel to leave such area.	693 694 695 696 697 698 699 700 701 702 703 704
23. Contracts of Carriage (a) The Charterers are to procure that all documents issued during the Charter Period evidencing the terms and conditions agreed in respect of carriage of goods shall contain a paramount clause incorporating any legislation relating to carrier's liability for cargo compulsorily applicable in the trade; if no such legislation exists, the documents shall incorporate the Hague-Visby Rules. The documents shall also contain the New Jason Clause and the Both-to-Blame Collision Clause. (b) The Charterers are to procure that all passenger tickets issued during the Charter Period for the carriage of passengers and their luggage under this Charter shall	619 620 621 622 623 624 625 626 627 628 629 630 631		



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(c) The Vessel shall not load contraband cargo, or to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent's right of search and/or confiscation.	705 706 707 708 709 710 711 712	28. Termination (See Clauses 53)	778
(d) If the insurers of the war risks insurance, when Clause 14 is applicable, should require payment of premiums and/or calls because, pursuant to the Charterers' orders, the Vessel is within, or is due to enter and remain within, any area or areas which are specified by such insurers as being subject to additional premiums because of War Risks, then such premiums and/or calls shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due.	713 714 715 716 717 718 719 720 721	(a) Charterers' Default	779
(e) The Charterers shall have the liberty:	722	The Owners shall be entitled to withdraw the Vessel from the service of the Charterers and terminate the Charter with immediate effect by written notice to the Charterers if:	780
(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Vessel sails, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;	723 724 725 726 727 728 729 730 731	(i) the Charterers fail to pay hire in accordance with Clause 11. However, where there is a failure to make punctual payment of hire due to oversight, negligence, errors or omissions on the part of the Charterers or their bankers, the Owners shall give the Charterers written notice of the number of clear banking days stated in Box 24 (as recognised at the agreed place of payment) in which to rectify the failure, and when so rectified within such number of days following the Owners' notice, the payment shall stand as regular and punctual. Failure by the Charterers to pay hire within the number of days stated in Box 24 of their receiving the Owners' notice as provided herein, shall entitle the Owners to withdraw the Vessel from the service of the Charterers and terminate the Charter without further notice;	781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799
(ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;	732 733 734 735	(ii) the Charterers fail to comply with the requirements of (1) Clause 6 (Trading Restrictions) (2) Clause 12(a) (Insurance and Repairs) provided that the Owners shall have the option, by written notice to the Charterers, to give the Charterers a specified number of days grace within which to rectify the failure without prejudice to the Owners' right to withdraw and terminate under this Clause if the Charterers fail to comply with such notice;	800 801 802 803 804 805 806 807 808 809
(iii) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.	736 737 738 739 740 741 742 743 744	(iii) the Charterers fail to rectify any failure to comply with the requirements of sub-clause 10(a)(i) (Maintenance and Repairs) as soon as practically possible after the Owners have requested them in writing so to do and in any event so that the Vessel's insurance cover is not prejudiced.	810 811 812 813 814 815
(f) In the event of outbreak of war (whether there be a declaration of war or not) (i) between any two or more of the following countries: the United States of America; Russia; the United Kingdom; France; and the People's Republic of China, (ii) between any two or more of the countries stated in Box 36, both the Owners and the Charterers shall have the right to cancel this Charter, whereupon the Charterers shall redeliver the Vessel to the Owners in accordance with Clause 15, if the Vessel has cargo on board after discharge thereof at destination, or if debarred under this Clause from reaching or entering it at a near, open and safe port as directed by the Owners, or if the Vessel has no cargo on board, at the port at which the Vessel then is or if at sea at a near, open and safe port as directed by the Owners. In all cases hire shall continue to be paid in accordance with Clause 11 and except as aforesaid all other provisions of this Charter shall apply until redelivery.	745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763	(b) Owners' Default	816
27. Commission	764	If the Owners shall by any act or omission be in breach of their obligations under this Charter to the extent that the Charterers are deprived of the use of the Vessel and such breach continues for a period of fourteen (14) running days after written notice thereof has been given by the Charterers to the Owners, the Charterers shall be entitled to terminate this Charter with immediate effect by written notice to the Owners.	817 818 819 820 821 822 823 824
The Owners to pay a commission at the rate indicated in Box 33 to the Brokers named in Box 33 on any hire paid under the Charter. If no rate is indicated in Box 33, the commission to be paid by the Owners shall cover the actual expenses of the Brokers and a reasonable fee for their work.	765 766 767 768 769 770	(c) Loss of Vessel	825
If the full hire is not paid owing to breach of the Charter by either of the parties the party liable therefor shall indemnify the Brokers against their loss of commission. Should the parties agree to cancel the Charter, the Owners shall indemnify the Brokers against any loss of commission but in such case the commission shall not exceed the brokerage on one year's hire.	771 772 773 774 775 776 777	This Charter shall be deemed to be terminated if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss. For the purpose of this sub-clause, the Vessel shall not be deemed to be lost unless she has either become an actual total loss or agreement has been reached with her underwriters in respect of her constructive, compromised or arranged total loss or if such agreement with her underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred.	826 827 828 829 830 831 832 833 834 835 836
		(d) Either party shall be entitled to terminate this Charter with immediate effect by written notice to the other party in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of the other party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.	837 838 839 840 841 842 843 844 845
		(e) The termination of this Charter shall be without prejudice to all rights accrued due between the parties prior to the date of termination and to any claim that either party might have.	846 847 848 849
		29. Repossession (See Clauses 54 and 55)	850
		In the event of the termination of this Charter in	851



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accordance with the applicable provisions of <u>Clause 28</u> ,	852	*)—(c)—This Contract shall be governed by and construed	926
the Owners shall have the right to repossess the Vessel	853	in accordance with the laws of the place mutually agreed	927
from the Charterers at her current or next port of call, or	854	by the parties and any dispute arising out of or in	928
at a port or place convenient to them without hindrance	855	connection with this Contract shall be referred to	929
or interference by the Charterers, courts or local	856	arbitration at a mutually agreed place, subject to the	930
authorities. Pending physical repossession of the Vessel	857	procedures applicable there.	931
in accordance with this <u>Clause 28</u> , the Charterers shall	858	(d) Notwithstanding (a), (b) or (c) above, the parties	932
hold the Vessel as gratuitous bailee only to the Owners.	859	may agree at any time to refer to mediation any	933
The Owners shall arrange for an authorised represent-	860	difference and/or dispute arising out of or in connection	934
ative to board the Vessel as seen as reasonably	861	with this Contract.	935
practicable following the termination of the Charter. The	862	In the case of a dispute in respect of which arbitration	936
Vessel shall be deemed to be repossessed by the	863	has been commenced under (a), (b) or (c) above, the	937
Owners from the Charterers upon the boarding of the	864	following shall apply:-	938
Vessel by the Owners' representative. All arrangements	865	(i) Either party may at any time and from time to time	939
and expenses relating to the settling of wages,	866	elect to refer the dispute or part of the dispute to	940
disembarkation and repatriation of the Charterers'	867	mediation by service on the other party of a written	941
Master, officers and crew shall be the sole responsibility	868	notice (the "Mediation Notice") calling on the other	942
of the Charterers.	869	party to agree to mediation.	943
		(ii) The other party shall thereupon within 14 calendar	944
30. Dispute Resolution	870	days of receipt of the Mediation Notice confirm that	945
*) (a) This Contract shall be governed by and construed	871	they agree to mediation, in which case the parties	946
in accordance with English law and any dispute arising	872	shall thereafter agree a mediator within a further	947
out of or in connection with this Contract shall be referred	873	14 calendar days, failing which on the application	948
to arbitration in London in accordance with the Arbitration	874	of either party a mediator will be appointed promptly	949
Act 1996 or any statutory modification or re-enactment	875	by the Arbitration Tribunal ("the Tribunal") or such	950
thereof save to the extent necessary to give effect to	876	person as the Tribunal may designate for that	951
the provisions of this Clause.	877	purpose. The mediation shall be conducted in such	952
The arbitration shall be conducted in accordance with	878	place and in accordance with such procedure and	953
the London Maritime Arbitrators Association (LMAA)	879	on such terms as the parties may agree or, in the	954
Terms current at the time when the arbitration proceed-	880	event of disagreement, as may be set by the	955
ings are commenced.	881	mediator.	956
The reference shall be to three arbitrators. A party	882	(iii) If the other party does not agree to mediate, that	957
wishing to refer a dispute to arbitration shall appoint its	883	fact may be brought to the attention of the Tribunal	958
arbitrator and send notice of such appointment in writing	884	and may be taken into account by the Tribunal when	959
to the other party requiring the other party to appoint its	885	allocating the costs of the arbitration as between	960
own arbitrator within 14 calendar days of that notice and	886	the parties.	961
stating that it will appoint its arbitrator as sole arbitrator	887	(iv) The mediation shall not affect the right of either	962
unless the other party appoints its own arbitrator and	888	party to seek such relief or take such steps as it	963
gives notice that it has done so within the 14 days	889	considers necessary to protect its interest.	964
specified. If the other party does not appoint its own	890	(v) Either party may advise the Tribunal that they have	965
arbitrator and give notice that it has done so within the	891	agreed to mediation. The arbitration procedure shall	966
14 days specified, the party referring a dispute to	892	continue during the conduct of the mediation but	967
arbitration may, without the requirement of any further	893	the Tribunal may take the mediation timetable into	968
prior notice to the other party, appoint its arbitrator as	894	account when setting the timetable for steps in the	969
sole arbitrator and shall advise the other party	895	arbitration.	970
accordingly. The award of a sole arbitrator shall be	896	(vi) Unless otherwise agreed or specified in the	971
binding on both parties as if he had been appointed by	897	mediation terms, each party shall bear its own costs	972
agreement.	898	incurred in the mediation and the parties shall share	973
Nothing herein shall prevent the parties agreeing in	899	equally the mediator's costs and expenses.	974
writing to vary these provisions to provide for the	900	(vii) The mediation process shall be without prejudice	975
appointment of a sole arbitrator.	901	and confidential and no information or documents	976
In cases where neither the claim nor any counterclaim	902	disclosed during it shall be revealed to the Tribunal	977
exceeds the sum of US\$50,000 (or such other sum as	903	except to the extent that they are disclosable under	978
the parties may agree) the arbitration shall be conducted	904	the law and procedure governing the arbitration.	979
in accordance with the LMAA Small Claims Procedure	905	(Note: The parties should be aware that the mediation	980
current at the time when the arbitration proceedings are	906	process may not necessarily interrupt time limits.)	981
commenced.	907	(e) If <u>Box 35</u> in Part I is not appropriately filled in, sub-clause	982
*)—(b)—This Contract shall be governed by and construed	908	30(a) of this Clause shall apply. <u>Sub-clause 30(d)</u> shall	983
in accordance with Title 9 of the United States Code	909	apply in all cases.	984
and the Maritime Law of the United States and any	910	*) <u>Sub-clauses 30(a), 30(b) and 30(c) are alternatives;</u>	985
dispute arising out of or in connection with this Contract	911	indicate alternative agreed in <u>Box 35</u>.	986
shall be referred to three persons at New York, one to	912		
be appointed by each of the parties hereto, and the third	913	31. Notices	987
by the two so chosen; their decision or that of any two	914	(a) Any notice to be given by either party to the other	988
of them shall be final, and for the purposes of enforcing	915	party shall be in writing and may be sent by fax, telex,	989
any award, judgement may be entered on an award by	916	registered or recorded mail or by personal service.	990
any court of competent jurisdiction. The proceedings	917	(b) The address of the Parties for service of such	991
shall be conducted in accordance with the rules of the	918	communication shall be as stated in <u>Boxes 3 and 4</u>	992
Society of Maritime Arbitrators, Inc.	919	respectively. Clause 63.	993
In cases where neither the claim nor any counterclaim	920		
exceeds the sum of US\$50,000 (or such other sum as	921		
the parties may agree) the arbitration shall be conducted	922		
in accordance with the Shortened Arbitration Procedure	923		
of the Society of Maritime Arbitrators, Inc. current at	924		
the time when the arbitration proceedings are commenced.	925		





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**PART IV
HIRE/PURCHASE AGREEMENT**

(Optional, only to apply if expressly agreed and stated in Box 42)

<p>OPTIONAL PART</p>

On expiration of this Charter and provided the Charterers have fulfilled their obligations according to Part I and II as well as Part III, if applicable, it is agreed, that on payment of the final payment of hire as per <u>Clause 14</u> the Charterers have purchased the Vessel with everything belonging to her and the Vessel is fully paid for.	1 2 3 4 5 6 7	in exchange for payment of the last month's hire instalment the Sellers shall furnish the Buyers with a Bill of Sale duly attested and legalized, together with a certificate setting out the registered encumbrances, if any. On delivery of the Vessel the Sellers shall provide for deletion of the Vessel from the Ship's Register and deliver a certificate of deletion to the Buyers. The Sellers shall, at the time of delivery, hand to the Buyers all classification certificates (for hull, engine, anchors, chains, etc.), as well as all plans which may be in Sellers' possession.	28 29 30 31 32 33 34 35 36 37 38
<i>In the following paragraphs the Owners are referred to as the Sellers and the Charterers as the Buyers.</i>	8 9		
The Vessel shall be delivered by the Sellers and taken over by the Buyers on expiration of the Charter.	10 11	The Wireless Installation and Nautical Instruments, unless on hire, shall be included in the sale without any extra payment.	39 40 41
The Sellers guarantee that the Vessel, at the time of delivery, is free from all encumbrances and maritime liens or any debts whatsoever other than those arising from anything done or not done by the Buyers or any existing mortgage agreed not to be paid off by the time of delivery. Should any claims, which have been incurred prior to the time of delivery be made against the Vessel, the Sellers hereby undertake to indemnify the Buyers against all consequences of such claims to the extent it can be proved that the Sellers are responsible for such claims. Any taxes, notarial, consular and other charges and expenses connected with the purchase and registration under Buyers' flag, shall be for Buyers' account. Any taxes, consular and other charges and expenses connected with closing of the Sellers' register, shall be for Sellers' account.	12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	The Vessel with everything belonging to her shall be at Sellers' risk and expense until she is delivered to the Buyers, subject to the conditions of this Contract and the Vessel with everything belonging to her shall be delivered and taken over as she is at the time of delivery, after which the Sellers shall have no responsibility for possible faults or deficiencies of any description.	42 43 44 45 46 47 48
		The Buyers undertake to pay for the repatriation of the Master, officers and other personnel if appointed by the Sellers to the port where the Vessel entered the Bareboat Charter as per <u>Clause 3</u> (Part II) or to pay the equivalent cost for their journey to any other place.	49 50 51 52 53



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OPTIONAL PART

PART V
PROVISIONS TO APPLY FOR VESSELS REGISTERED IN A BAREBOAT CHARTER REGISTRY

(Optional, only to apply if expressly agreed and stated in Box 43)

4—Definitions	4	3.—Termination of Charter by Default	47
For the purpose of this PART V, the following terms shall have the meanings hereby assigned to them:	2	If the Vessel chartered under this Charter is registered in a Bareboat Charter Registry as stated in <u>Box 44</u> , and	18
<u>"The Bareboat Charter Registry"</u> shall mean the registry of the State whose flag the Vessel will fly and in which the Charterers are registered as the bareboat charterers during the period of the Bareboat Charter.	3	if the Owners shall default in the payment of any amounts due under the mortgage(s) specified in <u>Box 28</u> , the Charterers shall, if so required by the mortgagee, direct the Owners to re-register the Vessel in the Underlying Registry as shown in <u>Box 45</u> .	49
<u>"The Underlying Registry"</u> shall mean the registry of the state in which the Owners of the Vessel are registered as Owners and to which jurisdiction and control of the Vessel will revert upon termination of the Bareboat Charter Registration.	4	In the event of the Vessel being deleted from the Bareboat Charter Registry as stated in <u>Box 44</u> , due to a default by the Owners in the payment of any amounts due under the mortgage(s), the Charterers shall have the right to terminate this Charter forthwith and without prejudice to any other claim they may have against the Owners under this Charter.	20
	5		21
	6		22
	7		23
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	11		27
	12		28
2—Mortgage	13		29
The Vessel chartered under this Charter is financed by a mortgage and the provisions of <u>Clause 12(b)</u> (Part II) shall apply.	14		30
	15		31
	16		



PART II — ADDITIONAL CLAUSES 32 TO 65 TO THE SUB-BAREBOAT CHARTER IN BARECON 2001 FORM DATED NOVEMBER 23, 2010 AND MADE BETWEEN PRIME HILL MARITIME LTD (AS HEAD-CHARTERERS) AND GRAND RODOSI INC. (AS SUB-CHARTERERS) IN RELATION TO M.V. "GRAND RODOSI"

ADDITIONAL DEFINITIONS

- 32.1 The following Clauses shall be deemed to be incorporated as an integral part of this Sub-Charter. In the event of any conflict between the provisions of these Additional Clauses and the printed provisions of this Sub-Charter as annexed hereto, the provisions of these Additional Clauses hereunder shall prevail.
- 32.2 In this Sub-Charter, including the Recitals, the following expressions shall have the following meanings:
- "Acquisition Agreement"** means acquisition agreement of even date herewith entered into between the Owners, Prime Lake Shipping Ltd, Prime Time Shipping Ltd and Prime Mountain Shipping Ltd (together as buyers), the Head Charterers, Prime Lake Maritime Ltd, Prime Time Maritime Ltd and Prime Mountain Maritime Ltd (together as head-charterers) and Australia Holdings Ltd., Brazil Holdings Ltd., China Holdings Ltd. and Grand Rodosi Inc. (together as sellers) relating to, *inter alia*, the sale and purchase of the Vessel, the Purchase Obligation and the Call Option of the Sub-Charterers;
- "Approved Brokers"** means the insurance brokers appointed by the Sub-Charterers as shall from time to time be approved in writing by the Approved Mortgagee;
- "Approved Mortgage"** and **"Approved Mortgagee"** have the meanings given to them in Clause 56;
- "Banking Day"** means a day (excluding Saturdays and Sundays) on which banks are open for business in London and Athens and (if payment is required to be made on such day) in New York City and the place to which such payment is required to be made;
- "Call Option"** means the call option available to the Sub-Charterers in accordance with the terms of the Acquisition Agreement;
- "Call Option Sum"** means the aggregate amount which would be payable by the Sub-Charterers to the Head-Charterers upon exercise of the Call Option at any relevant time in accordance with the terms of the Acquisition Agreement;
- "Classification Society"** means Bureau Veritas or such other classification society (being a member of IACS) as may be agreed between the Sub-Charterers and the Head-Charterers in writing;
- "Compulsory Acquisition"** means requisition for title or other compulsory acquisition, requisition, appropriation, expropriation, deprivation, forfeiture or confiscation for any
-

reason of the Vessel by any government entity or other competent authority, whether *de jure* or *de facto*, but shall exclude requisition for use or hire not involving requisition of title;

“Delivery Date” means the date on which the Vessel is delivered to the Sub-Charterers under this Sub-Charter being the same date on which the Vessel is delivered from the Sub-Charterers (as sellers) to the Owners (as buyers) in accordance with the terms of the Acquisition Agreement and the MOA;

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

“Encumbrance” means any mortgage, charge, (whether fixed or floating), pledge, lien, hypothecation, assignment, trust arrangement or security interest or other encumbrance of any kind securing any obligation of any person or having the effect of conferring security or any type of preferential arrangement (including, without limitation, title transfer and/or retention arrangements having a similar effect);

“Financial Indebtedness” means any indebtedness in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above;

“Flag State” means the Republic of Liberia or such other flag state which may be approved from time to time by the Owners, the Head-Charterers, the Sub-Charterers and the Approved Mortgagee as the case may be in accordance with this Sub-Charter;

“Head-Charter” means the bareboat charter of even date herewith between the Owners and the Head-Charterers;

“Head-Charterers’ Guarantee” means the guarantee of the Head-Charterers’ obligations under this Charter to be executed the Head-Charterers’ Guarantor;

“Head-Charterers’ Guarantor” means Prime Maritime Holding Ltd a company incorporated in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands;

“Head-Charterers’ Encumbrance” means any Encumbrance created or permitted to exist by the Head-Charterers or exercised, asserted or claimed against the Vessel, the Insurances or any Requisition Compensation or any part thereof (and not occasioned by any act, omission or default of the Sub-Charterers) in respect of:

(a) any Indebtedness or liability or obligation whatsoever of the Head-Charterers;

(b) any breach by the Head-Charterers of their obligations to the Sub-Charterers under this Sub-Charter; or

(c) any other acts or omissions whatsoever of the Head-Charterers whether or not related to the transactions contemplated by this Sub-Charter;

“Indebtedness” means any obligation for the payment or repayment of moneys, whether present or future, actual or contingent, sole or joint;

“Insurance Documents” means all slips, cover notes, contracts, policies, certificates of entry or other insurance documents evidencing or constituting the Insurances from time to time in effect;

“Insurances” means all policies and contracts of insurance (including all entries of the Vessel in a protection and indemnity association and a war risks association) which are from time to time taken out or entered into in respect of the Vessel or otherwise howsoever (as specified in greater detail in this Sub-Charter) and all benefits of such

policies and contracts, including all claims of whatsoever nature and return of premiums as shall from time to time be approved in writing by the Approved Mortgagee;

“Insurers” means the underwriters, insurance companies and mutual insurance associations with or by which the Insurances are effected as shall from time to time be approved in writing by the Approved Mortgagee;

“ISM Code” means The International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the International Maritime Organisation as Resolutions A.741(18) and A.913(22);

“ISPS Code” means Part A of The International Ship and Port Facility Security Code as adopted by the International Maritime Organisation;

“Major Casualty” means any casualty to the Vessel or incident (other than a Total Loss) in respect of which the claim or the aggregate of the claims against all insurers, before adjustment for any franchise or deductible exceeds five hundred thousand United States Dollars (US\$500,000) or the equivalent in any other currency;

“Manager” means Newlead Bulkers S.A., a company organized and existing under the laws of the Greece, having its registered office at 83 Akti Miaouli & Flessa, Piraeus 18538 Greece, or any other company other than the Sub-Charterers which the Sub-Charterers may appoint, and which if not a subsidiary or affiliated company of the Sub-Charterers, the Head-Charterers and the Approved Mortgagee may approve, such approval not to be unreasonably withheld, as the manager of the Vessel;

“Manager’s Undertaking” means, in relation to the Vessel, the undertaking to be executed by the Manager with respect to its management of the Vessel and the rights of the Approved Mortgagee in such form as may be approved by the Head-Charterer and the Approved Mortgagee;

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

- (a) the financial condition or business of the Sub-Charterers or the Sub-Charterers’ Guarantor;
- (b) the ability of the Sub-Charterers or the Sub-Charterers’ Guarantor to perform and comply with their respective obligations under this Sub-Charter and the Sub-Charterers’ Guarantee;
- (c) the validity, legality or enforceability of this Sub-Charter or the Sub-Charterers’ Guarantee; or
- (d) the validity, legality or enforceability of any Encumbrance expressed to be created pursuant to any Security Document or the priority or ranking of that Encumbrance;

“MOA” means the memorandum of agreement dated 2010 made between the Sellers and the Owners for the sale of the Vessel by the Sellers to the Owners;

“Owners” means Prime Hill Shipping Ltd a company incorporated in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands;

“Permitted Encumbrance” means:

- (a) any Encumbrance created by or pursuant to this Sub-Charter;
- (b) any Head-Charterers Encumbrance;
- (c) any Encumbrance in favour of the Approved Mortgagee;
- (d) any Encumbrance for taxes of any kind either not yet assessed or, if assessed, not yet due and payable or being contested in good faith by appropriate proceedings (and for payment of which adequate reserves have been provided); or
- (e) liens on the Vessel for crew’s wages or salvage or under the Time Charter or otherwise arising in the normal course of trading or by operation of law provided that the claims in respect of which such liens may arise are promptly discharged or settled;

“Purchase Obligation” means the purchase obligation of the Sub-Charterers in accordance with the terms of the Acquisition Agreement;

“Purchase Price” means \$17,500,000 paid (or to be paid) by the Owners to the Sellers in accordance with the MOA;

“Quite Enjoyment” shall have the meaning described in Clause 57;

“Security Documents” means:

- (a) the Approved Mortgage;
- (b) the Manager’s Undertaking;
- (c) the Sub-Charterers’ Guarantee;
- (d) the Head-Charterers’ Guarantee;
- (e) a multipartite agreement to be entered into between the Owners, the Head-Charterers, the Sub-Charterers and the Approved Mortgagee assigning, *inter alia*, the Head-Charter, the Sub-Charter, the Sub-Charterers Guarantee, the Time Charter and all Insurances in favour of the Approved Mortgagee (the **“Multipartite Agreement”**);

- (f) a specific assignment of any third party charter (in excess of twelve (12) months) other than the Time Charter entered into by the Sub-Charterer in favour of the Approved Mortgagee;
- (g) an accounts assignment, pledge and charge of the earnings account (held by the Sub-Charterer with the Approved Mortgagee) entered into by the Sub-Charterer in favour of the Approved Mortgagee; and
- (h) any and every other document from time to time executed as security for, or to establish a subordination or priorities arrangement in relation to, all or any of the obligations of any person to the Owner, the Head-Charterers or the Approved Mortgagee or any of the documents referred to in this definition;

"Sellers" means Grand Rodosi Inc. (as seller) of 80 Broad Street, Monrovia, Liberia with registration number C-109303;

"Sub-Charterers' Guarantee" means the guarantee of the Sub-Charterers' obligations under this Sub-Charter to be executed by the Sub-Charterers' Guarantor in such form as may be approved by the Head-Charterer and the Approved Mortgagee;

"Sub-Charterers' Guarantor" means NewLead Holdings Ltd., Canon Street, 22 Victoria Street, Hamilton HM12, Bermuda;

"Termination Event" means any of the events specified in Clause 53.1;

"Time Charter" means the time charter between A.W.B. (Geneva) S.A. of Geneva and the Sub-Charterers into which the Vessel will be redelivered upon delivery under this Sub-Charter or such other charter acceptable to the Approved Mortgagee;

"Total Loss" has the meaning given to it in Clause 48.2;

"Transaction Head-Charterers" means together each of the Prime Mountain Maritime Ltd, Prime Lake Maritime Ltd, Prime Time Maritime Ltd and Prime Hill Maritime Ltd in their capacity as head-charterers pursuant to the Transaction Sub-Charters and **"Transaction Head-Charterer"** shall mean any one of them;

"Transaction Sub-Charterers" means together each of the Australia Holdings Ltd., Brazil Holdings Ltd., China Holdings Ltd. and Grand Rodosi Inc. in their capacity as sub-charterers pursuant to the Transaction Sub-Charters and **"Transaction Sub-Charterer"** shall mean any one of them;

"Transaction Sub-Charters" means together each of the following sub-bareboat charters:

- (a) this Sub-Charter;

- (b) the sub-bareboat charter of even date herewith entered into between Prime Lake Maritime Ltd (as head-charterer) and Brazil Holdings Ltd. (as sub-charterer) in relation to m.v. "BRAZIL";
- (c) the sub-bareboat charter of even date herewith entered into between Prime Time Maritime Ltd (as head-charterer) and China Holdings Ltd. (as sub-charterer) in relation to m.v. "CHINA";
- (d) the sub-bareboat charter of even date herewith entered into between Prime Mountain Maritime Ltd (as head-charterer) and Australia Holdings Ltd. (as sub-charterer) in relation to m.v. "AUSTRALIA",

and "**Transaction Sub-Charter**" shall mean any one of them; and

"Warrants Instrument" means the warrants instrument to be entered into by the Sub-Charterers' Guarantor in favour of Lemissoler Corporate Management Limited in connection with the warrants to be issued annually in consideration of the fees payable to Lemissoler Corporate Management Limited in connection with the Transaction Sub-Charters.

32.3 In Clause 43.2:

"excess risks" means the proportion of claims not recoverable in respect of general average and salvage, or under the ordinary running-down clause, as a result of the value at which a vessel is assessed for the purpose of such claims exceeding her insured value;

"protection and indemnity risks" means the usual risks covered by the standard form rules of members of the International Group of protection and indemnity associations, including the proportion not otherwise recoverable in case of collision under the ordinary running-down clause; and

"war risks" means all risks referred to in the Institute Time Clauses (Hulls) (1/10/83) and (1/11/95) including, but not limited to, the risk of mines, blocking and trapping, missing vessel, confiscation 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) or Clause 29 of the International Hull Clauses (01/11/2002) or Clause 29 of the International Hull Clauses (01/11/2003).

32.4 The following expressions shall be construed in the following manner:

"Owners", "Head-Charterers", "Sub-Charterers" and **"Approved Mortgagee"** shall include their respective successors and assigns;

"person" includes include any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;

“subsidiary” means any company or entity directly or indirectly authorised by such person, and for this purpose control means either the ownership of more than fifty per cent (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity or the power to direct policies and management whether by contract or otherwise;

“taxes” means all present and future taxes, levies, imposts, duties, charges, fees, deductions and withholdings, and any restrictions or conditions resulting in a charge whatsoever, together with interest thereon and penalties with respect thereto, if any, and any payments of principal, interest, charges, fees or other amounts made on or in respect thereof, and **“Tax”** and **“Taxation”** shall be construed accordingly.

32.5 Unless the context otherwise requires, words in the singular include the plural and vice versa.

32.6 References to any document include the same as varied, supplemented or replaced from time to time.

32.7 References to any enactment include re-enactments, amendments and extensions thereof.

32.8 Clause headings are for convenience of reference only and are not to be taken into account in construction.

32.9 Unless otherwise specified, references to Clauses, Recitals, and Schedules are to Clauses of and the Recitals and Schedules to this Sub-Charter.

32.10 In this Sub-Charter, references to periods of **“months”** shall mean a period beginning in one calendar month and ending in the relevant calendar month on the day numerically corresponding to the day of the calendar month in which such period started, provided that (a) if such period started on the last Banking Day in a calendar month, or if there is no such numerically corresponding day, such period shall end on the last Banking Day in the relevant calendar month and (b) if such numerically corresponding day is not a Banking Day, such period shall end on the next following Banking Day in the same calendar month, or if there is no such Banking Day, such period shall end on the preceding Banking Day (and **“month”** and **“monthly”** shall be construed accordingly).

32.11 A person who is not a party to this Sub-Charter may not enforce, or otherwise have the benefit of, any provision of this Sub-Charter under the Contracts (Rights of Third Parties) Act 1999, except as provided in Clause 38.6.

33. **REPRESENTATIONS AND WARRANTIES**

33.1 The Sub-Charterers represent and warrant that the matters set out in Schedule 2, Part A are true at the date of this Sub-Charter.

- 33.2 The Head-Charterers represent and warrant that the matters set out in Schedule 2, Part B are true at the date of this Sub-Charter.
- 33.3 The Head-Charterers and the Sub-Charterers agree that the representations and warranties set out in Schedule 2 shall survive the execution of this Sub-Charter and shall be deemed to be repeated on the Delivery Date and on each date on which a payment of hire is due from the Sub-Charterers to the Head-Charterers with reference to the facts and circumstances then subsisting, as if made on such date.
34. **DELIVERY**
- 34.1 The Vessel shall be delivered on the Delivery Date.
- 34.2 On the Delivery Date the Vessel shall be delivered to the Sub-Charterers under this Sub-Charter and the Sub-Charterers shall deliver to the Head-Charterers a duly executed Protocol of Delivery and Acceptance for the Vessel, substantially in the form set out in Schedule 4, which shall be conclusive proof that the Sub-Charterers have unconditionally accepted the Vessel for charter under this Sub-Charter without any reservations whatsoever.
- 34.3 The Sub-Charterers shall be bound to accept delivery of the Vessel from the Head-Charterers as and where she is upon her delivery from the Sellers to the Owners and from the Owners to the Head-Charterers.
- 34.4 If, for any reason:
- 34.4.1 the Owners become entitled to cancel and terminate the MOA; or
- 34.4.2 the Sellers terminate the MOA or fail to deliver the Vessel under the MOA,
- 34.4.3 the Head-Charterers shall be excused from giving delivery of the Vessel to the Sub-Charterers, and shall be entitled, without liability to the Sub-Charterers, to terminate this Sub-Charter by giving notice in writing to the Sub-Charterers.
- 34.5 The Head-Charterers warrant that the Vessel, at time of delivery, is free from all charters (other than this Sub-Charter, the Head-Charter and the Time Charter), Encumbrances, mortgages (except for any Approved Mortgage or Permitted Encumbrance) and maritime liens or any other debts whatsoever.
- 34.6 The Vessel shall be delivered to the Sub-Charterers with all stores, lubricants, bunkers as: (i) delivered to the Owners under the MOA; and (ii) delivered to the Head Charterers under the Head-Charter. The Head-Charterers will deliver to the Sub-Charterers the remaining on board bunkers and lubricants at the time of delivery at no cost. And the Sub-Charterers shall redeliver the Vessel with same quantities and grades of bunkers and lubricants as on delivery. The Head-Charterers shall at the time of redelivery pay for the

- remaining bunkers and lube oils on board at prices evidenced by the Sub-Charterers' last invoice.
- 34.7 If the Vessel is lost or is or becomes a Total Loss as a result of an event or events occurring prior to delivery under this Sub-Charter, this Sub-Charter shall automatically terminate without any liability whatsoever or any claim for damages by either party upon the other.
- 34.8 The Sub-Charterers will give the Head-Charterers all such assistance with respect to the registration of the Vessel, as the Head-Charterers may reasonably request, and will reimburse to the Head-Charterers (in so far as paid by the Head-Charterers) the costs of registration of the Vessel under the Flag State (but not of the Approved Mortgage).
- 34.9 The Vessel shall be delivered to the Sub-Charterers with all stores, lubricants, bunkers and spares which are on the Vessel when she is: (i) delivered to the Owners under the MOA; and (ii) delivered to the Head Charterers under the Head-Charter.
35. **FLAG STATE**
- 35.1 The Vessel shall on the Delivery Date be registered in the name of the Owners under the laws and flag of the Flag State and the Head-Charterers and the Sub-Charterers shall provide the Owners with all such assistance as the Owners may reasonably require in obtaining and maintaining such registration and shall not during the Charter Period do or suffer anything to be done which might imperil such registration. Initial registration costs shall be for Owners' account but thereafter all registration, tonnage and other taxes, imposts, dues and payments from time to time payable in connection with maintaining such registration shall be for the Sub-Charterers' account and be payable on demand. No change shall be made to the Vessel's Flag State without Sub-Charterers' consent in writing (such consent not to be unreasonably withheld, delayed or conditioned) and the costs of any change (unless requested by Sub-Charterers) shall be for Owners' account.
- 35.2 The Sub-Charterers shall have the right, subject to the prior approval of the Owners and the Approved Mortgagee (which the Head-Charterers shall procure is not unreasonably withheld, conditioned or delayed), and subject to the Sub-Charterers paying all costs associated therewith to require that the Owners register their title in another Flag State of the Sub-Charterers' choice.
- 35.3 The Sub-Charterers acknowledge that it shall be reasonable for the Owners, the Head-Charterers and the Approved Mortgagee to withhold their approval if the Owners' title to the Vessel or the Approved Mortgagee's security would be adversely affected, or if either of them would become subject to additional taxes or other costs, unless indemnified by the Sub-Charterers, by reason of such change.
- 35.4 The name of the Vessel shall be chosen by the Sub-Charterers subject to the Owners' and Head-Charterers' consent which shall not be unreasonably withheld. Neither the Owners

- nor the Head-Charterers shall have any right to change the name of the Vessel, without the Sub-Charterers' consent which shall not be unreasonably withheld or delayed.
- 35.5 The Sub-Charterers shall have the right to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag provided that painting, re-painting, installation and re-installation shall be for the Sub-Charterers' account.
36. **TIME AND PLACE FOR DELIVERY AND CANCELLATION**
- 36.1 The Vessel shall be delivered to Sub-Charterers immediately upon: FIRSTLY delivery of the Vessel by the Seller to the Owners under the MOA; and SECONDLY delivery of the Vessel by the Owners to the Head-Charterers under the Head-Charter.
- 36.2 The Vessel shall be delivered by the Head-Charterers and taken over by the Sub-Charterers safely afloat at the place of delivery by the Seller to the Owners under the MOA.
- 36.3 Should the Vessel not be: (i) delivered to the Owners by the Seller under the MOA (unless such failure is caused by default of the Owners); and/or (ii) delivered to the Head-Charterers by the Owners under the Head-Charter, this Charter shall terminate without claim by either party upon the other.
37. **CONDITIONS PRECEDENT TO DELIVERY**
- 37.1 The obligation of the Head-Charterers to deliver the Vessel to the Sub-Charterers under the terms of this Sub-Charter shall be subject to and conditional upon the satisfaction (which the Sub-Charterers hereby undertake to procure by the Delivery Date) of the Conditions listed in Schedule 1, Part A, which the Head-Charterers may in their discretion waive.
- 37.2 The obligation of the Sub-Charterers to accept delivery of the Vessel under the terms of this Sub-Charter shall be subject to and conditional upon the satisfaction of the Conditions listed in Schedule 1, Part B, which the Sub-Charterers may in their discretion waive.
- 37.3 Without prejudice to Clause 37.1, if the Head-Charterers in their discretion deliver the Vessel to the Sub-Charterers under this Sub-Charter notwithstanding that one or more of the conditions precedent specified in Clause 37.1 remains unsatisfied on the Delivery Date, then the Sub-Charterers shall procure the satisfaction of such condition or conditions precedent within fourteen (14) days thereafter or such longer period as the Head-Charterers in their absolute discretion agree in writing.

38. **EXCLUSIONS**

- 38.1 Unless otherwise specified in this Sub-Charter, the Head-Charterers shall not be liable for any losses, costs, charges, expenses, fees, payments, penalties, fines, damages or other sanctions of a monetary nature or any loss of profit:
- 38.1.1 resulting directly or indirectly from any defect or alleged defect in the Vessel or any failure of the Vessel to comply with any of the matters set out in this Sub-Charter or otherwise howsoever;
- 38.1.2 arising from any delay in the delivery of the Vessel; or
- 38.1.3 arising from the detention or arrest (whether registered or not) of the Vessel and provided that such process is not attributable to an act, omission or default of the Owners or the Head-Charterers.
- 38.2 The Sub-Charterers hereby acknowledge that the Head-Charterers make no representation or warranty, express or implied (and whether statutory or otherwise), as to seaworthiness, condition, design, operation, performance, capacity, merchantability or fitness for use of the Vessel or as to its eligibility for any particular trade or operation or any other representation or warranty whatsoever, express or implied, with respect to the Vessel or her engines, machinery, boats, tackle, outfit, fuel and consumable or other stores, and the Sub-Charterers hereby waive all their rights and claims whatsoever against the Head-Charterers and howsoever arising in respect of the foregoing.
- 38.3 Acceptance by the Sub-Charterers of the Vessel hereunder shall be deemed conclusive, as between the Head-Charterers and the Sub-Charterers, that the Vessel is seaworthy in accordance with the provisions of applicable law, in good working order and repair and without defect or inherent vice in title, (other than as may arise from the deliberate act or omission of the Head-Charterers), condition, design, operation or fitness for use, whether or not discoverable by the Head-Charterers and free and clear of all Encumbrances other than the Approved Mortgage and Permitted Encumbrances.
- 38.4 The Head-Charterers shall not be under any liability whatsoever and howsoever arising, other than where such liability arises from the deliberate act or grossly negligent omission of the Head-Charterers, in respect of the injury, death, loss, damage or delay of or to or in connection with any vessel (including the Vessel) or any person (which expression includes, without prejudice to the generality thereof, states, governments, municipalities and local authorities) or property whatsoever, whether on board the Vessel or elsewhere irrespective of whether such injury, death (other than death or personal injury which may not be excluded under Section 2(1) of the Unfair Contract Terms Act 1977), loss, damage or delay shall arise from the unseaworthiness of the Vessel.
- 38.5 The Sub-Charterers agree that the Head-Charterers shall be under no liability to supply any replacement Vessel or any piece or part thereof during any period when the Vessel is

- 38.6 unusable and the Head-Charterers shall not be liable to the Sub-Charterers or any other person as a result of the Vessel being unusable. Every exclusion and limitation contained in this Sub-Charter applicable to either party hereto or to which either party hereto is entitled under this Sub-Charter shall also be available and shall extend to protect the directors, employees, servants, independent contractors and agents of such party in respect of acts or omissions in the course of their employment or service.
39. **EXTENSION OF CHARTER PERIOD**
- 39.1 The Sub-Charterers may extend the Charter Period by one period of 30 days, provided that they give the Head-Charterers not less than fifteen (15) Banking Days prior written notice before the date on which the Charter Period would otherwise have expired.
- 39.2 Upon receipt by the Head-Charterers of the notice referred to in Clause 39.1, the Head-Charterers shall provide such notice to the Owners as may be required in accordance with the terms of the Head Charter to extend the Head Charter for such period being equal to the extended Charter Period of this Sub-Charter.
- 39.3 If the Vessel is on a voyage (otherwise than under requisition for hire) at the time when this Sub-Charter would (but for the provisions of this Clause 39) have terminated, the Charter Period shall be extended for such additional period as may be necessary for the completion of such voyage. The Charter Period shall also be extended for such additional period as may be necessary to bring the Vessel to a port of redelivery as hereinafter provided. Hire shall continue to be paid for the period of extension at the rate in force before the start of such extension, as provided in Clause 40.
40. **PAYMENT OF HIRE AND OTHER MONEYS**
- 40.1 The Sub-Charterers shall throughout the Charter Period and any extended Charter Period pay to Head-Charterers hire for the Vessel every thirty (30) days in advance commencing on and from the date and hour of her delivery to the Sub-Charterers on charter in accordance with Clause 34 and continuing until the date and hour of her redelivery to the Head-Charterers pursuant to Clause 15 at the rates specified below:
- 40.1.1 The monthly rate of hire payable by the Sub-Charterers shall be the rate (the "**Hire Rate**") set out in Schedule 5.
- 40.1.2 The first such instalment of hire shall be due and payable on the Delivery Date and subsequent instalments shall be payable at monthly intervals thereafter. All payments of hire shall be made on the basis of a year of 365 days (366 days in a leap year).
- 40.1.3 In addition to the first such instalment of hire payable at the Hire Rate a lump sum of \$1,383,000 (the "**Lump Sum**") shall be set-off with part of the Purchase

- Price payable to the Sub-Charterers in their capacity as "Sellers" under the MOA on the Delivery Date.
- 40.1.4 The final payment of hire, if for a period of less than one month, shall be calculated proportionally according to the number of days and hours remaining before redelivery and advance payment shall be effected accordingly. The final adjustment of hire, depending on the actual time and date of redelivery, shall be made immediately after redelivery.
- 40.2 Unless otherwise specified by the Head-Charterers, all moneys to be paid by the Sub-Charterers under this Sub-Charter shall be paid to the Head-Charterers:
- 40.2.1 on their due date in Dollars;
- 40.2.2 to the account of Prime Maritime Holding Ltd held with Marfin Egnatia Bank S.A. with account number 0280587428;
- 40.2.3 bear as reference the Vessel's name.
- 40.3 All payments due shall be made on a Banking Day. If the due date for the payment falls on a day which is not a Banking Day:
- 40.3.1 the payment or payments shall be fall due and be made on the first Banking Day thereafter, provided this falls in the same calendar month; and
- 40.3.2 if it does not, payment shall fall due and be made on the immediately preceding Banking Day.
- 40.4 All payments of hire and other moneys payable by the Sub-Charterers under or pursuant to this Sub-Charter shall be made:
- 40.4.1 without any set-off or counterclaim whatsoever; and
- 40.4.2 free and clear of, and without deduction for, or on account of, any bank charges and any present or future taxes (other than taxes on the overall net income of the Head-Charterers), unless the Sub-Charterers are compelled by law to make payment subject to any such tax.
- 40.5 If the Sub-Charterers are compelled by law to make payment subject to any such taxes, the Sub-Charterers will
- 40.5.1 promptly notify the Head-Charterers upon becoming aware of such requirement;
- 40.5.2 pay to the Head-Charterers such additional amounts as may be necessary to ensure that the Head-Charterers receive a net amount equal to the full amount which the Head-Charterers would have received had such payment not been subject to such taxes; and

- 40.5.3 deliver to the Head-Charterers copies of the receipts from the relevant government authority or body evidencing the due and punctual payment of such taxes.
- 40.6 The Sub-Charterers shall pay to the Head-Charterers the Value Added Tax (if any) legally due on any payments of hire or other sums payable by the Sub-Charterers under this Sub-Charter at the rate applicable for the time being (by addition to, and at the time of payment of, the said hire or other sums).
- 40.7 The Sub-Charterers shall pay on demand by the Head-Charterers an additional amount by way of compensation for late payment (the "**Additional Amount**") on any unpaid sum due under this Sub-Charter (the "**Unpaid Amount**") from and including the date upon which it fell due for payment until the date of actual payment (the "**Number of Days**") (as well after as before judgment) on the basis of the Unpaid Amount multiplied by the Number of Days multiplied by 0.000165. All payments of an Additional Amount shall be calculated on the basis of the actual number of days elapsed.
- 40.8 The Vessel shall not at any time be placed off-hire and the Sub-Charterers' obligation to pay hire shall be absolute and irrevocable during the Charter Period, irrespective of any occurrence or contingency whatsoever, including, but not limited to:
- 40.8.1 any unavailability of the Vessel for any reason, including (but not limited to) any defect in the title (save as may arise as a result of the wilful act or omission of the Head-Charterers), seaworthiness, condition, design, operation, performance, capacity, quality, merchantability, or fitness for use or eligibility of the Vessel for any particular trade or operation; or
- 40.8.2 any incapacity, disability, or defect in powers of the Sub-Charterers or any other person (other than the Head-Charterers), or any irregular exercise thereof by, or lack of authority of, any person purporting to act on behalf of the Sub-Charterers or such other person; or
- 40.8.3 any illegality, invalidity, avoidance or unenforceability on any grounds whatsoever of, or of any obligations of the Sub-Charterers or any other person (other than the Head-Charterers) under, this Sub-Charter; or
- 40.8.4 the liquidation, administration, insolvency, amalgamation, reorganisation or dissolution, or any change in the constitution, name or style, of the Sub-Charterers, the Head-Charterers (except to the extent that such event shall interfere with the Quiet Enjoyment of the Vessel by the Sub-Charterers) or any other person;
- 40.8.5 piracy, hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (except the cases described in clause 48.2.3 and 48.3.5)

- 40.8.6 any repair period and/or drydocking period as may needed or required by the Class; or
- 40.8.7 any other cause which, but for this provision, might operate to exonerate the Sub-Charterers from liability, whether in whole or in part, under this Sub-Charter.
- 40.9 Notwithstanding anything to the contrary contained in this Sub-Charter, instalments of hire payable by the Sub-Charterers shall be deemed earned by the Head-Charterers as and when they fall due for payment hereunder.
- 40.10 During any 30 day extension period(s) of this Sub-Charter, such as is referred to in Clause 38, and if the Vessel is not redelivered within the Charter Period (whether or not so extended) from the expiry of the Charter Period until her redelivery, the Sub-Charterers will pay the Head-Charterers on demand: (i) any legal, administrative and enforcement expenses that the Head-Charterers may incur as a result of non-payment of any amounts due under this Sub-Charter; and (ii) all costs and expenses (including but not limited to legal fees) incurred by the Head-Charterers in connection with any enforcement by the Head-Charterers of their rights under this Sub-Charter.
41. **SUBSTITUTION**
Throughout the Charter Period, the Sub-Charterers may request the Head-Charterer to substitute the Vessel at any time with a substitute vessel and if the Head-Charterers agree to proceed with such substitution, the Sub-Charterers shall (at their expense) enter into such documentation with the Owners, the Head-Charterers and the Approved Mortgagee as may be required in order for such substitution to become effective, provided always that such substitution has been approved by the Owners and the Approved Mortgagee. For the avoidance of doubt, neither the Owners, the Head-Charterers nor the Approved Mortgagee are obliged to accept such request.
42. **GENERAL UNDERTAKINGS OF THE SUB-CHARTERER**
- 42.1 The Sub-Charterers shall:
- 42.1.1 not change the nature of their business;
- 42.1.2 ensure that no material change should occur in the ownership or shareholding structure of the Sub-Charterers without the prior approval of the Owners, the Head-Charterers and the Approved Mortgagee;
- 42.1.3 procure that the Vessel is kept in a good and seaworthy state of repair, so as to maintain the highest class with the Classification Society free of overdue recommendations and conditions, and so as to comply with the provisions of all laws and all other regulations and requirements (statutory or otherwise) from time to time applicable to vessels registered at ports in its Flag State and to vessels

- trading to any jurisdiction to which that Vessel may, subject to the provisions of this Sub-Charter, trade from time to time;
- 42.1.4 permit the Head-Charterers to inspect the Vessel, Vessel's Class Certificates and the Vessel's logbooks, when so reasonably required by them in writing;
 - 42.1.5 permit the Head-Charterers to be present during drydocking only for internal reporting purposes and without any right to interfere with such drydocking (and the Sub-Charterers shall notify the Head-Charterers in advance for the plans for the scheduled drydocking); and
 - 42.1.6 promptly furnish the Head-Charterers, when so reasonably requested by them in writing, with all such information regarding the Vessel and any Time Charter as the Owners, the Head-Charterers or the Approved Mortgagee may request.
- 42.2 The Sub-Charterers shall notify the Head-Charterers immediately upon becoming aware of the same by e-mail or fax (hereafter confirmed by letter) of:
- 42.2.1 any accident to the Vessel or incident which is or is likely to be a Major Casualty or a Total Loss;
 - 42.2.2 any requirement or recommendation made by any insurer or classification society, or by any competent authority, which is not complied with within any time limit imposed by such insurer, classification society or authority;
 - 42.2.3 any of the following events occurring which might adversely affect (a) the ability of the Sub-Charterers to perform their obligations under this Sub-Charter; or (b) the rights of the Head-Charterers or the Approved Mortgagee or which might involve them in any loss or liability:
 - (a) any arrest of the Vessel, or the exercise or purported exercise of any lien on the Vessel or her Insurances or earnings, or any loss, confiscation, seizure, requisitioning (for title or for hire) or impounding of the Vessel;
 - (b) any substantial casualty or injury to a party caused by, or in connection with, the Vessel; or
 - (c) any assistance which has been given to the Vessel which has resulted or may result in a lien for salvage being acquired over the Vessel;
 - 42.2.4 any litigation, arbitration, tax claim or administrative proceeding instituted or threatened or of any other occurrence which might materially adversely affect (a) the ability of the Sub-Charterers to perform their obligations under this Sub-Charter; or (b) the rights of the Head-Charterers or the Approved Mortgagee or which might involve them in any material loss or liability.

- 42.3 The Sub-Charterers shall not without the prior consent in writing of the Owners, the Head-Charterers and the Approved Mortgagee (and then only subject to such terms as the Owners, the Head-Charterers and the Approved Mortgagee may reasonably impose):
- 42.3.1 save for the Time Charter, let the Vessel on any time or consecutive voyage charter for a term which exceeds, or which by virtue of any optional extensions might exceed, twelve (12) months' duration and provided that in the case of any time or consecutive voyage charter, such time or consecutive voyage charter shall provide that the Vessel upon termination or expiry for whatever cause of the Charter Period shall be re-delivered;
- 42.3.2 employ the Vessel on terms whereby more than two (2) months' hire (or the equivalent) is payable in advance;
- 42.3.3 employ the Vessel otherwise than on bona fide arm's-length terms;
- 42.3.4 appoint any person to manage the Vessel other than the Manager;
- 42.3.5 change the Classification Society of the Vessel;
- 42.3.6 change the Flag State of the Vessel;
- 42.3.7 incur any Financial Indebtedness (except for unsecured Financial Indebtedness which is subordinated to the Financial Indebtedness owing to the Approved Mortgagee, the Owner or the Head-Charterer) unless such Financial Indebtedness is in the ordinary course of business for the Sub-Charterer;
- 42.3.8 put the Vessel into the possession of any person for the purpose of work being done upon her in an amount exceeding or likely to exceed five hundred thousand United States Dollars (US\$500,000) (or the equivalent in any other currency) unless such person has first given to the Head-Charterers and in terms satisfactory to them a written undertaking not to exercise any lien on the Vessel or her earnings for the cost of such work or otherwise;
- 42.3.9 create or suffer the creation of an Encumbrance (other than a Permitted Encumbrance) over or in respect of the Vessel or any share in the Vessel; or
- 42.3.10 amend, vary, rescind, cancel the Time Charter or accept any rescission, cancellation or termination thereof by the relevant time charterer.
43. **DAMAGE AND FRUSTRATION**
- 43.1 The Head-Charterers shall not be liable for any expense in repairing or maintaining the Vessel or be liable to supply a vessel or any part thereof or any equipment in lieu if the Vessel is lost or damaged or rendered unfit for use or confiscated, seized, requisitioned, restrained or appropriated or otherwise taken out of the possession or control of the Sub-Charterers.

- 43.2 Unless otherwise expressly provided in this Sub-Charter, if for any reason whatsoever the Vessel becomes inoperable or unusable, the charter hire payable in respect of the Vessel shall continue to be payable and the other obligations of the Sub-Charterers hereunder shall continue notwithstanding such loss, damage or other event unless or until the Vessel be declared by the insurers to be a Total Loss and the Head-Charterers have received the amount set out in Clause 48.5 and notwithstanding any inability on the part of the Sub-Charterers to operate the Vessel, the Vessel being held to be the property of the Sub-Charterers or of any person other than the Owners; or any other circumstances whatsoever which might operate to frustrate this Sub-Charter.
44. **COMPULSORY LEGISLATION**
If any improvement, structural changes, additions or new equipment to or for the Vessel become necessary for the continued operation of the Vessel by reason of new class requirements or compulsory legislation the Sub-Charterers shall at their own expense and time, implement such improvement, changes, additions or installation of equipment. The Sub-Charterers shall notify the Head-Charterers of any such class requirements or compulsory legislation and, before making the necessary expenditure, with details of such expenditure. Such improvements, changes, additions or installations are deemed to be an integral part of the Vessel and will not be removed at redelivery.
45. **SAFE USE AND ENVIRONMENTAL MATTERS**
- 45.1 The Sub-Charterers undertake throughout the Charter Period:
- 45.1.1 to implement and maintain a safety management system (“SMS”) which complies with all laws, rules and regulations, and with all the codes, guidelines and standards recommended by the International Maritime Organisation (including without limitation, The International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the International Maritime Organisation as Resolutions A.741(18) and A.788(19) (as amended from time to time, the “ISM Code”)), the Flag State of the Vessel and the Vessel’s classification society, which may from time to time be applicable to the Vessel and/or the Head-Charterers and/or the Sub-Charterers and/or the Manager, and which is otherwise appropriate having regard to the Sub-Charterers’ obligations under this Sub-Charter;
- 45.1.2 to obtain and maintain in force at all times valid certificates evidencing compliance with the requirements of Clause 45.1.1, including, without limitation, a valid Document of Compliance in relation to themselves and a valid Safety Management Certificate in respect of the Vessel as required by the ISM Code;
- 45.1.3 to provide the Head-Charterers with copies of any such Document of Compliance and Safety Management Certificate upon issuance;
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- 45.1.4 to keep or procure that there is kept on board the Vessel at all times a copy of any such Document of Compliance and the original of any such Safety Management Certificate.
- 45.2 the Sub-Charterers undertake throughout the Charter Period:
 - 45.2.1 to comply with, and procure that the Vessel complies with, the ISPS Code;
 - 45.2.2 to ensure that the Vessel's security system and its associated security equipment comply with the applicable requirements of Part A of the ISPS Code and of Chapter XI-2 of the Safety of Life at Sea Convention 1974 (SOLAS), and that an approved ship security plan is in place;
 - 45.2.3 to obtain and maintain in force at all times valid certificates evidencing compliance with the requirements of the ISPS Code, including, without limitation, a valid International Ship Security Certificate in respect of the Vessel as required by the ISPS Code;
 - 45.2.4 to keep or procure that there is kept on board the Vessel at all times the original of such International Ship Security Certificate.
- 45.3 Without prejudice to the generality of Clause 10 the Sub-Charterers shall take all reasonable precautions to prevent any infringements of the Anti-Drug Abuse Act of 1986 of the United States of America or any similar legislation applicable to the Vessel in the Flag State in any jurisdiction in or to which the Vessel may be employed or trade from time to time.
- 45.4 The Sub-Charterers shall not at any time represent or hold out the Head-Charterers as carrying goods or persons on the Vessel or being in any way connected or associated with any operation or carriage whether for charter or reward or gratuitously which may be undertaken by the Sub-Charterers during the Charter Period nor shall the Sub-Charterers represent themselves as the agent of the Head-Charterers for such purpose.
- 45.5 The Sub-Charterers shall ensure that the Vessel is, at all times, equipped and accredited with any required trading documentation and/or authorisations necessary to legitimise the entry of the Vessel into the waters of any relevant jurisdiction. Such trading documentation and authorisations shall include, inter alia, valid certification under the International Convention on Civil Liability for Oil Pollution Damage (as amended), a valid US Coast Guard certificate of financial responsibility (water pollution), a valid certificate from any US state that requires a state equivalent of a certificate of financial responsibility, a vessel classification certificate and any other credentials as might be, or may come to be, required. Copies of such trading documentation and/or authorisations shall be made available to the Head-Charterers as and when reasonably requested.

46. **EQUIPMENT**

- 46.1 The Sub-Charterers shall have the use of all outfit, machinery, equipment, spare parts, appliances, furniture, fittings, furnishings and stores of the Vessel which are the property of the Head-Charterers or the Owners, and all substitutions, replacements and renewals.
- 46.2 The Sub-Charterers shall, at their own expense, from time to time during the Charter Period substitute, replace and/or renew (as the case may be) any outfit, machinery, equipment, spare parts, appliances, furniture, fittings, furnishings and stores which shall be consumed or be so damaged or worn out as to be unfit for use. The Sub-Charterers shall procure that all such repairs, substitutions, replacements and renewals shall be effected in such manner (both as regards workmanship and quality of materials) so as not to diminish the value of the Vessel.
- 46.3 Notwithstanding any other provision of this Sub-Charter, in the event of any future improvements, modifications or structural changes carried out upon the Vessel (as approved by the Owners, the Head-Charterers and/or the Approved Mortgagee in advance), such modifications, improvements or structural changes are deemed to be an integral part of the Vessel and the Sub-Charterers shall be under no obligation to restore the Vessel to its original condition upon redelivery. In the event of any Sub-Charterers' equipment being installed on the Vessel is deemed to be an integral part of the Vessel and unless the Sub-Charterers have informed the Owners and the Head-Charterers in advance for such installation and the Owners and the Head-Charterers have accepted the said equipment as Sub-Charterers' equipment in which case the Sub-Charterers shall have the right to remove the said equipment (and all additions and installations thereto) before redelivery, all such Sub-Charterers' equipment shall be considered as usual outfit, machinery or equipment of the Vessel, needed for Vessel's normal operation and/or any additional or new equipment installed in accordance with Clause 44.

47. **INSURANCES**

- 47.1 The Vessel shall throughout the Charter Period be in every respect at the risk of the Sub-Charterers who shall bear all risks howsoever arising in respect of the Vessel, whether of navigation, operation or maintenance or otherwise:
- 47.2 The Sub-Charterers covenant with the Head-Charterers that throughout the Charter Period they will comply with the following provisions of this Clause 47.2:
- 47.2.1 to effect and maintain sufficient insurances on and over the Vessel in respect of (a) hull, machinery and equipment, marine, war and terrorism risks (including excess risks), (b) protection and indemnity risks (including pollution risks), and (c) such other risks for which insurance would be maintained by a prudent owner for a ship of a similar type, size, age and flag, and otherwise in accordance with the provisions of this Sub-Charter;
- 47.2.2 to insure and keep insured the Vessel in Dollars or such other currency as may be approved in writing by the Approved Mortgagee, in the full insurable value of the Vessel

- but in any case not less than the higher of (i) the market value of the Vessel as calculated by the Approved Mortgagee and (ii) one hundred and ten per cent (110%) of the Purchase Price against fire, marine and other risks (including excess risks) and war risks covered by hull and machinery policies;
- 47.2.3 to enter the Vessel in the name of the Owners for her full value and tonnage in a protection and indemnity association approved by the Approved Mortgagee with unlimited liability if available otherwise for the highest possible standard cover for the time being US\$1,000,000,000 for oil pollution and for excess oil spillage and pollution liability insurance for the highest possible standard cover against all protection and indemnity risks;
- 47.2.4 if the Vessel enters the territorial waters of the United States of America for any reason whatsoever, to take out such additional insurance to cover such risks as may be necessary in order to obtain a Certificate of Financial Responsibility from the United States Coastguard;
- 47.2.5 to effect such additional Insurances as may reasonably be requested by the Approved Mortgagee to maintain the scope of the existing cover of the Insurances;
- 47.2.6 to effect the Insurances through the Approved Brokers and with such insurance companies, underwriters, war risks and protection and indemnity associations as shall from time to time be approved in writing by the Head-Charterers and the Approved Mortgagee (such approval not to be unreasonably withheld), and, if so required by the Head-Charterers or the Approved Mortgagee (but, without, as between the Head-Charterers or the Approved Mortgagee and the Sub-Charterers, liability on the part of the Head-Charterers or the Approved Mortgagee for premiums or calls), with the Owners, the Head-Charterers or the Approved Mortgagee from the time being named as co-assured. Insurance for Protection and Indemnity risks shall be provided always by member of the International Group of P&I Clubs. Insurance for hull, machinery and equipment, marine, war and terrorism risks or any other risks shall be provided always by underwriters with a minimum of a BBB+ rating;
- 47.2.7 to renew the Insurances at least fourteen (14) days before the relevant Insurances expire and to procure that the Approved Brokers and any war risks and protection and indemnity association with which the Insurances are effected shall promptly confirm in writing to the Head-Charterers and the Approved Mortgagee as and when each such renewal is effected;
- 47.2.8 punctually to pay all premiums, calls, contributions or other sums payable in respect of the Insurances and to produce all relevant receipts when so required in writing by the Head-Charterers or the Approved Mortgagee;
- 47.2.9 reimburse to the Owners and/or the Head-Charterers on demand such documented sums as the Owners and/or Head-Charterers shall certify are payable by them to the Approved

- Mortgagee in respect of mortgagees interest insurance on the Vessel (as required by the Approved Mortgagee);
- 47.2.10 to arrange for the execution of such guarantees and the making of such declaration as may from time to time be required by any protection and indemnity or war risks association of the Vessel;
 - 47.2.11 to give notice of assignment of the Insurances to the Insurers in the form set out in Schedule 3 to this Sub-Charter or in such other form as may be required by the Head-Charterers and/or the Approved Mortgagee and to procure that a copy of each notice of assignment shall be endorsed upon or attached to the relevant Insurance Documents;
 - 47.2.12 to procure that the Insurance Documents shall be deposited with the Approved Brokers and that such brokers shall provide the Owners, the Head-Charterers and the Approved Mortgagee with certified copies thereof and shall issue to the Approved Mortgagee a letter or letters of undertaking in such form as the Approved Mortgagee shall reasonably require;
 - 47.2.13 to procure that the protection and indemnity and/or war risks associations in which the Vessel is entered shall provide the Approved Mortgagee with a letter or letters of undertaking in their standard form and shall provide the Approved Mortgagee with a copy of the certificates of entry;
 - 47.2.14 to procure that the Insurance Documents (including all certificates of entry in any protection and indemnity and/or war risks association) shall contain loss payable clauses in the form set out in set out in Schedule 3 to this Sub-Charter or in such other form as may be required by the Head-Charterers and/or the Approved Mortgagee (as may be appropriate);
 - 47.2.15 to procure that the Insurance Documents shall provide that the lien or set off for unpaid premiums or calls shall be limited to only the premiums or calls due in relation to the Insurances on the Vessel and for fourteen (14) days prior written notice to be given to the Approved Mortgagee by the Insurers (such notice to be given even if the Insurers have not received an appropriate enquiry from the Approved Mortgagee) in the event of cancellation or termination of Insurances and in the event of the non-payment of the premium or calls, the right to pay the said premium or calls within a reasonable time;
 - 47.2.16 to promptly provide the Owners, the Head-Charterers and the Approved Mortgagee with full information regarding any casualties or damage to the Vessel in an amount in excess of Five hundred thousand United States Dollars (US\$500,000) or in consequence whereof the Vessel has become or may become a Total Loss;
 - 47.2.17 at the request of the Approved Mortgagee, to provide the Approved Mortgagee, at the Sub-Charterers' cost, with a detailed report issued by a firm of marine insurance brokers or consultants appointed by the Approved Mortgagee in relation to the Insurances;

- 47.2.18 not to do any act nor voluntarily suffer nor permit any act to be done whereby any Insurance shall or may be suspended or avoided and not to suffer nor permit the Vessel to engage in any voyage nor to carry any cargo not permitted under the Insurances in effect without first covering the Vessel to the amount herein provided for with insurance satisfactory to the Approved Mortgagee for such voyage or the carriage of such cargo;
- 47.2.19 (without limitation to the generality of the foregoing) in particular not permit the Vessel to enter or trade to any zone which is declared a war zone by any government or by the Vessel's war risks Insurers unless there shall have been effected by the Sub-Charterers at their expense such special insurance as the war risk Insurers may require; and
- 47.2.20 to procure that all amounts payable under the Insurances are paid in accordance with the loss payable clause in the form set out in Schedule 3 to this Sub-Charter or in such other form as may be required by the Head-Charterers and/or the Approved Mortgagee (as may be appropriate) and to apply and procure that all amounts as are paid to the Owners, the Head-Charterers and/or the Sub-Charterers are applied to the repair of the damage and the reparation of the loss in respect of which the said amounts shall have been received.
- 47.3 The Sub-Charterers shall procure that the policies in respect of the Insurances shall, in each case, be endorsed to the effect that (subject always to the rights of the Approved Mortgagee):
- 47.3.1 payment of a claim for Total Loss of the Vessel shall be made to the Head-Charterers who upon receipt thereof shall apply the same in accordance with Clause 48.8;
- 47.3.2 payment of a claim for any Major Casualty to the Vessel shall be made to the Head-Charterers, but so that, unless and until the Head-Charterers (following the occurrence of a Termination Event) direct to the contrary (whereupon all insurance recoveries in respect of any such claim shall be payable to the Head-Charterers and be applied in accordance with Clause 48.8):
- (a) the payment so received by the Head-Charterers shall be paid over to the Sub-Charterers upon the Sub-Charterers furnishing evidence satisfactory to the Head-Charterers and the Approved Mortgagee that all loss and damage resulting from the casualty has been or will be properly made good and repaired and that all repair accounts and other liabilities whatsoever in connection with the casualty have been or will be fully paid and discharged by the Sub-Charterers;
 - (b) the Insurers with whom the hull, machinery and equipment marine risks insurances are effected may in the case of a Major Casualty, with the prior consent in writing of the Owners, the Head-Charterers and the Approved Mortgagee, make payment on account of repairs in the course of being effected;

- 47.3.3 payment of a claim which is not for a Total Loss or a Major Casualty shall, unless and until the Head-Charterers shall (following the occurrence of a Termination Event) direct to the contrary (whereupon all insurance recoveries in respect of any such claim shall be payable to the Head-Charterers and be applied in accordance with Clause 48.8), be made to the Sub-Charterers who shall, as agent for the Owners and the Head-Charterers, apply the same in or towards making good the loss and fully repairing all damage in respect of which such payment shall have been made.
- 47.4 The provisions of this Clause 47 and Clause 48 shall not apply to the proceeds of any additional insurance cover effected by the Owners and/or the Head-Charterers and/or the Sub-Charterers for their own account and benefit, provided that such cover shall only be effected if and to the extent that the Insurances effected by the Sub-Charterers pursuant to this Clause 47 so permit. The Head-Charterers and the Sub-Charterers, as the case may be, shall promptly furnish the other with particulars of any additional insurance effected, including copies of any cover notes or policies, and the written consent of the insurers for the Insurances required to be maintained by the Sub-Charterers under this Clause 47 in any case where the consent of such insurers is necessary. For avoidance of doubt, the Head-Charterers shall have no obligation to furnish the Sub-Charterers with any such information or documentation relating to any innocent owner's insurance effected by the Head-Charterers.
- 47.5 The Head-Charterers shall be entitled, at any time and from time to time, to consult insurance advisers on any matter relating to the Insurances (including, without limitation, the terms, amounts and quality of the Insurances and the status of any insurance claims), and the Sub-Charterers shall procure that there is delivered to such adviser any and all such information concerning the Vessel and her Insurances as the Head-Charterers may require. The reasonable costs of any such insurance adviser shall, where the involvement of such insurance advisers is at the request of the Approved Mortgagee but in the absence of a Termination Event, not more than once annually, be for the account of the Sub-Charterers and shall be payable on demand.
48. **LOSS, DAMAGE AND REQUISITION**
- 48.1 Throughout the Charter Period, the Sub-Charterers shall bear the full risk of any Total Loss or any damage to the Vessel howsoever arising and of any other occurrence of whatever kind which may deprive the Sub-Charterers of the use, possession or enjoyment of the Vessel and no such event shall relieve the Sub-Charterers of their obligations (whether in whole or in part) under this Sub-Charter.
- 48.2 For the purposes of this Sub-Charter, "**Total Loss**" shall mean:
- 48.2.1 actual or constructive or compromised or agreed or arranged total loss of the Vessel; or

- 48.2.2 Compulsory Acquisition of the Vessel;
- 48.2.3 the hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (other than any event described in Clause 48.2.2) by any government entity or by persons acting or purporting to act on behalf of any government entity unless the Vessel be released and restored to the Sub-Charterers from such hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation within thirty (30) days after the occurrence thereof or such lesser period provided in the Vessel's war risks Insurances;
- 48.3 For the purpose of this Clause 48, a Total Loss shall be deemed to have occurred:
- 48.3.1 in the case of an actual total loss of the Vessel on the actual date and at the time the Vessel was lost or if such date is now known, on the date on which the Vessel was last reported;
- 48.3.2 in the case of a constructive total loss of the Vessel upon the date and at the time notice of abandonment of the Vessel is given to the Insurers of the Vessel for the time being (provided a claim for such total loss is admitted by such insurers) or, if such Insurers do not admit such a claim, or, in the event that such notice of abandonment is not given by the Head-Charterers and/or the Sub-Charterers to the Insurers of the Vessel, on the date and at a time on which the incident which may result, in the Vessel being subsequently determined to be a constructive total loss has occurred
- 48.3.3 in the case of a compromised or arranged total loss of the Vessel, on the date upon which a binding agreement as to such compromised or arranged total loss has been entered into by the Insurers of the Vessel.;
- 48.3.4 in the case of Compulsory Acquisition of the Vessel, on the date upon which the relevant Compulsory Acquisition occurs; and
- 48.3.5 in the case of hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (other than where the same amounts to Compulsory Acquisition of the Vessel) by any government entity, or by persons purporting to act on behalf of any government entity, which deprives the Head-Charterers and/or the Sub-Charterers of the use of the Vessel for more than thirty (30) days, upon the expiry of the period of thirty (30) days after the date upon which the relevant hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation occurred.
- 48.4 The Sub-Charterers shall notify the Head-Charterers and the Approved Mortgagee forthwith by e-mail or fax (thereafter confirmed by letter) upon becoming aware of any occurrence in consequence whereof the Vessel has become or is likely to become a Total Loss.

- 48.5 If the Vessel shall become a Total Loss, the Sub-Charterers shall within one hundred and eighty (180) days of the date of the Total Loss, pay or procure the payment to the Head-Charterers of a net amount equal to the aggregate of:
- 48.5.1 the Call Option Sum which would be applicable had the Call Option been exercised at the date of such Total Loss;
 - 48.5.2 any costs payable by the Owners and/or the Head-Charterers to the Approved Mortgagee;
 - 48.5.3 all other moneys, whether of hire or otherwise, then due and owing under any other provisions of this Sub-Charter.
- 48.6 The Sub-Charterers shall continue to pay hire on the days and in the amounts required under this Sub-Charter notwithstanding that the Vessel shall have become a Total Loss. The Sub-Charterers' obligation to pay hire under this Sub-Charter shall terminate immediately upon the Head-Charterers' receipt of (a) an amount equal to the aggregate of the minimum insured value as at the date of the Total Loss and in any event not less than the Call Option Sum applicable at the date of such Total Loss, and (b) all other sums (if any) payable by the Sub-Charterers hereunder.
- 48.7 In the event that the insurers do not admit a claim for a Total Loss or agree to pay out a claim for a Total Loss in an amount equal to the amount referred to in Clause 48.6 within one hundred and eighty (180) days of the Total Loss, the Sub-Charterers shall immediately pay to the Head-Charterers the amount referred to in Clause 48.6 or an amount equal to the deficiency between the payment from the insurers and the amount referred to in Clause 48.6 together with an Additional Amount (calculated in accordance with Clause 40.7) if hire has not been paid as required under Clause 48.6.
- 48.8 Subject always to the rights of the Approved Mortgagee in such Insurances, all moneys recoverable:
- 48.8.1 under the Insurances effected by the Sub-Charterers pursuant to Clause 47, or by way of other compensation, in respect of a Total Loss of the Vessel; and
 - 48.8.2 under the Insurances effected by the Sub-Charterers pursuant to Clause 47.3 in respect of any other claim (whether relating to a Major Casualty or otherwise) which by virtue of Clause 47.3 are payable to the Head-Charterers after the occurrence of a Termination Event; shall be paid to, and be held by, the Sub-Charterers, in the first place, to pay or make good all costs, expenses and liabilities whatsoever incurred by the Sub-Charterers in or about or incidental to the recovery of such moneys, and the balance shall be applied as follows:

FIRST, in payment of any hire or other moneys whatsoever due and owing to the Head-Charterers under this Sub-Charter up to the date of receipt of such proceeds;

SECOND, in the case of a Total Loss to the Head-Charterers in such amount as shall be required to ensure that the Head-Charterers have received, taking into account any amount received by the Head-Charterers under Clause 48.5 an amount equal to the aggregate of:

- (a) the Call Option Sum which would be applicable had the Call Option been exercised on the date of such Total Loss;
- (b) any costs payable by the Head-Charterers to the Approved Mortgagee;
- (c) all other moneys, whether of hire or otherwise, then due and owing under any other provisions of this Sub-Charter.

THIRD, the balance shall be released to the Sub-Charterers or to any other person who shall be entitled thereto;

PROVIDED ALWAYS that in the event that such proceeds are insufficient to satisfy the amounts specified in FIRST and SECOND above the Sub-Charterers shall forthwith on the Head-Charterers' demand pay the shortfall to the Head-Charterers, and PROVIDED FURTHER that the Head-Charterers shall out of such proceeds apply such sum in payment to the Owners or the Approved Mortgagee as shall be required to discharge the Approved Mortgage.

48.9 The Head-Charterers shall, upon the request of the Sub-Charterers, but subject to the consent (if required) of the Approved Mortgagee being obtained, promptly execute and deliver such documents as may be required to enable the Sub-Charterers to abandon the Vessel to the insurers and to claim a constructive total loss.

49. **TITLE AND ENCUMBRANCES**

49.1 The Sub-Charterers shall take all steps which may be reasonably necessary to safeguard the title and rights of the Owners, the Head-Charterers and the Approved Mortgagee in the Vessel as notified to the Sub-Charterers and in particular (but without limitation):

49.1.1 will place, and at all times and places retain a properly certified copy of this Sub-Charter, and of the Approved Mortgage, on board the Vessel with her papers, cause each such certified copy and such papers to be exhibited to any and all persons having business with the Vessel which might give rise to any lien on it, other than liens for crew's wages and salvage, and to any representative of the Head-Charterers and the Approved Mortgagee;

- 49.1.2 will promptly pay and discharge or secure all debts, damages and liabilities whatsoever which the Sub-Charterers shall have been called upon to pay, discharge or secure and which have given, or may give, rise to maritime or possessory liens on or claims enforceable against the Vessel, and in the event of arrest of the Vessel pursuant to legal process, or in the event of her detention in exercise or purported exercise of any such lien as aforesaid, to procure the release of the Vessel from such arrest or detention forthwith upon receiving notice of the same by providing bail or otherwise as the circumstances may require;
- 49.1.3 will not pledge the credit of the Head-Charterers for any maintenance, service, repairs, drydocking or modifications and upgrades to the Vessel or for any other purpose whatsoever;
- 49.1.4 will not sell or hypothecate or purport to sell or hypothecate or execute a bill of sale of the Vessel or any interest therein or create or suffer to exist any Encumbrance (save for a Permitted Encumbrance) over the Vessel;
- 49.1.5 will not do or permit to be done any act or thing which might jeopardise the rights of the Head-Charterers or the Approved Mortgagee in the Vessel and will not omit to do or permit to be omitted to be done any act or thing which if not done might jeopardise or prejudice the rights of the Head-Charterers or the Approved Mortgagee in the Vessel;
- 49.1.6 will not do anything which may result in the Vessel being confiscated, seized, requisitioned, taken in execution, impounded or otherwise taken from the possession of the Sub-Charterers and in the event of any such confiscation, requisition, seizure, impounding or taking, the Sub-Charterers will use their best endeavours to procure an immediate release of the Vessel therefrom; and
- 49.1.7 will duly pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges levied upon the Vessel prior to the date on which penalties are attached thereto, except to the extent that such may be contested in good faith.

50. **FINANCIAL COVENANTS**

50.1 For the purposes of this Clause 50 the following expressions shall have the following meanings:

“Borrowed Money” means Indebtedness in respect of (i) money borrowed or raised and debit balances at banks, (ii) any bond, note, loan stock, debenture or similar debt instrument, (iii) acceptance or documentary credit facilities, (iv) receivables sold or discounted (otherwise than on a non-recourse basis), (v) deferred payments for assets or services acquired, (vi) finance leases and hire purchase contracts, (vii) swaps, forward exchange contracts, futures and other derivatives, (viii) any other transaction (including without limitation forward sale or purchase agreements) having the commercial effect of

a borrowing or raising of money or of any of (ii) to (vii) above and (ix) guarantees in respect of Indebtedness of any person falling within any of (i) to (viii) above;

“**Cash**” means free and available negotiable money, orders, cheques and bank balances and deposits but to exclude (a) any cash that is specifically blocked and charged and (b) cash standing to the credit of any blocked account and charged to the Approved Mortgagee;

“**Cash Equivalent Investments**” means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by a bank or financial institution acceptable to the Approved Mortgagee;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security; or
- (c) any other debt security approved by the Approved Mortgagee,

in each case, to which the Sub-Charterers’ Guarantor’s Group is beneficially entitled at that time and which is not issued or guaranteed by any member of the Sub-Charterers’ Guarantor Group or subject to any Encumbrance (other than one arising under the Security Documents).

“**Current Assets**” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of current assets in a consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time together with such amount of Cash and Cash Equivalent Investments forming part of the Minimum Liquidity and/or any retention amount (but always excluding any current assets arising from Derivative Financial Instruments) which may be disregarded from the current assets in a consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group;

“**Current Liabilities**” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of current liabilities of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as current liabilities in the consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time excluding Deferred Revenue and all current liabilities arising from Derivative Financial Instruments;

“**Deferred Revenue**” means at any time in respect of the Sub-Charterers’ Guarantor’s Group, that liability calculated at the time an existing Time Charter(s) or other

employment arrangement is assumed, by discounting at the Sub-Charterers' Guarantor's Group's weighted average cost of capital, the difference between the market charter rate for an equivalent vessel and the assumed charter rate (as set out in the then latest financial statements delivered to the Approved Mortgagee pursuant to this Clause 50), which liability is recorded as deferred revenue and amortised to revenue over the remaining period of such Time Charter(s) or other employment arrangement;

"Derivative Financial Instruments" means at any time in respect of the Sub-Charterers' Guarantor's Group the fair value of any transaction entered into under a master swap agreements and the fair value of any other derivative financial instruments appearing under this heading (and previously approved by the Approved Mortgagee) in the consolidated financial statements of the Sub-Charterers' Guarantor's Group provided by the Sub-Charterers to the Approved Mortgagee in accordance with the provisions of this Clause 50 or otherwise and in the event of the Sub-Charterers changing the form or substance of the financial statements (always in accordance with GAAP) provided by the Sub-Charterers to the Approved Mortgagee so that Derivative Financial Instruments no longer appears as a heading and/or such Derivative Financial Instruments are otherwise accounted for, the determination of what constitutes Derivative Financial Instruments shall be made by the Approved Mortgagee acting reasonably;

"EBITDA" means, in respect of any period, the consolidated profit on ordinary activities of the Sub-Charterers' Guarantor's Group before Taxation for such period:

- (a) adjusted to exclude Interest Receivable and Interest Payable and other similar income or costs to the extent not already excluded;
- (b) adjusted to exclude any gain or loss realised on the disposal of fixed assets (whether tangible or intangible);
- (c) after adding back depreciation and amortisation;
- (d) adjusted to exclude any exceptional or extraordinary costs or income;
- (e) after deducting any profit arising out of the release of any provisions against a liability or charge (excluding in this context the release of any provisions against liabilities or charges relating to exceptional or extraordinary items);

"Equity Ratio" means the ratio of Total Shareholder's Equity to Total Assets of the Sub-Charterers' Guarantor's Group;

"Finance Lease" means any lease under which a member of the Sub-Charterers' Guarantor's Group is the lessee which is or should be treated as a finance lease under US GAAP (and includes any hire purchase contract or other arrangement which is similarly treated);

“Financial Quarter” means each period of approximately three (3) months commencing on the day after a Financial Quarter Day and ending on the next following Financial Quarter Day;

“Financial Quarter Day” means 31 March, 30 June, 30 September and 31 December in any year;

“Financial Year” means the annual accounting period of the Sub-Charterers’ Guarantor’s Group ending on 31 December in each year;

“Fleet Book Value” means, at the end of a Relevant Period, the aggregate book value of the Sub-Charterers’ Guarantor’s Group’s owned fleet less depreciation as stated in the most recent financial statements delivered pursuant to this Clause 50;

“Fleet Market Value” means, at the date of calculation, the aggregate of the fair market value of the Sub-Charterers’ Guarantor’s Group’s owned fleet as determined by the Approved Mortgagee;

“Interest” means, in respect of any specified Borrowed Money, all continuing regular or periodic costs, charges and expenses incurred in effecting, servicing or maintaining such Borrowed Money including:

- (a) gross interest, commitment fees, discount and acceptance fees and guarantee, fronting and ancillary facility fees payable or incurred on any form of such Borrowed Money;
- (b) repayment and prepayment premiums payable or incurred in repaying or prepaying such Borrowed Money; and
- (c) the interest element of Finance Leases,

but excluding, in respect of such Borrowed Money, agency and arrangement fees or other up-front fees;

“Interest Expense” means, in respect of the Relevant Period, the aggregate (calculated on a consolidated basis) of:

- (a) the amounts charged and posted (or estimated to be charged and posted) as a current accrual accrued during such period in respect of members of the Sub-Charterers’ Guarantor’s Group by way of Interest on all Borrowed Money, but excluding any amount accruing as interest in-kind (and not as cash pay) to the extent capitalised as principal during such period; and
- (b) net payments in relation to interest rate or currency hedging arrangements in respect of Borrowed Money (after deducting net income in relation to such interest rate or currency hedging arrangements);

“Interest Receivable” means, in respect of any period, the amount of Interest accrued on cash balances of the Sub-Charterers’ Guarantor’s Group (including the amount of interest accrued on the earnings accounts of the Sub-Charterers as the case may be, to the extent that the account holder is entitled to receive such interest) during such period;

“Minimum Liquidity” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the minimum amount of Cash and Cash Equivalent Investments for a Financial Quarter equal to five percent (5%) of Total Debt at any time;

“Related Company” of a person means any Subsidiary of such person, any company or other entity of which such person is a Subsidiary and any Subsidiary of any such company or entity;

“Relevant Period” means each rolling period of twelve (12) months ending on a Financial Quarter;

“Sub-Charterers’ Guarantor’s Group” means the Sub-Charterers’ Guarantor and its Related Companies;

“Subsidiary” of a person means any company or entity directly or indirectly controlled by such person, and for this purpose “control” means either the ownership of more than fifty per cent (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity or the power to direct its policies and management, whether by contract or otherwise;

“Taxes” includes all present and future taxes, levies, imposts, duties, fees or charges of whatever nature together with interest thereon and penalties in respect thereof and **“Taxation”** shall be construed accordingly;

“Total Assets” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of total assets of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as total assets adjusted for the difference between Fleet Market Value and Fleet Book Value and in a consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time;

“Total Debt” means, at any time, the aggregate outstanding principal, capital or nominal amount of all Borrowed Money of the Sub-Charterers’ Guarantor’s Group calculated on a consolidated basis at that time;

“Total Shareholder’s Equity” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of shareholders equity of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as shareholders equity in the consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time;

“US GAAP” means, generally accepted accounting principles in the United States of America;

“Working Capital” means, Current Assets less Current Liabilities (excluding, at any given time, (a) the current portion of long term debt maturing within twelve (12) months and (b) non-cash current liabilities of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as non cash liabilities in the consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time, in relation to Deferred Revenue)

- 50.2 The Sub-Charterer undertakes with each of the Head-Charterer and the Approved Mortgagee that, during the Charter Period, it will:
- 50.2.1 maintain an Equity Ratio of not less than: (i) twenty-five percent (25%) from the Financial Quarter Day ending on 30 September 2010 until the Financial Quarter Day ending on 30 June 2013; and (ii) thirty percent (30%) from the Financial Quarter Day ending on 30 June 2013 onwards;
- 50.2.2 maintain on a consolidated basis the Minimum Liquidity;
- 50.2.3 maintain on a consolidated basis on each Financial Quarter Day during the Charter Period a Working Capital of not less than zero Dollars (\$0);
- 50.2.4 maintain a ratio of EBITDA to Interest Expense on a trailing four (4) Financial Quarter basis of not less than: (i) 2.00 to 1.00 from the Financial Quarter Day ending on 30 September 2010 until the Financial Quarter Day ending on 30 June 2013; and (i) 2.50 to 1.00 from the Financial Quarter Day ending on 30 June 2013 onwards;
- 50.2.5 prepare consolidated financial statements of the Sub-Charterers’ Guarantor in accordance with US GAAP consistently applied in respect of each Financial Year and cause the same to be reported on by its auditors and prepare unaudited consolidated financial statements for the Sub-Charterers’ Guarantor in respect of each Financial Quarter on the same basis as the annual statements and deliver as one copy of the same to the Approved Mortgagee as soon as practicable but not later than one hundred and eighty (180) days (in the case of audited financial statements) or ninety (90) days (in the case of unaudited financial statements) after the end of the financial period to which they relate.
- 50.3 The covenants in this Clause 50 shall be tested each Financial Quarter.
- 51. **HEAD-CHARTERERS’ RIGHTS TO REMEDY DEFAULTS**
- 51.1 If at any time the Sub-Charterers shall fail to comply with any of the provisions of Clause 47, then (without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event) the Head-Charterers shall be at liberty, but not

- under any obligation, either (a) to procure such insurance and/or entries on a war risks association or protection and indemnity risks association and/or associations and to pay any outstanding premiums (as the case may be) in accordance with such provisions (at the Sub-Charterers' expense), or (b) at any time whilst such failure is continuing to require the Vessel to remain in port, or (as the case may be) to proceed to and remain at a port or other place designated by the Head-Charterers, until such time as such provisions are fully complied with. If the Head-Charterers intend to exercise any right conferred to them by this Clause 51.1, they shall inform the Sub-Charterers thereof.
- 51.2 If the Sub-Charterers fail to comply with any of the provisions of Clause 10, 44 or 45 the Head-Charterers may, without being in any way obliged so to do, or responsible for so doing, and without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event, arrange for the carrying out of such repairs, changes or surveys as they may deem expedient or necessary in order to procure the compliance with such provisions.
- 51.3 If the Sub-Charterers fail to comply with any of the provisions of Clauses 49 or 52 the Head-Charterers may, without being in any way obliged so to do, or responsible for so doing, and without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event, pay and discharge all such debts, damages, liabilities and outgoings as are therein mentioned and/or take any such measures as they may deem expedient or necessary for the purpose of securing the release of the Vessel in order to procure the compliance with such provisions.
- 51.4 If the Sub-Charterers fail to comply with any of their other obligations under this Sub-Charter, the Head-Charterers may, without being in any way obliged to do so or responsible for so doing, and without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event, take such action as they may deem expedient or necessary in order to procure the compliance with such provisions.
- 51.5 Without prejudice to Clauses 52 and 53 all documented claims, costs, damages or expenses (including without limitation, taxes, repair costs, registration fees and insurance premiums) suffered, incurred or paid by the Head-Charterers in connection with the exercise by the Head-Charterers of any of their powers under this Clause 51 together with any Additional Amount or any unpaid sum in respect of all such claims, costs, damages or expenses from the date on which same were suffered, incurred or paid by the Head-Charterers until the date of receipt or recovery thereof (both before and after any relevant judgment), calculated in accordance with Clause 40.7, which shall be payable by the Sub-Charterers to the Head-Charterers on demand.
- 51.6 Notwithstanding any exercise by the Head-Charterers of any of the rights and powers contained in this Clause 51, charter hire shall continue to accrue and be payable by the Sub-Charterers during the period of such exercise.

52. **COSTS AND INDEMNITY**

- 52.1 The Sub-Charterers agree at all times during the Charter Period to indemnify and keep indemnified the Head-Charterers against:
- 52.1.1 any costs, charges or expenses which the Sub-Charterers have agreed to pay under this Sub-Charter and which shall be claimed or assessed against or paid by the Head-Charterers;
- 52.1.2 all documented claims, costs, damages or expenses suffered or incurred by the Head-Charterers (otherwise than arising from the wilful misconduct or gross negligence of the Head-Charterers):
- (a) which result directly or indirectly from claims which may at any time be made on the ground that any design, article or material of or in the Vessel or the operation or use thereof constitutes or is alleged to constitute an infringement of patent or copyright or registered design or other intellectual property right or other right whatsoever;
 - (b) in preventing or attempting to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture or detention of the Vessel, or in securing the release of the Vessel therefrom;
 - (c) in relation to or which result from breach by the Sub-Charterers of any representation, warranty, covenant, agreement, condition or stipulation contained in this Sub-Charter;
 - (d) in relation to the preservation or enforcement or attempted enforcement of any rights conferred upon the Head-Charterers by this Sub-Charter following the occurrence of any Termination Event or other breach by the Sub-Charterers of the terms of this Sub-Charter;
 - (e) in consequence of the Vessel becoming a wreck or obstruction to navigation;
- 52.1.3 any loss, damage or expense incurred by the Head-Charterers as a direct consequence of any arrest or detention of the Vessel by reason of a claim or claims for which the Sub-Charterers are directly responsible or as a consequence of any alleged violation of any convention (including, but not limited to, MARPOL) and the Sub-Charterer shall take all reasonable steps to secure that within a reasonable time the Vessel is released, by providing bail or otherwise as the circumstances may require; and
- 52.1.4 the occurrence of a Termination Event.

- The indemnity contained in this Clause 52 shall extend to all amounts payable by the Head-Charterers to the Approved Mortgagee by way of breakage costs as a result of, and any other costs and expenses arising from any of the defaults or events specified above.
- 52.2 The following shall apply if any amount received or recovered by the Head-Charterers in respect of any moneys or liabilities due, owing or incurred by the Sub-Charterers to the Head-Charterers (whether as a result of any judgment or order of any court or in the bankruptcy, administration, reorganisation, liquidation or dissolution of the Sub-Charterers, or by way of damages or any breach of any obligation to make any payment to the Head-Charterers) is received in a currency (the “**Currency of Payment**”) other than Dollars in whatever circumstances and for whatever reason:
- 52.2.1 such receipt or recovery shall only constitute a discharge to the Sub-Charterers to the extent of the amount in Dollars (the “**Dollar Equivalent Receipt**”) which the Head-Charterers are able or would have been able, on the date or dates of receipt by them of such payment or payments in the Currency of Payment (or, in the case of any such date which is not a Banking Day, on the next succeeding Banking Day), to purchase in the foreign exchange market of their choice with the amount or amounts so received in the Currency of Payment.
- 52.2.2 if the Dollar Equivalent Receipt falls short of the amount originally due to the Head-Charterers hereunder, the Sub-Charterers shall indemnify the Head-Charterers against any documented costs or expenses incurred or arising as a result of paying to the Head-Charterers that amount in Dollars certified by the Head-Charterers as necessary to so indemnify the Head-Charterers;
- 52.2.3 this indemnity shall constitute a separate and independent obligation from the other obligations contained in this Sub-Charter, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Head-Charterers from time to time, and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum or sums in respect of amounts due hereunder or under any such judgment or order; and
- 52.2.4 the certificate of the Head-Charterers as to the documented amount of any such costs and expenses aforesaid (which shall be deemed to constitute a loss suffered by the Head-Charterers) shall (save in the case of manifest error) for all purposes be conclusive and binding on the Sub-Charterers.
- 52.3 The indemnities contained in this Clause 52, and each of the other indemnities contained in this Sub-Charter in favour of the Head-Charterers, shall survive any termination or other ending of the Charter Period and any breach of, or repudiation or alleged repudiation by, the Head-Charterers or the Sub-Charterers of this Sub-Charter PROVIDED that, save where a Sub-Charterers’ Termination Event has occurred, any claim under such indemnities must be made within twelve (12) months of the Head-Charterers becoming aware of the matters giving rise to such claim.

52.4 All moneys payable by the Sub-Charterers under this Clause 52 shall be paid on demand.

53. **TERMINATION**

53.1 Each of the following events shall be a Termination Event for the purposes of this Sub-Charter:

53.1.1 if the Sub-Charterers fail to make any payment of hire or other moneys due under this Sub-Charter on its due date, or, in respect of moneys payable on demand (unless otherwise specifically provided) forthwith upon such demand being made and has not remedied such failure within three Banking Days of receipt of notice from the Head-Charterers of such failure;

53.1.2 if the Sub-Charterers are in breach of any one or more of the provisions of this Sub-Charter relating to the Insurances;

53.1.3 if the Sub-Charterers fail to observe or perform any provision of this Sub-Charter (including, without limitation, any Financial Covenant or General Undertaking) other than those referred to in Clauses 53.1.1 and 53.1.2, and, in the reasonable opinion of the Head-Charterers, such default is either not remediable or, in the case of any such default which the Head-Charterers consider capable of remedy, is not remedied to the Head-Charterers' entire satisfaction within seven (7) Banking Days after the Head-Charterers, by written notice to the Sub-Charterers, require the same to be remedied;

53.1.4 if any licence, approval, consent, authorisation or registration at any time necessary for the validity, enforceability or admissibility in evidence of this Sub-Charter, or for the Sub-Charterers to comply with their obligations thereunder, or in connection with the chartering and operation of the Vessel, is revoked, withheld or expires, or is modified in what the Head-Charterers consider a material respect;

53.1.5 if a petition is filed or an order made, (and the Sub-Charterers or the Sub-Charterers' Guarantor or the Manager shall not within twenty one (21) days thereafter have entered a bona fide appeal as a consequence of which such order is stayed) or an effective resolution passed, for the compulsory or voluntary winding-up or dissolution of the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager (other than for the purposes of amalgamation or reconstruction in respect of which the prior written consent of the Head-Charterers have been obtained, such consent not to be unreasonably withheld) or any step analogous thereto is begun in any jurisdiction in relation to the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager, or if the Sub-Charterers, the Sub-Charterers Guarantor or the Manager suspends payment of, or is unable to or admits inability to pay, their debts as they fall due or make any special

- arrangement or composition with their creditors generally or any class of their creditors;
- 53.1.6 if an administrator, administrative receiver, receiver or trustee or similar official is appointed of the whole, or a material part, of the property, assets or undertaking of the Sub-Charterers, the Sub-Charterers Guarantor or the Manager, or if the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager applies for, or consent to, any such appointment or any event occurs or proceeding is taken in any jurisdiction which has an effect equivalent or similar thereto;
- 53.1.7 if an encumbrancer takes possession of, or distress or execution is levied upon, the whole, or a material part, of the property, assets or undertaking of the Sub-Charterers;
- 53.1.8 if any of the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager cease, or threaten to cease, to carry on their business, or (without the prior written consent of the Head-Charterers, which shall not be unreasonably withheld) disposes or threatens to dispose of the whole, or a substantial part, of their property, assets or undertaking;
- 53.1.9 if any representation or warranty made or at any time deemed to be made in this Sub-Charter, or in any certificate or statement in writing delivered or made in connection with this Sub-Charter or in any certificate or statement in writing delivered or made in the negotiations leading up to the conclusion of this Sub-Charter is, incorrect in any material adverse respect, as if such representation or warranty were made as of such time and the same shall not be rectified within 14 days thereafter;
- 53.1.10 if an event of default occurs in relation to any obligation in respect of indebtedness of the Sub-Charterers the amount of which exceeds five hundred thousand United States Dollars (US\$500,000);
- 53.1.11 if it becomes impossible or unlawful for the Sub-Charterers in any material respect to fulfil any of their obligations under this Sub-Charter or for the Head-Charterers to exercise any of the rights vested in them by this Sub-Charter, or this Sub-Charter for any reason becomes invalid or unenforceable or cease to be in full force and effect or the Sub-Charterers repudiate or threaten to repudiate this Sub-Charter;
- 53.1.12 if the Vessel loses her classification status, or loss of classification status is threatened and remedial action is not initiated by the Sub-Charterers within seven (7) days;
- 53.1.13 if the Vessel becomes a Total Loss and the Head-Charterers do not receive, within the time specified in Clause 48.5, a net amount equal to the aggregate of

- (i) the minimum insured value applicable as at the date of the Total Loss and (ii) all other sums (if any) payable by the Sub-Charterers hereunder;
- 53.1.14 if a Termination Event (as defined in each Transaction Sub-Charter) occurs pursuant to or in accordance with the terms of any of the Transaction Sub-Charters or it becomes impossible or unlawful for any of the Transaction Sub-Charterers to fulfil any of their obligations under the Transaction Sub-Charters;
- 53.1.15 if it becomes impossible or unlawful for the Sub-Charterers' Guarantor in any material respect to fulfil any of its obligations under the Sub-Charterers' Guarantee or for the Head-Charterers to exercise any of the rights vested in them by the Sub-Charterers' Guarantee, or the Sub-Charterers' Guarantee for any reason becomes invalid or unenforceable or cease to be in full force and effect or the Sub-Charterers' Guarantor repudiate or threaten to repudiate the Sub-Charterers' Guarantee;
- 53.1.16 if anything is done or suffered or omitted to be done by the Sub-Charterers which, in the reasonable opinion of the Head-Charterers or the Approved Mortgagee, may imperil the registration of the Vessel or of any Security Documents, the Approved Mortgage or any other security constituted by the Approved Mortgage and if in the opinion of the Head-Charterers it will not adversely affect the Head-Charterers, or the security of the Approved Mortgage, it is remedied before the expiry of notice from the Head-Charterers requiring the same to be remedied;
- 53.1.17 if the Manager ceases, without the Head-Charterers approval, to be the managers of the Vessel;
- 53.1.18 there is a Material Adverse Effect; or
- 53.1.19 if the Vessel is detained under any arrest (which for the purpose of this Clause 53.1.19 means any arrest (whether or not registered), attachment, detention, restraint, impounding or seizure under any distress, execution or other process not attributable to any act or default of the Owners or the Head-Charterers or is impounded and is not released within fourteen (14) days.
- 53.2 The Sub-Charterers undertake promptly to advise the Head-Charterers of the occurrence of any Termination Event and of the steps (if any) which are being taken to remedy it.
- 54. **HEAD CHARTERERS' RIGHTS ON TERMINATION EVENT**
- 54.1 A Termination Event shall constitute (as the case may be) either a repudiatory breach of, or breach of condition by the Sub-Charterers under this Sub-Charter or an agreed terminating event the occurrence of which will (in any such case) entitle the Head-Charterers thereupon and at any time thereafter, so long as the same has not been

remedied, to take any one or more of the actions specified in Clauses 54.2 to 54.5 inclusive.

- 54.2 The Head-Charterers may:
 - 54.2.1 proceed by appropriate court action or actions to enforce performance of this Sub-Charter and/or to recover damages for the breach thereof; and/or
 - 54.2.2 take any and all such action as they may consider necessary or desirable to cure any such Termination Event. If the Head-Charterers thereby incur any expenditure or liability in curing the same, or otherwise incur any expenditure or liability in respect of the Vessel which should have been incurred by the Sub-Charterers, the Head-Charterers shall be entitled (without prejudice to their other rights hereunder) to recover such expenditure, or an amount equal to such liability, from the Sub-Charterers together with any Additional Amount (as well after as before judgment) calculated in accordance with the provisions of Clause 40.7 from the date such expenditure or liability suffered or incurred by the Head-Charterers until the date of receipt of payment thereof by the Head-Charterers.
- 54.3 The Head-Charterers may at their option, by notice to the Sub-Charterers, declare the Sub-Charterers to be in default and terminate the letting and hiring of the Vessel under this Sub-Charter and withdraw the Vessel from the service of the Sub-Charterers either immediately or on such date as the Head-Charterers may specify, in which event:
 - 54.3.1 the Vessel shall no longer be in the possession of the Sub-Charterers with the consent of the Head-Charterers;
 - 54.3.2 the Sub-Charterers shall, at the Sub-Charterers' expense, redeliver the Vessel or cause the Vessel to be redelivered to the Head-Charterers with all reasonable dispatch in the manner and in the condition required by this Sub-Charter, and the provisions of Clause 15 permitting the Sub-Charterers to have the use of the Vessel for the relevant additional period specified in that Clause in the circumstances mentioned in that Clause shall take effect subject to the Sub-Charterers' obligation under this Clause 54.3.2 to redeliver the Vessel with all reasonable despatch;
 - 54.3.3 without prejudice to the Sub-Charterers' obligation under Clause 54.3.2 above, the Head-Charterers shall be entitled, without legal process (or any obligation to institute legal process), to retake the Vessel (wherever she may be) together with all outfit, machinery, equipment, spare parts, appliances, furniture, fittings, furnishings, consumable stores, unused lubricating oils and bunkers on board the Vessel irrespective of whether the Sub-Charterers, any further sub-charterer or any other person/s are in possession of the Vessel, and for that purpose the Head-Charterers or their agent may enter upon any dock, pier or other premises where the Vessel may be, and the Sub-Charterers agree to indemnify the Head-

- Charterers for any liability, damages, costs or expenses whatsoever caused or incurred thereby.
- 54.4 Following the redelivery or retaking of possession of the Vessel, the Head-Charterers may sell the Vessel by public or private sale, in which case the Head-Charterers shall apply the proceeds of sale in or towards payment to the Approved Mortgagee of such sum as shall be required to discharge the Approved Mortgage, or otherwise dispose of, hold, use, operate, charter to others or keep idle the Vessel, as the Head-Charterers in their sole discretion may determine, all free and clear of any rights of the Sub-Charterers and without any duty to account to the Sub-Charterers with respect to such action or inaction or for any proceeds with respect thereto.
- 54.5 The Head-Charterers may recover the amounts specified in this Clause 54, without prejudice to the Head-Charterers' rights to claim damages and/or to exercise any other right or remedy to which the Head-Charterers may be entitled to under this Sub-Charter or at law, in equity or otherwise as a consequence of the occurrence of a Termination Event.
- 54.6 Termination of the chartering of the Vessel and/or repossession of the Vessel by the Head-Charterers shall not relieve the Sub-Charterers from any of their obligations under this Sub-Charter and the Sub-Charterers shall continue to comply with their obligations under this Sub-Charter until such time as the Head-Charterers has unconditionally received all amounts payable by the Sub-Charterers under Clause 55.
55. **TERMINATION PAYMENTS**
- 55.1 Following termination of the chartering of the Vessel hereunder pursuant to Clause 54.3 or after any repudiation of this Sub-Charter by the Sub-Charterers which is accepted by the Head-Charterers, whether or not amounting to a Termination Event, the Sub-Charterers shall be and become obliged to pay to the Head-Charterers the following amounts:
- 55.1.1 forthwith upon such termination all arrears of hire which are due and payable under Clause 40 before the date of termination of the chartering of the Vessel hereunder and all other moneys then payable to the Head-Charterers, together, with an Additional Amount (as well after as before judgement) in respect thereof calculated in accordance with Clause 40.7 from the date on which such hire or other sums fell due for payment to the date of payment;
- 55.1.2 on demand all documented costs and expenses of and in connection with or arising out of the retaking of possession of the Vessel by the Head-Charterers or redelivery of the Vessel to the Head-Charterers pursuant to this Sub-Charter including (without limitation), if a Termination Event has occurred, all costs and expenses suffered or incurred in moving, storing, laying up, insuring and maintaining, the Vessel and in carrying out any works or modifications required

- so as to enable the Vessel to comply with the requirements of Clause 14, together with any Additional Amount calculated in accordance with the provisions of Clause 40.7;
- 55.1.3 on demand all other documented costs, damages, expenses (including without limitation breakage and other costs incurred by the Owners under its financing arrangements with the Approved Mortgagee that result from any prepayment following termination being made other than on the date scheduled by such financing arrangements or from any default thereunder arising from such termination, and any legal fees and expenses on a full indemnity basis) of whatsoever nature suffered or incurred by the Owners as a result of such termination or repudiation, together with, if a Termination Event has occurred, any Additional Amount in respect thereof calculated in accordance with the provisions of Clause 40.7;
- 55.1.4 on demand all other documented costs, damages, expenses arising from such termination, and any legal fees and expenses on a full indemnity basis of whatsoever nature suffered or incurred by the Head-Charterers as a result of such termination or repudiation, together with any Additional Amount calculated in accordance with the provisions of Clause 40.7; and
- 55.1.5 on demand effect the Call Option pursuant to the terms of the Acquisition Agreement and pay the amount due thereunder, provided however that if for any reason whatsoever the Sub-Charterers fail to effect the Call Option on demand by the Head-Charterers, the Sub-Charterers shall pay to the Head-Charterers a sum equal to the Call Option Sum which would be payable if the Call Option had been exercised at the time of such demand.
- 55.2 The Sub-Charterers will be entitled in accordance with the terms of the Acquisition Agreement, by notice in writing to the Owners and the Head-Charterers, should the Head-Charterers make a demand on the Sub-Charterers under Clause 55.1.5, to require the Owners and the Head-Charterers to transfer title to the Vessel to the Sub-Charterers or to a company nominated by them, upon, or at any time after, payment by the Sub-Charterers to the Head-Charterers of the sum set out in Clause 55.1.5 and all other sums (if any) payable under Clauses 55.1.1, 55.1.2, 55.1.3, 55.1.4 and any other provision of this Sub-Charter. Such transfer will be on the basis that the Owners and the Head-Charterers make no condition, term, representation or warranty, express or implied (and whether statutory or otherwise) with respect to the Vessel, and the transfer will be strictly on as "as is/where is" basis, free from the Approved Mortgage and any other Encumbrance (save for Permitted Encumbrances) created as a result of any act or omission of the Owners or the Head Charterers.

56. **APPROVED MORTGAGEE**
- 56.1 The Sub-Charterers hereby acknowledge that the Owners intend to obtain a loan from Marfin Egnatia Bank S.A. of Greece (referred to in this Sub-Charter as the “**Approved Mortgagee**” to enable the Owners to finance or refinance the purchase of the Vessel and enter into the Head-Charter.
- 56.2 It is noted and agreed that the said loan will be secured by, *inter alia*, a mortgage and as the case may be collateral deed or deeds of covenant over the Vessel (referred to in this Sub-Charter as an “**Approved Mortgage**”), and an assignment or assignments of all the Owners and the Head-Charterers’ rights in the Insurances, earnings and the proceeds of any requisition of the Vessel and of the benefit of this Sub-Charter.
- 56.3 The Sub-Charterers hereby confirm their agreement to the provision by the Head-Charterers of the securities referred to in Clause 56.2 and undertake, at the request of the Owners and/or the Head-Charterers and (with respect to the Sub-Charterers’ own costs, including legal costs) at the Sub-Charterers’ expense, to execute all such documents and instruments and to do all such acts and things as the Approved Mortgagee may reasonably require to create and perfect, or otherwise in relation to, such security, and hereby acknowledges that their rights as Sub-Charterers of the Vessel shall in all respects be subordinate to the rights of the Approved Mortgagee. Without limitation, the Sub-Charterers will on request by the Head-Charterers additionally assign all their rights in the obligatory Insurances and the freights, hires or other earnings of the Vessel to the Head-Charterers, or to the Approved Mortgagee as assignee of the Head-Charterers’ rights under this Sub-Charter, as the Approved Mortgagee may require, as security for the performance by the Sub-Charterers of their obligations under this Sub-Charter and the Time Charter.
57. **QUIET ENJOYMENT**
- 57.1 If the Vessel is arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Sub-Charterers, the Sub-Charterers shall take all reasonable steps to secure that within a reasonable time the release of the Vessel, by providing bail or otherwise as the circumstances may require.
- 57.2 The Head-Charterers’ hereby covenant and undertake that, so long as no Termination Event shall have occurred and be continuing, in consequence whereof the Head-Charterers have duly given notice to withdraw the Vessel and terminate this Sub-Charter as provided in this Sub-Charter, the Head-Charterers shall not, and shall procure that no person for whose acts or omissions the Head-Charterers, are responsible, including any mortgagee of the Vessel, shall, disturb or interfere with quiet and peaceful use, possession and enjoyment of the Vessel by the Sub-Charterers subject to and upon the terms of this Sub-Charter or any sub-charterer.

- 57.3 The Head-Charterers shall not without the Sub-Charterers' prior written consent create which shall not be unreasonably withheld or delayed or suffer to exist any Encumbrance over the Vessel other than an Approved Mortgage, subject always to the provisions of this Sub-Charter.
- 57.4 If the Vessel is arrested or otherwise detained by reason of a claim or claims for which the Owners or the Head-Charterers are directly responsible, the Owners and the Head-Charterers shall take all reasonable steps to secure that within a reasonable time the Vessel is released, by providing bail or otherwise as the circumstances may require. In such circumstances, the Head-Charterers shall indemnify the Sub-Charterers against any loss, damage or expense incurred by the Sub-Charterers (including hire paid under this Sub-Charter) as a direct consequence of such arrest or detention.
58. **SALVAGE**
All salvage and towage and all proceeds from derelicts shall be for the Sub-Charterers' benefit and the cost of repairing damage or discharging liabilities occasioned thereby shall be borne by the Sub-Charterers.
59. **GENERAL AVERAGE**
- 59.1 General Average, if any, shall be adjusted according to the York-Antwerp Rules 2004 or any subsequent modification thereof current at the time of the casualty. The hire shall not contribute to General Average. If for any reason the hull and machinery insurance will not contribute to the General Average, then any liability shall be for the Sub-Charterers' account and not the Head-Charterers' and/or the Owners' account.
- 59.2 The Sub-Charterers hereby undertake to pay any salvor's award not paid by the Vessel's insurers due to gross negligence or wilful misconduct of the Sub-Charterers and/or the Manager.
60. **BILLS OF LADING**
The Sub-Charterers are to procure that all bills of lading issued for carriage of goods under this Sub-Charter shall contain a Paramount Clause incorporating any legislation relating to the carrier's liability for cargo compulsorily applicable in the trade. If no such legislation exists, the bills of lading shall incorporate the English Carriage of Goods by Sea Act 1971 (or as the same may be amended or replaced). The bills of lading shall also contain the amended New Jason Clause and the Both-to-Blame Collision Clause.
61. **REDELIVERY**
If on redelivery of the Vessel the requirements of this Charter relating to the condition of the Vessel shall not have been satisfied, the Head-Charterers shall be entitled to carry out such works or repairs to the Vessel, and otherwise take such actions, as shall be necessary

- to cause such requirements to be satisfied and shall be entitled to recover from the Sub-Charterers on demand the costs (if any) so incurred.
62. **ASSIGNMENT AND TRANSFER OF TITLE TO VESSEL**
- 62.1 The Head-Charterers shall not assign all or any of their rights and benefits under this Sub-Charter or any part thereof and/or to transfer title in the Vessel to any person or persons without the prior written consent of the Sub-Charterers, such consent not to be unreasonably withheld, conditioned or delayed, provided that such consent shall not be required in the case of an assignment of this Sub-Charter or transfer of title in the Vessel (with the benefit and burden of this Sub-Charter) to the Approved Mortgagee.
- 62.2 The Sub-Charterers agree and undertake to enter into such usual documents (including, without limitation, novation agreements and any documents supplemental thereto) as the Head-Charterers shall reasonably require to complete or perfect the transfer of the Vessel (with the benefit and burden of this Sub-Charter) pursuant to Clause 62.1.
63. **NOTICES**
- 63.1 Every notice or demand under this Sub-Charter shall be in the English language and in writing and may be given or made by letter, e-mail or fax.
- 63.2 Any accounts, demand, consent, record, election or notice required or permitted to be given hereunder shall be in writing and sent by prepaid airmail letter post, telex or delivered by hand addressed as follows:
- 63.2.1 if to the Owners to: c/o Prime Shipping Holding Ltd
17-21B Agias Zonis, Eleni Court
P.O.Box 54970
Limassol CY-3729
Republic of Cyprus
Fax No.: + 357 25 746926
E-mail: info@lemissoler.com
- 63.2.2 if to the Head-Charterers to: c/o Lemissoler Shipmanagement Limited
17-21B Agias Zonis, Eleni Court
P.O.Box 54970
Limassol CY-3729
Republic of Cyprus
Fax No.: + 357 25 746926
E-mail: info@lemissoler.com
- 63.2.3 if to the Sub-Charterers to: c/o Newlead Bulkiers S.A.
83 Akti Miaouli & Flessa
Piraeus 18538
Greece

Fax No.: +30 213 0148609
E-mail: Pkallifidas@newleadholdings.com

Marfin Egnatia Bank S.A
24B Kifissias Avenue
151 25 Maroussi
Attiki, Greece
Fax No: +30 210 6896358

63.2.4 if to the Approved Mortgagee to:

or in each case to such other person or address or addresses as any party may notify in writing to the other parties thereto. Every notice or demand shall, except so far as otherwise required by this Sub-Charter, be deemed to have been received in the case of a telefax at the time of despatch thereof and in the case of a letter two (2) days after the posting of the same by prepaid local post or seven (7) days after the posting of the same by prepaid airmail post, as may be appropriate, and in the case of delivery by hand, on delivery.

64. **FEES AND EXPENSES**

The Sub-Charterers shall pay on demand all costs, charges, expenses, claims, liabilities, losses, duties and fees (including, but not limited to, the fees and expenses of all legal and insurance advisers) incurred by that Owners and the Head-Charterers in the negotiation, preparation, printing, execution, enforcement and registration of this Sub-Charter and the Head-Charter and any other document entered into pursuant to or in connection with this Sub-Charter (save for any of the Security Documents or any loan agreement or finance document entered into by the Owners or the Head-Charterers).

65. **MISCELLANEOUS**

- 65.1 No delay or omission by the either party to exercise any right, power or remedy vested in it under this Sub-Charter or by law shall impair such right, power or remedy, or be construed as a waiver of, or as an acquiescence in, any default by the other party.
- 65.2 If either party on any occasion agrees to waive any such right, power or remedy, such waiver shall not in any way preclude or impair any further exercise thereof or the exercise of any other right, power or remedy.
- 65.3 Any waiver by either party of any provision of this Sub-Charter, and any consent or approval given by either party, shall only be effective if given in writing and then only strictly for the purpose and upon the terms for which it is given.
- 65.4 This Sub-Charter may not be amended or varied orally but only by an instrument signed by each of the parties hereto.

- 65.5 The rights, powers and remedies of each party contained in this Sub-Charter are cumulative and not exclusive of each other nor of any other rights, powers or remedies conferred by law, and may be exercised from time to time and as often as that party may think fit.
- 65.6 If at any time one or more of the provisions of this Sub-Charter is or become invalid, illegal or unenforceable in any respect under any law by which it may be governed or affected, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired as a result.
- 65.7 This Sub-Charter may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute but one and the same instrument.
- 65.8 The termination or expiry of this Sub-Charter shall be without prejudice to rights accrued due between the parties prior to the date of termination or expiry and to any claim that either party may have.
- 65.9 All terms and conditions of this Sub-Charter shall be kept private and confidential.
- AS WITNESS** the hands of the duly authorised representatives of the parties hereto the day and year first before written.

For and on behalf of

For and on behalf of

PRIME HILL MARITIME LTD

GRAND RODOSI INC.

By: /s/ Petros Monogios

By: /s/ Peter Kallifidas

SCHEDULE 1
CONDITIONS PRECEDENT

Part A: Sub-Charterers

1. The Head-Charterers and their legal advisers shall be satisfied on the Delivery Date that:
 - 1.1 no Termination Event has occurred and is continuing or would result from the chartering of the Vessel to the Sub-Charterers under this Sub-Charter;
 - 1.2 each of the representations and warranties contained in Clause 33 is true and correct on the Delivery Date by reference to the facts and circumstances then subsisting;
 - 1.3 each of the financial covenants contained in Clause 50 is true and correct on the Delivery Date by reference to the facts and circumstances then subsisting;
 - 1.4 no Encumbrances (save for Permitted Encumbrances) are subsisting on the Vessel;
 - 1.5 the Head-Charterers have received payment of the Advance Payment and the first month's hire due on the Delivery Date;
 - 1.6 the Head-Charterers or their legal advisers, have received in form and substance satisfactory to them, of:
 - 1.6.1 an extract from the relevant companies register in the country of incorporation of the Sub-Charterers confirming that the Sub-Charterers are in good standing and the authority of named officers of the Sub-Charterers to bind the Sub-Charterers;
 - 1.6.2 a copy, certified as true by the secretary or a director of the Sub-Charterers, of any power of attorney duly issued by the Sub-Charterers and in favour of any person or persons executing the Sub-Charter;
 - 1.6.3 the Manager's Undertaking duly executed by the Manager in a form acceptable to the Approved Mortgagee;
 - 1.6.4 evidence, by way of copy policies, cover notes, letters of undertaking and certificates of entry, that insurance in respect of the Vessel has been effected in accordance with the provisions of this Sub-Charter and that the respective interests of the Owners, Head-Charterers and the Approved Mortgagee have been or will be noted thereon, together with letters of undertaking from the relevant brokers and protection and indemnity and war risks associations and a favourable written opinion from insurance advisers nominated by the Approved Mortgagee, at the Sub-Charterers' expense, as to the quality of the insurance of the Vessel;
 - 1.6.5 a copy, certified as true by the secretary or a director of the Sub-Charterers, of the management agreement in relation to the Vessel, in terms acceptable to the Approved Mortgagee, entered into by the Sub-Charterers with the Manager;

- 1.6.6 a copy, certified as true by the secretary or a director of the Sub-Charterers, of any Time Charter in relation to the Vessel, in terms acceptable to the Approved Mortgagee;
- 1.6.7 evidence satisfactory to the Head-Charterers in all respects:
- (a) of compliance by the Sub-Charterers, the Manager, and the Vessel with the requirements of MARPOL 73/78, the ISM Code and of the ISPS Code;
 - (b) that the Vessel is classed with the Classification Society with the highest possible notation for such type of vessel and with its classification free from all recommendations, qualifications, requirements, notations and average damage;
 - (c) that the Vessel is in compliance with all applicable laws, regulations and requirements (statutory or otherwise) applicable to ships registered under the Flag State with all required trading certificates (valid and current) and engaged in the service in which it is or is to be engaged;
 - (d) that the Sub-Charterers' Guarantor has entered into the Sub-Charterers' Guarantee together with evidence that the Sub-Charterers' Guarantor has the full power and corporate authority to enter into the Sub-Charterers' Guarantee and, where required, evidence that all information requested by the Approved Mortgagee in connection with the Sub-Charterers' Guarantor or the Sub-Charterers' Guarantee has been provided (and is acceptable) to the Approved Mortgagee;
 - (e) that the Sub-Charterers' Guarantor has entered into the Warrants Instrument with Lemissoler Corporate Management Limited in the agreed form;
 - (f) that the Sub-Charterers have entered into such Security Documents (to which it is a party) and all documents, instruments, notices and acknowledgements thereto required under those Security Documents, and, where required, evidence that such Security Documents have been duly registered or are capable of immediate registration with the required priority in the appropriate register and acceptable to the Approved Mortgagee; and
 - (g) the Sub-Charterers have made payment of all fees and expenses (including legal fees and expenses) due and payable on or before the Delivery Date.

Part B: Head-Charterers

2. The Sub-Charterers and their legal advisers shall be satisfied on the Delivery Date that:
- 2.1 each of the representations and warranties made by the Head-Charterers contained in Clause 33 is true and correct on the Delivery Date by reference to the facts and circumstances then subsisting; and
 - 2.2 no Encumbrances (save for Permitted Encumbrances) are subsisting on the Vessel;
 - 2.3 the Sub-Charterers or their legal advisers, have received in form and substance satisfactory to them, of:
 - 2.3.1 an extract from the relevant companies register in the country of incorporation of the Head-Charterers confirming that the Head-Charterers are in good standing and the authority of named officers of the Head-Charterers to bind the Head-Charterers;
 - 2.3.2 a copy, certified as true by the secretary or a director of the Head-Charterers, of any power of attorney duly issued by the Head-Charterers and in favour of any person or persons executing the Head-Charter;
 - 2.3.3 evidence satisfactory to the Sub-Charterers:
 - (a) the Vessel has been unconditionally delivered by the Seller to the Owner in accordance with the MOA and accepted by the Owner as being in all respects in compliance with the provisions of the MOA to include certified true copies of the protocol of delivery and acceptance signed by the Seller and of all other documents to be provided by the Seller upon delivery of the Vessel pursuant to the MOA;
 - (b) the Vessel has been unconditionally delivered by the Owners to the Head-Charterers in accordance with the Head-Charter and accepted by the Head-Charterers as being in all respects in compliance with the provisions of the Head-Charter to include certified true copies of the protocol of delivery and acceptance signed by the Head-Charterers and of all other documents to be provided by the Owners upon delivery of the Vessel pursuant to the Head-Charter;
 - (c) that the Vessel is in the absolute ownership of the Owner as the sole, legal and beneficial owner of the Vessel free from all Encumbrances save for Permitted Encumbrances; and
 - 2.3.4 confirmation from the agents in England nominated by the Head-Charterers in the Multipartite Agreement for the acceptance of service of process, that they consent to such nomination.

**SCHEDULE 2
REPRESENTATIONS AND WARRANTIES**

Part A: Sub-Charterers

1. The Sub-Charterers represent and warrant that the following matters are true at the date of this Charter and shall be true on the Delivery Date:
- 1.1 the Sub-Charterers:
 - 1.1.1 are a company duly incorporated with limited liability in the Republic of Liberia, validly existing and in good standing under the laws of the Republic of Liberia;
 - 1.1.2 have full power to own their property and assets and to carry on their business as it is now being conducted and to charter the Vessel from the Head-Charterers hereunder;
 - 1.1.3 have complied with all statutory and other requirements relative to their business;
- 1.2 entry into and performance by the Sub-Charterers of this Sub-Charter is within the corporate powers of the Sub-Charterers and has been duly authorised by all necessary corporate actions and approvals;
- 1.3 entry into and performance by the Sub-Charterers of this Sub-Charter does not and will not
 - 1.3.1 contravene in any respect any law, regulation or contractual restriction which does, or may, bind the Sub-Charterers any of their assets;
 - 1.3.2 result in the creation or imposition of any encumbrance on any of their assets in favour of any party other than the Head-Charterers and the Approved Mortgagee;
- 1.4 all licences, authorisations, approvals and consents (if any) necessary for the entry into, performance, validity, enforceability or admissibility in evidence of this Sub-Charter have been obtained and are in full force and effect;
- 1.5 this Sub-Charter constitutes the Sub-Charterers' legal, valid and binding obligations and is enforceable in accordance with its terms;
- 1.6 no litigation, arbitration, tax claim or administrative proceeding is current or pending or threatened, which, if adversely determined, would have a materially detrimental effect on the financial condition of the Sub-Charterers;

- 1.7 no Termination Event has occurred and is continuing;
- 1.8 the choice of English law to govern this Sub-Charter and the submission by the Sub-Charterers to the jurisdiction of the English courts are valid and binding;
- 1.9 all payments to be made by the Sub-Charterers under this Sub-Charter may be made free and clear of and without deduction or withholding for or on account of any taxes, and this Sub-Charter is not liable to any registration charge or any stamp, documentary or similar taxes imposed by any authority, including without limitation, in connection with the admissibility in evidence thereof;
- 1.10 the obligations of the Sub-Charterers under this Sub-Charter will rank at least *pari passu* with all of their other unsecured and unsubordinated obligations and liabilities from time to time outstanding, other than as preferred by the statute; and
- 1.11 each of the financial covenants contained in Clause 50 is true and correct by reference to the facts and circumstances then subsisting.

Part B: Head-Charterers

- 2. The Head-Charterers represent and warrant that the following matters are true at the date of this Sub-Charter and shall be true on the Delivery Date:
 - 2.1 the Head-Charterers:
 - 2.1.1 are a company duly incorporated with limited liability, validly existing and in good standing under the laws of the Republic of the Marshall Islands; and
 - 2.1.2 have full power to charter the Vessel to the Sub-Charterers hereunder, to own their property and assets and to carry on their business as it is now being conducted.
 - 2.2 the entry into and performance by the Head-Charterers of this Sub-Charter is within the corporate powers of the Head-Charterers and has been duly authorised by all necessary corporate actions and approvals.
 - 2.3 all licences, authorisations, approvals and consents necessary for the Head-Charterers' entry into and performance of this Sub-Charter have been obtained and are in full force and effect, true copies have been delivered to the Sub-Charterers and there has been no breach of any condition or restriction imposed in this respect.
 - 2.4 the Head-Charterers further represent and warrant and undertake that they are and shall throughout the Charter Period remain as single-purpose company, chartering no other ship than the Vessel.

SCHEDULE 3
NOTICE OF ASSIGNMENT/LOSS PAYABLE CLAUSE

SCHEDULE 4
FORM OF PROTOCOL OF DELIVERY AND ACCEPTANCE

By this Protocol of Delivery and Acceptance dated [•]2010 it is hereby confirmed that the m.v. [•] having IMO Number [•] was delivered to and accepted by [•] (the “**Sub-Charterer**”) pursuant to and under a bareboat charter (the “Sub-Charter”) dated [•] and made between [•] (the “**Head-Charterer**”) as head-charterer and the Sub-Charterer as sub-charterer, at [00:00] hours G.M.T. on the [•] day of [•] 2010.

Signed by

for and on behalf of
[•]

Signed by

for and on behalf of
[•]

**SCHEDULE 5
CALCULATION OF HIRE RATE
m.v. "GRAND RODOSI"**

Month	Monthly Rate (US\$)
1 — 36	225,782
37 — 96	135,469

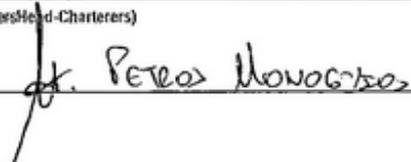
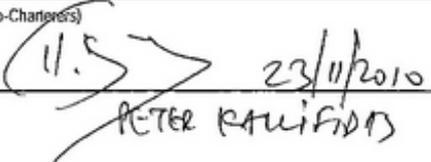


"BARECON 2001" STANDARD BAREBOAT CHARTER

PART I

26. Place of payment; also state beneficiary and bank account (Cl. 11) Account Name: PRIME MARITIME HOLDING LTD IBAN No.: GR5802803140000000280587428 Bank: Marfin Egnatia Bank SA SWIFT: EGNAGR2T	27. Bank guarantee/bond (sum and place) (Cl. 24) (optional) N/A
28. Mortgage(s), if any (state whether 12(a) or (b) applies; if 12(b) applies state date of Financial Instrument and name of Mortgagee(s)/Place of business) (Cl. 12) See Clause 56	29. Insurance (hull and machinery and war risks) (state value acc. to Cl. 13(i) or, if applicable, acc. to Cl. 14(k)) (also state if Cl. 14 applies) See Clause 47
30. Additional insurance cover, if any, for Owners' account limited to (Cl. 13(b) or, if applicable, Cl. 14(a))	31. Additional insurance cover, if any, for Charterers' account limited to (Cl. 13(b) or, if applicable, Cl. 14(a))
32. Latent defects (only to be filled in if period other than stated in Cl. 3) N/A	33. Brokerage commission and to whom payable (Cl. 27) N/A
34. Grace period (state number of clear banking days) (Cl. 28) See Clauses 53, 54 and 55	35. Dispute Resolution (state 30(a), 30(b) or 30(c); if 30(c) agreed Place of Arbitration <u>must</u> be stated (Cl. 30) London Arbitration
36. War cancellation (indicate countries agreed) (Cl. 28(f)) N/A	
37. Newbuilding Vessel (Indicate with "yes" or "no" whether PART II applies) (optional) NO	38. Name and place of Builders (only to be filled in if PART III applies) N/A
39. Vessel's Yard Building No. (only to be filled in if PART III applies) N/A	40. Date of Building Contract (only to be filled in if PART III applies) N/A
41. Liquidated damages and costs shall accrue to (state party acc. to Cl. 1) a) N/A b) N/A c) N/A	
42. Hire/Purchase agreement (Indicate with "yes" or "no" whether PART IV applies) (optional) NO	43. Bareboat Charter Registry (Indicate with "yes" or "no" whether PART V applies) (optional) NO
44. Flag and Country of the Bareboat Charter Registry (only to be filled in if PART V applies) N/A	45. Country of the Underlying Registry (only to be filled in if PART V applies) N/A
46. Number of additional clauses covering special provisions, if agreed Additional Clauses 32 to 65 inclusive, as attached hereto.	

PREAMBLE - It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include PART I and PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict but no further. It is further mutually agreed that PART III and/or PART IV and/or PART V shall only apply and only form part of this Charter if expressly agreed and stated in Boxes 37, 42 and 43. If PART III and/or PART IV and/or PART V apply, it is further agreed that in the event of a conflict of conditions, the provisions of PART I and PART II shall prevail over those of PART III and/or PART IV and/or PART V to the extent of such conflict but no further.

Signature (Owners/Head-Charterers) 	Signature (Sub-Charterers) 
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PART II
"BARECON 2001" Standard Bareboat Charter

1.	Definitions	1	(b) — If it appears that the Vessel will be delayed beyond	69
	In this Charter, the following terms shall have the	2	the cancelling date, the Owners may, as soon as they	70
	meanings hereby assigned to them:	3	are in a position to state with reasonable certainty the	71
	"The Owners" shall mean the party identified in <u>Box 3</u> ;	4	day on which the Vessel should be ready, give notice	72
	"The Charterers" shall mean the party identified in <u>Box 4</u> ;	5	thereof to the Charterers asking whether they will	73
	"The Vessel" shall mean the vessel named in <u>Box 5</u> and	6	exercise their option of cancelling, and the option must	74
	with particulars as stated in <u>Boxes 6 to 12</u> ;	7	then be declared within one hundred and sixty-eight	75
	"Financial Instrument" means the mortgage, deed of	8	(168) running hours of the receipt by the Charterers of	76
	covenant or other such financial security instrument as	9	such notice or within thirty-six (36) running hours after	77
	annexed to this Charter and stated in <u>Box 28</u> ;	10	the cancelling date, whichever is the earlier. If the	78
	Any references herein to "this Charter", "the Owner"		Charterers do not then exercise their option of cancelling,	79
	and "the Charterers" shall be interpreted and		the seventh day after the readiness date stated in the	80
	construed to be a reference to "this Sub-Charter", the		Owners' notice shall be substituted for the cancelling	81
	Head-Charterers" and the "Sub-Charterers"		date indicated in <u>Box 15</u> for the purpose of this <u>Clause 5</u> ;	82
	respectively, as the context may require.		(c) — Cancellation under this <u>Clause 5</u> shall be without	83
2.	Charter Period	11	prejudice to any claim the Charterers may otherwise	84
	In consideration of the hire detailed in <u>Box 22</u> ,	12	have on the Owners under this Charter.	85
	the Owners have agreed to, let and the Charterers have	13		
	agreed to hire the Vessel for the period stated in <u>Box 21</u>	14	6. Trading Restrictions	86
	("The Charter Period").	15	The Vessel shall be employed in lawful trades for the	87
3.	Delivery (See Clauses 34, 36, 37, 38)	16	carriage of suitable lawful merchandise within the trading	88
	<i>(not applicable when Part III applies, as indicated in <u>Box 37</u>)</i>	17	limits indicated in <u>Box 20</u> .	89
	(a) — The Owners shall before and at the time of delivery	18	The Charterers undertake not to employ the Vessel or	90
	exercise due diligence to make the Vessel seaworthy	19	suffer the Vessel to be employed otherwise than in	91
	and in every respect ready in hull, machinery and	20	conformity with the terms of the contracts of insurance	92
	equipment for service under this Charter.	21	(including any warranties expressed or implied therein)	93
	The Vessel shall be delivered by the Owners and taken	22	without first obtaining the consent of the insurers to such	94
	over by the Charterers at the port or place indicated in	23	employment and complying with such requirements as	95
	<u>Box 13</u> in such ready safe berth as the Charterers may	24	extra premium or otherwise as the insurers may	96
	direct.	25	prescribe.	97
	(b) — The Vessel shall be properly documented on	26	The Charterers also undertake not to employ the Vessel	98
	delivery in accordance with the laws of the flag State	27	or suffer her employment in any trade or business which	99
	indicated in <u>Box 5</u> and the requirements of the	28	is forbidden by the law of any country to which the Vessel	100
	classification society stated in <u>Box 10</u> . The Vessel upon	29	may sail or is otherwise illicit or in carrying illicit or	101
	delivery shall have her survey cycles up to date and	30	prohibited goods or in any manner whatsoever which	102
	trading and class certificates valid for at least the number	31	may render her liable to condemnation, destruction,	103
	of months agreed in <u>Box 12</u> .	32	seizure or confiscation.	104
	(c) — The delivery of the Vessel by the Owners and the	33	Notwithstanding any other provisions contained in this	105
	taking over of the Vessel by the Charterers shall	34	Charter it is agreed that nuclear fuels or radioactive	106
	constitute a full performance by the Owners of all the	35	products or waste are specifically excluded from the	107
	Owners' obligations under this <u>Clause 3</u> , and thereafter	36	cargo permitted to be loaded or carried under this	108
	the Charterers shall not be entitled to make or assert	37	Charter. This exclusion does not apply to radio-isotopes	109
	any claim against the Owners on account of any	38	used or intended to be used for any industrial,	110
	conditions, representations or warranties expressed or	39	commercial, agricultural, medical or scientific purposes	111
	implied with respect to the Vessel but the Owners shall	40	provided the Owners' prior approval has been obtained	112
	be liable for the cost of but not the time for repairs or	41	to loading thereof.	113
	renewals occasioned by latent defects in the Vessel,	42	7. Surveys on Delivery and Redelivery	114
	her machinery or appurtenances, existing at the time of	43	<i>(not applicable when Part III applies, as indicated in <u>Box 37</u>)</i>	115
	delivery under this Charter, provided such defects have	44	The Owners and Charterers shall each appoint	116
	manifested themselves within twelve (12) months after	45	surveyors for the purpose of determining and agreeing	117
	delivery unless otherwise provided in <u>Box 32</u> .	46	in writing the condition of the Vessel at the time of	118
4.	Time for Delivery	47	delivery and redelivery hereunder. The Owners shall	119
	<i>(not applicable when Part III applies, as indicated in <u>Box 37</u>)</i>	48	bear all expenses of the On-hire Survey including loss	120
	The Vessel shall not be delivered before the date	49	of time, if any, and the Charterers shall bear all expenses	121
	indicated in <u>Box 14</u> without the Charterers' consent and	50	of the Off-hire Survey including loss of time, if any, at	122
	the Owners shall exercise due diligence to deliver the	51	the daily equivalent to the rate of hire or pro rata thereof.	123
	Vessel not later than the date indicated in <u>Box 15</u> .	52		
	Unless otherwise agreed in <u>Box 18</u> , the Owners shall	53	8. Inspection	124
	give the Charterers not less than thirty (30) running days'	54	The Owners shall have the right at any time after giving	125
	preliminary and not less than fourteen (14) running days'	55	reasonable notice to the Charterers to inspect or survey	126
	definite notice of the date on which the Vessel is	56	the Vessel or instruct a duly authorised surveyor to carry	127
	expected to be ready for delivery.	57	out such survey on their behalf:	128
	The Owners shall keep the Charterers closely advised	58	(a) to ascertain the condition of the Vessel and satisfy	129
	of possible changes in the Vessel's position.	59	themselves that the Vessel is being properly repaired	130
5.	Cancelling (See Clause 36)	60	and maintained, so that it maintains her classification	131
	<i>(not applicable when Part III applies, as indicated in <u>Box 37</u>)</i>	61	status with the classification society free from	
	(a) — Should the Vessel not be delivered latest by the	62	overdue recommendations affecting the same. The	
	cancelling date indicated in <u>Box 15</u> , the Charterers shall	63	costs and fees for such inspection	
	have the option of cancelling this Charter by giving the	64	or survey shall be paid by the Owners unless the Vessel	132
	Owners notice of cancellation within thirty-six (36)	65	is found to require repairs or maintenance in order to	133
	running hours after the cancelling date stated in <u>Box</u>	66	achieve the condition so provided;	134
	<u>15</u> , failing which this Charter shall remain in full force	67	(b) in dry-dock if the Charterers have not dry-docked	135
	and effect.	68	Her in accordance with <u>Clause 10(g)</u> . The costs and fees	136
			for such inspection or survey shall be paid by the	137
			Charterers; and	138



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(c) for any other commercial reason they consider necessary (provided it does not unduly interfere with the commercial operation of the Vessel). The costs and fees for such inspection and survey shall be paid by the Owners.	139 140 141 142 143	or authority thereof, to enable the Vessel, without penalty or charge, lawfully to enter, remain at, or leave any port, place, territorial or contiguous waters of any country, state or municipality in performance of this Charter without any delay. This obligation shall apply whether or not such requirements have been lawfully imposed by such government or division or authority thereof.	205 206 207 208 209 210 211 212
All time used in respect of inspection, survey or repairs shall be for the Charterers' account and form part of the Charter Period.	144 145 146	The Charterers shall make and maintain all arrangements by bond or otherwise as may be necessary to satisfy such requirements at the Charterers' sole expense and the Charterers shall indemnify the Owners against all consequences whatsoever (including loss of time) for any failure or inability to do so.	213 214 215 216 217 218
The Charterers shall also permit the Owners to inspect the Vessel's log books whenever requested and shall whenever required by the Owners furnish them with full information regarding any casualties or other accidents or damage to the Vessel.	147 148 149 150 151	(b) <u>Operation of the Vessel</u> - The Charterers shall at their own expense and by their own procurement man, victual, navigate, operate, supply, fuel and, whenever required, repair the Vessel during the Charter Period and they shall pay all charges and expenses of every kind and nature whatsoever incidental to their use and operation of the Vessel under this Charter, including annual flag State fees and any foreign general municipality and/or state taxes. The Master, officers and crew of the Vessel shall be the servants of the Charterers for all purposes whatsoever, even if for any reason appointed by the Owners.	219 220 221 222 223 224 225 226 227 228 229 230
9. Inventories, Oil and Stores	152	Charterers shall comply with the regulations regarding officers and crew in force in the country of the Vessel's flag or any other applicable law. Vessel not to force ice or follow icebreaker or enter ice-bound port. Charterers to follow for entire duration of the Charter (including any extension) Rightship vetting.	231 232 233
A complete inventory of the Vessel's entire equipment, outfit including spare parts, appliances and of all consumable stores on board the Vessel shall be made by the Charterers in conjunction with the Owners on delivery and again on redelivery of the Vessel. The Charterers and the Owners, respectively, shall at the time of delivery and redelivery take over and pay for all bunkers, lubricating oil, unbroached provisions, paints, ropes and other consumable stores (excluding - including spare parts) in the said Vessel at the then current market prices at the ports of delivery and redelivery, respectively. The Charterers shall ensure that all spare parts listed in the inventory and used during the Charter Period are replaced at their expense prior to redelivery of the Vessel. The Head Charterers will deliver to the Sub Charterers the remaining on board bunkers and lubricants at the time of delivery at no cost. The Sub Charterers will redeliver the Vessel with same quantities and grades of bunkers and lubricants as on delivery. The Head Charterers at the time of redelivery will pay for the remaining bunkers at prices as per last invoice.	153 154 155 156 157 158 159 160 161 162 163 164 165 166 167	(c) The Charterers shall keep the Owners and the mortgagee(s) advised of the intended employment, planned dry-docking and major repairs of the Vessel, as reasonably required.	234 235 236 237
10. Maintenance and Operation (See also Clause 42)	168	(d) <u>Flag and Name of Vessel</u> - During the Charter Period, the Charterers shall have the liberty to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag. The Charterers shall also have the liberty, with the Owners' consent, which shall not be unreasonably withheld, to change the flag and/or the name of the Vessel during the Charter Period. Painting and re-painting, instalment and re-instalment, registration and re-registration, if required by the Owners, shall be at the Charterers' expense and time.	238 239 240 241 242 243 244 245 246 247 248
(a)(i) <u>Maintenance and Repairs</u> - During the Charter Period the Vessel shall be in the full possession and at the absolute disposal for all purposes of the Charterers and under their complete control in every respect. The Charterers shall maintain the Vessel, her machinery, boilers, appurtenances and spare parts in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice and, except as provided for in <u>Clause 14(f)</u> , if applicable, at their own expense they shall at all times keep the Vessel's Class fully up to date with the Classification Society indicated in <u>Box 10</u> and maintain all other necessary certificates in force at all times.	169 170 171 172 173 174 175 176 177 178 179 180 181 182	(e) <u>Changes to the Vessel</u> - Subject to <u>Clause 10(a)(ii)</u> and <u>Clause 46</u> , the Charterers shall make no structural changes in the Vessel or changes in the machinery, boilers, appurtenances or spare parts thereof without in each instance first securing the Owners' written approval thereof. If the Owners	249 250 251 252 253
(ii) New Class and Other Safety Requirements - In the event of any improvement, structural changes or new equipment becoming necessary for the continued operation of the Vessel by reason of new class requirements or by compulsory legislation existing (excluding the Charterers' loss of time) more than the percentage stated in <u>Box 23</u>, or if <u>Box 23</u> is left blank, 5 per cent of the Vessel's insurance value as stated in <u>Box 29</u>, then the extent, if any, to which the rate of hire shall be varied and the ratio in which the cost of compliance shall be shared between the parties concerned in order to achieve a reasonable distribution thereof as between the Owners and the Charterers having regard, inter alia, to the length of the period remaining under this Charter shall, in the absence of agreement, be referred to the dispute resolution method agreed in <u>Clause 30</u>. (See <u>Clause 45</u>)	183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200	so agree, the Charterers shall, if the Owners so require, restore the Vessel to its former condition before the termination of this Charter.	254 255 256
(iii) <u>Financial Security</u> - The Charterers shall maintain financial security or responsibility in respect of third party liabilities as required by any government, including federal, state or municipal or other division	201 202 203 204	(f) <u>Use of the Vessel's Outfit, Equipment and Appliances</u> - The Charterers shall have the use of all outfit, equipment, and appliances on board the Vessel at the time of delivery, provided the same or their substantial equivalent shall be returned to the Owners on redelivery in the same good order and condition as when received, ordinary wear and tear excepted. The Charterers shall from time to time during the Charter Period replace such items of equipment as shall be so damaged or worn as to be unfit for use. The Charterers are to procure that all repairs to or replacement of any damaged, worn or lost parts or equipment be effected in such manner (both as regards workmanship and quality of materials) as not to diminish the value of the Vessel. The Charterers have the right to fit additional equipment at their expense and risk but the Charterers shall remove such equipment and fittings at the end of the period if	257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273



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requested by the Owners. Any equipment including radio	274	provisions of the Financial Instrument and agree to	346
equipment on hire on the Vessel at time of delivery shall	275	acknowledge this in writing in any form that may be	347
be kept and maintained by the Charterers and the	276	required by the mortgagee(s). The Owners warrant that	348
Charterers shall assume the obligations and liabilities	277	they have not effected any mortgage(s) other than stated	349
of the Owners under any lease contracts in connection	278	in <u>Box 28</u> and that they shall not agree to any	350
therewith and shall reimburse the Owners for all	279	amendment of the mortgage(s) referred to in <u>Box 28</u> or	351
expenses incurred in connection therewith, also for any	280	effect any other mortgage(s) without the prior consent	352
new equipment required in order to comply with radio	281	of the Charterers, which shall not be unreasonably	353
regulations.	282	withheld.	354
(g) <u>Periodical Dry-Docking</u> - The Charterers shall dry-	283	*) (Optional, <u>Clauses 12(a) and 12(b)</u> are alternatives;	355
dock the Vessel and clean and paint her underwater	284	indicate alternative agreed in <u>Box 28</u> .	356
parts whenever the same may be necessary, but not and	285		
as per Class requirements		13. Insurance and Repairs (See also Clause 47)	357
less than once during the period stated in <u>Box 19</u> or, if	286	(a) During the Charter Period the Vessel shall be kept	358
<u>Box 19</u> has been left blank, every sixty (60) calendar	287	insured by the Charterers at their expense against hull	359
months after delivery or such other period as may be	288	and machinery, war and Protection and Indemnity risks	360
required by the Classification Society or flag State.	289	(and any risks against which it is compulsory to insure	361
		for the operation of the Vessel, including maintaining	362
11. Hire (See also Clause 40)	290	financial security in accordance with sub-clause	363
(a) The Charterers shall pay hire due to the Owners	291	10(a)(ii)) in such form as the Owners shall in writing	364
punctually in accordance with the terms of this Charter	292	approve, which approval shall not be un-reasonably	365
in respect of which time shall be of the essence.	293	withheld. Such insurances shall be arranged by the	366
(b) The Charterers shall pay to the Owners for the hire	294	Charterers to protect the interests of both the Owners	367
of the Vessel a lump sum in the amount indicated in	295	and the Charterers and the mortgagee(s) (if any), and	368
<u>Box 22</u> which shall be payable not later than every thirty	296	The Charterers shall be at liberty to protect under such	369
(30) running days in advance, the first lump sum being	297	insurances the interests of any managers they may	370
payable on the date and hour of the Vessel's delivery to	298	appoint. Insurance policies shall cover the Owners and	371
the Charterers. Hire shall be paid continuously	299	the Charterers according to their respective interests.	372
throughout the Charter Period.	300	Subject to the provisions of the Financial Instrument, if	373
(c) Payment of hire shall be made in cash without	301	any, and the approval of the Owners and the insurers,	374
discount in the currency and in the manner indicated in	302	the Charterers shall effect all insured repairs and shall	375
<u>Box 25</u> and at the place mentioned in <u>Box 26</u> .	303	undertake settlement and reimbursement from the	376
(d) Final payment of hire, if for a period of less than	304	insurers of all costs in connection with such repairs as	377
thirty (30) running days, shall be calculated proportionally	305	well as insured charges, expenses and liabilities to the	378
according to the number of days and hours remaining	306	extent of coverage under the insurances herein provided	379
before redelivery and advance payment to be effected	307	for.	380
accordingly.	308	The Charterers also to remain responsible for and to	381
(e) Should the Vessel be lost or missing, hire shall	309	effect repairs and settlement of costs and expenses	382
cease from the date and time when she was lost or last	310	incurred thereby in respect of all other repairs not	383
heard of. The date upon which the Vessel is to be treated	311	covered by the insurances and/or not exceeding any	384
as lost or missing shall be ten (10) days after the Vessel	312	possible franchise(s) or deductibles provided for in the	385
was last reported or when the Vessel is posted as	313	insurances.	386
missing by Lloyd's, whichever occurs first. Any hire paid	314	All time used for repairs under the provisions of sub-	387
in advance to be adjusted accordingly.	315	clause 13(a) and for repairs of latent defects according	388
(f) Any delay in payment of hire shall entitle the	316	to <u>Clause 3(c)</u> above, including any deviation, shall be	389
Owners to interest at the rate per annum as agreed	317	for the Charterers' account.	390
in <u>Box 24</u> . If <u>Box 24</u> has not been filled in, the three months	318	(b) If the conditions of the above insurances permit	391
interbank offered rate in London (LIBOR or its successor)	319	additional insurance to be placed by the parties, such	392
for the currency stated in <u>Box 25</u> , as quoted by the British	320	cover shall be limited to the amount for each party set	393
Bankers' Association (BBA) on the date when the hire	321	out in <u>Box 30</u> and <u>Box 31</u> , respectively. The Owners or	394
fell due, increased by 2 per cent., shall apply.	322	the Charterers as the case may be shall immediately	395
(g) Payment of interest due under <u>sub-clause 11(f)</u>	323	furnish the other party with particulars of any additional	396
shall be made within seven (7) running days of the date	324	insurance effected, including copies of any cover notes	397
of the Owners' invoice specifying the amount payable	325	or policies and the written consent of the insurers of	398
or, in the absence of an invoice, at the time of the next	326	any such required insurance in any case where the	399
hire payment date.	327	consent of such insurers is necessary.	400
		(c) The Charterers shall upon the request of the	401
12. Mortgage (See Clause 56)	328	Owners, provide information and promptly execute such	402
(only to apply if <u>Box 28</u> has been appropriately filled in)	329	documents as may be required to enable the Owners to	403
*) (a) The Owners warrant that they have not effected	330	comply with the insurance provisions of the Financial	404
any mortgage(s) of the Vessel and that they shall not	331	Instrument. Security Documents referred to in Part A	405
effect any mortgage(s) without the prior consent of the	332	of Schedule I of the Additional Clauses.	
Charterers, which shall not be unreasonably withheld.	333	(d) Subject to the provisions of the Financial Instru-	406
*) (b) The Vessel chartered under this Charter is financed	334	ment, if any, should the Vessel become an actual,	407
by a mortgage according to the Financial Instrument.	335	constructive, compromised or agreed total loss under	408
The Charterers undertake to comply, and provide such	336	the insurances required under <u>sub-clause 13(a)</u> all	409
information and documents to enable the Owners to	337	insurance payments for such loss shall be paid to the	410
comply, with all such instructions or directions in regard	338	Owners who shall distribute the moneys between the	411
to the employment, insurances, operation, repairs and	339	Owners and the Charterers according to their respective	412
maintenance of the Vessel as laid down in the Financial	340	interests. The Charterers undertake to notify the Owners	413
Instrument or as may be directed from time to time during	341	and the mortgagee(s), if any, of any occurrences in	414
the currency of the Charter by the mortgagee(s) in	342	consequence of which the Vessel is likely to become a	415
conformity with the Financial Instrument. The Charterers	343	total loss as defined in this Clause.	416
confirm that, for this purpose, they have acquainted	344	(e) The Owners shall upon the request of the	417
themselves with all relevant terms, conditions and	345	Charterers, promptly execute such documents as may	418





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any loss, damage or expense incurred by the Owners arising out of or in relation to the operation of the Vessel by the Charterers, and against any lien of whatsoever nature arising out of an event occurring during the Charter Period. If the Vessel be arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Charterers, the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail. Without prejudice to the generality of the foregoing, the Charterers agree to indemnify the Owners against all consequences or liabilities arising from the Master, officers or agents signing Bills of Lading or other documents.	562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577	contain a paramount clause incorporating any legislation relating to carrier's liability for passengers and their luggage compulsorily applicable in the trade; if no such legislation exists, the passenger tickets shall incorporate the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, and any protocol thereto.	632 633 634 635 636 637 638 639
*)		Delete as applicable.	
24. Bank Guarantee (Optional, only to apply if Box 27 filled in) The Charterers undertake to furnish, before delivery of the Vessel, a first class bank guarantee or bond in the sum and at the place as indicated in Box 27 as guarantee for full performance of their obligations under this Charter.	640 641 642 643 644 645 646		
25. Requisition/Acquisition (a) In the event of the Requisition for Hire of the Vessel by any governmental or other competent authority (hereinafter referred to as "Requisition for Hire") irrespective of the date during the Charter Period when "Requisition for Hire" may occur and irrespective of the length thereof and whether or not it be for an indefinite or a limited period of time, and irrespective of whether it may or will remain in force for the remainder of the Charter Period, this Charter shall not be deemed thereby or thereupon to be frustrated or otherwise terminated and the Charterers shall continue to pay the stipulated hire in the manner provided by this Charter until the time when the Charter would have terminated pursuant to any of the provisions hereof always provided however that in the event of "Requisition for Hire" any Requisition Hire or compensation received or receivable by the Owners shall be payable to the Charterers during the remainder of the Charter Period or the period of the "Requisition for Hire" whichever be the shorter. (b) In the event of the Owners being deprived of their ownership in the Vessel by any Compulsory Acquisition of the Vessel or requisition for title by any governmental or other competent authority (hereinafter referred to as "Compulsory Acquisition"), then, irrespective of the date during the Charter Period when "Compulsory Acquisition" may occur, this Charter shall be deemed terminated as of the date of such "Compulsory Acquisition". In such event Charter Hire to be considered as earned and to be paid up to the date and time of such "Compulsory Acquisition". See Clause 48.	647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677		
26. War (a) For the purpose of this Clause, the words "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warfare operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel. (b) The Vessel, unless the written consent of the Owners be first obtained, shall not continue to or go through any port, place, area or zone (whether of land or sea), or any waterway or canal, where it reasonably appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Owners, may be, or are likely to be, exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, the Owners shall have the right to require the Vessel to leave such area.	678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704		
18. Lien The Owners to have a lien upon all cargoes, sub-hires and sub-freights belonging or due to the Charterers or any sub-charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.	587 588 589 590 591 592 593		
19. Salvage All salvage and towage performed by the Vessel shall be for the Charterers' benefit and the cost of repairing damage occasioned thereby shall be borne by the Charterers.	594 595 596 597 598		
20. Wreck Removal In the event of the Vessel becoming a wreck or obstruction to navigation the Charterers shall indemnify the Owners against any sums whatsoever which the Owners shall become liable to pay and shall pay in consequence of the Vessel becoming a wreck or obstruction to navigation.	599 600 601 602 603 604 605		
21. General Average The Owners shall not contribute to General Average.	606 607		
22. Assignment, Sub-Charter and Sale - See Clauses 42 and 62 (a) The Charterers shall not assign this Charter nor sub-charter the Vessel on a bareboat basis except with the prior consent in writing of the Owners, which shall not be unreasonably withheld, and subject to such terms and conditions as the Owners shall approve. (b) The Owners shall not sell the Vessel during the currency of this Charter except with the prior written consent of the Charterers, which shall not be unreasonably withheld, and subject to the buyer accepting an assignment of this Charter.	608 609 610 611 612 613 614 615 616 617 618		
23. Contracts of Carriage (a) The Charterers are to procure that all documents issued during the Charter Period evidencing the terms and conditions agreed in respect of carriage of goods shall contain a paramount clause incorporating any legislation relating to carrier's liability for cargo compulsorily applicable in the trade; if no such legislation exists, the documents shall incorporate the Hague-Visby Rules. The documents shall also contain the New Jason Clause and the Both-to-Blame Collision Clause. (b) The Charterers are to procure that all passenger tickets issued during the Charter Period for the carriage of passengers and their luggage under this Charter shall	619 620 621 622 623 624 625 626 627 628 629 630 631		



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(c) The Vessel shall not load contraband cargo, or to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent's right of search and/or confiscation.	705	28. Termination (See Clauses 53)	778
(d) If the insurers of the war risks insurance, when Clause 14 is applicable, should require payment of premiums and/or calls because, pursuant to the Charterers' orders, the Vessel is within, or is due to enter and remain within, any area or areas which are specified by such insurers as being subject to additional premiums because of War Risks, then such premiums and/or calls shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due.	706	(a) — <u>Charterers' Default</u>	779
(e) The Charterers shall have the liberty:	707	The Owners shall be entitled to withdraw the Vessel from the service of the Charterers and terminate the Charter with immediate effect by written notice to the Charterers if:	780
(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Vessel sails, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;	708	(i) — the Charterers fail to pay hire in accordance with Clause 11. However, where there is a failure to make punctual payment of hire due to oversight, negligence, errors or omissions on the part of the Charterers or their bankers, the Owners shall give the Charterers written notice of the number of clear banking days stated in Box 34 (as recognised at the agreed place of payment) in which to rectify the failure, and when so rectified within such number of days following the Owners' notice, the payment shall stand as regular and punctual. Failure by the Charterers to pay hire within the number of days stated in Box 34 of their receiving the Owners' notice as provided herein, shall entitle the Owners to withdraw the Vessel from the service of the Charterers and terminate the Charter without further notice;	781
(ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;	709	(ii) — the Charterers fail to comply with the requirements of:	782
(iii) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.	710	(1) Clause 6 (Trading Restrictions)	800
(f) — In the event of outbreak of war (whether there be a declaration of war or not) (i) between any two or more of the following countries: the United States of America; Russia; the United Kingdom; France; and the People's Republic of China; (ii) between any two or more of the countries listed in Box 36, both the Owners and the Charterers shall have the right to cancel this Charter, whereupon the Charterers shall redeliver the Vessel to the Owners in accordance with Clause 16. If the Vessel has cargo on board after discharge thereof at destination, or if debarrated under this Clause from reaching or entering it at a near, open and safe port as directed by the Owners, or if the Vessel has no cargo on board, at the port at which the Vessel then is or if at sea at a near, open and safe port as directed by the Owners, in all cases hire shall continue to be paid in accordance with Clause 11 and except as aforesaid all other provisions of this Charter shall apply until redelivery.	711	(2) Clause 13(a) (Insurance and Repairs)	801
	712	provided that the Owners shall have the option, by written notice to the Charterers, to give the Charterers a specified number of days grace within which to rectify the failure without prejudice to the Owners' right to withdraw and terminate under this Clause if the Charterers fail to comply with such notice;	802
	713	(iii) — the Charterers fail to rectify any failure to comply with the requirements of sub-clause 10(a)(ii) (Maintenance and Repairs) as soon as practically possible after the Owners have requested them in writing to do so and in any event so that the Vessel's insurance cover is not prejudiced.	803
	714	(b) — <u>Owners' Default</u>	804
	715	If the Owners shall by any act or omission be in breach of their obligations under this Charter to the extent that the Charterers are deprived of the use of the Vessel and such breach continues for a period of fourteen (14) running days after written notice thereof has been given by the Charterers to the Owners, the Charterers shall be entitled to terminate this Charter with immediate effect by written notice to the Owners.	805
	716	(c) — <u>Loss of Vessel</u>	806
	717	This Charter shall be deemed to be terminated if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss. For the purpose of this sub-clause, the Vessel shall not be deemed to be lost unless she has either become an actual total loss or agreement has been reached with her underwriters in respect of her constructive, compromised or arranged total loss or if such agreement with her underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred.	807
	718	(d) — Either party shall be entitled to terminate this Charter with immediate effect by written notice to the other party in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of the other party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.	808
	719	(e) — The termination of this Charter shall be without prejudice to all rights accrued due between the parties prior to the date of termination and to any claim that either party might have.	809
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27. — <u>Commission</u>	765	29. <u>Repossession</u> (See Clauses 54 and 55)	850
The Owners to pay a commission at the rate indicated in Box 32 to the Brokers named in Box 33 on any hire paid under the Charter. If no rate is indicated in Box 32, the commission to be paid by the Owners shall cover the actual expenses of the Brokers and a reasonable fee for their work.	766	in the event of the termination of this Charter in	851
If the full hire is not paid owing to breach of the Charter by either of the parties the party liable therefor shall indemnify the Brokers against their loss of commission. Should the parties agree to cancel the Charter, the Owners shall indemnify the Brokers against any loss of commission but in such case the commission shall not exceed the brokerage on one year's hire.	767		
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PART II
"BARECON 2001" Standard Bareboat Charter

accordance with the applicable provisions of Clause 28,	852	*) (c) This Contract shall be governed by and construed	926
the Owners shall have the right to repossess the Vessel	853	in accordance with the laws of the place mutually agreed	927
from the Charterers at her current or next port of call, or	854	by the parties and any dispute arising out of or in	928
at a port or place convenient to them without hindrance	855	connection with this Contract shall be referred to	929
or interference by the Charterers, courts or local	856	arbitration at a mutually agreed place, subject to the	930
authorities. Pending physical repossession of the Vessel	857	procedures applicable there.	931
in accordance with this Clause 29, the Charterers shall	858	(d) Notwithstanding (a), (b) or (c) above, the parties	932
hold the Vessel as gratuitous bailee only to the Owners.	859	may agree at any time to refer to mediation any	933
The Owners shall arrange for an authorised representa-	860	difference and/or dispute arising out of or in connection	934
tive to board the Vessel as soon as reasonably	861	with this Contract.	935
practicable following the termination of the Charter. The	862	In the case of a dispute in respect of which arbitration	936
Vessel shall be deemed to be repossessed by the	863	has been commenced under (a), (b) or (c) above, the	937
Owners from the Charterers upon the boarding of the	864	following shall apply:-	938
Vessel by the Owners' representative. All arrangements	865	(i) Either party may at any time and from time to time	939
and expenses relating to the settling of wages,	866	elect to refer the dispute or part of the dispute to	940
disembarkation and repatriation of the Charterers'	867	mediation by service on the other party of a written	941
Master, officers and crew shall be the sole responsibility	868	notice (the "Mediation Notice") calling on the other	942
of the Charterers.	869	party to agree to mediation.	943
		(ii) The other party shall thereupon within 14 calendar	944
30. Dispute Resolution	870	days of receipt of the Mediation Notice confirm that	945
*) (a) This Contract shall be governed by and construed	871	they agree to mediation, in which case the parties	946
in accordance with English law and any dispute arising	872	shall thereafter agree a mediator within a further	947
out of or in connection with this Contract shall be referred	873	14 calendar days, failing which on the application	948
to arbitration in London in accordance with the Arbitration	874	of either party a mediator will be appointed promptly	949
Act 1996 or any statutory modification or re-enactment	875	by the Arbitration Tribunal ("the Tribunal") or such	950
thereof save to the extent necessary to give effect to	876	person as the Tribunal may designate for that	951
the provisions of this Clause.	877	purpose. The mediation shall be conducted in such	952
The arbitration shall be conducted in accordance with	878	place and in accordance with such procedure and	953
the London Maritime Arbitrators Association (LMAA)	879	on such terms as the parties may agree or, in the	954
Terms current at the time when the arbitration proceed-	880	event of disagreement, as may be set by the	955
ings are commenced.	881	mediator.	956
The reference shall be to three arbitrators. A party	882	(iii) If the other party does not agree to mediate, that	957
wishing to refer a dispute to arbitration shall appoint its	883	fact may be brought to the attention of the Tribunal	958
arbitrator and send notice of such appointment in writing	884	and may be taken into account by the Tribunal when	959
to the other party requiring the other party to appoint its	885	allocating the costs of the arbitration as between	960
own arbitrator within 14 calendar days of that notice and	886	the parties.	961
stating that it will appoint its arbitrator as sole arbitrator	887	(iv) The mediation shall not affect the right of either	962
unless the other party appoints its own arbitrator and	888	party to seek such relief or take such steps as it	963
gives notice that it has done so within the 14 days	889	considers necessary to protect its interest.	964
specified. If the other party does not appoint its own	890	(v) Either party may advise the Tribunal that they have	965
arbitrator and give notice that it has done so within the	891	agreed to mediation. The arbitration procedure shall	966
14 days specified, the party referring a dispute to	892	continue during the conduct of the mediation but	967
arbitration may, without the requirement of any further	893	the Tribunal may take the mediation timetable into	968
prior notice to the other party, appoint its arbitrator as	894	account when setting the timetable for steps in the	969
sole arbitrator and shall advise the other party	895	arbitration.	970
accordingly. The award of a sole arbitrator shall be	896	(vi) Unless otherwise agreed or specified in the	971
binding on both parties as if he had been appointed by	897	mediation terms, each party shall bear its own costs	972
agreement.	898	incurred in the mediation and the parties shall share	973
Nothing herein shall prevent the parties agreeing in	899	equally the mediator's costs and expenses.	974
writing to vary these provisions to provide for the	900	(vii) The mediation process shall be without prejudice	975
appointment of a sole arbitrator.	901	and confidential and no information or documents	976
In cases where neither the claim nor any counterclaim	902	disclosed during it shall be revealed to the Tribunal	977
exceeds the sum of US\$50,000 (or such other sum as	903	except to the extent that they are disclosable under	978
the parties may agree) the arbitration shall be conducted	904	the law and procedure governing the arbitration.	979
in accordance with the LMAA Small Claims Procedure	905	(Note: The parties should be aware that the mediation	980
current at the time when the arbitration proceedings are	906	process may not necessarily interrupt time limits.)	981
commenced.	907	(e) If Box 35 in Part I is not appropriately filed in, sub-clause	982
*) (b) This Contract shall be governed by and construed	908	30(a) of this Clause shall apply. Sub-clause 30(d) shall	983
in accordance with Title 9 of the United States Code	909	apply in all cases.	984
and the Maritime Law of the United States and any	910	*) Sub-clauses 30(a), 30(b) and 30(c) are alternatives;	985
dispute arising out of or in connection with this Contract	911	indicate alternative agreed in Box 35.	986
shall be referred to three persons at New York, one to	912		
be appointed by each of the parties hereto, and the third	913	31. Notices	987
by the two so chosen; their decision or that of any two	914	(a) Any notice to be given by either party to the other	988
of them shall be final, and for the purposes of enforcing	915	party shall be in writing and may be sent by fax, telex,	989
any award, judgement may be entered on an award by	916	registered or recorded mail or by personal service.	990
any court of competent jurisdiction. The proceedings	917	(b) The address of the Parties for service of such	991
shall be conducted in accordance with the rules of the	918	communication shall be as stated in Boxes 2 and 4	992
Society of Maritime Arbitrators, Inc.	919	respectively. Clause 63.	993
In cases where neither the claim nor any counterclaim	920		
exceeds the sum of US\$50,000 (or such other sum as	921		
the parties may agree) the arbitration shall be conducted	922		
in accordance with the Shortened Arbitration Procedure	923		
of the Society of Maritime Arbitrators, Inc. current at	924		
the time when the arbitration proceedings are commenced.	925		



"BARECON 2001" Standard Bareboat Charter

**OPTIONAL
PART**

**PART III
PROVISIONS TO APPLY FOR NEWBUILDING VESSELS ONLY**

(Optional, only to apply if expressly agreed and stated in Box 37)

<p>1. Specifications and Building Contract</p> <p>(a) The Vessel shall be constructed in accordance with the Building Contract (hereafter called "the Building Contract") as annexed to this Charter, made between the Builders and the Owners and in accordance with the specifications and plans annexed thereto, such Building Contract, specifications and plans having been countersigned as approved by the Charterers.</p> <p>(b) No charge shall be made in the Building Contract or in the specifications or plans of the Vessel as approved by the Charterers as aforesaid, without the Charterers' consent.</p> <p>(c) The Charterers shall have the right to send their representative to the Builders' Yard to inspect the Vessel during the course of her construction to satisfy themselves that construction is in accordance with such approved specifications and plans as referred to under sub-clause (a) of this Clause.</p> <p>(d) The Vessel shall be built in accordance with the Building Contract and shall be of the description set out therein. Subject to the provisions of sub-clause 2(c)(ii) hereunder, the Charterers shall be bound to accept the Vessel from the Owners, completed and constructed in accordance with the Building Contract, on the date of delivery by the Builders. The Charterers undertake that having accepted the Vessel they will not thereafter raise any claims against the Owners in respect of the Vessel's performance or specification or defects, if any. Nevertheless, in respect of any repairs, replacements or defects which appear within the first 12 months from delivery by the Builders, the Owners shall endeavour to compel the Builders to repair, replace or remedy any defects or to recover from the Builders any expenditure incurred in carrying out such repairs, replacements or remedies. However, the Owners' liability to the Charterers shall be limited to the extent the Owners have a valid claim against the Builders under the guarantee clause of the Building Contract (a copy whereof has been supplied to the Charterers). The Charterers shall be bound to accept such sums as the Owners are reasonably able to recover under this Clause and shall make no further claim on the Owners for the difference between the amount (e) so recovered and the actual expenditure on repairs, replacement or remedying defects or for any loss of time incurred. Any liquidated damages for physical defects or deficiencies shall accrue to the account of the party stated in Box 41(a) or if not filled in shall be shared equally between the parties. The costs of pursuing a claim or claims against the Builders under this Clause (including any liability to the Builders) shall be borne by the party stated in Box 41(b) or if not filled in shall be shared equally between the parties.</p> <p>2. Time and Place of Delivery</p> <p>(a) Subject to the Vessel having completed her acceptance trials including trials of cargo equipment in accordance with the Building Contract and specifications to the satisfaction of the Charterers, the Owners shall give and the Charterers shall take delivery of the Vessel afloat when ready for delivery and properly documented at the Builders' Yard or some other safe and readily accessible dock, wharf or place as may be agreed between the parties hereto and the Builders. Under the Building Contract the Builders have estimated that the Vessel will be ready for delivery to the Owners as therein provided but the delivery date for the purpose of this Charter shall be the date when the Vessel is in fact ready for delivery by the Builders after completion of trials whether that be before or after as indicated in the Building Contract. The Charterers shall not be entitled to refuse acceptance of delivery of the Vessel</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68</p>	<p>and upon and after such acceptance, subject to Clause 1(d), the Charterers shall not be entitled to make any claim against the Owners in respect of any conditions, representations or warranties, whether express or implied, as to the seaworthiness of the Vessel or in respect of delay in delivery.</p> <p>(b) If for any reason other than a default by the Owners under the Building Contract, the Builders become entitled under that Contract not to deliver the Vessel to the Owners, the Owners shall upon giving to the Charterers written notice of Builders becoming so entitled, be excused from giving delivery of the Vessel to the Charterers and upon receipt of such notice by the Charterers this Charter shall cease to have effect.</p> <p>(c) If for any reason the Owners become entitled under the Building Contract to reject the Vessel the Owners shall, before exercising such right of rejection, consult the Charterers and thereupon</p> <p>(i) if the Charterers do not wish to take delivery of the Vessel they shall inform the Owners within seven (7) running days by notice in writing and upon receipt by the Owners of such notice this Charter shall cease to have effect; or</p> <p>(ii) if the Charterers wish to take delivery of the Vessel they may by notice in writing within seven (7) running days require the Owners to negotiate with the Builders as to the terms on which delivery should be taken and/or refrain from exercising their right to rejection and upon receipt of such notice the Owners shall commence such negotiations and/or take delivery of the Vessel from the Builders and deliver her to the Charterers;</p> <p>(iii) in no circumstances shall the Charterers be entitled to reject the Vessel unless the Owners are able to reject the Vessel from the Builders;</p> <p>(iv) if this Charter terminates under sub-clause (b) or (c) of this Clause, the Owners shall thereafter not be liable to the Charterers for any claim under or arising out of this Charter or its termination.</p> <p>(d) Any liquidated damages for delay in delivery under the Building Contract and any costs incurred in pursuing a claim therefor shall accrue to the account of the party stated in Box 41(c) or if not filled in shall be shared equally between the parties.</p> <p>3. Guarantee Works</p> <p>If not otherwise agreed, the Owners authorise the Charterers to arrange for the guarantee works to be performed in accordance with the building contract terms, and hire to continue during the period of guarantee works. The Charterers have to advise the Owners about the performance to the extent the Owners may request.</p> <p>4. Name of Vessel</p> <p>The name of the Vessel shall be mutually agreed between the Owners and the Charterers and the Vessel shall be painted in the colours, display the funnel insignia and fly the house flag as required by the Charterers.</p> <p>5. Survey on Redelivery</p> <p>The Owners and the Charterers shall appoint surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of re-delivery. Without prejudice to Clause 15 (Part II), the Charterers shall bear all survey expenses and all other costs, if any, including the cost of docking and undocking, if required, as well as all repair costs incurred. The Charterers shall also bear all loss of time spent in connection with any docking and undocking as well as repairs, which shall be paid at the rate of hire per day or pro-rata.</p>	<p>69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133</p>
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"BARECON 2001" Standard Bareboat Charter

PART IV
HIRE/PURCHASE AGREEMENT

OPTIONAL
PART

(Optional, only to apply if expressly agreed and stated in Box 42)

<p>On expiration of this Charter and provided the Charterers have fulfilled their obligations according to Part I and II as well as Part III, if applicable, it is agreed, that on payment of the final payment of hire as per Clause 14 the Charterers have purchased the Vessel with everything belonging to her and the Vessel is fully paid for.</p> <p><i>In the following paragraphs the Owners are referred to as the Sellers and the Charterers as the Buyers.</i></p> <p>The Vessel shall be delivered by the Sellers and taken over by the Buyers on expiration of the Charter.</p> <p>The Sellers guarantee that the Vessel, at the time of delivery, is free from all encumbrances and maritime liens or any debts whatsoever other than those arising from anything done or not done by the Buyers or any existing mortgage agreed not to be paid off by the time of delivery. Should any claims, which have been incurred prior to the time of delivery be made against the Vessel, the Sellers hereby undertake to indemnify the Buyers against all consequences of such claims to the extent it can be proved that the Sellers are responsible for such claims. Any taxes, notarial, consular and other charges and expenses connected with the purchase and registration under Buyers' flag, shall be for Buyers' account. Any taxes, consular and other charges and expenses connected with closing of the Sellers' register, shall be for Sellers' account.</p>	<p>4 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27</p>	<p>in exchange for payment of the last month's hire instalment the Sellers shall furnish the Buyers with a Bill of Sale duly attested and legalized, together with a certificate setting out the registered encumbrances, if any. On delivery of the Vessel the Sellers shall provide for deletion of the Vessel from the Ship's Register and deliver a certificate of deletion to the Buyers.</p> <p>The Sellers shall, at the time of delivery, hand to the Buyers all classification certificates (for hull, engines, anchors, chains, etc.), as well as all plans which may be in Sellers' possession.</p> <p>The Wireless Installation and Nautical Instruments, unless on hire, shall be included in the sale without any extra payment.</p> <p>The Vessel with everything belonging to her shall be at Sellers' risk and expense until she is delivered to the Buyers, subject to the conditions of this Contract and the Vessel with everything belonging to her shall be delivered and taken over as she is at the time of delivery, after which the Sellers shall have no responsibility for possible faults or deficiencies of any description.</p> <p>The Buyers undertake to pay for the repatriation of the Master, officers and other personnel if appointed by the Sellers to the port where the Vessel entered the Bareboat Charter as per Clause 3 (Part II) or to pay the equivalent cost for their journey to any other place.</p>	<p>28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53</p>
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PART V
PROVISIONS TO APPLY FOR VESSELS REGISTERED IN A BAREBOAT CHARTER REGISTRY
(Optional, only to apply if expressly agreed and stated in Box 43)

1—	Definitions	1	3—	Termination of Charter by Default	17
	For the purpose of this PART V, the following terms shall have the meanings hereby assigned to them:	2		if the Vessel chartered under this Charter is registered in a Bareboat Charter Registry as stated in <u>Box 44</u> , and	18
	"The Bareboat Charter Registry" shall mean the registry of the State whose flag the Vessel will fly and in which the Charterers are registered as the bareboat charterers during the period of the Bareboat Charter.	3		if the Owners shall default in the payment of any amounts due under the mortgage(s) specified in <u>Box 28</u> , the Charterers shall, if so required by the mortgagee, direct the Owners to re-register the Vessel in the Underlying Registry as shown in <u>Box 45</u> .	19
	"The Underlying Registry" shall mean the registry of the state in which the Owners of the Vessel are registered as Owners and to which jurisdiction and control of the Vessel will revert upon termination of the Bareboat Charter Registration.	4		in the event of the Vessel being deleted from the Bareboat Charter Registry as stated in <u>Box 44</u> , due to a default by the Owners in the payment of any amounts due under the mortgage(s), the Charterers shall have the right to terminate this Charter forthwith and without prejudice to any other claim they may have against the Owners under this Charter.	20
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2—	Mortgage	14			30
	The Vessel chartered under this Charter is financed by a mortgage and the provisions of <u>Clause 12(b)</u> (Part II) shall apply.	15			31
		16			34

PART II — ADDITIONAL CLAUSES 32 TO 65 TO THE SUB-BAREBOAT CHARTER IN BARECON 2001 FORM DATED NOVEMBER 23, 2010 AND MADE BETWEEN PRIME MOUNTAIN MARITIME LTD (AS HEAD-CHARTERERS) AND AUSTRALIA HOLDINGS LTD. (AS SUB-CHARTERERS) IN RELATION TO M.V. "AUSTRALIA"

ADDITIONAL DEFINITIONS

- 32.1 The following Clauses shall be deemed to be incorporated as an integral part of this Sub-Charter. In the event of any conflict between the provisions of these Additional Clauses and the printed provisions of this Sub-Charter as annexed hereto, the provisions of these Additional Clauses hereunder shall prevail.
- 32.2 In this Sub-Charter, including the Recitals, the following expressions shall have the following meanings:
- "Acquisition Agreement"** means acquisition agreement of even date herewith entered into between the Owners, Prime Lake Shipping Ltd, Prime Time Shipping Ltd and Prime Hill Shipping Ltd (together as buyers), the Head Charterers, Prime Lake Maritime Ltd, Prime Time Maritime Ltd and Prime Hill Maritime Ltd (together as head-charterers) and Australia Holdings Ltd., Brazil Holdings Ltd., China Holdings Ltd. and Grand Rodosi Inc. (together as sellers) relating to, *inter alia*, the sale and purchase of the Vessel, the Purchase Obligation and the Call Option of the Sub-Charterers;
- "Approved Brokers"** means the insurance brokers appointed by the Sub-Charterers as shall from time to time be approved in writing by the Approved Mortgagee;
- "Approved Mortgage"** and **"Approved Mortgagee"** have the meanings given to them in Clause 56;
- "Banking Day"** means a day (excluding Saturdays and Sundays) on which banks are open for business in London and Athens and (if payment is required to be made on such day) in New York City and the place to which such payment is required to be made;
- "Call Option"** means the call option available to the Sub-Charterers in accordance with the terms of the Acquisition Agreement;
- "Call Option Sum"** means the aggregate amount which would be payable by the Sub-Charterers to the Head-Charterers upon exercise of the Call Option at any relevant time in accordance with the terms of the Acquisition Agreement;
- "Classification Society"** means Bureau Veritas or such other classification society (being a member of IACS) as may be agreed between the Sub-Charterers and the Head-Charterers in writing;
- "Compulsory Acquisition"** means requisition for title or other compulsory acquisition, requisition, appropriation, expropriation, deprivation, forfeiture or confiscation for any
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reason of the Vessel by any government entity or other competent authority, whether *de jure* or *de facto*, but shall exclude requisition for use or hire not involving requisition of title;

“Delivery Date” means the date on which the Vessel is delivered to the Sub-Charterers under this Sub-Charter being the same date on which the Vessel is delivered from the Sub-Charterers (as sellers) to the Owners (as buyers) in accordance with the terms of the Acquisition Agreement and the MOA;

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

“Encumbrance” means any mortgage, charge, (whether fixed or floating), pledge, lien, hypothecation, assignment, trust arrangement or security interest or other encumbrance of any kind securing any obligation of any person or having the effect of conferring security or any type of preferential arrangement (including, without limitation, title transfer and/or retention arrangements having a similar effect);

“Financial Indebtedness” means any indebtedness in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above;
“Flag State” means the Republic of Liberia or such other flag state which may be approved from time to time by the Owners, the Head-Charterers, the Sub-Charterers and the Approved Mortgagee as the case may be in accordance with this Sub-Charter;

“Head-Charter” means the bareboat charter of even date herewith between the Owners and the Head-Charterers;

“Head-Charterers’ Guarantee” means the guarantee of the Head-Charterers’ obligations under this Charter to be executed the Head-Charterers’ Guarantor;

“Head-Charterers’ Guarantor” means Prime Maritime Holding Ltd a company incorporated in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands;

“Head-Charterers’ Encumbrance” means any Encumbrance created or permitted to exist by the Head-Charterers or exercised, asserted or claimed against the Vessel, the Insurances or any Requisition Compensation or any part thereof (and not occasioned by any act, omission or default of the Sub-Charterers) in respect of:

(a) any Indebtedness or liability or obligation whatsoever of the Head-Charterers;

(b) any breach by the Head-Charterers of their obligations to the Sub-Charterers under this Sub-Charter; or

(c) any other acts or omissions whatsoever of the Head-Charterers whether or not related to the transactions contemplated by this Sub-Charter;

“Indebtedness” means any obligation for the payment or repayment of moneys, whether present or future, actual or contingent, sole or joint;

“Insurance Documents” means all slips, cover notes, contracts, policies, certificates of entry or other insurance documents evidencing or constituting the Insurances from time to time in effect;

“Insurances” means all policies and contracts of insurance (including all entries of the Vessel in a protection and indemnity association and a war risks association) which are from time to time taken out or entered into in respect of the Vessel or otherwise howsoever (as specified in greater detail in this Sub-Charter) and all benefits of such

policies and contracts, including all claims of whatsoever nature and return of premiums as shall from time to time be approved in writing by the Approved Mortgagee;

“Insurers” means the underwriters, insurance companies and mutual insurance associations with or by which the Insurances are effected as shall from time to time be approved in writing by the Approved Mortgagee;

“ISM Code” means The International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the International Maritime Organisation as Resolutions A.741(18) and A.913(22);

“ISPS Code” means Part A of The International Ship and Port Facility Security Code as adopted by the International Maritime Organisation;

“Major Casualty” means any casualty to the Vessel or incident (other than a Total Loss) in respect of which the claim or the aggregate of the claims against all insurers, before adjustment for any franchise or deductible exceeds five hundred thousand United States Dollars (US\$500,000) or the equivalent in any other currency;

“Manager” means Newlead Bulkers S.A., a company organized and existing under the laws of the Greece, having its registered office at 83 Akti Miaouli & Flessa, Piraeus 18538 Greece, or any other company other than the Sub-Charterers which the Sub-Charterers may appoint, and which if not a subsidiary or affiliated company of the Sub-Charterers, the Head-Charterers and the Approved Mortgagee may approve, such approval not to be unreasonably withheld, as the manager of the Vessel;

“Manager’s Undertaking” means, in relation to the Vessel, the undertaking to be executed by the Manager with respect to its management of the Vessel and the rights of the Approved Mortgagee in such form as may be approved by the Head-Charterer and the Approved Mortgagee;

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

- (a) the financial condition or business of the Sub-Charterers or the Sub-Charterers’ Guarantor;
- (b) the ability of the Sub-Charterers or the Sub-Charterers’ Guarantor to perform and comply with their respective obligations under this Sub-Charter and the Sub-Charterers’ Guarantee;
- (c) the validity, legality or enforceability of this Sub-Charter or the Sub-Charterers’ Guarantee; or
- (d) the validity, legality or enforceability of any Encumbrance expressed to be created pursuant to any Security Document or the priority or ranking of that Encumbrance;

“MOA” means the memorandum of agreement dated 2010 made between the Sellers and the Owners for the sale of the Vessel by the Sellers to the Owners;

“Owners” means Prime Mountain Shipping Ltd a company incorporated in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands;

“Permitted Encumbrance” means:

- (a) any Encumbrance created by or pursuant to this Sub-Charter;
- (b) any Head-Charterers Encumbrance;
- (c) any Encumbrance in favour of the Approved Mortgagee;
- (d) any Encumbrance for taxes of any kind either not yet assessed or, if assessed, not yet due and payable or being contested in good faith by appropriate proceedings (and for payment of which adequate reserves have been provided); or
- (e) liens on the Vessel for crew’s wages or salvage or under the Time Charter or otherwise arising in the normal course of trading or by operation of law provided that the claims in respect of which such liens may arise are promptly discharged or settled;

“Purchase Obligation” means the purchase obligation of the Sub-Charterers in accordance with the terms of the Acquisition Agreement;

“Purchase Price” means \$24,500,000 paid (or to be paid) by the Owners to the Sellers in accordance with the MOA;

“Quite Enjoyment” shall have the meaning described in Clause 57;

“Security Documents” means:

- (a) the Approved Mortgage;
- (b) the Manager’s Undertaking;
- (c) the Sub-Charterers’ Guarantee;
- (d) the Head-Charterers’ Guarantee;
- (e) a multipartite agreement to be entered into between the Owners, the Head-Charterers, the Sub-Charterers and the Approved Mortgagee assigning, *inter alia*, the Head-Charter, the Sub-Charter, the Sub-Charterers Guarantee, the Time Charter and all Insurances in favour of the Approved Mortgagee (the **“Multipartite Agreement”**);

- (f) a specific assignment of any third party charter (in excess of twelve (12) months) other than the Time Charter entered into by the Sub-Charterer in favour of the Approved Mortgagee;
- (g) an accounts assignment, pledge and charge of the earnings account (held by the Sub-Charterer with the Approved Mortgagee) entered into by the Sub-Charterer in favour of the Approved Mortgagee; and
- (h) any and every other document from time to time executed as security for, or to establish a subordination or priorities arrangement in relation to, all or any of the obligations of any person to the Owner, the Head-Charterers or the Approved Mortgagee or any of the documents referred to in this definition;

“**Sellers**” means Australia Holdings Ltd. (as seller) of 80 Broad Street, Monrovia, Liberia with registration number C-112608;

“**Sub-Charterers’ Guarantee**” means the guarantee of the Sub-Charterers’ obligations under this Sub-Charter to be executed by the Sub-Charterers’ Guarantor in such form as may be approved by the Head-Charterer and the Approved Mortgagee;

“**Sub-Charterers’ Guarantor**” means NewLead Holdings Ltd., Canon Street, 22 Victoria Street, Hamilton HM12, Bermuda;

“**Termination Event**” means any of the events specified in Clause 53.1;

“**Time Charter**” means the time charter between Rizzo Bottiglieri de Carlini Armatori SpA of Italy (the “**Time Charterer**”) and the Sub-Charterers into which the Vessel will be redelivered upon delivery under this Sub-Charter or such other charter acceptable to the Approved Mortgagee;

“**Total Loss**” has the meaning given to it in Clause 48.2;

“**Transaction Head-Charterers**” means together each of the Prime Mountain Maritime Ltd, Prime Lake Maritime Ltd, Prime Time Maritime Ltd and Prime Hill Maritime Ltd in their capacity as head-charterers pursuant to the Transaction Sub-Charters and “**Transaction Head-Charterer**” shall mean any one of them;

“**Transaction Sub-Charterers**” means together each of the Australia Holdings Ltd., Brazil Holdings Ltd., China Holdings Ltd. and Grand Rodosi Inc. in their capacity as sub-charterers pursuant to the Transaction Sub-Charters and “**Transaction Sub-Charterer**” shall mean any one of them;

“**Transaction Sub-Charters**” means together each of the following sub-bareboat charters:

- (a) this Sub-Charter;

- (b) the sub-bareboat charter of even date herewith entered into between Prime Lake Maritime Ltd (as head-charterer) and Brazil Holdings Ltd. (as sub-charterer) in relation to m.v. "BRAZIL";
- (c) the sub-bareboat charter of even date herewith entered into between Prime Time Maritime Ltd (as head-charterer) and China Holdings Ltd. (as sub-charterer) in relation to m.v. "CHINA";
- (d) the sub-bareboat charter of even date herewith entered into between Prime Hill Maritime Ltd (as head-charterer) and Grand Rodosi Inc. (as sub-charterer) in relation to m.v. "GRAND RODOSI";

and "**Transaction Sub-Charter**" shall mean any one of them; and

"Warrants Instrument" means the warrants instrument to be entered into by the Sub-Charterers' Guarantor in favour of Lemissoler Corporate Management Limited in connection with the warrants to be issued annually in consideration of the fees payable to Lemissoler Corporate Management Limited in connection with the Transaction Sub-Charters.

32.3 In Clause 43.2:

"excess risks" means the proportion of claims not recoverable in respect of general average and salvage, or under the ordinary running-down clause, as a result of the value at which a vessel is assessed for the purpose of such claims exceeding her insured value;

"protection and indemnity risks" means the usual risks covered by the standard form rules of members of the International Group of protection and indemnity associations, including the proportion not otherwise recoverable in case of collision under the ordinary running-down clause; and

"war risks" means all risks referred to in the Institute Time Clauses (Hulls) (1/10/83) and (1/11/95) including, but not limited to, the risk of mines, blocking and trapping, missing vessel, confiscation 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) or Clause 29 of the International Hull Clauses (01/11/2002) or Clause 29 of the International Hull Clauses (01/11/2003).

32.4 The following expressions shall be construed in the following manner:

"Owners", **"Head-Charterers"**, **"Sub-Charterers"** and **"Approved Mortgagee"** shall include their respective successors and assigns;

"person" includes include any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;

“subsidiary” means any company or entity directly or indirectly authorised by such person, and for this purpose control means either the ownership of more than fifty per cent (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity or the power to direct policies and management whether by contract or otherwise;

“taxes” means all present and future taxes, levies, imposts, duties, charges, fees, deductions and withholdings, and any restrictions or conditions resulting in a charge whatsoever, together with interest thereon and penalties with respect thereto, if any, and any payments of principal, interest, charges, fees or other amounts made on or in respect thereof, and **“Tax”** and **“Taxation”** shall be construed accordingly.

32.5 Unless the context otherwise requires, words in the singular include the plural and vice versa.

32.6 References to any document include the same as varied, supplemented or replaced from time to time.

32.7 References to any enactment include re-enactments, amendments and extensions thereof.

32.8 Clause headings are for convenience of reference only and are not to be taken into account in construction.

32.9 Unless otherwise specified, references to Clauses, Recitals, and Schedules are to Clauses of and the Recitals and Schedules to this Sub-Charter.

32.10 In this Sub-Charter, references to periods of **“months”** shall mean a period beginning in one calendar month and ending in the relevant calendar month on the day numerically corresponding to the day of the calendar month in which such period started, provided that (a) if such period started on the last Banking Day in a calendar month, or if there is no such numerically corresponding day, such period shall end on the last Banking Day in the relevant calendar month and (b) if such numerically corresponding day is not a Banking Day, such period shall end on the next following Banking Day in the same calendar month, or if there is no such Banking Day, such period shall end on the preceding Banking Day (and **“month”** and **“monthly”** shall be construed accordingly).

32.11 A person who is not a party to this Sub-Charter may not enforce, or otherwise have the benefit of, any provision of this Sub-Charter under the Contracts (Rights of Third Parties) Act 1999, except as provided in Clause 38.6.

33. **REPRESENTATIONS AND WARRANTIES**

33.1 The Sub-Charterers represent and warrant that the matters set out in Schedule 2, Part A are true at the date of this Sub-Charter.

- 33.2 The Head-Charterers represent and warrant that the matters set out in Schedule 2, Part B are true at the date of this Sub-Charter.
- 33.3 The Head-Charterers and the Sub-Charterers agree that the representations and warranties set out in Schedule 2 shall survive the execution of this Sub-Charter and shall be deemed to be repeated on the Delivery Date and on each date on which a payment of hire is due from the Sub-Charterers to the Head-Charterers with reference to the facts and circumstances then subsisting, as if made on such date.
34. **DELIVERY**
- 34.1 The Vessel shall be delivered on the Delivery Date.
- 34.2 On the Delivery Date the Vessel shall be delivered to the Sub-Charterers under this Sub-Charter and the Sub-Charterers shall deliver to the Head-Charterers a duly executed Protocol of Delivery and Acceptance for the Vessel, substantially in the form set out in Schedule 4, which shall be conclusive proof that the Sub-Charterers have unconditionally accepted the Vessel for charter under this Sub-Charter without any reservations whatsoever.
- 34.3 The Sub-Charterers shall be bound to accept delivery of the Vessel from the Head-Charterers as and where she is upon her delivery from the Sellers to the Owners and from the Owners to the Head-Charterers.
- 34.4 If, for any reason:
- 34.4.1 the Owners become entitled to cancel and terminate the MOA; or
- 34.4.2 the Sellers terminate the MOA or fail to deliver the Vessel under the MOA,
- 34.4.3 the Head-Charterers shall be excused from giving delivery of the Vessel to the Sub-Charterers, and shall be entitled, without liability to the Sub-Charterers, to terminate this Sub-Charter by giving notice in writing to the Sub-Charterers.
- 34.5 The Head-Charterers warrant that the Vessel, at time of delivery, is free from all charters (other than this Sub-Charter, the Head-Charter and the Time Charter), Encumbrances, mortgages (except for any Approved Mortgage or Permitted Encumbrance) and maritime liens or any other debts whatsoever.
- 34.6 The Vessel shall be delivered to the Sub-Charterers with all stores, lubricants, bunkers as: (i) delivered to the Owners under the MOA; and (ii) delivered to the Head Charterers under the Head-Charter. The Head-Charterers will deliver to the Sub-Charterers the remaining on board bunkers and lubricants at the time of delivery at no cost. And the Sub-Charterers shall redeliver the Vessel with same quantities and grades of bunkers and lubricants as on delivery. The Head-Charterers shall at the time of redelivery pay for the

- remaining bunkers and lube oils on board at prices evidenced by the Sub-Charterers' last invoice.
- 34.7 If the Vessel is lost or is or becomes a Total Loss as a result of an event or events occurring prior to delivery under this Sub-Charter, this Sub-Charter shall automatically terminate without any liability whatsoever or any claim for damages by either party upon the other.
- 34.8 The Sub-Charterers will give the Head-Charterers all such assistance with respect to the registration of the Vessel, as the Head-Charterers may reasonably request, and will reimburse to the Head-Charterers (in so far as paid by the Head-Charterers) the costs of registration of the Vessel under the Flag State (but not of the Approved Mortgage).
- 34.9 The Vessel shall be delivered to the Sub-Charterers with all stores, lubricants, bunkers and spares which are on the Vessel when she is: (i) delivered to the Owners under the MOA; and (ii) delivered to the Head Charterers under the Head-Charter.
35. **FLAG STATE**
- 35.1 The Vessel shall on the Delivery Date be registered in the name of the Owners under the laws and flag of the Flag State and the Head-Charterers and the Sub-Charterers shall provide the Owners with all such assistance as the Owners may reasonably require in obtaining and maintaining such registration and shall not during the Charter Period do or suffer anything to be done which might imperil such registration. Initial registration costs shall be for Owners' account but thereafter all registration, tonnage and other taxes, imposts, dues and payments from time to time payable in connection with maintaining such registration shall be for the Sub-Charterers' account and be payable on demand. No change shall be made to the Vessel's Flag State without Sub-Charterers' consent in writing (such consent not to be unreasonably withheld, delayed or conditioned) and the costs of any change (unless requested by Sub-Charterers) shall be for Owners' account.
- 35.2 The Sub-Charterers shall have the right, subject to the prior approval of the Owners and the Approved Mortgagee (which the Head-Charterers shall procure is not unreasonably withheld, conditioned or delayed), and subject to the Sub-Charterers paying all costs associated therewith to require that the Owners register their title in another Flag State of the Sub-Charterers' choice.
- 35.3 The Sub-Charterers acknowledge that it shall be reasonable for the Owners, the Head-Charterers and the Approved Mortgagee to withhold their approval if the Owners' title to the Vessel or the Approved Mortgagee's security would be adversely affected, or if either of them would become subject to additional taxes or other costs, unless indemnified by the Sub-Charterers, by reason of such change.
- 35.4 The name of the Vessel shall be chosen by the Sub-Charterers subject to the Owners' and Head-Charterers' consent which shall not be unreasonably withheld. Neither the Owners

nor the Head-Charterers shall have any right to change the name of the Vessel, without the Sub-Charterers' consent which shall not be unreasonably withheld or delayed.

35.5 The Sub-Charterers shall have the right to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag provided that painting, re-painting, installation and re-installation shall be for the Sub-Charterers' account.

36. **TIME AND PLACE FOR DELIVERY AND CANCELLATION**

36.1 The Vessel shall be delivered to Sub-Charterers immediately upon: FIRSTLY delivery of the Vessel by the Seller to the Owners under the MOA; and SECONDLY delivery of the Vessel by the Owners to the Head-Charterers under the Head-Charter.

36.2 The Vessel shall be delivered by the Head-Charterers and taken over by the Sub-Charterers safely afloat at the place of delivery by the Seller to the Owners under the MOA.

36.3 Should the Vessel not be: (i) delivered to the Owners by the Seller under the MOA (unless such failure is caused by default of the Owners); and/or (ii) delivered to the Head-Charterers by the Owners under the Head-Charter, this Charter shall terminate without claim by either party upon the other.

37. **CONDITIONS PRECEDENT TO DELIVERY**

37.1 The obligation of the Head-Charterers to deliver the Vessel to the Sub-Charterers under the terms of this Sub-Charter shall be subject to and conditional upon the satisfaction (which the Sub-Charterers hereby undertake to procure by the Delivery Date) of the Conditions listed in Schedule 1, Part A, which the Head-Charterers may in their discretion waive.

37.2 The obligation of the Sub-Charterers to accept delivery of the Vessel under the terms of this Sub-Charter shall be subject to and conditional upon the satisfaction of the Conditions listed in Schedule 1, Part B, which the Sub-Charterers may in their discretion waive.

37.3 Without prejudice to Clause 37.1, if the Head-Charterers in their discretion deliver the Vessel to the Sub-Charterers under this Sub-Charter notwithstanding that one or more of the conditions precedent specified in Clause 37.1 remains unsatisfied on the Delivery Date, then the Sub-Charterers shall procure the satisfaction of such condition or conditions precedent within fourteen (14) days thereafter or such longer period as the Head-Charterers in their absolute discretion agree in writing.

38. **EXCLUSIONS**

- 38.1 Unless otherwise specified in this Sub-Charter, the Head-Charterers shall not be liable for any losses, costs, charges, expenses, fees, payments, penalties, fines, damages or other sanctions of a monetary nature or any loss of profit:
- 38.1.1 resulting directly or indirectly from any defect or alleged defect in the Vessel or any failure of the Vessel to comply with any of the matters set out in this Sub-Charter or otherwise howsoever;
- 38.1.2 arising from any delay in the delivery of the Vessel; or
- 38.1.3 arising from the detention or arrest (whether registered or not) of the Vessel and provided that such process is not attributable to an act, omission or default of the Owners or the Head-Charterers.
- 38.2 The Sub-Charterers hereby acknowledge that the Head-Charterers make no representation or warranty, express or implied (and whether statutory or otherwise), as to seaworthiness, condition, design, operation, performance, capacity, merchantability or fitness for use of the Vessel or as to its eligibility for any particular trade or operation or any other representation or warranty whatsoever, express or implied, with respect to the Vessel or her engines, machinery, boats, tackle, outfit, fuel and consumable or other stores, and the Sub-Charterers hereby waive all their rights and claims whatsoever against the Head-Charterers and howsoever arising in respect of the foregoing.
- 38.3 Acceptance by the Sub-Charterers of the Vessel hereunder shall be deemed conclusive, as between the Head-Charterers and the Sub-Charterers, that the Vessel is seaworthy in accordance with the provisions of applicable law, in good working order and repair and without defect or inherent vice in title, (other than as may arise from the deliberate act or omission of the Head-Charterers), condition, design, operation or fitness for use, whether or not discoverable by the Head-Charterers and free and clear of all Encumbrances other than the Approved Mortgage and Permitted Encumbrances.
- 38.4 The Head-Charterers shall not be under any liability whatsoever and howsoever arising, other than where such liability arises from the deliberate act or grossly negligent omission of the Head-Charterers, in respect of the injury, death, loss, damage or delay of or to or in connection with any vessel (including the Vessel) or any person (which expression includes, without prejudice to the generality thereof, states, governments, municipalities and local authorities) or property whatsoever, whether on board the Vessel or elsewhere irrespective of whether such injury, death (other than death or personal injury which may not be excluded under Section 2(1) of the Unfair Contract Terms Act 1977), loss, damage or delay shall arise from the unseaworthiness of the Vessel.
- 38.5 The Sub-Charterers agree that the Head-Charterers shall be under no liability to supply any replacement Vessel or any piece or part thereof during any period when the Vessel is

unusable and the Head-Charterers shall not be liable to the Sub-Charterers or any other person as a result of the Vessel being unusable.

38.6 Every exclusion and limitation contained in this Sub-Charter applicable to either party hereto or to which either party hereto is entitled under this Sub-Charter shall also be available and shall extend to protect the directors, employees, servants, independent contractors and agents of such party in respect of acts or omissions in the course of their employment or service.

39. **EXTENSION OF CHARTER PERIOD**

39.1 The Sub-Charterers may extend the Charter Period by one period of 30 days, provided that they give the Head-Charterers not less than fifteen (15) Banking Days prior written notice before the date on which the Charter Period would otherwise have expired.

39.2 Upon receipt by the Head-Charterers of the notice referred to in Clause 39.1, the Head-Charterers shall provide such notice to the Owners as may be required in accordance with the terms of the Head Charter to extend the Head Charter for such period being equal to the extended Charter Period of this Sub-Charter.

39.3 If the Vessel is on a voyage (otherwise than under requisition for hire) at the time when this Sub-Charter would (but for the provisions of this Clause 39) have terminated, the Charter Period shall be extended for such additional period as may be necessary for the completion of such voyage. The Charter Period shall also be extended for such additional period as may be necessary to bring the Vessel to a port of redelivery as hereinafter provided. Hire shall continue to be paid for the period of extension at the rate in force before the start of such extension, as provided in Clause 40.

40. **PAYMENT OF HIRE AND OTHER MONEYS**

40.1 The Sub-Charterers shall throughout the Charter Period and any extended Charter Period pay to Head-Charterers hire for the Vessel every thirty (30) days in advance commencing on and from the date and hour of her delivery to the Sub-Charterers on charter in accordance with Clause 34 and continuing until the date and hour of her redelivery to the Head-Charterers pursuant to Clause 15 at the rates specified below:

40.1.1 The monthly rate of hire payable by the Sub-Charterers shall be the rate (the "**Hire Rate**") set out in Schedule 5.

40.1.2 The first such instalment of hire shall be due and payable on the Delivery Date and subsequent instalments shall be payable at monthly intervals thereafter. All payments of hire shall be made on the basis of a year of 365 days (366 days in a leap year).

40.1.3 In addition to the first such instalment of hire payable at the Hire Rate a lump sum of \$1,937,000 (the "**Lump Sum**") shall be set-off with part of the Purchase

Price payable to the Sub-Charterers in their capacity as "Sellers" under the MOA on the Delivery Date.

- 40.1.4 The final payment of hire, if for a period of less than one month, shall be calculated proportionally according to the number of days and hours remaining before redelivery and advance payment shall be effected accordingly. The final adjustment of hire, depending on the actual time and date of redelivery, shall be made immediately after redelivery.
- 40.2 Unless otherwise specified by the Head-Charterers, all moneys to be paid by the Sub-Charterers under this Sub-Charter shall be paid to the Head-Charterers:
 - 40.2.1 on their due date in Dollars;
 - 40.2.2 to the account of Prime Maritime Holding Ltd held with Marfin Egnatia Bank S.A. with account number 0280587428;
 - 40.2.3 bear as reference the Vessel's name.
- 40.3 All payments due shall be made on a Banking Day. If the due date for the payment falls on a day which is not a Banking Day:
 - 40.3.1 the payment or payments shall be fall due and be made on the first Banking Day thereafter, provided this falls in the same calendar month; and
 - 40.3.2 if it does not, payment shall fall due and be made on the immediately preceding Banking Day.
- 40.4 All payments of hire and other moneys payable by the Sub-Charterers under or pursuant to this Sub-Charter shall be made:
 - 40.4.1 without any set-off or counterclaim whatsoever; and
 - 40.4.2 free and clear of, and without deduction for, or on account of, any bank charges and any present or future taxes (other than taxes on the overall net income of the Head-Charterers), unless the Sub-Charterers are compelled by law to make payment subject to any such tax.
- 40.5 If the Sub-Charterers are compelled by law to make payment subject to any such taxes, the Sub-Charterers will
 - 40.5.1 promptly notify the Head-Charterers upon becoming aware of such requirement;
 - 40.5.2 pay to the Head-Charterers such additional amounts as may be necessary to ensure that the Head-Charterers receive a net amount equal to the full amount which the Head-Charterers would have received had such payment not been subject to such taxes; and

- 40.5.3 deliver to the Head-Charterers copies of the receipts from the relevant government authority or body evidencing the due and punctual payment of such taxes.
- 40.6 The Sub-Charterers shall pay to the Head-Charterers the Value Added Tax (if any) legally due on any payments of hire or other sums payable by the Sub-Charterers under this Sub-Charter at the rate applicable for the time being (by addition to, and at the time of payment of, the said hire or other sums).
- 40.7 The Sub-Charterers shall pay on demand by the Head-Charterers an additional amount by way of compensation for late payment (the “**Additional Amount**”) on any unpaid sum due under this Sub-Charter (the “**Unpaid Amount**”) from and including the date upon which it fell due for payment until the date of actual payment (the “**Number of Days**”) (as well after as before judgment) on the basis of the Unpaid Amount multiplied by the Number of Days multiplied by 0.000165. All payments of an Additional Amount shall be calculated on the basis of the actual number of days elapsed.
- 40.8 The Vessel shall not at any time be placed off-hire and the Sub-Charterers’ obligation to pay hire shall be absolute and irrevocable during the Charter Period, irrespective of any occurrence or contingency whatsoever, including, but not limited to:
- 40.8.1 any unavailability of the Vessel for any reason, including (but not limited to) any defect in the title (save as may arise as a result of the wilful act or omission of the Head-Charterers), seaworthiness, condition, design, operation, performance, capacity, quality, merchantability, or fitness for use or eligibility of the Vessel for any particular trade or operation; or
- 40.8.2 any incapacity, disability, or defect in powers of the Sub-Charterers or any other person (other than the Head-Charterers), or any irregular exercise thereof by, or lack of authority of, any person purporting to act on behalf of the Sub-Charterers or such other person; or
- 40.8.3 any illegality, invalidity, avoidance or unenforceability on any grounds whatsoever of, or of any obligations of the Sub-Charterers or any other person (other than the Head-Charterers) under, this Sub-Charter; or
- 40.8.4 the liquidation, administration, insolvency, amalgamation, reorganisation or dissolution, or any change in the constitution, name or style, of the Sub-Charterers, the Head-Charterers (except to the extent that such event shall interfere with the Quiet Enjoyment of the Vessel by the Sub-Charterers) or any other person;
- 40.8.5 piracy, hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (except the cases described in clause 48.2.3 and 48.3.5)

- 40.8.6 any repair period and/or drydocking period as may needed or required by the Class; or
- 40.8.7 any other cause which, but for this provision, might operate to exonerate the Sub-Charterers from liability, whether in whole or in part, under this Sub-Charter.
- 40.9 Notwithstanding anything to the contrary contained in this Sub-Charter, instalments of hire payable by the Sub-Charterers shall be deemed earned by the Head-Charterers as and when they fall due for payment hereunder.
- 40.10 During any 30 day extension period(s) of this Sub-Charter, such as is referred to in Clause 38, and if the Vessel is not redelivered within the Charter Period (whether or not so extended) from the expiry of the Charter Period until her redelivery, the Sub-Charterers will pay the Head-Charterers on demand: (i) any legal, administrative and enforcement expenses that the Head-Charterers may incur as a result of non-payment of any amounts due under this Sub-Charter; and (ii) all costs and expenses (including but not limited to legal fees) incurred by the Head-Charterers in connection with any enforcement by the Head-Charterers of their rights under this Sub-Charter.

41. **SUBSTITUTION**

Throughout the Charter Period, the Sub-Charterers may request the Head-Charterer to substitute the Vessel at any time with a substitute vessel and if the Head-Charterers agree to proceed with such substitution, the Sub-Charterers shall (at their expense) enter into such documentation with the Owners, the Head-Charterers and the Approved Mortgagee as may be required in order for such substitution to become effective, provided always that such substitution has been approved by the Owners and the Approved Mortgagee. For the avoidance of doubt, neither the Owners, the Head-Charterers nor the Approved Mortgagee are obliged to accept such request.

42. **GENERAL UNDERTAKINGS OF THE SUB-CHARTERER**

42.1 The Sub-Charterers shall:

42.1.1 not change the nature of their business;

42.1.2 ensure that no material change should occur in the ownership or shareholding structure of the Sub-Charterers without the prior approval of the Owners, the Head-Charterers and the Approved Mortgagee;

42.1.3 procure that the Vessel is kept in a good and seaworthy state of repair, so as to maintain the highest class with the Classification Society free of overdue recommendations and conditions, and so as to comply with the provisions of all laws and all other regulations and requirements (statutory or otherwise) from time to time applicable to vessels registered at ports in its Flag State and to vessels

trading to any jurisdiction to which that Vessel may, subject to the provisions of this Sub-Charter, trade from time to time;

- 42.1.4 permit the Head-Charterers to inspect the Vessel, Vessel's Class Certificates and the Vessel's logbooks, when so reasonably required by them in writing;
- 42.1.5 permit the Head-Charterers to be present during drydocking only for internal reporting purposes and without any right to interfere with such drydocking (and the Sub-Charterers shall notify the Head-Charterers in advance for the plans for the scheduled drydocking); and
- 42.1.6 promptly furnish the Head-Charterers, when so reasonably requested by them in writing, with all such information regarding the Vessel and any Time Charter as the Owners, the Head-Charterers or the Approved Mortgagee may request.
- 42.2 The Sub-Charterers shall notify the Head-Charterers immediately upon becoming aware of the same by e-mail or fax (thereafter confirmed by letter) of:
 - 42.2.1 any accident to the Vessel or incident which is or is likely to be a Major Casualty or a Total Loss;
 - 42.2.2 any requirement or recommendation made by any insurer or classification society, or by any competent authority, which is not complied with within any time limit imposed by such insurer, classification society or authority;
 - 42.2.3 any of the following events occurring which might adversely affect (a) the ability of the Sub-Charterers to perform their obligations under this Sub-Charter; or (b) the rights of the Head-Charterers or the Approved Mortgagee or which might involve them in any loss or liability:
 - (a) any arrest of the Vessel, or the exercise or purported exercise of any lien on the Vessel or her Insurances or earnings, or any loss, confiscation, seizure, requisitioning (for title or for hire) or impounding of the Vessel;
 - (b) any substantial casualty or injury to a party caused by, or in connection with, the Vessel; or
 - (c) any assistance which has been given to the Vessel which has resulted or may result in a lien for salvage being acquired over the Vessel;
- 42.2.4 any litigation, arbitration, tax claim or administrative proceeding instituted or threatened or of any other occurrence which might materially adversely affect (a) the ability of the Sub-Charterers to perform their obligations under this Sub-Charter; or (b) the rights of the Head-Charterers or the Approved Mortgagee or which might involve them in any material loss or liability.

- 42.3 The Sub-Charterers shall not without the prior consent in writing of the Owners, the Head-Charterers and the Approved Mortgagee (and then only subject to such terms as the Owners, the Head-Charterers and the Approved Mortgagee may reasonably impose):
- 42.3.1 save for the Time Charter, let the Vessel on any time or consecutive voyage charter for a term which exceeds, or which by virtue of any optional extensions might exceed, twelve (12) months' duration and provided that in the case of any time or consecutive voyage charter, such time or consecutive voyage charter shall provide that the Vessel upon termination or expiry for whatever cause of the Charter Period shall be re-delivered;
- 42.3.2 employ the Vessel on terms whereby more than two (2) months' hire (or the equivalent) is payable in advance;
- 42.3.3 employ the Vessel otherwise than on bona fide arm's-length terms;
- 42.3.4 appoint any person to manage the Vessel other than the Manager;
- 42.3.5 change the Classification Society of the Vessel;
- 42.3.6 change the Flag State of the Vessel;
- 42.3.7 incur any Financial Indebtedness (except for unsecured Financial Indebtedness which is subordinated to the Financial Indebtedness owing to the Approved Mortgagee, the Owner or the Head-Charterer) unless such Financial Indebtedness is in the ordinary course of business for the Sub-Charterer;
- 42.3.8 put the Vessel into the possession of any person for the purpose of work being done upon her in an amount exceeding or likely to exceed five hundred thousand United States Dollars (US\$500,000) (or the equivalent in any other currency) unless such person has first given to the Head-Charterers and in terms satisfactory to them a written undertaking not to exercise any lien on the Vessel or her earnings for the cost of such work or otherwise;
- 42.3.9 create or suffer the creation of an Encumbrance (other than a Permitted Encumbrance) over or in respect of the Vessel or any share in the Vessel; or
- 42.3.10 amend, vary, rescind, cancel the Time Charter or accept any rescission, cancellation or termination thereof by the relevant time charterer.
43. **DAMAGE AND FRUSTRATION**
- 43.1 The Head-Charterers shall not be liable for any expense in repairing or maintaining the Vessel or be liable to supply a vessel or any part thereof or any equipment in lieu if the Vessel is lost or damaged or rendered unfit for use or confiscated, seized, requisitioned, restrained or appropriated or otherwise taken out of the possession or control of the Sub-Charterers.

43.2 Unless otherwise expressly provided in this Sub-Charter, if for any reason whatsoever the Vessel becomes inoperable or unusable, the charter hire payable in respect of the Vessel shall continue to be payable and the other obligations of the Sub-Charterers hereunder shall continue notwithstanding such loss, damage or other event unless or until the Vessel be declared by the insurers to be a Total Loss and the Head-Charterers have received the amount set out in Clause 48.5 and notwithstanding any inability on the part of the Sub-Charterers to operate the Vessel, the Vessel being held to be the property of the Sub-Charterers or of any person other than the Owners; or any other circumstances whatsoever which might operate to frustrate this Sub-Charter.

44. **COMPULSORY LEGISLATION**

If any improvement, structural changes, additions or new equipment to or for the Vessel become necessary for the continued operation of the Vessel by reason of new class requirements or compulsory legislation the Sub-Charterers shall at their own expense and time, implement such improvement, changes, additions or installation of equipment. The Sub-Charterers shall notify the Head-Charterers of any such class requirements or compulsory legislation and, before making the necessary expenditure, with details of such expenditure. Such improvements, changes, additions or installations are deemed to be an integral part of the Vessel and will not be removed at redelivery.

45. **SAFE USE AND ENVIRONMENTAL MATTERS**

45.1 The Sub-Charterers undertake throughout the Charter Period:

45.1.1 to implement and maintain a safety management system (“SMS”) which complies with all laws, rules and regulations, and with all the codes, guidelines and standards recommended by the International Maritime Organisation (including without limitation, The International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the International Maritime Organisation as Resolutions A.741(18) and A.788(19) (as amended from time to time, the “ISM Code”), the Flag State of the Vessel and the Vessel’s classification society, which may from time to time be applicable to the Vessel and/or the Head-Charterers and/or the Sub-Charterers and/or the Manager, and which is otherwise appropriate having regard to the Sub-Charterers’ obligations under this Sub-Charter;

45.1.2 to obtain and maintain in force at all times valid certificates evidencing compliance with the requirements of Clause 45.1.1, including, without limitation, a valid Document of Compliance in relation to themselves and a valid Safety Management Certificate in respect of the Vessel as required by the ISM Code;

45.1.3 to provide the Head-Charterers with copies of any such Document of Compliance and Safety Management Certificate upon issuance;

- 45.1.4 to keep or procure that there is kept on board the Vessel at all times a copy of any such Document of Compliance and the original of any such Safety Management Certificate.
- 45.2 the Sub-Charterers undertake throughout the Charter Period:
- 45.2.1 to comply with, and procure that the Vessel complies with, the ISPS Code;
- 45.2.2 to ensure that the Vessel's security system and its associated security equipment comply with the applicable requirements of Part A of the ISPS Code and of Chapter XI-2 of the Safety of Life at Sea Convention 1974 (SOLAS), and that an approved ship security plan is in place;
- 45.2.3 to obtain and maintain in force at all times valid certificates evidencing compliance with the requirements of the ISPS Code, including, without limitation, a valid International Ship Security Certificate in respect of the Vessel as required by the ISPS Code;
- 45.2.4 to keep or procure that there is kept on board the Vessel at all times the original of such International Ship Security Certificate.
- 45.3 Without prejudice to the generality of Clause 10 the Sub-Charterers shall take all reasonable precautions to prevent any infringements of the Anti-Drug Abuse Act of 1986 of the United States of America or any similar legislation applicable to the Vessel in the Flag State in any jurisdiction in or to which the Vessel may be employed or trade from time to time.
- 45.4 The Sub-Charterers shall not at any time represent or hold out the Head-Charterers as carrying goods or persons on the Vessel or being in any way connected or associated with any operation or carriage whether for charter or reward or gratuitously which may be undertaken by the Sub-Charterers during the Charter Period nor shall the Sub-Charterers represent themselves as the agent of the Head-Charterers for such purpose.
- 45.5 The Sub-Charterers shall ensure that the Vessel is, at all times, equipped and accredited with any required trading documentation and/or authorisations necessary to legitimise the entry of the Vessel into the waters of any relevant jurisdiction. Such trading documentation and authorisations shall include, inter alia, valid certification under the International Convention on Civil Liability for Oil Pollution Damage (as amended), a valid US Coast Guard certificate of financial responsibility (water pollution), a valid certificate from any US state that requires a state equivalent of a certificate of financial responsibility, a vessel classification certificate and any other credentials as might be, or may come to be, required. Copies of such trading documentation and/or authorisations shall be made available to the Head-Charterers as and when reasonably requested.

46. **EQUIPMENT**

- 46.1 The Sub-Charterers shall have the use of all outfit, machinery, equipment, spare parts, appliances, furniture, fittings, furnishings and stores of the Vessel which are the property of the Head-Charterers or the Owners, and all substitutions, replacements and renewals.
- 46.2 The Sub-Charterers shall, at their own expense, from time to time during the Charter Period substitute, replace and/or renew (as the case may be) any outfit, machinery, equipment, spare parts, appliances, furniture, fittings, furnishings and stores which shall be consumed or be so damaged or worn out as to be unfit for use. The Sub-Charterers shall procure that all such repairs, substitutions, replacements and renewals shall be effected in such manner (both as regards workmanship and quality of materials) so as not to diminish the value of the Vessel.
- 46.3 Notwithstanding any other provision of this Sub-Charter, in the event of any future improvements, modifications or structural changes carried out upon the Vessel (as approved by the Owners, the Head-Charterers and/or the Approved Mortgagee in advance), such modifications, improvements or structural changes are deemed to be an integral part of the Vessel and the Sub-Charterers shall be under no obligation to restore the Vessel to its original condition upon redelivery. In the event of any Sub-Charterers' equipment being installed on the Vessel is deemed to be an integral part of the Vessel and unless the Sub-Charterers have informed the Owners and the Head-Charterers in advance for such installation and the Owners and the Head-Charterers have accepted the said equipment as Sub-Charterers' equipment in which case the Sub-Charterers shall have the right to remove the said equipment (and all additions and installations thereto) before redelivery, all such Sub-Charterers' equipment shall be considered as usual outfit, machinery or equipment of the Vessel, needed for Vessel's normal operation and/or any additional or new equipment installed in accordance with Clause 44.

47. **INSURANCES**

- 47.1 The Vessel shall throughout the Charter Period be in every respect at the risk of the Sub-Charterers who shall bear all risks howsoever arising in respect of the Vessel, whether of navigation, operation or maintenance or otherwise:
- 47.2 The Sub-Charterers covenant with the Head-Charterers that throughout the Charter Period they will comply with the following provisions of this Clause 47.2:
- 47.2.1 to effect and maintain sufficient insurances on and over the Vessel in respect of (a) hull, machinery and equipment, marine, war and terrorism risks (including excess risks), (b) protection and indemnity risks (including pollution risks), and (c) such other risks for which insurance would be maintained by a prudent owner for a ship of a similar type, size, age and flag, and otherwise in accordance with the provisions of this Sub-Charter;
- 47.2.2 to insure and keep insured the Vessel in Dollars or such other currency as may be approved in writing by the Approved Mortgagee, in the full insurable value of the Vessel

- but in any case not less than the higher of (i) the market value of the Vessel as calculated by the Approved Mortgagee and (ii) one hundred and ten per cent (110%) of the Purchase Price against fire, marine and other risks (including excess risks) and war risks covered by hull and machinery policies;
- 47.2.3 to enter the Vessel in the name of the Owners for her full value and tonnage in a protection and indemnity association approved by the Approved Mortgagee with unlimited liability if available otherwise for the highest possible standard cover for the time being US\$1,000,000,000 for oil pollution and for excess oil spillage and pollution liability insurance for the highest possible standard cover against all protection and indemnity risks;
- 47.2.4 if the Vessel enters the territorial waters of the United States of America for any reason whatsoever, to take out such additional insurance to cover such risks as may be necessary in order to obtain a Certificate of Financial Responsibility from the United States Coastguard;
- 47.2.5 to effect such additional Insurances as may reasonably be requested by the Approved Mortgagee to maintain the scope of the existing cover of the Insurances;
- 47.2.6 to effect the Insurances through the Approved Brokers and with such insurance companies, underwriters, war risks and protection and indemnity associations as shall from time to time be approved in writing by the Head-Charterers and the Approved Mortgagee (such approval not to be unreasonably withheld), and, if so required by the Head-Charterers or the Approved Mortgagee (but, without, as between the Head-Charterers or the Approved Mortgagee and the Sub-Charterers, liability on the part of the Head-Charterers or the Approved Mortgagee for premiums or calls), with the Owners, the Head-Charterers or the Approved Mortgagee from the time being named as co-assured. Insurance for Protection and Indemnity risks shall be provided always by member of the International Group of P&I Clubs. Insurance for hull, machinery and equipment, marine, war and terrorism risks or any other risks shall be provided always by underwriters with a minimum of a BBB+ rating;
- 47.2.7 to renew the Insurances at least fourteen (14) days before the relevant Insurances expire and to procure that the Approved Brokers and any war risks and protection and indemnity association with which the Insurances are effected shall promptly confirm in writing to the Head-Charterers and the Approved Mortgagee as and when each such renewal is effected;
- 47.2.8 punctually to pay all premiums, calls, contributions or other sums payable in respect of the Insurances and to produce all relevant receipts when so required in writing by the Head-Charterers or the Approved Mortgagee;
- 47.2.9 reimburse to the Owners and/or the Head-Charterers on demand such documented sums as the Owners and/or Head-Charterers shall certify are payable by them to the Approved

- Mortgagee in respect of mortgagees interest insurance on the Vessel (as required by the Approved Mortgagee);
- 47.2.10 to arrange for the execution of such guarantees and the making of such declaration as may from time to time be required by any protection and indemnity or war risks association of the Vessel;
 - 47.2.11 to give notice of assignment of the Insurances to the Insurers in the form set out in Schedule 3 to this Sub-Charter or in such other form as may be required by the Head-Charterers and/or the Approved Mortgagee and to procure that a copy of each notice of assignment shall be endorsed upon or attached to the relevant Insurance Documents;
 - 47.2.12 to procure that the Insurance Documents shall be deposited with the Approved Brokers and that such brokers shall provide the Owners, the Head-Charterers and the Approved Mortgagee with certified copies thereof and shall issue to the Approved Mortgagee a letter or letters of undertaking in such form as the Approved Mortgagee shall reasonably require;
 - 47.2.13 to procure that the protection and indemnity and/or war risks associations in which the Vessel is entered shall provide the Approved Mortgagee with a letter or letters of undertaking in their standard form and shall provide the Approved Mortgagee with a copy of the certificates of entry;
 - 47.2.14 to procure that the Insurance Documents (including all certificates of entry in any protection and indemnity and/or war risks association) shall contain loss payable clauses in the form set out in set out in Schedule 3 to this Sub-Charter or in such other form as may be required by the Head-Charterers and/or the Approved Mortgagee (as may be appropriate);
 - 47.2.15 to procure that the Insurance Documents shall provide that the lien or set off for unpaid premiums or calls shall be limited to only the premiums or calls due in relation to the Insurances on the Vessel and for fourteen (14) days prior written notice to be given to the Approved Mortgagee by the Insurers (such notice to be given even if the Insurers have not received an appropriate enquiry from the Approved Mortgagee) in the event of cancellation or termination of Insurances and in the event of the non-payment of the premium or calls, the right to pay the said premium or calls within a reasonable time;
 - 47.2.16 to promptly provide the Owners, the Head-Charterers and the Approved Mortgagee with full information regarding any casualties or damage to the Vessel in an amount in excess of Five hundred thousand United States Dollars (US\$500,000) or in consequence whereof the Vessel has become or may become a Total Loss;
 - 47.2.17 at the request of the Approved Mortgagee, to provide the Approved Mortgagee, at the Sub-Charterers' cost, with a detailed report issued by a firm of marine insurance brokers or consultants appointed by the Approved Mortgagee in relation to the Insurances;

- 47.2.18 not to do any act nor voluntarily suffer nor permit any act to be done whereby any Insurance shall or may be suspended or avoided and not to suffer nor permit the Vessel to engage in any voyage nor to carry any cargo not permitted under the Insurances in effect without first covering the Vessel to the amount herein provided for with insurance satisfactory to the Approved Mortgagee for such voyage or the carriage of such cargo;
- 47.2.19 (without limitation to the generality of the foregoing) in particular not permit the Vessel to enter or trade to any zone which is declared a war zone by any government or by the Vessel's war risks Insurers unless there shall have been effected by the Sub-Charterers at their expense such special insurance as the war risk Insurers may require; and
- 47.2.20 to procure that all amounts payable under the Insurances are paid in accordance with the loss payable clause in the form set out in Schedule 3 to this Sub-Charter or in such other form as may be required by the Head-Charterers and/or the Approved Mortgagee (as may be appropriate) and to apply and procure that all amounts as are paid to the Owners, the Head-Charterers and/or the Sub-Charterers are applied to the repair of the damage and the reparation of the loss in respect of which the said amounts shall have been received.
- 47.3 The Sub-Charterers shall procure that the policies in respect of the Insurances shall, in each case, be endorsed to the effect that (subject always to the rights of the Approved Mortgagee):
- 47.3.1 payment of a claim for Total Loss of the Vessel shall be made to the Head-Charterers who upon receipt thereof shall apply the same in accordance with Clause 48.8;
- 47.3.2 payment of a claim for any Major Casualty to the Vessel shall be made to the Head-Charterers, but so that, unless and until the Head-Charterers (following the occurrence of a Termination Event) direct to the contrary (whereupon all insurance recoveries in respect of any such claim shall be payable to the Head-Charterers and be applied in accordance with Clause 48.8):
- (a) the payment so received by the Head-Charterers shall be paid over to the Sub-Charterers upon the Sub-Charterers furnishing evidence satisfactory to the Head-Charterers and the Approved Mortgagee that all loss and damage resulting from the casualty has been or will be properly made good and repaired and that all repair accounts and other liabilities whatsoever in connection with the casualty have been or will be fully paid and discharged by the Sub-Charterers;
 - (b) the Insurers with whom the hull, machinery and equipment marine risks insurances are effected may in the case of a Major Casualty, with the prior consent in writing of the Owners, the Head-Charterers and the Approved Mortgagee, make payment on account of repairs in the course of being effected;

- 47.3.3 payment of a claim which is not for a Total Loss or a Major Casualty shall, unless and until the Head-Charterers shall (following the occurrence of a Termination Event) direct to the contrary (whereupon all insurance recoveries in respect of any such claim shall be payable to the Head-Charterers and be applied in accordance with Clause 48.8), be made to the Sub-Charterers who shall, as agent for the Owners and the Head-Charterers, apply the same in or towards making good the loss and fully repairing all damage in respect of which such payment shall have been made.
- 47.4 The provisions of this Clause 47 and Clause 48 shall not apply to the proceeds of any additional insurance cover effected by the Owners and/or the Head-Charterers and/or the Sub-Charterers for their own account and benefit, provided that such cover shall only be effected if and to the extent that the Insurances effected by the Sub-Charterers pursuant to this Clause 47 so permit. The Head-Charterers and the Sub-Charterers, as the case may be, shall promptly furnish the other with particulars of any additional insurance effected, including copies of any cover notes or policies, and the written consent of the insurers for the Insurances required to be maintained by the Sub-Charterers under this Clause 47 in any case where the consent of such insurers is necessary. For avoidance of doubt, the Head-Charterers shall have no obligation to furnish the Sub-Charterers with any such information or documentation relating to any innocent owner's insurance effected by the Head-Charterers.
- 47.5 The Head-Charterers shall be entitled, at any time and from time to time, to consult insurance advisers on any matter relating to the Insurances (including, without limitation, the terms, amounts and quality of the Insurances and the status of any insurance claims), and the Sub-Charterers shall procure that there is delivered to such adviser any and all such information concerning the Vessel and her Insurances as the Head-Charterers may require. The reasonable costs of any such insurance adviser shall, where the involvement of such insurance advisers is at the request of the Approved Mortgagee but in the absence of a Termination Event, not more than once annually, be for the account of the Sub-Charterers and shall be payable on demand.
48. **LOSS, DAMAGE AND REQUISITION**
- 48.1 Throughout the Charter Period, the Sub-Charterers shall bear the full risk of any Total Loss or any damage to the Vessel howsoever arising and of any other occurrence of whatever kind which may deprive the Sub-Charterers of the use, possession or enjoyment of the Vessel and no such event shall relieve the Sub-Charterers of their obligations (whether in whole or in part) under this Sub-Charter.
- 48.2 For the purposes of this Sub-Charter, "**Total Loss**" shall mean:
- 48.2.1 actual or constructive or compromised or agreed or arranged total loss of the Vessel; or

- 48.2.2 Compulsory Acquisition of the Vessel;
- 48.2.3 the hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (other than any event described in Clause 48.2.2) by any government entity or by persons acting or purporting to act on behalf of any government entity unless the Vessel be released and restored to the Sub-Charterers from such hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation within thirty (30) days after the occurrence thereof or such lesser period provided in the Vessel's war risks Insurances;
- 48.3 For the purpose of this Clause 48, a Total Loss shall be deemed to have occurred:
- 48.3.1 in the case of an actual total loss of the Vessel on the actual date and at the time the Vessel was lost or if such date is now known, on the date on which the Vessel was last reported;
- 48.3.2 in the case of a constructive total loss of the Vessel upon the date and at the time notice of abandonment of the Vessel is given to the Insurers of the Vessel for the time being (provided a claim for such total loss is admitted by such insurers) or, if such Insurers do not admit such a claim, or, in the event that such notice of abandonment is not given by the Head-Charterers and/or the Sub-Charterers to the Insurers of the Vessel, on the date and at a time on which the incident which may result, in the Vessel being subsequently determined to be a constructive total loss has occurred
- 48.3.3 in the case of a compromised or arranged total loss of the Vessel, on the date upon which a binding agreement as to such compromised or arranged total loss has been entered into by the Insurers of the Vessel;.
- 48.3.4 in the case of Compulsory Acquisition of the Vessel, on the date upon which the relevant Compulsory Acquisition occurs; and
- 48.3.5 in the case of hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (other than where the same amounts to Compulsory Acquisition of the Vessel) by any government entity, or by persons purporting to act on behalf of any government entity, which deprives the Head-Charterers and/or the Sub-Charterers of the use of the Vessel for more than thirty (30) days, upon the expiry of the period of thirty (30) days after the date upon which the relevant hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation occurred.
- 48.4 The Sub-Charterers shall notify the Head-Charterers and the Approved Mortgagee forthwith by e-mail or fax (thereafter confirmed by letter) upon becoming aware of any occurrence in consequence whereof the Vessel has become or is likely to become a Total Loss.

- 48.5 If the Vessel shall become a Total Loss, the Sub-Charterers shall within one hundred and eighty (180) days of the date of the Total Loss, pay or procure the payment to the Head-Charterers of a net amount equal to the aggregate of:
- 48.5.1 the Call Option Sum which would be applicable had the Call Option been exercised at the date of such Total Loss;
 - 48.5.2 any costs payable by the Owners and/or the Head-Charterers to the Approved Mortgagee;
 - 48.5.3 all other moneys, whether of hire or otherwise, then due and owing under any other provisions of this Sub-Charter.
- 48.6 The Sub-Charterers shall continue to pay hire on the days and in the amounts required under this Sub-Charter notwithstanding that the Vessel shall have become a Total Loss. The Sub-Charterers' obligation to pay hire under this Sub-Charter shall terminate immediately upon the Head-Charterers' receipt of (a) an amount equal to the aggregate of the minimum insured value as at the date of the Total Loss and in any event not less than the Call Option Sum applicable at the date of such Total Loss, and (b) all other sums (if any) payable by the Sub-Charterers hereunder.
- 48.7 In the event that the insurers do not admit a claim for a Total Loss or agree to pay out a claim for a Total Loss in an amount equal to the amount referred to in Clause 48.6 within one hundred and eighty (180) days of the Total Loss, the Sub-Charterers shall immediately pay to the Head-Charterers the amount referred to in Clause 48.6 or an amount equal to the deficiency between the payment from the insurers and the amount referred to in Clause 48.6 together with an Additional Amount (calculated in accordance with Clause 40.7) if hire has not been paid as required under Clause 48.6.
- 48.8 Subject always to the rights of the Approved Mortgagee in such Insurances, all moneys recoverable:
- 48.8.1 under the Insurances effected by the Sub-Charterers pursuant to Clause 47, or by way of other compensation, in respect of a Total Loss of the Vessel; and
 - 48.8.2 under the Insurances effected by the Sub-Charterers pursuant to Clause 47.3 in respect of any other claim (whether relating to a Major Casualty or otherwise) which by virtue of Clause 47.3 are payable to the Head-Charterers after the occurrence of a Termination Event; shall be paid to, and be held by, the Sub-Charterers, in the first place, to pay or make good all costs, expenses and liabilities whatsoever incurred by the Sub-Charterers in or about or incidental to the recovery of such moneys, and the balance shall be applied as follows:

FIRST, in payment of any hire or other moneys whatsoever due and owing to the Head-Charterers under this Sub-Charter up to the date of receipt of such proceeds;

SECOND, in the case of a Total Loss to the Head-Charterers in such amount as shall be required to ensure that the Head-Charterers have received, taking into account any amount received by the Head-Charterers under Clause 48.5 an amount equal to the aggregate of:

(a) the Call Option Sum which would be applicable had the Call Option been exercised on the date of such Total Loss;

(b) any costs payable by the Head-Charterers to the Approved Mortgagee;

(c) all other moneys, whether of hire or otherwise, then due and owing under any other provisions of this Sub-Charter.

THIRD, the balance shall be released to the Sub-Charterers or to any other person who shall be entitled thereto;

PROVIDED ALWAYS that in the event that such proceeds are insufficient to satisfy the amounts specified in FIRST and SECOND above the Sub-Charterers shall forthwith on the Head-Charterers' demand pay the shortfall to the Head-Charterers, and PROVIDED FURTHER that the Head-Charterers shall out of such proceeds apply such sum in payment to the Owners or the Approved Mortgagee as shall be required to discharge the Approved Mortgage.

48.9 The Head-Charterers shall, upon the request of the Sub-Charterers, but subject to the consent (if required) of the Approved Mortgagee being obtained, promptly execute and deliver such documents as may be required to enable the Sub-Charterers to abandon the Vessel to the insurers and to claim a constructive total loss.

49. **TITLE AND ENCUMBRANCES**

49.1 The Sub-Charterers shall take all steps which may be reasonably necessary to safeguard the title and rights of the Owners, the Head-Charterers and the Approved Mortgagee in the Vessel as notified to the Sub-Charterers and in particular (but without limitation):

49.1.1 will place, and at all times and places retain a properly certified copy of this Sub-Charter, and of the Approved Mortgage, on board the Vessel with her papers, cause each such certified copy and such papers to be exhibited to any and all persons having business with the Vessel which might give rise to any lien on it, other than liens for crew's wages and salvage, and to any representative of the Head-Charterers and the Approved Mortgagee;

- 49.1.2 will promptly pay and discharge or secure all debts, damages and liabilities whatsoever which the Sub-Charterers shall have been called upon to pay, discharge or secure and which have given, or may give, rise to maritime or possessory liens on or claims enforceable against the Vessel, and in the event of arrest of the Vessel pursuant to legal process, or in the event of her detention in exercise or purported exercise of any such lien as aforesaid, to procure the release of the Vessel from such arrest or detention forthwith upon receiving notice of the same by providing bail or otherwise as the circumstances may require;
- 49.1.3 will not pledge the credit of the Head-Charterers for any maintenance, service, repairs, drydocking or modifications and upgrades to the Vessel or for any other purpose whatsoever;
- 49.1.4 will not sell or hypothecate or purport to sell or hypothecate or execute a bill of sale of the Vessel or any interest therein or create or suffer to exist any Encumbrance (save for a Permitted Encumbrance) over the Vessel;
- 49.1.5 will not do or permit to be done any act or thing which might jeopardise the rights of the Head-Charterers or the Approved Mortgagee in the Vessel and will not omit to do or permit to be omitted to be done any act or thing which if not done might jeopardise or prejudice the rights of the Head-Charterers or the Approved Mortgagee in the Vessel;
- 49.1.6 will not do anything which may result in the Vessel being confiscated, seized, requisitioned, taken in execution, impounded or otherwise taken from the possession of the Sub-Charterers and in the event of any such confiscation, requisition, seizure, impounding or taking, the Sub-Charterers will use their best endeavours to procure an immediate release of the Vessel therefrom; and
- 49.1.7 will duly pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges levied upon the Vessel prior to the date on which penalties are attached thereto, except to the extent that such may be contested in good faith.

50. **FINANCIAL COVENANTS**

50.1 For the purposes of this Clause 50 the following expressions shall have the following meanings:

“Borrowed Money” means Indebtedness in respect of (i) money borrowed or raised and debit balances at banks, (ii) any bond, note, loan stock, debenture or similar debt instrument, (iii) acceptance or documentary credit facilities, (iv) receivables sold or discounted (otherwise than on a non-recourse basis), (v) deferred payments for assets or services acquired, (vi) finance leases and hire purchase contracts, (vii) swaps, forward exchange contracts, futures and other derivatives, (viii) any other transaction (including without limitation forward sale or purchase agreements) having the commercial effect of

a borrowing or raising of money or of any of (ii) to (vii) above and (ix) guarantees in respect of Indebtedness of any person falling within any of (i) to (viii) above;

“Cash” means free and available negotiable money, orders, cheques and bank balances and deposits but to exclude (a) any cash that is specifically blocked and charged and (b) cash standing to the credit of any blocked account and charged to the Approved Mortgagee;

“Cash Equivalent Investments” means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by a bank or financial institution acceptable to the Approved Mortgagee;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security; or
- (c) any other debt security approved by the Approved Mortgagee,

in each case, to which the Sub-Charterers’ Guarantor’s Group is beneficially entitled at that time and which is not issued or guaranteed by any member of the Sub-Charterers’ Guarantor Group or subject to any Encumbrance (other than one arising under the Security Documents).

“Current Assets” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of current assets in a consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time together with such amount of Cash and Cash Equivalent Investments forming part of the Minimum Liquidity and/or any retention amount (but always excluding any current assets arising from Derivative Financial Instruments) which may be disregarded from the current assets in a consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group;

“Current Liabilities” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of current liabilities of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as current liabilities in the consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time excluding Deferred Revenue and all current liabilities arising from Derivative Financial Instruments;

“Deferred Revenue” means at any time in respect of the Sub-Charterers’ Guarantor’s Group, that liability calculated at the time an existing Time Charter(s) or other

employment arrangement is assumed, by discounting at the Sub-Charterers' Guarantor's Group's weighted average cost of capital, the difference between the market charter rate for an equivalent vessel and the assumed charter rate (as set out in the then latest financial statements delivered to the Approved Mortgagee pursuant to this Clause 50), which liability is recorded as deferred revenue and amortised to revenue over the remaining period of such Time Charter(s) or other employment arrangement;

"Derivative Financial Instruments" means at any time in respect of the Sub-Charterers' Guarantor's Group the fair value of any transaction entered into under a master swap agreements and the fair value of any other derivative financial instruments appearing under this heading (and previously approved by the Approved Mortgagee) in the consolidated financial statements of the Sub-Charterers' Guarantor's Group provided by the Sub-Charterers to the Approved Mortgagee in accordance with the provisions of this Clause 50 or otherwise and in the event of the Sub-Charterers changing the form or substance of the financial statements (always in accordance with GAAP) provided by the Sub-Charterers to the Approved Mortgagee so that Derivative Financial Instruments no longer appears as a heading and/or such Derivative Financial Instruments are otherwise accounted for, the determination of what constitutes Derivative Financial Instruments shall be made by the Approved Mortgagee acting reasonably;

"EBITDA" means, in respect of any period, the consolidated profit on ordinary activities of the Sub-Charterers' Guarantor's Group before Taxation for such period:

- (a) adjusted to exclude Interest Receivable and Interest Payable and other similar income or costs to the extent not already excluded;
- (b) adjusted to exclude any gain or loss realised on the disposal of fixed assets (whether tangible or intangible);
- (c) after adding back depreciation and amortisation;
- (d) adjusted to exclude any exceptional or extraordinary costs or income;
- (e) after deducting any profit arising out of the release of any provisions against a liability or charge (excluding in this context the release of any provisions against liabilities or charges relating to exceptional or extraordinary items);

"Equity Ratio" means the ratio of Total Shareholder's Equity to Total Assets of the Sub-Charterers' Guarantor's Group;

"Finance Lease" means any lease under which a member of the Sub-Charterers' Guarantor's Group is the lessee which is or should be treated as a finance lease under US GAAP (and includes any hire purchase contract or other arrangement which is similarly treated);

“Financial Quarter” means each period of approximately three (3) months commencing on the day after a Financial Quarter Day and ending on the next following Financial Quarter Day;

“Financial Quarter Day” means 31 March, 30 June, 30 September and 31 December in any year;

“Financial Year” means the annual accounting period of the Sub-Charterers’ Guarantor’s Group ending on 31 December in each year;

“Fleet Book Value” means, at the end of a Relevant Period, the aggregate book value of the Sub-Charterers’ Guarantor’s Group’s owned fleet less depreciation as stated in the most recent financial statements delivered pursuant to this Clause 50;

“Fleet Market Value” means, at the date of calculation, the aggregate of the fair market value of the Sub-Charterers’ Guarantor’s Group’s owned fleet as determined by the Approved Mortgagee;

“Interest” means, in respect of any specified Borrowed Money, all continuing regular or periodic costs, charges and expenses incurred in effecting, servicing or maintaining such Borrowed Money including:

- (a) gross interest, commitment fees, discount and acceptance fees and guarantee, fronting and ancillary facility fees payable or incurred on any form of such Borrowed Money;
- (b) repayment and prepayment premiums payable or incurred in repaying or prepaying such Borrowed Money; and
- (c) the interest element of Finance Leases, but excluding, in respect of such Borrowed Money, agency and arrangement fees or other up-front fees;

“Interest Expense” means, in respect of the Relevant Period, the aggregate (calculated on a consolidated basis) of:

- (a) the amounts charged and posted (or estimated to be charged and posted) as a current accrual accrued during such period in respect of members of the Sub-Charterers’ Guarantor’s Group by way of Interest on all Borrowed Money, but excluding any amount accruing as interest in-kind (and not as cash pay) to the extent capitalised as principal during such period; and
- (b) net payments in relation to interest rate or currency hedging arrangements in respect of Borrowed Money (after deducting net income in relation to such interest rate or currency hedging arrangements);

“Interest Receivable” means, in respect of any period, the amount of Interest accrued on cash balances of the Sub-Charterers’ Guarantor’s Group (including the amount of interest accrued on the earnings accounts of the Sub-Charterers as the case may be, to the extent that the account holder is entitled to receive such interest) during such period;

“Minimum Liquidity” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the minimum amount of Cash and Cash Equivalent Investments for a Financial Quarter equal to five percent (5%) of Total Debt at any time;

“Related Company” of a person means any Subsidiary of such person, any company or other entity of which such person is a Subsidiary and any Subsidiary of any such company or entity;

“Relevant Period” means each rolling period of twelve (12) months ending on a Financial Quarter;

“Sub-Charterers’ Guarantor’s Group” means the Sub-Charterers’ Guarantor and its Related Companies;

“Subsidiary” of a person means any company or entity directly or indirectly controlled by such person, and for this purpose “control” means either the ownership of more than fifty per cent (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity or the power to direct its policies and management, whether by contract or otherwise;

“Taxes” includes all present and future taxes, levies, imposts, duties, fees or charges of whatever nature together with interest thereon and penalties in respect thereof and **“Taxation”** shall be construed accordingly;

“Total Assets” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of total assets of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as total assets adjusted for the difference between Fleet Market Value and Fleet Book Value and in a consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time;

“Total Debt” means, at any time, the aggregate outstanding principal, capital or nominal amount of all Borrowed Money of the Sub-Charterers’ Guarantor’s Group calculated on a consolidated basis at that time;

“Total Shareholder’s Equity” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of shareholders equity of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as shareholders equity in the consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time;

“US GAAP” means, generally accepted accounting principles in the United States of America;

“Working Capital” means, Current Assets less Current Liabilities (excluding, at any given time, (a) the current portion of long term debt maturing within twelve (12) months and (b) non-cash current liabilities of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as non cash liabilities in the consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time, in relation to Deferred Revenue)

- 50.2 The Sub-Charterer undertakes with each of the Head-Charterer and the Approved Mortgagee that, during the Charter Period, it will:
- 50.2.1 maintain an Equity Ratio of not less than: (i) twenty-five percent (25%) from the Financial Quarter Day ending on 30 September 2010 until the Financial Quarter Day ending on 30 June 2013; and (ii) thirty percent (30%) from the Financial Quarter Day ending on 30 June 2013 onwards;
- 50.2.2 maintain on a consolidated basis the Minimum Liquidity;
- 50.2.3 maintain on a consolidated basis on each Financial Quarter Day during the Charter Period a Working Capital of not less than zero Dollars (\$0);
- 50.2.4 maintain a ratio of EBITDA to Interest Expense on a trailing four (4) Financial Quarter basis of not less than: (i) 2.00 to 1.00 from the Financial Quarter Day ending on 30 September 2010 until the Financial Quarter Day ending on 30 June 2013; and (i) 2.50 to 1.00 from the Financial Quarter Day ending on 30 June 2013 onwards;
- 50.2.5 prepare consolidated financial statements of the Sub-Charterers’ Guarantor in accordance with US GAAP consistently applied in respect of each Financial Year and cause the same to be reported on by its auditors and prepare unaudited consolidated financial statements for the Sub-Charterers’ Guarantor in respect of each Financial Quarter on the same basis as the annual statements and deliver as one copy of the same to the Approved Mortgagee as soon as practicable but not later than one hundred and eighty (180) days (in the case of audited financial statements) or ninety (90) days (in the case of unaudited financial statements) after the end of the financial period to which they relate.
- 50.3 The covenants in this Clause 50 shall be tested each Financial Quarter.
- 51. **HEAD-CHARTERERS’ RIGHTS TO REMEDY DEFAULTS**
- 51.1 If at any time the Sub-Charterers shall fail to comply with any of the provisions of Clause 47, then (without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event) the Head-Charterers shall be at liberty, but not

- under any obligation, either (a) to procure such insurance and/or entries on a war risks association or protection and indemnity risks association and/or associations and to pay any outstanding premiums (as the case may be) in accordance with such provisions (at the Sub-Charterers' expense), or (b) at any time whilst such failure is continuing to require the Vessel to remain in port, or (as the case may be) to proceed to and remain at a port or other place designated by the Head-Charterers, until such time as such provisions are fully complied with. If the Head-Charterers intend to exercise any right conferred to them by this Clause 51.1, they shall inform the Sub-Charterers thereof.
- 51.2 If the Sub-Charterers fail to comply with any of the provisions of Clause 10, 44 or 45 the Head-Charterers may, without being in any way obliged so to do, or responsible for so doing, and without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event, arrange for the carrying out of such repairs, changes or surveys as they may deem expedient or necessary in order to procure the compliance with such provisions.
- 51.3 If the Sub-Charterers fail to comply with any of the provisions of Clauses 49 or 52 the Head-Charterers may, without being in any way obliged so to do, or responsible for so doing, and without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event, pay and discharge all such debts, damages, liabilities and outgoings as are therein mentioned and/or take any such measures as they may deem expedient or necessary for the purpose of securing the release of the Vessel in order to procure the compliance with such provisions.
- 51.4 If the Sub-Charterers fail to comply with any of their other obligations under this Sub-Charter, the Head-Charterers may, without being in any way obliged to do so or responsible for so doing, and without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event, take such action as they may deem expedient or necessary in order to procure the compliance with such provisions.
- 51.5 Without prejudice to Clauses 52 and 53 all documented claims, costs, damages or expenses (including without limitation, taxes, repair costs, registration fees and insurance premiums) suffered, incurred or paid by the Head-Charterers in connection with the exercise by the Head-Charterers of any of their powers under this Clause 51 together with any Additional Amount or any unpaid sum in respect of all such claims, costs, damages or expenses from the date on which same were suffered, incurred or paid by the Head-Charterers until the date of receipt or recovery thereof (both before and after any relevant judgment), calculated in accordance with Clause 40.7, which shall be payable by the Sub-Charterers to the Head-Charterers on demand.
- 51.6 Notwithstanding any exercise by the Head-Charterers of any of the rights and powers contained in this Clause 51, charter hire shall continue to accrue and be payable by the Sub-Charterers during the period of such exercise.

52. **COSTS AND INDEMNITY**

52.1 The Sub-Charterers agree at all times during the Charter Period to indemnify and keep indemnified the Head-Charterers against:

52.1.1 any costs, charges or expenses which the Sub-Charterers have agreed to pay under this Sub-Charter and which shall be claimed or assessed against or paid by the Head-Charterers;

52.1.2 all documented claims, costs, damages or expenses suffered or incurred by the Head-Charterers (otherwise than arising from the wilful misconduct or gross negligence of the Head-Charterers):

- (a) which result directly or indirectly from claims which may at any time be made on the ground that any design, article or material of or in the Vessel or the operation or use thereof constitutes or is alleged to constitute an infringement of patent or copyright or registered design or other intellectual property right or other right whatsoever;
- (b) in preventing or attempting to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture or detention of the Vessel, or in securing the release of the Vessel therefrom;
- (c) in relation to or which result from breach by the Sub-Charterers of any representation, warranty, covenant, agreement, condition or stipulation contained in this Sub-Charter;
- (d) in relation to the preservation or enforcement or attempted enforcement of any rights conferred upon the Head-Charterers by this Sub-Charter following the occurrence of any Termination Event or other breach by the Sub-Charterers of the terms of this Sub-Charter;
- (e) in consequence of the Vessel becoming a wreck or obstruction to navigation;

52.1.3 any loss, damage or expense incurred by the Head-Charterers as a direct consequence of any arrest or detention of the Vessel by reason of a claim or claims for which the Sub-Charterers are directly responsible or as a consequence of any alleged violation of any convention (including, but not limited to, MARPOL) and the Sub-Charterer shall take all reasonable steps to secure that within a reasonable time the Vessel is released, by providing bail or otherwise as the circumstances may require; and

52.1.4 the occurrence of a Termination Event.

- The indemnity contained in this Clause 52 shall extend to all amounts payable by the Head-Charterers to the Approved Mortgagee by way of breakage costs as a result of, and any other costs and expenses arising from any of the defaults or events specified above.
- 52.2 The following shall apply if any amount received or recovered by the Head-Charterers in respect of any moneys or liabilities due, owing or incurred by the Sub-Charterers to the Head-Charterers (whether as a result of any judgment or order of any court or in the bankruptcy, administration, reorganisation, liquidation or dissolution of the Sub-Charterers, or by way of damages or any breach of any obligation to make any payment to the Head-Charterers) is received in a currency (the “**Currency of Payment**”) other than Dollars in whatever circumstances and for whatever reason:
- 52.2.1 such receipt or recovery shall only constitute a discharge to the Sub-Charterers to the extent of the amount in Dollars (the “**Dollar Equivalent Receipt**”) which the Head-Charterers are able or would have been able, on the date or dates of receipt by them of such payment or payments in the Currency of Payment (or, in the case of any such date which is not a Banking Day, on the next succeeding Banking Day), to purchase in the foreign exchange market of their choice with the amount or amounts so received in the Currency of Payment.
- 52.2.2 if the Dollar Equivalent Receipt falls short of the amount originally due to the Head-Charterers hereunder, the Sub-Charterers shall indemnify the Head-Charterers against any documented costs or expenses incurred or arising as a result of paying to the Head-Charterers that amount in Dollars certified by the Head-Charterers as necessary to so indemnify the Head-Charterers;
- 52.2.3 this indemnity shall constitute a separate and independent obligation from the other obligations contained in this Sub-Charter, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Head-Charterers from time to time, and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum or sums in respect of amounts due hereunder or under any such judgment or order; and
- 52.2.4 the certificate of the Head-Charterers as to the documented amount of any such costs and expenses aforesaid (which shall be deemed to constitute a loss suffered by the Head-Charterers) shall (save in the case of manifest error) for all purposes be conclusive and binding on the Sub-Charterers.
- 52.3 The indemnities contained in this Clause 52, and each of the other indemnities contained in this Sub-Charter in favour of the Head-Charterers, shall survive any termination or other ending of the Charter Period and any breach of, or repudiation or alleged repudiation by, the Head-Charterers or the Sub-Charterers of this Sub-Charter PROVIDED that, save where a Sub-Charterers’ Termination Event has occurred, any claim under such indemnities must be made within twelve (12) months of the Head-Charterers becoming aware of the matters giving rise to such claim.

52.4 All moneys payable by the Sub-Charterers under this Clause 52 shall be paid on demand.

53. **TERMINATION**

53.1 Each of the following events shall be a Termination Event for the purposes of this Sub-Charter:

53.1.1 if the Sub-Charterers fail to make any payment of hire or other moneys due under this Sub-Charter on its due date, or, in respect of moneys payable on demand (unless otherwise specifically provided) forthwith upon such demand being made and has not remedied such failure within three Banking Days of receipt of notice from the Head-Charterers of such failure;

53.1.2 if the Sub-Charterers are in breach of any one or more of the provisions of this Sub-Charter relating to the Insurances;

53.1.3 if the Sub-Charterers fail to observe or perform any provision of this Sub-Charter (including, without limitation, any Financial Covenant or General Undertaking) other than those referred to in Clauses 53.1.1 and 53.1.2, and, in the reasonable opinion of the Head-Charterers, such default is either not remediable or, in the case of any such default which the Head-Charterers consider capable of remedy, is not remedied to the Head-Charterers' entire satisfaction within seven (7) Banking Days after the Head-Charterers, by written notice to the Sub-Charterers, require the same to be remedied;

53.1.4 if any licence, approval, consent, authorisation or registration at any time necessary for the validity, enforceability or admissibility in evidence of this Sub-Charter, or for the Sub-Charterers to comply with their obligations thereunder, or in connection with the chartering and operation of the Vessel, is revoked, withheld or expires, or is modified in what the Head-Charterers consider a material respect;

53.1.5 if a petition is filed or an order made, (and the Sub-Charterers or the Sub-Charterers' Guarantor or the Manager shall not within twenty one (21) days thereafter have entered a bona fide appeal as a consequence of which such order is stayed) or an effective resolution passed, for the compulsory or voluntary winding-up or dissolution of the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager (other than for the purposes of amalgamation or reconstruction in respect of which the prior written consent of the Head-Charterers have been obtained, such consent not to be unreasonably withheld) or any step analogous thereto is begun in any jurisdiction in relation to the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager, or if the Sub-Charterers, the Sub-Charterers Guarantor or the Manager suspends payment of, or is unable to or admits inability to pay, their debts as they fall due or make any special

- arrangement or composition with their creditors generally or any class of their creditors;
- 53.1.6 if an administrator, administrative receiver, receiver or trustee or similar official is appointed of the whole, or a material part, of the property, assets or undertaking of the Sub-Charterers, the Sub-Charterers Guarantor or the Manager, or if the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager applies for, or consent to, any such appointment or any event occurs or proceeding is taken in any jurisdiction which has an effect equivalent or similar thereto;
- 53.1.7 if an encumbrancer takes possession of, or distress or execution is levied upon, the whole, or a material part, of the property, assets or undertaking of the Sub-Charterers;
- 53.1.8 if any of the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager cease, or threaten to cease, to carry on their business, or (without the prior written consent of the Head-Charterers, which shall not be unreasonably withheld) disposes or threatens to dispose of the whole, or a substantial part, of their property, assets or undertaking;
- 53.1.9 if any representation or warranty made or at any time deemed to be made in this Sub-Charter, or in any certificate or statement in writing delivered or made in connection with this Sub-Charter or in any certificate or statement in writing delivered or made in the negotiations leading up to the conclusion of this Sub-Charter is, incorrect in any material adverse respect, as if such representation or warranty were made as of such time and the same shall not be rectified within 14 days thereafter;
- 53.1.10 if an event of default occurs in relation to any obligation in respect of indebtedness of the Sub-Charterers the amount of which exceeds five hundred thousand United States Dollars (US\$500,000);
- 53.1.11 if it becomes impossible or unlawful for the Sub-Charterers in any material respect to fulfil any of their obligations under this Sub-Charter or for the Head-Charterers to exercise any of the rights vested in them by this Sub-Charter, or this Sub-Charter for any reason becomes invalid or unenforceable or cease to be in full force and effect or the Sub-Charterers repudiate or threaten to repudiate this Sub-Charter;
- 53.1.12 if the Vessel loses her classification status, or loss of classification status is threatened and remedial action is not initiated by the Sub-Charterers within seven (7) days;
- 53.1.13 if the Vessel becomes a Total Loss and the Head-Charterers do not receive, within the time specified in Clause 48.5, a net amount equal to the aggregate of

- (i) the minimum insured value applicable as at the date of the Total Loss and (ii) all other sums (if any) payable by the Sub-Charterers hereunder;
- 53.1.14 if a Termination Event (as defined in each Transaction Sub-Charter) occurs pursuant to or in accordance with the terms of any of the Transaction Sub-Charters or it becomes impossible or unlawful for any of the Transaction Sub-Charterers to fulfil any of their obligations under the Transaction Sub-Charters;
- 53.1.15 if it becomes impossible or unlawful for the Sub-Charterers' Guarantor in any material respect to fulfil any of its obligations under the Sub-Charterers' Guarantee or for the Head-Charterers to exercise any of the rights vested in them by the Sub-Charterers' Guarantee, or the Sub-Charterers' Guarantee for any reason becomes invalid or unenforceable or cease to be in full force and effect or the Sub-Charterers' Guarantor repudiate or threaten to repudiate the Sub-Charterers' Guarantee;
- 53.1.16 if anything is done or suffered or omitted to be done by the Sub-Charterers which, in the reasonable opinion of the Head-Charterers or the Approved Mortgagee, may imperil the registration of the Vessel or of any Security Documents, the Approved Mortgage or any other security constituted by the Approved Mortgage and if in the opinion of the Head-Charterers it will not adversely affect the Head-Charterers, or the security of the Approved Mortgage, it is remedied before the expiry of notice from the Head-Charterers requiring the same to be remedied;
- 53.1.17 if the Manager ceases, without the Head-Charterers approval, to be the managers of the Vessel;
- 53.1.18 there is a Material Adverse Effect; or
- 53.1.19 if the Vessel is detained under any arrest (which for the purpose of this Clause 53.1.19 means any arrest (whether or not registered), attachment, detention, restraint, impounding or seizure under any distress, execution or other process not attributable to any act or default of the Owners or the Head-Charterers or is impounded and is not released within fourteen (14) days.
- 53.2 The Sub-Charterers undertake promptly to advise the Head-Charterers of the occurrence of any Termination Event and of the steps (if any) which are being taken to remedy it.
54. **HEAD CHARTERERS' RIGHTS ON TERMINATION EVENT**
- 54.1 A Termination Event shall constitute (as the case may be) either a repudiatory breach of, or breach of condition by the Sub-Charterers under this Sub-Charter or an agreed terminating event the occurrence of which will (in any such case) entitle the Head-Charterers thereupon and at any time thereafter, so long as the same has not been

remedied, to take any one or more of the actions specified in Clauses 54.2 to 54.5 inclusive.

- 54.2 The Head-Charterers may:
- 54.2.1 proceed by appropriate court action or actions to enforce performance of this Sub-Charter and/or to recover damages for the breach thereof; and/or
- 54.2.2 take any and all such action as they may consider necessary or desirable to cure any such Termination Event. If the Head-Charterers thereby incur any expenditure or liability in curing the same, or otherwise incur any expenditure or liability in respect of the Vessel which should have been incurred by the Sub-Charterers, the Head-Charterers shall be entitled (without prejudice to their other rights hereunder) to recover such expenditure, or an amount equal to such liability, from the Sub-Charterers together with any Additional Amount (as well after as before judgment) calculated in accordance with the provisions of Clause 40.7 from the date such expenditure or liability suffered or incurred by the Head-Charterers until the date of receipt of payment thereof by the Head-Charterers.
- 54.3 The Head-Charterers may at their option, by notice to the Sub-Charterers, declare the Sub-Charterers to be in default and terminate the letting and hiring of the Vessel under this Sub-Charter and withdraw the Vessel from the service of the Sub-Charterers either immediately or on such date as the Head-Charterers may specify, in which event:
- 54.3.1 the Vessel shall no longer be in the possession of the Sub-Charterers with the consent of the Head-Charterers;
- 54.3.2 the Sub-Charterers shall, at the Sub-Charterers' expense, redeliver the Vessel or cause the Vessel to be redelivered to the Head-Charterers with all reasonable dispatch in the manner and in the condition required by this Sub-Charter, and the provisions of Clause 15 permitting the Sub-Charterers to have the use of the Vessel for the relevant additional period specified in that Clause in the circumstances mentioned in that Clause shall take effect subject to the Sub-Charterers' obligation under this Clause 54.3.2 to redeliver the Vessel with all reasonable despatch;
- 54.3.3 without prejudice to the Sub-Charterers' obligation under Clause 54.3.2 above, the Head-Charterers shall be entitled, without legal process (or any obligation to institute legal process), to retake the Vessel (wherever she may be) together with all outfit, machinery, equipment, spare parts, appliances, furniture, fittings, furnishings, consumable stores, unused lubricating oils and bunkers on board the Vessel irrespective of whether the Sub-Charterers, any further sub-charterer or any other person/s are in possession of the Vessel, and for that purpose the Head-Charterers or their agent may enter upon any dock, pier or other premises where the Vessel may be, and the Sub-Charterers agree to indemnify the Head-

Charterers for any liability, damages, costs or expenses whatsoever caused or incurred thereby.

- 54.4 Following the redelivery or retaking of possession of the Vessel, the Head-Charterers may sell the Vessel by public or private sale, in which case the Head-Charterers shall apply the proceeds of sale in or towards payment to the Approved Mortgagee of such sum as shall be required to discharge the Approved Mortgage, or otherwise dispose of, hold, use, operate, charter to others or keep idle the Vessel, as the Head-Charterers in their sole discretion may determine, all free and clear of any rights of the Sub-Charterers and without any duty to account to the Sub-Charterers with respect to such action or inaction or for any proceeds with respect thereto.
- 54.5 The Head-Charterers may recover the amounts specified in this Clause 54, without prejudice to the Head-Charterers' rights to claim damages and/or to exercise any other right or remedy to which the Head-Charterers may be entitled to under this Sub-Charter or at law, in equity or otherwise as a consequence of the occurrence of a Termination Event.
- 54.6 Termination of the chartering of the Vessel and/or repossession of the Vessel by the Head-Charterers shall not relieve the Sub-Charterers from any of their obligations under this Sub-Charter and the Sub-Charterers shall continue to comply with their obligations under this Sub-Charter until such time as the Head-Charterers has unconditionally received all amounts payable by the Sub-Charterers under Clause 55.

55. **TERMINATION PAYMENTS**

- 55.1 Following termination of the chartering of the Vessel hereunder pursuant to Clause 54.3 or after any repudiation of this Sub-Charter by the Sub-Charterers which is accepted by the Head-Charterers, whether or not amounting to a Termination Event, the Sub-Charterers shall be and become obliged to pay to the Head-Charterers the following amounts:
- 55.1.1 forthwith upon such termination all arrears of hire which are due and payable under Clause 40 before the date of termination of the chartering of the Vessel hereunder and all other moneys then payable to the Head-Charterers, together, with an Additional Amount (as well after as before judgement) in respect thereof calculated in accordance with Clause 40.7 from the date on which such hire or other sums fell due for payment to the date of payment;
- 55.1.2 on demand all documented costs and expenses of and in connection with or arising out of the retaking of possession of the Vessel by the Head-Charterers or redelivery of the Vessel to the Head-Charterers pursuant to this Sub-Charter including (without limitation), if a Termination Event has occurred, all costs and expenses suffered or incurred in moving, storing, laying up, insuring and maintaining, the Vessel and in carrying out any works or modifications required

so as to enable the Vessel to comply with the requirements of Clause 14, together with any Additional Amount calculated in accordance with the provisions of Clause 40.7;

- 55.1.3 on demand all other documented costs, damages, expenses (including without limitation breakage and other costs incurred by the Owners under its financing arrangements with the Approved Mortgagee that result from any prepayment following termination being made other than on the date scheduled by such financing arrangements or from any default thereunder arising from such termination, and any legal fees and expenses on a full indemnity basis) of whatsoever nature suffered or incurred by the Owners as a result of such termination or repudiation, together with, if a Termination Event has occurred, any Additional Amount in respect thereof calculated in accordance with the provisions of Clause 40.7;
- 55.1.4 on demand all other documented costs, damages, expenses arising from such termination, and any legal fees and expenses on a full indemnity basis of whatsoever nature suffered or incurred by the Head-Charterers as a result of such termination or repudiation, together with any Additional Amount calculated in accordance with the provisions of Clause 40.7; and
- 55.1.5 on demand effect the Call Option pursuant to the terms of the Acquisition Agreement and pay the amount due thereunder, provided however that if for any reason whatsoever the Sub-Charterers fail to effect the Call Option on demand by the Head-Charterers, the Sub-Charterers shall pay to the Head-Charterers a sum equal to the Call Option Sum which would be payable if the Call Option had been exercised at the time of such demand.
- 55.2 The Sub-Charterers will be entitled in accordance with the terms of the Acquisition Agreement, by notice in writing to the Owners and the Head-Charterers, should the Head-Charterers make a demand on the Sub-Charterers under Clause 55.1.5, to require the Owners and the Head-Charterers to transfer title to the Vessel to the Sub-Charterers or to a company nominated by them, upon, or at any time after, payment by the Sub-Charterers to the Head-Charterers of the sum set out in Clause 55.1.5 and all other sums (if any) payable under Clauses 55.1.1, 55.1.2, 55.1.3, 55.1.4 and any other provision of this Sub-Charter. Such transfer will be on the basis that the Owners and the Head-Charterers make no condition, term, representation or warranty, express or implied (and whether statutory or otherwise) with respect to the Vessel, and the transfer will be strictly on an "as is/where is" basis, free from the Approved Mortgage and any other Encumbrance (save for Permitted Encumbrances) created as a result of any act or omission of the Owners or the Head Charterers.

56. **APPROVED MORTGAGEE**

- 56.1 The Sub-Charterers hereby acknowledge that the Owners intend to obtain a loan from Marfin Egnatia Bank S.A. of Greece (referred to in this Sub-Charter as the “**Approved Mortgagee**”) to enable the Owners to finance or refinance the purchase of the Vessel and enter into the Head-Charter.
- 56.2 It is noted and agreed that the said loan will be secured by, *inter alia*, a mortgage and as the case may be collateral deed or deeds of covenant over the Vessel (referred to in this Sub-Charter as an “**Approved Mortgage**”), and an assignment or assignments of all the Owners and the Head-Charterers’ rights in the Insurances, earnings and the proceeds of any requisition of the Vessel and of the benefit of this Sub-Charter.
- 56.3 The Sub-Charterers hereby confirm their agreement to the provision by the Head-Charterers of the securities referred to in Clause 56.2 and undertake, at the request of the Owners and/or the Head-Charterers and (with respect to the Sub-Charterers’ own costs, including legal costs) at the Sub-Charterers’ expense, to execute all such documents and instruments and to do all such acts and things as the Approved Mortgagee may reasonably require to create and perfect, or otherwise in relation to, such security, and hereby acknowledges that their rights as Sub-Charterers of the Vessel shall in all respects be subordinate to the rights of the Approved Mortgagee. Without limitation, the Sub-Charterers will on request by the Head-Charterers additionally assign all their rights in the obligatory Insurances and the freights, hires or other earnings of the Vessel to the Head-Charterers, or to the Approved Mortgagee as assignee of the Head-Charterers’ rights under this Sub-Charter, as the Approved Mortgagee may require, as security for the performance by the Sub-Charterers of their obligations under this Sub-Charter and the Time Charter.

57. **QUIET ENJOYMENT**

- 57.1 If the Vessel is arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Sub-Charterers, the Sub-Charterers shall take all reasonable steps to secure that within a reasonable time the release of the Vessel, by providing bail or otherwise as the circumstances may require.
- 57.2 The Head-Charterers’ hereby covenant and undertake that, so long as no Termination Event shall have occurred and be continuing, in consequence whereof the Head-Charterers have duly given notice to withdraw the Vessel and terminate this Sub-Charter as provided in this Sub-Charter, the Head-Charterers shall not, and shall procure that no person for whose acts or omissions the Head-Charterers, are responsible, including any mortgagee of the Vessel, shall, disturb or interfere with quiet and peaceful use, possession and enjoyment of the Vessel by the Sub-Charterers subject to and upon the terms of this Sub-Charter or any sub-charterer.

57.3 The Head-Charterers shall not without the Sub-Charterers' prior written consent create which shall not be unreasonably withheld or delayed or suffer to exist any Encumbrance over the Vessel other than an Approved Mortgage, subject always to the provisions of this Sub-Charter.

57.4 If the Vessel is arrested or otherwise detained by reason of a claim or claims for which the Owners or the Head-Charterers are directly responsible, the Owners and the Head-Charterers shall take all reasonable steps to secure that within a reasonable time the Vessel is released, by providing bail or otherwise as the circumstances may require. In such circumstances, the Head-Charterers shall indemnify the Sub-Charterers against any loss, damage or expense incurred by the Sub-Charterers (including hire paid under this Sub-Charter) as a direct consequence of such arrest or detention.

58. **SALVAGE**

All salvage and towage and all proceeds from derelicts shall be for the Sub-Charterers' benefit and the cost of repairing damage or discharging liabilities occasioned thereby shall be borne by the Sub-Charterers.

59. **GENERAL AVERAGE**

59.1 General Average, if any, shall be adjusted according to the York-Antwerp Rules 2004 or any subsequent modification thereof current at the time of the casualty. The hire shall not contribute to General Average. If for any reason the hull and machinery insurance will not contribute to the General Average, then any liability shall be for the Sub-Charterers' account and not the Head-Charterers' and/or the Owners' account.

59.2 The Sub-Charterers hereby undertake to pay any salvor's award not paid by the Vessel's insurers due to gross negligence or wilful misconduct of the Sub-Charterers and/or the Manager.

60. **BILLS OF LADING**

The Sub-Charterers are to procure that all bills of lading issued for carriage of goods under this Sub-Charter shall contain a Paramount Clause incorporating any legislation relating to the carrier's liability for cargo compulsorily applicable in the trade. If no such legislation exists, the bills of lading shall incorporate the English Carriage of Goods by Sea Act 1971 (or as the same may be amended or replaced). The bills of lading shall also contain the amended New Jason Clause and the Both-to-Blame Collision Clause.

61. **REDELIVERY**

If on redelivery of the Vessel the requirements of this Charter relating to the condition of the Vessel shall not have been satisfied, the Head-Charterers shall be entitled to carry out such works or repairs to the Vessel, and otherwise take such actions, as shall be necessary

to cause such requirements to be satisfied and shall be entitled to recover from the Sub-Charterers on demand the costs (if any) so incurred.

62. ASSIGNMENT AND TRANSFER OF TITLE TO VESSEL

62.1 The Head-Charterers shall not assign all or any of their rights and benefits under this Sub-Charter or any part thereof and/or to transfer title in the Vessel to any person or persons without the prior written consent of the Sub-Charterers, such consent not to be unreasonably withheld, conditioned or delayed, provided that such consent shall not be required in the case of an assignment of this Sub-Charter or transfer of title in the Vessel (with the benefit and burden of this Sub-Charter) to the Approved Mortgagee.

62.2 The Sub-Charterers agree and undertake to enter into such usual documents (including, without limitation, novation agreements and any documents supplemental thereto) as the Head-Charterers shall reasonably require to complete or perfect the transfer of the Vessel (with the benefit and burden of this Sub-Charter) pursuant to Clause 62.1.

63. NOTICES

63.1 Every notice or demand under this Sub-Charter shall be in the English language and in writing and may be given or made by letter, e-mail or fax.

63.2 Any accounts, demand, consent, record, election or notice required or permitted to be given hereunder shall be in writing and sent by prepaid airmail letter post, telex or delivered by hand addressed as follows:

63.2.1 if to the Owners to: c/o Prime Shipping Holding Ltd
17-21B Agias Zonis, Eleni Court
P.O.Box 54970
Limassol CY-3729
Republic of Cyprus
Fax No.: + 357 25 746926
E-mail: info@lemissoler.com

63.2.2 if to the Head-Charterers to: c/o Lemissoler Shipmanagement Limited
17-21B Agias Zonis, Eleni Court
P.O.Box 54970
Limassol CY-3729
Republic of Cyprus
Fax No.: + 357 25 746926
E-mail: info@lemissoler.com

63.2.3 if to the Sub-Charterers to: c/o Newlead Bulkera S.A.
83 Akti Miaouli & Flessa
Piraeus 18538
Greece

Fax No.: +30 213 0148609
E-mail: Pkallifidas@newleadholdings.com

63.2.4 if to the Approved Mortgagee to:

Marfin Egnatia Bank S.A
24B Kifissias Avenue
151 25 Maroussi
Attiki, Greece
Fax No: +30 210 6896358

or in each case to such other person or address or addresses as any party may notify in writing to the other parties thereto. Every notice or demand shall, except so far as otherwise required by this Sub-Charter, be deemed to have been received in the case of a telefax at the time of despatch thereof and in the case of a letter two (2) days after the posting of the same by prepaid local post or seven (7) days after the posting of the same by prepaid airmail post, as may be appropriate, and in the case of delivery by hand, on delivery.

64. **FEES AND EXPENSES**

The Sub-Charterers shall pay on demand all costs, charges, expenses, claims, liabilities, losses, duties and fees (including, but not limited to, the fees and expenses of all legal and insurance advisers) incurred by that Owners and the Head-Charterers in the negotiation, preparation, printing, execution, enforcement and registration of this Sub-Charter and the Head-Charter and any other document entered into pursuant to or in connection with this Sub-Charter (save for any of the Security Documents or any loan agreement or finance document entered into by the Owners or the Head-Charterers).

65. **MISCELLANEOUS**

- 65.1 No delay or omission by the either party to exercise any right, power or remedy vested in it under this Sub-Charter or by law shall impair such right, power or remedy, or be construed as a waiver of, or as an acquiescence in, any default by the other party.
- 65.2 If either party on any occasion agrees to waive any such right, power or remedy, such waiver shall not in any way preclude or impair any further exercise thereof or the exercise of any other right, power or remedy.
- 65.3 Any waiver by either party of any provision of this Sub-Charter, and any consent or approval given by either party, shall only be effective if given in writing and then only strictly for the purpose and upon the terms for which it is given.
- 65.4 This Sub-Charter may not be amended or varied orally but only by an instrument signed by each of the parties hereto.

- 65.5 The rights, powers and remedies of each party contained in this Sub-Charter are cumulative and not exclusive of each other nor of any other rights, powers or remedies conferred by law, and may be exercised from time to time and as often as that party may think fit.
- 65.6 If at any time one or more of the provisions of this Sub-Charter is or become invalid, illegal or unenforceable in any respect under any law by which it may be governed or affected, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired as a result.
- 65.7 This Sub-Charter may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute but one and the same instrument.
- 65.8 The termination or expiry of this Sub-Charter shall be without prejudice to rights accrued due between the parties prior to the date of termination or expiry and to any claim that either party may have.
- 65.9 All terms and conditions of this Sub-Charter shall be kept private and confidential.
- AS WITNESS** the hands of the duly authorised representatives of the parties hereto the day and year first before written.

For and on behalf of

For and on behalf of

PRIME MOUNTAIN MARITIME LTD

AUSTRALIA HOLDINGS LTD.

By: /s/ Petros Monogios

By: /s/ Peter Kallifidas
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SCHEDULE 1
CONDITIONS PRECEDENT

Part A: Sub-Charterers

1. The Head-Charterers and their legal advisers shall be satisfied on the Delivery Date that:
 - 1.1 no Termination Event has occurred and is continuing or would result from the chartering of the Vessel to the Sub-Charterers under this Sub-Charter;
 - 1.2 each of the representations and warranties contained in Clause 33 is true and correct on the Delivery Date by reference to the facts and circumstances then subsisting;
 - 1.3 each of the financial covenants contained in Clause 50 is true and correct on the Delivery Date by reference to the facts and circumstances then subsisting;
 - 1.4 no Encumbrances (save for Permitted Encumbrances) are subsisting on the Vessel;
 - 1.5 the Head-Charterers have received payment of the Advance Payment and the first month's hire due on the Delivery Date;
 - 1.6 the Head-Charterers or their legal advisers, have received in form and substance satisfactory to them, of:
 - 1.6.1 an extract from the relevant companies register in the country of incorporation of the Sub-Charterers confirming that the Sub-Charterers are in good standing and the authority of named officers of the Sub-Charterers to bind the Sub-Charterers;
 - 1.6.2 a copy, certified as true by the secretary or a director of the Sub-Charterers, of any power of attorney duly issued by the Sub-Charterers and in favour of any person or persons executing the Sub-Charter;
 - 1.6.3 the Manager's Undertaking duly executed by the Manager in a form acceptable to the Approved Mortgagee;
 - 1.6.4 evidence, by way of copy policies, cover notes, letters of undertaking and certificates of entry, that insurance in respect of the Vessel has been effected in accordance with the provisions of this Sub-Charter and that the respective interests of the Owners, Head-Charterers and the Approved Mortgagee have been or will be noted thereon, together with letters of undertaking from the relevant brokers and protection and indemnity and war risks associations and a favourable written opinion from insurance advisers nominated by the Approved Mortgagee, at the Sub-Charterers' expense, as to the quality of the insurance of the Vessel;
 - 1.6.5 a copy, certified as true by the secretary or a director of the Sub-Charterers, of the management agreement in relation to the Vessel, in terms acceptable to the Approved Mortgagee, entered into by the Sub-Charterers with the Manager;

- 1.6.6 a copy, certified as true by the secretary or a director of the Sub-Charterers, of any Time Charter in relation to the Vessel, in terms acceptable to the Approved Mortgagee;
- 1.6.7 evidence satisfactory to the Head-Charterers in all respects:
- (a) of compliance by the Sub-Charterers, the Manager, and the Vessel with the requirements of MARPOL 73/78, the ISM Code and of the ISPS Code;
 - (b) that the Vessel is classed with the Classification Society with the highest possible notation for such type of vessel and with its classification free from all recommendations, qualifications, requirements, notations and average damage;
 - (c) that the Vessel is in compliance with all applicable laws, regulations and requirements (statutory or otherwise) applicable to ships registered under the Flag State with all required trading certificates (valid and current) and engaged in the service in which it is or is to be engaged;
 - (d) that the Sub-Charterers' Guarantor has entered into the Sub-Charterers' Guarantee together with evidence that the Sub-Charterers' Guarantor has the full power and corporate authority to enter into the Sub-Charterers' Guarantee and, where required, evidence that all information requested by the Approved Mortgagee in connection with the Sub-Charterers' Guarantor or the Sub-Charterers' Guarantee has been provided (and is acceptable) to the Approved Mortgagee;
 - (e) that the Sub-Charterers' Guarantor has entered into the Warrants Instrument with Lemissoler Corporate Management Limited in the agreed form;
 - (f) that the Sub-Charterers have entered into such Security Documents (to which it is a party) and all documents, instruments, notices and acknowledgements thereto required under those Security Documents, and, where required, evidence that such Security Documents have been duly registered or are capable of immediate registration with the required priority in the appropriate register and acceptable to the Approved Mortgagee; and
 - (g) the Sub-Charterers have made payment of all fees and expenses (including legal fees and expenses) due and payable on or before the Delivery Date.

Part B: Head-Charterers

2. The Sub-Charterers and their legal advisers shall be satisfied on the Delivery Date that:
- 2.1 each of the representations and warranties made by the Head-Charterers contained in Clause 33 is true and correct on the Delivery Date by reference to the facts and circumstances then subsisting; and
- 2.2 no Encumbrances (save for Permitted Encumbrances) are subsisting on the Vessel;
- 2.3 the Sub-Charterers or their legal advisers, have received in form and substance satisfactory to them, of:
- 2.3.1 an extract from the relevant companies register in the country of incorporation of the Head-Charterers confirming that the Head-Charterers are in good standing and the authority of named officers of the Head-Charterers to bind the Head-Charterers;
- 2.3.2 a copy, certified as true by the secretary or a director of the Head-Charterers, of any power of attorney duly issued by the Head-Charterers and in favour of any person or persons executing the Head-Charter;
- 2.3.3 evidence satisfactory to the Sub-Charterers:
- (a) the Vessel has been unconditionally delivered by the Seller to the Owner in accordance with the MOA and accepted by the Owner as being in all respects in compliance with the provisions of the MOA to include certified true copies of the protocol of delivery and acceptance signed by the Seller and of all other documents to be provided by the Seller upon delivery of the Vessel pursuant to the MOA;
 - (b) the Vessel has been unconditionally delivered by the Owners to the Head-Charterers in accordance with the Head-Charter and accepted by the Head-Charterers as being in all respects in compliance with the provisions of the Head-Charter to include certified true copies of the protocol of delivery and acceptance signed by the Head-Charterers and of all other documents to be provided by the Owners upon delivery of the Vessel pursuant to the Head-Charter;
 - (c) that the Vessel is in the absolute ownership of the Owner as the sole, legal and beneficial owner of the Vessel free from all Encumbrances save for Permitted Encumbrances; and
- 2.3.4 confirmation from the agents in England nominated by the Head-Charterers in the Multipartite Agreement for the acceptance of service of process, that they consent to such nomination.

**SCHEDULE 2
REPRESENTATIONS AND WARRANTIES**

Part A: Sub-Charterers

1. The Sub-Charterers represent and warrant that the following matters are true at the date of this Charter and shall be true on the Delivery Date:
- 1.1 the Sub-Charterers:
 - 1.1.1 are a company duly incorporated with limited liability in the Republic of Liberia, validly existing and in good standing under the laws of the Republic of Liberia;
 - 1.1.2 have full power to own their property and assets and to carry on their business as it is now being conducted and to charter the Vessel from the Head-Charterers hereunder;
 - 1.1.3 have complied with all statutory and other requirements relative to their business;
- 1.2 entry into and performance by the Sub-Charterers of this Sub-Charter is within the corporate powers of the Sub-Charterers and has been duly authorised by all necessary corporate actions and approvals;
- 1.3 entry into and performance by the Sub-Charterers of this Sub-Charter does not and will not
 - 1.3.1 contravene in any respect any law, regulation or contractual restriction which does, or may, bind the Sub-Charterers any of their assets;
 - 1.3.2 result in the creation or imposition of any encumbrance on any of their assets in favour of any party other than the Head-Charterers and the Approved Mortgagee;
- 1.4 all licences, authorisations, approvals and consents (if any) necessary for the entry into, performance, validity, enforceability or admissibility in evidence of this Sub-Charter have been obtained and are in full force and effect;
- 1.5 this Sub-Charter constitutes the Sub-Charterers' legal, valid and binding obligations and is enforceable in accordance with its terms;
- 1.6 no litigation, arbitration, tax claim or administrative proceeding is current or pending or threatened, which, if adversely determined, would have a materially detrimental effect on the financial condition of the Sub-Charterers;

- 1.7 no Termination Event has occurred and is continuing;
- 1.8 the choice of English law to govern this Sub-Charter and the submission by the Sub-Charterers to the jurisdiction of the English courts are valid and binding;
- 1.9 all payments to be made by the Sub-Charterers under this Sub-Charter may be made free and clear of and without deduction or withholding for or on account of any taxes, and this Sub-Charter is not liable to any registration charge or any stamp, documentary or similar taxes imposed by any authority, including without limitation, in connection with the admissibility in evidence thereof;
- 1.10 the obligations of the Sub-Charterers under this Sub-Charter will rank at least *pari passu* with all of their other unsecured and unsubordinated obligations and liabilities from time to time outstanding, other than as preferred by the statute; and
- 1.11 each of the financial covenants contained in Clause 50 is true and correct by reference to the facts and circumstances then subsisting.

Part B: Head-Charterers

- 2. The Head-Charterers represent and warrant that the following matters are true at the date of this Sub-Charter and shall be true on the Delivery Date:
 - 2.1 the Head-Charterers:
 - 2.1.1 are a company duly incorporated with limited liability, validly existing and in good standing under the laws of the Republic of the Marshall Islands; and
 - 2.1.2 have full power to charter the Vessel to the Sub-Charterers hereunder, to own their property and assets and to carry on their business as it is now being conducted.
 - 2.2 the entry into and performance by the Head-Charterers of this Sub-Charter is within the corporate powers of the Head-Charterers and has been duly authorised by all necessary corporate actions and approvals.
 - 2.3 all licences, authorisations, approvals and consents necessary for the Head-Charterers' entry into and performance of this Sub-Charter have been obtained and are in full force and effect, true copies have been delivered to the Sub-Charterers and there has been no breach of any condition or restriction imposed in this respect.
 - 2.4 the Head-Charterers further represent and warrant and undertake that they are and shall throughout the Charter Period remain as single-purpose company, chartering no other ship than the Vessel.

SCHEDULE 3
NOTICE OF ASSIGNMENT/LOSS PAYABLE CLAUSE

1. Shipbroker		BIMCO STANDARD BAREBOAT CHARTER CODE NAME: "BARECON 2001"		 PART I	
		2. Place and date 25 NOVEMBER 2010 <i>H.U.R.</i>			
3. Owner/Head-Charterers/Place of business (Cl. 1) PRIME LAKE MARITIME LTD Trust Company Complex Ajeltake Road Ajeltake Island MH96960, Marshall Islands		4. Bareboat Sub-Charterers/Place of business (Cl. 1) BRAZIL HOLDINGS LTD 80 Broad Street Monrovia Liberia			
5. Vessel's name, call sign and flag (Cl. 1 and 2) BRAZIL, A8TT8, LIBERIA					
6. Type of Vessel BULK CARRIER		7. GT/NT 77,135/48,543			
8. When/Where built 1995, KAOHSIUNG, TAIWAN		9. Total DWT (abt.) in metric tons on summer freeboard 151,738			
10. Classification Society (Cl. 3) BUREAU VERITAS		11. Date of last special survey by the Vessel's classification society 25 FEBRUARY 2009			
12. Further particulars of Vessel (also indicate minimum number of months' validity of class certificates agreed acc. to Cl. 3) LOA: 270.05m, BEAM: 43.00m, MAIN GMT MAN B&W/SL80MCE CLASS CERTIFICATES VALID					
13. Port or Place of delivery (Cl. 3) WORLDWIDE		14. Time for delivery (Cl. 4) See Clause 34		15. Cancelling date (Cl. 5) See Clause 36	
16. Port or Place of redelivery (Cl. 15) WORLDWIDE		17. No. of months' validity of trading and class certificates upon redelivery (Cl. 15) VALID AT AS THE TIME OF DELIVERY.			
18. Running days' notice if other than stated in Cl. 4 N/A		19. Frequency of dry-docking (Cl. 10(a)) AS PER CLASS REQUIREMENTS			
20. Trading limits (Cl. 6) WORLDWIDE WITHIN INSTITUTE WARRANTY LIMITS BUT HEAD-CHARTERERS TO BE INFORMED IN ADVANCE FOR ANY CALL TO ISRAEL, CUBA AND NORTH CYPRUS					
21. Charter period (Cl. 2) 96 MONTHS FROM DELIVERY		22. Charter hire (Cl. 11) SEE CLAUSE 40			
23. New class and other safety requirements (state percentage of Vessel's insurance value acc. to Box 29)(Cl. 10(a)(ii)) N/A					
24. Rate of interest payable acc. to Cl. 11 (f) and, if applicable, acc. to PART IV N/A		25. Currency and method of payment (Cl. 11) USD/BANK TRANSFER			

H.U.R. *JA*

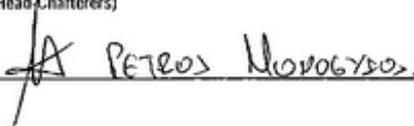
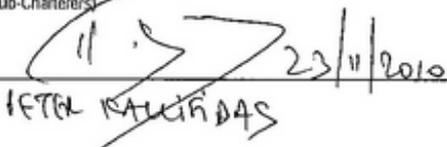


"BARECON 2001" STANDARD BAREBOAT CHARTER

PART I

26. Place of payment; also state beneficiary and bank account (Cl. 11) Account Name: PRIME MARITIME HOLDING LTD IBAN No.: GR580280314000000280587428 Bank: Marfin Egnatia Bank SA SWIFT: EGNAGR2T	27. Bank guarantee/bond (sum and place) (Cl. 24) (optional) N/A
28. Mortgage(s), if any (state whether 12(a) or (b) applies; if 12(b) applies state date of Financial Instrument and name of Mortgagee(s)/Place of business) (Cl. 12) See Clause 56	29. Insurance (hull and machinery and war risks) (state value acc. to Cl. 13(f) or, if applicable, acc. to Cl. 14(k)) (also state if Cl. 14 applies) See Clause 47
30. Additional insurance cover, if any, for Owners' account limited to (Cl. 13(b) or, if applicable, Cl. 14(g))	31. Additional insurance cover, if any, for Charterers' account limited to (Cl. 13(h) or, if applicable, Cl. 14(g))
32. Latent defects (only to be filled in if period other than stated in Cl. 3) N/A	33. Brokerage commission and to whom payable (Cl. 27) N/A
34. Grace period (state number of clear banking days) (Cl. 28) See Clauses 53, 54 and 55	35. Dispute Resolution (state 30(a), 30(b) or 30(c); if 30(c) agreed Place of Arbitration <u>must</u> be stated (Cl. 30) London Arbitration
36. War cancellation (indicate countries agreed) (Cl. 26(f)) N/A	
37. Newbuilding Vessel (indicate with "yes" or "no" whether PART III applies) (optional) NO	38. Name and place of Builders (only to be filled in if PART III applies) N/A
39. Vessel's Yard Building No. (only to be filled in if PART III applies) N/A	40. Date of Building Contract (only to be filled in if PART III applies) N/A
41. Liquidated damages and costs shall accrue to (state party acc. to Cl. 1) a) N/A b) N/A c) N/A	
42. Hire/Purchase agreement (indicate with "yes" or "no" whether PART IV applies) (optional) NO	43. Bareboat Charter Registry (indicate with "yes" or "no" whether PART V applies) (optional) NO
44. Flag and Country of the Bareboat Charter Registry (only to be filled in if PART V applies) N/A	45. Country of the Underlying Registry (only to be filled in if PART V applies) N/A
46. Number of additional clauses covering special provisions, if agreed Additional Clauses 32 to 65 inclusive, as attached hereto.	

PREAMBLE - It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include PART I and PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict but no further. It is further mutually agreed that PART III and/or PART IV and/or PART V shall only apply and only form part of this Charter if expressly agreed and stated in Boxes 37, 42 and 43. If PART III and/or PART IV and/or PART V apply, it is further agreed that in the event of a conflict of conditions, the provisions of PART I and PART II shall prevail over those of PART III and/or PART IV and/or PART V to the extent of such conflict but no further.

Signature (Owners/Head-Charterers) 	Signature (Sub-Charterers)  23/11/2010
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PART II
"BARECON 2001" Standard Bareboat Charter

<p>1. Definitions</p> <p>In this Charter, the following terms shall have the meanings hereby assigned to them: "The Owners" shall mean the party identified in <u>Box 3</u>; "The Charterers" shall mean the party identified in <u>Box 4</u>; "The Vessel" shall mean the vessel named in <u>Box 5</u> and with particulars as stated in <u>Boxes 6 to 12</u>. "Financial Instrument" means the mortgage, deed of covenant or other such financial security instrument as annexed to this Charter and stated in <u>Box 28</u>. Any references herein to "this Charter", "the Owner" and "the Charterers" shall be interpreted and construed to be a reference to "this Sub-Charter", the Head-Charterers" and the "Sub-Charterers" respectively, as the context may require.</p> <p>2. Charter Period</p> <p>In consideration of the hire detailed in <u>Box 22</u>, the Owners have agreed to let and the Charterers have agreed to hire the Vessel for the period stated in <u>Box 21</u> ("The Charter Period").</p> <p>3. Delivery (See Clauses 34, 36, 37, 38) <i>(not applicable when Part III applies, as indicated in <u>Box 37</u>)</i> (a) The Owners shall before and at the time of delivery exercise due diligence to make the Vessel seaworthy and in every respect ready in hull, machinery and equipment for service under this Charter. The Vessel shall be delivered by the Owners and taken over by the Charterers at the port or place indicated in <u>Box 13</u> in such ready safe berth as the Charterers may direct. (b) The Vessel shall be properly documented on delivery in accordance with the laws of the flag State indicated in <u>Box 5</u> and the requirements of the classification society stated in <u>Box 10</u>. The Vessel upon delivery shall have her survey cycles up to date and trading and class certificates valid for at least the number of months agreed in <u>Box 12</u>. (c) The delivery of the Vessel by the Owners and the taking over of the Vessel by the Charterers shall constitute a full performance by the Owners of all the Owners' obligations under this Clause 3, and thereafter the Charterers shall not be entitled to make or assert any claim against the Owners on account of any conditions, representations or warranties expressed or implied with respect to the Vessel but the Owners shall be liable for the cost of but not the time for repairs or renewals occasioned by latent defects in the Vessel, her machinery or appurtenances, existing at the time of delivery under this Charter, provided such defects have manifested themselves within twelve (12) months after delivery unless otherwise provided in <u>Box 32</u>.</p> <p>4. Time for Delivery <i>(not applicable when Part III applies, as indicated in <u>Box 37</u>)</i> The Vessel shall not be delivered before the date indicated in <u>Box 14</u> without the Charterers' consent and the Owners shall exercise due diligence to deliver the Vessel not later than the date indicated in <u>Box 15</u>. Unless otherwise agreed in <u>Box 18</u>, the Owners shall give the Charterers not less than thirty (30) running days' preliminary and not less than fourteen (14) running days' definite notice of the date on which the Vessel is expected to be ready for delivery. The Owners shall keep the Charterers closely advised of possible changes in the Vessel's position.</p> <p>5. Cancelling (See Clause 36) <i>(not applicable when Part III applies, as indicated in <u>Box 37</u>)</i> (a) Should the Vessel not be delivered latest by the cancelling date indicated in <u>Box 15</u>, the Charterers shall have the option of cancelling this Charter by giving the Owners notice of cancellation within thirty-six (36) running hours after the cancelling date stated in <u>Box 15</u>, falling which this Charter shall remain in full force and effect.</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68</p>	<p>(b) If it appears that the Vessel will be delayed beyond the cancelling date, the Owners may, as soon as they are in a position to state with reasonable certainty the day on which the Vessel should be ready, give notice thereof to the Charterers asking whether they will exercise their option of cancelling, and the option must then be declared within one hundred and sixty-eight (168) running hours of the receipt by the Charterers of such notice or within thirty-six (36) running hours after the cancelling date, whichever is the earlier. If the Charterers do not then exercise their option of cancelling, the seventh day after the readiness date stated in the Owners' notice shall be substituted for the cancelling date indicated in <u>Box 15</u> for the purpose of this Clause 5. (c) Cancellation under this Clause 5 shall be without prejudice to any claim the Charterers may otherwise have on the Owners under this Charter.</p> <p>6. Trading Restrictions</p> <p>The Vessel shall be employed in lawful trades for the carriage of suitable lawful merchandise within the trading limits indicated in <u>Box 20</u>. The Charterers undertake not to employ the Vessel or suffer the Vessel to be employed otherwise than in conformity with the terms of the contracts of insurance (including any warranties expressed or implied therein) without first obtaining the consent of the insurers to such employment and complying with such requirements as to extra premium or otherwise as the insurers may prescribe. The Charterers also undertake not to employ the Vessel or suffer her employment in any trade or business which is forbidden by the law of any country to which the Vessel may sail or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render her liable to condemnation, destruction, seizure or confiscation. Notwithstanding any other provisions contained in this Charter it is agreed that nuclear fuels or radioactive products or waste are specifically excluded from the cargo permitted to be loaded or carried under this Charter. This exclusion does not apply to radio-isotopes used or intended to be used for any industrial, commercial, agricultural, medical or scientific purposes provided the Owners' prior approval has been obtained to loading thereof.</p> <p>7. Surveys on Delivery and Redelivery <i>(not applicable when Part III applies, as indicated in <u>Box 37</u>)</i> The Owners and Charterers shall each appoint surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of delivery and redelivery hereunder. The Owners shall bear all expenses of the On-hire Survey including loss of time, if any, and the Charterers shall bear all expenses of the Off-hire Survey including loss of time, if any, at the daily equivalent to the rate of hire or pro rata thereof.</p> <p>8. Inspection</p> <p>The Owners shall have the right at any time after giving reasonable notice to the Charterers to inspect or survey the Vessel or instruct a duly authorised surveyor to carry out such survey on their behalf:- (a) to ascertain the condition of the Vessel and satisfy themselves that the Vessel is being properly repaired and maintained, so that it maintains her classification status with the classification society free from overdue recommendations affecting the same. The costs and fees for such inspection or survey shall be paid by the Owners unless the Vessel is found to require repairs or maintenance in order to achieve the condition so provided; (b) in dry-dock if the Charterers have not dry-docked her in accordance with <u>Clause 10(g)</u>. The costs and fees for such inspection or survey shall be paid by the Charterers; and</p>	<p>69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138</p>
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PART II
"BARECON 2001" Standard Bareboat Charter

(c) for any other commercial reason they consider necessary (provided it does not unduly interfere with the commercial operation of the Vessel). The costs and fees for such inspection and survey shall be paid by the Owners.	139 140 141 142 143	or authority thereof, to enable the Vessel, without penalty or charge, lawfully to enter, remain at, or leave any port, place, territorial or contiguous waters of any country, state or municipality in performance of this Charter without any delay. This obligation shall apply whether or not such requirements have been lawfully imposed by such government or division or authority thereof.	205 206 207 208 209 210 211 212
All time used in respect of inspection, survey or repairs shall be for the Charterers' account and form part of the Charter Period.	144 145 146	The Charterers shall make and maintain all arrangements by bond or otherwise as may be necessary to satisfy such requirements at the Charterers' sole expense and the Charterers shall indemnify the Owners against all consequences whatsoever (including loss of time) for any failure or inability to do so.	213 214 215 216 217 218
The Charterers shall also permit the Owners to inspect the Vessel's log books whenever requested and shall whenever required by the Owners furnish them with full information regarding any casualties or other accidents or damage to the Vessel.	147 148 149 150 151	(b) Operation of the Vessel - The Charterers shall at their own expense and by their own procurement man, victual, navigate, operate, supply, fuel and, whenever required, repair the Vessel during the Charter Period and they shall pay all charges and expenses of every kind and nature whatsoever incidental to their use and operation of the Vessel under this Charter, including annual flag State fees and any foreign general municipality and/or state taxes. The Master, officers and crew of the Vessel shall be the servants of the Charterers for all purposes whatsoever, even if for any reason appointed by the Owners.	219 220 221 222 223 224 225 226 227 228 229 230
9. Inventories, Oil and Stores	152	Charterers shall comply with the regulations regarding officers and crew in force in the country of the Vessel's flag or any other applicable law. Vessel not to force ice or follow icebreaker or enter ice-bound port. Charterers to follow for entire duration of the Charter (including any extension) Rightship vetting.	231 232 233
A complete inventory of the Vessel's entire equipment, outfit including spare parts, appliances and of all consumable stores on board the Vessel shall be made by the Charterers in conjunction with the Owners on delivery and again on redelivery of the Vessel. The Charterers and the Owners, respectively, shall at the time of delivery and redelivery take over and pay-for-all bunkers, lubricating oil, unbroke provisions, paints, ropes and other consumable stores (excluding- including spare parts) in the said Vessel at the then-current-market-prices at the ports of delivery and redelivery, respectively. The Charterers shall ensure that all spare parts listed in the inventory and used during the Charter Period are replaced at their expense prior to redelivery of the Vessel. The Head Charterers will deliver to the Sub Charterers the remaining on board bunkers and lubricants at the time of delivery at no cost. The Sub Charterers will redeliver the Vessel with same quantities and grades of bunkers and lubricants as on delivery. The Head Charterers at the time of redelivery will pay for the remaining bunkers at prices as per last invoice.	153 154 155 156 157 158 159 160 161 162 163 164 165 166 167	(c) The Charterers shall keep the Owners and the mortgagee(s) advised of the intended employment, planned dry-docking and major repairs of the Vessel, as reasonably required.	234 235 236 237
10. Maintenance and Operation (See also Clause 42)	168	(d) Flag and Name of Vessel - During the Charter Period, the Charterers shall have the liberty to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag. The Charterers shall also have the liberty, with the Owners' consent, which shall not be unreasonably withheld, to change the flag and/or the name of the Vessel during the Charter Period. Painting and re-painting, instalment and re-instalment, registration and re-registration, if required by the Owners, shall be at the Charterers' expense and time.	238 239 240 241 242 243 244 245 246 247 248
(a)(i) Maintenance and Repairs - During the Charter Period the Vessel shall be in the full possession and at the absolute disposal for all purposes of the Charterers and under their complete control in every respect. The Charterers shall maintain the Vessel, her machinery, boilers, appurtenances and spare parts in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice and, except as provided for in Clause 14(i), if applicable, at their own expense they shall at all times keep the Vessel's Class fully up to date with the Classification Society indicated in Box 10 and maintain all other necessary certificates in force at all times.	169 170 171 172 173 174 175 176 177 178 179 180 181 182	(e) Changes to the Vessel - Subject to Clause 10(a)(ii) and Clause 46, the Charterers shall make no structural changes in the Vessel or changes in the machinery, boilers, appurtenances or spare parts thereof without in each instance first securing the Owners' written approval thereof. If the Owners so agree, the Charterers shall, if the Owners so require, restore the Vessel to its former condition before the termination of this Charter.	249 250 251 252 253 254 255 256
(ii) New Class and Other Safety Requirements - In the event of any improvement, structural changes or new equipment becoming necessary for the continued operation of the Vessel by reason of new class requirements or by compulsory legislation costing (excluding the Charterers' loss of time) more than the percentage stated in Box 23, or if Box 23 is left blank, 5 per cent of the Vessel's insurance value as stated in Box 28, then the extent, if any, to which the rate of hire shall be varied and the ratio in which the cost of compliance shall be shared between the parties concerned in order to achieve a reasonable distribution thereof as between the Owners and the Charterers having regard, inter alia, to the length of the period remaining under this Charter shall, in the absence of agreement, be referred to the dispute resolution method agreed in Clause 30. (See Clause 45)	183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200	(f) Use of the Vessel's Outfit, Equipment and Appliances - The Charterers shall have the use of all outfit, equipment, and appliances on board the Vessel at the time of delivery, provided the same or their substantial equivalent shall be returned to the Owners on redelivery in the same good order and condition as when received, ordinary wear and tear excepted. The Charterers shall from time to time during the Charter Period replace such items of equipment as shall be so damaged or worn as to be unfit for use. The Charterers are to procure that all repairs to or replacement of any damaged, worn or lost parts or equipment be effected in such manner (both as regards workmanship and quality of materials) as not to diminish the value of the Vessel. The Charterers have the right to fit additional equipment at their expense and risk but the Charterers shall remove such equipment and fittings at the end of the period if	257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273
(iii) Financial Security - The Charterers shall maintain financial security or responsibility in respect of third party liabilities as required by any government, including federal, state or municipal or other division	201 202 203 204		

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PART II
"BARECON 2001" Standard Bareboat Charter

requested by the Owners. Any equipment including radio	274	provisions of the Financial Instrument and agree to	346
equipment on hire on the Vessel at time of delivery shall	275	acknowledge this in writing in any form that may be	347
kept and maintained by the Charterers and the	276	required by the mortgagee(s). The Owners warrant that	348
Charterers shall assume the obligations and liabilities	277	they have not effected any mortgage(s) other than stated	349
of the Owners under any lease contracts in connection	278	in Box 28 and that they shall not agree to any	350
therewith and shall reimburse the Owners for all	279	amendment of the mortgage(s) referred to in Box 28 or	351
expenses incurred in connection therewith, also for any	280	effect any other mortgage(s) without the prior consent	352
new equipment required in order to comply with radio	281	of the Charterers, which shall not be unreasonably	353
regulations.	282	withheld.	354
(g) <u>Periodical Dry-Docking</u> - The Charterers shall dry-	283	* (Optional, <u>Clauses 12(a) and 12(b)</u> are alternatives;	355
dock the Vessel and clean and paint her underwater	284	indicate alternative agreed in <u>Box 28</u>).	356
parts whenever the same may be necessary, but not and	285		
as per Class requirements			
less than once during the period stated in <u>Box 19</u> or, if	286		
<u>Box 19</u> has been left blank, every sixty (60) calendar	287		
months after delivery or such other period as may be	288		
required by the Classification Society or flag State.	289		
11. Hire (See also Clause 40)	290	13. Insurance and Repairs (See also Clause 47)	357
(a) The Charterers shall pay hire due to the Owners	291	(a) During the Charter Period the Vessel shall be kept	358
punctually in accordance with the terms of this Charter	292	insured by the Charterers at their expense against hull	359
in respect of which time shall be of the essence.	293	and machinery, war and Protection and Indemnity risks	360
(b) The Charterers shall pay to the Owners for the hire	294	(and any risks against which it is compulsory to insure	361
of the Vessel a lump sum in the amount indicated in	295	for the operation of the Vessel, including maintaining	362
<u>Box 22</u> which shall be payable not later than every thirty	296	financial security in accordance with sub-clause	363
(30) running days in advance, the first lump sum being	297	10(a)(iii) in such form as the Owners shall in writing	364
payable on the date and hour of the Vessel's delivery to	298	approve, which approval shall not be un-reasonably	365
the Charterers. Hire shall be paid continuously	299	withheld. Such insurances shall be arranged by the	366
throughout the Charter Period.	300	Charterers to protect the interests of both the Owners	367
(c) Payment of hire shall be made in cash without	301	and the Charterers and the mortgagee(s) (if any), and	368
discount in the currency and in the manner indicated in	302	The Charterers shall be at liberty to protect under such	369
<u>Box 25</u> and at the place mentioned in <u>Box 26</u> .	303	insurances the interests of any managers they may	370
(d) Final payment of hire, if for a period of less than	304	appoint. Insurance policies shall cover the Owners and	371
thirty (30) running days, shall be calculated proportionally	305	the Charterers according to their respective interests.	372
according to the number of days and hours remaining	306	Subject to the provisions of the Financial Instrument, if	373
before redelivery and advance payment to be effected	307	any, and the approval of the Owners and the insurers,	374
accordingly.	308	the Charterers shall effect all insured repairs and shall	375
(e) Should the Vessel be lost or missing, hire shall	309	undertake settlement and reimbursement from the	376
cease from the date and time when she was lost or last	310	insurers of all costs in connection with such repairs as	377
heard of. The date upon which the Vessel is to be treated	311	well as insured charges, expenses and liabilities to the	378
as lost or missing shall be ten (10) days after the Vessel	312	extent of coverage under the insurances herein provided	379
was last reported or when the Vessel is posted as	313	for.	380
missing by Lloyd's, whichever occurs first. Any hire paid	314	The Charterers also to remain responsible for and to	381
in advance to be adjusted accordingly.	315	effect repairs and settlement of costs and expenses	382
(f) Any delay in payment of hire shall entitle the	316	incurred thereby in respect of all other repairs not	383
Owners to interest at the rate per annum as agreed	317	covered by the insurances and/or not exceeding any	384
in <u>Box 24</u> if <u>Box 24</u> has not been filled in, the three-months	318	possible franchise(s) or deductibles provided for in the	385
interbank offered rate in London (LIBOR or its successor)	319	insurances.	386
for the currency stated in <u>Box 25</u> , as quoted by the British	320	All time used for repairs under the provisions of sub-	387
Bankers' Association (BBA) on the date when the hire	321	clause 13(a) and for repairs of latent defects according	388
fell due, increased by 2 per cent., shall apply.	322	to <u>Clause 3(e)</u> above, including any deviation, shall be	389
(g) Payment of interest due under sub-clause 11(f)	323	for the Charterers' account.	390
shall be made within seven (7) running days of the date	324	(b) If the conditions of the above insurances permit	391
of the Owners' invoice specifying the amount payable	325	additional insurance to be placed by the parties, such	392
or, in the absence of an invoice, at the time of the next	326	cover shall be limited to the amount for each party set	393
hire payment date.	327	out in <u>Box 30</u> and <u>Box 31</u> , respectively. The Owners or	394
		the Charterers as the case may be shall immediately	395
		furnish the other party with particulars of any additional	396
		insurance effected, including copies of any cover notes	397
		or policies and the written consent of the insurers of	398
		any such required insurance in any case where the	399
		consent of such insurers is necessary.	400
		(c) The Charterers shall upon the request of the	401
		Owners, provide information and promptly execute such	402
		documents as may be required to enable the Owners to	403
		comply with the insurance provisions of the Financial	404
		Instrument, Security Documents referred to in Part A	405
		of Schedule I of the Additional Clauses.	
		(d) Subject to the provisions of the Financial Instru-	406
		ment, if any, should the Vessel become an actual	407
		constructive, compromised or agreed total loss under	408
		the insurances required under sub-clause 13(a), all	409
		insurance payments for such loss shall be paid to the	410
		Owners who shall distribute the moneys between the	411
		Owners and the Charterers according to their respective	412
		interests. The Charterers undertake to notify the Owners	413
		and the mortgagee(s), if any, of any occurrences in	414
		consequence of which the Vessel is likely to become a	415
		total loss as defined in this Clause.	416
		(e) The Owners shall upon the request of the	417
		Charterers, promptly execute such documents as may	418

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PART II
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be required to enable the Charterers to abandon the Vessel to insurers and claim a constructive total loss.	419	distribute the moneys between themselves and the Charterers according to their respective interests.	493
(f) For the purpose of insurance coverage against hull and machinery and war risks under the provisions of sub-clause 13(a), the value of the Vessel is the sum indicated in Box 29.	420-424	(i) If the Vessel becomes an actual, constructive, compromised or agreed total loss under the insurances arranged by the Owners in accordance with sub-clause 14(a), this Charter shall terminate as of the date of such loss.	494-498
14. Insurance, Repairs and Classification	425	(j) The Charterers shall upon the request of the Owners, promptly execute such documents as may be required to enable the Owners to abandon the Vessel to the insurers and claim a constructive total loss.	499-503
<i>(Optional, only to apply if expressly agreed and stated in Box 29, in which event Clause 13 shall be considered deleted).</i>	426	(k) For the purpose of insurance coverage against hull and machinery and war risks under the provisions of sub-clause 14(a), the value of the Vessel is the sum indicated in Box 29.	504-507
(a) During the Charter Period the Vessel shall be kept insured by the Owners at their expense against hull and machinery and war risks under the form of policy or policies attached hereto. The Owners and/or insurers shall not have any right of recovery or subrogation against the Charterers on account of loss of or any damage to the Vessel or her machinery or appurtenances covered by such insurance, or on account of payments made to discharge claims against or liabilities of the Vessel or the Owners covered by such insurance. Insurance policies shall cover the Owners and the Charterers according to their respective interests.	429-440	(l) Notwithstanding anything contained in sub-clause 10(a), it is agreed that under the provisions of Clause 14, if applicable, the Owners shall keep the Vessel's Class fully up to date with the Classification Society indicated in Box 10 and maintain all other necessary certificates in force at all times.	508-513
(b) During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against Protection and Indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with sub-clause 10(a)(iii)) in such form as the Owners shall in writing approve which approval shall not be unreasonably withheld.	441-448	15. Redelivery (See also Clause 61)	514
(c) In the event that any act or negligence of the Charterers shall vitiate any of the insurance herein provided, the Charterers shall pay to the Owners all losses and indemnify the Owners against all claims and demands which would otherwise have been covered by such insurance.	449-454	At the expiration of the Charter Period the Vessel shall be redelivered by the Charterers to the Owners at a safe and ice-free port or place as indicated in Box 16, in such ready safe berth as the Owners may direct. The Charterers shall give the Owners not less than thirty (30) running days' preliminary notice of expected date, range of ports of redelivery or port or place of redelivery and not less than fourteen (14) running days' definite notice of expected date and port or place of redelivery. Any changes thereafter in the Vessel's position shall be notified immediately to the Owners.	515-525
(d) The Charterers shall, subject to the approval of the Owners or Owners' Underwriters, effect all insured repairs, and the Charterers shall undertake settlement of all miscellaneous expenses in connection with such repairs as well as all insured charges, expenses and liabilities, to the extent of coverage under the insurances provided for under the provisions of sub-clause 14(a). The Charterers to be secured reimbursement through the Owners' Underwriters for such expenditures upon presentation of accounts.	455-464	The Charterers warrant that they will not permit the Vessel to commence a voyage (including any preceding ballast voyage) which cannot reasonably be expected to be completed in time to allow redelivery of the Vessel within the Charter Period. Notwithstanding the above, should the Charterers fail to redeliver the Vessel within the Charter Period, the Charterers shall pay the daily equivalent to the rate of hire stated in Clause 40 Box 22 plus 10 per cent or to the market rate, whichever is the higher, for the number of days by which the Charter Period is exceeded. All other terms, conditions and provisions of this Charter shall continue to apply.	526-537
(e) The Charterers to remain responsible for and to effect repairs and settlement of costs and expenses incurred thereby in respect of all other repairs not covered by the insurances and/or not exceeding any possible franchise (e) or deductibles provided for in the insurances.	465-470	Subject to the provisions of Clause 10, the Vessel shall be redelivered to the Owners in the same or as good structure, state, condition and class as that in which she was delivered, fair wear and tear not affecting class excepted.	538-542
(f) All time used for repairs under the provisions of sub-clause 14(d) and 14(e) and for repairs of latent defects according to Clause 3 above, including any deviation, shall be for the Charterers' account and shall form part of the Charter Period.	471-474	The Vessel upon redelivery shall have her survey cycles up to date and trading and class certificates valid for at least the number of months agreed in Box 17.	543-545
The Owners shall not be responsible for any expenses as are incident to the use and operation of the Vessel for such time as may be required to make such repairs.	475-478	16. Non-Lien	546
(g) If the conditions of the above insurances permit additional insurance to be placed by the parties such cover shall be limited to the amount for each party set out in Box 30 and Box 31, respectively. The Owners or the Charterers as the case may be shall immediately furnish the other party with particulars of any additional insurance effected, including copies of any cover notes or policies and the written consent of the insurers of any such required insurance in any case where the consent of such insurers is necessary.	479-488	Save for any lien on the Vessel in favour of TMT BULK Corp. (as time charterers of the Vessel) the Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the Owners in the Vessel. The Charterers further agree to fasten to the Vessel in a conspicuous place and to keep so fastened during the Charter Period a notice reading as follows:	547-553
(h) Should the Vessel become an actual, constructive, compromised or agreed total loss under the insurances required under sub-clause 14(a), all insurance payments for such loss shall be paid to the Owners, who shall	489-492	"This Vessel is the property of (name of Owners). It is under charter to (name of Charterers) and by the terms of the Charter Party neither the Charterers nor the Master have any right, power or authority to create, incur or permit to be imposed on the Vessel any lien whatsoever."	554-559
		17. Indemnity	560
		(a) The Charterers shall indemnify the Owners against any loss, damage or expense incurred by the Owners	561-562






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arising out of or in relation to the operation of the Vessel by the Charterers, and against any lien of whatsoever nature arising out of an event occurring during the Charter Period. If the Vessel be arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Charterers, the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail. Without prejudice to the generality of the foregoing, the Charterers agree to indemnify the Owners against all consequences or liabilities arising from the Master, officers or agents signing Bills of Lading or other documents.	563 564 565 566 567 568 569 570 571 572 573 574 575 576	relating to carrier's liability for passengers and their luggage compulsorily applicable in the trade; if no such legislation exists, the passenger tickets shall incorporate the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, and any protocol thereto.	633 634 635 636 637 638 639
*) Delete as applicable.			
24. Bank Guarantee (Optional, only to apply if Box 27 filled in) The Charterers undertake to furnish, before delivery of the Vessel, a first class bank guarantee or bond in the sum and at the place as indicated in Box 27 as guarantee for full performance of their obligations under this Charter.	577 578 579 580 581 582 583 584 585 586		640 641 642 643 644 645 646
18. Lien The Owners to have a lien upon all cargoes, sub-hires and sub-freights belonging or due to the Charterers or any sub-charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.	587 588 589 590 591 592 593	25. Requisition/Acquisition (a) In the event of the Requisition for Hire of the Vessel by any governmental or other competent authority (hereinafter referred to as "Requisition for Hire") irrespective of the date during the Charter Period when "Requisition for Hire" may occur and irrespective of the length thereof and whether or not it be for an indefinite or a limited period of time, and irrespective of whether it may or will remain in force for the remainder of the Charter Period, this Charter shall not be deemed thereby or thereupon to be frustrated or otherwise terminated and the Charterers shall continue to pay the stipulated hire in the manner provided by this Charter until the time when the Charter would have terminated pursuant to any of the provisions hereof always provided however that in the event of "Requisition for Hire" any Requisition Hire or compensation received or receivable by the Owners shall be payable to the Charterers during the remainder of the Charter Period or the period of the "Requisition for Hire" whichever be the shorter. (b) In the event of the Owners being deprived of their ownership in the Vessel by any Compulsory Acquisition of the Vessel or requisition for title by any governmental or other competent authority (hereinafter referred to as "Compulsory Acquisition"), then, irrespective of the date during the Charter Period when "Compulsory Acquisition" may occur, this Charter shall be deemed terminated as of the date of such "Compulsory Acquisition". In such event Charter Hire to be considered as earned and to be paid up to the date and time of such "Compulsory Acquisition". See Clause 48.	647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677
19. Salvage All salvage and towage performed by the Vessel shall be for the Charterers' benefit and the cost of repairing damage occasioned thereby shall be borne by the Charterers.	594 595 596 597 598		
20. Wreck Removal In the event of the Vessel becoming a wreck or obstruction to navigation the Charterers shall indemnify the Owners against any sums whatsoever which the Owners shall become liable to pay and shall pay in consequence of the Vessel becoming a wreck or obstruction to navigation.	599 600 601 602 603 604 605		
21. General Average The Owners shall not contribute to General Average.	606 607		
22. Assignment, Sub-Charter and Sale - See Clauses 42 and 62 (a) The Charterers shall not assign this Charter nor sub-charter the Vessel on a bareboat basis except with the prior consent in writing of the Owners, which shall not be unreasonably withheld, and subject to such terms and conditions as the Owners shall approve. (b) The Owners shall not sell the Vessel during the currency of this Charter except with the prior written consent of the Charterers, which shall not be unreasonably withheld, and subject to the buyer accepting an assignment of this Charter.	608 609 610 611 612 613 614 615 616 617 618	26. War (a) For the purpose of this Clause, the words "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel. (b) The Vessel, unless the written consent of the Owners be first obtained, shall not continue to or go through any port, place, area or zone (whether of land or sea), or any waterway or canal, where it reasonably appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Owners, may be, or are likely to be, exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, the Owners shall have the right to require the Vessel to leave such area. (c) The Vessel shall not load contraband cargo, or to	678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705
23. Contracts of Carriage (a) The Charterers are to procure that all documents issued during the Charter Period evidencing the terms and conditions agreed in respect of carriage of goods shall contain a paramount clause incorporating any legislation relating to carrier's liability for cargo compulsorily applicable in the trade; if no such legislation exists, the documents shall incorporate the Hague-Visby Rules. The documents shall also contain the New Jason Clause and the Both-to-Blame Collision Clause. (b) The Charterers are to procure that all passenger tickets issued during the Charter Period for the carriage of passengers and their luggage under this Charter shall contain a paramount clause incorporating any legislation	619 620 621 622 623 624 625 626 627 628 629 630 631 632		

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pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent's right of search and/or confiscation.	706 707 708 709 710 711	(a) Charterers' Default	779
(d) If the insurers of the war risks insurance, when Clause 14 is applicable, should require payment of premiums and/or calls because, pursuant to the Charterers' orders, the Vessel is within, or is due to enter and remain within, any area or areas which are specified by such insurers as being subject to additional premiums because of War Risks, then such premiums and/or calls shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due.	712 713 714 715 716 717 718 719 720 721	The Owners shall be entitled to withdraw the Vessel from the service of the Charterers and terminate the Charter with immediate effect by written notice to the Charterers if:	780 781 782 783
(e) The Charterers shall have the liberty:	722	(i) the Charterers fail to pay hire in accordance with Clause 11. However, where there is a failure to make punctual payment of hire due to oversight, negligence, errors or omissions on the part of the Charterers or their bankers, the Owners shall give the Charterers written notice of the number of clear banking days stated in Box 34 (as recognised at the agreed place of payment) in which to rectify the failure, and when so rectified within such number of days following the Owners' notice, the payment shall stand as regular and punctual. Failure by the Charterers to pay hire within the number of days stated in Box 34 of their receiving the Owners' notice as provided herein, shall entitle the Owners to withdraw the Vessel from the service of the Charterers and terminate the Charter without further notice;	784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799
(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Vessel sails, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;	723 724 725 726 727 728 729 730 731	(ii) the Charterers fail to comply with the requirements of:	800
(ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;	732 733 734 735	(1) Clause 6 (Trading Restrictions)	801
(iii) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.	736 737 738 739 740 741 742 743 744	(2) Clause 13(a) (Insurance and Repairs)	802
(f) In the event of outbreak of war (whether there be a declaration of war or not) (i) between any two or more of the following countries: the United States of America; Russia; the United Kingdom; France; and the People's Republic of China; (ii) between any two or more of the countries stated in Box 36, both the Owners and the Charterers shall have the right to cancel this Charter, whereupon the Charterers shall redeliver the Vessel to the Owners in accordance with Clause 16, if the Vessel has cargo on board after discharge thereof at destination, or if debarré under this Clause from reaching or entering it at a near, open and safe port as directed by the Owners, or if the Vessel has no cargo on board, at the port at which the Vessel then is or if at sea at a near, open and safe port as directed by the Owners. In all cases hire shall continue to be paid in accordance with Clause 11 and except as aforesaid all other provisions of this Charter shall apply until redelivery.	745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763	provided that the Owners shall have the option, by written notice to the Charterers, to give the Charterers a specified number of days grace within which to rectify the failure without prejudice to the Owners' right to withdraw and terminate under this Clause if the Charterers fail to comply with such notice;	803 804 805 806 807 808 809
27. Commission	764	(iii) the Charterers fail to rectify any failure to comply with the requirements of sub-clause 10(a)(i) (Maintenance and Repairs) as soon as practically possible after the Owners have requested them in writing so to do and in any event so that the Vessel's insurance cover is not prejudiced.	810
The Owners to pay a commission at the rate indicated in Box 33 to the Brokers named in Box 33 on any hire paid under the Charter. If no rate is indicated in Box 33, the commission to be paid by the Owners shall cover the actual expenses of the Brokers and a reasonable fee for their work.	765 766 767 768 769 770	(b) Owners' Default	816
If the full hire is not paid owing to breach of the Charter by either of the parties the party liable therefor shall indemnify the Brokers against their loss of commission. Should the parties agree to cancel the Charter, the Owners shall indemnify the Brokers against any loss of commission but in such case the commission shall not exceed the brokerage on one year's hire.	771 772 773 774 775 776 777	If the Owners shall by any act or omission be in breach of their obligations under this Charter to the extent that the Charterers are deprived of the use of the Vessel and such breach continues for a period of fourteen (14) running days after written notice thereof has been given by the Charterers to the Owners, the Charterers shall be entitled to terminate this Charter with immediate effect by written notice to the Owners.	817 818 819 820 821 822 823 824
28. Termination (See Clauses 53)	778	(c) Loss of Vessel	825
		This Charter shall be deemed to be terminated if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss. For the purpose of this sub-clause, the Vessel shall not be deemed to be lost unless she has either become an actual total loss or agreement has been reached with her underwriters in respect of her constructive, compromised or arranged total loss or if such agreement with her underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred.	826 827 828 829 830 831 832 833 834 835 836
		(d) Either party shall be entitled to terminate this Charter with immediate effect by written notice to the other party in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of the other party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.	837 838 839 840 841 842 843 844 845
		(e) The termination of this Charter shall be without prejudice to all rights accrued due between the parties prior to the date of termination and to any claim that either party might have.	846 847 848 849
		29. Repossession (See Clauses 54 and 55)	850
		In the event of the termination of this Charter in accordance with the applicable provisions of Clause 28.	851 852

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the Owners shall have the right to repossess the Vessel from the Charterers at her current or next port of call, or at a port or place convenient to them without hindrance or interference by the Charterers, courts or local authorities. Pending physical repossession of the Vessel in accordance with this Clause 29, the Charterers shall hold the Vessel as gratuitous bailee only to the Owners. The Owners shall arrange for an authorised representative to board the Vessel as soon as reasonably practicable following the termination of the Charter. The Vessel shall be deemed to be repossessed by the Owners from the Charterers upon the boarding of the Vessel by the Owners' representative. All arrangements and expenses relating to the settling of wages, disembarkation and repatriation of the Charterers' Master, officers and crew shall be the sole responsibility of the Charterers.	853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869	in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.	927 928 929 930 931
(d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract.	932 933 934 935	In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:-	936 937 938
(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.	939 940 941 942 943	(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall hereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.	944 945 946 947 948 949 950 951 952 953 954 955 956
(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.	957 958 959 960 961	(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.	962 963 964
(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.	965 966 967 968 969 970	(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.	971 972 973 974
(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.	975 976 977 978 979	(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)	980 981
(e) If Box 35 in Part I is not appropriately filled in, sub-clause 30(a) of this Clause shall apply. Sub-clause 30(d) shall apply in all cases.	982 983 984	* Sub-clauses 30(a), 30(b) and 30(c) are alternatives; indicate alternative agreed in Box 35.	985 986
31. Notices	987	(a) Any notice to be given by either party to the other party shall be in writing and may be sent by fax, telex, registered or recorded mail or by personal service.	988 989 990
(b) The address of the Parties for service of such communication shall be as stated in Boxes 3 and 4 respectively, Clause 63.	991 992 993		
30. Dispute Resolution	870		
*) (a) This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.	871 872 873 874 875 876 877		
The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.	878 879 880 881		
The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.	882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898		
Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.	899 900 901		
In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.	902 903 904 905 906 907		
*) (b) This Contract shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.	908 909 910 911 912 913 914 915 916 917 918 919		
In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.	920 921 922 923 924 925		
*) (c) This Contract shall be governed by and construed	926		

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**PART III
PROVISIONS TO APPLY FOR NEWBUILDING VESSELS ONLY**
(Optional, only to apply if expressly agreed and stated in Box 37)

**OPTIONAL
PART**

1. Specifications and Building Contract	1	and upon and after such acceptance, subject to Clause	69
(a) The Vessel shall be constructed in accordance with the Building Contract (hereafter called "the Building Contract") as annexed to this Charter, made between the Builders and the Owners and in accordance with the specifications and plans annexed thereto, such Building Contract, specifications and plans having been countersigned as approved by the Charterers.	2	4(d), the Charterers shall not be entitled to make any claim against the Owners in respect of any conditions, representations or warranties, whether express or implied, as to the seaworthiness of the Vessel or in respect of delay in delivery.	70
(b) No change shall be made in the Building Contract or in the specifications or plans of the Vessel as approved by the Charterers as aforesaid, without the Charterers' consent.	3		71
(c) The Charterers shall have the right to send their representative to the Builders' Yard to inspect the Vessel during the course of her construction to satisfy themselves that construction is in accordance with such approved specifications and plans as referred to under sub-clause (a) of this Clause.	4	(b) If for any reason other than a default by the Owners under the Building Contract, the Builders become entitled under that Contract not to deliver the Vessel to the Owners, the Owners shall upon giving to the Charterers written notice of Builders becoming so entitled, be excused from giving delivery of the Vessel to the Charterers and upon receipt of such notice by the Charterers this Charter shall cease to have effect.	72
(d) The Vessel shall be built in accordance with the Building Contract and shall be of the description set out therein. Subject to the provisions of sub-clause 2(c)(ii) hereunder, the Charterers shall be bound to accept the Vessel from the Owners, completed and constructed in accordance with the Building Contract, on the date of delivery by the Builders. The Charterers undertake that having accepted the Vessel they will not thereafter raise any claims against the Owners in respect of the Vessel's performance or specification or defects, if any. Nevertheless, in respect of any repairs, replacements or defects which appear within the first 12 months from delivery by the Builders, the Owners shall endeavour to compel the Builders to repair, replace or remedy any defects or to recover from the Builders any expenditure incurred in carrying out such repairs, replacements or remedies. However, the Owners' liability to the Charterers shall be limited to the extent the Owners have a valid claim against the Builders under the guarantee clause of the Building Contract (a copy whereof has been supplied to the Charterers). The Charterers shall be bound to accept such sums as the Owners are reasonably able to recover under this Clause and shall make no further claim on the Owners for the difference between the amount(s) so recovered and the actual expenditure on repairs, replacement or remedying defects or for any loss of time incurred. Any liquidated damages for physical defects or deficiencies shall accrue to the account of the party stated in Box 41(a) or if not filled in shall be shared equally between the parties. The costs of pursuing a claim or claims against the Builders under this Clause (including any liability to the Builders) shall be borne by the party stated in Box 41(b) or if not filled in shall be shared equally between the parties.	5		73
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2. Time and Place of Delivery	52	3. Guarantee Works	111
(a) Subject to the Vessel having completed her acceptance trials including trials of cargo equipment in accordance with the Building Contract and specifications to the satisfaction of the Charterers, the Owners shall give and the Charterers shall take delivery of the Vessel afloat when ready for delivery and properly documented at the Builders' Yard or some other safe and readily accessible dock, wharf or place as may be agreed between the parties hereto and the Builders. Under the Building Contract the Builders have estimated that the Vessel will be ready for delivery to the Owners as therein provided but the delivery date for the purpose of this Charter shall be the date when the Vessel is in fact ready for delivery by the Builders after completion of trials whether that be before or after as indicated in the Building Contract. The Charterers shall not be entitled to refuse acceptance of delivery of the Vessel	53	if not otherwise agreed, the Owners authorize the Charterers to arrange for the guarantee works to be performed in accordance with the building contract terms, and hire to continue during the period of guarantee works. The Charterers have to advise the Owners about the performance to the extent the Owners may request.	112
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		4. Name of Vessel	118
		The name of the Vessel shall be mutually agreed between the Owners and the Charterers and the Vessel shall be painted in the colours, display the funnel insignia and fly the house flag as required by the Charterers.	119
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		5. Survey on Redelivery	123
		The Owners and the Charterers shall appoint surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of re-delivery. Without prejudice to Clause 46 (Part II), the Charterers shall bear all survey expenses and all other costs, if any, including the cost of docking and undocking, if required, as well as all repair costs incurred. The Charterers shall also bear all loss of time spent in connection with any docking and undocking as well as repairs, which shall be paid at the rate of hire per day or pro rata.	124
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PART IV
HIRE/PURCHASE AGREEMENT

(Optional, only to apply if expressly agreed and stated in Box 42)

OPTIONAL
PART

On expiration of this Charter and provided the Charterers have fulfilled their obligations according to Part I and II as well as Part III, if applicable, it is agreed, that on payment of the final payment of hire as per <u>Clause 11</u> the Charterers have purchased the Vessel with everything belonging to her and the Vessel is fully paid for.	1 2 3 4 5 6 7	In exchange for payment of the last month's hire instalment the Sellers shall furnish the Buyers with a Bill of Sale duly attested and legalized, together with a certificate setting out the registered encumbrances, if any. On delivery of the Vessel the Sellers shall provide for deletion of the Vessel from the Ship's Register and deliver a certificate of deletion to the Buyers.	28 29 30 31 32 33 34
In the following paragraphs the Owners are referred to as the Sellers and the Charterers as the Buyers.	8 9	The Sellers shall, at the time of delivery, hand to the Buyers all classification certificates (for hull, engines, anchors, chains, etc.), as well as all plans which may be in Sellers' possession.	35 36 37 38
The Vessel shall be delivered by the Sellers and taken over by the Buyers on expiration of the Charter.	10 11	The Wireless Installation and Nautical Instruments, unless on hire, shall be included in the sale without any extra payment.	39 40 41
The Sellers guarantee that the Vessel, at the time of delivery, is free from all encumbrances and maritime liens or any debts whatsoever other than those arising from anything done or not done by the Buyers or any existing mortgage agreed not to be paid off by the time of delivery. Should any claims, which have been incurred prior to the time of delivery be made against the Vessel, the Sellers hereby undertake to indemnify the Buyers against all consequences of such claims to the extent it can be proved that the Sellers are responsible for such claims. Any taxes, notarial, consular and other charges and expenses connected with the purchase and registration under Buyers' flag, shall be for Buyers' account. Any taxes, consular and other charges and expenses connected with closing of the Sellers' register, shall be for Sellers' account.	12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	The Vessel with everything belonging to her shall be at Sellers' risk and expense until she is delivered to the Buyers, subject to the conditions of this Contract and the Vessel with everything belonging to her shall be delivered and taken over as she is at the time of delivery, after which the Sellers shall have no responsibility for possible faults or deficiencies of any description.	42 43 44 45 46 47 48
		The Buyers undertake to pay for the repatriation of the Master, officers and other personnel if appointed by the Sellers to the port where the Vessel entered the Bareboat Charter as per <u>Clause 3</u> (Part II) or to pay the equivalent cost for their journey to any other place.	49 50 51 52 53

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PART V

PROVISIONS TO APPLY FOR VESSELS REGISTERED IN A BAREBOAT CHARTER REGISTRY

(Optional, only to apply if expressly agreed and stated in Box 43)

1. Definitions	1	3. Termination of Charter by Default	47
For the purpose of this PART V, the following terms shall have the meanings hereby assigned to them:	2	If the Vessel chartered under this Charter is registered in a Bareboat Charter Registry as stated in <u>Box 44</u> , and	48
The Bareboat Charter Registry shall mean the registry of the State whose flag the Vessel will fly and in which the Charterers are registered as the bareboat charterers during the period of the Bareboat Charter.	3	if the Owners shall default in the payment of any amounts due under the mortgage(s) specified in <u>Box 28</u> , the Charterers shall, if so required by the mortgagee, direct the Owners to re-register the Vessel in the Underlying Registry as shown in <u>Box 45</u> .	49
The Underlying Registry shall mean the registry of the state in which the Owners of the Vessel are registered as Owners and to which jurisdiction and control of the Vessel will revert upon termination of the Bareboat Charter Registration.	4	in the event of the Vessel being deleted from the Bareboat Charter Registry as stated in <u>Box 44</u> , due to a default by the Owners in the payment of any amounts due under the mortgage(s), the Charterers shall have the right to terminate this Charter forthwith and without prejudice to any other claim they may have against the Owners under this Charter.	20
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	13		29
2. Mortgage	13		30
The Vessel chartered under this Charter is financed by a mortgage and the provisions of <u>Clause 12(b)</u> (Part II) shall apply.	14		31
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PART II — ADDITIONAL CLAUSES 32 TO 65 TO THE SUB-BAREBOAT CHARTER IN BARECON 2001 FORM DATED NOVEMBER 23, 2010 AND MADE BETWEEN PRIME LAKE MARITIME LTD (AS HEAD-CHARTERERS) AND BRAZIL HOLDINGS LTD. (AS SUB-CHARTERERS) IN RELATION TO M.V. "BRAZIL"

ADDITIONAL DEFINITIONS

- 32.1 The following Clauses shall be deemed to be incorporated as an integral part of this Sub-Charter. In the event of any conflict between the provisions of these Additional Clauses and the printed provisions of this Sub-Charter as annexed hereto, the provisions of these Additional Clauses hereunder shall prevail.
- 32.2 In this Sub-Charter, including the Recitals, the following expressions shall have the following meanings:
- "Acquisition Agreement"** means acquisition agreement of even date herewith entered into between the Owners, Prime Mountain Shipping Ltd, Prime Time Shipping Ltd and Prime Hill Shipping Ltd (together as buyers), the Head Charterers, Prime Mountain Maritime Ltd, Prime Time Maritime Ltd and Prime Hill Maritime Ltd (together as head-charterers) and Australia Holdings Ltd., Brazil Holdings Ltd., China Holdings Ltd. and Grand Rodosi Inc. (together as sellers) relating to, *inter alia*, the sale and purchase of the Vessel, the Purchase Obligation and the Call Option of the Sub-Charterers;
- "Approved Brokers"** means the insurance brokers appointed by the Sub-Charterers as shall from time to time be approved in writing by the Approved Mortgagee;
- "Approved Mortgage"** and **"Approved Mortgagee"** have the meanings given to them in Clause 56;
- "Banking Day"** means a day (excluding Saturdays and Sundays) on which banks are open for business in London and Athens and (if payment is required to be made on such day) in New York City and the place to which such payment is required to be made;
- "Call Option"** means the call option available to the Sub-Charterers in accordance with the terms of the Acquisition Agreement;
- "Call Option Sum"** means the aggregate amount which would be payable by the Sub-Charterers to the Head-Charterers upon exercise of the Call Option at any relevant time in accordance with the terms of the Acquisition Agreement;
- "Classification Society"** means Bureau Veritas or such other classification society (being a member of IACS) as may be agreed between the Sub-Charterers and the Head-Charterers in writing;
- "Compulsory Acquisition"** means requisition for title or other compulsory acquisition, requisition, appropriation, expropriation, deprivation, forfeiture or confiscation for any
-

reason of the Vessel by any government entity or other competent authority, whether *de jure* or *de facto*, but shall exclude requisition for use or hire not involving requisition of title;

“Delivery Date” means the date on which the Vessel is delivered to the Sub-Charterers under this Sub-Charter being the same date on which the Vessel is delivered from the Sub-Charterers (as sellers) to the Owners (as buyers) in accordance with the terms of the Acquisition Agreement and the MOA;

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

“Encumbrance” means any mortgage, charge, (whether fixed or floating), pledge, lien, hypothecation, assignment, trust arrangement or security interest or other encumbrance of any kind securing any obligation of any person or having the effect of conferring security or any type of preferential arrangement (including, without limitation, title transfer and/or retention arrangements having a similar effect);

“Financial Indebtedness” means any indebtedness in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above;

“Flag State” means the Republic of Liberia or such other flag state which may be approved from time to time by the Owners, the Head-Charterers, the Sub-Charterers and the Approved Mortgagee as the case may be in accordance with this Sub-Charter;

“Head-Charter” means the bareboat charter of even date herewith between the Owners and the Head-Charterers;

“Head-Charterers’ Guarantee” means the guarantee of the Head-Charterers’ obligations under this Charter to be executed the Head-Charterers’ Guarantor;

“Head-Charterers’ Guarantor” means Prime Maritime Holding Ltd a company incorporated in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands;

“Head-Charterers’ Encumbrance” means any Encumbrance created or permitted to exist by the Head-Charterers or exercised, asserted or claimed against the Vessel, the Insurances or any Requisition Compensation or any part thereof (and not occasioned by any act, omission or default of the Sub-Charterers) in respect of:

(a) any Indebtedness or liability or obligation whatsoever of the Head-Charterers;

(b) any breach by the Head-Charterers of their obligations to the Sub-Charterers under this Sub-Charter; or

(c) any other acts or omissions whatsoever of the Head-Charterers whether or not related to the transactions contemplated by this Sub-Charter;

“Indebtedness” means any obligation for the payment or repayment of moneys, whether present or future, actual or contingent, sole or joint;

“Insurance Documents” means all slips, cover notes, contracts, policies, certificates of entry or other insurance documents evidencing or constituting the Insurances from time to time in effect;

“Insurances” means all policies and contracts of insurance (including all entries of the Vessel in a protection and indemnity association and a war risks association) which are from time to time taken out or entered into in respect of the Vessel or otherwise howsoever (as specified in greater detail in this Sub-Charter) and all benefits of such

policies and contracts, including all claims of whatsoever nature and return of premiums as shall from time to time be approved in writing by the Approved Mortgagee;

“Insurers” means the underwriters, insurance companies and mutual insurance associations with or by which the Insurances are effected as shall from time to time be approved in writing by the Approved Mortgagee;

“ISM Code” means The International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the International Maritime Organisation as Resolutions A.741(18) and A.913(22);

“ISPS Code” means Part A of The International Ship and Port Facility Security Code as adopted by the International Maritime Organisation;

“Major Casualty” means any casualty to the Vessel or incident (other than a Total Loss) in respect of which the claim or the aggregate of the claims against all insurers, before adjustment for any franchise or deductible exceeds five hundred thousand United States Dollars (US\$500,000) or the equivalent in any other currency;

“Manager” means Newlead Bulkers S.A., a company organized and existing under the laws of the Greece, having its registered office at 83 Akti Miaouli & Flessa, Piraeus 18538 Greece, or any other company other than the Sub-Charterers which the Sub-Charterers may appoint, and which if not a subsidiary or affiliated company of the Sub-Charterers, the Head-Charterers and the Approved Mortgagee may approve, such approval not to be unreasonably withheld, as the manager of the Vessel;

“Manager’s Undertaking” means, in relation to the Vessel, the undertaking to be executed by the Manager with respect to its management of the Vessel and the rights of the Approved Mortgagee in such form as may be approved by the Head-Charterer and the Approved Mortgagee;

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

- (a) the financial condition or business of the Sub-Charterers or the Sub-Charterers’ Guarantor;
- (b) the ability of the Sub-Charterers or the Sub-Charterers’ Guarantor to perform and comply with their respective obligations under this Sub-Charter and the Sub-Charterers’ Guarantee;
- (c) the validity, legality or enforceability of this Sub-Charter or the Sub-Charterers’ Guarantee; or
- (d) the validity, legality or enforceability of any Encumbrance expressed to be created pursuant to any Security Document or the priority or ranking of that Encumbrance;

“MOA” means the memorandum of agreement dated 2010 made between the Sellers and the Owners for the sale of the Vessel by the Sellers to the Owners;

“Owners” means Prime Lake Shipping Ltd a company incorporated in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands;

“Permitted Encumbrance” means:

- (a) any Encumbrance created by or pursuant to this Sub-Charter;
- (b) any Head-Charterers Encumbrance;
- (c) any Encumbrance in favour of the Approved Mortgagee;
- (d) any Encumbrance for taxes of any kind either not yet assessed or, if assessed, not yet due and payable or being contested in good faith by appropriate proceedings (and for payment of which adequate reserves have been provided); or
- (e) liens on the Vessel for crew’s wages or salvage or under the Time Charter or otherwise arising in the normal course of trading or by operation of law provided that the claims in respect of which such liens may arise are promptly discharged or settled;

“Purchase Obligation” means the purchase obligation of the Sub-Charterers in accordance with the terms of the Acquisition Agreement;

“Purchase Price” means \$32,750,000 paid (or to be paid) by the Owners to the Sellers in accordance with the MOA;

“Quite Enjoyment” shall have the meaning described in Clause 57;

“Security Documents” means:

- (a) the Approved Mortgage;
- (b) the Manager’s Undertaking;
- (c) the Sub-Charterers’ Guarantee;
- (d) the Head-Charterers’ Guarantee;
- (e) a multipartite agreement to be entered into between the Owners, the Head-Charterers, the Sub-Charterers and the Approved Mortgagee assigning, *inter alia*, the Head-Charter, the Sub-Charter, the Sub-Charterers Guarantee, the Time Charter and all Insurances in favour of the Approved Mortgagee (the **“Multipartite Agreement”**);

- (f) a specific assignment of any third party charter (in excess of twelve (12) months) other than the Time Charter entered into by the Sub-Charterer in favour of the Approved Mortgagee;
- (g) an accounts assignment, pledge and charge of the earnings account (held by the Sub-Charterer with the Approved Mortgagee) entered into by the Sub-Charterer in favour of the Approved Mortgagee; and
- (h) any and every other document from time to time executed as security for, or to establish a subordination or priorities arrangement in relation to, all or any of the obligations of any person to the Owner, the Head-Charterers or the Approved Mortgagee or any of the documents referred to in this definition;

"Sellers" means Brazil Holdings Ltd. (as seller) of 80 Broad Street, Monrovia, Liberia with registration number C-112614;

"Sub-Charterers' Guarantee" means the guarantee of the Sub-Charterers' obligations under this Sub-Charter to be executed by the Sub-Charterers' Guarantor in such form as may be approved by the Head-Charterer and the Approved Mortgagee;

"Sub-Charterers' Guarantor" means NewLead Holdings Ltd, Canon Street, 22 Victoria Street, Hamilton HM12, Bermuda;

"Termination Event" means any of the events specified in Clause 53.1;

"Time Charter" means the time charter between TMT Bulk Corp. of Taiwan (the **"Time Charterer"**) and the Sub-Charterers into which the Vessel will be redelivered upon delivery under this Sub-Charter or such other charter acceptable to the Approved Mortgagee;

"Total Loss" has the meaning given to it in Clause 48.2;

"Transaction Head-Charterers" means together each of the Prime Mountain Maritime Ltd, Prime Lake Maritime Ltd, Prime Time Maritime Ltd and Prime Hill Maritime Ltd in their capacity as head-charterers pursuant to the Transaction Sub-Charters and **"Transaction Head-Charterer"** shall mean any one of them;

"Transaction Sub-Charterers" means together each of the Australia Holdings Ltd., Brazil Holdings Ltd., China Holdings Ltd. and Grand Rodosi Inc. in their capacity as sub-charterers pursuant to the Transaction Sub-Charters and **"Transaction Sub-Charterer"** shall mean any one of them;

"Transaction Sub-Charters" means together each of the following sub-bareboat charters:

- (a) this Sub-Charter;

- (b) the sub-bareboat charter of even date herewith entered into between Prime Mountain Maritime Ltd (as head-charterer) and Australia Holdings Ltd. (as sub-charterer) in relation to m.v. "AUSTRALIA";
 - (c) the sub-bareboat charter of even date herewith entered into between Prime Time Maritime Ltd (as head-charterer) and China Holdings Ltd. (as sub-charterer) in relation to m.v. "CHINA";
 - (d) the sub-bareboat charter of even date herewith entered into between Prime Hill Maritime Ltd (as head-charterer) and Grand Rodosi Inc. (as sub-charterer) in relation to m.v. "GRAND RODOSI",
- and "**Transaction Sub-Charter**" shall mean any one of them; and

"Warrants Instrument" means the warrants instrument to be entered into by the Sub-Charterers' Guarantor in favour of Lemissoler Corporate Management Limited in connection with the warrants to be issued annually in consideration of the fees payable to Lemissoler Corporate Management Limited in connection with the Transaction Sub-Charterers.

32.3 In Clause 43.2:

"excess risks" means the proportion of claims not recoverable in respect of general average and salvage, or under the ordinary running-down clause, as a result of the value at which a vessel is assessed for the purpose of such claims exceeding her insured value;

"protection and indemnity risks" means the usual risks covered by the standard form rules of members of the International Group of protection and indemnity associations, including the proportion not otherwise recoverable in case of collision under the ordinary running-down clause; and

"war risks" means all risks referred to in the Institute Time Clauses (Hulls) (1/10/83) and (1/11/95) including, but not limited to, the risk of mines, blocking and trapping, missing vessel, confiscation 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) or Clause 29 of the International Hull Clauses (01/11/2002) or Clause 29 of the International Hull Clauses (01/11/2003).

32.4 The following expressions shall be construed in the following manner:

"Owners", **"Head-Charterers"**, **"Sub-Charterers"** and **"Approved Mortgagee"** shall include their respective successors and assigns;

"person" includes include any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;

“subsidiary” means any company or entity directly or indirectly authorised by such person, and for this purpose control means either the ownership of more than fifty per cent (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity or the power to direct policies and management whether by contract or otherwise;

“taxes” means all present and future taxes, levies, imposts, duties, charges, fees, deductions and withholdings, and any restrictions or conditions resulting in a charge whatsoever, together with interest thereon and penalties with respect thereto, if any, and any payments of principal, interest, charges, fees or other amounts made on or in respect thereof, and **“Tax”** and **“Taxation”** shall be construed accordingly.

32.5 Unless the context otherwise requires, words in the singular include the plural and vice versa.

32.6 References to any document include the same as varied, supplemented or replaced from time to time.

32.7 References to any enactment include re-enactments, amendments and extensions thereof.

32.8 Clause headings are for convenience of reference only and are not to be taken into account in construction.

32.9 Unless otherwise specified, references to Clauses, Recitals, and Schedules are to Clauses of and the Recitals and Schedules to this Sub-Charter.

32.10 In this Sub-Charter, references to periods of **“months”** shall mean a period beginning in one calendar month and ending in the relevant calendar month on the day numerically corresponding to the day of the calendar month in which such period started, provided that (a) if such period started on the last Banking Day in a calendar month, or if there is no such numerically corresponding day, such period shall end on the last Banking Day in the relevant calendar month and (b) if such numerically corresponding day is not a Banking Day, such period shall end on the next following Banking Day in the same calendar month, or if there is no such Banking Day, such period shall end on the preceding Banking Day (and **“month”** and **“monthly”** shall be construed accordingly).

32.11 A person who is not a party to this Sub-Charter may not enforce, or otherwise have the benefit of, any provision of this Sub-Charter under the Contracts (Rights of Third Parties) Act 1999, except as provided in Clause 38.6.

33. REPRESENTATIONS AND WARRANTIES

33.1 The Sub-Charterers represent and warrant that the matters set out in Schedule 2, Part A are true at the date of this Sub-Charter.

- 33.2 The Head-Charterers represent and warrant that the matters set out in Schedule 2, Part B are true at the date of this Sub-Charter.
- 33.3 The Head-Charterers and the Sub-Charterers agree that the representations and warranties set out in Schedule 2 shall survive the execution of this Sub-Charter and shall be deemed to be repeated on the Delivery Date and on each date on which a payment of hire is due from the Sub-Charterers to the Head-Charterers with reference to the facts and circumstances then subsisting, as if made on such date.
34. **DELIVERY**
- 34.1 The Vessel shall be delivered on the Delivery Date.
- 34.2 On the Delivery Date the Vessel shall be delivered to the Sub-Charterers under this Sub-Charter and the Sub-Charterers shall deliver to the Head-Charterers a duly executed Protocol of Delivery and Acceptance for the Vessel, substantially in the form set out in Schedule 4, which shall be conclusive proof that the Sub-Charterers have unconditionally accepted the Vessel for charter under this Sub-Charter without any reservations whatsoever.
- 34.3 The Sub-Charterers shall be bound to accept delivery of the Vessel from the Head-Charterers as and where she is upon her delivery from the Sellers to the Owners and from the Owners to the Head-Charterers.
- 34.4 If, for any reason:
- 34.4.1 the Owners become entitled to cancel and terminate the MOA; or
- 34.4.2 the Sellers terminate the MOA or fail to deliver the Vessel under the MOA,
- 34.4.3 the Head-Charterers shall be excused from giving delivery of the Vessel to the Sub-Charterers, and shall be entitled, without liability to the Sub-Charterers, to terminate this Sub-Charter by giving notice in writing to the Sub-Charterers.
- 34.5 The Head-Charterers warrant that the Vessel, at time of delivery, is free from all charters (other than this Sub-Charter, the Head-Charter and the Time Charter), Encumbrances, mortgages (except for any Approved Mortgage or Permitted Encumbrance) and maritime liens or any other debts whatsoever.
- 34.6 The Vessel shall be delivered to the Sub-Charterers with all stores, lubricants, bunkers as: (i) delivered to the Owners under the MOA; and (ii) delivered to the Head Charterers under the Head-Charter. The Head-Charterers will deliver to the Sub-Charterers the remaining on board bunkers and lubricants at the time of delivery at no cost. And the Sub-Charterers shall redeliver the Vessel with same quantities and grades of bunkers and lubricants as on delivery. The Head-Charterers shall at the time of redelivery pay for the

- remaining bunkers and lube oils on board at prices evidenced by the Sub-Charterers' last invoice.
- 34.7 If the Vessel is lost or is or becomes a Total Loss as a result of an event or events occurring prior to delivery under this Sub-Charter, this Sub-Charter shall automatically terminate without any liability whatsoever or any claim for damages by either party upon the other.
- 34.8 The Sub-Charterers will give the Head-Charterers all such assistance with respect to the registration of the Vessel, as the Head-Charterers may reasonably request, and will reimburse to the Head-Charterers (in so far as paid by the Head-Charterers) the costs of registration of the Vessel under the Flag State (but not of the Approved Mortgage).
- 34.9 The Vessel shall be delivered to the Sub-Charterers with all stores, lubricants, bunkers and spares which are on the Vessel when she is: (i) delivered to the Owners under the MOA; and (ii) delivered to the Head Charterers under the Head-Charter.
35. **FLAG STATE**
- 35.1 The Vessel shall on the Delivery Date be registered in the name of the Owners under the laws and flag of the Flag State and the Head-Charterers and the Sub-Charterers shall provide the Owners with all such assistance as the Owners may reasonably require in obtaining and maintaining such registration and shall not during the Charter Period do or suffer anything to be done which might imperil such registration. Initial registration costs shall be for Owners' account but thereafter all registration, tonnage and other taxes, imposts, dues and payments from time to time payable in connection with maintaining such registration shall be for the Sub-Charterers' account and be payable on demand. No change shall be made to the Vessel's Flag State without Sub-Charterers' consent in writing (such consent not to be unreasonably withheld, delayed or conditioned) and the costs of any change (unless requested by Sub-Charterers) shall be for Owners' account.
- 35.2 The Sub-Charterers shall have the right, subject to the prior approval of the Owners and the Approved Mortgagee (which the Head-Charterers shall procure is not unreasonably withheld, conditioned or delayed), and subject to the Sub-Charterers paying all costs associated therewith to require that the Owners register their title in another Flag State of the Sub-Charterers' choice.
- 35.3 The Sub-Charterers acknowledge that it shall be reasonable for the Owners, the Head-Charterers and the Approved Mortgagee to withhold their approval if the Owners' title to the Vessel or the Approved Mortgagee's security would be adversely affected, or if either of them would become subject to additional taxes or other costs, unless indemnified by the Sub-Charterers, by reason of such change.
- 35.4 The name of the Vessel shall be chosen by the Sub-Charterers subject to the Owners' and Head-Charterers' consent which shall not be unreasonably withheld. Neither the Owners

nor the Head-Charterers shall have any right to change the name of the Vessel, without the Sub-Charterers' consent which shall not be unreasonably withheld or delayed.

35.5 The Sub-Charterers shall have the right to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag provided that painting, re-painting, installation and re-installation shall be for the Sub-Charterers' account.

36. **TIME AND PLACE FOR DELIVERY AND CANCELLATION**

36.1 The Vessel shall be delivered to Sub-Charterers immediately upon: FIRSTLY delivery of the Vessel by the Seller to the Owners under the MOA; and SECONDLY delivery of the Vessel by the Owners to the Head-Charterers under the Head-Charter.

36.2 The Vessel shall be delivered by the Head-Charterers and taken over by the Sub-Charterers safely afloat at the place of delivery by the Seller to the Owners under the MOA.

36.3 Should the Vessel not be: (i) delivered to the Owners by the Seller under the MOA (unless such failure is caused by default of the Owners); and/or (ii) delivered to the Head-Charterers by the Owners under the Head-Charter, this Charter shall terminate without claim by either party upon the other.

37. **CONDITIONS PRECEDENT TO DELIVERY**

37.1 The obligation of the Head-Charterers to deliver the Vessel to the Sub-Charterers under the terms of this Sub-Charter shall be subject to and conditional upon the satisfaction (which the Sub-Charterers hereby undertake to procure by the Delivery Date) of the Conditions listed in Schedule 1, Part A, which the Head-Charterers may in their discretion waive.

37.2 The obligation of the Sub-Charterers to accept delivery of the Vessel under the terms of this Sub-Charter shall be subject to and conditional upon the satisfaction of the Conditions listed in Schedule 1, Part B, which the Sub-Charterers may in their discretion waive.

37.3 Without prejudice to Clause 37.1, if the Head-Charterers in their discretion deliver the Vessel to the Sub-Charterers under this Sub-Charter notwithstanding that one or more of the conditions precedent specified in Clause 37.1 remains unsatisfied on the Delivery Date, then the Sub-Charterers shall procure the satisfaction of such condition or conditions precedent within fourteen (14) days thereafter or such longer period as the Head-Charterers in their absolute discretion agree in writing.

38. **EXCLUSIONS**

- 38.1 Unless otherwise specified in this Sub-Charter, the Head-Charterers shall not be liable for any losses, costs, charges, expenses, fees, payments, penalties, fines, damages or other sanctions of a monetary nature or any loss of profit:
- 38.1.1 resulting directly or indirectly from any defect or alleged defect in the Vessel or any failure of the Vessel to comply with any of the matters set out in this Sub-Charter or otherwise howsoever;
- 38.1.2 arising from any delay in the delivery of the Vessel; or
- 38.1.3 arising from the detention or arrest (whether registered or not) of the Vessel and provided that such process is not attributable to an act, omission or default of the Owners or the Head-Charterers.
- 38.2 The Sub-Charterers hereby acknowledge that the Head-Charterers make no representation or warranty, express or implied (and whether statutory or otherwise), as to seaworthiness, condition, design, operation, performance, capacity, merchantability or fitness for use of the Vessel or as to its eligibility for any particular trade or operation or any other representation or warranty whatsoever, express or implied, with respect to the Vessel or her engines, machinery, boats, tackle, outfit, fuel and consumable or other stores, and the Sub-Charterers hereby waive all their rights and claims whatsoever against the Head-Charterers and howsoever arising in respect of the foregoing.
- 38.3 Acceptance by the Sub-Charterers of the Vessel hereunder shall be deemed conclusive, as between the Head-Charterers and the Sub-Charterers, that the Vessel is seaworthy in accordance with the provisions of applicable law, in good working order and repair and without defect or inherent vice in title, (other than as may arise from the deliberate act or omission of the Head-Charterers), condition, design, operation or fitness for use, whether or not discoverable by the Head-Charterers and free and clear of all Encumbrances other than the Approved Mortgage and Permitted Encumbrances.
- 38.4 The Head-Charterers shall not be under any liability whatsoever and howsoever arising, other than where such liability arises from the deliberate act or grossly negligent omission of the Head-Charterers, in respect of the injury, death, loss, damage or delay of or to or in connection with any vessel (including the Vessel) or any person (which expression includes, without prejudice to the generality thereof, states, governments, municipalities and local authorities) or property whatsoever, whether on board the Vessel or elsewhere irrespective of whether such injury, death (other than death or personal injury which may not be excluded under Section 2(1) of the Unfair Contract Terms Act 1977), loss, damage or delay shall arise from the unseaworthiness of the Vessel.
- 38.5 The Sub-Charterers agree that the Head-Charterers shall be under no liability to supply any replacement Vessel or any piece or part thereof during any period when the Vessel is

unusable and the Head-Charterers shall not be liable to the Sub-Charterers or any other person as a result of the Vessel being unusable.

38.6 Every exclusion and limitation contained in this Sub-Charter applicable to either party hereto or to which either party hereto is entitled under this Sub-Charter shall also be available and shall extend to protect the directors, employees, servants, independent contractors and agents of such party in respect of acts or omissions in the course of their employment or service.

39. **EXTENSION OF CHARTER PERIOD**

39.1 The Sub-Charterers may extend the Charter Period by one period of 30 days, provided that they give the Head-Charterers not less than fifteen (15) Banking Days prior written notice before the date on which the Charter Period would otherwise have expired.

39.2 Upon receipt by the Head-Charterers of the notice referred to in Clause 39.1, the Head-Charterers shall provide such notice to the Owners as may be required in accordance with the terms of the Head Charter to extend the Head Charter for such period being equal to the extended Charter Period of this Sub-Charter.

39.3 If the Vessel is on a voyage (otherwise than under requisition for hire) at the time when this Sub-Charter would (but for the provisions of this Clause 39) have terminated, the Charter Period shall be extended for such additional period as may be necessary for the completion of such voyage. The Charter Period shall also be extended for such additional period as may be necessary to bring the Vessel to a port of redelivery as hereinafter provided. Hire shall continue to be paid for the period of extension at the rate in force before the start of such extension, as provided in Clause 40.

40. **PAYMENT OF HIRE AND OTHER MONEYS**

40.1 The Sub-Charterers shall throughout the Charter Period and any extended Charter Period pay to Head-Charterers hire for the Vessel every thirty (30) days in advance commencing on and from the date and hour of her delivery to the Sub-Charterers on charter in accordance with Clause 34 and continuing until the date and hour of her redelivery to the Head-Charterers pursuant to Clause 15 at the rates specified below:

40.1.1 The monthly rate of hire payable by the Sub-Charterers shall be the rate (the "**Hire Rate**") set out in Schedule 5.

40.1.2 The first such instalment of hire shall be due and payable on the Delivery Date and subsequent instalments shall be payable at monthly intervals thereafter. All payments of hire shall be made on the basis of a year of 365 days (366 days in a leap year).

40.1.3 In addition to the first such instalment of hire payable at the Hire Rate a lump sum of \$2,589,000 (the "**Lump Sum**") shall be set-off with part of the Purchase

Price payable to the Sub-Charterers in their capacity as "Sellers" under the MOA on the Delivery Date.

- 40.1.4 The final payment of hire, if for a period of less than one month, shall be calculated proportionally according to the number of days and hours remaining before redelivery and advance payment shall be effected accordingly. The final adjustment of hire, depending on the actual time and date of redelivery, shall be made immediately after redelivery.
- 40.2 Unless otherwise specified by the Head-Charterers, all moneys to be paid by the Sub-Charterers under this Sub-Charter shall be paid to the Head-Charterers:
 - 40.2.1 on their due date in Dollars;
 - 40.2.2 to the account of Prime Maritime Holding Ltd held with Marfin Egnatia Bank S.A. with account number 0280587428;
 - 40.2.3 bear as reference the Vessel's name.
- 40.3 All payments due shall be made on a Banking Day. If the due date for the payment falls on a day which is not a Banking Day:
 - 40.3.1 the payment or payments shall be fall due and be made on the first Banking Day thereafter, provided this falls in the same calendar month; and
 - 40.3.2 if it does not, payment shall fall due and be made on the immediately preceding Banking Day.
- 40.4 All payments of hire and other moneys payable by the Sub-Charterers under or pursuant to this Sub-Charter shall be made:
 - 40.4.1 without any set-off or counterclaim whatsoever; and
 - 40.4.2 free and clear of, and without deduction for, or on account of, any bank charges and any present or future taxes (other than taxes on the overall net income of the Head-Charterers), unless the Sub-Charterers are compelled by law to make payment subject to any such tax.
- 40.5 If the Sub-Charterers are compelled by law to make payment subject to any such taxes, the Sub-Charterers will
 - 40.5.1 promptly notify the Head-Charterers upon becoming aware of such requirement;
 - 40.5.2 pay to the Head-Charterers such additional amounts as may be necessary to ensure that the Head-Charterers receive a net amount equal to the full amount which the Head-Charterers would have received had such payment not been subject to such taxes; and

- 40.5.3 deliver to the Head-Charterers copies of the receipts from the relevant government authority or body evidencing the due and punctual payment of such taxes.
- 40.6 The Sub-Charterers shall pay to the Head-Charterers the Value Added Tax (if any) legally due on any payments of hire or other sums payable by the Sub-Charterers under this Sub-Charter at the rate applicable for the time being (by addition to, and at the time of payment of, the said hire or other sums).
- 40.7 The Sub-Charterers shall pay on demand by the Head-Charterers an additional amount by way of compensation for late payment (the “**Additional Amount**”) on any unpaid sum due under this Sub-Charter (the “**Unpaid Amount**”) from and including the date upon which it fell due for payment until the date of actual payment (the “**Number of Days**”) (as well after as before judgment) on the basis of the Unpaid Amount multiplied by the Number of Days multiplied by 0.000165. All payments of an Additional Amount shall be calculated on the basis of the actual number of days elapsed.
- 40.8 The Vessel shall not at any time be placed off-hire and the Sub-Charterers’ obligation to pay hire shall be absolute and irrevocable during the Charter Period, irrespective of any occurrence or contingency whatsoever, including, but not limited to:
- 40.8.1 any unavailability of the Vessel for any reason, including (but not limited to) any defect in the title (save as may arise as a result of the wilful act or omission of the Head-Charterers), seaworthiness, condition, design, operation, performance, capacity, quality, merchantability, or fitness for use or eligibility of the Vessel for any particular trade or operation; or
- 40.8.2 any incapacity, disability, or defect in powers of the Sub-Charterers or any other person (other than the Head-Charterers), or any irregular exercise thereof by, or lack of authority of, any person purporting to act on behalf of the Sub-Charterers or such other person; or
- 40.8.3 any illegality, invalidity, avoidance or unenforceability on any grounds whatsoever of, or of any obligations of the Sub-Charterers or any other person (other than the Head-Charterers) under, this Sub-Charter; or
- 40.8.4 the liquidation, administration, insolvency, amalgamation, reorganisation or dissolution, or any change in the constitution, name or style, of the Sub-Charterers, the Head-Charterers (except to the extent that such event shall interfere with the Quiet Enjoyment of the Vessel by the Sub-Charterers) or any other person;
- 40.8.5 piracy, hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (except the cases described in clause 48.2.3 and 48.3.5)

- 40.8.6 any repair period and/or drydocking period as may needed or required by the Class; or
- 40.8.7 any other cause which, but for this provision, might operate to exonerate the Sub-Charterers from liability, whether in whole or in part, under this Sub-Charter.
- 40.9 Notwithstanding anything to the contrary contained in this Sub-Charter, instalments of hire payable by the Sub-Charterers shall be deemed earned by the Head-Charterers as and when they fall due for payment hereunder.
- 40.10 During any 30 day extension period(s) of this Sub-Charter, such as is referred to in Clause 38, and if the Vessel is not redelivered within the Charter Period (whether or not so extended) from the expiry of the Charter Period until her redelivery, the Sub-Charterers will pay the Head-Charterers on demand: (i) any legal, administrative and enforcement expenses that the Head-Charterers may incur as a result of non-payment of any amounts due under this Sub-Charter; and (ii) all costs and expenses (including but not limited to legal fees) incurred by the Head-Charterers in connection with any enforcement by the Head-Charterers of their rights under this Sub-Charter.

41. **SUBSTITUTION**

Throughout the Charter Period, the Sub-Charterers may request the Head-Charterer to substitute the Vessel at any time with a substitute vessel and if the Head-Charterers agree to proceed with such substitution, the Sub-Charterers shall (at their expense) enter into such documentation with the Owners, the Head-Charterers and the Approved Mortgagee as may be required in order for such substitution to become effective, provided always that such substitution has been approved by the Owners and the Approved Mortgagee. For the avoidance of doubt, neither the Owners, the Head-Charterers nor the Approved Mortgagee are obliged to accept such request.

42. **GENERAL UNDERTAKINGS OF THE SUB-CHARTERER**

42.1 The Sub-Charterers shall:

42.1.1 not change the nature of their business;

42.1.2 ensure that no material change should occur in the ownership or shareholding structure of the Sub-Charterers without the prior approval of the Owners, the Head-Charterers and the Approved Mortgagee;

42.1.3 procure that the Vessel is kept in a good and seaworthy state of repair, so as to maintain the highest class with the Classification Society free of overdue recommendations and conditions, and so as to comply with the provisions of all laws and all other regulations and requirements (statutory or otherwise) from time to time applicable to vessels registered at ports in its Flag State and to vessels

- trading to any jurisdiction to which that Vessel may, subject to the provisions of this Sub-Charter, trade from time to time;
- 42.1.4 permit the Head-Charterers to inspect the Vessel, Vessel's Class Certificates and the Vessel's logbooks, when so reasonably required by them in writing;
- 42.1.5 permit the Head-Charterers to be present during drydocking only for internal reporting purposes and without any right to interfere with such drydocking (and the Sub-Charterers shall notify the Head-Charterers in advance for the plans for the scheduled drydocking); and
- 42.1.6 promptly furnish the Head-Charterers, when so reasonably requested by them in writing, with all such information regarding the Vessel and any Time Charter as the Owners, the Head-Charterers or the Approved Mortgagee may request.
- 42.2 The Sub-Charterers shall notify the Head-Charterers immediately upon becoming aware of the same by e-mail or fax (thereafter confirmed by letter) of:
- 42.2.1 any accident to the Vessel or incident which is or is likely to be a Major Casualty or a Total Loss;
- 42.2.2 any requirement or recommendation made by any insurer or classification society, or by any competent authority, which is not complied with within any time limit imposed by such insurer, classification society or authority;
- 42.2.3 any of the following events occurring which might adversely affect (a) the ability of the Sub-Charterers to perform their obligations under this Sub-Charter; or (b) the rights of the Head-Charterers or the Approved Mortgagee or which might involve them in any loss or liability:
- (a) any arrest of the Vessel, or the exercise or purported exercise of any lien on the Vessel or her Insurances or earnings, or any loss, confiscation, seizure, requisitioning (for title or for hire) or impounding of the Vessel;
- (b) any substantial casualty or injury to a party caused by, or in connection with, the Vessel; or
- (c) any assistance which has been given to the Vessel which has resulted or may result in a lien for salvage being acquired over the Vessel;
- 42.2.4 any litigation, arbitration, tax claim or administrative proceeding instituted or threatened or of any other occurrence which might materially adversely affect (a) the ability of the Sub-Charterers to perform their obligations under this Sub-Charter; or (b) the rights of the Head-Charterers or the Approved Mortgagee or which might involve them in any material loss or liability.

- 42.3 The Sub-Charterers shall not without the prior consent in writing of the Owners, the Head-Charterers and the Approved Mortgagee (and then only subject to such terms as the Owners, the Head-Charterers and the Approved Mortgagee may reasonably impose):
- 42.3.1 save for the Time Charter, let the Vessel on any time or consecutive voyage charter for a term which exceeds, or which by virtue of any optional extensions might exceed, twelve (12) months' duration and provided that in the case of any time or consecutive voyage charter, such time or consecutive voyage charter shall provide that the Vessel upon termination or expiry for whatever cause of the Charter Period shall be re-delivered;
 - 42.3.2 employ the Vessel on terms whereby more than two (2) months' hire (or the equivalent) is payable in advance;
 - 42.3.3 employ the Vessel otherwise than on bona fide arm's-length terms;
 - 42.3.4 appoint any person to manage the Vessel other than the Manager;
 - 42.3.5 change the Classification Society of the Vessel;
 - 42.3.6 change the Flag State of the Vessel;
 - 42.3.7 incur any Financial Indebtedness (except for unsecured Financial Indebtedness which is subordinated to the Financial Indebtedness owing to the Approved Mortgagee, the Owner or the Head-Charterer) unless such Financial Indebtedness is in the ordinary course of business for the Sub-Charterer;
 - 42.3.8 put the Vessel into the possession of any person for the purpose of work being done upon her in an amount exceeding or likely to exceed five hundred thousand United States Dollars (US\$500,000) (or the equivalent in any other currency) unless such person has first given to the Head-Charterers and in terms satisfactory to them a written undertaking not to exercise any lien on the Vessel or her earnings for the cost of such work or otherwise;
 - 42.3.9 create or suffer the creation of an Encumbrance (other than a Permitted Encumbrance) over or in respect of the Vessel or any share in the Vessel; or
 - 42.3.10 amend, vary, rescind, cancel the Time Charter or accept any rescission, cancellation or termination thereof by the relevant time charterer.

43. **DAMAGE AND FRUSTRATION**

- 43.1 The Head-Charterers shall not be liable for any expense in repairing or maintaining the Vessel or be liable to supply a vessel or any part thereof or any equipment in lieu if the Vessel is lost or damaged or rendered unfit for use or confiscated, seized, requisitioned, restrained or appropriated or otherwise taken out of the possession or control of the Sub-Charterers.

43.2 Unless otherwise expressly provided in this Sub-Charter, if for any reason whatsoever the Vessel becomes inoperable or unusable, the charter hire payable in respect of the Vessel shall continue to be payable and the other obligations of the Sub-Charterers hereunder shall continue notwithstanding such loss, damage or other event unless or until the Vessel be declared by the insurers to be a Total Loss and the Head-Charterers have received the amount set out in Clause 48.5 and notwithstanding any inability on the part of the Sub-Charterers to operate the Vessel, the Vessel being held to be the property of the Sub-Charterers or of any person other than the Owners; or any other circumstances whatsoever which might operate to frustrate this Sub-Charter.

44. **COMPULSORY LEGISLATION**

If any improvement, structural changes, additions or new equipment to or for the Vessel become necessary for the continued operation of the Vessel by reason of new class requirements or compulsory legislation the Sub-Charterers shall at their own expense and time, implement such improvement, changes, additions or installation of equipment. The Sub-Charterers shall notify the Head-Charterers of any such class requirements or compulsory legislation and, before making the necessary expenditure, with details of such expenditure. Such improvements, changes, additions or installations are deemed to be an integral part of the Vessel and will not be removed at redelivery.

45. **SAFE USE AND ENVIRONMENTAL MATTERS**

45.1 The Sub-Charterers undertake throughout the Charter Period:

45.1.1 to implement and maintain a safety management system (“SMS”) which complies with all laws, rules and regulations, and with all the codes, guidelines and standards recommended by the International Maritime Organisation (including without limitation, The International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the International Maritime Organisation as Resolutions A.741(18) and A.788(19) (as amended from time to time, the “ISM Code”), the Flag State of the Vessel and the Vessel’s classification society, which may from time to time be applicable to the Vessel and/or the Head-Charterers and/or the Sub-Charterers and/or the Manager, and which is otherwise appropriate having regard to the Sub-Charterers’ obligations under this Sub-Charter;

45.1.2 to obtain and maintain in force at all times valid certificates evidencing compliance with the requirements of Clause 45.1.1, including, without limitation, a valid Document of Compliance in relation to themselves and a valid Safety Management Certificate in respect of the Vessel as required by the ISM Code;

45.1.3 to provide the Head-Charterers with copies of any such Document of Compliance and Safety Management Certificate upon issuance;

- 45.1.4 to keep or procure that there is kept on board the Vessel at all times a copy of any such Document of Compliance and the original of any such Safety Management Certificate.
- 45.2 the Sub-Charterers undertake throughout the Charter Period:
- 45.2.1 to comply with, and procure that the Vessel complies with, the ISPS Code;
- 45.2.2 to ensure that the Vessel's security system and its associated security equipment comply with the applicable requirements of Part A of the ISPS Code and of Chapter XI-2 of the Safety of Life at Sea Convention 1974 (SOLAS), and that an approved ship security plan is in place;
- 45.2.3 to obtain and maintain in force at all times valid certificates evidencing compliance with the requirements of the ISPS Code, including, without limitation, a valid International Ship Security Certificate in respect of the Vessel as required by the ISPS Code;
- 45.2.4 to keep or procure that there is kept on board the Vessel at all times the original of such International Ship Security Certificate.
- 45.3 Without prejudice to the generality of Clause 10 the Sub-Charterers shall take all reasonable precautions to prevent any infringements of the Anti-Drug Abuse Act of 1986 of the United States of America or any similar legislation applicable to the Vessel in the Flag State in any jurisdiction in or to which the Vessel may be employed or trade from time to time.
- 45.4 The Sub-Charterers shall not at any time represent or hold out the Head-Charterers as carrying goods or persons on the Vessel or being in any way connected or associated with any operation or carriage whether for charter or reward or gratuitously which may be undertaken by the Sub-Charterers during the Charter Period nor shall the Sub-Charterers represent themselves as the agent of the Head-Charterers for such purpose.
- 45.5 The Sub-Charterers shall ensure that the Vessel is, at all times, equipped and accredited with any required trading documentation and/or authorisations necessary to legitimise the entry of the Vessel into the waters of any relevant jurisdiction. Such trading documentation and authorisations shall include, inter alia, valid certification under the International Convention on Civil Liability for Oil Pollution Damage (as amended), a valid US Coast Guard certificate of financial responsibility (water pollution), a valid certificate from any US state that requires a state equivalent of a certificate of financial responsibility, a vessel classification certificate and any other credentials as might be, or may come to be, required. Copies of such trading documentation and/or authorisations shall be made available to the Head-Charterers as and when reasonably requested.

46. **EQUIPMENT**

- 46.1 The Sub-Charterers shall have the use of all outfit, machinery, equipment, spare parts, appliances, furniture, fittings, furnishings and stores of the Vessel which are the property of the Head-Charterers or the Owners, and all substitutions, replacements and renewals.
- 46.2 The Sub-Charterers shall, at their own expense, from time to time during the Charter Period substitute, replace and/or renew (as the case may be) any outfit, machinery, equipment, spare parts, appliances, furniture, fittings, furnishings and stores which shall be consumed or be so damaged or worn out as to be unfit for use. The Sub-Charterers shall procure that all such repairs, substitutions, replacements and renewals shall be effected in such manner (both as regards workmanship and quality of materials) so as not to diminish the value of the Vessel.
- 46.3 Notwithstanding any other provision of this Sub-Charter, in the event of any future improvements, modifications or structural changes carried out upon the Vessel (as approved by the Owners, the Head-Charterers and/or the Approved Mortgagee in advance), such modifications, improvements or structural changes are deemed to be an integral part of the Vessel and the Sub-Charterers shall be under no obligation to restore the Vessel to its original condition upon redelivery. In the event of any Sub-Charterers' equipment being installed on the Vessel is deemed to be an integral part of the Vessel and unless the Sub-Charterers have informed the Owners and the Head-Charterers in advance for such installation and the Owners and the Head-Charterers have accepted the said equipment as Sub-Charterers' equipment in which case the Sub-Charterers shall have the right to remove the said equipment (and all additions and installations thereto) before redelivery, all such Sub-Charterers' equipment shall be considered as usual outfit, machinery or equipment of the Vessel, needed for Vessel's normal operation and/or any additional or new equipment installed in accordance with Clause 44.

47. **INSURANCES**

- 47.1 The Vessel shall throughout the Charter Period be in every respect at the risk of the Sub-Charterers who shall bear all risks howsoever arising in respect of the Vessel, whether of navigation, operation or maintenance or otherwise:
- 47.2 The Sub-Charterers covenant with the Head-Charterers that throughout the Charter Period they will comply with the following provisions of this Clause 47.2:
- 47.2.1 to effect and maintain sufficient insurances on and over the Vessel in respect of (a) hull, machinery and equipment, marine, war and terrorism risks (including excess risks), (b) protection and indemnity risks (including pollution risks), and (c) such other risks for which insurance would be maintained by a prudent owner for a ship of a similar type, size, age and flag, and otherwise in accordance with the provisions of this Sub-Charter;
- 47.2.2 to insure and keep insured the Vessel in Dollars or such other currency as may be approved in writing by the Approved Mortgagee, in the full insurable value of the Vessel

- but in any case not less than the higher of (i) the market value of the Vessel as calculated by the Approved Mortgagee and (ii) one hundred and ten per cent (110%) of the Purchase Price against fire, marine and other risks (including excess risks) and war risks covered by hull and machinery policies;
- 47.2.3 to enter the Vessel in the name of the Owners for her full value and tonnage in a protection and indemnity association approved by the Approved Mortgagee with unlimited liability if available otherwise for the highest possible standard cover for the time being US\$1,000,000,000 for oil pollution and for excess oil spillage and pollution liability insurance for the highest possible standard cover against all protection and indemnity risks;
- 47.2.4 if the Vessel enters the territorial waters of the United States of America for any reason whatsoever, to take out such additional insurance to cover such risks as may be necessary in order to obtain a Certificate of Financial Responsibility from the United States Coastguard;
- 47.2.5 to effect such additional Insurances as may reasonably be requested by the Approved Mortgagee to maintain the scope of the existing cover of the Insurances;
- 47.2.6 to effect the Insurances through the Approved Brokers and with such insurance companies, underwriters, war risks and protection and indemnity associations as shall from time to time be approved in writing by the Head-Charterers and the Approved Mortgagee (such approval not to be unreasonably withheld), and, if so required by the Head-Charterers or the Approved Mortgagee (but, without, as between the Head-Charterers or the Approved Mortgagee and the Sub-Charterers, liability on the part of the Head-Charterers or the Approved Mortgagee for premiums or calls), with the Owners, the Head-Charterers or the Approved Mortgagee from the time being named as co-assured. Insurance for Protection and Indemnity risks shall be provided always by member of the International Group of P&I Clubs. Insurance for hull, machinery and equipment, marine, war and terrorism risks or any other risks shall be provided always by underwriters with a minimum of a BBB+ rating;
- 47.2.7 to renew the Insurances at least fourteen (14) days before the relevant Insurances expire and to procure that the Approved Brokers and any war risks and protection and indemnity association with which the Insurances are effected shall promptly confirm in writing to the Head-Charterers and the Approved Mortgagee as and when each such renewal is effected;
- 47.2.8 punctually to pay all premiums, calls, contributions or other sums payable in respect of the Insurances and to produce all relevant receipts when so required in writing by the Head-Charterers or the Approved Mortgagee;
- 47.2.9 reimburse to the Owners and/or the Head-Charterers on demand such documented sums as the Owners and/or Head-Charterers shall certify are payable by them to the Approved

- Mortgagee in respect of mortgagees interest insurance on the Vessel (as required by the Approved Mortgagee);
- 47.2.10 to arrange for the execution of such guarantees and the making of such declaration as may from time to time be required by any protection and indemnity or war risks association of the Vessel;
- 47.2.11 to give notice of assignment of the Insurances to the Insurers in the form set out in Schedule 3 to this Sub-Charter or in such other form as may be required by the Head-Charterers and/or the Approved Mortgagee and to procure that a copy of each notice of assignment shall be endorsed upon or attached to the relevant Insurance Documents;
- 47.2.12 to procure that the Insurance Documents shall be deposited with the Approved Brokers and that such brokers shall provide the Owners, the Head-Charterers and the Approved Mortgagee with certified copies thereof and shall issue to the Approved Mortgagee a letter or letters of undertaking in such form as the Approved Mortgagee shall reasonably require;
- 47.2.13 to procure that the protection and indemnity and/or war risks associations in which the Vessel is entered shall provide the Approved Mortgagee with a letter or letters of undertaking in their standard form and shall provide the Approved Mortgagee with a copy of the certificates of entry;
- 47.2.14 to procure that the Insurance Documents (including all certificates of entry in any protection and indemnity and/or war risks association) shall contain loss payable clauses in the form set out in set out in Schedule 3 to this Sub-Charter or in such other form as may be required by the Head-Charterers and/or the Approved Mortgagee (as may be appropriate);
- 47.2.15 to procure that the Insurance Documents shall provide that the lien or set off for unpaid premiums or calls shall be limited to only the premiums or calls due in relation to the Insurances on the Vessel and for fourteen (14) days prior written notice to be given to the Approved Mortgagee by the Insurers (such notice to be given even if the Insurers have not received an appropriate enquiry from the Approved Mortgagee) in the event of cancellation or termination of Insurances and in the event of the non-payment of the premium or calls, the right to pay the said premium or calls within a reasonable time;
- 47.2.16 to promptly provide the Owners, the Head-Charterers and the Approved Mortgagee with full information regarding any casualties or damage to the Vessel in an amount in excess of Five hundred thousand United States Dollars (US\$500,000) or in consequence whereof the Vessel has become or may become a Total Loss;
- 47.2.17 at the request of the Approved Mortgagee, to provide the Approved Mortgagee, at the Sub-Charterers' cost, with a detailed report issued by a firm of marine insurance brokers or consultants appointed by the Approved Mortgagee in relation to the Insurances;

- 47.2.18 not to do any act nor voluntarily suffer nor permit any act to be done whereby any Insurance shall or may be suspended or avoided and not to suffer nor permit the Vessel to engage in any voyage nor to carry any cargo not permitted under the Insurances in effect without first covering the Vessel to the amount herein provided for with insurance satisfactory to the Approved Mortgagee for such voyage or the carriage of such cargo;
- 47.2.19 (without limitation to the generality of the foregoing) in particular not permit the Vessel to enter or trade to any zone which is declared a war zone by any government or by the Vessel's war risks Insurers unless there shall have been effected by the Sub-Charterers at their expense such special insurance as the war risk Insurers may require; and
- 47.2.20 to procure that all amounts payable under the Insurances are paid in accordance with the loss payable clause in the form set out in Schedule 3 to this Sub-Charter or in such other form as may be required by the Head-Charterers and/or the Approved Mortgagee (as may be appropriate) and to apply and procure that all amounts as are paid to the Owners, the Head-Charterers and/or the Sub-Charterers are applied to the repair of the damage and the reparation of the loss in respect of which the said amounts shall have been received.
- 47.3 The Sub-Charterers shall procure that the policies in respect of the Insurances shall, in each case, be endorsed to the effect that (subject always to the rights of the Approved Mortgagee):
- 47.3.1 payment of a claim for Total Loss of the Vessel shall be made to the Head-Charterers who upon receipt thereof shall apply the same in accordance with Clause 48.8;
- 47.3.2 payment of a claim for any Major Casualty to the Vessel shall be made to the Head-Charterers, but so that, unless and until the Head-Charterers (following the occurrence of a Termination Event) direct to the contrary (whereupon all insurance recoveries in respect of any such claim shall be payable to the Head-Charterers and be applied in accordance with Clause 48.8):
- (a) the payment so received by the Head-Charterers shall be paid over to the Sub-Charterers upon the Sub-Charterers furnishing evidence satisfactory to the Head-Charterers and the Approved Mortgagee that all loss and damage resulting from the casualty has been or will be properly made good and repaired and that all repair accounts and other liabilities whatsoever in connection with the casualty have been or will be fully paid and discharged by the Sub-Charterers;
 - (b) the Insurers with whom the hull, machinery and equipment marine risks insurances are effected may in the case of a Major Casualty, with the prior consent in writing of the Owners, the Head-Charterers and the Approved Mortgagee, make payment on account of repairs in the course of being effected;

47.3.3 payment of a claim which is not for a Total Loss or a Major Casualty shall, unless and until the Head-Charterers shall (following the occurrence of a Termination Event) direct to the contrary (whereupon all insurance recoveries in respect of any such claim shall be payable to the Head-Charterers and be applied in accordance with Clause 48.8), be made to the Sub-Charterers who shall, as agent for the Owners and the Head-Charterers, apply the same in or towards making good the loss and fully repairing all damage in respect of which such payment shall have been made.

47.4 The provisions of this Clause 47 and Clause 48 shall not apply to the proceeds of any additional insurance cover effected by the Owners and/or the Head-Charterers and/or the Sub-Charterers for their own account and benefit, provided that such cover shall only be effected if and to the extent that the Insurances effected by the Sub-Charterers pursuant to this Clause 47 so permit. The Head-Charterers and the Sub-Charterers, as the case may be, shall promptly furnish the other with particulars of any additional insurance effected, including copies of any cover notes or policies, and the written consent of the insurers for the Insurances required to be maintained by the Sub-Charterers under this Clause 47 in any case where the consent of such insurers is necessary. For avoidance of doubt, the Head-Charterers shall have no obligation to furnish the Sub-Charterers with any such information or documentation relating to any innocent owner's insurance effected by the Head-Charterers.

47.5 The Head-Charterers shall be entitled, at any time and from time to time, to consult insurance advisers on any matter relating to the Insurances (including, without limitation, the terms, amounts and quality of the Insurances and the status of any insurance claims), and the Sub-Charterers shall procure that there is delivered to such adviser any and all such information concerning the Vessel and her Insurances as the Head-Charterers may require. The reasonable costs of any such insurance adviser shall, where the involvement of such insurance advisers is at the request of the Approved Mortgagee but in the absence of a Termination Event, not more than once annually, be for the account of the Sub-Charterers and shall be payable on demand.

48. **LOSS, DAMAGE AND REQUISITION**

48.1 Throughout the Charter Period, the Sub-Charterers shall bear the full risk of any Total Loss or any damage to the Vessel howsoever arising and of any other occurrence of whatever kind which may deprive the Sub-Charterers of the use, possession or enjoyment of the Vessel and no such event shall relieve the Sub-Charterers of their obligations (whether in whole or in part) under this Sub-Charter.

48.2 For the purposes of this Sub-Charter, "**Total Loss**" shall mean:

48.2.1 actual or constructive or compromised or agreed or arranged total loss of the Vessel; or

- 48.2.2 Compulsory Acquisition of the Vessel;
- 48.2.3 the hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (other than any event described in Clause 48.2.2) by any government entity or by persons acting or purporting to act on behalf of any government entity unless the Vessel be released and restored to the Sub-Charterers from such hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation within thirty (30) days after the occurrence thereof or such lesser period provided in the Vessel's war risks Insurances;
- 48.3 For the purpose of this Clause 48, a Total Loss shall be deemed to have occurred:
- 48.3.1 in the case of an actual total loss of the Vessel on the actual date and at the time the Vessel was lost or if such date is now known, on the date on which the Vessel was last reported;
- 48.3.2 in the case of a constructive total loss of the Vessel upon the date and at the time notice of abandonment of the Vessel is given to the Insurers of the Vessel for the time being (provided a claim for such total loss is admitted by such insurers) or, if such Insurers do not admit such a claim, or, in the event that such notice of abandonment is not given by the Head-Charterers and/or the Sub-Charterers to the Insurers of the Vessel, on the date and at a time on which the incident which may result, in the Vessel being subsequently determined to be a constructive total loss has occurred
- 48.3.3 in the case of a compromised or arranged total loss of the Vessel, on the date upon which a binding agreement as to such compromised or arranged total loss has been entered into by the Insurers of the Vessel;.
- 48.3.4 in the case of Compulsory Acquisition of the Vessel, on the date upon which the relevant Compulsory Acquisition occurs; and
- 48.3.5 in the case of hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (other than where the same amounts to Compulsory Acquisition of the Vessel) by any government entity, or by persons purporting to act on behalf of any government entity, which deprives the Head-Charterers and/or the Sub-Charterers of the use of the Vessel for more than thirty (30) days, upon the expiry of the period of thirty (30) days after the date upon which the relevant hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation occurred.
- 48.4 The Sub-Charterers shall notify the Head-Charterers and the Approved Mortgagee forthwith by e-mail or fax (thereafter confirmed by letter) upon becoming aware of any occurrence in consequence whereof the Vessel has become or is likely to become a Total Loss.

- 48.5 If the Vessel shall become a Total Loss, the Sub-Charterers shall within one hundred and eighty (180) days of the date of the Total Loss, pay or procure the payment to the Head-Charterers of a net amount equal to the aggregate of:
- 48.5.1 the Call Option Sum which would be applicable had the Call Option been exercised at the date of such Total Loss;
- 48.5.2 any costs payable by the Owners and/or the Head-Charterers to the Approved Mortgagee;
- 48.5.3 all other moneys, whether of hire or otherwise, then due and owing under any other provisions of this Sub-Charter.
- 48.6 The Sub-Charterers shall continue to pay hire on the days and in the amounts required under this Sub-Charter notwithstanding that the Vessel shall have become a Total Loss. The Sub-Charterers' obligation to pay hire under this Sub-Charter shall terminate immediately upon the Head-Charterers' receipt of (a) an amount equal to the aggregate of the minimum insured value as at the date of the Total Loss and in any event not less than the Call Option Sum applicable at the date of such Total Loss, and (b) all other sums (if any) payable by the Sub-Charterers hereunder.
- 48.7 In the event that the insurers do not admit a claim for a Total Loss or agree to pay out a claim for a Total Loss in an amount equal to the amount referred to in Clause 48.6 within one hundred and eighty (180) days of the Total Loss, the Sub-Charterers shall immediately pay to the Head-Charterers the amount referred to in Clause 48.6 or an amount equal to the deficiency between the payment from the insurers and the amount referred to in Clause 48.6 together with an Additional Amount (calculated in accordance with Clause 40.7) if hire has not been paid as required under Clause 48.6.
- 48.8 Subject always to the rights of the Approved Mortgagee in such Insurances, all moneys recoverable:
- 48.8.1 under the Insurances effected by the Sub-Charterers pursuant to Clause 47, or by way of other compensation, in respect of a Total Loss of the Vessel; and
- 48.8.2 under the Insurances effected by the Sub-Charterers pursuant to Clause 47.3 in respect of any other claim (whether relating to a Major Casualty or otherwise) which by virtue of Clause 47.3 are payable to the Head-Charterers after the occurrence of a Termination Event;
- shall be paid to, and be held by, the Sub-Charterers, in the first place, to pay or make good all costs, expenses and liabilities whatsoever incurred by the Sub-Charterers in or about or incidental to the recovery of such moneys, and the balance shall be applied as follows:

FIRST, in payment of any hire or other moneys whatsoever due and owing to the Head-Charterers under this Sub-Charter up to the date of receipt of such proceeds;

SECOND, in the case of a Total Loss to the Head-Charterers in such amount as shall be required to ensure that the Head-Charterers have received, taking into account any amount received by the Head-Charterers under Clause 48.5 an amount equal to the aggregate of:

(a) the Call Option Sum which would be applicable had the Call Option been exercised on the date of such Total Loss;

(b) any costs payable by the Head-Charterers to the Approved Mortgagee;

(c) all other moneys, whether of hire or otherwise, then due and owing under any other provisions of this Sub-Charter.

THIRD, the balance shall be released to the Sub-Charterers or to any other person who shall be entitled thereto;

PROVIDED ALWAYS that in the event that such proceeds are insufficient to satisfy the amounts specified in FIRST and SECOND above the Sub-Charterers shall forthwith on the Head-Charterers' demand pay the shortfall to the Head-Charterers, and PROVIDED FURTHER that the Head-Charterers shall out of such proceeds apply such sum in payment to the Owners or the Approved Mortgagee as shall be required to discharge the Approved Mortgage.

48.9 The Head-Charterers shall, upon the request of the Sub-Charterers, but subject to the consent (if required) of the Approved Mortgagee being obtained, promptly execute and deliver such documents as may be required to enable the Sub-Charterers to abandon the Vessel to the insurers and to claim a constructive total loss.

49. **TITLE AND ENCUMBRANCES**

49.1 The Sub-Charterers shall take all steps which may be reasonably necessary to safeguard the title and rights of the Owners, the Head-Charterers and the Approved Mortgagee in the Vessel as notified to the Sub-Charterers and in particular (but without limitation):

49.1.1 will place, and at all times and places retain a properly certified copy of this Sub-Charter, and of the Approved Mortgage, on board the Vessel with her papers, cause each such certified copy and such papers to be exhibited to any and all persons having business with the Vessel which might give rise to any lien on it, other than liens for crew's wages and salvage, and to any representative of the Head-Charterers and the Approved Mortgagee;

- 49.1.2 will promptly pay and discharge or secure all debts, damages and liabilities whatsoever which the Sub-Charterers shall have been called upon to pay, discharge or secure and which have given, or may give, rise to maritime or possessory liens on or claims enforceable against the Vessel, and in the event of arrest of the Vessel pursuant to legal process, or in the event of her detention in exercise or purported exercise of any such lien as aforesaid, to procure the release of the Vessel from such arrest or detention forthwith upon receiving notice of the same by providing bail or otherwise as the circumstances may require;
- 49.1.3 will not pledge the credit of the Head-Charterers for any maintenance, service, repairs, drydocking or modifications and upgrades to the Vessel or for any other purpose whatsoever;
- 49.1.4 will not sell or hypothecate or purport to sell or hypothecate or execute a bill of sale of the Vessel or any interest therein or create or suffer to exist any Encumbrance (save for a Permitted Encumbrance) over the Vessel;
- 49.1.5 will not do or permit to be done any act or thing which might jeopardise the rights of the Head-Charterers or the Approved Mortgagee in the Vessel and will not omit to do or permit to be done any act or thing which if not done might jeopardise or prejudice the rights of the Head-Charterers or the Approved Mortgagee in the Vessel;
- 49.1.6 will not do anything which may result in the Vessel being confiscated, seized, requisitioned, taken in execution, impounded or otherwise taken from the possession of the Sub-Charterers and in the event of any such confiscation, requisition, seizure, impounding or taking, the Sub-Charterers will use their best endeavours to procure an immediate release of the Vessel therefrom; and
- 49.1.7 will duly pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges levied upon the Vessel prior to the date on which penalties are attached thereto, except to the extent that such may be contested in good faith.

50. FINANCIAL COVENANTS

- 50.1 For the purposes of this Clause 50 the following expressions shall have the following meanings:

“Borrowed Money” means Indebtedness in respect of (i) money borrowed or raised and debit balances at banks, (ii) any bond, note, loan stock, debenture or similar debt instrument, (iii) acceptance or documentary credit facilities, (iv) receivables sold or discounted (otherwise than on a non-recourse basis), (v) deferred payments for assets or services acquired, (vi) finance leases and hire purchase contracts, (vii) swaps, forward exchange contracts, futures and other derivatives, (viii) any other transaction (including without limitation forward sale or purchase agreements) having the commercial effect of

a borrowing or raising of money or of any of (ii) to (vii) above and (ix) guarantees in respect of Indebtedness of any person falling within any of (i) to (viii) above;

“Cash” means free and available negotiable money, orders, cheques and bank balances and deposits but to exclude (a) any cash that is specifically blocked and charged and (b) cash standing to the credit of any blocked account and charged to the Approved Mortgagee;

“Cash Equivalent Investments” means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by a bank or financial institution acceptable to the Approved Mortgagee;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security; or
- (c) any other debt security approved by the Approved Mortgagee,

in each case, to which the Sub-Charterers’ Guarantor’s Group is beneficially entitled at that time and which is not issued or guaranteed by any member of the Sub-Charterers’ Guarantor Group or subject to any Encumbrance (other than one arising under the Security Documents).

“Current Assets” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of current assets in a consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time together with such amount of Cash and Cash Equivalent Investments forming part of the Minimum Liquidity and/or any retention amount (but always excluding any current assets arising from Derivative Financial Instruments) which may be disregarded from the current assets in a consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group;

“Current Liabilities” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of current liabilities of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as current liabilities in the consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time excluding Deferred Revenue and all current liabilities arising from Derivative Financial Instruments;

“Deferred Revenue” means at any time in respect of the Sub-Charterers’ Guarantor’s Group, that liability calculated at the time an existing Time Charter(s) or other

employment arrangement is assumed, by discounting at the Sub-Charterers' Guarantor's Group's weighted average cost of capital, the difference between the market charter rate for an equivalent vessel and the assumed charter rate (as set out in the then latest financial statements delivered to the Approved Mortgagee pursuant to this Clause 50), which liability is recorded as deferred revenue and amortised to revenue over the remaining period of such Time Charter(s) or other employment arrangement;

"Derivative Financial Instruments" means at any time in respect of the Sub-Charterers' Guarantor's Group the fair value of any transaction entered into under a master swap agreements and the fair value of any other derivative financial instruments appearing under this heading (and previously approved by the Approved Mortgagee) in the consolidated financial statements of the Sub-Charterers' Guarantor's Group provided by the Sub-Charterers to the Approved Mortgagee in accordance with the provisions of this Clause 50 or otherwise and in the event of the Sub-Charterers changing the form or substance of the financial statements (always in accordance with GAAP) provided by the Sub-Charterers to the Approved Mortgagee so that Derivative Financial Instruments no longer appears as a heading and/or such Derivative Financial Instruments are otherwise accounted for, the determination of what constitutes Derivative Financial Instruments shall be made by the Approved Mortgagee acting reasonably;

"EBITDA" means, in respect of any period, the consolidated profit on ordinary activities of the Sub-Charterers' Guarantor's Group before Taxation for such period:

- (a) adjusted to exclude Interest Receivable and Interest Payable and other similar income or costs to the extent not already excluded;
- (b) adjusted to exclude any gain or loss realised on the disposal of fixed assets (whether tangible or intangible);
- (c) after adding back depreciation and amortisation;
- (d) adjusted to exclude any exceptional or extraordinary costs or income;
- (e) after deducting any profit arising out of the release of any provisions against a liability or charge (excluding in this context the release of any provisions against liabilities or charges relating to exceptional or extraordinary items);

"Equity Ratio" means the ratio of Total Shareholder's Equity to Total Assets of the Sub-Charterers' Guarantor's Group;

"Finance Lease" means any lease under which a member of the Sub-Charterers' Guarantor's Group is the lessee which is or should be treated as a finance lease under US GAAP (and includes any hire purchase contract or other arrangement which is similarly treated);

“Financial Quarter” means each period of approximately three (3) months commencing on the day after a Financial Quarter Day and ending on the next following Financial Quarter Day;

“Financial Quarter Day” means 31 March, 30 June, 30 September and 31 December in any year;

“Financial Year” means the annual accounting period of the Sub-Charterers’ Guarantor’s Group ending on 31 December in each year;

“Fleet Book Value” means, at the end of a Relevant Period, the aggregate book value of the Sub-Charterers’ Guarantor’s Group’s owned fleet less depreciation as stated in the most recent financial statements delivered pursuant to this Clause 50;

“Fleet Market Value” means, at the date of calculation, the aggregate of the fair market value of the Sub-Charterers’ Guarantor’s Group’s owned fleet as determined by the Approved Mortgagee;

“Interest” means, in respect of any specified Borrowed Money, all continuing regular or periodic costs, charges and expenses incurred in effecting, servicing or maintaining such Borrowed Money including:

- (a) gross interest, commitment fees, discount and acceptance fees and guarantee, fronting and ancillary facility fees payable or incurred on any form of such Borrowed Money;
- (b) repayment and prepayment premiums payable or incurred in repaying or prepaying such Borrowed Money; and
- (c) the interest element of Finance Leases,

but excluding, in respect of such Borrowed Money, agency and arrangement fees or other up-front fees;

“Interest Expense” means, in respect of the Relevant Period, the aggregate (calculated on a consolidated basis) of:

- (a) the amounts charged and posted (or estimated to be charged and posted) as a current accrual accrued during such period in respect of members of the Sub-Charterers’ Guarantor’s Group by way of Interest on all Borrowed Money, but excluding any amount accruing as interest in-kind (and not as cash pay) to the extent capitalised as principal during such period; and
- (b) net payments in relation to interest rate or currency hedging arrangements in respect of Borrowed Money (after deducting net income in relation to such interest rate or currency hedging arrangements);

“Interest Receivable” means, in respect of any period, the amount of Interest accrued on cash balances of the Sub-Charterers’ Guarantor’s Group (including the amount of interest accrued on the earnings accounts of the Sub-Charterers as the case may be, to the extent that the account holder is entitled to receive such interest) during such period;

“Minimum Liquidity” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the minimum amount of Cash and Cash Equivalent Investments for a Financial Quarter equal to five percent (5%) of Total Debt at any time;

“Related Company” of a person means any Subsidiary of such person, any company or other entity of which such person is a Subsidiary and any Subsidiary of any such company or entity;

“Relevant Period” means each rolling period of twelve (12) months ending on a Financial Quarter;

“Sub-Charterers’ Guarantor’s Group” means the Sub-Charterers’ Guarantor and its Related Companies;

“Subsidiary” of a person means any company or entity directly or indirectly controlled by such person, and for this purpose “control” means either the ownership of more than fifty per cent (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity or the power to direct its policies and management, whether by contract or otherwise;

“Taxes” includes all present and future taxes, levies, imposts, duties, fees or charges of whatever nature together with interest thereon and penalties in respect thereof and **“Taxation”** shall be construed accordingly;

“Total Assets” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of total assets of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as total assets adjusted for the difference between Fleet Market Value and Fleet Book Value and in a consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time;

“Total Debt” means, at any time, the aggregate outstanding principal, capital or nominal amount of all Borrowed Money of the Sub-Charterers’ Guarantor’s Group calculated on a consolidated basis at that time;

“Total Shareholder’s Equity” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of shareholders equity of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as shareholders equity in the consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time;

“US GAAP” means, generally accepted accounting principles in the United States of America;

“Working Capital” means, Current Assets less Current Liabilities (excluding, at any given time, (a) the current portion of long term debt maturing within twelve (12) months and (b) non-cash current liabilities of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as non cash liabilities in the consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time, in relation to Deferred Revenue)

50.2 The Sub-Charterer undertakes with each of the Head-Charterer and the Approved Mortgagee that, during the Charter Period, it will:

50.2.1 maintain an Equity Ratio of not less than: (i) twenty-five percent (25%) from the Financial Quarter Day ending on 30 September 2010 until the Financial Quarter Day ending on 30 June 2013; and (ii) thirty percent (30%) from the Financial Quarter Day ending on 30 June 2013 onwards;

50.2.2 maintain on a consolidated basis the Minimum Liquidity;

50.2.3 maintain on a consolidated basis on each Financial Quarter Day during the Charter Period a Working Capital of not less than zero Dollars (\$0);

50.2.4 maintain a ratio of EBITDA to Interest Expense on a trailing four (4) Financial Quarter basis of not less than: (i) 2.00 to 1.00 from the Financial Quarter Day ending on 30 September 2010 until the Financial Quarter Day ending on 30 June 2013; and (i) 2.50 to 1.00 from the Financial Quarter Day ending on 30 June 2013 onwards;

50.2.5 prepare consolidated financial statements of the Sub-Charterers’ Guarantor in accordance with US GAAP consistently applied in respect of each Financial Year and cause the same to be reported on by its auditors and prepare unaudited consolidated financial statements for the Sub-Charterers’ Guarantor in respect of each Financial Quarter on the same basis as the annual statements and deliver as one copy of the same to the Approved Mortgagee as soon as practicable but not later than one hundred and eighty (180) days (in the case of audited financial statements) or ninety (90) days (in the case of unaudited financial statements) after the end of the financial period to which they relate.

50.3 The covenants in this Clause 50 shall be tested each Financial Quarter.

51. HEAD-CHARTERERS’ RIGHTS TO REMEDY DEFAULTS

51.1 If at any time the Sub-Charterers shall fail to comply with any of the provisions of Clause 47, then (without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event) the Head-Charterers shall be at liberty, but not

- under any obligation, either (a) to procure such insurance and/or entries on a war risks association or protection and indemnity risks association and/or associations and to pay any outstanding premiums (as the case may be) in accordance with such provisions (at the Sub-Charterers' expense), or (b) at any time whilst such failure is continuing to require the Vessel to remain in port, or (as the case may be) to proceed to and remain at a port or other place designated by the Head-Charterers, until such time as such provisions are fully complied with. If the Head-Charterers intend to exercise any right conferred to them by this Clause 51.1, they shall inform the Sub-Charterers thereof.
- 51.2 If the Sub-Charterers fail to comply with any of the provisions of Clause 10, 44 or 45 the Head-Charterers may, without being in any way obliged so to do, or responsible for so doing, and without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event, arrange for the carrying out of such repairs, changes or surveys as they may deem expedient or necessary in order to procure the compliance with such provisions.
- 51.3 If the Sub-Charterers fail to comply with any of the provisions of Clauses 49 or 52 the Head-Charterers may, without being in any way obliged so to do, or responsible for so doing, and without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event, pay and discharge all such debts, damages, liabilities and outgoings as are therein mentioned and/or take any such measures as they may deem expedient or necessary for the purpose of securing the release of the Vessel in order to procure the compliance with such provisions.
- 51.4 If the Sub-Charterers fail to comply with any of their other obligations under this Sub-Charter, the Head-Charterers may, without being in any way obliged to do so or responsible for so doing, and without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event, take such action as they may deem expedient or necessary in order to procure the compliance with such provisions.
- 51.5 Without prejudice to Clauses 52 and 53 all documented claims, costs, damages or expenses (including without limitation, taxes, repair costs, registration fees and insurance premiums) suffered, incurred or paid by the Head-Charterers in connection with the exercise by the Head-Charterers of any of their powers under this Clause 51 together with any Additional Amount or any unpaid sum in respect of all such claims, costs, damages or expenses from the date on which same were suffered, incurred or paid by the Head-Charterers until the date of receipt or recovery thereof (both before and after any relevant judgment), calculated in accordance with Clause 40.7, which shall be payable by the Sub-Charterers to the Head-Charterers on demand.
- 51.6 Notwithstanding any exercise by the Head-Charterers of any of the rights and powers contained in this Clause 51, charter hire shall continue to accrue and be payable by the Sub-Charterers during the period of such exercise.

52. **COSTS AND INDEMNITY**

- 52.1 The Sub-Charterers agree at all times during the Charter Period to indemnify and keep indemnified the Head-Charterers against:
- 52.1.1 any costs, charges or expenses which the Sub-Charterers have agreed to pay under this Sub-Charter and which shall be claimed or assessed against or paid by the Head-Charterers;
- 52.1.2 all documented claims, costs, damages or expenses suffered or incurred by the Head-Charterers (otherwise than arising from the wilful misconduct or gross negligence of the Head-Charterers):
- (a) which result directly or indirectly from claims which may at any time be made on the ground that any design, article or material of or in the Vessel or the operation or use thereof constitutes or is alleged to constitute an infringement of patent or copyright or registered design or other intellectual property right or other right whatsoever;
 - (b) in preventing or attempting to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture or detention of the Vessel, or in securing the release of the Vessel therefrom;
 - (c) in relation to or which result from breach by the Sub-Charterers of any representation, warranty, covenant, agreement, condition or stipulation contained in this Sub-Charter;
 - (d) in relation to the preservation or enforcement or attempted enforcement of any rights conferred upon the Head-Charterers by this Sub-Charter following the occurrence of any Termination Event or other breach by the Sub-Charterers of the terms of this Sub-Charter;
 - (e) in consequence of the Vessel becoming a wreck or obstruction to navigation;
- 52.1.3 any loss, damage or expense incurred by the Head-Charterers as a direct consequence of any arrest or detention of the Vessel by reason of a claim or claims for which the Sub-Charterers are directly responsible or as a consequence of any alleged violation of any convention (including, but not limited to, MARPOL) and the Sub-Charterer shall take all reasonable steps to secure that within a reasonable time the Vessel is released, by providing bail or otherwise as the circumstances may require; and
- 52.1.4 the occurrence of a Termination Event.

The indemnity contained in this Clause 52 shall extend to all amounts payable by the Head-Charterers to the Approved Mortgagee by way of breakage costs as a result of, and any other costs and expenses arising from any of the defaults or events specified above.

- 52.2 The following shall apply if any amount received or recovered by the Head-Charterers in respect of any moneys or liabilities due, owing or incurred by the Sub-Charterers to the Head-Charterers (whether as a result of any judgment or order of any court or in the bankruptcy, administration, reorganisation, liquidation or dissolution of the Sub-Charterers, or by way of damages or any breach of any obligation to make any payment to the Head-Charterers) is received in a currency (the “**Currency of Payment**”) other than Dollars in whatever circumstances and for whatever reason:
- 52.2.1 such receipt or recovery shall only constitute a discharge to the Sub-Charterers to the extent of the amount in Dollars (the “**Dollar Equivalent Receipt**”) which the Head-Charterers are able or would have been able, on the date or dates of receipt by them of such payment or payments in the Currency of Payment (or, in the case of any such date which is not a Banking Day, on the next succeeding Banking Day), to purchase in the foreign exchange market of their choice with the amount or amounts so received in the Currency of Payment.
- 52.2.2 if the Dollar Equivalent Receipt falls short of the amount originally due to the Head-Charterers hereunder, the Sub-Charterers shall indemnify the Head-Charterers against any documented costs or expenses incurred or arising as a result of paying to the Head-Charterers that amount in Dollars certified by the Head-Charterers as necessary to so indemnify the Head-Charterers;
- 52.2.3 this indemnity shall constitute a separate and independent obligation from the other obligations contained in this Sub-Charter, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Head-Charterers from time to time, and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum or sums in respect of amounts due hereunder or under any such judgment or order; and
- 52.2.4 the certificate of the Head-Charterers as to the documented amount of any such costs and expenses aforesaid (which shall be deemed to constitute a loss suffered by the Head-Charterers) shall (save in the case of manifest error) for all purposes be conclusive and binding on the Sub-Charterers.
- 52.3 The indemnities contained in this Clause 52, and each of the other indemnities contained in this Sub-Charter in favour of the Head-Charterers, shall survive any termination or other ending of the Charter Period and any breach of, or repudiation or alleged repudiation by, the Head-Charterers or the Sub-Charterers of this Sub-Charter PROVIDED that, save where a Sub-Charterers’ Termination Event has occurred, any claim under such indemnities must be made within twelve (12) months of the Head-Charterers becoming aware of the matters giving rise to such claim.

52.4 All moneys payable by the Sub-Charterers under this Clause 52 shall be paid on demand.

53. **TERMINATION**

53.1 Each of the following events shall be a Termination Event for the purposes of this Sub-Charter:

53.1.1 if the Sub-Charterers fail to make any payment of hire or other moneys due under this Sub-Charter on its due date, or, in respect of moneys payable on demand (unless otherwise specifically provided) forthwith upon such demand being made and has not remedied such failure within three Banking Days of receipt of notice from the Head-Charterers of such failure;

53.1.2 if the Sub-Charterers are in breach of any one or more of the provisions of this Sub-Charter relating to the Insurances;

53.1.3 if the Sub-Charterers fail to observe or perform any provision of this Sub-Charter (including, without limitation, any Financial Covenant or General Undertaking) other than those referred to in Clauses 53.1.1 and 53.1.2, and, in the reasonable opinion of the Head-Charterers, such default is either not remediable or, in the case of any such default which the Head-Charterers consider capable of remedy, is not remedied to the Head-Charterers' entire satisfaction within seven (7) Banking Days after the Head-Charterers, by written notice to the Sub-Charterers, require the same to be remedied;

53.1.4 if any licence, approval, consent, authorisation or registration at any time necessary for the validity, enforceability or admissibility in evidence of this Sub-Charter, or for the Sub-Charterers to comply with their obligations thereunder, or in connection with the chartering and operation of the Vessel, is revoked, withheld or expires, or is modified in what the Head-Charterers consider a material respect;

53.1.5 if a petition is filed or an order made, (and the Sub-Charterers or the Sub-Charterers' Guarantor or the Manager shall not within twenty one (21) days thereafter have entered a bona fide appeal as a consequence of which such order is stayed) or an effective resolution passed, for the compulsory or voluntary winding-up or dissolution of the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager (other than for the purposes of amalgamation or reconstruction in respect of which the prior written consent of the Head-Charterers have been obtained, such consent not to be unreasonably withheld) or any step analogous thereto is begun in any jurisdiction in relation to the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager, or if the Sub-Charterers, the Sub-Charterers Guarantor or the Manager suspends payment of, or is unable to or admits inability to pay, their debts as they fall due or make any special

- arrangement or composition with their creditors generally or any class of their creditors;
- 53.1.6 if an administrator, administrative receiver, receiver or trustee or similar official is appointed of the whole, or a material part, of the property, assets or undertaking of the Sub-Charterers, the Sub-Charterers Guarantor or the Manager, or if the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager applies for, or consent to, any such appointment or any event occurs or proceeding is taken in any jurisdiction which has an effect equivalent or similar thereto;
- 53.1.7 if an encumbrancer takes possession of, or distress or execution is levied upon, the whole, or a material part, of the property, assets or undertaking of the Sub-Charterers;
- 53.1.8 if any of the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager cease, or threaten to cease, to carry on their business, or (without the prior written consent of the Head-Charterers, which shall not be unreasonably withheld) disposes or threatens to dispose of the whole, or a substantial part, of their property, assets or undertaking;
- 53.1.9 if any representation or warranty made or at any time deemed to be made in this Sub-Charter, or in any certificate or statement in writing delivered or made in connection with this Sub-Charter or in any certificate or statement in writing delivered or made in the negotiations leading up to the conclusion of this Sub-Charter is, incorrect in any material adverse respect, as if such representation or warranty were made as of such time and the same shall not be rectified within 14 days thereafter;
- 53.1.10 if an event of default occurs in relation to any obligation in respect of indebtedness of the Sub-Charterers the amount of which exceeds five hundred thousand United States Dollars (US\$500,000);
- 53.1.11 if it becomes impossible or unlawful for the Sub-Charterers in any material respect to fulfil any of their obligations under this Sub-Charter or for the Head-Charterers to exercise any of the rights vested in them by this Sub-Charter, or this Sub-Charter for any reason becomes invalid or unenforceable or cease to be in full force and effect or the Sub-Charterers repudiate or threaten to repudiate this Sub-Charter;
- 53.1.12 if the Vessel loses her classification status, or loss of classification status is threatened and remedial action is not initiated by the Sub-Charterers within seven (7) days;
- 53.1.13 if the Vessel becomes a Total Loss and the Head-Charterers do not receive, within the time specified in Clause 48.5, a net amount equal to the aggregate of

- (i) the minimum insured value applicable as at the date of the Total Loss and (ii) all other sums (if any) payable by the Sub-Charterers hereunder;
- 53.1.14 if a Termination Event (as defined in each Transaction Sub-Charter) occurs pursuant to or in accordance with the terms of any of the Transaction Sub-Charters or it becomes impossible or unlawful for any of the Transaction Sub-Charterers to fulfil any of their obligations under the Transaction Sub-Charters;
- 53.1.15 if it becomes impossible or unlawful for the Sub-Charterers' Guarantor in any material respect to fulfil any of its obligations under the Sub-Charterers' Guarantee or for the Head-Charterers to exercise any of the rights vested in them by the Sub-Charterers' Guarantee, or the Sub-Charterers' Guarantee for any reason becomes invalid or unenforceable or cease to be in full force and effect or the Sub-Charterers' Guarantor repudiate or threaten to repudiate the Sub-Charterers' Guarantee;
- 53.1.16 if anything is done or suffered or omitted to be done by the Sub-Charterers which, in the reasonable opinion of the Head-Charterers or the Approved Mortgagee, may imperil the registration of the Vessel or of any Security Documents, the Approved Mortgage or any other security constituted by the Approved Mortgage and if in the opinion of the Head-Charterers it will not adversely affect the Head-Charterers, or the security of the Approved Mortgage, it is remedied before the expiry of notice from the Head-Charterers requiring the same to be remedied;
- 53.1.17 if the Manager ceases, without the Head-Charterers approval, to be the managers of the Vessel;
- 53.1.18 there is a Material Adverse Effect; or
- 53.1.19 if the Vessel is detained under any arrest (which for the purpose of this Clause 53.1.19 means any arrest (whether or not registered), attachment, detention, restraint, impounding or seizure under any distress, execution or other process not attributable to any act or default of the Owners or the Head-Charterers or is impounded and is not released within fourteen (14) days.
- 53.2 The Sub-Charterers undertake promptly to advise the Head-Charterers of the occurrence of any Termination Event and of the steps (if any) which are being taken to remedy it.
54. **HEAD CHARTERERS' RIGHTS ON TERMINATION EVENT**
- 54.1 A Termination Event shall constitute (as the case may be) either a repudiatory breach of, or breach of condition by the Sub-Charterers under this Sub-Charter or an agreed terminating event the occurrence of which will (in any such case) entitle the Head-Charterers thereupon and at any time thereafter, so long as the same has not been

- remedied, to take any one or more of the actions specified in Clauses 54.2 to 54.5 inclusive.
- 54.2 The Head-Charterers may:
- 54.2.1 proceed by appropriate court action or actions to enforce performance of this Sub-Charter and/or to recover damages for the breach thereof; and/or
- 54.2.2 take any and all such action as they may consider necessary or desirable to cure any such Termination Event. If the Head-Charterers thereby incur any expenditure or liability in curing the same, or otherwise incur any expenditure or liability in respect of the Vessel which should have been incurred by the Sub-Charterers, the Head-Charterers shall be entitled (without prejudice to their other rights hereunder) to recover such expenditure, or an amount equal to such liability, from the Sub-Charterers together with any Additional Amount (as well after as before judgment) calculated in accordance with the provisions of Clause 40.7 from the date such expenditure or liability suffered or incurred by the Head-Charterers until the date of receipt of payment thereof by the Head-Charterers.
- 54.3 The Head-Charterers may at their option, by notice to the Sub-Charterers, declare the Sub-Charterers to be in default and terminate the letting and hiring of the Vessel under this Sub-Charter and withdraw the Vessel from the service of the Sub-Charterers either immediately or on such date as the Head-Charterers may specify, in which event:
- 54.3.1 the Vessel shall no longer be in the possession of the Sub-Charterers with the consent of the Head-Charterers;
- 54.3.2 the Sub-Charterers shall, at the Sub-Charterers' expense, redeliver the Vessel or cause the Vessel to be redelivered to the Head-Charterers with all reasonable dispatch in the manner and in the condition required by this Sub-Charter, and the provisions of Clause 15 permitting the Sub-Charterers to have the use of the Vessel for the relevant additional period specified in that Clause in the circumstances mentioned in that Clause shall take effect subject to the Sub-Charterers' obligation under this Clause 54.3.2 to redeliver the Vessel with all reasonable despatch;
- 54.3.3 without prejudice to the Sub-Charterers' obligation under Clause 54.3.2 above, the Head-Charterers shall be entitled, without legal process (or any obligation to institute legal process), to retake the Vessel (wherever she may be) together with all outfit, machinery, equipment, spare parts, appliances, furniture, fittings, furnishings, consumable stores, unused lubricating oils and bunkers on board the Vessel irrespective of whether the Sub-Charterers, any further sub-charterer or any other person/s are in possession of the Vessel, and for that purpose the Head-Charterers or their agent may enter upon any dock, pier or other premises where the Vessel may be, and the Sub-Charterers agree to indemnify the Head-

Charterers for any liability, damages, costs or expenses whatsoever caused or incurred thereby.

- 54.4 Following the redelivery or retaking of possession of the Vessel, the Head-Charterers may sell the Vessel by public or private sale, in which case the Head-Charterers shall apply the proceeds of sale in or towards payment to the Approved Mortgagee of such sum as shall be required to discharge the Approved Mortgage, or otherwise dispose of, hold, use, operate, charter to others or keep idle the Vessel, as the Head-Charterers in their sole discretion may determine, all free and clear of any rights of the Sub-Charterers and without any duty to account to the Sub-Charterers with respect to such action or inaction or for any proceeds with respect thereto.
- 54.5 The Head-Charterers may recover the amounts specified in this Clause 54, without prejudice to the Head-Charterers' rights to claim damages and/or to exercise any other right or remedy to which the Head-Charterers may be entitled to under this Sub-Charter or at law, in equity or otherwise as a consequence of the occurrence of a Termination Event.
- 54.6 Termination of the chartering of the Vessel and/or repossession of the Vessel by the Head-Charterers shall not relieve the Sub-Charterers from any of their obligations under this Sub-Charter and the Sub-Charterers shall continue to comply with their obligations under this Sub-Charter until such time as the Head-Charterers has unconditionally received all amounts payable by the Sub-Charterers under Clause 55.

55. **TERMINATION PAYMENTS**

- 55.1 Following termination of the chartering of the Vessel hereunder pursuant to Clause 54.3 or after any repudiation of this Sub-Charter by the Sub-Charterers which is accepted by the Head-Charterers, whether or not amounting to a Termination Event, the Sub-Charterers shall be and become obliged to pay to the Head-Charterers the following amounts:
- 55.1.1 forthwith upon such termination all arrears of hire which are due and payable under Clause 40 before the date of termination of the chartering of the Vessel hereunder and all other moneys then payable to the Head-Charterers, together, with an Additional Amount (as well after as before judgement) in respect thereof calculated in accordance with Clause 40.7 from the date on which such hire or other sums fell due for payment to the date of payment;
- 55.1.2 on demand all documented costs and expenses of and in connection with or arising out of the retaking of possession of the Vessel by the Head-Charterers or redelivery of the Vessel to the Head-Charterers pursuant to this Sub-Charter including (without limitation), if a Termination Event has occurred, all costs and expenses suffered or incurred in moving, storing, laying up, insuring and maintaining, the Vessel and in carrying out any works or modifications required

so as to enable the Vessel to comply with the requirements of Clause 14, together with any Additional Amount calculated in accordance with the provisions of Clause 40.7;

- 55.1.3 on demand all other documented costs, damages, expenses (including without limitation breakage and other costs incurred by the Owners under its financing arrangements with the Approved Mortgagee that result from any prepayment following termination being made other than on the date scheduled by such financing arrangements or from any default thereunder arising from such termination, and any legal fees and expenses on a full indemnity basis) of whatsoever nature suffered or incurred by the Owners as a result of such termination or repudiation, together with, if a Termination Event has occurred, any Additional Amount in respect thereof calculated in accordance with the provisions of Clause 40.7;
- 55.1.4 on demand all other documented costs, damages, expenses arising from such termination, and any legal fees and expenses on a full indemnity basis of whatsoever nature suffered or incurred by the Head-Charterers as a result of such termination or repudiation, together with any Additional Amount calculated in accordance with the provisions of Clause 40.7; and
- 55.1.5 on demand effect the Call Option pursuant to the terms of the Acquisition Agreement and pay the amount due thereunder, provided however that if for any reason whatsoever the Sub-Charterers fail to effect the Call Option on demand by the Head-Charterers, the Sub-Charterers shall pay to the Head-Charterers a sum equal to the Call Option Sum which would be payable if the Call Option had been exercised at the time of such demand.
- 55.2 The Sub-Charterers will be entitled in accordance with the terms of the Acquisition Agreement, by notice in writing to the Owners and the Head-Charterers, should the Head-Charterers make a demand on the Sub-Charterers under Clause 55.1.5, to require the Owners and the Head-Charterers to transfer title to the Vessel to the Sub-Charterers or to a company nominated by them, upon, or at any time after, payment by the Sub-Charterers to the Head-Charterers of the sum set out in Clause 55.1.5 and all other sums (if any) payable under Clauses 55.1.1, 55.1.2, 55.1.3, 55.1.4 and any other provision of this Sub-Charter. Such transfer will be on the basis that the Owners and the Head-Charterers make no condition, term, representation or warranty, express or implied (and whether statutory or otherwise) with respect to the Vessel, and the transfer will be strictly on an "as is/where is" basis, free from the Approved Mortgage and any other Encumbrance (save for Permitted Encumbrances) created as a result of any act or omission of the Owners or the Head Charterers.

56. **APPROVED MORTGAGEE**

- 56.1 The Sub-Charterers hereby acknowledge that the Owners intend to obtain a loan from Marfin Egnatia Bank S.A. of Greece (referred to in this Sub-Charter as the “**Approved Mortgagee**”) to enable the Owners to finance or refinance the purchase of the Vessel and enter into the Head-Charter.
- 56.2 It is noted and agreed that the said loan will be secured by, *inter alia*, a mortgage and as the case may be collateral deed or deeds of covenant over the Vessel (referred to in this Sub-Charter as an “**Approved Mortgage**”), and an assignment or assignments of all the Owners and the Head-Charterers’ rights in the Insurances, earnings and the proceeds of any requisition of the Vessel and of the benefit of this Sub-Charter.
- 56.3 The Sub-Charterers hereby confirm their agreement to the provision by the Head-Charterers of the securities referred to in Clause 56.2 and undertake, at the request of the Owners and/or the Head-Charterers and (with respect to the Sub-Charterers’ own costs, including legal costs) at the Sub-Charterers’ expense, to execute all such documents and instruments and to do all such acts and things as the Approved Mortgagee may reasonably require to create and perfect, or otherwise in relation to, such security, and hereby acknowledges that their rights as Sub-Charterers of the Vessel shall in all respects be subordinate to the rights of the Approved Mortgagee. Without limitation, the Sub-Charterers will on request by the Head-Charterers additionally assign all their rights in the obligatory Insurances and the freights, hires or other earnings of the Vessel to the Head-Charterers, or to the Approved Mortgagee as assignee of the Head-Charterers’ rights under this Sub-Charter, as the Approved Mortgagee may require, as security for the performance by the Sub-Charterers of their obligations under this Sub-Charter and the Time Charter.

57. **QUIET ENJOYMENT**

- 57.1 If the Vessel is arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Sub-Charterers, the Sub-Charterers shall take all reasonable steps to secure that within a reasonable time the release of the Vessel, by providing bail or otherwise as the circumstances may require.
- 57.2 The Head-Charterers’ hereby covenant and undertake that, so long as no Termination Event shall have occurred and be continuing, in consequence whereof the Head-Charterers have duly given notice to withdraw the Vessel and terminate this Sub-Charter as provided in this Sub-Charter, the Head-Charterers shall not, and shall procure that no person for whose acts or omissions the Head-Charterers, are responsible, including any mortgagee of the Vessel, shall, disturb or interfere with quiet and peaceful use, possession and enjoyment of the Vessel by the Sub-Charterers subject to and upon the terms of this Sub-Charter or any sub-charterer.

57.3 The Head-Charterers shall not without the Sub-Charterers' prior written consent create which shall not be unreasonably withheld or delayed or suffer to exist any Encumbrance over the Vessel other than an Approved Mortgage, subject always to the provisions of this Sub-Charter.

57.4 If the Vessel is arrested or otherwise detained by reason of a claim or claims for which the Owners or the Head-Charterers are directly responsible, the Owners and the Head-Charterers shall take all reasonable steps to secure that within a reasonable time the Vessel is released, by providing bail or otherwise as the circumstances may require. In such circumstances, the Head-Charterers shall indemnify the Sub-Charterers against any loss, damage or expense incurred by the Sub-Charterers (including hire paid under this Sub-Charter) as a direct consequence of such arrest or detention.

58. **SALVAGE**

All salvage and towage and all proceeds from derelicts shall be for the Sub-Charterers' benefit and the cost of repairing damage or discharging liabilities occasioned thereby shall be borne by the Sub-Charterers.

59. **GENERAL AVERAGE**

59.1 General Average, if any, shall be adjusted according to the York-Antwerp Rules 2004 or any subsequent modification thereof current at the time of the casualty. The hire shall not contribute to General Average. If for any reason the hull and machinery insurance will not contribute to the General Average, then any liability shall be for the Sub-Charterers' account and not the Head-Charterers' and/or the Owners' account.

59.2 The Sub-Charterers hereby undertake to pay any salvor's award not paid by the Vessel's insurers due to gross negligence or wilful misconduct of the Sub-Charterers and/or the Manager.

60. **BILLS OF LADING**

The Sub-Charterers are to procure that all bills of lading issued for carriage of goods under this Sub-Charter shall contain a Paramount Clause incorporating any legislation relating to the carrier's liability for cargo compulsorily applicable in the trade. If no such legislation exists, the bills of lading shall incorporate the English Carriage of Goods by Sea Act 1971 (or as the same may be amended or replaced). The bills of lading shall also contain the amended New Jason Clause and the Both-to-Blame Collision Clause.

61. **REDELIVERY**

If on redelivery of the Vessel the requirements of this Charter relating to the condition of the Vessel shall not have been satisfied, the Head-Charterers shall be entitled to carry out such works or repairs to the Vessel, and otherwise take such actions, as shall be necessary

to cause such requirements to be satisfied and shall be entitled to recover from the Sub-Charterers on demand the costs (if any) so incurred.

62. **ASSIGNMENT AND TRANSFER OF TITLE TO VESSEL**

62.1 The Head-Charterers shall not assign all or any of their rights and benefits under this Sub-Charter or any part thereof and/or to transfer title in the Vessel to any person or persons without the prior written consent of the Sub-Charterers, such consent not to be unreasonably withheld, conditioned or delayed, provided that such consent shall not be required in the case of an assignment of this Sub-Charter or transfer of title in the Vessel (with the benefit and burden of this Sub-Charter) to the Approved Mortgagee.

62.2 The Sub-Charterers agree and undertake to enter into such usual documents (including, without limitation, novation agreements and any documents supplemental thereto) as the Head-Charterers shall reasonably require to complete or perfect the transfer of the Vessel (with the benefit and burden of this Sub-Charter) pursuant to Clause 62.1.

63. **NOTICES**

63.1 Every notice or demand under this Sub-Charter shall be in the English language and in writing and may be given or made by letter, e-mail or fax.

63.2 Any accounts, demand, consent, record, election or notice required or permitted to be given hereunder shall be in writing and sent by prepaid airmail letter post, telex or delivered by hand addressed as follows:

63.2.1 if to the Owners to: c/o Prime Shipping Holding Ltd
17-21B Agias Zonis, Eleni Court
P.O.Box 54970
Limassol CY-3729
Republic of Cyprus
Fax No.: + 357 25 746926
E-mail: info@lemissoler.com

63.2.2 if to the Head-Charterers to: c/o Lemissoler Shipmanagement Limited
17-21B Agias Zonis, Eleni Court
P.O.Box 54970
Limassol CY-3729
Republic of Cyprus
Fax No.: + 357 25 746926
E-mail: info@lemissoler.com

63.2.3 if to the Sub-Charterers to: c/o Newlead Bulkers S.A.
83 Akti Miaouli & Flessa
Piraeus 18538
Greece
46

Fax No.: +30 213 0148609
E-mail: Pkallifidas@newleadholdings.com

Marfin Egnatia Bank S.A
24B Kifissias Avenue
151 25 Maroussi
Attiki, Greece
Fax No: +30 210 6896358

63.2.4 if to the Approved Mortgagee to:

or in each case to such other person or address or addresses as any party may notify in writing to the other parties thereto. Every notice or demand shall, except so far as otherwise required by this Sub-Charter, be deemed to have been received in the case of a telefax at the time of despatch thereof and in the case of a letter two (2) days after the posting of the same by prepaid local post or seven (7) days after the posting of the same by prepaid airmail post, as may be appropriate, and in the case of delivery by hand, on delivery.

64. **FEES AND EXPENSES**

The Sub-Charterers shall pay on demand all costs, charges, expenses, claims, liabilities, losses, duties and fees (including, but not limited to, the fees and expenses of all legal and insurance advisers) incurred by that Owners and the Head-Charterers in the negotiation, preparation, printing, execution, enforcement and registration of this Sub-Charter and the Head-Charter and any other document entered into pursuant to or in connection with this Sub-Charter (save for any of the Security Documents or any loan agreement or finance document entered into by the Owners or the Head-Charterers).

65. **MISCELLANEOUS**

- 65.1 No delay or omission by the either party to exercise any right, power or remedy vested in it under this Sub-Charter or by law shall impair such right, power or remedy, or be construed as a waiver of, or as an acquiescence in, any default by the other party.
- 65.2 If either party on any occasion agrees to waive any such right, power or remedy, such waiver shall not in any way preclude or impair any further exercise thereof or the exercise of any other right, power or remedy.
- 65.3 Any waiver by either party of any provision of this Sub-Charter, and any consent or approval given by either party, shall only be effective if given in writing and then only strictly for the purpose and upon the terms for which it is given.
- 65.4 This Sub-Charter may not be amended or varied orally but only by an instrument signed by each of the parties hereto.

- 65.5 The rights, powers and remedies of each party contained in this Sub-Charter are cumulative and not exclusive of each other nor of any other rights, powers or remedies conferred by law, and may be exercised from time to time and as often as that party may think fit.
- 65.6 If at any time one or more of the provisions of this Sub-Charter is or become invalid, illegal or unenforceable in any respect under any law by which it may be governed or affected, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired as a result.
- 65.7 This Sub-Charter may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute but one and the same instrument.
- 65.8 The termination or expiry of this Sub-Charter shall be without prejudice to rights accrued due between the parties prior to the date of termination or expiry and to any claim that either party may have.
- 65.9 All terms and conditions of this Sub-Charter shall be kept private and confidential.

AS WITNESS the hands of the duly authorised representatives of the parties hereto the day and year first before written.

For and on behalf of

For and on behalf of

PRIME LAKE MARITIME LTD

BRAZIL HOLDINGS LTD.

By: /s/ Petros Monogios

By: /s/ Peter Kallifidas

SCHEDULE 1
CONDITIONS PRECEDENT

Part A: Sub-Charterers

1. The Head-Charterers and their legal advisers shall be satisfied on the Delivery Date that:
 - 1.1 no Termination Event has occurred and is continuing or would result from the chartering of the Vessel to the Sub-Charterers under this Sub-Charter;
 - 1.2 each of the representations and warranties contained in Clause 33 is true and correct on the Delivery Date by reference to the facts and circumstances then subsisting;
 - 1.3 each of the financial covenants contained in Clause 50 is true and correct on the Delivery Date by reference to the facts and circumstances then subsisting;
 - 1.4 no Encumbrances (save for Permitted Encumbrances) are subsisting on the Vessel;
 - 1.5 the Head-Charterers have received payment of the Advance Payment and the first month's hire due on the Delivery Date;
 - 1.6 the Head-Charterers or their legal advisers, have received in form and substance satisfactory to them, of:
 - 1.6.1 an extract from the relevant companies register in the country of incorporation of the Sub-Charterers confirming that the Sub-Charterers are in good standing and the authority of named officers of the Sub-Charterers to bind the Sub-Charterers;
 - 1.6.2 a copy, certified as true by the secretary or a director of the Sub-Charterers, of any power of attorney duly issued by the Sub-Charterers and in favour of any person or persons executing the Sub-Charter;
 - 1.6.3 the Manager's Undertaking duly executed by the Manager in a form acceptable to the Approved Mortgagee;
 - 1.6.4 evidence, by way of copy policies, cover notes, letters of undertaking and certificates of entry, that insurance in respect of the Vessel has been effected in accordance with the provisions of this Sub-Charter and that the respective interests of the Owners, Head-Charterers and the Approved Mortgagee have been or will be noted thereon, together with letters of undertaking from the relevant brokers and protection and indemnity and war risks associations and a favourable written opinion from insurance advisers nominated by the Approved Mortgagee, at the Sub-Charterers' expense, as to the quality of the insurance of the Vessel;
 - 1.6.5 a copy, certified as true by the secretary or a director of the Sub-Charterers, of the management agreement in relation to the Vessel, in terms acceptable to the Approved Mortgagee, entered into by the Sub-Charterers with the Manager;

- 1.6.6 a copy, certified as true by the secretary or a director of the Sub-Charterers, of any Time Charter in relation to the Vessel, in terms acceptable to the Approved Mortgagee;
- 1.6.7 evidence satisfactory to the Head-Charterers in all respects:
- (a) of compliance by the Sub-Charterers, the Manager, and the Vessel with the requirements of MARPOL 73/78, the ISM Code and of the ISPS Code;
 - (b) that the Vessel is classed with the Classification Society with the highest possible notation for such type of vessel and with its classification free from all recommendations, qualifications, requirements, notations and average damage;
 - (c) that the Vessel is in compliance with all applicable laws, regulations and requirements (statutory or otherwise) applicable to ships registered under the Flag State with all required trading certificates (valid and current) and engaged in the service in which it is or is to be engaged;
 - (d) that the Sub-Charterers' Guarantor has entered into the Sub-Charterers' Guarantee together with evidence that the Sub-Charterers' Guarantor has the full power and corporate authority to enter into the Sub-Charterers' Guarantee and, where required, evidence that all information requested by the Approved Mortgagee in connection with the Sub-Charterers' Guarantor or the Sub-Charterers' Guarantee has been provided (and is acceptable) to the Approved Mortgagee;
 - (e) that the Sub-Charterers' Guarantor has entered into the Warrants Instrument with Lemissoler Corporate Management Limited in the agreed form;
 - (f) that the Sub-Charterers have entered into such Security Documents (to which it is a party) and all documents, instruments, notices and acknowledgements thereto required under those Security Documents, and, where required, evidence that such Security Documents have been duly registered or are capable of immediate registration with the required priority in the appropriate register and acceptable to the Approved Mortgagee; and
 - (g) the Sub-Charterers have made payment of all fees and expenses (including legal fees and expenses) due and payable on or before the Delivery Date.

Part B: Head-Charterers

2. The Sub-Charterers and their legal advisers shall be satisfied on the Delivery Date that:
- 2.1 each of the representations and warranties made by the Head-Charterers contained in Clause 33 is true and correct on the Delivery Date by reference to the facts and circumstances then subsisting; and
 - 2.2 no Encumbrances (save for Permitted Encumbrances) are subsisting on the Vessel;
 - 2.3 the Sub-Charterers or their legal advisers, have received in form and substance satisfactory to them, of:
 - 2.3.1 an extract from the relevant companies register in the country of incorporation of the Head-Charterers confirming that the Head-Charterers are in good standing and the authority of named officers of the Head-Charterers to bind the Head-Charterers;
 - 2.3.2 a copy, certified as true by the secretary or a director of the Head-Charterers, of any power of attorney duly issued by the Head-Charterers and in favour of any person or persons executing the Head-Charter;
 - 2.3.3 evidence satisfactory to the Sub-Charterers:
 - (a) the Vessel has been unconditionally delivered by the Seller to the Owner in accordance with the MOA and accepted by the Owner as being in all respects in compliance with the provisions of the MOA to include certified true copies of the protocol of delivery and acceptance signed by the Seller and of all other documents to be provided by the Seller upon delivery of the Vessel pursuant to the MOA;
 - (b) the Vessel has been unconditionally delivered by the Owners to the Head-Charterers in accordance with the Head-Charter and accepted by the Head-Charterers as being in all respects in compliance with the provisions of the Head-Charter to include certified true copies of the protocol of delivery and acceptance signed by the Head-Charterers and of all other documents to be provided by the Owners upon delivery of the Vessel pursuant to the Head-Charter;
 - (c) that the Vessel is in the absolute ownership of the Owner as the sole, legal and beneficial owner of the Vessel free from all Encumbrances save for Permitted Encumbrances; and
 - 2.3.4 confirmation from the agents in England nominated by the Head-Charterers in the Multipartite Agreement for the acceptance of service of process, that they consent to such nomination.
-

SCHEDULE 2
REPRESENTATIONS AND WARRANTIES

Part A: Sub-Charterers

1. The Sub-Charterers represent and warrant that the following matters are true at the date of this Charter and shall be true on the Delivery Date:
 - 1.1 the Sub-Charterers:
 - 1.1.1 are a company duly incorporated with limited liability in the Republic of Liberia, validly existing and in good standing under the laws of the Republic of Liberia;
 - 1.1.2 have full power to own their property and assets and to carry on their business as it is now being conducted and to charter the Vessel from the Head-Charterers hereunder;
 - 1.1.3 have complied with all statutory and other requirements relative to their business;
 - 1.2 entry into and performance by the Sub-Charterers of this Sub-Charter is within the corporate powers of the Sub-Charterers and has been duly authorised by all necessary corporate actions and approvals;
 - 1.3 entry into and performance by the Sub-Charterers of this Sub-Charter does not and will not
 - 1.3.1 contravene in any respect any law, regulation or contractual restriction which does, or may, bind the Sub-Charterers any of their assets;
 - 1.3.2 result in the creation or imposition of any encumbrance on any of their assets in favour of any party other than the Head-Charterers and the Approved Mortgagee;
 - 1.4 all licences, authorisations, approvals and consents (if any) necessary for the entry into, performance, validity, enforceability or admissibility in evidence of this Sub-Charter have been obtained and are in full force and effect;
 - 1.5 this Sub-Charter constitutes the Sub-Charterers' legal, valid and binding obligations and is enforceable in accordance with its terms;
 - 1.6 no litigation, arbitration, tax claim or administrative proceeding is current or pending or threatened, which, if adversely determined, would have a materially detrimental effect on the financial condition of the Sub-Charterers;

- 1.7 no Termination Event has occurred and is continuing;
- 1.8 the choice of English law to govern this Sub-Charter and the submission by the Sub-Charterers to the jurisdiction of the English courts are valid and binding;
- 1.9 all payments to be made by the Sub-Charterers under this Sub-Charter may be made free and clear of and without deduction or withholding for or on account of any taxes, and this Sub-Charter is not liable to any registration charge or any stamp, documentary or similar taxes imposed by any authority, including without limitation, in connection with the admissibility in evidence thereof;
- 1.10 the obligations of the Sub-Charterers under this Sub-Charter will rank at least *pari passu* with all of their other unsecured and unsubordinated obligations and liabilities from time to time outstanding, other than as preferred by the statute; and
- 1.11 each of the financial covenants contained in Clause 50 is true and correct by reference to the facts and circumstances then subsisting.
- Part B: Head-Charterers**
2. The Head-Charterers represent and warrant that the following matters are true at the date of this Sub-Charter and shall be true on the Delivery Date:
- 2.1 the Head-Charterers:
- 2.1.1 are a company duly incorporated with limited liability, validly existing and in good standing under the laws of the Republic of the Marshall Islands; and
- 2.1.2 have full power to charter the Vessel to the Sub-Charterers hereunder, to own their property and assets and to carry on their business as it is now being conducted.
- 2.2 the entry into and performance by the Head-Charterers of this Sub-Charter is within the corporate powers of the Head-Charterers and has been duly authorised by all necessary corporate actions and approvals.
- 2.3 all licences, authorisations, approvals and consents necessary for the Head-Charterers' entry into and performance of this Sub-Charter have been obtained and are in full force and effect, true copies have been delivered to the Sub-Charterers and there has been no breach of any condition or restriction imposed in this respect.
- 2.4 the Head-Charterers further represent and warrant and undertake that they are and shall throughout the Charter Period remain as single-purpose company, chartering no other ship than the Vessel.

SCHEDULE 3
NOTICE OF ASSIGNMENT/LOSS PAYABLE CLAUSE

SCHEDULE 4
FORM OF PROTOCOL OF DELIVERY AND ACCEPTANCE

By this Protocol of Delivery and Acceptance dated [•]2010 it is hereby confirmed that the m.v. [•] having IMO Number [•] was delivered to and accepted by [•] (the “**Sub-Charterer**”) pursuant to and under a bareboat charter (the “Sub-Charter”) dated [•] and made between [•] (the “**Head-Charterer**”) as head-charterer and the Sub-Charterer as sub-charterer, at [00:00] hours G.M.T. on the [•] day of [•] 2010.

Signed by

for and on behalf of
[•]

Signed by

for and on behalf of
[•]

SCHEDULE 5
CALCULATION OF HIRE RATE
m.v. "BRAZIL"

Month	Monthly Rate (US\$)
1 — 36	422,536
37 — 96	253,521

First issued by
The Baltic and International Maritime Council (BIMCO), Copenhagen in 1974
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1. Shipbroker		BIMCO STANDARD BAREBOAT CHARTER CODE NAME: "BARECON 2001" 	
		2. Place and date 23 NOVEMBER 2010 	
3. Owners/Head-Charterers/Place of business (Cl. 1) PRIME TIME MARITIME LTD Trust Company Complex Ajeltake Road Ajeltake Island MH96960, Marshall Islands		4. Bareboat Sub-Charterers/Place of business (Cl. 1) CHINA HOLDINGS LTD 80 Broad Street Monrovia Liberia	
5. Vessel's name, call sign and flag (Cl. 1 and 3) CHINA, A8PW2, LIBERIA			
6. Type of Vessel BULK CARRIER		7. GT/NT 73,115/47,445	
8. When/Where built 1992, VENICE, ITALY		9. Total DWT (abt.) in metric tons on summer freeboard 137,000	
10. Classification Society (Cl. 3) BUREAU VERITAS		11. Date of last special survey by the Vessel's classification society 27 APRIL 2010	
12. Further particulars of Vessel (also indicate minimum number of months' validity of class certificates agreed acc. to Cl. 3) LOA: 262.00m, BEAM: 43.00m, GMT SULZER - 6RTA72 CLASS CERTIFICATES VALID			
13. Port or Place of delivery (Cl. 3) WORLDWIDE		14. Time for delivery (Cl. 4) See Clause 34	15. Cancelling date (Cl. 5) See Clause 36
16. Port or Place of redelivery (Cl. 15) WORLDWIDE		17. No. of months' validity of trading and class certificates upon redelivery (Cl. 15) VALID AT AS THE TIME OF DELIVERY.	
18. Running days' notice if other than stated in Cl. 4 N/A		19. Frequency of dry-docking (Cl. 10(a)) AS PER CLASS REQUIREMENTS	
20. Trading limits (Cl. 6) WORLDWIDE WITHIN INSTITUTE WARRANTY LIMITS BUT HEAD-CHARTERERS TO BE INFORMED IN ADVANCE FOR ANY CALL TO ISRAEL, CUBA AND NORTH CYPRUS			
21. Charter period (Cl. 2) 96 MONTHS FROM DELIVERY		22. Charter hire (Cl. 11) SEE CLAUSE 40	
23. New class and other safety requirements (state percentage of Vessel's insurance value acc. to Box 20)(Cl. 10(a)(ii)) N/A			
24. Rate of interest payable acc. to Cl. 11 (f) and, if applicable, acc. to PART IV N/A		25. Currency and method of payment (Cl. 11) USD/BANK TRANSFER	

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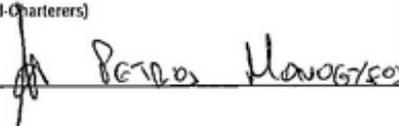
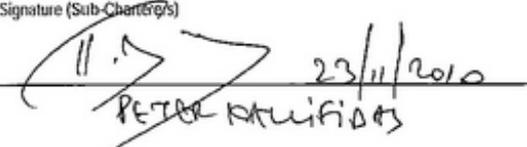


"BARECON 2001" STANDARD BAREBOAT CHARTER

PART I

26. Place of payment; also state beneficiary and bank account (Cl. 11) Account Name: PRIME MARITIME HOLDING LTD IBAN No.: GR5802803140000000280587428 Bank: Marfin Egnatia Bank SA SWIFT: EGNAGR2T	27. Bank guarantee/bond (sum and place) (Cl. 24) (optional) N/A
28. Mortgage(s), if any (state whether 12(a) or (b) applies; if 12(b) applies state date of Financial Instrument and name of Mortgagee(s)/Place of business) (Cl. 12) See Clause 56	29. Insurance (hull and machinery and war risks) (state value acc. to Cl. 13(f) or, if applicable, acc. to Cl. 14(k)) (also state if Cl. 14 applies) See Clause 47
30. Additional insurance cover, if any, for Owners' account limited to (Cl. 13(b)) or, if applicable, Cl. 14(g))	31. Additional insurance cover, if any, for Charterers' account limited to (Cl. 13(b)) or, if applicable, Cl. 14(g))
32. Latent defects (only to be filled in if period other than stated in Cl. 3) N/A	33. Brokerage commission and to whom payable (Cl. 27) N/A
34. Grace period (state number of clear banking days) (Cl. 28) See Clauses 53, 54 and 55	35. Dispute Resolution (state 30(a), 30(b) or 30(c); if 30(c) agreed Place of Arbitration <u>must</u> be stated (Cl. 30) London Arbitration
36. War cancellation (indicate countries agreed) (Cl. 26(f)) N/A	
37. Newbuilding Vessel (indicate with "yes" or "no" whether PART III applies) (optional) NO	38. Name and place of Builders (only to be filled in if PART III applies) N/A
39. Vessel's Yard Building No. (only to be filled in if PART III applies) N/A	40. Date of Building Contract (only to be filled in if PART III applies) N/A
41. Liquidated damages and costs shall accrue to (state party acc. to Cl. 1) a) N/A b) N/A c) N/A	
42. Hire/Purchase agreement (indicate with "yes" or "no" whether PART IV applies) (optional) NO	43. Bareboat Charter Registry (indicate with "yes" or "no" whether PART V applies) (optional) NO
44. Flag and Country of the Bareboat Charter Registry (only to be filled in if PART V applies) N/A	45. Country of the Underlying Registry (only to be filled in if PART V applies) N/A
46. Number of additional clauses covering special provisions, if agreed Additional Clauses 32 to 65 inclusive, as attached hereto.	

PREAMBLE - It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include PART I and PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict but no further. It is further mutually agreed that PART III and/or PART IV and/or PART V shall only apply and only form part of this Charter if expressly agreed and stated in Boxes 37, 42 and 43. If PART III and/or PART IV and/or PART V apply, it is further agreed that in the event of a conflict of conditions, the provisions of PART I and PART II shall prevail over those of PART III and/or PART IV and/or PART V to the extent of such conflict but no further.

Signature (Owners/Head-Charterers) 	Signature (Sub-Charterers)  23/11/2010 PETER KALLIFIDIS
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PART II
"BARECON 2001" Standard Bareboat Charter

<p>1. Definitions</p> <p>In this Charter, the following terms shall have the meanings hereby assigned to them: <i>"The Owners"</i> shall mean the party identified in <u>Box 3</u>; <i>"The Charterers"</i> shall mean the party identified in <u>Box 4</u>; <i>"The Vessel"</i> shall mean the vessel named in <u>Box 5</u> and with particulars as stated in <u>Boxes 6 to 12</u>. <i>"Financial Instrument"</i> means the mortgage, deed of covenant or other such financial security instrument as annexed to this Charter and stated in <u>Box 24</u>. Any references herein to "this Charter", "the Owner" and "the Charterers" shall be interpreted and construed to be a reference to "this Sub-Charter", the Head-Charterers" and the "Sub-Charterers" respectively, as the context may require.</p> <p>2. Charter Period</p> <p>In consideration of the hire detailed in <u>Box 22</u>, the Owners have agreed to let and the Charterers have agreed to hire the Vessel for the period stated in <u>Box 21</u> ("The Charter Period").</p> <p>3. Delivery (See Clauses 34, 36, 37, 38) <i>(not applicable when Part III applies, as indicated in Box 27)</i> (a) —The Owners shall before and at the time of delivery exercise due diligence to make the Vessel seaworthy and in every respect ready in hull, machinery and equipment for service under this Charter. The Vessel shall be delivered by the Owners and taken over by the Charterers at the port or place indicated in <u>Box 13</u> in such ready safe berth as the Charterers may direct. (b) —The Vessel shall be properly documented on delivery in accordance with the laws of the flag State indicated in <u>Box 9</u> and the requirements of the classification society stated in <u>Box 10</u>. The Vessel upon delivery shall have her survey cycles up to date and trading and class certificates valid for at least the number of months agreed in <u>Box 12</u>. (c) —The delivery of the Vessel by the Owners and the taking over of the Vessel by the Charterers shall constitute a full performance by the Owners of all the Owners' obligations under this Clause 3, and thereafter the Charterers shall not be entitled to make or assert any claim against the Owners on account of any conditions, representations or warranties expressed or implied with respect to the Vessel but the Owners shall be liable for the cost of but not the time for repairs or renewals occasioned by latent defects in the Vessel, her machinery or appurtenances, existing at the time of delivery under this Charter, provided such defects have manifested themselves within twelve (12) months after delivery unless otherwise provided in <u>Box 32</u>.</p> <p>4. Time for Delivery <i>(not applicable when Part III applies, as indicated in Box 37)</i> The Vessel shall not be delivered before the date indicated in <u>Box 14</u> without the Charterers' consent and the Owners shall exercise due diligence to deliver the Vessel not later than the date indicated in <u>Box 15</u>. Unless otherwise agreed in <u>Box 18</u>, the Owners shall give the Charterers not less than thirty (30) running days' preliminary and not less than fourteen (14) running days' definite notice of the date on which the Vessel is expected to be ready for delivery. The Owners shall keep the Charterers closely advised of possible changes in the Vessel's position.</p> <p>5. Cancelling (See Clause 36) <i>(not applicable when Part III applies, as indicated in Box 37)</i> (a) —Should the Vessel not be delivered latest by the cancelling date indicated in <u>Box 15</u>, the Charterers shall have the option of cancelling this Charter by giving the Owners notice of cancellation within thirty-six (36) running hours after the cancelling date stated in <u>Box 15</u>, failing which this Charter shall remain in full force and effect.</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68</p>	<p>(b) — If it appears that the Vessel will be delayed beyond the cancelling date, the Owners may, as soon as they are in a position to state with reasonable certainty the day on which the Vessel should be ready, give notice thereof to the Charterers asking whether they will exercise their option of cancelling, and the option must then be declared within one hundred and sixty-eight (168) running hours of the receipt by the Charterers of such notice or within thirty-six (36) running hours after the cancelling date, whichever is the earlier. If the Charterers do not then exercise their option of cancelling, the seventh day after the readiness date stated in the Owners' notice shall be substituted for the cancelling date indicated in <u>Box 15</u> for the purpose of this Clause 5. (c) — Cancellation under this Clause 5 shall be without prejudice to any claim the Charterers may otherwise have on the Owners under this Charter.</p> <p>6. Trading Restrictions</p> <p>The Vessel shall be employed in lawful trades for the carriage of suitable lawful merchandise within the trading limits indicated in <u>Box 20</u>. The Charterers undertake not to employ the Vessel or suffer the Vessel to be employed otherwise than in conformity with the terms of the contracts of insurance (including any warranties expressed or implied therein) without first obtaining the consent of the insurers to such employment and complying with such requirements as to extra premium or otherwise as the insurers may prescribe. The Charterers also undertake not to employ the Vessel or suffer her employment in any trade or business which is forbidden by the law of any country to which the Vessel may sail or is otherwise illicit or in carrying illicit or prohibited goods or in any manner whatsoever which may render her liable to condemnation, destruction, seizure or confiscation. Notwithstanding any other provisions contained in this Charter it is agreed that nuclear fuels or radioactive products or waste are specifically excluded from the cargo permitted to be loaded or carried under this Charter. This exclusion does not apply to radio-isotopes used or intended to be used for any industrial, commercial, agricultural, medical or scientific purposes provided the Owners' prior approval has been obtained to loading thereof.</p> <p>7. Surveys on Delivery and Redelivery <i>(not applicable when Part III applies, as indicated in Box 37)</i> The Owners and Charterers shall each appoint surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of delivery and redelivery hereunder. The Owners shall bear all expenses of the On-hire Survey including loss of time, if any, and the Charterers shall bear all expenses of the Off-hire Survey including loss of time, if any, at the daily equivalent to the rate of hire or pro rata thereof.</p> <p>8. Inspection</p> <p>The Owners shall have the right at any time after giving reasonable notice to the Charterers to inspect or survey the Vessel or instruct a duly authorised surveyor to carry out such survey on their behalf:- (a) to ascertain the condition of the Vessel and satisfy themselves that the Vessel is being properly repaired and maintained, so that it maintains her classification status with the classification society free from overdue recommendations affecting the same. The costs and fees for such inspection or survey shall be paid by the Owners unless the Vessel is found to require repairs or maintenance in order to achieve the condition so provided; (b) in dry-dock if the Charterers have not dry-docked Her in accordance with <u>Clause 10(a)</u>. The costs and fees for such inspection or survey shall be paid by the Charterers; and</p>	<p>69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138</p>
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PART II
"BARECON 2001" Standard Bareboat Charter

(c) for any other commercial reason they consider necessary (provided it does not unduly interfere with the commercial operation of the Vessel). The costs and fees for such inspection and survey shall be paid by the Owners.	139 140 141 142 143	or authority thereof, to enable the Vessel, without penalty or charge, lawfully to enter, remain at, or leave any port, place, territorial or contiguous waters of any country, state or municipality in performance of this Charter without any delay. This obligation shall apply whether or not such requirements have been lawfully imposed by such government or division or authority thereof.	205 206 207 208 209 210 211 212
All time used in respect of inspection, survey or repairs shall be for the Charterers' account and form part of the Charter Period.	144 145 146	The Charterers shall make and maintain all arrangements by bond or otherwise as may be necessary to satisfy such requirements at the Charterers' sole expense and the Charterers shall indemnify the Owners against all consequences whatsoever (including loss of time) for any failure or inability to do so.	213 214 215 216 217 218
The Charterers shall also permit the Owners to inspect the Vessel's log books whenever requested and shall whenever required by the Owners furnish them with full information regarding any casualties or other accidents or damage to the Vessel.	147 148 149 150 151	(b) <u>Operation of the Vessel</u> - The Charterers shall at their own expense and by their own procurement man, victual, navigate, operate, supply, fuel and, whenever required, repair the Vessel during the Charter Period and they shall pay all charges and expenses of every kind and nature whatsoever incidental to their use and operation of the Vessel under this Charter, including annual flag State fees and any foreign general municipality and/or state taxes. The Master, officers and crew of the Vessel shall be the servants of the Charterers for all purposes whatsoever, even if for any reason appointed by the Owners.	219 220 221 222 223 224 225 226 227 228 229 230
9. Inventories, Oil and Stores	152	Charterers shall comply with the regulations regarding officers and crew in force in the country of the Vessel's flag or any other applicable law. Vessel not to force ice or follow icebreaker or enter ice-bound port. Charterers to follow for entire duration of Charter (including any extension) Rightship vetting.	231 232 233 234
A complete inventory of the Vessel's entire equipment, outfit including spare parts, appliances and of all consumable stores on board the Vessel shall be made by the Charterers in conjunction with the Owners on delivery and again on redelivery of the Vessel. The Charterers and the Owners, respectively, shall at the time of delivery and redelivery take over and pay for all bunkers, lubricating-oil, unbroached provisions, paints, ropes and other consumable stores (excluding- including spare parts) in the said Vessel at the then current market prices at the ports of delivery and redelivery, respectively. The Charterers shall ensure that all spare parts listed in the inventory and used during the Charter Period are replaced at their expense prior to redelivery of the Vessel. The Head Charterers will deliver to the Sub Charterers the remaining on board bunkers and lubricants at the time of delivery at no cost. The Sub Charterers will redeliver the Vessel with same quantities and grades of bunkers and lubricants as on delivery. The Head Charterers at the time of redelivery will pay for the remaining bunkers at prices as per last invoice.	153 154 155 156 157 158 159 160 161 162 163 164 165 166 167	(c) The Charterers shall keep the Owners and the mortgagee(s) advised of the intended employment, planned dry-docking and major repairs of the Vessel, as reasonably required.	235 236 237
10. Maintenance and Operation (See also Clause 42)	168	(d) <u>Flag and Name of Vessel</u> - During the Charter Period, the Charterers shall have the liberty to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag. The Charterers shall also have the liberty, with the Owners' consent, which shall not be unreasonably withheld, to change the flag and/or the name of the Vessel during the Charter Period. Painting and re-painting, instalment and re-instalment, registration and re-registration, if required by the Owners, shall be at the Charterers' expense and time.	238 239 240 241 242 243 244 245 246 247 248
(a) <u>Maintenance and Repairs</u> - During the Charter Period the Vessel shall be in the full possession and at the absolute disposal for all purposes of the Charterers and under their complete control in every respect. The Charterers shall maintain the Vessel, her machinery, boilers, appurtenances and spare parts in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice and, except as provided for in Clause 14(i), if applicable, at their own expense they shall at all times keep the Vessel's Class fully up to date with the Classification Society indicated in Box 10 and maintain all other necessary certificates in force at all times.	169 170 171 172 173 174 175 176 177 178 179 180 181 182	(e) <u>Changes to the Vessel</u> - Subject to Clause 10(a)(vi) and Clause 46, the Charterers shall make no structural changes in the Vessel or changes in the machinery, boilers, appurtenances or spare parts thereof without in each instance first securing the Owners' written approval thereof. If the Owners so agree, the Charterers shall, if the Owners so require, restore the Vessel to its former condition before the termination of this Charter.	249 250 251 252 253 254 255 256
(ii) <u>New Class and Other Safety Requirements</u> - In the event of any improvement, structural changes or new equipment becoming necessary for the continued operation of the Vessel by reason of new class requirements or by compulsory legislation costing (excluding the Charterers' loss of time) more than the percentage stated in Box 23, or if Box 23 is left blank, 6 per cent. of the Vessel's insurance value as stated in Box 28, then the extent, if any, to which the rate of hire shall be varied and the rate in which the cost of compliance shall be shared between the parties concerned in order to achieve a reasonable distribution thereof as between the Owners and the Charterers having regard, inter alia, to the length of the period remaining under this Charter shall, in the absence of agreement, be referred to the dispute resolution method agreed in Clause 30. (See Clause 45)	183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200	(f) <u>Use of the Vessel's Outfit, Equipment and Appliances</u> - The Charterers shall have the use of all outfit, equipment, and appliances on board the Vessel at the time of delivery, provided the same or their substantial equivalent shall be returned to the Owners on redelivery in the same good order and condition as when received, ordinary wear and tear excepted. The Charterers shall from time to time during the Charter Period replace such items of equipment as shall be so damaged or worn as to be unfit for use. The Charterers are to procure that all repairs to or replacement of be effected damaged, worn or lost parts or equipment be effected in such manner (both as regards workmanship and quality of materials) as not to diminish the value of the Vessel. The Charterers have the right to fit additional equipment at their expense and risk but the Charterers shall remove such equipment and fittings at the end of the period if	257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273
(iii) <u>Financial Security</u> - The Charterers shall maintain financial security or responsibility in respect of third party liabilities as required by any government, including federal, state or municipal or other division	201 202 203 204		



PART II
"BARECON 2001" Standard Bareboat Charter

requested by the Owners. Any equipment including radio	274	provisions of the Financial Instrument and agree to	346
equipment on hire on the Vessel at time of delivery shall	275	acknowledge this in writing in any form that may be	347
be kept and maintained by the Charterers and the	276	required by the mortgagee(s). The Owners warrant that	348
Charterers shall assume the obligations and liabilities	277	they have not effected any mortgage(s) other than stated	349
of the Owners under any lease contracts in connection	278	in <u>Box 28</u> and that they shall not agree to any	350
therewith and shall reimburse the Owners for all	279	amendment of the mortgage(s) referred to in <u>Box 28</u> or	351
expenses incurred in connection therewith, also for any	280	effect any other mortgage(s) without the prior consent	352
new equipment required in order to comply with radio	281	of the Charterers, which shall not be unreasonably	353
regulations.	282	withheld.	354
(g) <u>Periodical Dry-Docking</u> - The Charterers shall dry-	283	*) (Optional, <u>Clauses 12(a) and 12(b)</u> are alternatives;	355
dock the Vessel and clean and paint her underwater	284	indicate alternative agreed in <u>Box 28</u>).	356
parts whenever the same may be necessary, but not and	285		
as per Class requirements		13. Insurance and Repairs (See also Clause 47)	357
less than once during the period stated in <u>Box 19</u> or, if	286	(a) During the Charter Period the Vessel shall be kept	358
<u>Box 19</u> has been left blank, every sixty (60) calendar	287	insured by the Charterers at their expense against hull	359
months after delivery or such other period as may be	288	and machinery, war and Protection and Indemnity risks	360
required by the Classification Society or flag State.	289	(and any risks against which it is compulsory to insure	361
		for the operation of the Vessel, including maintaining	362
11. Hire (See also Clause 40)	290	financial security in accordance with sub-clause	363
(a) The Charterers shall pay hire due to the Owners	291	10(a)(iii)) in such form as the Owners shall in writing	364
punctually in accordance with the terms of this Charter	292	approve, which approval shall not be un-reasonably	365
in respect of which time shall be of the essence.	293	withheld. Such insurances shall be arranged by the	366
(b) The Charterers shall pay to the Owners for the hire	294	Charterers to protect the interests of both the Owners	367
of the Vessel a lump sum in the amount indicated in	295	and the Charterers and the mortgagee(s) (if any), and	368
<u>Box 22</u> which shall be payable not later than every thirty	296	The Charterers shall be at liberty to protect under such	369
(30) running days in advance, the first lump sum being	297	insurances the interests of any managers they may	370
payable on the date and hour of the Vessel's delivery to	298	appoint. Insurance policies shall cover the Owners and	371
the Charterers. Hire shall be paid continuously	299	the Charterers according to their respective interests.	372
throughout the Charter Period.	300	Subject to the provisions of the Financial Instrument, if	373
(c) Payment of hire shall be made in cash without	301	any, and the approval of the Owners and the insurers,	374
discount in the currency and in the manner indicated in	302	the Charterers shall effect all insured repairs and shall	375
<u>Box 25</u> and at the place mentioned in <u>Box 26</u> .	303	undertake settlement and reimbursement from the	376
(d) Final payment of hire, if for a period of less than	304	insurers of all costs in connection with such repairs as	377
thirty (30) running days, shall be calculated proportionally	305	well as insured charges, expenses and liabilities to the	378
according to the number of days and hours remaining	306	extent of coverage under the insurances herein provided	379
before redelivery and advance payment to be effected	307	for.	380
accordingly.	308	The Charterers also to remain responsible for and to	381
(e) Should the Vessel be lost or missing, hire shall	309	effect repairs and settlement of costs and expenses	382
cease from the date and time when she was lost or last	310	incurred thereby in respect of all other repairs not	383
heard of. The date upon which the Vessel is to be treated	311	covered by the insurances and/or not exceeding any	384
as lost or missing shall be ten (10) days after the Vessel	312	possible franchise(s) or deductibles provided for in the	385
was last reported or when the Vessel is posted as	313	insurances.	386
missing by Lloyd's, whichever occurs first. Any hire paid	314	All time used for repairs under the provisions of sub-	387
in advance to be adjusted accordingly.	315	clause 13(a) and for repairs of latent defects according	388
(f) Any delay in payment of hire shall entitle the	316	to <u>Clause 3(e)</u> above, including any deviation, shall be	389
Owners to interest at the rate per annum as agreed	317	for the Charterers' account.	390
in <u>Box 24</u> . If <u>Box 24</u> has not been filled in, the three months	318	(b) If the conditions of the above insurances permit	391
Interbank offered rate in London (LIBOR or its successor)	319	additional insurance to be placed by the parties, such	392
for the currency stated in <u>Box 25</u> , as quoted by the British	320	cover shall be limited to the amount for each party set	393
Bankers' Association (BBA) on the date when the hire	321	out in <u>Box 30</u> and <u>Box 31</u> , respectively. The Owners or	394
fell due, increased by 2 per cent., shall apply.	322	the Charterers as the case may be shall immediately	395
(g) Payment of interest due under sub-clause 11(f)	323	furnish the other party with particulars of any additional	396
shall be made within seven (7) running days of the date	324	insurance effected, including copies of any cover notes	397
of the Owners' invoice specifying the amount payable	325	or policies and the written consent of the insurers of	398
or, in the absence of an invoice, at the time of the next	326	any such required insurance in any case where the	399
hire payment date.	327	consent of such insurers is necessary.	400
		(c) The Charterers shall upon the request of the	401
12. Mortgage (See Clause 56)	328	Owners, provide information and promptly execute such	402
(only to apply if <u>Box 28</u> has been appropriately filled in)	329	documents as may be required to enable the Owners to	403
*) (a) The Owners warrant that they have not effected	330	comply with the insurance provisions of the Financial	404
any mortgage(s) of the Vessel and that they shall not	331	Instrument. Security Documents referred to in Part A	405
effect any mortgage(s) without the prior consent of the	332	of Schedule I of the Additional Clauses.	
Charterers, which shall not be unreasonably withheld.	333	(d) Subject to the provisions of the Financial Instru-	406
*) (b) The Vessel chartered under this Charter is financed	334	ment, if any, should the Vessel become an actual,	407
by a mortgage according to the Financial Instrument.	335	constructive, compromised or agreed total loss under	408
The Charterers undertake to comply, and provide such	336	the insurances required under sub-clause 13(a), all	409
information and documents to enable the Owners to	337	insurance payments for such loss shall be paid to the	410
comply, with all such instructions or directions in regard	338	Owners who shall distribute the moneys between the	411
to the employment, insurances, operation, repairs and	339	Owners and the Charterers according to their respective	412
maintenance of the Vessel as laid down in the Financial	340	interests. The Charterers undertake to notify the Owners	413
Instrument or as may be directed from time to time during	341	and the mortgagee(s), if any, of any occurrences in	414
the currency of the Charter by the mortgagee(s) in	342	consequence of which the Vessel is likely to become a	415
conformity with the Financial Instrument. The Charterers	343	total loss as defined in this Clause.	416
confirm that, for this purpose, they have acquainted	344	(e) The Owners shall upon the request of the	417
themselves with all relevant terms, conditions and	345	Charterers, promptly execute such documents as may	418



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be required to enable the Charterers to abandon the Vessel to insurers and claim a constructive total loss.	419	distribute the moneys between themselves and the Charterers according to their respective interests.	493
(f) For the purpose of insurance coverage against hull and machinery and war risks under the provisions of sub-clause 13(a), the value of the Vessel is the sum indicated in Box 29.	420	(f) If the Vessel becomes an actual, constructive, compromised or agreed total loss under the insurances arranged by the Owners in accordance with sub-clause 14(a), this Charter shall terminate as of the date of such loss.	494
14. Insurance, Repairs and Classification	421	(j) The Charterers shall upon the request of the Owners, promptly execute such documents as may be required to enable the Owners to abandon the Vessel to the insurers and claim a constructive total loss.	495
<i>(Optional, only to apply if expressly agreed and stated in Box 29, in which event Clause 13 shall be considered deleted).</i>	422	(k) For the purpose of insurance coverage against hull and machinery and war risks under the provisions of sub-clause 14(a), the value of the Vessel is the sum indicated in Box 29.	496
(a) During the Charter Period the Vessel shall be kept insured by the Owners at their expense against hull and machinery and war risks under the form of policy or policies attached hereto. The Owners and/or insurers shall not have any right of recovery or subrogation against the Charterers on account of loss of or any damage to the Vessel or her machinery or appurtenances covered by such insurance, or on account of payments made to discharge claims against or liabilities of the Vessel or the Owners covered by such insurance. Insurance policies shall cover the Owners and the Charterers according to their respective interests.	423	(l) Notwithstanding anything contained in sub-clause 14(a), it is agreed that under the provisions of Clause 14, if applicable, the Owners shall keep the Vessel's Class fully up-to-date with the Classification Society indicated in Box 10 and maintain all other necessary certificates in force at all times.	497
(b) During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against Protection and Indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with sub-clause 10(a)(iii)) in such form as the Owners shall in writing approve which approval shall not be unreasonably withheld.	424		498
(c) In the event that any act or negligence of the Charterers shall vitiate any of the insurance herein provided, the Charterers shall pay to the Owners all losses and indemnify the Owners against all claims and demands which would otherwise have been covered by such insurance.	425		499
(d) The Charterers shall, subject to the approval of the Owners or Owners' Underwriters, effect all insured repairs, and the Charterers shall undertake settlement of all miscellaneous expenses in connection with such repairs as well as all insured charges, expenses and liabilities, to the extent of coverage under the insurances provided for under the provisions of sub-clause 14(a). The Charterers to be secured reimbursement through the Owners' Underwriters for such expenditures upon presentation of accounts.	426		500
(e) The Charterers to remain responsible for and to effect repairs and settlement of costs and expenses incurred thereby in respect of all other repairs not covered by the insurances and/or not exceeding any possible franchise or deductibles provided for in the insurances.	427		501
(f) All time used for repairs under the provisions of sub-clauses 14(d) and 14(e) and for repairs of latent defects according to Clause 3 above, including any deviation, shall be for the Charterers' account and shall form part of the Charter Period. The Owners shall not be responsible for any expenses as are incident to the use and operation of the Vessel for such time as may be required to make such repairs.	428		502
(g) If the conditions of the above insurances permit additional insurance to be placed by the parties such cover shall be limited to the amount for each party set out in Box 30 and Box 31, respectively. The Owners or the Charterers as the case may be shall immediately furnish the other party with particulars of any additional insurance effected, including copies of any cover notes or policies and the written consent of the insurers of any such required insurance in any case where the consent of such insurers is necessary.	429		503
(h) Should the Vessel become an actual, constructive, compromised or agreed total loss under the insurances required under sub-clause 14(a), all insurance payments for such loss shall be paid to the Owners, who shall	430		504
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any loss, damage or expense incurred by the Owners arising out of or in relation to the operation of the Vessel by the Charterers, and against any lien of whatsoever nature arising out of an event occurring during the Charter Period. If the Vessel be arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Charterers, the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail. Without prejudice to the generality of the foregoing, the Charterers agree to indemnify the Owners against all consequences or liabilities arising from the Master, officers or agents signing Bills of Lading or other documents.	562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577	contain a paramount clause incorporating any legislation relating to carrier's liability for passengers and their luggage compulsorily applicable in the trade; if no such legislation exists, the passenger tickets shall incorporate the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, and any protocol thereto.	832 833 834 835 836 837 838 839
(b) If the Vessel be arrested or otherwise detained by reason of a claim or claims against the Owners, the Owners shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail. In such circumstances the Owners shall indemnify the Charterers against any loss, damage or expense incurred by the Charterers (including hire paid under this Charter) as a direct consequence of such arrest or detention.	578 579 580 581 582 583 584 585 586	23. Delete as applicable.	840 841 842 843 844 845 846
18. Lien The Owners to have a lien upon all cargoes, sub-hires and sub-freights belonging or due to the Charterers or any sub-charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.	587 588 589 590 591 592 593	24. Bank Guarantee <i>(Optional, only to apply if Box 27 filled in)</i> The Charterers undertake to furnish, before delivery of the Vessel, a first class bank guarantee or bond in the sum and at the place as indicated in Box 27 as guarantee for full performance of their obligations under this Charter.	840 841 842 843 844 845 846
19. Salvage All salvage and towage performed by the Vessel shall be for the Charterers' benefit and the cost of repairing damage occasioned thereby shall be borne by the Charterers.	594 595 596 597 598	25. Requisition/Acquisition (a) In the event of the Requisition for Hire of the Vessel by any governmental or other competent authority (hereinafter referred to as "Requisition for Hire") irrespective of the date during the Charter Period when "Requisition for Hire" may occur and irrespective of the length thereof and whether or not it be for an indefinite or a limited period of time, and irrespective of whether it may or will remain in force for the remainder of the Charter Period, this Charter shall not be deemed thereby or thereupon to be frustrated or otherwise terminated and the Charterers shall continue to pay the stipulated hire in the manner provided by this Charter until the time when the Charter would have terminated pursuant to any of the provisions hereof always provided however that in the event of "Requisition for Hire" any Requisition Hire or compensation received or receivable by the Owners shall be payable to the Charterers during the remainder of the Charter Period or the period of the "Requisition for Hire" whichever be the shorter.	847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866
20. Wreck Removal In the event of the Vessel becoming a wreck or obstruction to navigation the Charterers shall indemnify the Owners against any sums whatsoever which the Owners shall become liable to pay and shall pay in consequence of the Vessel becoming a wreck or obstruction to navigation.	599 600 601 602 603 604 605	(b) In the event of the Owners being deprived of their ownership in the Vessel by any Compulsory Acquisition of the Vessel or requisition for title by any governmental or other competent authority (hereinafter referred to as "Compulsory Acquisition"), then, irrespective of the date during the Charter Period when "Compulsory Acquisition" may occur, this Charter shall be deemed terminated as of the date of such "Compulsory Acquisition". In such event Charter Hire to be considered as earned and to be paid up to the date and time of such "Compulsory Acquisition". See Clause 48.	867 868 869 870 871 872 873 874 875 876 877
21. General Average The Owners shall not contribute to General Average.	606 607	26. War (a) For the purpose of this Clause, the words "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.	878 879 880 881 882 883 884 885 886 887 888 889 890 891 892
22. Assignment, Sub-Charter and Sale – See Clauses 42 and 62 (a) The Charterers shall not assign this Charter nor sub-charter the Vessel on a bareboat basis except with the prior consent in writing of the Owners, which shall not be unreasonably withheld, and subject to such terms and conditions as the Owners shall approve. (b) The Owners shall not sell the Vessel during the currency of this Charter except with the prior written consent of the Charterers, which shall not be unreasonably withheld, and subject to the buyer accepting an assignment of this Charter.	608 609 610 611 612 613 614 615 616 617 618	(b) The Vessel, unless the written consent of the Owners be first obtained, shall not continue to or go through any port, place, area or zone (whether of land or sea), or any waterway or canal, where it reasonably appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Owners, may be, or are likely to be, exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, the Owners shall have the right to require the Vessel to leave such area.	893 894 895 896 897 898 899 900 901 902 903 904
23. Contracts of Carriage ^{*)} (a) The Charterers are to procure that all documents issued during the Charter Period evidencing the terms and conditions agreed in respect of carriage of goods shall contain a paramount clause incorporating any legislation relating to carrier's liability for cargo compulsorily applicable in the trade; if no such legislation exists, the documents shall incorporate the Hague-Visby Rules. The documents shall also contain the New Jason Clause and the Both-to-Blame Collision Clause. ^{*)} (b) The Charterers are to procure that all passenger tickets issued during the Charter Period for the carriage of passengers and their luggage under this Charter shall	619 620 621 622 623 624 625 626 627 628 629 630 631		



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(c) The Vessel shall not load contraband cargo, or to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent's right of search and/or confiscation.	705 706 707 708 709 710 711 712		
(d) If the insurers of the war risks insurance, when Clause 14 is applicable, should require payment of premiums and/or calls because, pursuant to the Charterers' orders, the Vessel is within, or is due to enter and remain within, any area or areas which are specified by such insurers as being subject to additional premiums because of War Risks, then such premiums and/or calls shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due.	713 714 715 716 717 718 719 720 721		
(e) The Charterers shall have the liberty:	722		
(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Vessel sails, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;	723 724 725 726 727 728 729 730 731		
(ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;	732 733 734 735		
(iii) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.	736 737 738 739 740 741 742 743 744		
(f) In the event of outbreak of war (whether there be a declaration of war or not) (i) between any two or more of the following countries: the United States of America; Russia; the United Kingdom; France; and the People's Republic of China; (ii) between any two or more of the countries stated in Box 36, both the Owners and the Charterers shall have the right to cancel this Charter, whereupon the Charterers shall redeliver the Vessel to the Owners in accordance with Clause 16, if the Vessel has cargo on board after discharge thereof at destination, or if debarred under this Clause from reaching or entering it at a near, open and safe port as directed by the Owners, or if the Vessel has no cargo on board, at the port at which the Vessel then is or if at sea at a near, open and safe port as directed by the Owners. In all cases hire shall continue to be paid in accordance with Clause 11 and except as aforesaid all other provisions of this Charter shall apply until redelivery.	745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763		
27—Commission	764		
The Owners to pay a commission at the rate indicated in Box 33 to the Brokers named in Box 33 on any hire paid under the Charter, if no rate is indicated in Box 33, the commission to be paid by the Owners shall cover the actual expenses of the Brokers and a reasonable fee for their work.	765 766 767 768 769 770		
If the full hire is not paid owing to breach of the Charter by either of the parties the party liable therefor shall indemnify the Brokers against their loss of commission. Should the parties agree to cancel the Charter, the Owners shall indemnify the Brokers against any loss of commission but in such case the commission shall not exceed the brokerage on one year's hire.	771 772 773 774 775 776 777		
28. Termination (See Clauses 53)	778		
(a) Charterers' Default	779		
The Owners shall be entitled to withdraw the Vessel from the service of the Charterers and terminate the Charter with immediate effect by written notice to the Charterers if:	780 781 782		
(i) the Charterers fail to pay hire in accordance with Clause 11. However, where there is a failure to make punctual payment of hire due to oversight, negligence, errors or omissions on the part of the Charterers or their bankers, the Owners shall give the Charterers written notice of the number of clear banking days stated in Box 34 (as recognised at the agreed place of payment) in which to rectify the failure, and when so rectified within such number of days following the Owners' notice, the payment shall stand as regular and punctual. Failure by the Charterers to pay hire within the number of days stated in Box 34 of their receiving the Owners' notice as provided herein, shall entitle the Owners to withdraw the Vessel from the service of the Charterers and terminate the Charter without further notice;	783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799		
(ii) the Charterers fail to comply with the requirements of:	800		
(1) Clause 6 (Trading Restrictions)	801		
(2) Clause 13(a) (Insurance and Repairs)	802		
provided that the Owners shall have the option, by written notice to the Charterers, to give the Charterers a specified number of days grace within which to rectify the failure without prejudice to the Owners' right to withdraw and terminate under this Clause if the Charterers fail to comply with such notice;	803 804 805 806 807 808		
(iii) the Charterers fail to rectify any failure to comply with the requirements of sub-clause 10(e)(i) (Maintenance and Repairs) as soon as practically possible after the Owners have requested them in writing so to do and in any event so that the Vessel's insurance cover is not prejudiced.	809 810 811 812 813 814 815		
(b) Owners' Default	816		
If the Owners shall by any act or omission be in breach of their obligations under this Charter to the extent that the Charterers are deprived of the use of the Vessel and such breach continues for a period of fourteen (14) running days after written notice thereof has been given by the Charterers to the Owners, the Charterers shall be entitled to terminate this Charter with immediate effect by written notice to the Owners.	817 818 819 820 821 822 823 824		
(c) Loss of Vessel	825		
This Charter shall be deemed to be terminated if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss. For the purpose of this sub-clause, the Vessel shall not be deemed to be lost unless she has either become an actual total loss or agreement has been reached with her underwriters in respect of her constructive, compromised or arranged total loss or if such agreement with her underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred.	826 827 828 829 830 831 832 833 834 835 836		
(d) Either party shall be entitled to terminate this Charter with immediate effect by written notice to the other party in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of the other party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.	837 838 839 840 841 842 843 844 845		
(e) The termination of this Charter shall be without prejudice to all rights accrued due between the parties prior to the date of termination and to any claim that either party might have.	846 847 848 849		
29. Repossession (See Clauses 54 and 55)	850		
In the event of the termination of this Charter in	851		



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<p>accordance with the applicable provisions of Clause 29, the Owners shall have the right to repossess the Vessel from the Charterers at her current or next port of call, or at a port or place convenient to them without hindrance or interference by the Charterers, courts or local authorities. Pending physical repossession of the Vessel in accordance with this Clause 29, the Charterers shall hold the Vessel as gratuitous bailee only to the Owners. The Owners shall arrange for an authorised represent- ative to board the Vessel as soon as reasonably practicable following the termination of the Charter. The Vessel shall be deemed to be repossessed by the Owners from the Charterers upon the boarding of the Vessel by the Owners' representative. All arrangements and expenses relating to the settling of wages, disembarkation and repatriation of the Charterers' Master, officers and crew shall be the sole responsibility of the Charterers.</p> <p>30. Dispute Resolution</p> <p>*) (a) This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceed- ings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement. Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator. In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.</p> <p>*) (b) This Contract shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.</p>	<p>852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869</p> <p>870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925</p>	<p>*) (c) This Contract shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there. (d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract. In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:- (i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation. (ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator. (iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties. (iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest. (v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration. (vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses. (vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration. <i>(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)</i> (e) If <u>Box 35</u> in Part I is not appropriately filled in, sub-clause 30(a) of this Clause shall apply. <u>Sub-clause 30(d)</u> shall apply in all cases.</p> <p>*) <u>Sub-clauses 30(a), 30(b) and 30(c)</u> are alternatives; indicate alternative agreed in <u>Box 35</u>.</p> <p>31. Notices</p> <p>(a) Any notice to be given by either party to the other party shall be in writing and may be sent by fax, telex, registered or recorded mail or by personal service. (b) The address of the Parties for service of such communication shall be as stated in <u>Boxes 3 and 4</u> respectively, Clause 63.</p>	<p>926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993</p>
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"BARECON 2001" Standard Bareboat Charter

**OPTIONAL
PART**

**PART III
PROVISIONS TO APPLY FOR NEWBUILDING VESSELS ONLY**

(Optional, only to apply if expressly agreed and stated in Box 37)

1. Specifications and Building Contract	1	and upon and after such acceptance, subject to Clause	69
(a) The Vessel shall be constructed in accordance with the Building Contract (hereafter called "the Building Contract") as annexed to this Charter, made between the Builders and the Owners and in accordance with the specifications and plans annexed thereto, such Building Contract, specifications and plans having been countersigned as approved by the Charterers.	2	4(d), the Charterers shall not be entitled to make any claim against the Owners in respect of any conditions, representations or warranties, whether express or implied, as to the seaworthiness of the Vessel or in respect of delay in delivery.	70
(b) No change shall be made in the Building Contract or in the specifications or plans of the Vessel as approved by the Charterers as aforesaid, without the Charterers' consent.	3		71
(c) The Charterers shall have the right to send their representative to the Builders' Yard to inspect the Vessel during the course of her construction to satisfy themselves that construction is in accordance with such approved specifications and plans as referred to under sub-clause (a) of this Clause.	4		72
(d) The Vessel shall be built in accordance with the Building Contract and shall be of the description set out therein. Subject to the provisions of sub-clause 2(e)(ii) hereunder, the Charterers shall be bound to accept the Vessel from the Owners, completed and constructed in accordance with the Building Contract, on the date of delivery by the Builders. The Charterers undertake that having accepted the Vessel they will not thereafter raise any claims against the Owners in respect of the Vessel's performance or specification or defects, if any. Nevertheless, in respect of any repairs, replacements or defects which appear within the first 12 months from delivery by the Builders, the Owners shall endeavour to compel the Builders to repair, replace or remedy any defects or to recover from the Builders any expenditure incurred in carrying out such repairs, replacements or remedies. However, the Owners' liability to the Charterers shall be limited to the extent the Owners have a valid claim against the Builders under the guarantee clause of the Building Contract (a copy whereof has been supplied to the Charterers). The Charterers shall be bound to accept such sums as the Owners are reasonably able to recover under this Clause and shall make no further claim on the Owners for the difference between the amount(s) so recovered and the actual expenditure on repairs, replacement or remedying defects or for any loss of time incurred. Any liquidated damages for physical defects or deficiencies shall accrue to the account of the party stated in Box 41(a) or if not filled in shall be shared equally between the parties. The costs of pursuing a claim or claims against the Builders under this Clause (including any liability to the Builders) shall be borne by the party stated in Box 41(b) or if not filled in shall be shared equally between the parties.	5		73
	6		74
	7	(b) If for any reason other than a default by the Owners under the Building Contract, the Builders become entitled under that Contract not to deliver the Vessel to the Owners, the Owners shall upon giving to the Charterers written notice of Builders becoming so entitled, be excused from giving delivery of the Vessel to the Charterers and upon receipt of such notice by the Charterers this Charter shall cease to have effect.	75
	8		76
	9	(c) If for any reason the Owners become entitled under the Building Contract to reject the Vessel the Owners shall, before exercising such right of rejection, consult the Charterers and thereupon	77
	10		78
	11	(i) if the Charterers do not wish to take delivery of the Vessel they shall inform the Owners within seven (7) running days by notice in writing and upon receipt by the Owners of such notice this Charter shall cease to have effect; or	79
	12	(ii) if the Charterers wish to take delivery of the Vessel they may by notice in writing within seven (7) running days require the Owners to negotiate with the Builders as to the terms on which delivery should be taken and/or refrain from exercising their right to rejection and upon receipt of such notice the Owners shall commence such negotiations and/or take delivery of the Vessel from the Builders and deliver her to the Charterers;	80
	13	(iii) in no circumstances shall the Charterers be entitled to reject the Vessel unless the Owners are able to reject the Vessel from the Builders;	81
	14	(iv) if this Charter terminates under sub-clause (b) or (c) of this Clause, the Owners shall thereafter not be liable to the Charterers for any claim under or arising out of this Charter or its termination.	82
	15	(d) Any liquidated damages for delay in delivery under the Building Contract and any costs incurred in pursuing a claim therefor shall accrue to the account of the party stated in Box 41(c) or if not filled in shall be shared equally between the parties.	83
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	44	3.— Guarantee Works	111
	45	If not otherwise agreed, the Owners authorise the Charterers to arrange for the guarantee works to be performed in accordance with the building contract terms, and hire to continue during the period of guarantee works. The Charterers have to advise the Owners about the performance to the extent the Owners may request.	112
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	52	4.— Name of Vessel	118
2.— Time and Place of Delivery	53	The name of the Vessel shall be mutually agreed between the Owners and the Charterers and the Vessel shall be painted in the colours, display the funnel insignia and fly the house flag as required by the Charterers.	119
(a) Subject to the Vessel having completed her acceptance trials including trials of cargo equipment in accordance with the Building Contract and specifications to the satisfaction of the Charterers, the Owners shall give and the Charterers shall take delivery of the Vessel afloat when ready for delivery and properly documented at the Builders' Yard or some other safe and readily accessible dock, wharf or place as may be agreed between the parties hereto and the Builders. Under the Building Contract the Builders have estimated that the Vessel will be ready for delivery to the Owners as therein provided but the delivery date for the purpose of this Charter shall be the date when the Vessel is in fact ready for delivery by the Builders after completion of trials whether that be before or after as indicated in the Building Contract. The Charterers shall not be entitled to refuse acceptance of delivery of the Vessel	54		120
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	56		122
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	58	5.— Survey on Redelivery	123
	59	The Owners and the Charterers shall appoint surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of re-delivery. Without prejudice to Clause 15 (Part II), the Charterers shall bear all survey expenses and all other costs, if any, including the cost of docking and undocking, if required, as well as all repair costs incurred. The Charterers shall also bear all loss of time spent in connection with any docking and undocking as well as repairs, which shall be paid at the rate of hire per day or pro-rata.	124
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"BARECON 2001" Standard Bareboat Charter

**PART IV
HIRE/PURCHASE AGREEMENT**

(Optional, only to apply if expressly agreed and stated in Box 42)

OPTIONAL PART

On expiration of this Charter and provided the Charterers have fulfilled their obligations according to Part I and II as well as Part III, if applicable, it is agreed, that on payment of the final payment of hire as per <u>Clause 11</u> the Charterers have purchased the Vessel with everything belonging to her and the Vessel is fully paid for:	4	In exchange for payment of the last month's hire instalment the Sellers shall furnish the Buyers with a Bill of Sale duly attested and legalized, together with a certificate setting out the registered encumbrances, if any. On delivery of the Vessel the Sellers shall provide for deletion of the Vessel from the Ship's Register and deliver a certificate of deletion to the Buyers.	28
<i>In the following paragraphs the Owners are referred to as the Sellers and the Charterers as the Buyers.</i>	8	The Sellers shall, at the time of delivery, hand to the Buyers all classification certificates (for hull, engines, anchors, chains, etc.), as well as all plans which may be in Sellers' possession.	35
The Vessel shall be delivered by the Sellers and taken over by the Buyers on expiration of the Charter.	10	The Wireless Installation and Nautical Instruments, unless on hire, shall be included in the sale without any extra payment.	39
The Sellers guarantee that the Vessel, at the time of delivery, is free from all encumbrances and maritime liens or any debts whatsoever other than those arising from anything done or not done by the Buyers or any existing mortgage agreed not to be paid off by the time of delivery. Should any claims, which have been incurred prior to the time of delivery be made against the Vessel, the Sellers hereby undertake to indemnify the Buyers against all consequences of such claims to the extent it can be proved that the Sellers are responsible for such claims. Any taxes, notarial, consular and other charges and expenses connected with the purchase and registration under Buyers' flag, shall be for Buyers' account. Any taxes, consular and other charges and expenses connected with closing of the Sellers' register, shall be for Sellers' account.	12	The Vessel with everything belonging to her shall be at Sellers' risk and expense until she is delivered to the Buyers, subject to the conditions of this Contract and the Vessel with everything belonging to her shall be delivered and taken over as she is at the time of delivery, after which the Sellers shall have no responsibility for possible faults or deficiencies of any description.	42
	14	The Buyers undertake to pay for the repatriation of the Master, officers and other personnel if appointed by the Sellers to the port where the Vessel entered the Bareboat Charter as per <u>Clause 3</u> (Part II) or to pay the equivalent cost for their journey to any other place.	49
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PART V
PROVISIONS TO APPLY FOR VESSELS REGISTERED IN A BAREBOAT CHARTER REGISTRY
(Optional, only to apply if expressly agreed and stated in Box 43)

1. Definitions	4	3. Termination of Charter by Default	47
For the purpose of this PART V, the following terms shall have the meanings hereby assigned to them:	2	if the Vessel chartered under this Charter is registered in a Bareboat Charter Registry as stated in <u>Box 44</u> , and	48
<u>"The Bareboat Charter Registry"</u> shall mean the registry of the State whose flag the Vessel will fly and in which the Charterers are registered as the bareboat charterers during the period of the Bareboat Charter.	3	if the Owners shall default in the payment of any amount due under the mortgage(s) specified in <u>Box 28</u> , the Charterers shall, if so required by the mortgagee, direct the Owners to re-register the Vessel in the Underlying Registry as shown in <u>Box 45</u> .	49
<u>"The Underlying Registry"</u> shall mean the registry of the state in which the Owners of the Vessel are registered as Owners and to which jurisdiction and control of the Vessel will revert upon termination of the Bareboat Charter Registration.	4	In the event of the Vessel being deleted from the Bareboat Charter Registry as stated in <u>Box 44</u> , due to a default by the Owners in the payment of any amounts due under the mortgage(s), the Charterers shall have the right to terminate this Charter forthwith and without prejudice to any other claim they may have against the Owners under this Charter.	20
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2. Mortgage	13		30
The Vessel chartered under this Charter is financed by a mortgage and the provisions of <u>Clause 12(b)</u> (Part II) shall apply.	14		34
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PART II — ADDITIONAL CLAUSES 32 TO 65 TO THE SUB-BAREBOAT CHARTER IN BARECON 2001 FORM DATED NOVEMBER 23, 2010 AND MADE BETWEEN PRIME TIME MARITIME LTD (AS HEAD-CHARTERERS) AND CHINA HOLDINGS LTD. (AS SUB-CHARTERERS) IN RELATION TO M.V. "CHINA"

ADDITIONAL DEFINITIONS

- 32.1 The following Clauses shall be deemed to be incorporated as an integral part of this Sub-Charter. In the event of any conflict between the provisions of these Additional Clauses and the printed provisions of this Sub-Charter as annexed hereto, the provisions of these Additional Clauses hereunder shall prevail.
- 32.2 In this Sub-Charter, including the Recitals, the following expressions shall have the following meanings:
- "Acquisition Agreement"** means acquisition agreement of even date herewith entered into between the Owners, Prime Lake Shipping Ltd, Prime Mountain Shipping Ltd and Prime Hill Shipping Ltd (together as buyers), the Head Charterers, Prime Lake Maritime Ltd, Prime Mountain Maritime Ltd and Prime Hill Maritime Ltd (together as head-charterers) and Australia Holdings Ltd., Brazil Holdings Ltd., China Holdings Ltd. and Grand Rodosi Inc. (together as sellers) relating to, *inter alia*, the sale and purchase of the Vessel, the Purchase Obligation and the Call Option of the Sub-Charterers;
 - "Approved Brokers"** means the insurance brokers appointed by the Sub-Charterers as shall from time to time be approved in writing by the Approved Mortgagee;
 - "Approved Mortgage"** and **"Approved Mortgagee"** have the meanings given to them in Clause 56;
 - "Banking Day"** means a day (excluding Saturdays and Sundays) on which banks are open for business in London and Athens and (if payment is required to be made on such day) in New York City and the place to which such payment is required to be made;
 - "Call Option"** means the call option available to the Sub-Charterers in accordance with the terms of the Acquisition Agreement;
 - "Call Option Sum"** means the aggregate amount which would be payable by the Sub-Charterers to the Head-Charterers upon exercise of the Call Option at any relevant time in accordance with the terms of the Acquisition Agreement;
 - "Classification Society"** means Bureau Veritas or such other classification society (being a member of IACS) as may be agreed between the Sub-Charterers and the Head-Charterers in writing;
 - "Compulsory Acquisition"** means requisition for title or other compulsory acquisition, requisition, appropriation, expropriation, deprivation, forfeiture or confiscation for any
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reason of the Vessel by any government entity or other competent authority, whether *de jure* or *de facto*, but shall exclude requisition for use or hire not involving requisition of title;

“Delivery Date” means the date on which the Vessel is delivered to the Sub-Charterers under this Sub-Charter being the same date on which the Vessel is delivered from the Sub-Charterers (as sellers) to the Owners (as buyers) in accordance with the terms of the Acquisition Agreement and the MOA;

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

“Encumbrance” means any mortgage, charge, (whether fixed or floating), pledge, lien, hypothecation, assignment, trust arrangement or security interest or other encumbrance of any kind securing any obligation of any person or having the effect of conferring security or any type of preferential arrangement (including, without limitation, title transfer and/or retention arrangements having a similar effect);

“Financial Indebtedness” means any indebtedness in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);

- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above;

“Flag State” means the Republic of Liberia or such other flag state which may be approved from time to time by the Owners, the Head-Charterers, the Sub-Charterers and the Approved Mortgagee as the case may be in accordance with this Sub-Charter;

“Head-Charter” means the bareboat charter of even date herewith between the Owners and the Head-Charterers;

“Head-Charterers’ Guarantee” means the guarantee of the Head-Charterers’ obligations under this Charter to be executed the Head-Charterers’ Guarantor;

“Head-Charterers’ Guarantor” means Prime Maritime Holding Ltd a company incorporated in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands;

“Head-Charterers’ Encumbrance” means any Encumbrance created or permitted to exist by the Head-Charterers or exercised, asserted or claimed against the Vessel, the Insurances or any Requisition Compensation or any part thereof (and not occasioned by any act, omission or default of the Sub-Charterers) in respect of:

- (a) any Indebtedness or liability or obligation whatsoever of the Head-Charterers;
- (b) any breach by the Head-Charterers of their obligations to the Sub-Charterers under this Sub-Charter; or
- (c) any other acts or omissions whatsoever of the Head-Charterers whether or not related to the transactions contemplated by this Sub-Charter;

“Indebtedness” means any obligation for the payment or repayment of moneys, whether present or future, actual or contingent, sole or joint;

“Insurance Documents” means all slips, cover notes, contracts, policies, certificates of entry or other insurance documents evidencing or constituting the Insurances from time to time in effect;

“Insurances” means all policies and contracts of insurance (including all entries of the Vessel in a protection and indemnity association and a war risks association) which are from time to time taken out or entered into in respect of the Vessel or otherwise howsoever (as specified in greater detail in this Sub-Charter) and all benefits of such

policies and contracts, including all claims of whatsoever nature and return of premiums as shall from time to time be approved in writing by the Approved Mortgagee;

“Insurers” means the underwriters, insurance companies and mutual insurance associations with or by which the Insurances are effected as shall from time to time be approved in writing by the Approved Mortgagee;

“ISM Code” means The International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the International Maritime Organisation as Resolutions A.741(18) and A.913(22);

“ISPS Code” means Part A of The International Ship and Port Facility Security Code as adopted by the International Maritime Organisation;

“Major Casualty” means any casualty to the Vessel or incident (other than a Total Loss) in respect of which the claim or the aggregate of the claims against all insurers, before adjustment for any franchise or deductible exceeds five hundred thousand United States Dollars (US\$500,000) or the equivalent in any other currency;

“Manager” means Newlead Bulkers S.A., a company organized and existing under the laws of the Greece, having its registered office at 83 Akti Miaouli & Flessa, Piraeus 18538 Greece, or any other company other than the Sub-Charterers which the Sub-Charterers may appoint, and which if not a subsidiary or affiliated company of the Sub-Charterers, the Head-Charterers and the Approved Mortgagee may approve, such approval not to be unreasonably withheld, as the manager of the Vessel;

“Manager’s Undertaking” means, in relation to the Vessel, the undertaking to be executed by the Manager with respect to its management of the Vessel and the rights of the Approved Mortgagee in such form as may be approved by the Head-Charterer and the Approved Mortgagee;

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

- (a) the financial condition or business of the Sub-Charterers or the Sub-Charterers’ Guarantor;
- (b) the ability of the Sub-Charterers or the Sub-Charterers’ Guarantor to perform and comply with their respective obligations under this Sub-Charter and the Sub-Charterers’ Guarantee;
- (c) the validity, legality or enforceability of this Sub-Charter or the Sub-Charterers’ Guarantee; or
- (d) the validity, legality or enforceability of any Encumbrance expressed to be created pursuant to any Security Document or the priority or ranking of that Encumbrance;

“**MOA**” means the memorandum of agreement dated 2010 made between the Sellers and the Owners for the sale of the Vessel by the Sellers to the Owners;

“**Owners**” means Prime Time Shipping Ltd a company incorporated in the Republic of the Marshall Islands whose registered office is at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands;

“**Permitted Encumbrance**” means:

- (a) any Encumbrance created by or pursuant to this Sub-Charter;
- (b) any Head-Charterers Encumbrance;
- (c) any Encumbrance in favour of the Approved Mortgagee;
- (d) any Encumbrance for taxes of any kind either not yet assessed or, if assessed, not yet due and payable or being contested in good faith by appropriate proceedings (and for payment of which adequate reserves have been provided); or
- (e) liens on the Vessel for crew’s wages or salvage or under the Time Charter or otherwise arising in the normal course of trading or by operation of law provided that the claims in respect of which such liens may arise are promptly discharged or settled;

“**Purchase Obligation**” means the purchase obligation of the Sub-Charterers in accordance with the terms of the Acquisition Agreement;

“**Purchase Price**” means \$19,500,000 paid (or to be paid) by the Owners to the Sellers in accordance with the MOA;

“**Quite Enjoyment**” shall have the meaning described in Clause 57;

“**Security Documents**” means:

- (a) the Approved Mortgage;
- (b) the Manager’s Undertaking;
- (c) the Sub-Charterers’ Guarantee;
- (d) the Head-Charterers’ Guarantee;
- (e) a multipartite agreement to be entered into between the Owners, the Head-Charterers, the Sub-Charterers and the Approved Mortgagee assigning, *inter alia*, the Head-Charter, the Sub-Charter, the Sub-Charterers Guarantee, the Time Charter and all Insurances in favour of the Approved Mortgagee (the “**Multipartite Agreement**”);

- (f) a specific assignment of any third party charter (in excess of twelve (12) months) other than the Time Charter entered into by the Sub-Charterer in favour of the Approved Mortgagee;
- (g) an accounts assignment, pledge and charge of the earnings account (held by the Sub-Charterer with the Approved Mortgagee) entered into by the Sub-Charterer in favour of the Approved Mortgagee; and
- (h) any and every other document from time to time executed as security for, or to establish a subordination or priorities arrangement in relation to, all or any of the obligations of any person to the Owner, the Head-Charterers or the Approved Mortgagee or any of the documents referred to in this definition;

"Sellers" means China Holdings Ltd. (as seller) of 80 Broad Street, Monrovia, Liberia with registration number C-112609;

"Sub-Charterers' Guarantee" means the guarantee of the Sub-Charterers' obligations under this Sub-Charter to be executed by the Sub-Charterers' Guarantor in such form as may be approved by the Head-Charterer and the Approved Mortgagee;

"Sub-Charterers' Guarantor" means NewLead Holdings Ltd., Canon Street, 22 Victoria Street, Hamilton HM12, Bermuda;

"Termination Event" means any of the events specified in Clause 53.1;

"Time Charter" means the time charter between Deilemar Shipping Societa' Con Unico Socio SpA of Italy (the **"Time Charterer"**) and the Sub-Charterers into which the Vessel will be redelivered upon delivery under this Sub-Charter or such other charter acceptable to the Approved Mortgagee;

"Total Loss" has the meaning given to it in Clause 48.2;

"Transaction Head-Charterers" means together each of the Prime Mountain Maritime Ltd, Prime Lake Maritime Ltd, Prime Time Maritime Ltd and Prime Hill Maritime Ltd in their capacity as head-charterers pursuant to the Transaction Sub-Charters and **"Transaction**

Head-Charterer" shall mean any one of them;

"Transaction Sub-Charterers" means together each of the Australia Holdings Ltd., Brazil Holdings Ltd., China Holdings Ltd. and Grand Rodosi Inc. in their capacity as sub-charterers pursuant to the Transaction Sub-Charters and **"Transaction Sub-Charterer"** shall mean any one of them;

"Transaction Sub-Charters" means together each of the following sub-bareboat charters:

- (a) this Sub-Charter;

- (b) the sub-bareboat charter of even date herewith entered into between Prime Lake Maritime Ltd (as head-charterer) and Brazil Holdings Ltd. (as sub-charterer) in relation to m.v. "BRAZIL";
- (c) the sub-bareboat charter of even date herewith entered into between Prime Mountain Maritime Ltd (as head-charterer) and Australia Holdings Ltd. (as sub-charterer) in relation to m.v. "AUSTRALIA";
- (d) the sub-bareboat charter of even date herewith entered into between Prime Hill Maritime Ltd (as head-charterer) and Grand Rodosi Inc. (as sub-charterer) in relation to m.v. "GRAND RODOSI",

and "**Transaction Sub-Charter**" shall mean any one of them; and

"Warrants Instrument" means the warrants instrument to be entered into by the Sub-Charterers' Guarantor in favour of Lemissoler Corporate Management Limited in connection with the warrants to be issued annually in consideration of the fees payable to Lemissoler Corporate Management Limited in connection with the Transaction Sub-Charters.

32.3 In Clause 43.2:

"excess risks" means the proportion of claims not recoverable in respect of general average and salvage, or under the ordinary running-down clause, as a result of the value at which a vessel is assessed for the purpose of such claims exceeding her insured value;

"protection and indemnity risks" means the usual risks covered by the standard form rules of members of the International Group of protection and indemnity associations, including the proportion not otherwise recoverable in case of collision under the ordinary running-down clause; and

"war risks" means all risks referred to in the Institute Time Clauses (Hulls) (1/10/83) and (1/11/95) including, but not limited to, the risk of mines, blocking and trapping, missing vessel, confiscation 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) or Clause 29 of the International Hull Clauses (01/11/2002) or Clause 29 of the International Hull Clauses (01/11/2003).

32.4 The following expressions shall be construed in the following manner:

"Owners", **"Head-Charterers"**, **"Sub-Charterers"** and **"Approved Mortgagee"** shall include their respective successors and assigns;

"person" includes include any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;

“**subsidiary**” means any company or entity directly or indirectly authorised by such person, and for this purpose control means either the ownership of more than fifty per cent (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity or the power to direct policies and management whether by contract or otherwise;

“**taxes**” means all present and future taxes, levies, imposts, duties, charges, fees, deductions and withholdings, and any restrictions or conditions resulting in a charge whatsoever, together with interest thereon and penalties with respect thereto, if any, and any payments of principal, interest, charges, fees or other amounts made on or in respect thereof, and “**Tax**” and “**Taxation**” shall be construed accordingly.

32.5 Unless the context otherwise requires, words in the singular include the plural and vice versa.

32.6 References to any document include the same as varied, supplemented or replaced from time to time.

32.7 References to any enactment include re-enactments, amendments and extensions thereof.

32.8 Clause headings are for convenience of reference only and are not to be taken into account in construction.

32.9 Unless otherwise specified, references to Clauses, Recitals, and Schedules are to Clauses of and the Recitals and Schedules to this Sub-Charter.

32.10 In this Sub-Charter, references to periods of “**months**” shall mean a period beginning in one calendar month and ending in the relevant calendar month on the day numerically corresponding to the day of the calendar month in which such period started, provided that (a) if such period started on the last Banking Day in a calendar month, or if there is no such numerically corresponding day, such period shall end on the last Banking Day in the relevant calendar month and (b) if such numerically corresponding day is not a Banking Day, such period shall end on the next following Banking Day in the same calendar month, or if there is no such Banking Day, such period shall end on the preceding Banking Day (and “**month**” and “**monthly**” shall be construed accordingly).

32.11 A person who is not a party to this Sub-Charter may not enforce, or otherwise have the benefit of, any provision of this Sub-Charter under the Contracts (Rights of Third Parties) Act 1999, except as provided in Clause 38.6.

33. **REPRESENTATIONS AND WARRANTIES**

33.1 The Sub-Charterers represent and warrant that the matters set out in Schedule 2, Part A are true at the date of this Sub-Charter.

- 33.2 The Head-Charterers represent and warrant that the matters set out in Schedule 2, Part B are true at the date of this Sub-Charter.
- 33.3 The Head-Charterers and the Sub-Charterers agree that the representations and warranties set out in Schedule 2 shall survive the execution of this Sub-Charter and shall be deemed to be repeated on the Delivery Date and on each date on which a payment of hire is due from the Sub-Charterers to the Head-Charterers with reference to the facts and circumstances then subsisting, as if made on such date.
34. **DELIVERY**
- 34.1 The Vessel shall be delivered on the Delivery Date.
- 34.2 On the Delivery Date the Vessel shall be delivered to the Sub-Charterers under this Sub-Charter and the Sub-Charterers shall deliver to the Head-Charterers a duly executed Protocol of Delivery and Acceptance for the Vessel, substantially in the form set out in Schedule 4, which shall be conclusive proof that the Sub-Charterers have unconditionally accepted the Vessel for charter under this Sub-Charter without any reservations whatsoever.
- 34.3 The Sub-Charterers shall be bound to accept delivery of the Vessel from the Head-Charterers as and where she is upon her delivery from the Sellers to the Owners and from the Owners to the Head-Charterers.
- 34.4 If, for any reason:
- 34.4.1 the Owners become entitled to cancel and terminate the MOA; or
- 34.4.2 the Sellers terminate the MOA or fail to deliver the Vessel under the MOA,
- 34.4.3 the Head-Charterers shall be excused from giving delivery of the Vessel to the Sub-Charterers, and shall be entitled, without liability to the Sub-Charterers, to terminate this Sub-Charter by giving notice in writing to the Sub-Charterers.
- 34.5 The Head-Charterers warrant that the Vessel, at time of delivery, is free from all charters (other than this Sub-Charter, the Head-Charter and the Time Charter), Encumbrances, mortgages (except for any Approved Mortgage or Permitted Encumbrance) and maritime liens or any other debts whatsoever.
- 34.6 The Vessel shall be delivered to the Sub-Charterers with all stores, lubricants, bunkers as: (i) delivered to the Owners under the MOA; and (ii) delivered to the Head Charterers under the Head-Charter. The Head-Charterers will deliver to the Sub-Charterers the remaining on board bunkers and lubricants at the time of delivery at no cost. And the Sub-Charterers shall redeliver the Vessel with same quantities and grades of bunkers and lubricants as on delivery. The Head-Charterers shall at the time of redelivery pay for the

remaining bunkers and lube oils on board at prices evidenced by the Sub-Charterers' last invoice.

- 34.7 If the Vessel is lost or is or becomes a Total Loss as a result of an event or events occurring prior to delivery under this Sub-Charter, this Sub-Charter shall automatically terminate without any liability whatsoever or any claim for damages by either party upon the other.
- 34.8 The Sub-Charterers will give the Head-Charterers all such assistance with respect to the registration of the Vessel, as the Head-Charterers may reasonably request, and will reimburse to the Head-Charterers (in so far as paid by the Head-Charterers) the costs of registration of the Vessel under the Flag State (but not of the Approved Mortgage).
- 34.9 The Vessel shall be delivered to the Sub-Charterers with all stores, lubricants, bunkers and spares which are on the Vessel when she is: (i) delivered to the Owners under the MOA; and (ii) delivered to the Head Charterers under the Head-Charter.
35. **FLAG STATE**
- 35.1 The Vessel shall on the Delivery Date be registered in the name of the Owners under the laws and flag of the Flag State and the Head-Charterers and the Sub-Charterers shall provide the Owners with all such assistance as the Owners may reasonably require in obtaining and maintaining such registration and shall not during the Charter Period do or suffer anything to be done which might imperil such registration. Initial registration costs shall be for Owners' account but thereafter all registration, tonnage and other taxes, imposts, dues and payments from time to time payable in connection with maintaining such registration shall be for the Sub-Charterers' account and be payable on demand. No change shall be made to the Vessel's Flag State without Sub-Charterers' consent in writing (such consent not to be unreasonably withheld, delayed or conditioned) and the costs of any change (unless requested by Sub-Charterers) shall be for Owners' account.
- 35.2 The Sub-Charterers shall have the right, subject to the prior approval of the Owners and the Approved Mortgagee (which the Head-Charterers shall procure is not unreasonably withheld, conditioned or delayed), and subject to the Sub-Charterers paying all costs associated therewith to require that the Owners register their title in another Flag State of the Sub-Charterers' choice.
- 35.3 The Sub-Charterers acknowledge that it shall be reasonable for the Owners, the Head-Charterers and the Approved Mortgagee to withhold their approval if the Owners' title to the Vessel or the Approved Mortgagee's security would be adversely affected, or if either of them would become subject to additional taxes or other costs, unless indemnified by the Sub-Charterers, by reason of such change.
- 35.4 The name of the Vessel shall be chosen by the Sub-Charterers subject to the Owners' and Head-Charterers' consent which shall not be unreasonably withheld. Neither the Owners

nor the Head-Charterers shall have any right to change the name of the Vessel, without the Sub-Charterers' consent which shall not be unreasonably withheld or delayed.

35.5 The Sub-Charterers shall have the right to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag provided that painting, re-painting, installation and re-installation shall be for the Sub-Charterers' account.

36. **TIME AND PLACE FOR DELIVERY AND CANCELLATION**

36.1 The Vessel shall be delivered to Sub-Charterers immediately upon: FIRSTLY delivery of the Vessel by the Seller to the Owners under the MOA; and SECONDLY delivery of the Vessel by the Owners to the Head-Charterers under the Head-Charter.

36.2 The Vessel shall be delivered by the Head-Charterers and taken over by the Sub-Charterers safely afloat at the place of delivery by the Seller to the Owners under the MOA.

36.3 Should the Vessel not be: (i) delivered to the Owners by the Seller under the MOA (unless such failure is caused by default of the Owners); and/or (ii) delivered to the Head-Charterers by the Owners under the Head-Charter, this Charter shall terminate without claim by either party upon the other.

37. **CONDITIONS PRECEDENT TO DELIVERY**

37.1 The obligation of the Head-Charterers to deliver the Vessel to the Sub-Charterers under the terms of this Sub-Charter shall be subject to and conditional upon the satisfaction (which the Sub-Charterers hereby undertake to procure by the Delivery Date) of the Conditions listed in Schedule 1, Part A, which the Head-Charterers may in their discretion waive.

37.2 The obligation of the Sub-Charterers to accept delivery of the Vessel under the terms of this Sub-Charter shall be subject to and conditional upon the satisfaction of the Conditions listed in Schedule 1, Part B, which the Sub-Charterers may in their discretion waive.

37.3 Without prejudice to Clause 37.1, if the Head-Charterers in their discretion deliver the Vessel to the Sub-Charterers under this Sub-Charter notwithstanding that one or more of the conditions precedent specified in Clause 37.1 remains unsatisfied on the Delivery Date, then the Sub-Charterers shall procure the satisfaction of such condition or conditions precedent within fourteen (14) days thereafter or such longer period as the Head-Charterers in their absolute discretion agree in writing.

38. **EXCLUSIONS**

- 38.1 Unless otherwise specified in this Sub-Charter, the Head-Charterers shall not be liable for any losses, costs, charges, expenses, fees, payments, penalties, fines, damages or other sanctions of a monetary nature or any loss of profit:
- 38.1.1 resulting directly or indirectly from any defect or alleged defect in the Vessel or any failure of the Vessel to comply with any of the matters set out in this Sub-Charter or otherwise howsoever;
- 38.1.2 arising from any delay in the delivery of the Vessel; or
- 38.1.3 arising from the detention or arrest (whether registered or not) of the Vessel and provided that such process is not attributable to an act, omission or default of the Owners or the Head-Charterers.
- 38.2 The Sub-Charterers hereby acknowledge that the Head-Charterers make no representation or warranty, express or implied (and whether statutory or otherwise), as to seaworthiness, condition, design, operation, performance, capacity, merchantability or fitness for use of the Vessel or as to its eligibility for any particular trade or operation or any other representation or warranty whatsoever, express or implied, with respect to the Vessel or her engines, machinery, boats, tackle, outfit, fuel and consumable or other stores, and the Sub-Charterers hereby waive all their rights and claims whatsoever against the Head-Charterers and howsoever arising in respect of the foregoing.
- 38.3 Acceptance by the Sub-Charterers of the Vessel hereunder shall be deemed conclusive, as between the Head-Charterers and the Sub-Charterers, that the Vessel is seaworthy in accordance with the provisions of applicable law, in good working order and repair and without defect or inherent vice in title, (other than as may arise from the deliberate act or omission of the Head-Charterers), condition, design, operation or fitness for use, whether or not discoverable by the Head-Charterers and free and clear of all Encumbrances other than the Approved Mortgage and Permitted Encumbrances.
- 38.4 The Head-Charterers shall not be under any liability whatsoever and howsoever arising, other than where such liability arises from the deliberate act or grossly negligent omission of the Head-Charterers, in respect of the injury, death, loss, damage or delay of or to or in connection with any vessel (including the Vessel) or any person (which expression includes, without prejudice to the generality thereof, states, governments, municipalities and local authorities) or property whatsoever, whether on board the Vessel or elsewhere irrespective of whether such injury, death (other than death or personal injury which may not be excluded under Section 2(1) of the Unfair Contract Terms Act 1977), loss, damage or delay shall arise from the unseaworthiness of the Vessel.
- 38.5 The Sub-Charterers agree that the Head-Charterers shall be under no liability to supply any replacement Vessel or any piece or part thereof during any period when the Vessel is

unusable and the Head-Charterers shall not be liable to the Sub-Charterers or any other person as a result of the Vessel being unusable.

38.6 Every exclusion and limitation contained in this Sub-Charter applicable to either party hereto or to which either party hereto is entitled under this Sub-Charter shall also be available and shall extend to protect the directors, employees, servants, independent contractors and agents of such party in respect of acts or omissions in the course of their employment or service.

39. **EXTENSION OF CHARTER PERIOD**

39.1 The Sub-Charterers may extend the Charter Period by one period of 30 days, provided that they give the Head-Charterers not less than fifteen (15) Banking Days prior written notice before the date on which the Charter Period would otherwise have expired.

39.2 Upon receipt by the Head-Charterers of the notice referred to in Clause 39.1, the Head-Charterers shall provide such notice to the Owners as may be required in accordance with the terms of the Head Charter to extend the Head Charter for such period being equal to the extended Charter Period of this Sub-Charter.

39.3 If the Vessel is on a voyage (otherwise than under requisition for hire) at the time when this Sub-Charter would (but for the provisions of this Clause 39) have terminated, the Charter Period shall be extended for such additional period as may be necessary for the completion of such voyage. The Charter Period shall also be extended for such additional period as may be necessary to bring the Vessel to a port of redelivery as hereinafter provided. Hire shall continue to be paid for the period of extension at the rate in force before the start of such extension, as provided in Clause 40.

40. **PAYMENT OF HIRE AND OTHER MONEYS**

40.1 The Sub-Charterers shall throughout the Charter Period and any extended Charter Period pay to Head-Charterers hire for the Vessel every thirty (30) days in advance commencing on and from the date and hour of her delivery to the Sub-Charterers on charter in accordance with Clause 34 and continuing until the date and hour of her redelivery to the Head-Charterers pursuant to Clause 15 at the rates specified below:

40.1.1 The monthly rate of hire payable by the Sub-Charterers shall be the rate (the "**Hire Rate**") set out in Schedule 5.

40.1.2 The first such instalment of hire shall be due and payable on the Delivery Date and subsequent instalments shall be payable at monthly intervals thereafter. All payments of hire shall be made on the basis of a year of 365 days (366 days in a leap year).

40.1.3 In addition to the first such instalment of hire payable at the Hire Rate a lump sum of \$1,541,000 (the "**Lump Sum**") shall be set-off with part of the Purchase

Price payable to the Sub-Charterers in their capacity as "Sellers" under the MOA on the Delivery Date.

- 40.1.4 The final payment of hire, if for a period of less than one month, shall be calculated proportionally according to the number of days and hours remaining before redelivery and advance payment shall be effected accordingly. The final adjustment of hire, depending on the actual time and date of redelivery, shall be made immediately after redelivery.
- 40.2 Unless otherwise specified by the Head-Charterers, all moneys to be paid by the Sub-Charterers under this Sub-Charter shall be paid to the Head-Charterers:
 - 40.2.1 on their due date in Dollars;
 - 40.2.2 to the account of Prime Maritime Holding Ltd held with Marfin Egnatia Bank S.A. with account number 0280587428;
 - 40.2.3 bear as reference the Vessel's name.
- 40.3 All payments due shall be made on a Banking Day. If the due date for the payment falls on a day which is not a Banking Day:
 - 40.3.1 the payment or payments shall be fall due and be made on the first Banking Day thereafter, provided this falls in the same calendar month; and
 - 40.3.2 if it does not, payment shall fall due and be made on the immediately preceding Banking Day.
- 40.4 All payments of hire and other moneys payable by the Sub-Charterers under or pursuant to this Sub-Charter shall be made:
 - 40.4.1 without any set-off or counterclaim whatsoever; and
 - 40.4.2 free and clear of, and without deduction for, or on account of, any bank charges and any present or future taxes (other than taxes on the overall net income of the Head-Charterers), unless the Sub-Charterers are compelled by law to make payment subject to any such tax.
- 40.5 If the Sub-Charterers are compelled by law to make payment subject to any such taxes, the Sub-Charterers will
 - 40.5.1 promptly notify the Head-Charterers upon becoming aware of such requirement;
 - 40.5.2 pay to the Head-Charterers such additional amounts as may be necessary to ensure that the Head-Charterers receive a net amount equal to the full amount which the Head-Charterers would have received had such payment not been subject to such taxes; and

- 40.5.3 deliver to the Head-Charterers copies of the receipts from the relevant government authority or body evidencing the due and punctual payment of such taxes.
- 40.6 The Sub-Charterers shall pay to the Head-Charterers the Value Added Tax (if any) legally due on any payments of hire or other sums payable by the Sub-Charterers under this Sub-Charter at the rate applicable for the time being (by addition to, and at the time of payment of, the said hire or other sums).
- 40.7 The Sub-Charterers shall pay on demand by the Head-Charterers an additional amount by way of compensation for late payment (the "**Additional Amount**") on any unpaid sum due under this Sub-Charter (the "**Unpaid Amount**") from and including the date upon which it fell due for payment until the date of actual payment (the "**Number of Days**") (as well after as before judgment) on the basis of the Unpaid Amount multiplied by the Number of Days multiplied by 0.000165. All payments of an Additional Amount shall be calculated on the basis of the actual number of days elapsed.
- 40.8 The Vessel shall not at any time be placed off-hire and the Sub-Charterers' obligation to pay hire shall be absolute and irrevocable during the Charter Period, irrespective of any occurrence or contingency whatsoever, including, but not limited to:
- 40.8.1 any unavailability of the Vessel for any reason, including (but not limited to) any defect in the title (save as may arise as a result of the wilful act or omission of the Head-Charterers), seaworthiness, condition, design, operation, performance, capacity, quality, merchantability, or fitness for use or eligibility of the Vessel for any particular trade or operation; or
- 40.8.2 any incapacity, disability, or defect in powers of the Sub-Charterers or any other person (other than the Head-Charterers), or any irregular exercise thereof by, or lack of authority of, any person purporting to act on behalf of the Sub-Charterers or such other person; or
- 40.8.3 any illegality, invalidity, avoidance or unenforceability on any grounds whatsoever of, or of any obligations of the Sub-Charterers or any other person (other than the Head-Charterers) under, this Sub-Charter; or
- 40.8.4 the liquidation, administration, insolvency, amalgamation, reorganisation or dissolution, or any change in the constitution, name or style, of the Sub-Charterers, the Head-Charterers (except to the extent that such event shall interfere with the Quiet Enjoyment of the Vessel by the Sub-Charterers) or any other person;
- 40.8.5 piracy, hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (except the cases described in clause 48.2.3 and 48.3.5)

- 40.8.6 any repair period and/or drydocking period as may needed or required by the Class; or
- 40.8.7 any other cause which, but for this provision, might operate to exonerate the Sub-Charterers from liability, whether in whole or in part, under this Sub-Charter.
- 40.9 Notwithstanding anything to the contrary contained in this Sub-Charter, instalments of hire payable by the Sub-Charterers shall be deemed earned by the Head-Charterers as and when they fall due for payment hereunder.
- 40.10 During any 30 day extension period(s) of this Sub-Charter, such as is referred to in Clause 38, and if the Vessel is not redelivered within the Charter Period (whether or not so extended) from the expiry of the Charter Period until her redelivery, the Sub-Charterers will pay the Head-Charterers on demand: (i) any legal, administrative and enforcement expenses that the Head-Charterers may incur as a result of non-payment of any amounts due under this Sub-Charter; and (ii) all costs and expenses (including but not limited to legal fees) incurred by the Head-Charterers in connection with any enforcement by the Head-Charterers of their rights under this Sub-Charter.
41. **SUBSTITUTION**
Throughout the Charter Period, the Sub-Charterers may request the Head-Charterer to substitute the Vessel at any time with a substitute vessel and if the Head-Charterers agree to proceed with such substitution, the Sub-Charterers shall (at their expense) enter into such documentation with the Owners, the Head-Charterers and the Approved Mortgagee as may be required in order for such substitution to become effective, provided always that such substitution has been approved by the Owners and the Approved Mortgagee. For the avoidance of doubt, neither the Owners, the Head-Charterers nor the Approved Mortgagee are obliged to accept such request.
42. **GENERAL UNDERTAKINGS OF THE SUB-CHARTERER**
- 42.1 The Sub-Charterers shall:
- 42.1.1 not change the nature of their business;
- 42.1.2 ensure that no material change should occur in the ownership or shareholding structure of the Sub-Charterers without the prior approval of the Owners, the Head-Charterers and the Approved Mortgagee;
- 42.1.3 procure that the Vessel is kept in a good and seaworthy state of repair, so as to maintain the highest class with the Classification Society free of overdue recommendations and conditions, and so as to comply with the provisions of all laws and all other regulations and requirements (statutory or otherwise) from time to time applicable to vessels registered at ports in its Flag State and to vessels

- trading to any jurisdiction to which that Vessel may, subject to the provisions of this Sub-Charter, trade from time to time;
- 42.1.4 permit the Head-Charterers to inspect the Vessel, Vessel's Class Certificates and the Vessel's logbooks, when so reasonably required by them in writing;
- 42.1.5 permit the Head-Charterers to be present during drydocking only for internal reporting purposes and without any right to interfere with such drydocking (and the Sub-Charterers shall notify the Head-Charterers in advance for the plans for the scheduled drydocking); and
- 42.1.6 promptly furnish the Head-Charterers, when so reasonably requested by them in writing, with all such information regarding the Vessel and any Time Charter as the Owners, the Head-Charterers or the Approved Mortgagee may request.
- 42.2 The Sub-Charterers shall notify the Head-Charterers immediately upon becoming aware of the same by e-mail or fax (hereafter confirmed by letter) of:
- 42.2.1 any accident to the Vessel or incident which is or is likely to be a Major Casualty or a Total Loss;
- 42.2.2 any requirement or recommendation made by any insurer or classification society, or by any competent authority, which is not complied with within any time limit imposed by such insurer, classification society or authority;
- 42.2.3 any of the following events occurring which might adversely affect (a) the ability of the Sub-Charterers to perform their obligations under this Sub-Charter; or (b) the rights of the Head-Charterers or the Approved Mortgagee or which might involve them in any loss or liability:
- (a) any arrest of the Vessel, or the exercise or purported exercise of any lien on the Vessel or her Insurances or earnings, or any loss, confiscation, seizure, requisitioning (for title or for hire) or impounding of the Vessel;
- (b) any substantial casualty or injury to a party caused by, or in connection with, the Vessel; or
- (c) any assistance which has been given to the Vessel which has resulted or may result in a lien for salvage being acquired over the Vessel;
- 42.2.4 any litigation, arbitration, tax claim or administrative proceeding instituted or threatened or of any other occurrence which might materially adversely affect (a) the ability of the Sub-Charterers to perform their obligations under this Sub-Charter; or (b) the rights of the Head-Charterers or the Approved Mortgagee or which might involve them in any material loss or liability.

- 42.3 The Sub-Charterers shall not without the prior consent in writing of the Owners, the Head-Charterers and the Approved Mortgagee (and then only subject to such terms as the Owners, the Head-Charterers and the Approved Mortgagee may reasonably impose):
- 42.3.1 save for the Time Charter, let the Vessel on any time or consecutive voyage charter for a term which exceeds, or which by virtue of any optional extensions might exceed, twelve (12) months' duration and provided that in the case of any time or consecutive voyage charter, such time or consecutive voyage charter shall provide that the Vessel upon termination or expiry for whatever cause of the Charter Period shall be re-delivered;
- 42.3.2 employ the Vessel on terms whereby more than two (2) months' hire (or the equivalent) is payable in advance;
- 42.3.3 employ the Vessel otherwise than on bona fide arm's-length terms;
- 42.3.4 appoint any person to manage the Vessel other than the Manager;
- 42.3.5 change the Classification Society of the Vessel;
- 42.3.6 change the Flag State of the Vessel;
- 42.3.7 incur any Financial Indebtedness (except for unsecured Financial Indebtedness which is subordinated to the Financial Indebtedness owing to the Approved Mortgagee, the Owner or the Head-Charterer) unless such Financial Indebtedness is in the ordinary course of business for the Sub-Charterer;
- 42.3.8 put the Vessel into the possession of any person for the purpose of work being done upon her in an amount exceeding or likely to exceed five hundred thousand United States Dollars (US\$500,000) (or the equivalent in any other currency) unless such person has first given to the Head-Charterers and in terms satisfactory to them a written undertaking not to exercise any lien on the Vessel or her earnings for the cost of such work or otherwise;
- 42.3.9 create or suffer the creation of an Encumbrance (other than a Permitted Encumbrance) over or in respect of the Vessel or any share in the Vessel; or
- 42.3.10 amend, vary, rescind, cancel the Time Charter or accept any rescission, cancellation or termination thereof by the relevant time charterer.
43. **DAMAGE AND FRUSTRATION**
- 43.1 The Head-Charterers shall not be liable for any expense in repairing or maintaining the Vessel or be liable to supply a vessel or any part thereof or any equipment in lieu if the Vessel is lost or damaged or rendered unfit for use or confiscated, seized, requisitioned, restrained or appropriated or otherwise taken out of the possession or control of the Sub-Charterers.

43.2 Unless otherwise expressly provided in this Sub-Charter, if for any reason whatsoever the Vessel becomes inoperable or unusable, the charter hire payable in respect of the Vessel shall continue to be payable and the other obligations of the Sub-Charterers hereunder shall continue notwithstanding such loss, damage or other event unless or until the Vessel be declared by the insurers to be a Total Loss and the Head-Charterers have received the amount set out in Clause 48.5 and notwithstanding any inability on the part of the Sub-Charterers to operate the Vessel, the Vessel being held to be the property of the Sub-Charterers or of any person other than the Owners; or any other circumstances whatsoever which might operate to frustrate this Sub-Charter.

44. **COMPULSORY LEGISLATION**

If any improvement, structural changes, additions or new equipment to or for the Vessel become necessary for the continued operation of the Vessel by reason of new class requirements or compulsory legislation the Sub-Charterers shall at their own expense and time, implement such improvement, changes, additions or installation of equipment. The Sub-Charterers shall notify the Head-Charterers of any such class requirements or compulsory legislation and, before making the necessary expenditure, with details of such expenditure. Such improvements, changes, additions or installations are deemed to be an integral part of the Vessel and will not be removed at redelivery.

45. **SAFE USE AND ENVIRONMENTAL MATTERS**

45.1 The Sub-Charterers undertake throughout the Charter Period:

45.1.1 to implement and maintain a safety management system (“**SMS**”) which complies with all laws, rules and regulations, and with all the codes, guidelines and standards recommended by the International Maritime Organisation (including without limitation, The International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the International Maritime Organisation as Resolutions A.741(18) and A.788(19) (as amended from time to time, the “**ISM Code**”), the Flag State of the Vessel and the Vessel’s classification society, which may from time to time be applicable to the Vessel and/or the Head-Charterers and/or the Sub-Charterers and/or the Manager, and which is otherwise appropriate having regard to the Sub-Charterers’ obligations under this Sub-Charter;

45.1.2 to obtain and maintain in force at all times valid certificates evidencing compliance with the requirements of Clause 45.1.1, including, without limitation, a valid Document of Compliance in relation to themselves and a valid Safety Management Certificate in respect of the Vessel as required by the ISM Code;

45.1.3 to provide the Head-Charterers with copies of any such Document of Compliance and Safety Management Certificate upon issuance;

- 45.1.4 to keep or procure that there is kept on board the Vessel at all times a copy of any such Document of Compliance and the original of any such Safety Management Certificate.
- 45.2 the Sub-Charterers undertake throughout the Charter Period:
- 45.2.1 to comply with, and procure that the Vessel complies with, the ISPS Code;
- 45.2.2 to ensure that the Vessel's security system and its associated security equipment comply with the applicable requirements of Part A of the ISPS Code and of Chapter XI-2 of the Safety of Life at Sea Convention 1974 (SOLAS), and that an approved ship security plan is in place;
- 45.2.3 to obtain and maintain in force at all times valid certificates evidencing compliance with the requirements of the ISPS Code, including, without limitation, a valid International Ship Security Certificate in respect of the Vessel as required by the ISPS Code;
- 45.2.4 to keep or procure that there is kept on board the Vessel at all times the original of such International Ship Security Certificate.
- 45.3 Without prejudice to the generality of Clause 10 the Sub-Charterers shall take all reasonable precautions to prevent any infringements of the Anti-Drug Abuse Act of 1986 of the United States of America or any similar legislation applicable to the Vessel in the Flag State in any jurisdiction in or to which the Vessel may be employed or trade from time to time.
- 45.4 The Sub-Charterers shall not at any time represent or hold out the Head-Charterers as carrying goods or persons on the Vessel or being in any way connected or associated with any operation or carriage whether for charter or reward or gratuitously which may be undertaken by the Sub-Charterers during the Charter Period nor shall the Sub-Charterers represent themselves as the agent of the Head-Charterers for such purpose.
- 45.5 The Sub-Charterers shall ensure that the Vessel is, at all times, equipped and accredited with any required trading documentation and/or authorisations necessary to legitimise the entry of the Vessel into the waters of any relevant jurisdiction. Such trading documentation and authorisations shall include, inter alia, valid certification under the International Convention on Civil Liability for Oil Pollution Damage (as amended), a valid US Coast Guard certificate of financial responsibility (water pollution), a valid certificate from any US state that requires a state equivalent of a certificate of financial responsibility, a vessel classification certificate and any other credentials as might be, or may come to be, required. Copies of such trading documentation and/or authorisations shall be made available to the Head-Charterers as and when reasonably requested.

46. **EQUIPMENT**

- 46.1 The Sub-Charterers shall have the use of all outfit, machinery, equipment, spare parts, appliances, furniture, fittings, furnishings and stores of the Vessel which are the property of the Head-Charterers or the Owners, and all substitutions, replacements and renewals.
- 46.2 The Sub-Charterers shall, at their own expense, from time to time during the Charter Period substitute, replace and/or renew (as the case may be) any outfit, machinery, equipment, spare parts, appliances, furniture, fittings, furnishings and stores which shall be consumed or be so damaged or worn out as to be unfit for use. The Sub-Charterers shall procure that all such repairs, substitutions, replacements and renewals shall be effected in such manner (both as regards workmanship and quality of materials) so as not to diminish the value of the Vessel.
- 46.3 Notwithstanding any other provision of this Sub-Charter, in the event of any future improvements, modifications or structural changes carried out upon the Vessel (as approved by the Owners, the Head-Charterers and/or the Approved Mortgagee in advance), such modifications, improvements or structural changes are deemed to be an integral part of the Vessel and the Sub-Charterers shall be under no obligation to restore the Vessel to its original condition upon redelivery. In the event of any Sub-Charterers' equipment being installed on the Vessel is deemed to be an integral part of the Vessel and unless the Sub-Charterers have informed the Owners and the Head-Charterers in advance for such installation and the Owners and the Head-Charterers have accepted the said equipment as Sub-Charterers' equipment in which case the Sub-Charterers shall have the right to remove the said equipment (and all additions and installations thereto) before redelivery, all such Sub-Charterers' equipment shall be considered as usual outfit, machinery or equipment of the Vessel, needed for Vessel's normal operation and/or any additional or new equipment installed in accordance with Clause 44.

47. **INSURANCES**

- 47.1 The Vessel shall throughout the Charter Period be in every respect at the risk of the Sub-Charterers who shall bear all risks howsoever arising in respect of the Vessel, whether of navigation, operation or maintenance or otherwise:
- 47.2 The Sub-Charterers covenant with the Head-Charterers that throughout the Charter Period they will comply with the following provisions of this Clause 47.2:
- 47.2.1 to effect and maintain sufficient insurances on and over the Vessel in respect of (a) hull, machinery and equipment, marine, war and terrorism risks (including excess risks), (b) protection and indemnity risks (including pollution risks), and (c) such other risks for which insurance would be maintained by a prudent owner for a ship of a similar type, size, age and flag, and otherwise in accordance with the provisions of this Sub-Charter;
- 47.2.2 to insure and keep insured the Vessel in Dollars or such other currency as may be approved in writing by the Approved Mortgagee, in the full insurable value of the Vessel

but in any case not less than the higher of (i) the market value of the Vessel as calculated by the Approved Mortgagee and (ii) one hundred and ten per cent (110%) of the Purchase Price against fire, marine and other risks (including excess risks) and war risks covered by hull and machinery policies;

- 47.2.3 to enter the Vessel in the name of the Owners for her full value and tonnage in a protection and indemnity association approved by the Approved Mortgagee with unlimited liability if available otherwise for the highest possible standard cover for the time being US\$1,000,000,000 for oil pollution and for excess oil spillage and pollution liability insurance for the highest possible standard cover against all protection and indemnity risks;
- 47.2.4 if the Vessel enters the territorial waters of the United States of America for any reason whatsoever, to take out such additional insurance to cover such risks as may be necessary in order to obtain a Certificate of Financial Responsibility from the United States Coastguard;
- 47.2.5 to effect such additional Insurances as may reasonably be requested by the Approved Mortgagee to maintain the scope of the existing cover of the Insurances;
- 47.2.6 to effect the Insurances through the Approved Brokers and with such insurance companies, underwriters, war risks and protection and indemnity associations as shall from time to time be approved in writing by the Head-Charterers and the Approved Mortgagee (such approval not to be unreasonably withheld), and, if so required by the Head-Charterers or the Approved Mortgagee (but, without, as between the Head-Charterers or the Approved Mortgagee and the Sub-Charterers, liability on the part of the Head-Charterers or the Approved Mortgagee for premiums or calls), with the Owners, the Head-Charterers or the Approved Mortgagee from the time being named as co-assured. Insurance for Protection and Indemnity risks shall be provided always by member of the International Group of P&I Clubs. Insurance for hull, machinery and equipment, marine, war and terrorism risks or any other risks shall be provided always by underwriters with a minimum of a BBB+ rating;
- 47.2.7 to renew the Insurances at least fourteen (14) days before the relevant Insurances expire and to procure that the Approved Brokers and any war risks and protection and indemnity association with which the Insurances are effected shall promptly confirm in writing to the Head-Charterers and the Approved Mortgagee as and when each such renewal is effected;
- 47.2.8 punctually to pay all premiums, calls, contributions or other sums payable in respect of the Insurances and to produce all relevant receipts when so required in writing by the Head-Charterers or the Approved Mortgagee;
- 47.2.9 reimburse to the Owners and/or the Head-Charterers on demand such documented sums as the Owners and/or Head-Charterers shall certify are payable by them to the Approved

- Mortgagee in respect of mortgagees interest insurance on the Vessel (as required by the Approved Mortgagee);
- 47.2.10 to arrange for the execution of such guarantees and the making of such declaration as may from time to time be required by any protection and indemnity or war risks association of the Vessel;
 - 47.2.11 to give notice of assignment of the Insurances to the Insurers in the form set out in Schedule 3 to this Sub-Charter or in such other form as may be required by the Head-Charterers and/or the Approved Mortgagee and to procure that a copy of each notice of assignment shall be endorsed upon or attached to the relevant Insurance Documents;
 - 47.2.12 to procure that the Insurance Documents shall be deposited with the Approved Brokers and that such brokers shall provide the Owners, the Head-Charterers and the Approved Mortgagee with certified copies thereof and shall issue to the Approved Mortgagee a letter or letters of undertaking in such form as the Approved Mortgagee shall reasonably require;
 - 47.2.13 to procure that the protection and indemnity and/or war risks associations in which the Vessel is entered shall provide the Approved Mortgagee with a letter or letters of undertaking in their standard form and shall provide the Approved Mortgagee with a copy of the certificates of entry;
 - 47.2.14 to procure that the Insurance Documents (including all certificates of entry in any protection and indemnity and/or war risks association) shall contain loss payable clauses in the form set out in set out in Schedule 3 to this Sub-Charter or in such other form as may be required by the Head-Charterers and/or the Approved Mortgagee (as may be appropriate);
 - 47.2.15 to procure that the Insurance Documents shall provide that the lien or set off for unpaid premiums or calls shall be limited to only the premiums or calls due in relation to the Insurances on the Vessel and for fourteen (14) days prior written notice to be given to the Approved Mortgagee by the Insurers (such notice to be given even if the Insurers have not received an appropriate enquiry from the Approved Mortgagee) in the event of cancellation or termination of Insurances and in the event of the non-payment of the premium or calls, the right to pay the said premium or calls within a reasonable time;
 - 47.2.16 to promptly provide the Owners, the Head-Charterers and the Approved Mortgagee with full information regarding any casualties or damage to the Vessel in an amount in excess of Five hundred thousand United States Dollars (US\$500,000) or in consequence whereof the Vessel has become or may become a Total Loss;
 - 47.2.17 at the request of the Approved Mortgagee, to provide the Approved Mortgagee, at the Sub-Charterers' cost, with a detailed report issued by a firm of marine insurance brokers or consultants appointed by the Approved Mortgagee in relation to the Insurances;

- 47.2.18 not to do any act nor voluntarily suffer nor permit any act to be done whereby any Insurance shall or may be suspended or avoided and not to suffer nor permit the Vessel to engage in any voyage nor to carry any cargo not permitted under the Insurances in effect without first covering the Vessel to the amount herein provided for with insurance satisfactory to the Approved Mortgagee for such voyage or the carriage of such cargo;
- 47.2.19 (without limitation to the generality of the foregoing) in particular not permit the Vessel to enter or trade to any zone which is declared a war zone by any government or by the Vessel's war risks Insurers unless there shall have been effected by the Sub-Charterers at their expense such special insurance as the war risk Insurers may require; and
- 47.2.20 to procure that all amounts payable under the Insurances are paid in accordance with the loss payable clause in the form set out in Schedule 3 to this Sub-Charter or in such other form as may be required by the Head-Charterers and/or the Approved Mortgagee (as may be appropriate) and to apply and procure that all amounts as are paid to the Owners, the Head-Charterers and/or the Sub-Charterers are applied to the repair of the damage and the reparation of the loss in respect of which the said amounts shall have been received.
- 47.3 The Sub-Charterers shall procure that the policies in respect of the Insurances shall, in each case, be endorsed to the effect that (subject always to the rights of the Approved Mortgagee):
- 47.3.1 payment of a claim for Total Loss of the Vessel shall be made to the Head-Charterers who upon receipt thereof shall apply the same in accordance with Clause 48.8;
- 47.3.2 payment of a claim for any Major Casualty to the Vessel shall be made to the Head-Charterers, but so that, unless and until the Head-Charterers (following the occurrence of a Termination Event) direct to the contrary (whereupon all insurance recoveries in respect of any such claim shall be payable to the Head-Charterers and be applied in accordance with Clause 48.8):
- (a) the payment so received by the Head-Charterers shall be paid over to the Sub-Charterers upon the Sub-Charterers furnishing evidence satisfactory to the Head-Charterers and the Approved Mortgagee that all loss and damage resulting from the casualty has been or will be properly made good and repaired and that all repair accounts and other liabilities whatsoever in connection with the casualty have been or will be fully paid and discharged by the Sub-Charterers;
 - (b) the Insurers with whom the hull, machinery and equipment marine risks insurances are effected may in the case of a Major Casualty, with the prior consent in writing of the Owners, the Head-Charterers and the Approved Mortgagee, make payment on account of repairs in the course of being effected;

- 47.3.3 payment of a claim which is not for a Total Loss or a Major Casualty shall, unless and until the Head-Charterers shall (following the occurrence of a Termination Event) direct to the contrary (whereupon all insurance recoveries in respect of any such claim shall be payable to the Head-Charterers and be applied in accordance with Clause 48.8), be made to the Sub-Charterers who shall, as agent for the Owners and the Head-Charterers, apply the same in or towards making good the loss and fully repairing all damage in respect of which such payment shall have been made.
- 47.4 The provisions of this Clause 47 and Clause 48 shall not apply to the proceeds of any additional insurance cover effected by the Owners and/or the Head-Charterers and/or the Sub-Charterers for their own account and benefit, provided that such cover shall only be effected if and to the extent that the Insurances effected by the Sub-Charterers pursuant to this Clause 47 so permit. The Head-Charterers and the Sub-Charterers, as the case may be, shall promptly furnish the other with particulars of any additional insurance effected, including copies of any cover notes or policies, and the written consent of the insurers for the Insurances required to be maintained by the Sub-Charterers under this Clause 47 in any case where the consent of such insurers is necessary. For avoidance of doubt, the Head-Charterers shall have no obligation to furnish the Sub-Charterers with any such information or documentation relating to any innocent owner's insurance effected by the Head-Charterers.
- 47.5 The Head-Charterers shall be entitled, at any time and from time to time, to consult insurance advisers on any matter relating to the Insurances (including, without limitation, the terms, amounts and quality of the Insurances and the status of any insurance claims), and the Sub-Charterers shall procure that there is delivered to such adviser any and all such information concerning the Vessel and her Insurances as the Head-Charterers may require. The reasonable costs of any such insurance adviser shall, where the involvement of such insurance advisers is at the request of the Approved Mortgagee but in the absence of a Termination Event, not more than once annually, be for the account of the Sub-Charterers and shall be payable on demand.
48. **LOSS, DAMAGE AND REQUISITION**
- 48.1 Throughout the Charter Period, the Sub-Charterers shall bear the full risk of any Total Loss or any damage to the Vessel howsoever arising and of any other occurrence of whatever kind which may deprive the Sub-Charterers of the use, possession or enjoyment of the Vessel and no such event shall relieve the Sub-Charterers of their obligations (whether in whole or in part) under this Sub-Charter.
- 48.2 For the purposes of this Sub-Charter, "**Total Loss**" shall mean:
- 48.2.1 actual or constructive or compromised or agreed or arranged total loss of the Vessel; or

- 48.2.2 Compulsory Acquisition of the Vessel;
- 48.2.3 the hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (other than any event described in Clause 48.2.2) by any government entity or by persons acting or purporting to act on behalf of any government entity unless the Vessel be released and restored to the Sub-Charterers from such hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation within thirty (30) days after the occurrence thereof or such lesser period provided in the Vessel's war risks Insurances;
- 48.3 For the purpose of this Clause 48, a Total Loss shall be deemed to have occurred:
- 48.3.1 in the case of an actual total loss of the Vessel on the actual date and at the time the Vessel was lost or if such date is now known, on the date on which the Vessel was last reported;
- 48.3.2 in the case of a constructive total loss of the Vessel upon the date and at the time notice of abandonment of the Vessel is given to the Insurers of the Vessel for the time being (provided a claim for such total loss is admitted by such insurers) or, if such Insurers do not admit such a claim, or, in the event that such notice of abandonment is not given by the Head-Charterers and/or the Sub-Charterers to the Insurers of the Vessel, on the date and at a time on which the incident which may result, in the Vessel being subsequently determined to be a constructive total loss has occurred
- 48.3.3 in the case of a compromised or arranged total loss of the Vessel, on the date upon which a binding agreement as to such compromised or arranged total loss has been entered into by the Insurers of the Vessel;
- 48.3.4 in the case of Compulsory Acquisition of the Vessel, on the date upon which the relevant Compulsory Acquisition occurs; and
- 48.3.5 in the case of hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation of the Vessel (other than where the same amounts to Compulsory Acquisition of the Vessel) by any government entity, or by persons purporting to act on behalf of any government entity, which deprives the Head-Charterers and/or the Sub-Charterers of the use of the Vessel for more than thirty (30) days, upon the expiry of the period of thirty (30) days after the date upon which the relevant hijacking, theft, condemnation, capture, seizure, arrest, detention or confiscation occurred.
- 48.4 The Sub-Charterers shall notify the Head-Charterers and the Approved Mortgagee forthwith by e-mail or fax (thereafter confirmed by letter) upon becoming aware of any occurrence in consequence whereof the Vessel has become or is likely to become a Total Loss.

- 48.5 If the Vessel shall become a Total Loss, the Sub-Charterers shall within one hundred and eighty (180) days of the date of the Total Loss, pay or procure the payment to the Head-Charterers of a net amount equal to the aggregate of:
- 48.5.1 the Call Option Sum which would be applicable had the Call Option been exercised at the date of such Total Loss;
- 48.5.2 any costs payable by the Owners and/or the Head-Charterers to the Approved Mortgagee;
- 48.5.3 all other moneys, whether of hire or otherwise, then due and owing under any other provisions of this Sub-Charter.
- 48.6 The Sub-Charterers shall continue to pay hire on the days and in the amounts required under this Sub-Charter notwithstanding that the Vessel shall have become a Total Loss. The Sub-Charterers' obligation to pay hire under this Sub-Charter shall terminate immediately upon the Head-Charterers' receipt of (a) an amount equal to the aggregate of the minimum insured value as at the date of the Total Loss and in any event not less than the Call Option Sum applicable at the date of such Total Loss, and (b) all other sums (if any) payable by the Sub-Charterers hereunder.
- 48.7 In the event that the insurers do not admit a claim for a Total Loss or agree to pay out a claim for a Total Loss in an amount equal to the amount referred to in Clause 48.6 within one hundred and eighty (180) days of the Total Loss, the Sub-Charterers shall immediately pay to the Head-Charterers the amount referred to in Clause 48.6 or an amount equal to the deficiency between the payment from the insurers and the amount referred to in Clause 48.6 together with an Additional Amount (calculated in accordance with Clause 40.7) if hire has not been paid as required under Clause 48.6.
- 48.8 Subject always to the rights of the Approved Mortgagee in such Insurances, all moneys recoverable:
- 48.8.1 under the Insurances effected by the Sub-Charterers pursuant to Clause 47, or by way of other compensation, in respect of a Total Loss of the Vessel; and
- 48.8.2 under the Insurances effected by the Sub-Charterers pursuant to Clause 47.3 in respect of any other claim (whether relating to a Major Casualty or otherwise) which by virtue of Clause 47.3 are payable to the Head-Charterers after the occurrence of a Termination Event; shall be paid to, and be held by, the Sub-Charterers, in the first place, to pay or make good all costs, expenses and liabilities whatsoever incurred by the Sub-Charterers in or about or incidental to the recovery of such moneys, and the balance shall be applied as follows:

FIRST, in payment of any hire or other moneys whatsoever due and owing to the Head-Charterers under this Sub-Charter up to the date of receipt of such proceeds;

SECOND, in the case of a Total Loss to the Head-Charterers in such amount as shall be required to ensure that the Head-Charterers have received, taking into account any amount received by the Head-Charterers under Clause 48.5 an amount equal to the aggregate of:

- (a) the Call Option Sum which would be applicable had the Call Option been exercised on the date of such Total Loss;
- (b) any costs payable by the Head-Charterers to the Approved Mortgagee;
- (c) all other moneys, whether of hire or otherwise, then due and owing under any other provisions of this Sub-Charter.

THIRD, the balance shall be released to the Sub-Charterers or to any other person who shall be entitled thereto;

PROVIDED ALWAYS that in the event that such proceeds are insufficient to satisfy the amounts specified in FIRST and SECOND above the Sub-Charterers shall forthwith on the Head-Charterers' demand pay the shortfall to the Head-Charterers, and PROVIDED FURTHER that the Head-Charterers shall out of such proceeds apply such sum in payment to the Owners or the Approved Mortgagee as shall be required to discharge the Approved Mortgage.

48.9 The Head-Charterers shall, upon the request of the Sub-Charterers, but subject to the consent (if required) of the Approved Mortgagee being obtained, promptly execute and deliver such documents as may be required to enable the Sub-Charterers to abandon the Vessel to the insurers and to claim a constructive total loss.

49. **TITLE AND ENCUMBRANCES**

49.1 The Sub-Charterers shall take all steps which may be reasonably necessary to safeguard the title and rights of the Owners, the Head-Charterers and the Approved Mortgagee in the Vessel as notified to the Sub-Charterers and in particular (but without limitation):

49.1.1 will place, and at all times and places retain a properly certified copy of this Sub-Charter, and of the Approved Mortgage, on board the Vessel with her papers, cause each such certified copy and such papers to be exhibited to any and all persons having business with the Vessel which might give rise to any lien on it, other than liens for crew's wages and salvage, and to any representative of the Head-Charterers and the Approved Mortgagee;

- 49.1.2 will promptly pay and discharge or secure all debts, damages and liabilities whatsoever which the Sub-Charterers shall have been called upon to pay, discharge or secure and which have given, or may give, rise to maritime or possessory liens on or claims enforceable against the Vessel, and in the event of arrest of the Vessel pursuant to legal process, or in the event of her detention in exercise or purported exercise of any such lien as aforesaid, to procure the release of the Vessel from such arrest or detention forthwith upon receiving notice of the same by providing bail or otherwise as the circumstances may require;
- 49.1.3 will not pledge the credit of the Head-Charterers for any maintenance, service, repairs, drydocking or modifications and upgrades to the Vessel or for any other purpose whatsoever;
- 49.1.4 will not sell or hypothecate or purport to sell or hypothecate or execute a bill of sale of the Vessel or any interest therein or create or suffer to exist any Encumbrance (save for a Permitted Encumbrance) over the Vessel;
- 49.1.5 will not do or permit to be done any act or thing which might jeopardise the rights of the Head-Charterers or the Approved Mortgagee in the Vessel and will not omit to do or permit to be omitted to be done any act or thing which if not done might jeopardise or prejudice the rights of the Head-Charterers or the Approved Mortgagee in the Vessel;
- 49.1.6 will not do anything which may result in the Vessel being confiscated, seized, requisitioned, taken in execution, impounded or otherwise taken from the possession of the Sub-Charterers and in the event of any such confiscation, requisition, seizure, impounding or taking, the Sub-Charterers will use their best endeavours to procure an immediate release of the Vessel therefrom; and
- 49.1.7 will duly pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges levied upon the Vessel prior to the date on which penalties are attached thereto, except to the extent that such may be contested in good faith.

50. **FINANCIAL COVENANTS**

50.1 For the purposes of this Clause 50 the following expressions shall have the following meanings:

“Borrowed Money” means Indebtedness in respect of (i) money borrowed or raised and debit balances at banks, (ii) any bond, note, loan stock, debenture or similar debt instrument, (iii) acceptance or documentary credit facilities, (iv) receivables sold or discounted (otherwise than on a non-recourse basis), (v) deferred payments for assets or services acquired, (vi) finance leases and hire purchase contracts, (vii) swaps, forward exchange contracts, futures and other derivatives, (viii) any other transaction (including without limitation forward sale or purchase agreements) having the commercial effect of

a borrowing or raising of money or of any of (ii) to (vii) above and (ix) guarantees in respect of Indebtedness of any person falling within any of (i) to (viii) above;

“Cash” means free and available negotiable money, orders, cheques and bank balances and deposits but to exclude (a) any cash that is specifically blocked and charged and (b) cash standing to the credit of any blocked account and charged to the Approved Mortgagee;

“Cash Equivalent Investments” means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by a bank or financial institution acceptable to the Approved Mortgagee;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security; or
- (c) any other debt security approved by the Approved Mortgagee,

in each case, to which the Sub-Charterers’ Guarantor’s Group is beneficially entitled at that time and which is not issued or guaranteed by any member of the Sub-Charterers’ Guarantor Group or subject to any Encumbrance (other than one arising under the Security Documents).

“Current Assets” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of current assets in a consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time together with such amount of Cash and Cash Equivalent Investments forming part of the Minimum Liquidity and/or any retention amount (but always excluding any current assets arising from Derivative Financial Instruments) which may be disregarded from the current assets in a consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group;

“Current Liabilities” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of current liabilities of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as current liabilities in the consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time excluding Deferred Revenue and all current liabilities arising from Derivative Financial Instruments;

“Deferred Revenue” means at any time in respect of the Sub-Charterers’ Guarantor’s Group, that liability calculated at the time an existing Time Charter(s) or other

employment arrangement is assumed, by discounting at the Sub-Charterers' Guarantor's Group's weighted average cost of capital, the difference between the market charter rate for an equivalent vessel and the assumed charter rate (as set out in the then latest financial statements delivered to the Approved Mortgagee pursuant to this Clause 50), which liability is recorded as deferred revenue and amortised to revenue over the remaining period of such Time Charter(s) or other employment arrangement;

"Derivative Financial Instruments" means at any time in respect of the Sub-Charterers' Guarantor's Group the fair value of any transaction entered into under a master swap agreements and the fair value of any other derivative financial instruments appearing under this heading (and previously approved by the Approved Mortgagee) in the consolidated financial statements of the Sub-Charterers' Guarantor's Group provided by the Sub-Charterers to the Approved Mortgagee in accordance with the provisions of this Clause 50 or otherwise and in the event of the Sub-Charterers changing the form or substance of the financial statements (always in accordance with GAAP) provided by the Sub-Charterers to the Approved Mortgagee so that Derivative Financial Instruments no longer appears as a heading and/or such Derivative Financial Instruments are otherwise accounted for, the determination of what constitutes Derivative Financial Instruments shall be made by the Approved Mortgagee acting reasonably;

"EBITDA" means, in respect of any period, the consolidated profit on ordinary activities of the Sub-Charterers' Guarantor's Group before Taxation for such period:

- (a) adjusted to exclude Interest Receivable and Interest Payable and other similar income or costs to the extent not already excluded;
- (b) adjusted to exclude any gain or loss realised on the disposal of fixed assets (whether tangible or intangible);
- (c) after adding back depreciation and amortisation;
- (d) adjusted to exclude any exceptional or extraordinary costs or income;
- (e) after deducting any profit arising out of the release of any provisions against a liability or charge (excluding in this context the release of any provisions against liabilities or charges relating to exceptional or extraordinary items);

"Equity Ratio" means the ratio of Total Shareholder's Equity to Total Assets of the Sub-Charterers' Guarantor's Group;

"Finance Lease" means any lease under which a member of the Sub-Charterers' Guarantor's Group is the lessee which is or should be treated as a finance lease under US GAAP (and includes any hire purchase contract or other arrangement which is similarly treated);

“Financial Quarter” means each period of approximately three (3) months commencing on the day after a Financial Quarter Day and ending on the next following Financial Quarter Day;

“Financial Quarter Day” means 31 March, 30 June, 30 September and 31 December in any year;

“Financial Year” means the annual accounting period of the Sub-Charterers’ Guarantor’s Group ending on 31 December in each year;

“Fleet Book Value” means, at the end of a Relevant Period, the aggregate book value of the Sub-Charterers’ Guarantor’s Group’s owned fleet less depreciation as stated in the most recent financial statements delivered pursuant to this Clause 50;

“Fleet Market Value” means, at the date of calculation, the aggregate of the fair market value of the Sub-Charterers’ Guarantor’s Group’s owned fleet as determined by the Approved Mortgagee;

“Interest” means, in respect of any specified Borrowed Money, all continuing regular or periodic costs, charges and expenses incurred in effecting, servicing or maintaining such Borrowed Money including:

- (a) gross interest, commitment fees, discount and acceptance fees and guarantee, fronting and ancillary facility fees payable or incurred on any form of such Borrowed Money;
- (b) repayment and prepayment premiums payable or incurred in repaying or prepaying such Borrowed Money; and
- (c) the interest element of Finance Leases,

but excluding, in respect of such Borrowed Money, agency and arrangement fees or other up-front fees;

“Interest Expense” means, in respect of the Relevant Period, the aggregate (calculated on a consolidated basis) of:

- (a) the amounts charged and posted (or estimated to be charged and posted) as a current accrual accrued during such period in respect of members of the Sub-Charterers’ Guarantor’s Group by way of Interest on all Borrowed Money, but excluding any amount accruing as interest in-kind (and not as cash pay) to the extent capitalised as principal during such period; and
- (b) net payments in relation to interest rate or currency hedging arrangements in respect of Borrowed Money (after deducting net income in relation to such interest rate or currency hedging arrangements);

“Interest Receivable” means, in respect of any period, the amount of Interest accrued on cash balances of the Sub-Charterers’ Guarantor’s Group (including the amount of interest accrued on the earnings accounts of the Sub-Charterers as the case may be, to the extent that the account holder is entitled to receive such interest) during such period;

“Minimum Liquidity” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the minimum amount of Cash and Cash Equivalent Investments for a Financial Quarter equal to five percent (5%) of Total Debt at any time;

“Related Company” of a person means any Subsidiary of such person, any company or other entity of which such person is a Subsidiary and any Subsidiary of any such company or entity;

“Relevant Period” means each rolling period of twelve (12) months ending on a Financial Quarter;

“Sub-Charterers’ Guarantor’s Group” means the Sub-Charterers’ Guarantor and its Related Companies;

“Subsidiary” of a person means any company or entity directly or indirectly controlled by such person, and for this purpose “control” means either the ownership of more than fifty per cent (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity or the power to direct its policies and management, whether by contract or otherwise;

“Taxes” includes all present and future taxes, levies, imposts, duties, fees or charges of whatever nature together with interest thereon and penalties in respect thereof and **“Taxation”** shall be construed accordingly;

“Total Assets” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of total assets of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as total assets adjusted for the difference between Fleet Market Value and Fleet Book Value and in a consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time;

“Total Debt” means, at any time, the aggregate outstanding principal, capital or nominal amount of all Borrowed Money of the Sub-Charterers’ Guarantor’s Group calculated on a consolidated basis at that time;

“Total Shareholder’s Equity” means, at any time in respect of the Sub-Charterers’ Guarantor’s Group, the amount of shareholders equity of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as shareholders equity in the consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time;

“US GAAP” means, generally accepted accounting principles in the United States of America;

“Working Capital” means, Current Assets less Current Liabilities (excluding, at any given time, (a) the current portion of long term debt maturing within twelve (12) months and (b) non-cash current liabilities of the Sub-Charterers’ Guarantor’s Group on a consolidated basis which would be included as non cash liabilities in the consolidated balance sheet of the Sub-Charterers’ Guarantor’s Group in accordance with US GAAP drawn up at such time, in relation to Deferred Revenue)

- 50.2 The Sub-Charterer undertakes with each of the Head-Charterer and the Approved Mortgagee that, during the Charter Period, it will:
- 50.2.1 maintain an Equity Ratio of not less than: (i) twenty-five percent (25%) from the Financial Quarter Day ending on 30 September 2010 until the Financial Quarter Day ending on 30 June 2013; and (ii) thirty percent (30%) from the Financial Quarter Day ending on 30 June 2013 onwards;
- 50.2.2 maintain on a consolidated basis the Minimum Liquidity;
- 50.2.3 maintain on a consolidated basis on each Financial Quarter Day during the Charter Period a Working Capital of not less than zero Dollars (\$0);
- 50.2.4 maintain a ratio of EBITDA to Interest Expense on a trailing four (4) Financial Quarter basis of not less than: (i) 2.00 to 1.00 from the Financial Quarter Day ending on 30 September 2010 until the Financial Quarter Day ending on 30 June 2013; and (i) 2.50 to 1.00 from the Financial Quarter Day ending on 30 June 2013 onwards;
- 50.2.5 prepare consolidated financial statements of the Sub-Charterers’ Guarantor in accordance with US GAAP consistently applied in respect of each Financial Year and cause the same to be reported on by its auditors and prepare unaudited consolidated financial statements for the Sub-Charterers’ Guarantor in respect of each Financial Quarter on the same basis as the annual statements and deliver as one copy of the same to the Approved Mortgagee as soon as practicable but not later than one hundred and eighty (180) days (in the case of audited financial statements) or ninety (90) days (in the case of unaudited financial statements) after the end of the financial period to which they relate.
- 50.3 The covenants in this Clause 50 shall be tested each Financial Quarter.

51. **HEAD-CHARTERERS’ RIGHTS TO REMEDY DEFAULTS**

- 51.1 If at any time the Sub-Charterers shall fail to comply with any of the provisions of Clause 47, then (without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event) the Head-Charterers shall be at liberty, but not

under any obligation, either (a) to procure such insurance and/or entries on a war risks association or protection and indemnity risks association and/or associations and to pay any outstanding premiums (as the case may be) in accordance with such provisions (at the Sub-Charterers' expense), or (b) at any time whilst such failure is continuing to require the Vessel to remain in port, or (as the case may be) to proceed to and remain at a port or other place designated by the Head-Charterers, until such time as such provisions are fully complied with. If the Head-Charterers intend to exercise any right conferred to them by this Clause 51.1, they shall inform the Sub-Charterers thereof.

- 51.2 If the Sub-Charterers fail to comply with any of the provisions of Clause 10, 44 or 45 the Head-Charterers may, without being in any way obliged so to do, or responsible for so doing, and without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event, arrange for the carrying out of such repairs, changes or surveys as they may deem expedient or necessary in order to procure the compliance with such provisions.
- 51.3 If the Sub-Charterers fail to comply with any of the provisions of Clauses 49 or 52 the Head-Charterers may, without being in any way obliged so to do, or responsible for so doing, and without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event, pay and discharge all such debts, damages, liabilities and outgoings as are therein mentioned and/or take any such measures as they may deem expedient or necessary for the purpose of securing the release of the Vessel in order to procure the compliance with such provisions.
- 51.4 If the Sub-Charterers fail to comply with any of their other obligations under this Sub-Charter, the Head-Charterers may, without being in any way obliged to do so or responsible for so doing, and without prejudice to the right of the Head-Charterers to treat that non-compliance as a Termination Event, take such action as they may deem expedient or necessary in order to procure the compliance with such provisions.
- 51.5 Without prejudice to Clauses 52 and 53 all documented claims, costs, damages or expenses (including without limitation, taxes, repair costs, registration fees and insurance premiums) suffered, incurred or paid by the Head-Charterers in connection with the exercise by the Head-Charterers of any of their powers under this Clause 51 together with any Additional Amount or any unpaid sum in respect of all such claims, costs, damages or expenses from the date on which same were suffered, incurred or paid by the Head-Charterers until the date of receipt or recovery thereof (both before and after any relevant judgment), calculated in accordance with Clause 40.7, which shall be payable by the Sub-Charterers to the Head-Charterers on demand.
- 51.6 Notwithstanding any exercise by the Head-Charterers of any of the rights and powers contained in this Clause 51, charter hire shall continue to accrue and be payable by the Sub-Charterers during the period of such exercise.

52. **COSTS AND INDEMNITY**

- 52.1 The Sub-Charterers agree at all times during the Charter Period to indemnify and keep indemnified the Head-Charterers against:
- 52.1.1 any costs, charges or expenses which the Sub-Charterers have agreed to pay under this Sub-Charter and which shall be claimed or assessed against or paid by the Head-Charterers;
- 52.1.2 all documented claims, costs, damages or expenses suffered or incurred by the Head-Charterers (otherwise than arising from the wilful misconduct or gross negligence of the Head-Charterers):
- (a) which result directly or indirectly from claims which may at any time be made on the ground that any design, article or material of or in the Vessel or the operation or use thereof constitutes or is alleged to constitute an infringement of patent or copyright or registered design or other intellectual property right or other right whatsoever;
 - (b) in preventing or attempting to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture or detention of the Vessel, or in securing the release of the Vessel therefrom;
 - (c) in relation to or which result from breach by the Sub-Charterers of any representation, warranty, covenant, agreement, condition or stipulation contained in this Sub-Charter;
 - (d) in relation to the preservation or enforcement or attempted enforcement of any rights conferred upon the Head-Charterers by this Sub-Charter following the occurrence of any Termination Event or other breach by the Sub-Charterers of the terms of this Sub-Charter;
 - (e) in consequence of the Vessel becoming a wreck or obstruction to navigation;
- 52.1.3 any loss, damage or expense incurred by the Head-Charterers as a direct consequence of any arrest or detention of the Vessel by reason of a claim or claims for which the Sub-Charterers are directly responsible or as a consequence of any alleged violation of any convention (including, but not limited to, MARPOL) and the Sub-Charterer shall take all reasonable steps to secure that within a reasonable time the Vessel is released, by providing bail or otherwise as the circumstances may require; and
- 52.1.4 the occurrence of a Termination Event.
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- The indemnity contained in this Clause 52 shall extend to all amounts payable by the Head-Charterers to the Approved Mortgagee by way of breakage costs as a result of, and any other costs and expenses arising from any of the defaults or events specified above.
- 52.2 The following shall apply if any amount received or recovered by the Head-Charterers in respect of any moneys or liabilities due, owing or incurred by the Sub-Charterers to the Head-Charterers (whether as a result of any judgment or order of any court or in the bankruptcy, administration, reorganisation, liquidation or dissolution of the Sub-Charterers, or by way of damages or any breach of any obligation to make any payment to the Head-Charterers) is received in a currency (the “**Currency of Payment**”) other than Dollars in whatever circumstances and for whatever reason:
- 52.2.1 such receipt or recovery shall only constitute a discharge to the Sub-Charterers to the extent of the amount in Dollars (the “**Dollar Equivalent Receipt**”) which the Head-Charterers are able or would have been able, on the date or dates of receipt by them of such payment or payments in the Currency of Payment (or, in the case of any such date which is not a Banking Day, on the next succeeding Banking Day), to purchase in the foreign exchange market of their choice with the amount or amounts so received in the Currency of Payment.
- 52.2.2 if the Dollar Equivalent Receipt falls short of the amount originally due to the Head-Charterers hereunder, the Sub-Charterers shall indemnify the Head-Charterers against any documented costs or expenses incurred or arising as a result by paying to the Head-Charterers that amount in Dollars certified by the Head-Charterers as necessary to so indemnify the Head-Charterers;
- 52.2.3 this indemnity shall constitute a separate and independent obligation from the other obligations contained in this Sub-Charter, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Head-Charterers from time to time, and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum or sums in respect of amounts due hereunder or under any such judgment or order; and
- 52.2.4 the certificate of the Head-Charterers as to the documented amount of any such costs and expenses aforesaid (which shall be deemed to constitute a loss suffered by the Head-Charterers) shall (save in the case of manifest error) for all purposes be conclusive and binding on the Sub-Charterers.
- 52.3 The indemnities contained in this Clause 52, and each of the other indemnities contained in this Sub-Charter in favour of the Head-Charterers, shall survive any termination or other ending of the Charter Period and any breach of, or repudiation or alleged repudiation by, the Head-Charterers or the Sub-Charterers of this Sub-Charter PROVIDED that, save where a Sub-Charterers’ Termination Event has occurred, any claim under such indemnities must be made within twelve (12) months of the Head-Charterers becoming aware of the matters giving rise to such claim.

52.4 All moneys payable by the Sub-Charterers under this Clause 52 shall be paid on demand.

53. **TERMINATION**

53.1 Each of the following events shall be a Termination Event for the purposes of this Sub-Charter:

53.1.1 if the Sub-Charterers fail to make any payment of hire or other moneys due under this Sub-Charter on its due date, or, in respect of moneys payable on demand (unless otherwise specifically provided) forthwith upon such demand being made and has not remedied such failure within three Banking Days of receipt of notice from the Head-Charterers of such failure;

53.1.2 if the Sub-Charterers are in breach of any one or more of the provisions of this Sub-Charter relating to the Insurances;

53.1.3 if the Sub-Charterers fail to observe or perform any provision of this Sub-Charter (including, without limitation, any Financial Covenant or General Undertaking) other than those referred to in Clauses 53.1.1 and 53.1.2, and, in the reasonable opinion of the Head-Charterers, such default is either not remediable or, in the case of any such default which the Head-Charterers consider capable of remedy, is not remedied to the Head-Charterers' entire satisfaction within seven (7) Banking Days after the Head-Charterers, by written notice to the Sub-Charterers, require the same to be remedied;

53.1.4 if any licence, approval, consent, authorisation or registration at any time necessary for the validity, enforceability or admissibility in evidence of this Sub-Charter, or for the Sub-Charterers to comply with their obligations thereunder, or in connection with the chartering and operation of the Vessel, is revoked, withheld or expires, or is modified in what the Head-Charterers consider a material respect;

53.1.5 if a petition is filed or an order made, (and the Sub-Charterers or the Sub-Charterers' Guarantor or the Manager shall not within twenty one (21) days thereafter have entered a bona fide appeal as a consequence of which such order is stayed) or an effective resolution passed, for the compulsory or voluntary winding-up or dissolution of the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager (other than for the purposes of amalgamation or reconstruction in respect of which the prior written consent of the Head-Charterers have been obtained, such consent not to be unreasonably withheld) or any step analogous thereto is begun in any jurisdiction in relation to the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager, or if the Sub-Charterers, the Sub-Charterers Guarantor or the Manager suspends payment of, or is unable to or admits inability to pay, their debts as they fall due or make any special

- arrangement or composition with their creditors generally or any class of their creditors;
- 53.1.6 if an administrator, administrative receiver, receiver or trustee or similar official is appointed of the whole, or a material part, of the property, assets or undertaking of the Sub-Charterers, the Sub-Charterers Guarantor or the Manager, or if the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager applies for, or consent to, any such appointment or any event occurs or proceeding is taken in any jurisdiction which has an effect equivalent or similar thereto;
- 53.1.7 if an encumbrancer takes possession of, or distress or execution is levied upon, the whole, or a material part, of the property, assets or undertaking of the Sub-Charterers;
- 53.1.8 if any of the Sub-Charterers, the Sub-Charterers' Guarantor or the Manager cease, or threaten to cease, to carry on their business, or (without the prior written consent of the Head-Charterers, which shall not be unreasonably withheld) disposes or threatens to dispose of the whole, or a substantial part, of their property, assets or undertaking;
- 53.1.9 if any representation or warranty made or at any time deemed to be made in this Sub-Charter, or in any certificate or statement in writing delivered or made in connection with this Sub-Charter or in any certificate or statement in writing delivered or made in the negotiations leading up to the conclusion of this Sub-Charter is, incorrect in any material adverse respect, as if such representation or warranty were made as of such time and the same shall not be rectified within 14 days thereafter;
- 53.1.10 if an event of default occurs in relation to any obligation in respect of indebtedness of the Sub-Charterers the amount of which exceeds five hundred thousand United States Dollars (US\$500,000);
- 53.1.11 if it becomes impossible or unlawful for the Sub-Charterers in any material respect to fulfil any of their obligations under this Sub-Charter or for the Head-Charterers to exercise any of the rights vested in them by this Sub-Charter, or this Sub-Charter for any reason becomes invalid or unenforceable or cease to be in full force and effect or the Sub-Charterers repudiate or threaten to repudiate this Sub-Charter;
- 53.1.12 if the Vessel loses her classification status, or loss of classification status is threatened and remedial action is not initiated by the Sub-Charterers within seven (7) days;
- 53.1.13 if the Vessel becomes a Total Loss and the Head-Charterers do not receive, within the time specified in Clause 48.5, a net amount equal to the aggregate of

- (i) the minimum insured value applicable as at the date of the Total Loss and (ii) all other sums (if any) payable by the Sub-Charterers hereunder;
- 53.1.14 if a Termination Event (as defined in each Transaction Sub-Charter) occurs pursuant to or in accordance with the terms of any of the Transaction Sub-Charters or it becomes impossible or unlawful for any of the Transaction Sub-Charterers to fulfil any of their obligations under the Transaction Sub-Charters;
- 53.1.15 if it becomes impossible or unlawful for the Sub-Charterers' Guarantor in any material respect to fulfil any of its obligations under the Sub-Charterers' Guarantee or for the Head-Charterers to exercise any of the rights vested in them by the Sub-Charterers' Guarantee, or the Sub-Charterers' Guarantee for any reason becomes invalid or unenforceable or cease to be in full force and effect or the Sub-Charterers' Guarantor repudiate or threaten to repudiate the Sub-Charterers' Guarantee;
- 53.1.16 if anything is done or suffered or omitted to be done by the Sub-Charterers which, in the reasonable opinion of the Head-Charterers or the Approved Mortgagee, may imperil the registration of the Vessel or of any Security Documents, the Approved Mortgage or any other security constituted by the Approved Mortgage and if in the opinion of the Head-Charterers it will not adversely affect the Head-Charterers, or the security of the Approved Mortgage, it is remedied before the expiry of notice from the Head-Charterers requiring the same to be remedied;
- 53.1.17 if the Manager ceases, without the Head-Charterers approval, to be the managers of the Vessel;
- 53.1.18 there is a Material Adverse Effect; or
- 53.1.19 if the Vessel is detained under any arrest (which for the purpose of this Clause 53.1.19 means any arrest (whether or not registered), attachment, detention, restraint, impounding or seizure under any distress, execution or other process not attributable to any act or default of the Owners or the Head-Charterers or is impounded and is not released within fourteen (14) days.
- 53.2 The Sub-Charterers undertake promptly to advise the Head-Charterers of the occurrence of any Termination Event and of the steps (if any) which are being taken to remedy it.
54. **HEAD CHARTERERS' RIGHTS ON TERMINATION EVENT**
- 54.1 A Termination Event shall constitute (as the case may be) either a repudiatory breach of, or breach of condition by the Sub-Charterers under this Sub-Charter or an agreed terminating event the occurrence of which will (in any such case) entitle the Head-Charterers thereupon and at any time thereafter, so long as the same has not been

remedied, to take any one or more of the actions specified in Clauses 54.2 to 54.5 inclusive.

- 54.2 The Head-Charterers may:
- 54.2.1 proceed by appropriate court action or actions to enforce performance of this Sub-Charter and/or to recover damages for the breach thereof; and/or
- 54.2.2 take any and all such action as they may consider necessary or desirable to cure any such Termination Event. If the Head-Charterers thereby incur any expenditure or liability in curing the same, or otherwise incur any expenditure or liability in respect of the Vessel which should have been incurred by the Sub-Charterers, the Head-Charterers shall be entitled (without prejudice to their other rights hereunder) to recover such expenditure, or an amount equal to such liability, from the Sub-Charterers together with any Additional Amount (as well after as before judgment) calculated in accordance with the provisions of Clause 40.7 from the date such expenditure or liability suffered or incurred by the Head-Charterers until the date of receipt of payment thereof by the Head-Charterers.
- 54.3 The Head-Charterers may at their option, by notice to the Sub-Charterers, declare the Sub-Charterers to be in default and terminate the letting and hiring of the Vessel under this Sub-Charter and withdraw the Vessel from the service of the Sub-Charterers either immediately or on such date as the Head-Charterers may specify, in which event:
- 54.3.1 the Vessel shall no longer be in the possession of the Sub-Charterers with the consent of the Head-Charterers;
- 54.3.2 the Sub-Charterers shall, at the Sub-Charterers' expense, redeliver the Vessel or cause the Vessel to be redelivered to the Head-Charterers with all reasonable dispatch in the manner and in the condition required by this Sub-Charter, and the provisions of Clause 15 permitting the Sub-Charterers to have the use of the Vessel for the relevant additional period specified in that Clause in the circumstances mentioned in that Clause shall take effect subject to the Sub-Charterers' obligation under this Clause 54.3.2 to redeliver the Vessel with all reasonable despatch;
- 54.3.3 without prejudice to the Sub-Charterers' obligation under Clause 54.3.2 above, the Head-Charterers shall be entitled, without legal process (or any obligation to institute legal process), to retake the Vessel (wherever she may be) together with all outfit, machinery, equipment, spare parts, appliances, furniture, fittings, furnishings, consumable stores, unused lubricating oils and bunkers on board the Vessel irrespective of whether the Sub-Charterers, any further sub-charterer or any other person/s are in possession of the Vessel, and for that purpose the Head-Charterers or their agent may enter upon any dock, pier or other premises where the Vessel may be, and the Sub-Charterers agree to indemnify the Head-

Charterers for any liability, damages, costs or expenses whatsoever caused or incurred thereby.

- 54.4 Following the redelivery or retaking of possession of the Vessel, the Head-Charterers may sell the Vessel by public or private sale, in which case the Head-Charterers shall apply the proceeds of sale in or towards payment to the Approved Mortgagee of such sum as shall be required to discharge the Approved Mortgage, or otherwise dispose of, hold, use, operate, charter to others or keep idle the Vessel, as the Head-Charterers in their sole discretion may determine, all free and clear of any rights of the Sub-Charterers and without any duty to account to the Sub-Charterers with respect to such action or inaction or for any proceeds with respect thereto.
- 54.5 The Head-Charterers may recover the amounts specified in this Clause 54, without prejudice to the Head-Charterers' rights to claim damages and/or to exercise any other right or remedy to which the Head-Charterers may be entitled to under this Sub-Charter or at law, in equity or otherwise as a consequence of the occurrence of a Termination Event.
- 54.6 Termination of the chartering of the Vessel and/or repossession of the Vessel by the Head-Charterers shall not relieve the Sub-Charterers from any of their obligations under this Sub-Charter and the Sub-Charterers shall continue to comply with their obligations under this Sub-Charter until such time as the Head-Charterers has unconditionally received all amounts payable by the Sub-Charterers under Clause 55.

55. **TERMINATION PAYMENTS**

- 55.1 Following termination of the chartering of the Vessel hereunder pursuant to Clause 54.3 or after any repudiation of this Sub-Charter by the Sub-Charterers which is accepted by the Head-Charterers, whether or not amounting to a Termination Event, the Sub-Charterers shall be and become obliged to pay to the Head-Charterers the following amounts:
- 55.1.1 forthwith upon such termination all arrears of hire which are due and payable under Clause 40 before the date of termination of the chartering of the Vessel hereunder and all other moneys then payable to the Head-Charterers, together, with an Additional Amount (as well after as before judgement) in respect thereof calculated in accordance with Clause 40.7 from the date on which such hire or other sums fell due for payment to the date of payment;
- 55.1.2 on demand all documented costs and expenses of and in connection with or arising out of the retaking of possession of the Vessel by the Head-Charterers or redelivery of the Vessel to the Head-Charterers pursuant to this Sub-Charter including (without limitation), if a Termination Event has occurred, all costs and expenses suffered or incurred in moving, storing, laying up, insuring and maintaining, the Vessel and in carrying out any works or modifications required

so as to enable the Vessel to comply with the requirements of Clause 14, together with any Additional Amount calculated in accordance with the provisions of Clause 40.7;

- 55.1.3 on demand all other documented costs, damages, expenses (including without limitation breakage and other costs incurred by the Owners under its financing arrangements with the Approved Mortgagee that result from any prepayment following termination being made other than on the date scheduled by such financing arrangements or from any default thereunder arising from such termination, and any legal fees and expenses on a full indemnity basis) of whatsoever nature suffered or incurred by the Owners as a result of such termination or repudiation, together with, if a Termination Event has occurred, any Additional Amount in respect thereof calculated in accordance with the provisions of Clause 40.7;
- 55.1.4 on demand all other documented costs, damages, expenses arising from such termination, and any legal fees and expenses on a full indemnity basis of whatsoever nature suffered or incurred by the Head-Charterers as a result of such termination or repudiation, together with any Additional Amount calculated in accordance with the provisions of Clause 40.7; and
- 55.1.5 on demand effect the Call Option pursuant to the terms of the Acquisition Agreement and pay the amount due thereunder, provided however that if for any reason whatsoever the Sub-Charterers fail to effect the Call Option on demand by the Head-Charterers, the Sub-Charterers shall pay to the Head-Charterers a sum equal to the Call Option Sum which would be payable if the Call Option had been exercised at the time of such demand.
- 55.2 The Sub-Charterers will be entitled in accordance with the terms of the Acquisition Agreement, by notice in writing to the Owners and the Head-Charterers, should the Head-Charterers make a demand on the Sub-Charterers under Clause 55.1.5, to require the Owners and the Head-Charterers to transfer title to the Vessel to the Sub-Charterers or to a company nominated by them, upon, or at any time after, payment by the Sub-Charterers to the Head-Charterers of the sum set out in Clause 55.1.5 and all other sums (if any) payable under Clauses 55.1.1, 55.1.2, 55.1.3, 55.1.4 and any other provision of this Sub-Charter. Such transfer will be on the basis that the Owners and the Head-Charterers make no condition, term, representation or warranty, express or implied (and whether statutory or otherwise) with respect to the Vessel, and the transfer will be strictly on as "as is/where is" basis, free from the Approved Mortgage and any other Encumbrance (save for Permitted Encumbrances) created as a result of any act or omission of the Owners or the Head Charterers.

56. **APPROVED MORTGAGEE**

- 56.1 The Sub-Charterers hereby acknowledge that the Owners intend to obtain a loan from Marfin Egnatia Bank S.A. of Greece (referred to in this Sub-Charter as the “**Approved Mortgage**”) to enable the Owners to finance or refinance the purchase of the Vessel and enter into the Head-Charter.
- 56.2 It is noted and agreed that the said loan will be secured by, *inter alia*, a mortgage and as the case may be collateral deed or deeds of covenant over the Vessel (referred to in this Sub-Charter as an “**Approved Mortgage**”), and an assignment or assignments of all the Owners and the Head-Charterers’ rights in the Insurances, earnings and the proceeds of any requisition of the Vessel and of the benefit of this Sub-Charter.
- 56.3 The Sub-Charterers hereby confirm their agreement to the provision by the Head-Charterers of the securities referred to in Clause 56.2 and undertake, at the request of the Owners and/or the Head-Charterers and (with respect to the Sub-Charterers’ own costs, including legal costs) at the Sub-Charterers’ expense, to execute all such documents and instruments and to do all such acts and things as the Approved Mortgagee may reasonably require to create and perfect, or otherwise in relation to, such security, and hereby acknowledges that their rights as Sub-Charterers of the Vessel shall in all respects be subordinate to the rights of the Approved Mortgagee. Without limitation, the Sub-Charterers will on request by the Head-Charterers additionally assign all their rights in the obligatory Insurances and the freights, hires or other earnings of the Vessel to the Head-Charterers, or to the Approved Mortgagee as assignee of the Head-Charterers’ rights under this Sub-Charter, as the Approved Mortgagee may require, as security for the performance by the Sub-Charterers of their obligations under this Sub-Charter and the Time Charter.

57. **QUIET ENJOYMENT**

- 57.1 If the Vessel is arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Sub-Charterers, the Sub-Charterers shall take all reasonable steps to secure that within a reasonable time the release of the Vessel, by providing bail or otherwise as the circumstances may require.
- 57.2 The Head-Charterers’ hereby covenant and undertake that, so long as no Termination Event shall have occurred and be continuing, in consequence whereof the Head-Charterers have duly given notice to withdraw the Vessel and terminate this Sub-Charter as provided in this Sub-Charter, the Head-Charterers shall not, and shall procure that no person for whose acts or omissions the Head-Charterers, are responsible, including any mortgagee of the Vessel, shall, disturb or interfere with quiet and peaceful use, possession and enjoyment of the Vessel by the Sub-Charterers subject to and upon the terms of this Sub-Charter or any sub-charterer.

- 57.3 The Head-Charterers shall not without the Sub-Charterers' prior written consent create which shall not be unreasonably withheld or delayed or suffer to exist any Encumbrance over the Vessel other than an Approved Mortgage, subject always to the provisions of this Sub-Charter.
- 57.4 If the Vessel is arrested or otherwise detained by reason of a claim or claims for which the Owners or the Head-Charterers are directly responsible, the Owners and the Head-Charterers shall take all reasonable steps to secure that within a reasonable time the Vessel is released, by providing bail or otherwise as the circumstances may require. In such circumstances, the Head-Charterers shall indemnify the Sub-Charterers against any loss, damage or expense incurred by the Sub-Charterers (including hire paid under this Sub-Charter) as a direct consequence of such arrest or detention.
58. **SALVAGE**
- All salvage and towage and all proceeds from derelicts shall be for the Sub-Charterers' benefit and the cost of repairing damage or discharging liabilities occasioned thereby shall be borne by the Sub-Charterers.
59. **GENERAL AVERAGE**
- 59.1 General Average, if any, shall be adjusted according to the York-Antwerp Rules 2004 or any subsequent modification thereof current at the time of the casualty. The hire shall not contribute to General Average. If for any reason the hull and machinery insurance will not contribute to the General Average, then any liability shall be for the Sub-Charterers' account and not the Head-Charterers' and/or the Owners' account.
- 59.2 The Sub-Charterers hereby undertake to pay any salvor's award not paid by the Vessel's insurers due to gross negligence or wilful misconduct of the Sub-Charterers and/or the Manager.
60. **BILLS OF LADING**
- The Sub-Charterers are to procure that all bills of lading issued for carriage of goods under this Sub-Charter shall contain a Paramount Clause incorporating any legislation relating to the carrier's liability for cargo compulsorily applicable in the trade. If no such legislation exists, the bills of lading shall incorporate the English Carriage of Goods by Sea Act 1971 (or as the same may be amended or replaced). The bills of lading shall also contain the amended New Jason Clause and the Both-to-Blame Collision Clause.
61. **REDELIVERY**
- If on redelivery of the Vessel the requirements of this Charter relating to the condition of the Vessel shall not have been satisfied, the Head-Charterers shall be entitled to carry out such works or repairs to the Vessel, and otherwise take such actions, as shall be necessary

to cause such requirements to be satisfied and shall be entitled to recover from the Sub-Charterers on demand the costs (if any) so incurred.

62. **ASSIGNMENT AND TRANSFER OF TITLE TO VESSEL**

62.1 The Head-Charterers shall not assign all or any of their rights and benefits under this Sub-Charter or any part thereof and/or to transfer title in the Vessel to any person or persons without the prior written consent of the Sub-Charterers, such consent not to be unreasonably withheld, conditioned or delayed, provided that such consent shall not be required in the case of an assignment of this Sub-Charter or transfer of title in the Vessel (with the benefit and burden of this Sub-Charter) to the Approved Mortgagee.

62.2 The Sub-Charterers agree and undertake to enter into such usual documents (including, without limitation, novation agreements and any documents supplemental thereto) as the Head-Charterers shall reasonably require to complete or perfect the transfer of the Vessel (with the benefit and burden of this Sub-Charter) pursuant to Clause 62.1.

63. **NOTICES**

63.1 Every notice or demand under this Sub-Charter shall be in the English language and in writing and may be given or made by letter, e-mail or fax.

63.2 Any accounts, demand, consent, record, election or notice required or permitted to be given hereunder shall be in writing and sent by prepaid airmail letter post, telex or delivered by hand addressed as follows:

63.2.1 if to the Owners to:

c/o Prime Shipping Holding Ltd
17-21B Agias Zonis, Eleni Court
P.O.Box 54970
Limassol CY-3729
Republic of Cyprus
Fax No.: + 357 25 746926
E-mail: info@lemissoler.com

63.2.2 if to the Head-Charterers to:

c/o Lemissoler Shipmanagement Limited
17-21B Agias Zonis, Eleni Court
P.O.Box 54970
Limassol CY-3729
Republic of Cyprus
Fax No.: + 357 25 746926
E-mail: info@lemissoler.com

63.2.3 if to the Sub-Charterers to:

c/o Newlead Bulkers S.A.
83 Akti Miaouli & Flessa
Piraeus 18538
Greece

Fax No.: +30 213 0148609
E-mail: Pkallifidas@newleadholdings.com

63.2.4 if to the Approved Mortgagee to:

Marfin Egnatia Bank S.A
24B Kifissias Avenue
151 25 Maroussi
Attiki, Greece
Fax No: +30 210 6896358

or in each case to such other person or address or addresses as any party may notify in writing to the other parties thereto. Every notice or demand shall, except so far as otherwise required by this Sub-Charter, be deemed to have been received in the case of a telefax at the time of despatch thereof and in the case of a letter two (2) days after the posting of the same by prepaid local post or seven (7) days after the posting of the same by prepaid airmail post, as may be appropriate, and in the case of delivery by hand, on delivery.

64. **FEES AND EXPENSES**

The Sub-Charterers shall pay on demand all costs, charges, expenses, claims, liabilities, losses, duties and fees (including, but not limited to, the fees and expenses of all legal and insurance advisers) incurred by that Owners and the Head-Charterers in the negotiation, preparation, printing, execution, enforcement and registration of this Sub-Charter and the Head-Charter and any other document entered into pursuant to or in connection with this Sub-Charter (save for any of the Security Documents or any loan agreement or finance document entered into by the Owners or the Head-Charterers).

65. **MISCELLANEOUS**

- 65.1 No delay or omission by the either party to exercise any right, power or remedy vested in it under this Sub-Charter or by law shall impair such right, power or remedy, or be construed as a waiver of, or as an acquiescence in, any default by the other party.
- 65.2 If either party on any occasion agrees to waive any such right, power or remedy, such waiver shall not in any way preclude or impair any further exercise thereof or the exercise of any other right, power or remedy.
- 65.3 Any waiver by either party of any provision of this Sub-Charter, and any consent or approval given by either party, shall only be effective if given in writing and then only strictly for the purpose and upon the terms for which it is given.
- 65.4 This Sub-Charter may not be amended or varied orally but only by an instrument signed by each of the parties hereto.

- 65.5 The rights, powers and remedies of each party contained in this Sub-Charter are cumulative and not exclusive of each other nor of any other rights, powers or remedies conferred by law, and may be exercised from time to time and as often as that party may think fit.
- 65.6 If at any time one or more of the provisions of this Sub-Charter is or become invalid, illegal or unenforceable in any respect under any law by which it may be governed or affected, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired as a result.
- 65.7 This Sub-Charter may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute but one and the same instrument.
- 65.8 The termination or expiry of this Sub-Charter shall be without prejudice to rights accrued due between the parties prior to the date of termination or expiry and to any claim that either party may have.
- 65.9 All terms and conditions of this Sub-Charter shall be kept private and confidential.
- AS WITNESS** the hands of the duly authorised representatives of the parties hereto the day and year first before written.

For and on behalf of

For and on behalf of

PRIME TIME MARITIME LTD

CHINA HOLDINGS LTD.

By: /s/ Petros Monogios

By: /s/ Peter Kallifidas
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SCHEDULE 1

CONDITIONS PRECEDENT

Part A: Sub-Charterers

1. The Head-Charterers and their legal advisers shall be satisfied on the Delivery Date that:
 - 1.1 no Termination Event has occurred and is continuing or would result from the chartering of the Vessel to the Sub-Charterers under this Sub-Charter;
 - 1.2 each of the representations and warranties contained in Clause 33 is true and correct on the Delivery Date by reference to the facts and circumstances then subsisting;
 - 1.3 each of the financial covenants contained in Clause 50 is true and correct on the Delivery Date by reference to the facts and circumstances then subsisting;
 - 1.4 no Encumbrances (save for Permitted Encumbrances) are subsisting on the Vessel;
 - 1.5 the Head-Charterers have received payment of the Advance Payment and the first month's hire due on the Delivery Date;
 - 1.6 the Head-Charterers or their legal advisers, have received in form and substance satisfactory to them, of:
 - 1.6.1 an extract from the relevant companies register in the country of incorporation of the Sub-Charterers confirming that the Sub-Charterers are in good standing and the authority of named officers of the Sub-Charterers to bind the Sub-Charterers;
 - 1.6.2 a copy, certified as true by the secretary or a director of the Sub-Charterers, of any power of attorney duly issued by the Sub-Charterers and in favour of any person or persons executing the Sub-Charter;
 - 1.6.3 the Manager's Undertaking duly executed by the Manager in a form acceptable to the Approved Mortgagee;
 - 1.6.4 evidence, by way of copy policies, cover notes, letters of undertaking and certificates of entry, that insurance in respect of the Vessel has been effected in accordance with the provisions of this Sub-Charter and that the respective interests of the Owners, Head-Charterers and the Approved Mortgagee have been or will be noted thereon, together with letters of undertaking from the relevant brokers and protection and indemnity and war risks associations and a favourable written opinion from insurance advisers nominated by the Approved Mortgagee, at the Sub-Charterers' expense, as to the quality of the insurance of the Vessel;
 - 1.6.5 a copy, certified as true by the secretary or a director of the Sub-Charterers, of the management agreement in relation to the Vessel, in terms acceptable to the Approved Mortgagee, entered into by the Sub-Charterers with the Manager;

- 1.6.6 a copy, certified as true by the secretary or a director of the Sub-Charterers, of any Time Charter in relation to the Vessel, in terms acceptable to the Approved Mortgagee;
- 1.6.7 evidence satisfactory to the Head-Charterers in all respects:
- (a) of compliance by the Sub-Charterers, the Manager, and the Vessel with the requirements of MARPOL 73/78, the ISM Code and of the ISPS Code;
 - (b) that the Vessel is classed with the Classification Society with the highest possible notation for such type of vessel and with its classification free from all recommendations, qualifications, requirements, notations and average damage;
 - (c) that the Vessel is in compliance with all applicable laws, regulations and requirements (statutory or otherwise) applicable to ships registered under the Flag State with all required trading certificates (valid and current) and engaged in the service in which it is or is to be engaged;
 - (d) that the Sub-Charterers' Guarantor has entered into the Sub-Charterers' Guarantee together with evidence that the Sub-Charterers' Guarantor has the full power and corporate authority to enter into the Sub-Charterers' Guarantee and, where required, evidence that all information requested by the Approved Mortgagee in connection with the Sub-Charterers' Guarantor or the Sub-Charterers' Guarantee has been provided (and is acceptable) to the Approved Mortgagee;
 - (e) that the Sub-Charterers' Guarantor has entered into the Warrants Instrument with Lemissoler Corporate Management Limited in the agreed form;
 - (f) that the Sub-Charterers have entered into such Security Documents (to which it is a party) and all documents, instruments, notices and acknowledgements thereto required under those Security Documents, and, where required, evidence that such Security Documents have been duly registered or are capable of immediate registration with the required priority in the appropriate register and acceptable to the Approved Mortgagee; and
 - (g) the Sub-Charterers have made payment of all fees and expenses (including legal fees and expenses) due and payable on or before the Delivery Date.

Part B: Head-Charterers

2. The Sub-Charterers and their legal advisers shall be satisfied on the Delivery Date that:
- 2.1 each of the representations and warranties made by the Head-Charterers contained in Clause 33 is true and correct on the Delivery Date by reference to the facts and circumstances then subsisting; and
- 2.2 no Encumbrances (save for Permitted Encumbrances) are subsisting on the Vessel;
- 2.3 the Sub-Charterers or their legal advisers, have received in form and substance satisfactory to them, of:
- 2.3.1 an extract from the relevant companies register in the country of incorporation of the Head-Charterers confirming that the Head-Charterers are in good standing and the authority of named officers of the Head-Charterers to bind the Head-Charterers;
- 2.3.2 a copy, certified as true by the secretary or a director of the Head-Charterers, of any power of attorney duly issued by the Head-Charterers and in favour of any person or persons executing the Head-Charter;
- 2.3.3 evidence satisfactory to the Sub-Charterers:
- (a) the Vessel has been unconditionally delivered by the Seller to the Owner in accordance with the MOA and accepted by the Owner as being in all respects in compliance with the provisions of the MOA to include certified true copies of the protocol of delivery and acceptance signed by the Seller and of all other documents to be provided by the Seller upon delivery of the Vessel pursuant to the MOA;
- (b) the Vessel has been unconditionally delivered by the Owners to the Head-Charterers in accordance with the Head-Charter and accepted by the Head-Charterers as being in all respects in compliance with the provisions of the Head-Charter to include certified true copies of the protocol of delivery and acceptance signed by the Head-Charterers and of all other documents to be provided by the Owners upon delivery of the Vessel pursuant to the Head-Charter;
- (c) that the Vessel is in the absolute ownership of the Owner as the sole, legal and beneficial owner of the Vessel free from all Encumbrances save for Permitted Encumbrances; and
- 2.3.4 confirmation from the agents in England nominated by the Head-Charterers in the Multipartite Agreement for the acceptance of service of process, that they consent to such nomination.

**SCHEDULE 2
REPRESENTATIONS AND WARRANTIES**

Part A: Sub-Charterers

1. The Sub-Charterers represent and warrant that the following matters are true at the date of this Charter and shall be true on the Delivery Date:
- 1.1 the Sub-Charterers:
 - 1.1.1 are a company duly incorporated with limited liability in the Republic of Liberia, validly existing and in good standing under the laws of the Republic of Liberia;
 - 1.1.2 have full power to own their property and assets and to carry on their business as it is now being conducted and to charter the Vessel from the Head-Charterers hereunder;
 - 1.1.3 have complied with all statutory and other requirements relative to their business;
- 1.2 entry into and performance by the Sub-Charterers of this Sub-Charter is within the corporate powers of the Sub-Charterers and has been duly authorised by all necessary corporate actions and approvals;
- 1.3 entry into and performance by the Sub-Charterers of this Sub-Charter does not and will not
 - 1.3.1 contravene in any respect any law, regulation or contractual restriction which does, or may, bind the Sub-Charterers any of their assets;
 - 1.3.2 result in the creation or imposition of any encumbrance on any of their assets in favour of any party other than the Head-Charterers and the Approved Mortgagee;
- 1.4 all licences, authorisations, approvals and consents (if any) necessary for the entry into, performance, validity, enforceability or admissibility in evidence of this Sub-Charter have been obtained and are in full force and effect;
- 1.5 this Sub-Charter constitutes the Sub-Charterers' legal, valid and binding obligations and is enforceable in accordance with its terms;
- 1.6 no litigation, arbitration, tax claim or administrative proceeding is current or pending or threatened, which, if adversely determined, would have a materially detrimental effect on the financial condition of the Sub-Charterers;

- 1.7 no Termination Event has occurred and is continuing;
- 1.8 the choice of English law to govern this Sub-Charter and the submission by the Sub-Charterers to the jurisdiction of the English courts are valid and binding;
- 1.9 all payments to be made by the Sub-Charterers under this Sub-Charter may be made free and clear of and without deduction or withholding for or on account of any taxes, and this Sub-Charter is not liable to any registration charge or any stamp, documentary or similar taxes imposed by any authority, including without limitation, in connection with the admissibility in evidence thereof;
- 1.10 the obligations of the Sub-Charterers under this Sub-Charter will rank at least *pari passu* with all of their other unsecured and unsubordinated obligations and liabilities from time to time outstanding, other than as preferred by the statute; and
- 1.11 each of the financial covenants contained in Clause 50 is true and correct by reference to the facts and circumstances then subsisting.

Part B: Head-Charterers

- 2. The Head-Charterers represent and warrant that the following matters are true at the date of this Sub-Charter and shall be true on the Delivery Date:
 - 2.1 the Head-Charterers:
 - 2.1.1 are a company duly incorporated with limited liability, validly existing and in good standing under the laws of the Republic of the Marshall Islands; and
 - 2.1.2 have full power to charter the Vessel to the Sub-Charterers hereunder, to own their property and assets and to carry on their business as it is now being conducted.
 - 2.2 the entry into and performance by the Head-Charterers of this Sub-Charter is within the corporate powers of the Head-Charterers and has been duly authorised by all necessary corporate actions and approvals.
 - 2.3 all licences, authorisations, approvals and consents necessary for the Head-Charterers' entry into and performance of this Sub-Charter have been obtained and are in full force and effect, true copies have been delivered to the Sub-Charterers and there has been no breach of any condition or restriction imposed in this respect.
 - 2.4 the Head-Charterers further represent and warrant and undertake that they are and shall throughout the Charter Period remain as single-purpose company, chartering no other ship than the Vessel.

SCHEDULE 3
NOTICE OF ASSIGNMENT/LOSS PAYABLE CLAUSE

SCHEDULE 4

FORM OF PROTOCOL OF DELIVERY AND ACCEPTANCE

By this Protocol of Delivery and Acceptance dated [•]2010 it is hereby confirmed that the m.v. [•] having IMO Number [•] was delivered to and accepted by [•] (the “**Sub-Charterer**”) pursuant to and under a bareboat charter (the “**Sub-Charter**”) dated [•] and made between [•] (the “**Head-Charterer**”) as head-charterer and the Sub-Charterer as sub-charterer, at [00:00] hours G.M.T. on the [•] day of [•] 2010.
Signed by

for and on behalf of

[•]

Signed by

for and on behalf of

[•]

**SCHEDULE 5
CALCULATION OF HIRE RATE
m.v. "CHINA"**

Month	Monthly Rate (US\$)
1 — 36	251,586
37 — 96	150,952

DATED 20 January 2011
NEWLEAD HOLDINGS LTD.
as Issuer
and
LEMISOLER CORPORATE MANAGEMENT LIMITED
as Recipient

SHARE ISSUANCE AGREEMENT

relating to the issuance of common shares in NewLead Holdings Ltd.

THIS AGREEMENT is made on 10 January 2011 between:

- (1) **NEWLEAD HOLDINGS LTD.**, a company organised and existing under the laws of Bermuda, having its registered office at Canon's Court, 22 Victoria Street, Hamilton HM12, Bermuda (the "**Issuer**"); and
- (2) **LEMISOLER CORPOPRATE MANAGEMENT LIMITED**, a corporation organised and existing under the laws of the Cyprus, having its registered office at 17-21B Agias Zonis Street, Eleni Court, P.O.Box 54970, CY-3027, Limassol, Cyprus (the "**Recipient**").

WHEREAS:

- A. Australia Holdings Ltd., Brazil Holdings Ltd., China Holdings Ltd. and Grand Rodosi Inc., all being subsidiaries of the Issuer (together the "**Sellers**") sold m.v. "AUSTRALIA", m.v. "BRAZIL", m.v. "CHINA" and m.v. "GRAND RODOSI" (each a "**Vessel**" and together the "**Vessels**") to Prime Mountain Shipping Ltd, Prime Lake Shipping Ltd, Prime Time Shipping Ltd and Prime Hill Shipping Ltd (together the "**Buyers**") in accordance with the terms of an acquisition agreement, dated as of 23 November 2010, entered into between (amongst others) the Buyers and the Sellers (the "**Acquisition Agreement**").
- B. Immediately following such sale and delivery each of the Buyers let and demised the relevant Vessel then owned by it to Prime Mountain Maritime Ltd, Prime Lake Maritime Ltd, Prime Time Maritime Ltd and Prime Hill Maritime Ltd respectively (together the "**Head-Charterers**") and each of the Head-Charterers hired such Vessel, in accordance with the terms of the Head-Charters (as hereinafter defined).
- C. Immediately upon delivery to each of the Head-Charterers, each of the Head-Charterers let and demised the relevant Vessel to the Sellers as sub-charterers respectively (the "**Sub-Charterers**") and each of the Sub-Charterers hired such Vessel, in accordance with the Acquisition Agreement and the terms of the Sub-Charters (as hereinafter defined).
- D. Pursuant to the Acquisition Agreement, the Sellers agreed that the Issuer shall, amongst other things, enter into this Agreement pursuant to which the Issuer will issue and grant to the Recipient certain Common Shares (as hereinafter defined) in accordance with the terms of this Agreement (defined and referred to in the Acquisition Agreement as the "**Warrants Instrument**" notwithstanding the form or substance of this Agreement).

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation set out in this Section apply to this Agreement.

1.1.1 "**Bye-Laws**" means the bye-laws of the Issuer current at the date of this Agreement or as amended from time to time;

- 1.1.2 “**Common Shares**” means the common shares of the Issuer of \$0.01 par value per share having the rights and privileges set out in the Bye-Laws;
- 1.1.3 “**Directors**” means the board of directors of the Issuer from time to time;
- 1.1.4 “**Head-Charters**” means together each of the following head-bareboat charters:
- 1.1.4.1 the head-bareboat charter dated 23 November 2010 entered into between Prime Mountain Shipping Ltd (as owner) and Prime Mountain Maritime Ltd (as head-charterer) in relation to m.v. “AUSTRALIA”;
- 1.1.4.2 the head-bareboat charter dated 23 November 2010 entered into between Prime Lake Shipping Ltd (as owner) and Prime Lake Maritime Ltd (as head-charterer) in relation to m.v. “BRAZIL”;
- 1.1.4.3 the head-bareboat charter dated 23 November 2010 entered into between Prime Time Shipping Ltd (as owner) and Prime Time Maritime Ltd (as head-charterer) in relation to m.v. “CHINA”; and
- 1.1.4.4 the head-bareboat charter dated 23 November 2010 entered into between Prime Hill Shipping Ltd (as owner) and Prime Hill Maritime Ltd (as head-charterer) in relation to m.v. “GRAND RODOSI”;
- 1.1.5 “**Last Reported Sale Prices**” of the Common Shares on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. securities exchange on which the Common Shares are listed for trading. If the Common Shares are not listed for trading on a U.S. national or regional securities exchange on the relevant date, then the “Last Reported Sale Price” will be the last quoted bid price for the Common Shares in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization. If the Common Shares are not so quoted, the “Last Reported Sale Price” will be the average of the mid-point of the last bid and ask prices for the Common Shares on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose;
- 1.1.6 “**Sub-Charters**” means together each of the following sub-bareboat charters:

- 1.1.6.1 the sub-bareboat charter dated 23 November 2010 entered into between Prime Mountain Maritime Ltd (as head-charterer) and Australia Holdings Ltd. (as sub-charterer) in relation to m.v. "AUSTRALIA";
 - 1.1.6.2 the sub-bareboat charter dated 23 November 2010 entered into between Prime Lake Maritime Ltd (as head-charterer) and Brazil Holdings Ltd. (as sub-charterer) in relation to m.v. "BRAZIL";
 - 1.1.6.3 the sub-bareboat charter dated 23 November 2010 entered into between Prime Time Maritime Ltd (as head-charterer) and China Holdings Ltd. (as sub-charterer) in relation to m.v. "CHINA"; and
 - 1.1.6.4 the sub-bareboat charter dated 23 November 2010 entered into between Prime Hill Maritime Ltd (as head-charterer) and Grand Rodosi Inc. (as sub-charterer) in relation to m.v. "GRAND RODOSI";
 - 1.1.7 "**Subsidiary**" means, with respect to any legal or natural person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such person; (ii) such person and one or more Subsidiaries of such person; or (iii) one or more Subsidiaries of such person.
 - 1.2 Words and expressions defined in the Bye-Laws shall, unless otherwise defined in this Agreement, have the same meaning when used in this Agreement.
 - 1.3 Headings are inserted for convenience only and shall be ignored in the interpretation of this Agreement.
 - 1.4 In this Agreement, unless the context otherwise requires:
 - 1.4.1 references to Clauses, Sections, paragraphs and Schedules are to be construed as references to the Clauses, Sections and paragraphs of, and schedules to, this Agreement and references to this Agreement include its Schedules;
 - 1.4.2 reference to (or to any specified provision of) this Agreement or any other document or Agreement shall be construed as a reference to this Agreement, that provision or that document or Agreement as in force for the time being and as
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amended in accordance with the terms thereof;

1.4.3 references to a person shall be construed as including references to an individual, firm, company, corporation or unincorporated body of persons;

1.4.4 references to the singular shall include the plural and vice versa; and

1.4.5 references to statutory provisions shall be construed as references to those provisions as replaced, amended or re-enacted from time to time.

2 SHARE ISSUANCE; PRO-RATA ADJUSTMENT

- 2.1 On the date hereof, the Issuer shall, by irrevocable written instruction, instruct its transfer agent to issue to the Recipient 36,480 Common Shares.
- 2.2 Subject to adjustment as set forth in Section 2.4 below, within 10 days following each of the first and second anniversary of the date hereof, the Issuer shall deliver to the Recipient, at Issuer's option, either (a) US\$182,400 in cash, or (b) US\$182,400 worth of Common Shares, with each Common Share being valued at 120% of the 30-day average of the Last Reported Sale Prices for the 30 days prior to each such anniversary date.
- 2.3 Subject to adjustment as set forth in Section 2.4 below, within 10 days following each of the third, fourth, fifth, sixth and seventh anniversary of the date hereof, the Issuer shall deliver to the Recipient, at Issuer's option, either (a) US\$109,440 in cash, or (b) US\$109,440 worth of Common Shares, with each Common Share being valued at 120% of the 30-day average of the Last Reported Sale Prices for the 30 days prior to the applicable anniversary date.
- 2.4 Notwithstanding anything to the contrary set forth herein, if any of the Sub-Charters are terminated by any Sub-Charterer prior to the expiration of its stated term, then the cash payment or the total number of Common Shares to be issued pursuant to Sections 2.2 and 2.3 above, shall each be reduced pro-rata based on the value of the Vessel whose Sub-Charter has been terminated to the total value of all of the Vessels. Following such adjustment, the amount of any cash payment or the number of Common Shares remaining to be paid or issued pursuant to Sections 2.2 and 2.3 above on any anniversary of the date hereof shall be reduced pro-rata based on the payment to be made or the number of Common Shares originally issuable on such anniversary. For purposes hereof, the values of the Vessels are as follows: US\$17,500,000 for the GRAND RODOSI, US\$32,750,000 for the BRAZIL, US\$24,500,000 for the AUSTRALIA and US\$19,500,000 for the CHINA. For the sake of clarification, the pro-rata reduction of any cash payment to be made or Common Shares to be issued as per Sections 2.2 and 2.3 is only applicable for cash payments not yet paid or Common Shares not yet issued and will not reverse any cash payments or Common Shares already delivered to the Recipient.

2.5 Calculations. All calculations made by the Issuer under this Section 2 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable and, absent manifest error, will be binding on the parties hereto.

3 **ENTIRE AGREEMENT**

This Agreement sets out the entire agreement and understanding between the parties hereto in respect of the subject matter hereof and it is expressly declared that no variations hereof shall be effective unless made in writing and signed by or on behalf of each of the parties.

4 **GOVERNING LAW**

All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of this Agreement and the transactions herein contemplated ("**Proceedings**") (whether brought against a party hereto or its respective affiliates, employees or agents) may be commenced non-exclusively in the state and federal courts sitting in New York City, New York (the "**New York Courts**"). The Issuer and the Recipient, hereby irrevocably submits to the non-exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any Proceeding, any claim that it is not personally subject to the jurisdiction of any New York Court, or that such Proceeding has been commenced in an improper or inconvenient forum. The Issuer and the Recipient, hereby irrevocably waives personal service of process and consents to process being served in any such Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. The Issuer and the Recipient, hereby irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. If either the Issuer or the Recipient shall commence a Proceeding to enforce any provisions of this Agreement, then the prevailing party in such Proceeding shall be reimbursed by the other party for its attorney's fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Proceeding.

IN WITNESS WHEREOF this Agreement has been duly executed on behalf of the Issuer as an Agreement and is intended to be and is hereby delivered on the day and year first above written.

SIGNED AS A DEED)
by Michail Zolotas)
duly authorised for and on behalf of) /s/ Michail Zolotas
NEWLEAD HOLDINGS LTD.)
in the presence of:)

/s/ Peter G. Kallifidas
Peter G. Kallifidas
Attorney-at-Law

SIGNED AS A DEED)
by Philippos Plikis)
duly authorised for and on behalf of) /s/ Philippos Plikis

LEMISOLER CORPORATE)
MANAGEMENT LIMITED)
in the presence of:)

/s/ Petros Monogios
Petros Monogios

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1. Shipbroker N/A		BIMCO STANDARD BAREBOAT CHARTER CODE NAME: "BARECON 2001" 	
		2. Place and date 8 June 2011	
3. Owners/Place of business (Cl. 1) Endurance Shipping LLC The Trust Company Complex Ajeltake Island Majuro The Marshall Islands MH 96960		4. Bareboat Charterers/Place of business (Cl. 1) Curby Navigation Ltd a Liberian corporation acting through its office at: 83, Akti Miaouli & Flessa Str. Piraeus 185 38 Greece	
5. Vessel's name, call sign and flag (Cl. 1 and 3) Sungdong Hull No. S-1125 tbr "NEWLEAD ENDURANCE", Liberian flag			
6. Type of Vessel Bulk carrier		7. GT/NT 51117/30606	
8. When/Where built 2011 Sungdong Shipbuilding & Marine Engineering, Co. Ltd., Tongyeong City, Korea		9. Total DWT (abt.) in metric tons on summer freeboard about 91,600 mt	
10. Classification Society (Cl. 3) Bureau Veritas		11. Date of last special survey by the Vessel's classification society N/A	
12. Further particulars of Vessel (also indicate minimum number of months' validity of class certificates agreed acc. to Cl. 3) Validity of class certificates as delivered to the Owners under the MOA			
13. Port or Place of delivery (Cl. 3) As per MOA		14. Time for delivery (Cl. 4) The date of delivery under the MOA	15. Cancelling date (Cl. 5) as per MOA
16. Port or Place of redelivery (Cl. 15) N/A		17. No. of months' validity of trading and class certificates upon redelivery (Cl. 15) 6 months	
18. Running days' notice if other than stated in Cl. 4 N/A		19. Frequency of dry-docking (Cl. 10(a)) 30 months	
20. Trading limits (Cl. 6) Worldwide within IWL and always in compliance with all applicable conditions of insurance			
21. Charter period (Cl. 2) See Clause 37		22. Charter hire (Cl. 11) See Clause 38	
23. New class and other safety requirements (state percentage of Vessel's insurance value acc. to Box 29)(Cl. 10(a)(ii)) N/A			
24. Rate of interest payable acc. to Cl. 11 (f) and, if applicable, acc. to PART IV See Clause 38.5		25. Currency and method of payment (Cl. 11) United States Dollars payable monthly in advance	

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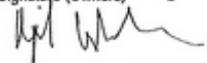


"BARECON 2001" STANDARD BAREBOAT CHARTER

PART I

26. Place of payment; also state beneficiary and bank account (Cl. 11) Clause 38.3.1	27. Bank guarantee/bond (sum and place) (Cl. 24) (optional) N/A
28. Mortgage(s), if any (state whether 12(a) or (b) applies; if 12(b) applies state date of Financial Instrument and name of Mortgagee(s)/Place of business) (Cl. 12) Clause 12(b) to apply	29. Insurance (hull and machinery and war risks) (state value acc. to Cl. 13(f) or, if applicable, acc. to Cl. 14(k)) (also state if Cl. 14 applies) Clause 47
30. Additional insurance cover, if any, for Owners' account limited to (Cl. 13(b) or, if applicable, Cl. 14(g)) N/A	31. Additional insurance cover, if any, for Charterers' account limited to (Cl. 13(b) or, if applicable, Cl. 14(g)) N/A
32. Latent defects (only to be filled in if period other than stated in Cl. 3) N/A	33. Brokerage commission and to whom payable (Cl. 27) N/A
34. Grace period (state number of clear banking days) (Cl. 28) Clause 49.1.2	35. Dispute Resolution (state 30(a), 30(b) or 30(c); if 30(c) agreed Place of Arbitration <u>must</u> be stated (Cl. 30)) London - Clause 30(a) to apply
36. War cancellation (indicate countries agreed) (Cl. 26(f)) N/A	
37. Newbuilding Vessel (indicate with "yes" or "no" whether PART III applies) (optional) No	38. Name and place of Builders (only to be filled in if PART III applies) N/A
39. Vessel's Yard Building No. (only to be filled in if PART III applies) N/A	40. Date of Building Contract (only to be filled in if PART III applies) N/A
41. Liquidated damages and costs shall accrue to (state party acc. to Cl. 1) a) N/A b) c)	
42. Hire/Purchase agreement (indicate with "yes" or "no" whether PART IV applies) (optional) No	43. Bareboat Charter Registry (indicate with "yes" or "no" whether PART V applies) (optional) No
44. Flag and Country of the Bareboat Charter Registry (only to be filled in if PART V applies) N/A	45. Country of the Underlying Registry (only to be filled in if PART V applies) N/A
46. Number of additional clauses covering special provisions, if agreed Additional clauses 32 - 56	

PREAMBLE - It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include PART I and PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict but no further. It is further mutually agreed that PART III and/or PART IV and/or PART V shall only apply and only form part of this Charter if expressly agreed and stated in Boxes 37, 42 and 43. If PART III and/or PART IV and/or PART V apply, it is further agreed that in the event of a conflict of conditions, the provisions of PART I and PART II shall prevail over those of PART III and/or PART IV and/or PART V to the extent of such conflict but no further.

Signature (Owners) 	Nigel Willis Attorney-in-Fact	Signature (Charterers)
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PART II
"BARECON 2001" Standard Bareboat Charter

1. Definitions	1	Owners notice of cancellation within thirty-six (36)	65
In this Charter, the following terms shall have the	2	running hours after the cancelling date stated in Box	66
meanings hereby assigned to them:	3	15, failing which this Charter shall remain in full force	67
"The Owners" shall mean the party identified in <u>Box 3</u> ;	4	and effect.	68
"The Charterers" shall mean the party identified in <u>Box 4</u> ;	5	(b) — if it appears that the Vessel will be delayed beyond	69
"The Vessel" shall mean the vessel named in <u>Box 5</u> and	6	the cancelling date, the Owners may, as soon as they	70
with particulars as stated in <u>Boxes 6 to 12</u> .	7	are in a position to state with reasonable certainty the	71
"Financial Instrument" means the any loan agreement	8	day on which the Vessel should be ready, give notice	72
mortgage, deed of		thereof to the Charterers asking whether they will	73
covenant or other such financial security instrument that	9	exercise their option of cancelling, and the option must	74
the Owner may at any time during the Charter Period		then be declared within one hundred and sixty-eight	75
enter into in respect of the Vessel. as (see box 28		(168) running hours of the receipt by the Charterers of	76
Clause 12(b) and 44.5)		such notice or within thirty-six (36) running hours after	77
annexed to this Charter and stated in <u>Box 28</u> .	10	the cancelling date, whichever is the earlier. If the	78
		Charterers do not then exercise their option of cancelling,	79
2. Charter Period	11	the seventh day after the readiness date stated in the	80
In consideration of the hire detailed in <u>Box 22</u> , Clause 38	12	Owners' notice shall be substituted for the cancelling	81
the Owners have agreed to let and the Charterers have	13	date indicated in <u>Box 15</u> for the purpose of this <u>Clause 5</u> .	82
agreed to hire the Vessel for the period stated in <u>Box 21</u> .	14	(c) — Cancellation under this <u>Clause 5</u> shall be without	83
Clause 37		prejudice to any claim the Charterers may otherwise	84
("The Charter Period").	15	have on the Owners under this Charter.	85
3. Delivery	16	6. Trading Restrictions	86
(not applicable when Part III applies, as indicated in <u>Box 37</u>)	17	The Vessel shall be employed in lawful trades for the	87
(a) — The Owners shall before and at the time of delivery	18	carriage of suitable lawful merchandise within the trading	88
exercise due diligence to make the Vessel seaworthy	19	limits indicated in <u>Box 20</u> .	89
And in every respect ready in hull, machinery and	20	The Charterers undertake not to employ the Vessel or	90
equipment for service under this Charter.	21	suffer the Vessel to be employed otherwise than in	91
The Vessel shall be delivered by the Owners and taken	22	conformity with the terms of the contracts of insurance	92
over by the Charterers at the port or place indicated in	23	(including any warranties expressed or implied therein)	93
<u>Box 13</u> in such ready safe berth as the Charterers may	24	without first obtaining the consent of the insurers to such	94
direct. The Owners shall deliver and the Charterers	25	employment and complying with such requirements as	95
shall accept the Vessel in the same physical		to extra premium or otherwise as the insurers may	96
condition as delivered by the Charterers to the		prescribe.	97
Owners under the MOA.		The Charterers also undertake not to employ the Vessel	98
(b) — The Vessel shall be properly documented on	26	or suffer her employment in any trade or business which	99
delivery in accordance with the laws of the flag State	27	is forbidden by the law of any country to which the Vessel	100
indicated in <u>Box 6</u> and the requirements of the	28	may sail or is otherwise illicit or in carrying illicit or	101
classification society stated in <u>Box 10</u> . The Vessel upon	29	prohibited goods or in any manner whatsoever which	102
delivery shall have her survey cycles up to date and	30	may render her liable to condemnation, destruction,	103
trading and class certificates valid for at least the number	31	seizure or confiscation.	104
of months agreed in <u>Box 12</u> .	32	Notwithstanding any other provisions contained in this	105
(c) The delivery of the Vessel by the Owners and the	33	Charter it is agreed that nuclear fuels or radioactive	106
taking over of the Vessel by the Charterers shall	34	products or waste are specifically excluded from the	107
constitute a full performance by the Owners of all the	35	cargo permitted to be loaded or carried under this	108
Owners' obligations under this <u>Clause 3</u> , and thereafter	36	Charter. This exclusion does not apply to radio-isotopes	109
the Charterers shall not be entitled to make or assert	37	used or intended to be used for any industrial,	110
any claim against the Owners on account of any	38	commercial, agricultural, medical or scientific purposes	111
conditions, representations or warranties expressed or	39	provided the Owners' prior approval has been obtained	112
implied with respect to the Vessel, but the Owners shall	40	to loading thereof.	113
be liable for the cost of but not the time for repairs or	41		
renewals occasioned by latent defects in the Vessel,	42	7. Surveys on Delivery and Redelivery	114
her machinery or appurtenances, existing at the time of	43	(not applicable when Part III applies, as indicated in <u>Box 37</u>)	115
delivery under this Charter, provided such defects have	44	The Owners and Charterers shall each appoint	116
manifested themselves within twelve (12) months after	45	surveyors for the purpose of determining and agreeing	117
delivery unless otherwise provided in <u>Box 32</u> .	46	in writing the condition of the Vessel at the time of	118
		delivery and redelivery hereunder. The Owners shall	119
4. Time for Delivery	47	bear all expenses of the On-hire Survey including loss	120
(not applicable when Part III applies, as indicated in <u>Box 37</u>)	48	of time, if any, and the Charterers shall bear all expenses	121
The Vessel shall not be delivered before the date	49	of the Off-hire Survey including loss of time, if any, at	122
indicated in <u>Box 14</u> , without the Charterers' consent and	50	the daily equivalent to the rate of hire or pro-rata thereof.	123
the Owners shall exercise due diligence to deliver the	51		
Vessel not later than the date indicated in <u>Box 15</u> .	52	8. Inspection	124
Unless otherwise agreed in <u>Box 18</u> , the Owners shall	53	The Owners shall have the right at any time after giving	125
give the Charterers not less than thirty (30) running days'	54	reasonable notice to the Charterers to, without	126
preliminary and not less than fourteen (14) running days'	55	interfering with or causing any delay to the Vessel's	
definite notice of the date on which the Vessel is	56	work schedule, inspect or survey	
expected to be ready for delivery.	57	the Vessel or instruct a duly authorised surveyor to carry	127
The Owners shall keep the Charterers closely advised	58	out such survey on their behalf.	128
of possible changes in the Vessel's position.	59	(a) to ascertain the condition of the Vessel and satisfy	129
		themselves that the Vessel is being properly repaired	130
5. Cancelling See Clause 34	60	and maintained. The costs and fees for such inspection	131
(not applicable when Part III applies, as indicated in <u>Box 37</u>)	61	or survey shall be paid by the Owners unless the Vessel	132
(a) — Should the Vessel not be delivered latest by the	62	is found to require repairs or maintenance in order to	133
cancelling date indicated in <u>Box 15</u> , the Charterers shall	63	achieve the condition so provided;	134
have the option of cancelling this Charter by giving the	64	(b) in dry-dock if the Charterers have not dry-docked	135



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Her in accordance with <u>Clause 10(g)</u> . The costs and fees for such inspection or survey shall be paid by the Charterers; and	136 137 138	insurance value as stated in <u>Box 29</u> , then the extent, if any, to which the rate of hire shall be varied and the ratio in which the cost of compliance shall be shared between the parties concerned in order to achieve a reasonable distribution thereof as between the Owners and the Charterers having regard, inter alia, to the length of the period remaining under this Charter shall, in the absence of agreement, be referred to the dispute resolution method agreed in <u>Clause 30</u> .	191 192 193 194 195 196 197 198 199 200
(c) — for any other commercial reason they consider necessary (provided it does not unduly interfere with the commercial operation of the Vessel). The costs and fees for such inspection and survey shall be paid by the Owners.	139 140 141 142 143	(iii) <u>Financial Security</u> - The Charterers shall maintain financial security or responsibility in respect of third party liabilities as required by any government, including federal, state or municipal or other division or authority thereof, to enable the Vessel, without penalty or charge, lawfully to enter, remain at, or leave any port, place, territorial or contiguous waters of any country, state or municipality in performance of this Charter without any delay. This obligation shall apply whether or not such requirements have been lawfully imposed by such government or division or authority thereof.	201 202 203 204 205 206 207 208 209 210 211 212
All time used in respect of inspection, survey or repairs shall be for the Charterers' account and form part of the Charter Period.	144 145 146	The Charterers shall make and maintain all arrangements by bond or otherwise as may be necessary to satisfy such requirements at the Charterers' sole expense and the Charterers shall indemnify the Owners against all consequences whatsoever (including loss of time) for any failure or inability to do so.	213 214 215 216 217 218
The Charterers shall also permit the Owners to inspect the Vessel's log books whenever requested and shall whenever required by the Owners furnish them with full information regarding any casualties or other accidents or damage to the Vessel.	147 148 149 150 151	(b) <u>Operation of the Vessel</u> - The Charterers shall at their own expense and by their own procurement man, victual, navigate, operate, supply, fuel and, whenever required, repair the Vessel during the Charter Period and they shall pay all charges and expenses of every kind and nature whatsoever incidental to their use and operation of the Vessel under this Charter, including annual flag State fees and any foreign general municipality and/or state taxes. The Master, officers and crew of the Vessel shall be the servants of the Charterers for all purposes whatsoever, even if for any reason appointed by the Owners.	219 220 221 222 223 224 225 226 227 228 229 230
9. Inventories, Oil and Stores	152	Charterers shall comply with the regulations regarding officers and crew in force in the country of the Vessel's flag or any other applicable law.	231 232 233
A complete inventory of the Vessel's entire equipment, outfit including spare parts, and appliances and of all consumable stores on board the Vessel shall be made by the Charterers in a form acceptable to Owners in conjunction with and delivered to the Owners (and in respect of which Owners are relying on Charterers although reserving the right to carry out their own inventory) on	153 154 155 156	(c) The Charterers shall keep the Owners and the mortgagee(s) advised of the intended employment, planned dry-docking and major repairs of the Vessel, as reasonably required.	234 235 236 237
delivery and again on redelivery of the Vessel. The inventory of the Vessel's equipment outfit performed at delivery shall include all items required pursuant to the shipbuilding contract between the builder and the Charterers dated 23 January 2010. The Charterers and the Owners, respectively, shall at the time of delivery and redelivery receive at no cost all take over and pay for all	157 158 159	(d) <u>Flag and Name of Vessel (see Clause 39)</u> - During the Charter	238 239
bunkers, lubricating oil, unbroached provisions, paints, ropes and other consumable stores (excluding spare parts) in the said Vessel and shall receive at no cost all bunkers save where the Charter Period expires by the effluxion of time without the Owner's put option being exercised in which case the Owners will at the time of redelivery pay for the remaining bunkers at prices as per the last invoice. at the then current market prices at the ports of delivery and redelivery, respectively. The Charterers shall ensure that all spare parts listed in the inventory and used during the Charter Period are replaced at their expense prior to redelivery of the Vessel.	160 161 162 163 164 165 166 167	Period, the Charterers shall have the liberty to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag. The Charterers shall also have the liberty, with the Owners' consent, which shall not be unreasonably withheld, to change the flag and/or the name of the Vessel during the Charter Period. — Painting and re-painting, instalment and re-installment, registration and re-registration, if required by the Owners, shall be at the Charterers' expense and time.	240 241 242 243 244 245 246 247 248
10. Maintenance and Operation	168	(e) <u>Changes to the Vessel</u> - Subject to <u>Clause 10(a)(ii)</u> , the Charterers shall make no structural changes in the Vessel or changes in the machinery, boilers, appurtenances or spare parts thereof without in each instance first securing the Owners' approval thereof. If the Owners so agree, the Charterers shall, if the Owners so require, restore the Vessel to its former condition before the termination of this Charter.	249 250 251 252 253 254 255 256
(a)(i) <u>Maintenance and Repairs</u> - During the Charter Period the Vessel shall be in the full possession and at the absolute disposal for all purposes of the Charterers and under their complete control in every respect. The Charterers shall maintain the Vessel, her machinery, boilers, appurtenances and spare parts in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice and, except as provided for in <u>Clause 14(ii)</u> , if applicable, at their own expense they shall at all times keep the Vessel's Class fully up to date with the Classification Society indicated in <u>Box 10</u> and maintain all other necessary certificates in force at all times.	169 170 171 172 173 174 175 176 177 178 179 180 181 182	(f) <u>Use of the Vessel's Outfit, Equipment and Appliances</u> - The Charterers shall have the use of all outfit, equipment, and appliances on board the Vessel at the time of delivery, provided the same or their substantial equivalent shall be returned to the Owners on redelivery in the same good order and condition as when received, ordinary wear and tear excepted. The Charterers shall from time to time during the Charter	257 258 259 260 261 262 263 264
(ii) <u>New Class and Other Safety Requirements</u> - In the event of any improvement, structural changes or new equipment becoming necessary for the continued operation of the Vessel by reason of new class requirements or by compulsory legislation Charterers shall at their own cost, and without variation in the rate of hire payable, implement the same after agreeing with Owners the nature of the work required.	183 184 185 186 187		
costing (excluding the Charterers' loss of time) more than the percentage stated in <u>Box 23</u> , or if <u>Box 23</u> is left blank, 5 per cent. of the Vessel's	188 189 190		



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further agree to fasten to the Vessel in a conspicuous place and to keep so fastened during the Charter Period a notice reading as follows:	551	acknowledge to the Owner and/or its assignee or transferee, in such terms as the Owner may request, that the Charterer is thereby obligated to the assignee or transferee on the terms of this Charter and, in relation to a transfer, provided the transferee confirms to Charterer that the transferee is bound by the Owner's obligations under this Charter, acknowledge that the Owner is released from such obligations.	
"This Vessel is the property of (name of Owners). It is under charter to (name of Charterers) and by the terms of the Charter Party neither the Charterers nor the Master have any right, power or authority to create, incur or permit to be imposed on the Vessel any lien whatsoever."	552	(c) The Owners or any Mortgagee under a Financial Instrument may sell the Vessel to any person to whom it transfers the Owners' obligations under this Charter (and shall inform the Charterers of the identity of such purchaser) provided that the Owners shall not sell the Vessel during the currency of this Charter where such sale would cause the Charterer to breach any US, UN or EU sanctions or any law or regulation to which the Charterers are subject. The Owners shall not otherwise sell the Vessel during the currency of this Charter except with the prior written consent of the Charterers, which shall not be unreasonably withheld, and subject to the buyer accepting an assignment of this Charter.	615
17. Indemnity See Clause 45	553		616
(a) The Charterers shall indemnify the Owners against any loss, damage or expense incurred by the Owners arising out of or in relation to the operation of the Vessel by the Charterers, and against any lien of whatsoever nature arising out of an event occurring during the Charter Period. If the Vessel be arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Charterers, the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail.	554		617
Without prejudice to the generality of the foregoing, the Charterers agree to indemnify the Owners against all consequences or liabilities arising from the Master, officers or agents signing Bills of Lading or other documents.	555		618
(b) If the Vessel be arrested or otherwise detained by reason of a claim or claims against the Owners, the Owners shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail.	556	23. Contracts of Carriage	619
In such circumstances the Owners shall indemnify the Charterers against any loss, damage or expense incurred by the Charterers (including hire paid under this Charter) as a direct consequence of such arrest or detention.	557	*) The Charterers are to procure that all documents issued during the Charter Period evidencing the terms and conditions agreed in respect of carriage of goods shall contain a paramount clause incorporating any legislation relating to carrier's liability for cargo compulsorily applicable in the trade; if no such legislation exists, the documents shall incorporate the Hague-Visby Rules. The documents shall also contain the New Jason Clause and the Both-to-Blame Collision Clause.	620
18. Lien	558	*) The Charterers are to procure that all passenger tickets issued during the Charter Period for the carriage of passengers and their luggage under this Charter shall contain a paramount clause incorporating any legislation relating to carrier's liability for passengers and their luggage compulsorily applicable in the trade; if no such legislation exists, the passenger tickets shall incorporate the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, and any protocol thereto.	621
The Owners to have a lien upon all cargoes, sub-hires and sub-freights belonging or due to the Charterers or any sub-charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to shall not have a	559	*) <i>Delete as applicable.</i>	622
lien on the Vessel for all moneys paid in advance and not earned.	560		623
19. Salvage	561	24. Bank Guarantee	640
All salvage and towage performed by the Vessel shall be for the Charterers' benefit and the cost of repairing damage occasioned thereby shall be borne by the Charterers.	562	<i>(Optional, only to apply if Box 27 filled in)</i>	641
20. Wreck Removal	563	The Charterers undertake to furnish, before delivery of the Vessel, a first class bank guarantee or bond in the sum and at the place as indicated in Box 27 as guarantee for full performance of their obligations under this Charter.	642
In the event of the Vessel becoming a wreck or obstruction to navigation the Charterers shall indemnify the Owners against any sums whatsoever which the Owners shall become liable to pay and shall pay in consequence of the Vessel becoming a wreck or obstruction to navigation.	564		643
21. General Average	565	25. Requisition/Acquisition	647
The Owners shall not contribute to General Average.	566	(a) In the event of the Requisition for Hire of the Vessel by any governmental or other competent authority (hereinafter referred to as "Requisition for Hire") irrespective of the date during the Charter Period when "Requisition for Hire" may occur and irrespective of the length thereof and whether or not it be for an indefinite or a limited period of time, and irrespective of whether it may or will remain in force for the remainder of the Charter Period, this Charter shall not be deemed thereby or thereupon to be frustrated or otherwise terminated and the Charterers shall continue to pay the stipulated hire in the manner provided by this Charter until the time when the Charter would have terminated pursuant to any of the provisions hereof always provided however that in the event of "Requisition for Hire" any Requisition Hire or compensation received or receivable by the Owners shall be payable to the Charterers during the remainder of the Charter Period or the period of the "Requisition for Hire" whichever be the shorter.	648
22. Assignment, Sub-Charter and Sale	567	(b) In the event of the Owners being deprived of their ownership in the Vessel by any Compulsory Acquisition	649
(a) The Charterers shall not assign this Charter, nor sub-charter the Vessel on a bareboat basis except with the prior consent in writing of the Owners, which shall not be unreasonably withheld, and subject to such terms and conditions as the Owners shall approve.	568		650
(b) Owners may unilaterally assign or transfer their rights and/or obligations under this Charter without requiring consent of the Charterer provided that by doing so Owners do not change Charterer's obligations under this Charter. The Owner will promptly notify Charterer prior to such arrangement and the Charterer will promptly on request	569		651
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of the Vessel or requisition for title by any governmental or other competent authority (hereinafter referred to as "Compulsory Acquisition"), then, irrespective of the date during the Charter Period when "Compulsory Acquisition" may occur, this Charter shall be deemed terminated as of the date of such "Compulsory Acquisition". In such event Charter Hire to be considered as earned and to be paid up to the date and time of such "Compulsory Acquisition".	669 670 671 672 673 674 675 676 677	the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement.	740 741 742 743 744
26. War	678	(f) —In the event of outbreak of war (whether there be a declaration of war or not) (i) between any two or more of the following countries: the United States of America; Russia; the United Kingdom; France; and the People's Republic of China; (ii) between any two or more of the countries stated in <u>Box 36</u> , both the Owners and the Charterers shall have the right to cancel this Charter, whereupon the Charterers shall redeliver the Vessel to the Owners in accordance with <u>Clause 15</u> , if the Vessel has cargo on board after discharge thereof at destination, or if debared under this Clause from reaching or entering it at a near, open and safe port as directed by the Owners, or if the Vessel has no cargo on board, at the port at which the Vessel then is or if at sea at a near, open and safe port as directed by the Owners. In all cases hire shall continue to be paid in accordance with <u>Clause 11</u> and except as aforesaid all other provisions of this Charter shall apply until redelivery.	745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763
(a) For the purpose of this Clause, the words "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.	679 680 681 682 683 684 685 686 687 688 689 690 691 692	27. Commission	764
(b) The Vessel, unless the written consent of the Owners be first obtained, shall not continue to go through any port, place, area or zone (whether of land or sea), or any waterway or canal, where it reasonably appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Owners, may be, or are likely to be, exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, the Owners shall have the right to require the Vessel to leave such area.	693 694 695 696 697 698 699 700 701 702 703 704	The Owners to pay a commission at the rate indicated in <u>Box 33</u> to the Brokers named in <u>Box 33</u> on any hire paid under the Charter. If no rate is indicated in <u>Box 33</u> , the commission to be paid by the Owners shall cover the actual expenses of the Brokers and a reasonable fee for their work.	765 766 767 768 769 770
(c) The Vessel shall not load contraband cargo, or to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent's right of search and/or confiscation.	705 706 707 708 709 710 711 712	If the full hire is not paid owing to breach of the Charter by either of the parties the party liable therefor shall indemnify the Brokers against their loss of commission. Should the parties agree to cancel the Charter, the Owners shall indemnify the Brokers against any loss of commission but in such case the commission shall not exceed the brokerage on one year's hire.	771 772 773 774 775 776 777
(d) If the insurers of the war risks insurance, when <u>Clause 14</u> is applicable, should require payment of premiums and/or calls because, pursuant to the Charterers' orders, the Vessel is within, or is due to enter and remain within, any area or areas which are specified by such insurers as being subject to additional premiums because of War Risks, then such premiums and/or calls shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due.	713 714 715 716 717 718 719 720 721	28. Termination See Clause 49	778
(e) The Charterers shall have the liberty and the obligation:	722	(a) — Charterers' Default	779
(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Vessel sails, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;	723 724 725 726 727 728 729 730 731	The Owners shall be entitled to withdraw the Vessel from the service of the Charterers and terminate the Charter with immediate effect by written notice to the Charterers if:	780 781 782
(ii) to comply with the orders, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;	732 733 734 735	(i) —the Charterers fail to pay hire in accordance with <u>Clause 11</u> . However, where there is a failure to make punctual payment of hire due to oversight, negligence, errors or omissions on the part of the Charterers or their bankers, the Owners shall give the Charterers written notice of the number of clear banking days stated in <u>Box 34</u> (as recognised at the agreed place of payment) in which to rectify the failure, and when so rectified within such number of days following the Owners' notice, the payment shall stand as regular and punctual. Failure by the Charterers to pay hire within the number of days stated in <u>Box 34</u> of their receiving the Owners' notice as provided herein, shall entitle the Owners to withdraw the Vessel from the service of the Charterers and terminate the Charter without further notice;	783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799
(iii) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, any applicable laws or directives of the USA, the effective orders of any other Supranational body which has	736 737 738 739	(ii) —the Charterers fail to comply with the requirements of: (1) <u>Clause 6</u> (Trading Restrictions) (2) <u>Clause 13(a)</u> (Insurance and Repairs) provided that the Owners shall have the option, by written notice to the Charterers, to give the Charterers a specified number of days grace within which to rectify the failure without prejudice to the Owners' right to withdraw and terminate under this Clause if the Charterers fail to comply with such notice;	800 801 802 803 804 805 806 807 808 809
		(iii) —the Charterers fail to rectify any failure to comply with the requirements of <u>sub-clause 10(a)(i)</u> (Maintenance and Repairs) as soon as practically	810 811 812



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possible after the Owners have requested them in writing so to do and in any event so that the Vessel's insurance cover is not prejudiced.	813 814 815	own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.	886 887 888 889 890 891 892 893 894 895 896 897 898
(b) Owners' Default If the Owners shall by any act or omission be in breach of their obligations under this Charter to the extent that the Charterers are deprived of the use of the Vessel and such breach continues for a period of fourteen (14) running days after written notice thereof has been given by the Charterers to the Owners, the Charterers shall be entitled to terminate this Charter with immediate effect by written notice to the Owners.	816 817 818 819 820 821 822 823 824	Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator. In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.	899 900 901 902 903 904 905 906 907
(c) Loss of Vessel This Charter shall be deemed to be terminated if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss. For the purpose of this sub-clause, the Vessel shall not be deemed to be lost unless she has either become an actual total loss or agreement has been reached with her underwriters in respect of her constructive, compromised or arranged total loss or if such agreement with her underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred.	825 826 827 828 829 830 831 832 833 834 835 836	*) (b) This Contract shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.	908 909 910 911 912 913 914 915 916 917 918 919
(d) Either party shall be entitled to terminate this Charter with immediate effect by written notice to the other party in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of the other party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.	837 838 839 840 841 842 843 844	In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.	920 921 922 923 924 925
(e) The termination of this Charter shall be without prejudice to all rights accrued due between the parties prior to the date of termination and to any claim that either party might have.	845 846 847 848 849	*) (c) This Contract shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there. (d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract. In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:	926 927 928 929 930 931 932 933 934 935 936 937 938
29. Repossession See Clause 50 In the event of the termination of this Charter in accordance with the applicable provisions of Clause 28, the Owners shall have the right to repossess the Vessel from the Charterers at her current or next port of call, or at a port or place convenient to them without hindrance or interference by the Charterers, courts or local authorities. Pending physical repossession of the Vessel in accordance with this Clause 29, the Charterers shall hold the Vessel as gratuitous bailee only to the Owners. The Owners shall arrange for an authorised representative to board the Vessel as soon as reasonably practicable following the termination of the Charter. The Vessel shall be deemed to be repossessed by the Owners from the Charterers upon the boarding of the Vessel by the Owners' representative. All arrangements and expenses relating to the settling of wages, disembarkation and repatriation of the Charterers' Master, officers and crew shall be the sole responsibility of the Charterers.	850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869	(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation. (ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator. (iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between	939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960
30. Dispute Resolution *) (a) This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its	870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885		



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the parties.	961
(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.	962 963 964
(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.	965 966 967 968 969 970
(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.	971 972 973 974
(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.	975 976 977 978 979
<i>(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)</i>	980 981
(e) If <u>Box 35</u> in Part I is not appropriately filled in, sub-clause 30(a) of this Clause shall apply. <u>Sub-clause 30(d)</u> shall apply in all cases.	982 983 984
*) <u>Sub-clauses 30(a), 30(b) and 30(c) are alternatives; indicate alternative agreed in <u>Box 35</u>.</u>	985 986
31. Notices See Clause 54	987
(a) Any notice to be given by either party to the other party shall be in writing and may be sent by fax, telex, registered or recorded mail or by personal service.	988 989 990
(b) The address of the Parties for service of such communication shall be as stated in <u>Boxes 3 and 4</u> respectively.	991 992 993





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PART IV
HIRE/PURCHASE AGREEMENT

(Optional, only to apply if expressly agreed and stated in Box 42)

OPTIONAL
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On expiration of this Charter and provided the Charterers have fulfilled their obligations according to Part I and II as well as Part III, if applicable, it is agreed, that on payment of the final payment of hire as per <u>Clause 11</u> the Charterers have purchased the Vessel with everything belonging to her and the Vessel is fully paid for.	1 2 3 4 5 6 7	In exchange for payment of the last month's hire instalment the Sellers shall furnish the Buyers with a Bill of Sale duly attested and legalized, together with a certificate setting out the registered encumbrances, if any. On delivery of the Vessel the Sellers shall provide for deletion of the Vessel from the Ship's Register and deliver a certificate of deletion to the Buyers.	28 29 30 31 32 33 34
<i>In the following paragraphs the Owners are referred to as the Sellers and the Charterers as the Buyers.</i>	8 9	The Sellers shall, at the time of delivery, hand to the Buyers all classification certificates (for hull, engines, anchors, chains, etc.), as well as all plans which may be in Sellers' possession.	35 36 37 38
The Vessel shall be delivered by the Sellers and taken over by the Buyers on expiration of the Charter.	10 11	The Wireless Installation and Nautical Instruments, unless on hire, shall be included in the sale without any extra payment.	39 40 41
The Sellers guarantee that the Vessel, at the time of delivery, is free from all encumbrances and maritime liens or any debts whatsoever other than those arising from anything done or not done by the Buyers or any existing mortgage agreed not to be paid off by the time of delivery. Should any claims, which have been incurred prior to the time of delivery be made against the Vessel, the Sellers hereby undertake to indemnify the Buyers against all consequences of such claims to the extent it can be proved that the Sellers are responsible for such claims. Any taxes, notarial, consular and other charges and expenses connected with the purchase and registration under Buyers' flag, shall be for Buyers' account. Any taxes, consular and other charges and expenses connected with closing of the Sellers' register, shall be for Sellers' account.	12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	The Vessel with everything belonging to her shall be at Sellers' risk and expense until she is delivered to the Buyers, subject to the conditions of this Contract and the Vessel with everything belonging to her shall be delivered and taken over as she is at the time of delivery, after which the Sellers shall have no responsibility for possible faults or deficiencies of any description.	42 43 44 45 46 47 48
		The Buyers undertake to pay for the repatriation of the Master, officers and other personnel if appointed by the Sellers to the port where the Vessel entered the Bareboat Charter as per <u>Clause 3</u> (Part II) or to pay the equivalent cost for their journey to any other place.	49 50 51 52 53



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PART V

PROVISIONS TO APPLY FOR VESSELS REGISTERED IN A BAREBOAT CHARTER REGISTRY

(Optional, only to apply if expressly agreed and stated in Box 43)

1. Definitions	1	3. Termination of Charter by Default	17
For the purpose of this PART V, the following terms shall have the meanings hereby assigned to them:	2	If the Vessel chartered under this Charter is registered in a Bareboat Charter Registry as stated in <u>Box 44</u> , and	18
<u>"The Bareboat Charter Registry"</u> shall mean the registry of the State whose flag the Vessel will fly and in which the Charterers are registered as the bareboat charterers during the period of the Bareboat Charter.	3	if the Owners shall default in the payment of any amounts due under the mortgage(s) specified in <u>Box 28</u> , the Charterers shall, if so required by the mortgagee, direct the Owners to re-register the Vessel in the Underlying Registry as shown in <u>Box 45</u> .	19
<u>"The Underlying Registry"</u> shall mean the registry of the state in which the Owners of the Vessel are registered as Owners and to which jurisdiction and control of the Vessel will revert upon termination of the Bareboat Charter Registration.	4	In the event of the Vessel being deleted from the Bareboat Charter Registry as stated in <u>Box 44</u> , due to a default by the Owners in the payment of any amounts due under the mortgage(s), the Charterers shall have the right to terminate this Charter forthwith and without prejudice to any other claim they may have against the Owners under this Charter.	20
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2. Mortgage	13		30
The Vessel chartered under this Charter is financed by a mortgage and the provisions of <u>Clause 12(b)</u> (Part II) shall apply.	14		31
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ADDITIONAL CLAUSES
to the Bareboat Charter dated June 8, 2011 between
Endurance Shipping LLC (as Owners) and Curby Navigation Ltd
(as Charterers)
in respect of

SUNGdong HULL No. S-1125 (tbr m/v "NEWLEAD ENDURANCE")

32. DEFINITIONS

- 32.1 In these Additional Clauses, words and phrases defined in the Call Option Agreement and not defined in this Charter shall have the same meaning when used herein and, unless the context otherwise requires, the following expressions shall have the following meanings:
- 32.1.1 **"Approved Time Charter"** means a time charter in respect of the Vessel between the Charterers as owners and the Time Charterer as charterer for a minimum period of 81 months at a daily rate of not less than USD15,000 per day less commissions not exceeding 4% and otherwise on terms acceptable to, and approved by, the Owners constituted by a recap in respect of which all subjects have been lifted;
- 32.1.2 **"Approved Managers"** means Newlead Bulkers S.A. or such other persons as may from time to time be nominated by Charterers and approved by the Owner in writing to carry out any management of the Vessel whether technical or commercial;
- 32.1.3 **"Banking Day"** means days on which banks are open for business and not authorised by law to close in New York;
- 32.1.4 **"Builder"** means Sungdong Shipbuilding and Marine Engineering Co. Ltd. of Tongyeong City, Korea;
- 32.1.5 **"Charterers Accounts Pledge"** means the account pledge over the Charterer's Earnings Account, as referred to in Clause 48.1.1(b);
- 32.1.6 **"Charterer's Assignment"** has the meaning given to it in Clause 48.1.1(a);
- 32.1.7 **"Charterer's Earnings Account"** means the account designated "Newlead Endurance Earnings Account", in the name of the Charterers and held with such bank as the Owners may require;
- 32.1.8 **"Charter Guarantee"** means the charter guarantee referred to in Clause 48.1.2;
- 32.1.9 **"Charter Guarantor"** means Newlead Holdings Ltd, a Bermuda corporation having its registered office at Canon's Court, 22 Victoria Street, Hamilton, Bermuda, Hamilton, Bermuda;
- 32.1.10 **"Charter Hire"** has the meaning given to it in Clause 38.1;
- 32.1.11 **"Charter Period"** has the meaning given to it in Clause 37;
- 32.1.12 **"Delivery Date"** has the meaning given to it in Clause 33.2;
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- 32.1.13 “**Earnings**” means all monies whatsoever due or to become due to the Charterers at any time during the Charter Period arising out of the use or operation of the Vessel including (without prejudice to the generality of the following) any earnings from the Approved Time Charter, all freight, hire and passage monies, compensation payable to the Charterers in the event of requisition of the Vessel for hire, remuneration for salvage and towage services, demurrage and detention monies and damages for breach (or payments for variation or termination) of any charterparty or any other contract of employment of the Vessel;
- 32.1.14 “**Environmental Claim**” means:
- (a) any claim which relates to the Vessel or its cargo from time to time by any governmental, judicial or regulatory authority which arises out of an Environmental Incident or an alleged Environmental Incident or which relates to any Environmental Law; or
 - (b) any claim by any other person in relation to the Vessel or its cargo from time to time which relates to an Environmental Incident or to an alleged Environmental Incident, and “**claim**” means a claim for damages, compensation, fines, penalties or any other payment of any kind, whether or not similar to the foregoing; an order or direction to take, or not to take, certain action or to desist from or suspend certain action; and any form of enforcement or regulatory action, including the arrest or attachment of any asset;
- 32.1.15 “**Environmental Incident**” means:
- (a) any release of Environmentally Sensitive Material from the Vessel; or
 - (b) any incident in which Environmentally Sensitive Material is released from a vessel other than the Vessel and which involves a collision between the Vessel and such other vessel or some other incident of navigation or operation, in either case, in connection with which the Vessel is actually or potentially liable to be arrested, attached, detained or enjoined and/or the Vessel and/or the Charterers and/or any operator or manager of the Vessel is at fault or allegedly at fault or otherwise liable to any legal or administrative action; or
 - (c) any other incident in which Environmentally Sensitive Material is released otherwise than from the Vessel and in connection with which the Vessel is actually or potentially liable to be arrested and/or where the Charterers or the Approved Manager is at fault or allegedly at fault or otherwise liable to any legal or administrative action;
- 32.1.16 “**Environmental Law**” means any law relating to pollution or protection of the environment, to the carriage of Environmentally Sensitive Material or to actual or threatened releases of Environmentally Sensitive Material;
- 32.1.17 “**Environmentally Sensitive Material**” means oil, oil products and any other substance (including any chemical, gas or other hazardous or noxious substance) which is (or is capable of being or becoming) polluting, toxic or hazardous;
- 32.1.18 “**Fair Market Value**” means, in relation to the Vessel as at any date, the market value of the relevant Vessel to be conclusively determined on the basis of the

average of valuations (which are not more than two months old at the time of the calculation of the Fair Market Value) provided by two reputable, independent and first class firms of shipbrokers appointed by the Owners. If the two valuations differ by a margin of over 15% then a third shipbroker shall be appointed by the Owners and the market value shall be the average of the three valuations. All valuations shall be on the basis of a charter-free sale for prompt delivery for cash at arm's length on normal commercial terms as between a willing seller and a willing buyer and at the expense of the Charterer;

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

- (a) money borrowed or raised;
- (b) any bond, note, loan stock, debenture or similar instrument;
- (c) acceptance or documentary credit facilities;
- (d) deferred payments for assets or services acquired;
- (e) rental payments under leases (whether in respect of land, machinery equipment or otherwise) entered into primarily as a method of raising finance or of financing the acquisition of the asset leased;
- (f) guarantees, bonds, stand-by letters of credit or other instruments issued in connection with the performance of contracts;
- (g) obligations under any derivative instrument; and
- (h) guarantees or other assurances against financial loss in respect of indebtedness of any person falling within any of paragraphs (a) to (g) above;

32.1.20 **"Financing"** means any financing arrangements which the Owners may enter into from time to time to finance or refinance their purchase of the Vessel;

32.1.21 **"Group Companies"** means the Charterers, the Shareholder, the Charter Guarantor and any Subsidiary of any of them (each a **"Group Company"**);

32.1.22 **"Insurances"** means:

- (a) all policies and contracts of insurance, including entries of the Vessel in any protection and indemnity or war risks association, which are effected in respect of the Vessel or otherwise in relation to her, excluding monies payable in respect of loss of hire; and
- (b) all rights and other assets relating to, or derived from, any of the foregoing, including any rights to a return of a premium, which are from time to time taken out for the benefit of the Charterers in relation to the Vessel;

32.1.23 **"ISM Code"** means the International Safety Management Code (including the guidelines on its implementation), adopted by the International Maritime Organisation Assembly as Resolutions A.741 (18) and A.788 (19), as the same may be amended or supplemented from time to time (and the terms **"safety**

management system", "**Safety Management Certificate**" and "**Document of Compliance**" have the same meanings as are given to them in the ISM Code);

- 32.1.24 "**ISPS Code**" means the International Ship and Port Facility Security Code adopted by the International Maritime Organisation (as the same may be amended, supplemented or superseded from time to time);
- 32.1.25 "**Lenders**" means those banks or financial institutions which are a party to any Financing from time to time (and "**Lender**" shall mean any of them);
- 32.1.26 "**Major Casualty**" means any casualty to the Vessel in respect of which the claim or the aggregate of the claims against all insurers, before adjustment for any relevant franchise or deductible, exceeds USD200,000 or the equivalent in any other currency;
- 32.1.27 "**MOA**" means the Memorandum of Agreement for the sale and purchase of the Vessel dated the same date as this Charter (as same may be amended from time to time) made between the Seller, as seller and the Owners as buyer;
- 32.1.28 "**month**" means a period beginning in one calendar month and ending in the next calendar month on the day numerically corresponding to the day of the calendar month on which it started provided that, if the period started on the last day in a calendar month or if there is no such numerically corresponding day, it shall end on the last day of such next calendar month or, if such last day is not a Banking Day, on the immediately preceding such Banking Day, and "**months**" and "**monthly**" shall be construed accordingly;
- 32.1.29 "**Mortgagee**" means any bank or financial institution to which the Owners grant a mortgage over the Vessel at any time;
- 32.1.30 "**Option Agreement**" means the option agreement dated the same date as this Charter and entered into between the Owners and the Charterers on the terms stated therein;
- 32.1.31 "**Owners' Account**" means such account in the name of the Owners which is held with DnB NOR and is specified as being the "Owners Account" for the purposes of this Charter or such other account as the Owners may specify to the Charterers from time to time in writing;
- 32.1.32 "**Permitted Security Interest**" means any Security Interest over the Vessel granted to a Mortgagee or Lender pursuant to the terms of Financing;
- 32.1.33 "**Pertinent Jurisdiction**" means, in relation to a company:
- (a) England and Wales;
 - (b) the country under the laws of which that company is incorporated or formed;
 - (c) a country in which that company's central management and control is or has recently been exercised;
 - (d) a country in which the overall net income of that company is subject to corporation tax, income tax or any similar tax;
 - (e) a country in which assets of that company (other than securities issued by, or loans to, related companies) having a substantial value are situated, in which

the company maintains a permanent place of business, or in which a Security Interest created by the company must or should be registered in order to ensure its validity or priority;

- (f) a country the courts of which have jurisdiction to make a winding up, administration or similar order in relation to the company or which would have such jurisdiction if their assistance were requested by the courts of a country referred to in paragraphs (b) or (c);
- 32.1.34 “**Security Interest**” means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement of arrangement having a similar effect;
- 32.1.35 “**Seller**” means the Charterers in their capacity as seller under the MOA;
- 32.1.36 “**Shareholder**” means Newlead Bulker Holdings Inc. a company incorporated in the Marshall Islands with its registered office at Trust Company Complex, Ajeltake Island, Ajeltake Road, Majuro, Marshall Islands;
- 32.1.37 “**Share Pledge**” means a pledge by the Shareholder of all the outstanding issued shares of the Charterer;
- 32.1.38 “**Shipbuilding Contract**” means the contract dated 23 January 2010 between the Builder as builder and the Seller as buyer for the construction of the Vessel as builder’s hull number S-1125;
- 32.1.39 “**Subsidiary**” means, in relation to a company or other entity, any other company or entity directly or indirectly controlled by such company or other entity, and for this purpose control means either the ownership of more than fifty per cent. (50%) of the voting share capital (or equivalent rights of ownership) of such company or entity or power to appoint or remove a majority of its board of directors having votes or direct policies and management whether by contract or otherwise;
- 32.1.40 “**Taxes**” shall have the meaning given in Clause 38.4;
- 32.1.41 “**Termination Date**” means the date specified in a notice served pursuant to Clause 50.1 as the date on which the chartering of the Vessel by the Charterers is to terminate;
- 32.1.42 “**Termination Event**” has the meaning given to it in Clause 49.1;
- 32.1.43 “**Termination Sum**” shall be calculated in accordance with Schedule 1;
- 32.1.44 “**Time Charterer**” means Deilemar Shipping SpA, a company incorporated in Italy and acting through its office at Torre del Greco, Naples, Italy;
- 32.1.45 “**Total Loss**” has the meaning given in Clause 46.1.1;
- 32.1.46 “**Total Loss Amount**” shall be a sum calculated in accordance with Schedule 2;
- 32.1.47 “**Total Loss Date**” has the meaning given in Clause 46.1.2;
- 32.1.48 “**Transaction Documents**” means this Charter, the MOA, the Option Agreement, the Charter Guarantee, the Charterer’s Assignment, the Charterer’s Account Pledge and the Share Pledge;

32.1.49 "US GAAP" means generally accepted accounting principles applicable in the United States of America as at the date of this Charter;

32.1.50 "Vessel" means the vessel identified at Box 5 of Part 1 of this Charter.

32.2 The headings in this Charter do not affect its interpretation.

32.3 In the event of any conflict between these Additional Clauses and Part 1 and 2 of this Charter, these Additional Clauses shall have priority and shall override the wording of Part 1 and Part 2.

33. MOA AND DELIVERY

33.1 The Owners' obligation to charter the Vessel to the Charterers under this Charter is conditional upon delivery of the Vessel to the Owners by the Seller pursuant to the MOA.

33.2 For the purposes of this Charter, the Vessel shall be deemed delivered to the Charterers simultaneously with delivery of the Vessel to the Owners by the Seller pursuant to the MOA (such date being the "Delivery Date").

33.3 Without prejudice to the provisions of clause 33.2 above, the Owners and the Charterers shall on the Delivery Date sign a Protocol of Delivery and Acceptance evidencing delivery of the Vessel hereunder.

34. CANCELLING

Should the MOA be cancelled by the Owners pursuant to clause 13 of the MOA or considered null and void pursuant to clause 18 of the MOA, this Charter shall be cancelled forthwith and the Charterers shall make due compensation to the Owners for their loss and for all reasonable expenses together with interest in accordance with the MOA.

35. TERMS OF DELIVERY

35.1 Subject to clause 35.4 and 44.3 below, the Charterers acknowledge and agree that the Owners make no condition, term, representation or warranty, express or implied (and whether statutory or otherwise) as to seaworthiness, merchantability, condition, design, operation, performance, capacity or fitness for use of the Vessel or as to the eligibility of the Vessel for any particular trade or operation or any other condition, term, representation or warranty whatsoever, express or implied, with respect to the Vessel. The Charterers expressly agree to accept delivery of the Vessel whether or not the Vessel is seaworthy, in good working order and repair and whether or not subject to any defect or inherent vice, and the Charterers agree to remedy any defects and inherent vices (even if not known or discoverable at the time of delivery) and to put the Vessel into seaworthy condition and good working order and repair the Vessel to the extent that this is not the case. The Charterers further acknowledge and agree that the Owners make no warranty regarding the Vessel being free and clear of any encumbrance, mortgage, charge, lien, security interest or debt of whatsoever nature (together "Liens") other than that it shall be free of any Liens created by the Owners.

35.2 Subject to clause 35.4 hereof, and without prejudice to the provisions of Clause 35.1, the Charterers hereby waive all their rights in respect of any condition, term, representation, or warranty express or implied (and whether statutory or otherwise) on the part of the Owners and all their claims against the Owners howsoever and

whenever the same may arise at any time in respect of the Vessel arising out of the operation or performance of the Vessel and the chartering thereof under this Charter (including in respect of the seaworthiness or otherwise of the Vessel) and, in particular and without prejudice to the generality of the foregoing, the Owners shall be under no liability whatsoever and howsoever arising in respect of any losses, costs, charges, expenses, fees, payments, liabilities, penalties, fines, damages or other sanctions of a monetary nature in respect of the injury, death, loss, damage or delay of or to or in connection with any person (which expression includes, but is not limited to, states, governments, municipalities and local authorities) or property whatsoever, whether on board the Vessel or elsewhere, irrespective of whether or when or where such injury, death, loss, damage or delay shall arise or of whether it shall arise as a result of the Vessel not being seaworthy or otherwise or of whether or not the Vessel or any part thereof is in the possession or under the control of the Charterers provided always that nothing in this Clause 35 shall exclude any liability of the Owners for death or personal injury resulting from negligence or for damages as a consequence of the Owners' breach of their obligations under Clauses 17(b), 40.2 or 40.3. However, to the extent that any liability of the Owners for death or personal injury is incurred other than by reason of wilful default or negligence on the part of the Owner, the Charterers hereby indemnify the Owners in respect of the same.

- 35.3 The Charterers agree that the Owners shall be under no liability to supply any replacement vessel or any piece or part thereof during any period when the Vessel is unusable and shall not be liable to the Charterers or any other person as a result of the Vessel being unusable.
- 35.4 Nothing contained in this Clause 35 shall be construed as a waiver of any rights or remedies of the Charterers at law or in equity against the Owners in respect of any fraudulent or wilful misconduct of the Owners.

36. CONDITIONS PRECEDENT/SUBSEQUENT

- 36.1 Notwithstanding anything to the contrary in this Charter, the obligations of the Owner under this Charter, shall be subject to receipt by the Owners on or prior to the Delivery Date of the following in forms and substance acceptable to the Owner in its discretion:
- (a) such corporate documents as the Owner's legal advisers may require (including the memorandum of association and articles of association (or equivalent documents), directors' resolutions and, if required by the providers of legal opinions, shareholders' resolutions) of the Charterers, the Shareholder and the Charter Guarantor;
 - (b) such documentation and other evidence as is reasonably required by commercial enterprises in order for the Owners to comply with their "Know Your Customers" regulations or other checks in relation to the identity of any person that they are required by any applicable law to carry out in relation to commercial transactions;
 - (c) the MoA and the Option Agreement, duly executed by the Seller and Charterers respectively;
 - (d) the non refundable fee referred to in Clause 37.2;
 - (e) the non-refundable premium of USD10,400,000 referred to in Clause 37.3 (unless such amount is to be set off against the Purchase Price);

- (f) a certified copy of the Shipbuilding Contract and an acknowledgement signed by the Builder of a notice of assignment to the Owner of the Seller's rights under the post delivery warranty in the Shipbuilding Contract;
- (g) a certified copy of the Approved Time Charter and an acknowledgment signed by the Time Charterer of a notice of assignment to the Owner and of the Owner's step in rights in relation to the Approved Time Charter;
- (h) the Charterer's Assignment and the Charterer's Accounts Pledge, each duly signed by Charterer together with all notices and other documents required to be signed thereunder and acknowledgements of such notices duly signed by all addressees of such notices, including an acknowledgement of the Charterers Accounts Pledge duly signed on behalf of the bank where the Charterer's Earnings Account is held, and (if then available, failing which the same shall be a condition subsequent to be satisfied within fifteen (15) days of the Delivery Date), evidence that all insurance policies have been endorsed with such notice of assignment and a loss payable clause in accordance with the terms of the Charterers Assignment;
- (i) no Termination Event having occurred and continuing unremedied, and no other event having occurred and continuing, which with the giving of notice and/or lapse of time would, if not remedied, constitute a Termination Event;
- (j) each of the representations and warranties contained in Clause 40 of this Charter being true and correct in all material respects on the Delivery Date by reference to the facts and circumstances then existing;
- (k) the Owners having received such evidence as they may reasonably require that the Vessel will, as from the Delivery Date, be insured in accordance with the provisions of this Charter and that all requirements of this Charter in respect of such insurances have been complied with;
- (l) the Owners having received a favourable legal opinion from an independent insurance consultant acceptable to the Owner on such matters as the Owners may require;
- (m) the Owners having received the Charter Guarantee duly executed;
- (n) the Share Pledge duly signed by the Shareholder together with all documents required to be signed thereunder, each duly signed;
- (o) the Vessel having been delivered by the Builder to the Seller and all obligations of the Builder and of Sellers under the Shipbuilding Contract having been duly performed in accordance with their terms;
- (p) all obligations of the Sellers under the MoA having been duly performed in accordance with their terms;
- (q) the Owners having received a class confirmation certificate in respect of the Vessel issued by the classification society indicated in Box 10 evidencing that the Vessel is in class with no overdue recommendations or requirements against class;
- (r) the Owners having received a survey report as to the physical condition of the Vessel in a form and substance satisfactory to the Owners;

- (s) the Charterers having nominated Approved Managers in respect of both commercial management of the Vessel and technical management of the Vessel and Owners having approved such nomination;
- (t) the Owners having received on the Delivery Date, a copy of the current Safety Construction, Safety Equipment, Safety Radio and Load Line Certificates of the Vessel;
- (u) the Owners having received such confirmations from its legal advisers in such relevant jurisdictions as it selects that legal opinions in form and substance acceptable to the Owners will be issued on or following the Delivery Date;
- (v) the Owners having received documents establishing that the Vessel will, as from the date of delivery under the Charter, be managed by the Approved Manager on terms acceptable to the Owners, together with (i) a letter of undertaking in the form attached as Schedule 3 executed by the Approved Manager in favour of the Owner agreeing certain matters in relation to the management of the Vessel and subordinating the rights of the Approved Manager against the Vessel to the Owners, and (ii) copies of the Approved Manager's Document of Compliance and of the Vessel's Safety Management Certificate and International Ship Security Certificate (together with any details of the applicable safety management system which the Owner requires);
- (w) the Vessel having been registered in the name of the Owner under the laws and flag of Liberia; and
- (x) the Owners having received such documentation and other evidence as they may require under Clause 43.12.

37. CHARTER PERIOD, CHARTER FEES AND PREMIUM

- 37.1 Subject to the terms of this Charter, the period of chartering of the Vessel hereunder (the "**Charter Period**") shall commence on the Delivery Date and shall terminate on the date which falls eighty four (84) months after the Delivery Date.
- 37.2 On or before the Delivery Date, the Charterer shall pay to the Owner a non-refundable fee set out in a separate side letter from the Charterer to the Owner dated on or about the date of this Charter.
- 37.3 On or before the Delivery Date, the Charterer shall pay to the Owner a non-refundable premium for the granting of this Charter and the Option Agreement in an amount of USD10,400,000. If such sum is not paid before the Purchase Price is required to be paid under the MOA, the Owner shall be entitled to set off such amount against the Purchase Price.

38. CHARTER HIRE

- 38.1 The Charterers shall, from the first day of the Charter Period until such time as the Vessel becomes a Total Loss or is redelivered in accordance with the terms of this Charter (even if beyond the Charter Period), pay charter hire ("**Charter Hire**") to the Owners at the rate of US\$9,500 per day.
- 38.2 Charter Hire shall be paid monthly in advance commencing on the Delivery Date.
- 38.3 Notwithstanding anything to the contrary contained in this Charter:—

- 38.3.1 The Charterers shall pay the Charter Hire in United States Dollars in funds with the same day value to the Owners' Account, not later than 11.00 am (New York time) on the relevant payment date;
- 38.3.2 If any day for the making of any payment hereunder shall not be a Banking Day, the due date for payment of the same shall be the immediately preceding Banking Day;
- 38.3.3 Receipt of the Charter Hire from the Charterers into the Owners' Account shall constitute payment by the Charterers to the Owners of the Charter Hire payable under this Charter.
- 38.4 Subject to the terms of this Charter, all payments hereunder shall be made net of all commissions and without any set-off or counterclaim whatsoever and free and clear of and without withholding or deduction for, or on account of, any present or future income, freight, stamp and other taxes, levies, imposts, duties, fees, charges, restrictions or conditions of any nature (collectively "Taxes"). If the Charterers are so required to make any withholding or deduction from any such payment for or on account of any Taxes, the sum due from the Charterers in respect of such payment will be increased to the extent necessary to ensure that, after making such withholding or deduction, the payment shall be of a net sum equal to the amount which would have been paid had no such withholding or deduction been required to be made. The Charterers will promptly deliver to the Owners any receipts, certificates or other proof evidencing the amounts, if any, paid to or payable in respect of any such withholding or deduction as aforesaid.
- 38.5 In the event of failure by the Charterers to pay on the due date for payment thereof, or in the case of a sum payable on demand, within two (2) Banking Days following the date of demand therefore, any hire or other amount payable by them under this Charter, the Charterers will pay to the Owners on demand default interest on such hire or such other amount from the date of such failure to the date of actual payment (both before and after any relevant judgment or the winding up of the Charterers) at the rate determined by the Owners and certified by them to the Charterers (such certification to be conclusive in the absence of manifest error) to be the equivalent of two per centum (2%) per annum above the rate at which Owners can borrow funds on a short term basis. The default interest payable by the Charterers as aforesaid shall be payable on demand.
- 38.6 Any default interest payable under this Charter shall accrue from day to day and shall be calculated on the actual number of days elapsed and a three hundred and sixty (360) day year.
- 38.7 The Charterers' obligations to pay hire shall, subject to the terms of this Charter, be absolute, irrespective of any contingency whatsoever, including (but not limited to):
- 38.7.1 any set-off (except as set out in this Charter), counterclaim, recoupment, defence, deduction, withholding or other right which the Charterers may have against the Owners or any other person;
- 38.7.2 any unavailability of the Vessel for any reason, including (but not limited to) any lack or invalidity of title (provided the same is due to deficiencies in the title to the Vessel acquired by the Owners pursuant to the MOA) or any other defect in the title, condition, design, operation or fitness for use of the Vessel or the ineligibility of the Vessel for any particular trade or for documentation under the laws of any country or any damage to the Vessel.

39. FLAG

- 39.1 The Charterers shall, at their own expense, upon the Delivery Date arrange for the Vessel to be registered in the name of the Owners under the flag of Liberia. Throughout the Charter Period, the Charterers shall be responsible for, and shall indemnify the Owners in respect of, the maintenance of and compliance with all ongoing administrative and reporting requirements of the Liberian Ship Registry and/or the maritime authorities of Liberia, and for the payment of all costs, charges, expenses, fees and taxes charged to the Owners or the Charterers by the Liberian Ship Registry, any Liberian authority, any resident agent or any agent or advisor in connection with such registration of the Vessel in Liberia.
- 39.2 The Charterers shall not change the flag or registry of the Vessel without the prior written consent of the Owners, not to be unreasonably withheld or delayed. Likewise, no change shall be made to the Vessel's flag without the Charterer's written consent, which is not to be unreasonably withheld or delayed.

40. REPRESENTATIONS AND WARRANTIES

- 40.1 The Charterers acknowledge that the Owners have entered into this Charter in full reliance on representations by the Charterers in the following terms; and the Charterers now warrant to the Owners that the following statements are, at the date hereof, and on the Delivery Date will be, true and accurate:–
 - 40.1.1 The Charterers are duly incorporated and validly existing under the laws of Liberia as a Liberian corporation;
 - 40.1.2 The entire issued share capital and stock of the Charterers is legally and beneficially owned by the Shareholder and will be so owned throughout the Charter Period.
 - 40.1.3 The entire issued share capital and stock of the Shareholder is legally and beneficially owned by the Charter Guarantor and will be so owned throughout the Charter Period.
 - 40.1.4 The Charterers have the power to conduct their business as it is now carried on, to own or hold under lease their assets, to execute, deliver and perform their obligations under this Charter, and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of this Charter;
 - 40.1.5 This Charter constitutes the valid and legally binding and enforceable obligations of the Charterers ranking at least pari passu with all other of their unsecured obligations and liabilities (actual or contingent) other than any mandatorily preferred by law;
 - 40.1.6 The entry into and performance by the Charterers of this Charter or any other Transaction Document to which it is a party does not, and will not during the Charter Period, violate (i) any existing law or regulation of any governmental or official authority or body to which the Charterers or their business operations are subject, or (ii) the constitutional documents of the Charterers, or (iii) any agreement, contract or other undertaking to which the Charterers are a party or which is binding on the Charterers or any of their assets;

- 40.1.7 All consents, licences, approvals and authorisations required in connection with the entry into, performance, validity and enforceability of this Charter have been obtained and are, or will on and following the Delivery Date be, in full force and effect;
- 40.1.8 No litigation, arbitration or administrative proceeding is taking place against the Charterers or against any of their assets which is likely to be adversely determined and, if adversely determined, would have a material adverse effect on the Charterers' ability to perform their obligations under this Charter;
- 40.1.9 The representations and warranties contained in the Charter Guarantee are, at the date thereof, and on the Delivery Date will be, true, accurate and complied with; and
- 40.1.10 The Approved Time Charter constitutes valid and binding and enforceable obligations of the parties thereto, the copy delivered to the Owners before the date of this Charter is a true and complete copy thereof and there has been no amendment or addition to the Approved Time Charter nor has any party thereto waived any of their respective rights thereunder except as notified to the Owners.
- 40.1.11 The copy of the Shipbuilding Contract provided to the Owners prior to the date of this Charter is a true copy and sets out the entirety of the agreement between the Builder and the Sellers in relation to the Vessel.
- 40.2 The Owners acknowledge that the Charterers have entered into this Charter in full reliance on representations by the Owners in the following terms; and the Owners now warrant to the Charterers that the following statements are, at the date hereof, and on the Delivery Date will be, true and accurate:—
- 40.2.1 The Owners are duly incorporated and validly existing under the laws of the Marshall Islands as a limited liability corporation;
- 40.2.2 The Owners have the power to conduct their business as it is now carried on, to own or hold under lease their assets, to execute, deliver and perform their obligations under this Charter, and all necessary corporate, member and other action has been taken to authorise the execution, delivery and performance of this Charter;
- 40.2.3 This Charter constitutes the valid and legally binding and enforceable obligations of the Owners ranking at least pari passu with all other of their unsecured obligations and liabilities (actual or contingent) other than any mandatorily preferred by law;
- 40.2.4 The entry into and performance by the Owners of this Charter does not, and will not during the Charter Period, violate (i) any existing law or regulation of any governmental or official authority or body to which the Owners or their business operations are subject, or (ii) the constitutional documents of the Owners, or (iii) any agreement, contract or other undertaking to which the Owners are a party or which is binding on the Owners or any of their assets;
- 40.2.5 All consents, licences, approvals and authorisations required in connection with the entry into, performance, validity and enforceability of this Charter have been obtained and are, or will prior to the Delivery Date be, in full force and effect; and

40.2.6 No litigation, arbitration or administrative proceeding is taking place against the Owners or against any of their assets which is likely to be adversely determined and, if adversely determined, would have a material adverse effect on the Owners' ability to perform their obligations under this Charter.

40.3 The representations and warranties contained in Clauses 40.1 and 40.2 hereof shall be deemed to be repeated by the Charterers and the Owners respectively on and as of the Delivery Date and on each day thereafter during the Charter Period as if made with reference to the facts and circumstances existing on such date, and the rights of the Owners and the Charterers respectively in respect thereof shall survive delivery of the Vessel hereunder.

41. CHARTERERS' GENERAL UNDERTAKINGS

The Charterers undertake and agree that throughout the Charter Period they will:

41.1 Provide to the Owners:

41.1.1 the English language unaudited management accounts of the Charterers, prepared in accordance with US GAAP, as soon as is available and in no event later than 180 days after the end of the Charter's financial year; and

41.1.2 the English language consolidated audited annual financial statements of the Charter Guarantor, prepared in accordance with US GAAP, as soon as is available and in no event later than 180 days after the end of Charter Guarantor's financial year; and

41.1.3 the English language consolidated unaudited quarterly financial statements of the Charter Guarantor, prepared in accordance with US GAAP and including footnotes, as soon as is available and in no event later than 90 days after each quarterly reporting period.

41.2 Procure that where there has been a change in the generally accepted accounting principle applicable in the United States of America following the date of this Charter, any accounts prepared in accordance with such modified GAAP and delivered hereunder shall also include appropriate adjustments to show what they would have been under US GAAP.

41.3 Procure that there shall be no change in their legal or beneficial ownership or in their control or management.

41.4 Procure that no substantial change is made to the general nature of their business, or the general nature of the Charter Guarantor's business, from that carried on at the date of this Charter.

41.5 Not enter into any amalgamation, demerger, merger or corporate reconstruction.

41.6 Comply in all respects with all laws and regulations to which they may be subject.

41.7 Not make or pay any dividend or other distribution (in cash or in kind) in respect of their share capital without the prior written consent of the Owners.

41.8 Not incur any Financial Indebtedness other than that which is created by this Charter.

41.9 Upon the request of the Owners, use all reasonable efforts to assist the Owners in negotiating and entering into any Financing, if required from time to time.

41.10 Enter into, and procure that the Charter Guarantor enter into, any agreements, deeds, undertakings and other documents as the Owners may require in connection with any Financing, or proposed Financing, including, without limitation, entering in to such direct operating and insurance covenants in relation to the Vessel and security assignments as may be required by the Lenders in relation to the Financing.

41.11 Procure that the Shareholder shall acknowledge in such terms as the Owners may require notices of any security assignment entered into pursuant to any Financing.

42. CHARTERERS' UNDERTAKINGS IN RESPECT OF EARNINGS AND CHARTERER'S EARNINGS ACCOUNT

42.1 The Charterers shall ensure that, throughout the Charter Period, all of the Earnings are paid to the Charterers Earnings Account;

42.2 The Charterers shall

42.2.1 comply with any requirement of the Owners as to the location or re-location of the Charterer's Earnings Account; and

42.2.2 execute any documents which the Owners specify to create or maintain a Security Interest over the Charterer's Earnings Account.

43. CHARTERERS' VESSEL UNDERTAKINGS

43.1 The Charterers shall ensure that the Vessel is at all times employed in accordance with the general employment strategy of the Charterers.

43.2 The Charterers shall enter into the Approved Time Charter on or before the Delivery Date, shall deliver the Vessel under the Approved Charter on or before the fourth day after the Delivery Date and shall operate the Vessel pursuant to the Approved Time Charter for a period of not less than 81 months.

43.3 The Charterers shall not vary or amend the terms, or agree to the premature termination, of the Approved Time Charter without the prior written consent of the Owners.

43.4 The Charterers shall keep the Vessel in a good and safe condition and state of repair:

43.4.1 consistent with first-class ship ownership and management practice;

43.4.2 so as to maintain the Vessel's current class with Bureau Veritas of Shipping, free of overdue recommendations and conditions affecting the Vessel's class or the equivalent with such other classification society which is a member of the IACS and which is agreed with the Owners; and

43.4.3 so as to comply with all laws and regulations applicable to vessels registered at ports in Liberia or to vessels trading to any jurisdiction to which the Vessel may trade from time to time, including but not limited to the ISM Code and the ISPS Code;

43.5 The Charterers shall operate, maintain and insure the Vessel so as to comply with and satisfy in full the requirements of, the Owners' obligations under any Financing if and to the extent such obligations are notified to the Charterer by the Owners at any time or from time to time during the Charter Period.

- 43.6 Except in the circumstances described in Clause 43.7 below, the Charterers shall not, unless the Owners' prior written consent is obtained, make any modification or repairs to, or replacement of, the Vessel or equipment installed on the Vessel which would or might materially alter the structure, type or performance characteristics of the Vessel or materially reduce its value;
- 43.7 Notwithstanding Clause 43.6 above, the Owner's consent shall not be required to carry out the actions described therein in the event of an emergency of such nature that necessitates those actions being taken and which does not allow the Charterers time to obtain the Owner's consent prior to carrying them out. In these circumstances, the Charterers shall, as soon as practicable, inform the Owner of the actions taken and, at the request of the Owner and to the extent possible, the Charterers shall undo any such work carried out on the Vessel or its equipment prior to the redelivering the Vessel to the Owner.
- 43.8 The Charterers shall permit the Owners, at the Charterers' expense, to arrange for the Vessel to be fully surveyed not less than once per year and the Charterers shall submit the Vessel to all periodical or other surveys which may be required for classification purposes and shall provide the Owners with copies of all survey reports;
- 43.9 The Charterers shall permit the Owners (by surveyors or other persons appointed by it for that purpose) to board the Vessel at any time to inspect its condition or to satisfy themselves about proposed or executed repairs and to review the Vessel's operating and/or insurance records without interfering with the Vessel's operation and shall afford all proper facilities for such inspections and, to the extent that such inspections are additional to those surveys referred to in Clause 43.7 above, such inspections shall be at the cost of the Owners.
- 43.10 The Charterers shall promptly discharge:
- 43.10.1 all liabilities which give or may give rise to maritime or possessory liens on or claims enforceable against the Vessel, the Earnings or the Insurances;
- 43.10.2 all taxes, dues and other amounts charged in respect of the Vessel, the Earnings or the Insurances; and
- 43.10.3 all other outgoings whatsoever in respect of the Vessel, the Earnings or the Insurances, and, forthwith upon receiving notice of the arrest of the Vessel, or of its detention in exercise or purported exercise of any lien or claim, the Charterers shall procure its release by providing bail or otherwise as the circumstances may require;
- 43.11 The Charterers shall:
- 43.11.1 comply, and procure the Approved Manager's compliance, with the ISM Code and the ISPS Code, all Environmental Laws and all other laws or regulations relating to the Vessel, its ownership, operation and management or to the business of the Charterers;
- 43.11.2 not employ the Vessel nor allow its employment in any manner contrary to any law or regulation in any relevant jurisdiction including but not limited to the ISM Code and the ISPS Code; and

- 43.11.3 in the event of hostilities in any part of the world (whether war is declared or not), not cause or permit the Vessel to enter or trade to any zone which is declared a war zone by any government or by the Vessel's war risks insurers unless the prior written consent of the Owners has been given and the Charterers have (at their expense) effected any special, additional or modified insurance cover which the Owners may require;
- 43.12 The Charterers shall promptly provide the Owners with any information, if and when required by the Owners, regarding:
 - 43.12.1 the Vessel, its employment, position and engagements;
 - 43.12.2 the Earnings and payments and amounts due to the master and crew of the Vessel;
 - 43.12.3 any expenses incurred, or likely to be incurred, in connection with the operation, maintenance or repair of the Vessel and any payments made in respect of the Vessel;
 - 43.12.4 any towages and salvages;
 - 43.12.5 its compliance, the Approved Manager's compliance and the compliance of the Vessel with the ISM Code and the ISPS Code;
 - 43.12.6 and, upon the Owners request, provide copies of any current charter relating to the Vessel, of any current charter guarantees and copies of the Vessel's Document of Compliance;
- 43.13 The Charterers shall immediately notify the Owners by email, confirmed forthwith by letter of:
 - 43.13.1 any casualty which is or is likely to be or to become a Major Casualty;
 - 43.13.2 any occurrence as a result of which the Vessel has become or is, by the passing of time or otherwise, likely to become a Total Loss;
 - 43.13.3 any requirement or recommendation made by any insurer or classification society or by any competent authority which is not immediately complied with;
 - 43.13.4 any arrest or detention of the Vessel, any exercise or purported exercise of any lien on the Vessel or its Earnings or any requisition of the Vessel for hire;
 - 43.13.5 any intended dry docking of the Vessel;
 - 43.13.6 any Environmental Claim made against the Charterers or in connection with the Vessel, or any Environmental Incident;
 - 43.13.7 any claim for breach of the ISM Code or the ISPS Code being made against the Charterers, an Approved Manager or otherwise in connection with the Vessel; or
 - 43.13.8 any other matter, event or incident, actual or threatened, the effect of which will or could lead to the ISM Code or the ISPS Code not being complied with;

and the Charterers shall keep the Owners advised in writing as and when required by the Owners and in such detail as the Owners shall require of the Charterers', each Approved Manager's or any other person's response to any of those events or matters;

43.14 The Charterers shall not, without the prior written consent of the Owners:

43.14.1 let the Vessel on demise charter for any period;

43.14.2 save for the Approved Time Charter, enter into any time or consecutive voyage charter in respect of the Vessel for a term which exceeds, or which by virtue of any optional extensions may exceed, 9 months without the consent of the Owners, such consent not to be unreasonably withheld;

43.14.3 enter into any charter in relation to the Vessel under which more than 2 months' hire (or the equivalent) is payable in advance unless disclosed to the Owners in advance;

43.14.4 charter the Vessel otherwise than on bona fide arm's length terms at the time when the Vessel is fixed;

43.14.5 appoint a manager of the Vessel other than an Approved Manager or agree to any alteration to the terms of an Approved Manager's appointment without the prior written consent of the Owners which is not to be withheld or delayed;

43.14.6 make any changes relating to the classification or classification society or manager or operator of the Vessel;

43.14.7 de-activate or lay up the Vessel; or

43.14.8 put the Vessel into the possession of any person for the purpose of work being done upon it in an amount exceeding or likely to exceed USD500,000 (or the equivalent in any other currency) **Provided that** where the Charterers request the Owners' consent for the purposes of this Clause 43.14.8 the Owners' consent shall not be unreasonably withheld or delayed;

43.15 The Charterers shall not create or permit to arise any Security Interest over the Vessel other than Permitted Security Interests.

43.16 The Charterers shall carry on board the Vessel a certified copy of any mortgage of the vessel that may be entered into by the Owners from time to time as part of any Financing and place and maintain in a conspicuous place in the navigation room and the Master's cabin of the Vessel a framed printed notice stating that the Vessel is mortgaged by the Owners to the relevant Mortgagee.

44. OWNERS' UNDERTAKINGS

The Owners undertake and agree that throughout the Charter Period they will:-

44.1 Maintain their separate corporate existence and remain in good standing under the laws of the Marshall Islands;

44.2 Obtain and promptly renew from time to time, and whenever so required, promptly furnish certified copies to the Charterers of, all such authorisations, approvals, consents and licences as may be required under any applicable law or regulation to enable the Owners to perform their obligations under this Charter or as may be required for the validity or enforceability of this Charter, and the Owners shall in all material respects comply with the terms of the same;

- 44.3 Have sufficient title to the Vessel to be able to make it available to the Charterers on the terms of this Charter, subject to any deficiencies in the title to the Vessel acquired by the Owners pursuant to the MOA.
- 44.4 Not, unless a Termination Event shall have occurred, disturb or interfere with the Charterers' or any permitted sub-charterers quiet and peaceful use, possession and enjoyment of the Vessel.
- 44.5 Not, during the Charter Period, without the Charterer's prior written consent (such consent not to be unreasonably withheld or delayed) effect any mortgage on the Vessel unless the principal amount of any loan secured by such mortgage is \$26,600,000 or less.

45. INDEMNITIES

- 45.1 The Charterers shall on demand indemnify and keep indemnified the Owners, any Mortgagee and/or their respective officers and members of the management board or shareholders (the "**Indemnified Parties**") against:
 - 45.1.1 Any taxes imposed on, or suffered by, the Owners; and
 - 45.1.2 All costs, charges, expenses, fees, taxes (including, without limitation, all costs, charges, expenses, fees and/or taxes to be imposed on the Owners by the Liberian Ship Registry or other governmental bodies in Liberia and including in relation to the Owner's business, profits and any distributions made to its members), losses, payments, liabilities, penalties, fines, damages or other sanctions of a monetary nature (collectively, "**Losses**") suffered or incurred by the Owners and arising directly or indirectly in any manner out of the design, manufacture, delivery, non delivery, purchase, importation, registration, incorporation, ownership, management, chartering, sub-chartering, possession, control, use, operation, condition, maintenance, repair, replacement, refurbishment, modification, overhaul, insurance, sale or other disposal, return or storage of or loss of or damage to the Vessel or otherwise in connection with the Vessel (whether or not in the control or possession of the Charterers) including any and all claims in tort or in contract by a sub-charterer of the Vessel or by the holders of any bills of lading issued by the Charterers or any sub-charterer, provided always that the indemnity in respect of Losses contained in this Clause 45 shall not extend to any Losses of the Owners as a consequence of the value of the Vessel at the end of the Charter Period unless such Losses shall have resulted from any breach by the Charterers of the terms of the Charter; and
 - 45.1.3 All Losses suffered or incurred by the Owners which result directly or indirectly from documented claims which may at any time be made on the ground that any design, article or material of or in the Vessel or the operation or use thereof constitutes or is alleged to constitute an infringement of patent or copyright or registered design or other intellectual property right or any other right whatsoever; and
 - 45.1.4 All Losses suffered or incurred by the Owners in preventing or attempting to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture or detention of the Vessel, or in securing the release of the Vessel therefrom, and

45.1.5 All Losses suffered or incurred by the Owners, any Mortgagee and any other Lenders with respect to or as a direct result of the presence, escape, seepage, spillage, leaking, discharge or migration from the Vessel of oil or any other hazardous substance, including without limitation, any claims asserted or arising under the US Oil Pollution Act of 1990 or the US Comprehensive Environmental Response Compensation and Liability Act of 1980 (as either may be amended and/or re-enacted from time to time hereafter) or similar legislation in any other jurisdiction, regardless of whether or not caused by or within the control of the Charterers and regardless of whether or not caused as a consequence of any deficiencies in the technical condition of the Vessel on the Delivery Date; and

45.1.6 All Losses suffered or incurred by the Owners and/or its respective officers or members of the management board or shareholders or members and/or any Mortgagee and any other Lenders, as a consequence of any violation by the Charterers or any sub-charterer of U.S. law or any other laws pursuant to which the Vessel and/or her trading or operations shall be subject from time to time;

provided always that the Charterers shall be entitled to take, in the name of the Owners, such reasonable action as the Charterers see fit to defend or avoid any Losses or to recover the same from any third party but subject to the Charterers first ensuring that the Owners are indemnified and secured to their satisfaction against all Losses thereby incurred or to be incurred.

45.2 If, under any applicable law, whether as a result of judgment against the Charterers or the liquidation of the Charterers or for any other reason, any payment to be made by the Charterers under or in connection with their Charter is made or is recovered in a currency other than the currency (the “**currency of obligation**”) in which it is payable pursuant to this Charter then, to the extent that the payment (when converted into the currency of obligation at the rate of exchange on the date for the determination of liabilities permitted by the applicable law) falls short of the amount unpaid under this Charter, the Charterers shall as a separate and independent obligation, fully indemnify the Owners against the amount of the shortfall; and for the purposes of this sub-clause “rate of exchange” means the best rate at which the Owners are able on the relevant date to purchase the currency of obligation with the other currency.

45.3 The indemnities contained in this Clause 45 shall survive any termination or other ending of this Charter and any breach of, or repudiation or alleged repudiation by, the Charterers or the Owners of this Charter, but the indemnities contained in this Clause 45 shall not apply if and to the extent that the relevant cost, charge, expense or Losses arise as a result of (i) any act, neglect or default of or by any person (other than the Charterers) subsequent, notwithstanding the provisions of this Charter or the other arrangements agreed between the Owners and the Charterers, to any redelivery of the Vessel to the Owners or any other provision of this Charter or (ii) any fraudulent or wilful misconduct, recklessness or gross and culpable negligence of the Indemnified Party claiming such indemnity. All moneys payable by the Charterers under this Clause 45 shall be paid on demand.

46. TOTAL LOSS

46.1 For the purposes of this Charter:

46.1.1 “**Total Loss**” means:

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

46.1.2 “**Total Loss Date**” means:

- (a) in the case of an actual loss of the Vessel, the date on which it occurred or, if that is unknown, the date when the Vessel was last heard of;
- (b) in the case of a constructive, compromised, agreed or arranged total loss of the Vessel, 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 Owners with the Vessel’s insurers in which the insurers agree to treat the Vessel 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 Owner that the event constituting the total loss has occurred;

46.2 If the Vessel shall become a Total Loss, Charter Hire shall cease to accrue on the earlier of (i) the date on which the Owners receive the insurance proceeds payable by the insurer consequent upon the Total Loss and (ii) 120 days after the Total Loss Date.

46.3 In the event that, following the occurrence of a Total Loss, the Owners (or any Mortgagee or whomsoever shall be named as loss payee) shall, for any reason, not have received the applicable Total Loss Amount in full out of the insurance proceeds or compensation amounts (if any) within one hundred and twenty (120) days (or such longer period as the Owners may agree) following the Total Loss Date, the Charterers shall thereupon forthwith on demand pay to the Owners (or any Mortgagee or whomsoever shall be named as loss payee) such amount as the Owners shall specify in writing to the Charterers, to be equal to the amount by which the applicable Total Loss Amount exceeds the amount of insurance proceeds or compensation moneys (if any) received by the Owners (or any Mortgagee as assignee) prior to such payment by the Charterers. Upon receipt by the Owners of all amounts payable pursuant to this Clause 46.3 or otherwise under the Charter, the Owners shall assign to the Charterers all of their rights and interests in respect of any claims for the Total Loss of the Vessel.

46.4 In the event that the amount of the insurance proceeds or compensation moneys (if any) which the Owners (or the Mortgagee as assignee) receive and are entitled to retain exceeds the Total Loss Amount the Owners shall thereupon forthwith pay to the Charterers the amount of any excess.

47. INSURANCES

- 47.1 During the Charter Period the Vessel shall be kept insured by the Charterers against
- (a) fire and usual marine risks (including hull and machinery and excess risks);
 - (b) war risks;
 - (c) protection and indemnity risks; and
 - (d) any other risks against which the Owners consider, having regard to practices and other circumstances prevailing at the relevant time, it would in the opinion of the Owners be reasonable for the Charterers to insure and which are specified by the Owners by notice to the Charterers.
- 47.2 The Charterers undertake with the Owners to comply with the following provisions of this Clause 47.2 at all times during the Charter Period:
- 47.2.1 all insurances to be taken out for the Vessel shall be effected and maintained by the Charterers:
- (a) in the name of the Owners, the Charterers, any Mortgagee and otherwise as the Owners and the Charterers may agree;
 - (b) in an amount of marine and war risks cover of no less than the higher of (i) the market value of the Vessel from time to time, and (ii) 120% of the amount referred to in Schedule 2, paragraph (a) and (b) as being applicable to the date of the placing of the relevant insurance (or such other amount as may be agreed from time to time between the Charterers and the Owner, or any Mortgagee (in its capacity as mortgagee and loss payee));
 - (c) so that the protection and indemnity risks are covered through a member of the International Group of Protection and Indemnity Associations or other such association as the Owners agree and include, in the case of oil pollution liability risks, cover for an aggregate amount equal to the highest level of cover available from time to time under the basic P&I Club entry policy (currently one billion United States Dollars);
 - (d) upon such terms and by policies and/or entries in such forms as shall from time to time be approved in writing by the Owners and any Mortgagee; and
 - (e) through such brokers (hereinafter called the "approved brokers") and with such insurance companies, underwriters, war risks and protection and indemnity associations or insurers (hereinafter called the "approved insurers") as shall, in each case, from time to time be approved in writing by the Owners and any Mortgagee;
- 47.2.2 all such insurances shall be renewed by the Charterers at least fourteen (14) days before the relevant policies or contracts expire and the approved brokers and/or the approved insurers shall promptly confirm in writing to the Owners and any Mortgagee as and when each such renewal is effected and, in the event of any

renewal not being effected by the Charterers as aforesaid, shall notify the Owners and any Mortgagee forthwith;

- 47.2.3 the Charterers shall pay punctually all premiums, calls, contributions or other sums payable in respect of all such insurances and produce all relevant receipts when so required by the Owners or any Mortgagee;
- 47.2.4 the Charterers shall arrange for the execution of such guarantees as may from time to time be required by any protection and indemnity or war risks association;
- 47.2.5 the Charterers shall procure that the policies and/or entries in respect of the insurances against marine and war risks are, in each case, endorsed with the interest of the Owners and any Mortgagee to the effect that:
- (a) payment of a claim for a Total Loss of the Vessel will be made to the Mortgagee, if any, in its capacity as mortgagee and loss payee (until such mortgage has been discharged, after which to the Owners).
 - (b) payment of a claim in respect of a Major Casualty shall be made to the Mortgagee, if any, until such mortgage has been discharged, after which to the Owners, and the Owners shall pay such sums to the Charterers as and when the relevant repairs on the Vessel has been completed and paid for.
 - (c) payment of a claim which is not a Major Casualty shall be paid (i) if at the time of the payment the relevant repairs on the Vessel have not been completed and paid for, to the Owners, or (ii) if the relevant repairs on the Vessel have been completed and paid for, to the Charterers.
- 47.2.6 the Charterers shall procure that the entries or insurances in respect of protection and indemnity risks shall provide for moneys payable thereunder to be paid either:
- (a) to the person by whom was incurred the liability in respect of which the relevant money was paid or, unless and until the Owners or any Mortgagee shall direct (following the occurrence of any Termination Event) that they shall be paid to the Owners or such Mortgagee, whereupon they shall be so paid;
 - (b) to the Charterers in reimbursement for any payment properly made by the Charterers to a third party;
- 47.2.7 the Charterers shall procure that the interest of the Owners as owner of the Vessel and any Mortgagee as mortgagee of the Vessel and as loss payee of all insurance proceeds shall be recorded on all policies and shall be confirmed to the Owners and any Mortgagee in conformity with applicable market practice and with their requirements;
- 47.2.8 the Charterers shall not do any act or permit or allow any act to be done whereby any insurance required as aforesaid shall or may be suspended, impaired or become defective;
- 47.2.9 the Charterers shall apply all such sums receivable in respect of the insurances as are paid to the Charterers in accordance with the terms of this Charter for the purpose of making good the loss and fully repairing all damage in respect whereof the insurance moneys shall have been received; and

- 47.2.10 the Charterers shall not make any alteration to any of the terms of the instruments of insurance referred to in this Clause without the prior written approval of the Owners and, if applicable, the Mortgagee and shall not make, do, consent or agree to any act or omission which would or might render any such instrument of insurance invalid, void, voidable or unenforceable or render any sum payable thereunder repayable in whole or in part.
- 47.2.11 the Charterers shall ensure that all approved brokers provide the Owners with pro forma copies of all policies relating to the insurances which they are to effect or renew and of a letter or letters or undertaking in a form required by the Owners and including undertakings by the approved brokers that:
- (a) they will have endorsed on each policy, immediately upon issue, a loss payable clause and a notice of assignment;
 - (b) they will hold such policies, and the benefit of such insurances, to the order of the Owners in accordance with the said loss payable clause;
 - (c) they will advise the Owners immediately of any material change to the terms of the insurances;
 - (d) they will notify the Owners, not less than fourteen (14) days before the expiry of the insurances, in the event of their not having received notice of renewal instructions from the Charterers or its agents and, in the event of their receiving instructions to renew, they will promptly notify the Owners of the terms of the instructions; and
 - (e) they will not set off against any sum recoverable in respect of a claim relating to the Vessel under such insurances any premiums or other amounts due to them or any other person in respect of any vessel other than the Vessel, they waive any lien on the policies, or any sums received under them, which they might have in respect of such premiums or other amounts, and they will not cancel such insurances by reason of non-payment of such premiums or other amounts, and will arrange for a separate policy to be issued in respect of the Vessel forthwith upon being so requested by the Owners.
- 47.2.12 the Charterers shall ensure that all policies relating to insurances are deposited with the approved brokers through which the insurances are effected or renewed.
- 47.2.13 the Charterers acknowledge that the Owners or their Mortgagee may from time to time or at all times during the Charter Period maintain and renew a mortgagee's interest marine insurance (including 'additional perils') in such amount as may be required by the Owners or their Mortgagee and on such terms, through such insurers and generally in such manner as the Owners or their Mortgagee may from time to time consider appropriate. The Charterers shall fully indemnify the Owners in respect of all premia and other expenses which are incurred by the Owners or their Mortgagee in connection with or with a view to effecting, maintaining or renewing any such insurance or dealing with, or considering, any matter arising out of any such insurance.
- 47.2.14 the Charterers shall, in addition to the foregoing, ensure that the insurances always comply with the requirements of any Financial Instrument and, if there is any conflict between the terms of this Clause 47 and the insurance requirements of any

Financial Instrument, the insurance requirements of the Financial Instrument shall prevail.

48. SECURITY

48.1 As security for their due and punctual performance under this Charter, the Charterers hereby agree that:

48.1.1 they will:

- (a) assign to the Owners all of their rights, title and interests in and to (i) all policies and contracts of insurance (which expression includes all entries of the Vessel in protection and indemnity or war risks associations) which are from time to time taken out or entered into by the Charterers in respect of the Vessel pursuant to this Charter and (where the context permits) all benefits thereof, including all claims of any nature and returns of premium, (ii) the Earnings (iii) any charters, pooling agreements or contracts of employment in respect of the Vessel that have a possible term of nine (9) months or more, including the Approved Time Charter (and any guarantee thereof) (the "**Charterers Assignment**") and (iv) any post delivery Vessel warranties by the Builder in favour of the Charterer (in its capacity as buyer under the Shipbuilding Contract) they will execute the Charterers Assignment in such form as the Owners may reasonably request and will procure that any affected charterer or other counterparty consents to the Owners having step in rights in relation to any assigned charter, pooling agreement or contract of employment on terms acceptable to Owner; and
- (b) execute an account security deed in respect of the Charterers Earnings Account in favour of the Owners (the "**Charterers Account Pledge**") in such form as the Owners may reasonably request;

48.1.2 they will procure the issue by the Charter Guarantor of a guarantee (the "**Charter Guarantee**") in favour of the Owners and on such terms as the Owner may require, guaranteeing the performance by the Charterers of all their obligations under this Charter and any other agreements made between the Owners and the Charterers in such form as the Owners may reasonably request;

48.1.3 they will procure the grant by the Shareholder of the Share Pledge on such terms as the Owner may require.

48.2 The Charterers acknowledge that the Owners may assign all of their rights and benefits under the Transaction Documents (or any of them) to any Lenders or Mortgagee from time to time as security for the due and punctual performance by the Owners of any obligations they assume in relation to any Financing and Charterers agree to provide such cooperation as Owners may require, including executing and delivering such documents as Owners or its Mortgagee may require including, without limitation, executing acknowledgements of notices of assignment and, if required, entering in to a tripartite agreement pursuant to which Charterers agree directly with any Mortgagee to perform such operating, maintenance and insurance covenants in relation to the Vessel as the Owner is itself required to perform pursuant to the Financial Instrument, and to assign its interest in the insurances directly to such Mortgagee.

49. TERMINATION EVENTS

49.1 Each of the following events shall be a "Termination Event" for the purposes of this Charter:–

- 49.1.1 If the Charterers fail to enter into, deliver the Vessel under or perform their obligation under the Approved Time Charter in accordance with Clause 43.2; or
- 49.1.2 If any instalment of Charter Hire or any other sum payable by the Charterers under any Transaction Document shall not be paid within five (5) Banking Days of its due date or (in the case only of sums expressed to be payable on demand) within five (5) Banking Days following the date of demand therefore; or
- 49.1.3 If the Charterers shall at any time fail to observe or perform any other obligation under any Transaction Document and such failure to observe or perform any such obligation is either not remediable or prejudices the Vessel's insurance cover.
- 49.1.4 If the Charterers shall at anytime fail to observe or perform any other obligation under any Transaction Document which is remediable (and does not prejudice the Vessel's insurance cover) but is not remedied within thirty (30) Banking Days of receipt by such party of written notice from the Owners notifying that party of such failure and requesting remedial action; or
- 49.1.5 If an event of default (however described) occurs in respect of any Financial Indebtedness of any Group Company, and such default is either not remediable or is remediable but is not remedied within fifteen (15) days of receipt by such party of written notice from the relevant creditor or the Owners demanding remedial action (whichever is received earlier); or
- 49.1.6 Any of the following occurs in relation to the Charterers, the Shareholder or the Charter Guarantor:
 - (a) such party becomes unable to pay its debts as they fall due; or
 - (b) any assets of such party are subject to any form of post-judgment execution, attachment, arrest, sequestration or distress in respect of a sum of, or sums aggregating, \$100,000 or more or the equivalent in another currency; or
 - (c) any administrative or other receiver is appointed over any asset of such party unless such appointment is being contested in good faith and on substantial grounds and the appointment is withdrawn within 21 days; or
 - (d) such party makes any formal declaration of bankruptcy or any formal statement to the effect that it is insolvent or likely to become insolvent, or a winding up or administration order is made in relation to such party, or the members or directors of such party pass a resolution to the effect that it should be wound up, placed in administration or cease to carry on business, save that this paragraph does not apply to a fully solvent winding up of such party which is, or is to be, effected for the purposes of an amalgamation or reconstruction previously approved by the Owners and effected not later than 3 months after the commencement of the winding up; or
 - (e) a petition is presented in any Pertinent Jurisdiction for the winding up or administration, or the appointment of a provisional liquidator, of such party unless the petition is being contested in good faith and on substantial

grounds and is dismissed or withdrawn within 30 days of the presentation of the petition; or

- (f) such party petitions a court, or presents any proposal for, any form of judicial or non-judicial suspension or deferral of payments, reorganisation of its debt (or certain of its debt) or arrangement with all or a substantial proportion (by number or value) of its creditors or of any class of them or any such suspension or deferral of payments, reorganisation or arrangement is effected by court order, contract or otherwise; or
 - (g) any meeting of the members or directors of such party is summoned for the purpose of considering a resolution or proposal to authorise or take any action of a type described in paragraphs (c), (d), (e) or (f); or
 - (h) in a Pertinent Jurisdiction other than England, any event occurs or any procedure is commenced which is similar to any of the foregoing; or
- 49.1.7 The Charterers, the Shareholder or the Charter Guarantor cease or suspend carrying on their business or a part of their business which is material in the context of this Agreement; or
- 49.1.8 If the Charter Guarantor, at any time during the Charter Period, shall breach any provision of the Charter Guarantee, including (but not limited to) any failure to maintain at all times the financial covenants contained therein; or
- 49.1.9 If the Shareholder, at any time during the Charter Period, shall breach any provision of the Share Pledge; or
- 49.1.10 If either (a) the Charterers fail at any time to effect or maintain any insurances required to be effected and maintained under this Charter, or any insurer shall avoid or cancel any such insurances (other than where the relevant avoidance or cancellation results from an event or circumstances outside the reasonable control of the Charterers and the relevant insurances are reinstated or re-constituted in a manner meeting the requirements of this Charter within seven (7) days of such avoidance or cancellation), or the Charterers shall commit any breach of or make any misrepresentation in respect of any such insurances the result of which is to entitle the relevant insurer to avoid the policy or otherwise to be excused or released from all or any of its liability thereunder to the Owners (unless the relevant insurer has expressly and irrevocably waived the breach or misrepresentation in question prior to exercising such right), or (b) any of the said insurances shall cease for any reason whatsoever to be in full force and effect (other than where the reason in question is outside the reasonable control of the Charterers and the relevant insurances are reinstated or re-constituted in a manner meeting the requirements of this Charter within seven (7) days of such cessation); or
- 49.1.11 If any representation or warranty of the Charterers, the Shareholder or the Charter Guarantor in connection with any Transaction Document or in any document or certificate furnished to the Owners in connection therewith shall prove to have been untrue, inaccurate or misleading in any material respect, when made; or
- 49.1.12 If the Vessel is arrested or detained (other than for reasons solely attributable to the Owners) and such arrest or detention is not lifted within fourteen (14) days (or

such longer period as the Owners shall agree in the light of all the circumstances); or

- 49.1.13 If there occurs a material breach of any obligation of the Charterers, the Shareholder or the Charter Guarantor in any other document or agreement made or to be made between the Owners and the Charterers, the Shareholder or the Charter Guarantor in connection with the Vessel and which is not specifically mentioned in this Clause 49; or
- 49.1.14 For any reason whatsoever, the Vessel ceases to be managed by an Approved Manager on terms in all respects approved by the Owners or is at any time managed by a person who is not an Approved Manager; or
- 49.1.15 An Approved Manager fails to comply with any provision of the management agreement pursuant to which it manages the Vessel or with any duties which are customary in accordance with the ship management industry's common practice; or
- 49.1.16 An Approved Manager fails to comply with any provision of the ISM Code, ISPS Code, any Environmental Laws or any other laws or regulations relating to the Vessel or its operation; or
- 49.1.17 If the Charterers at any time fail to observe or perform any obligation under the Option Agreement (other than a payment obligation falling within Clause 49.1.2) and such failure to observe or perform any such obligation is not remediable or is remediable but is not remedied within ten (10) Banking Days of receipt by the Charterers of written notice from the Owners notifying the Charterers of such failure and requesting remedial action; or
- 49.1.18 If it appears to the Owners that, without their prior consent, the Charterer has ceased to be wholly owned, legally and beneficially, by the Shareholder or that the Shareholder has ceased to be wholly owned, legally and beneficially, by the Charter Guarantor or that a change has occurred or probably has occurred after the date of this Charter in the ultimate beneficial ownership of any of the shares in the Shareholder or the Charter Guarantor or in the ultimate control of the voting rights attaching to any of those shares; or
- 49.1.19 If any provision which the Owners may reasonably consider material of any Transaction Document or of the Approved Time Charter proves to have been or becomes invalid or unenforceable, or a Security Interest created by any Transaction Document proves to have been or becomes invalid or unenforceable or such a Security Interest proves to have ranked after, or loses its priority to, another Security Interest or any other third party claim or interest; or
- 49.1.20 The security constituted by any Transaction Document is in any way imperilled or in jeopardy; or
- 49.1.21 It becomes unlawful in any Pertinent Jurisdiction or impossible (a) for the Charterers, the Shareholder or the Charter Guarantor to discharge any liability under any Transaction Document or to comply with any other obligation which the Owners consider material under such documents, or (b) for the Owners to exercise or enforce any right under, or to enforce any Security Interest created by any Transaction Document; or

- 49.1.22 Any official consent necessary to enable the Charterers to own, operate or charter the Vessel or to enable the Charterers, the Shareholder or the Charter Guarantor to comply with any provision which the Owners consider material of any Transaction Document or of the Approved Time Charter is not granted, expires without being renewed, is revoked or becomes liable to revocation or any condition of such a consent is not fulfilled; or
- 49.1.23 The Charterers are in breach of their obligations under the Approved Time Charter or, for any reason other than default by the Time Charterer, the Approved Time Charter is cancelled or otherwise terminated before the end of the 81st month following the Delivery Date; or
- 49.1.24 The Time Charterer is in breach of its obligations under the Approved Time Charter and such default is not remedied within 30 days or the Approved Time Charter is cancelled or otherwise terminated on the basis of default by the Time Charterer before the end of the 81st month following the Delivery Date and a substitute time charter is not entered into within 30 days of such termination or cancellation on terms acceptable to and with a counterparty acceptable to the Owners; or
- 49.1.25 Any other event occurs or any other circumstances arise or develop including, without limitation:
- (a) a change in the financial position, state of affairs or prospects of the Charterers or the Charter Guarantor; or
 - (b) any accident or other incident (other than a Total Loss in respect of which the Owners (or any assignee) receive the Total Loss Amount in full within 120 days of the Total Loss Date in accordance with Clause 46.3) involving the Vessel, in the light of which the Owners reasonably consider that there is a significant risk that:
 - (i) the Charterers are, or will later become, unable to discharge their liabilities under any Transaction Document as they fall due; or
 - (ii) the Charter Guarantor is, or will later become, unable to discharge its obligations under the Charter Guarantee.

50. OWNERS' RIGHTS ON TERMINATION EVENT

- 50.1 At any time after a Termination Event shall have occurred and be continuing, the Owners may, by notice to the Charterers on such date as the Owners shall specify, terminate the chartering by the Charterers of the Vessel under this Charter, whereupon the Vessel shall no longer be in the possession of the Charterers with the consent of the Owners, the Option Agreement shall lapse and if the Call Option or Put Option has been exercised but the Vessel has not been delivered to Charterers or their nominee, any obligation to deliver the Vessel pursuant to such option shall be null and void.
- 50.2 On or at any time after termination of the chartering by the Charterers of the Vessel pursuant to Clause 50.1 hereof the Owners shall be entitled (but not bound and without prejudice to the Charterers' obligations under Clause 52 hereof) to retake possession of the Vessel, the Charterers hereby agreeing that the Owners, for that purpose, may put into force and exercise all their rights and entitlements at law and may enter upon any

premises belonging to or in the occupation or under the control of the Charterers where the Vessel may be located.

- 50.3 If the Owners pursuant to Clause 50.1 hereof give notice to terminate the chartering by the Charterers of the Vessel, the Charterers shall pay to the Owners on the date of such termination or such later date as the Owners shall specify the aggregate of:–
- 50.3.1 all Charter Hire due and payable, but unpaid, under this Charter to (and including) the Termination Date together with any default interest accrued thereon pursuant to Clause 38.5 hereof from the due date for payment thereof to the Termination Date; and
 - 50.3.2 any sums, other than Charter Hire, due and payable, but unpaid, under this Charter together with any default interest accrued thereon pursuant to Clause 38.5 to the Termination Date; and
 - 50.3.3 all costs, expenses, damages and losses incurred by the Owners as a consequence of this Charter having terminated prior to the expiry of the agreed Charter Period (including, but not limited to, expenses incurred in recovering possession of, and in moving, laying-up, manning, insuring and maintaining, the Vessel and in carrying out any works or modifications required to cause the Vessel to conform with the provisions of this Charter); and
 - 50.3.4 the Termination Sum applicable on the Termination Date.
- 50.4 Provided that the Charterers have paid the Termination Sum within 30 days of its due date together with any other amounts due under the Transaction Documents, including any default interest payable under Clause 38.5, the Owners shall transfer the Vessel to the Charterers on an “as is where is” basis for USD 10. If the Termination Sum and such other amounts are not paid within 30 days of the Termination Sum becoming due the Termination Sum and such other moneys shall remain due but the Owners shall not be obliged to transfer the Vessel to the Charterer or to account to the Charterer for any proceeds of sale of the Vessel save to the extent provided in Clause 50.8.
- 50.5 Any amount due to the Owners under Clause 50.3 hereof which is not paid on the Termination Date shall incur default interest pursuant to Clause 38.5 hereof (before and after any relevant judgment or any winding-up of the Charterers) from the Termination Date or (as the case may be) from the date of any demand for payment to the date of the Owners’ actual receipt thereof.
- 50.6 Following termination of this Charter pursuant to Clause 50.1 the Charterers shall continue to comply with their obligations under this Charter, including (without limitation) the payment of Charter Hire, until the Vessel is redelivered to the Owners in accordance with Clause 52.
- 50.7 Following the occurrence of a Termination Event, the Charterers shall, at the request of the Owners, terminate the management arrangements in respect of the Vessel at Charterer’s cost.
- 50.8 If the Termination Sum together with any other amounts due under the Transaction Documents, including any default interest payable under Clause 38.5, is not paid within 30 days of the date on which the Termination Sum becomes due, the Owners shall have no obligation to transfer the Vessel to the Charterer, even if such sums are subsequently paid and the Charter shall have no claim on the Vessel under or arising out of any Transaction Document. However, the Owners shall be liable to pay to the Charterer by

way of rebate of hire an amount equal to the lower of the Vessel's value and the Termination Sum payable hereunder (such lower amount being the "Rebate") in accordance with the following:

- (a) The Owners may at any time elect for the Fair Market Value as at the date of such election to be used to establish the Vessel's value for the purposes of this Clause 50.8.
 - (b) If the Owners have not, within 6 months of the Termination Date, either sold the Vessel (and received the net proceeds of sale) or made an election under (a) above, they shall be deemed to have made such an election on such date; and
 - (c) If, prior to making an election under (a) or (b) above, the Owners sell the Vessel and receive the net proceeds of sale, the Vessel value for the purposes of this Clause shall be the net proceeds of sale.
- The Rebate, if any, established in accordance with the above shall be applied first by way of set-off against any amount then due under the Charter, whether by way of Termination Sum, default interest or other amount, and any balance shall be paid to the Charterer.

- 50.9 Following a Termination Event pursuant to Clause 49.1.13 or 49.1.14, the Charterers shall replace the Approved Manager with such manager, and upon such terms, as the Owners may reasonably require.
- 50.10 If a notice has been served under Clause 50.1, the Owner shall be entitled then or at any later time or times:
- 50.10.1 to exercise, to the exclusion of the Charterer, the powers possessed by it as owner of the Ship conferred by the law of any country or territory in which the Vessel is physically present or deemed to be sited the courts of which have or claim any jurisdiction in respect of the Charterer or the Vessel;
 - 50.10.2 to take possession of the Vessel whether actually or constructively and/or otherwise to take control of the Vessel wherever the Vessel may be and cause the Charterer or any other person in possession of the Vessel forthwith upon demand to surrender the Vessel to the Owner without legal process and without the Owner being liable for any losses thereby caused or to account to the Charterer in connection therewith;
 - 50.10.3 to collect, recover and give a good discharge for any moneys or claims arising in relation to the Vessel and to permit any brokers through whom collection or recovery is effected to charge the usual brokerage therefor;
 - 50.10.4 to take over or commence or defend (if necessary using the name of the Charterer) any claims or proceedings relating to, or affecting, the Vessel which the Owner may think fit and to abandon, release or settle in any way any such claims or proceedings; and
 - 50.10.5 generally, to enter into any transaction or arrangement of any kind and to do anything in relation to the Vessel which the Owner may think fit.
- 50.11 For the purpose of securing the Owner's interest in the Vessel and the due and punctual performance of the Charterer's obligations to the Owner under this Charter and every other Transaction Document, the Charterer irrevocably and by way of

security appoints the Owner its attorney, on behalf of the Charterer and in its name or otherwise, to execute or sign any document and do any act or thing which the Charterer is obliged to do under any Transaction Document.

50.12 For the avoidance of doubt and without limiting the generality of Clause 50.11, it is confirmed that it authorises the Owner to execute on behalf of the Charterer a document ratifying by the Charterer any transaction or action which the Owner has purported to enter into or to take and which the Owner considers was or might have been outside his powers or otherwise invalid.

50.13 The Owner may sub delegate to any person or persons all or any of the powers (including the discretions) conferred on the Owner by Clauses 50.11 and/or 50.12, and may do so on terms authorising successive sub delegations.

51. TERMINATION ON EXERCISE OF PUT OR CALL OPTION

51.1 In the event that Owners exercise their rights under Clause 4 of the Option Agreement or the Charterers exercise their rights under Clause 3 of the Option Agreement, the Vessel shall be redelivered to the Owners under this Charter immediately prior to the delivery of the Vessel to the Charterers pursuant to the Option, and this Charter shall terminate upon such redelivery.

52. REDELIVERY

52.1 In the event that the Vessel is to be redelivered to the Owners under this Charter other than in the circumstances set out in Clause 51, the Vessel shall be redelivered by the Charterers safely afloat on not less than 5 running days notice at a safe and accessible port worldwide within IWL and excluding any war zone and in the condition in which the Vessel is required to be maintained pursuant to this Charter, in class free from recommendations or damage of any kind.

52.2 In the event that the Charterer has not served notice before the end of the 81st month of the Charter Period to the effect that it intends to exercise its purchase option under the Option Agreement, Owner shall be free to market the Vessel for sale during the remaining Charter Period and Charterer shall at all reasonable times requested by Owner, facilitate inspection of the Vessel by potential buyers, subject to the requirements of the Vessel's trading schedule.

53. FEES AND EXPENSES

53.1 Each party shall bear the cost of its own fees and expenses (including but not limited to legal fees and expenses) incurred by in connection with the negotiation, preparation and execution of the Transaction Documents.

54. COMMUNICATION

54.1 Except as otherwise provided for in this Charter, all notices or other communications under or in respect of this Charter to either party hereto shall be in writing and shall be made or given to such party at the postal address, e-mail address or facsimile number appearing below (or at such other postal address, e-mail address or facsimile number as such party may hereafter specify for such purposes to the other by notice in writing):-

54.1.1 In the case of the Owners:

Endurance Shipping LLC
c/o Northern Fund Management America LLC
One Stamford Landing
62 Southfields Avenue Suite 212,
Stamford, CT 06902
USA

Attn: Katie Furman
Telephone No.: +1 203 487 3434
Telefax No.: +1 203 487 3435
E-mail: kfurman@nornav.com

with a copy to: Nikos Stratis
Telephone No.: +44 20 7193 5023
Telefax No.: +44 20 7245 0900
E-mail: nstratis@northernshippingfunds.com

54.1.2 In the case of the Charterers:

Curby Navigation Limited
c/o: Newlead Bulkers S.A.
83, Akti Miaouli & Flessa Str.
Piraeus, 185 38,
Greece

Attn: Michael Livanos
Telephone No.: +30 213 014 8251
Telefax No.: +30 213 0148408
E-mail: mlivanos@newleadship.com

A written notice given by;

- (a) post shall be deemed given on the fifth day following posting by pre-paid first class post to the addressee;
- (b) facsimile shall be deemed given upon appropriate confirmation by the sender's equipment; and
- (c) e-mail shall be deemed given two hours after despatch.

A notice received on a non-Banking Day or after business hours in the place of receipt shall be deemed to be served on the next following Banking Day in such place.

54.2 All communications and documents delivered pursuant to or otherwise relating to this Charter shall be in English.

55. CONFIDENTIALITY

Except if and to the extent required by any applicable law or statute (including US securities laws, each party hereto agrees to keep strictly confidential and not to disclose to any other person, other than to affiliates, co-investors, lawyers, surveyors, agents,

potential investors in the Owners or other third parties who need to know such information in connection with the transaction (and who will be informed to keep such information confidential herein for the benefit of the other party), any information regarding the transactions contemplated herein (including that a transaction has been discussed or agreed) or furnished by or on behalf of the other party in connection with the transactions contemplated herein.

56. MISCELLANEOUS

- 56.1 No term of this Charter is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to it other than any Mortgagee or Lender and their respective officers or members of the management board or shareholders or members.
- 56.2 In the event of any amendment or variation to this Charter, no consent shall be required from any third party expressing to have rights under this Charter.
- 56.3 If there is any conflict between the terms of the additional clauses and the printed part of this Charter, the terms of the additional clauses shall prevail.
- 56.4 This Charter and the other Transaction Document constitute the whole agreement between the parties relating to the subject matter hereof and replace any prior correspondence, documents, agreements, discussions and/or representations in their entirety, save to the extent that additional documentation or information is required by the terms of Transaction Document to be provided by one party or its affiliate to the other party or its affiliate.

This Charter has been entered into as a deed on the date above stated.

Executed and delivered as a deed for and on behalf of the Owners

Executed and delivered as a deed for and on behalf of the Charterer

/s/ Nigel Willis

/s/ Panagiotis Peter-Kallifidas

In the presence of: /s/ Frederick Phillips

In the presence of: /s/ Stella Nikolaou

Name: Frederick Phillips

Name: Stella Nikolaou

Occupation: Trainee Solicitor

Occupation:

Address: London EC2A 2HB

Address:

**SCHEDULE 1
CALCULATION OF TERMINATION SUM**

The Termination Sum on any relevant date shall be the aggregate of the amount applicable to such date, as determined in accordance with paragraphs (a) and (b) below:

(a) Date Falling	Applicable Amount
Delivery Date	\$ 32,000,000
0 – 364 days after Delivery Date	\$ 32,000,000
12 months after Delivery Date	\$ 31,300,000
24 months after Delivery Date	\$ 31,000,000
36 months after Delivery Date	\$ 30,500,000
48 months after Delivery Date	\$ 30,000,000
60 months after Delivery Date	\$ 29,500,000
72 months after Delivery Date	\$ 29,000,000
84 months after Delivery Date	\$ 26,500,000

- (b) on any other date other than those referred to in (a) above, the applicable amount shall be the amount set out in respect of the date referred to in (a) which occurs immediately prior to the Termination Date (the "**First Date**") less the difference between such amount and the amount due in respect of the date referred to in (a) above which occurs immediately after the Termination Date (the "**Second Date**") divided by 365 and multiplied by the number of days elapsed since the First Date.

**SCHEDULE 2
CALCULATION OF TOTAL LOSS AMOUNT**

Following a Total Loss, a Total Loss Amount shall be payable, the amount of which shall be determined as at the earlier of (i) the date on which the Owners receive the insurance proceeds payable by the insurer consequent upon the Total Loss and (ii) 120 days after the Total Loss Date (the "**Calculation Date**"). The amount payable on any date shall be the amount applicable on the relevant Calculation Date determined in accordance with paragraphs (a) and (b) below, together with any amount due under paragraph (c) below:

(a) Total Loss Amount Payment Date	Applicable Amount
Delivery Date	\$ 32,000,000
0 – 364 days after Delivery Date	\$ 32,000,000
12 months after Delivery Date	\$ 31,300,000
24 months after Delivery Date	\$ 31,000,000
36 months after Delivery Date	\$ 30,500,000
48 months after Delivery Date	\$ 30,000,000
60 months after Delivery Date	\$ 29,500,000
72 months after Delivery Date	\$ 29,000,000
84 months after Delivery Date	\$ 26,500,000

- (b) where the Calculation Date falls on a date other than those referred to in (a) above, the applicable amount shall be the amount set out in respect of the date referred to in (a) which occurs immediately prior to the relevant payment date (the "**First Date**") less the difference between such amount and the amount set out in respect of the date referred to in (a) above which occurs immediately after the relevant payment date (the "**Second Date**") divided by 365 and multiplied by the number of days elapsed since the First Date; and
- (c) The Total Loss Amount payable on any date shall be the applicable amount determined in accordance with paragraphs (a) and (b) plus:
- (i) all sums due and unpaid under the Charter; and
 - (ii) all costs and expenses relating to the recovery of the insurance proceeds.

**SCHEDULE 3
MANAGER'S UNDERTAKING**

To: ENDURANCE SHIPPING LLC (the "Owner")
c/o Northern Fund Management America LLC
One Stamford Landing
62 Southfields Avenue Suite 212,
Stamford, CT 06902
USA

From: [APPROVED MANAGER'S NAME]
[Address]

[●] 2011

Dear Sirs

m.v. "NEWLEAD ENDURANCE" ex Sungdong Hull No. S-1125 (the "Ship")

1. BACKGROUND

- 1.1 We understand from Curby Navigation Limited (the "Charterer") that you have entered into a bareboat charterparty (the "Charter") dated [●] 2011 with the Charterer.
- 1.2 By the terms of the Charter you have agreed (subject as therein provided) to charter the Ship to the Charterer.
- 1.3 We have been further advised by the Charterer that one of the conditions to you delivering the ship to the Charterer is that we enter into this Undertaking in your favour in respect of the Ship.

2. CONFIRMATION OF APPOINTMENT

- 2.1 We confirm that we have been appointed by the Charterer as the [technical] [commercial] manager of the Ship on the terms of a Management Contract dated [●] 2011 (the "Management Contract"), a copy of which is attached to this Letter. We further certify that the attached Management Contract is a true and complete copy of such document and that no addenda or supplements to it exist as at the date of this letter.

3. INTERPRETATION

- 3.1 Words and expressions defined in the Charter shall have the same meanings when used in this Letter unless the context otherwise requires.

4. UNDERTAKINGS

- 4.1 In consideration of your granting your approval to our appointment as manager of the Ship, we irrevocably and unconditionally undertake with you as follows:
- 4.1.1 that all claims of whatsoever nature which we have or may at any time hereafter have against or in connection with the Ship, the Earnings, the Insurances or any Requisition Compensation or against the Charterer shall rank after and be in all respects subordinate to all of your rights and claims;
 - 4.1.2 that we shall not institute any legal or quasi-legal proceedings in any jurisdiction at any time hereafter against or in connection with the Ship, the Earnings or the Insurances or against the Charterer in any capacity;
 - 4.1.3 that we shall not compete with you in a liquidation or other winding-up or bankruptcy of the Charterer or in any proceedings in connection with the Ship, the Earnings or the Charterer;
 - 4.1.4 that we shall upon your first written request deliver to you all documents of whatever nature which we hold in connection with the Charterer, the Ship, the Earnings or the Insurances;
 - 4.1.5 that we shall not do or omit to do or cause anything to be done or omitted which might be contrary to or incompatible with the obligations undertaken by the Charterer under the Charter and the Transaction Documents; and
 - 4.1.6 that we shall sign at your request any consent required by any approved broker and/or any approved underwriters which they may require so that you can collect or recover any moneys payable in respect of the obligatory insurances.

5. POWER OF ATTORNEY

- 5.1 **Appointment.** For the purpose of executing any consents referred to in Clause 4.1.6 above or any release or payment authorities that may be requested by any approved broker or approved underwriters in connection with the Insurances, we irrevocably appoint the Owner as our attorney (with full power of substitution and delegation), on our behalf and in our name or otherwise, to execute or sign any such document, with neither the Owner nor any substitute or delegate of the Owner being liable or answerable for any losses which may happen or arise in or about the exercise of the rights, powers and discretions vested in the Owner under or pursuant to this undertaking.

6. GOVERNING LAW AND JURISDICTION

- 6.1 This letter shall be governed by and construed in accordance with English law.
- 6.2 Subject to 6.4 below, the courts of England shall have exclusive jurisdiction in relation to all matters which may arise out of or in connection with this letter.
- 6.3 We shall not commence any proceedings in any country other than England in relation to a matter which arises out of or in connection with this letter.
- 6.4 Paragraph 6.2 is for the exclusive benefit of the Owner, which reserves the right:

6.4.1 to commence proceedings in relation to any matter which arises out of or in connection with this letter in the courts of any country other than England and which have or claim jurisdiction to that matter; and

6.4.2 to commence proceedings in the courts of any country or countries concurrently with or in addition to proceedings in England or without commencing proceedings in England.

6.5 We irrevocably appoint [●] at its registered office for the time being (presently at [●], England) to act as our agent to receive and accept on our behalf any process or other document relating to any proceedings in English courts which are connected with this letter.

6.6 Nothing in this paragraph 6 shall exclude or limit any right which the Owner 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.

6.7 In this paragraph “proceedings” means proceedings of any kind, including an application for a provisional or protective measure. This letter of undertaking has been executed as a deed on the date above stated.

Director
For and on behalf of
[●]

In the presence of:

COMPANY	SHAREHOLDER
NEWLEAD HOLDINGS LTD, Bermuda (formerly known as Aries Maritime Transport Limited)	
<i>DIRECT SUBSIDIARIES</i>	
NEWLEAD HOLDINGS (US) LLC, Delaware	
LEADING MARINE CONSTULTANTS (LMC) INC., Marshall Islands	NEWLEAD HOLDINGS LTD
Shipmanagement Companies	
AMT MANAGEMENT LTD., Marshall Islands	NEWLEAD HOLDINGS LTD.
NEWLEAD SHIPPING S.A., Panama	NEWLEAD HOLDINGS LTD.
Sub-Holding Companies	
NEWLEAD BULKER HOLDINGS INC., Marshall Islands	NEWLEAD HOLDINGS LTD.
NEWLEAD TANKER HOLDINGS INC., Marshall Islands	NEWLEAD HOLDINGS LTD.
Ship-Owning Companies	
ALTIUS MARINE S.A., Marshall Islands	NEWLEAD HOLDINGS LTD.
AUSTRALIA HOLDINGS LTD., Liberia	NEWLEAD HOLDINGS LTD.
AYASHA TRADING CORPORATION, Liberia	NEWLEAD HOLDINGS LTD.
BRAZIL HOLDINGS LTD., Liberia	NEWLEAD HOLDINGS LTD.

COMPANY	SHAREHOLDER
CHALLENGER ENTERPRISES LTD., Liberia	NEWLEAD HOLDINGS LTD.
CHINA HOLDINGS LTD., Liberia	NEWLEAD HOLDINGS LTD.
COMPASS OVERSEAS LTD., Bermuda	NEWLEAD HOLDINGS LTD.
COMPASSION OVERSEAS LTD., Bermuda	NEWLEAD HOLDINGS LTD.
CRUSADER ENTERPRISES LTD., Liberia	NEWLEAD HOLDINGS LTD.
FORTIUS MARINE S.A., Marshall Islands	NEWLEAD HOLDINGS LTD.
GRAND OCEANOS INC., Liberia	NEWLEAD HOLDINGS LTD.
GRAND RODOSI INC., Liberia	NEWLEAD HOLDINGS LTD.
NEWLEAD VICTORIA LTD., Liberia	NEWLEAD HOLDINGS LTD.
Ship–Owning Companies (Newbuildings)	
BETHUNE PROPERTIES SA, Liberia	NEWLEAD HOLDINGS LTD.
Companies With No Assets*	
CHINOOK WAVES CORPORATION, Marshall Islands	NEWLEAD HOLDINGS LTD.
ERMINA MARINE LIMITED, Marshall Islands	NEWLEAD HOLDINGS LTD.
GRAND VICTORIA PTE. LTD., Singapore	NEWLEAD HOLDINGS LTD.
LAND MARINE S.A., Marshall Islands	NEWLEAD HOLDINGS LTD.
MAKASSAR MARINE LTD., Marshall Islands	NEWLEAD HOLDINGS LTD.
OSTRIA WAVES LTD., Marshall Islands	NEWLEAD HOLDINGS LTD.
RIDER MARINE S.A., Marshall Islands	NEWLEAD HOLDINGS LTD.
SEINE MARINE LTD., Marshall Islands	NEWLEAD HOLDINGS LTD.
NEWLEAD STRIDE INC., Marshall Islands	NEWLEAD HOLDINGS LTD.

COMPANY	SHAREHOLDER
BORA LIMITED, BVI	NEWLEAD HOLDINGS LTD.
JUBILEE SHIPHOLDING S.A., Marshall Islands	NEWLEAD HOLDINGS LTD.
MOTE SHIPPING LTD., Malta	NEWLEAD HOLDINGS LTD.
STATESMAN SHIPPING LTD., Malta	NEWLEAD HOLDINGS LTD.
TRANS STATE NAVIGATION LTD., Malta	NEWLEAD HOLDINGS LTD.
OCEAN HOPE SHIPPING LIMITED., Malta	NEWLEAD HOLDINGS LTD.
INDIRECT (WHOLLY OWNED) SUBSIDIARIES	
Shipmanagement Companies	
NEWLEAD BULKERS S.A., Liberia	NEWLEAD SHIPPING S.A.
Ship–Owning Companies	
CURBY NAVIGATION LTD., Liberia	NL BULKER HOLDINGS INC.
GRAND ESMERALDA INC., Liberia	NL BULKER HOLDINGS INC.
GRAND MARKELA INC., Liberia	NL BULKER HOLDINGS INC.
GRAND SPARTOUNTA INC., Marshall Islands	NL BULKER HOLDINGS INC.
GRAND VENETICO INC., Marshall Islands	NL BULKER HOLDINGS INC.
NEWLEAD PROSPERITY INC., Marshall Islands	NL BULKER HOLDINGS INC.
NEWLEAD PROGRESS INC., Marshall Islands	NL TANKER HOLDINGS INC.
Ship–Owning Companies (Newbuildings)	
GRAND AFFECTION S.A. Marshall Islands	NL BULKER HOLDINGS INC.
GRAND AFFINITY S.A., Marshall Islands	NL BULKER HOLDINGS INC.

COMPANY**SHAREHOLDER****Companies with no assets ***

DYNAMIC MARITIME CO., Marshall Islands

OCEAN HOPE SHIPPING LIMITED

OLYMPIC GALAXY SHIPPING LTD., Marshall Islands

OCEAN HOPE SHIPPING LIMITED

VINTAGE MARINE S.A., Marshall Islands

OCEAN HOPE SHIPPING LIMITED

TRANS CONTINENT NAVIGATION LTD., Malta

OCEAN HOPE SHIPPING LIMITED

CERTIFICATION

I, Michail Zolotas, certify that:

1. I have reviewed this annual report on Form 20-F of NewLead 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 company as of, and for, the periods presented in this report;
 4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
 5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.
- Date: June 30, 2011
/s/ Michail Zolotas
Michail Zolotas
Chief Executive Officer

CERTIFICATION

I, Allan Shaw, certify that:

1. I have reviewed this annual report on Form 20-F of NewLead 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 company as of, and for, the periods presented in this report;
4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Date: June 30, 2011

/s/ Allan Shaw

Allan Shaw

Chief Financial Officer

**CHIEF EXECUTIVE OFFICER CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350**

In connection with this Annual Report of NewLead Holdings Ltd. (the "Company") on Form 20-F for the year ended December 31, 2010 as filed with the Securities and Exchange Commission (the "SEC") on or about the date hereof (the "Report"), I, Michail Zolotas, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company. A signed original of this written statement has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

Date: June 30, 2011

/s/ Michail Zolotas

Michail Zolotas
Chief Executive Officer

**CHIEF FINANCIAL OFFICER CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350**

In connection with this Annual Report of NewLead Holdings Ltd. (the "Company") on Form 20-F for the year ended December 31, 2010 as filed with the Securities and Exchange Commission (the "SEC") on or about the date hereof (the "Report"), I, Allan Shaw, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement has been provided to the Company and will be retained by the Company and furnished to the SEC or its staff upon request.

Date: June 30, 2011

/s/ Allan Shaw

Allan Shaw
Chief Financial Officer

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form F-3/A (Nos. 333-165745 and 333-165748) of NewLead Holdings Ltd. of our report dated June 30, 2011 relating to the successor financial statements and the effectiveness of internal control over financial reporting and of our report dated March 18, 2010, except with respect to the effects of the reverse stock split discussed in Note 1, as to which the date is December 29, 2010, relating to the predecessor financial statements, which appear in this Form 20-F.

/s/ PricewaterhouseCoopers S.A.

Athens, Greece

June 30, 2011