

Seaspan CORP
Form 6-K
October 23, 2006

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

Form 6-K

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

Date of Report: October 23, 2006

Commission File Number 1-32591

SEASPAN CORPORATION

(Exact name of Registrant as specified in its Charter)

Unit 2, 7th Floor

Bupa Centre

141 Connaught Road West

Hong Kong

China

(Address of principal executive office)

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

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101 (b)(1). Yes No

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Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101 (b)(7). Yes No

Indicate by check mark whether the registrant by furnishing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934. Yes No

If Yes is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): 82-_____ .

Item 1 Information Contained in this Form 6-K Report

On October 16, 2006, Seaspan Corporation entered into a credit facility for \$218,400,000 with Sumitomo Mitsui Banking Corporation, Brussels Branch, as an Original Lender and Facility Agent, and Sumitomo Mitsui Banking Corporation Europe Limited, as Security Trustee. The proceeds of this facility will be used to partially finance the construction of the four 5100 TEU vessels that will be built by Hyundai Heavy Industries Co., Ltd. in South Korea. The facility maturity date is earlier of the anniversary date falling twelve years after the delivery date of the fourth 5100 TEU vessel delivered or December 23, 2021.

Our obligations under the facility are secured by first-priority assignment of the shipbuilding contract and refund guarantee. Also, our obligations under the facility will be secured by first-priority mortgages on our four 5100 TEU vessels and first-priority assignment of our earnings related to the collateral vessels, including time-charter revenues and any insurance proceeds. Beginning thirty-six months from the scheduled delivery date of the last vessel securing the facility, the principal amount borrowed under the facility will be reduced in eighteen semi-annual payments by amounts ranging from 2.7% and 3.3% of the amount borrowed until the maturity date. A final repayment of approximately 45% of the amount borrowed is required upon the final maturity date.

We may prepay all loans at any time without penalty, other than breakage costs in certain circumstances. We are required to prepay a portion of the outstanding loans under certain circumstances, including the sale or loss of a vessel if we do not substitute another vessel. The credit facility requires payment of interest at a rate per annum, calculated as LIBOR plus 0.6% per annum. The credit facility requires payments of a commitment fee of 0.3% per annum calculated on the undrawn portion of the facility.

We are subject to other customary conditions precedent before we may borrow under the facility, including that no event of default is ongoing and there having occurred no material adverse effect on our ability to perform our payment obligations under the facility. In addition, the credit facility contains various covenants limiting our ability to:

Allow liens to be placed on the collateral securing the facility;

Enter into mergers with other entities;

Conduct material transactions with our affiliates except on an arm's-length basis; or

Change the flag, class, or management of our vessels.

The credit agreement also contains covenants, among others, requiring us to maintain:

A tangible net worth (as defined in the credit agreement) of \$450,000,000;

Cash on hand of \$25,000,000 if at any time more than 50% of the collateral vessels are subject to time charters having a remaining term of one year or less;

A net interest coverage ratio (as defined in the credit agreement) of 2.50 to 1.00; and

An interest and principal coverage ratio (as defined in the credit agreement) of 1.1 to 1.0.

The credit agreement contains customary definitions of events of default, including nonpayment of principal or interest, breach of covenants or material inaccuracy of representations, default under other material indebtedness and bankruptcy.

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The description of the credit facility is qualified in its entirety by reference to the agreement itself, a form of which is incorporated by reference herein and included as Exhibit 1 hereto.

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.

SEASPAN CORPORATION

Date: October 23, 2006

By: /s/ Kevin M. Kennedy
Kevin M. Kennedy
Chief Financial Officer

AGREEMENT

DATED OCTOBER 16, 2006

US\$218,400,000 CREDIT FACILITY

FOR

SEASPAN CORPORATION

(as Borrower)

ARRANGED BY

SUMITOMO MITSUI BANKING CORPORATION

WITH

SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED

as Security Trustee

AND

SUMITOMO MITSUI BANKING CORPORATION, BRUSSELS BRANCH

as Facility Agent

STEPHENSON HARWOOD

One St Paul s Churchyard

London EC4M 8SH

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(Ref: 814)

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THIS AGREEMENT is dated October 16, 2006
BETWEEN:

- (1) **SEASPAN CORPORATION**, a corporation incorporated according to the laws of the Republic of the Marshall Islands with its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (the **Borrower**);
 - (2) **SUMITOMO MITSUI BANKING CORPORATION** as mandated lead arranger (the **Arranger**);
 - (3) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (Original Lenders) as original lenders (the **Original Lenders**);
 - (4) **SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED** as security trustee (the **Security Trustee**); and
 - (5) **SUMITOMO MITSUI BANKING CORPORATION, BRUSSELS BRANCH** as facility agent (the **Facility Agent**).
- IT IS AGREED** as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

Account Bank means Sumitomo Mitsui Banking Corporation Europe Limited whose registered office is situated at Temple Court, 11 Queen Victoria Street, London EC4N 4TA or any other bank or financial institution with which, with the prior written consent of the Facility Agent (acting in accordance with the instructions of the Majority Lenders), the Retention Account is at any time held.

Administrative Party means the Arranger, the Facility Agent or the Security Trustee.

Affiliate means a Subsidiary or a Holding Company of a person or any other Subsidiary of that Holding Company.

Agreement means this credit agreement, including any schedules or appendices hereto, as amended from time to time.

Annual Compliance Certificate means the form of certificate attached at Schedule 9 (Annual Compliance Certificate).

Applicable Law means any or all applicable law (whether civil, criminal or administrative), common law, statute, statutory instrument, treaty, convention, regulation, directive, by-law, demand, decree, ordinance, injunction, resolution, order, judgment, rule, permit, licence or restriction (in each case having the force of law) and codes of practice or conduct, circulars and guidance notes generally accepted and applied by the global container shipping industry, in each case of any government, quasi-government, supranational, federal, state or local government, statutory or regulatory body, court, agency or association relating to all laws, rules, directives and regulations, national or international, public or private in any applicable jurisdiction from time to time.

Approved Valuers means Braemar Seascope Shipping Limited and H. Clarkson & Co. Ltd. or such other independent reputable shipbroker acceptable to the Facility Agent and the Borrower.

Availability Period means the period from and including the date of this Agreement, to and including the earlier of (i) the Delivery Date of Vessel 4, (ii) the date falling two hundred and ten days after the Scheduled Delivery Date of Vessel 4 and (iii) 30 July 2010.

Break Costs means the amount (if any) which a Lender is entitled to receive under this Agreement as compensation if any part of a Loan or overdue amount is prepaid other than on the last day of a Term for such Loan or overdue amount or, as the case may be, the amount (if any) which any Swap Counterparty is entitled to receive under any Swap Agreement in the event that such Swap Agreement is terminated early, each as determined pursuant to Clause 24.3 (Break Costs) hereof.

Builder means Hyundai Heavy Industries Co. Ltd., a corporation organised and existing under the laws of the Republic of Korea with its registered office at 1 Cheonha-Dong, Dong-ku, Ulsan, Korea.

Business Day means a day (other than a Saturday or a Sunday) on which banks are open for general business in London, England; New York, the United States of America; Vancouver, Canada and Hong Kong.

Cash and Cash Equivalents shall have the meaning given to it in Clause 17.1 (Financial Covenants).

Change of Control means the acquisition, directly or indirectly, by any person or group other than the Seaspan Group of beneficial ownership of more than fifty (50) per cent. of the aggregate outstanding voting power of the equity interests of the Borrower.

Charter Breach means:

- (a) the failure by the Charterer to make payment of hire under a Time Charter for a period of three (3) months; or
- (b) any other breach by the Charterer which would give the Borrower the right to terminate the applicable Time Charter.

Charter Default means any of the following events:

- (a) a change of control of the Charterer as described in Clause 6.3 that results in the Borrower having an obligation to prepay all or any of the Loans; or
- (b) a default by the Charterer that results in the Borrower having an obligation to prepay all or any of the Loans pursuant to Clause 16.25(b) (Charter Breach, Expiration or Termination of Time Charter).

Charterer means Mitsui O.S.K. Lines Ltd. or any substitute charterer from time to time in accordance with the provisions of Clause 16.25 (Charter Breach, Expiration or Termination of Time Charter).

Commitment means:

(a) for an Original Lender, the aggregate amount set opposite its name in Schedule 1 (Original Lenders) under the heading **Commitments** and the amount of any other commitment to advance funds under this Agreement it acquires; and

(b) for any other Lender, the amount of any commitment to advance funds under this Agreement it acquires, to the extent not cancelled, transferred or reduced under this Agreement.

Compliance Certificate means the form of certificate attached at Schedule 8 (Compliance Certificate).

Confidentiality Undertaking means a confidentiality undertaking in a form agreed between the Borrower and the Facility Agent.

Date of Total Loss means, in respect of a Vessel, the date of Total Loss of that Vessel which date shall be deemed to have occurred:

- (a) in the case of an actual total loss, on the actual date and at the time that Vessel was lost or, if such date is not known, on the date on which that Vessel was reported lost;
- (b) in the case of a constructive total loss, upon the date and at the time notice of abandonment is given to the Insurers for the time being (provided a claim for total loss is admitted by such Insurers) or, if such Insurers do not forthwith admit such a claim, at the earliest of the date and time at which either a total loss is subsequently admitted by the Insurers or a total loss is subsequently adjudged by a competent court of law or arbitration tribunal to have occurred or 180 days from the date of notice of abandonment;
- (c) in the case of a compromised, agreed or arranged total loss, on the date upon which a binding agreement as to such compromised, agreed or arranged total loss has been entered into by the Insurers;
- (d) in the case of requisition for title or other compulsory acquisition, on the date upon which the relevant requisition for title or other compulsory acquisition occurs; and
- (e) in the case of capture, seizure, arrest, detention, requisition for hire or confiscation by any government or by persons acting or purporting to act on behalf of any government or by any other person which deprives the Borrower or, as the case may be, the Charterer of the use of that Vessel for more than sixty (60) days, upon the expiry of the period of sixty (60) days after the date upon which the relevant capture, seizure, arrest, detention, requisition or confiscation occurred.

Deed of Covenants means, in respect of a Vessel, the deed of covenants entered into or to be entered into by the Borrower and the Security Trustee collateral to the Mortgage over that Vessel in the form of Appendix 3.

Default means:

- (a) an Event of Default; or

- (b) an event which would be (with the expiry of a grace period, the giving of notice or the making of any determination under the Finance Documents or any combination of them) an Event of Default.

Delivery Date means, in respect of a Vessel, the date of actual delivery of that Vessel to the Borrower under the terms of the relevant Shipbuilding Contract.

Delivery Date Instalment means, in respect of a Vessel, the amount due and payable by the Borrower in accordance with the relevant Shipbuilding Contract and to be deposited at a bank designated by the Builder on or three (3) Business Days prior to the relevant Delivery Date under that Shipbuilding Contract.

Dollars or US\$ means the lawful currency for the time being of the United States of America.

DPP means the deed of proceeds and priorities to be entered into by, *inter alios*, the Borrower, the Facility Agent, the Security Trustee and the Swap Counterparties.

Drawing means, in respect of a Loan under the Facility, the amount of an advance made by the Lenders.

Earnings means, in respect of a Vessel, all present and future moneys and claims which are earned by or become payable to or for the account of the Borrower in connection with the operation or ownership of that Vessel and including but not limited to:

- (a) freights, passage and hire moneys (howsoever earned);
- (b) remuneration for salvage and towage services;
- (c) demurrage and detention moneys;
- (d) all moneys and claims in respect of the requisition for hire of that Vessel;
- (e) payments received in respect of any off-hire insurance.

Environment means:

- (a) any land including, without limitation, surface land and sub-surface strata, sea bed or river bed under any water (as referred to below) and any natural or man-made structures;
- (b) water including, without limitation, coastal and inland waters, surface waters, ground waters and water in drains and sewers; and
- (c) air including, without limitation, air within buildings and other natural or man-made structures above or below ground.

Environmental Affiliate means the Borrower and the Manager together with their respective employees and all of those persons for whom the Borrower or the Manager is responsible under any Applicable Law in respect of any activities undertaken in relation to any of the Vessels.

Environmental Approvals means any permit, licence, approval, ruling, variance, exemption or other authorisation required under applicable Environmental Laws.

Environmental Claim means any claim by any person or persons or any governmental, judicial or regulatory authority which arises out of any breach, contravention or violation of Environmental Law or of the existence of any liability or potential liability arising from such breach, contravention or violation or the presence of Hazardous Material in contravention of Environmental Laws. In this context, claim means: a claim for damages, compensation, fines, penalties or any other payment of any kind whether or not similar to the foregoing; an order or direction to take, or not to take, certain action or to desist from or suspend certain action by any governmental, judicial or regulatory authority; and any form of enforcement or regulatory action.

Environmental Laws means any or all Applicable Law relating to or concerning:

- (a) pollution or contamination of the Environment, any ecological system or any living organisms which inhabit the Environment or any ecological system;
- (b) the generation, manufacture, processing, distribution, use (including abuse), treatment, storage, disposal, transport or handling of Hazardous Materials; and
- (c) the emission, leak, release, spill or discharge into the Environment of noise, vibration, dust, fumes, gas, odours, smoke, steam, effluvia, heat, light, radiation (of any kind), infection, electricity or any Hazardous Material and any matter or thing capable of constituting a nuisance or an actionable tort or breach of statutory duty of any kind in respect of such matters,

including, without limitation, the following laws of the United States of America: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, as amended, the Oil Pollution Act of 1990, as amended, the Resource Conservation and Recovery Act, as amended, and the Toxic Substances Control Act, as amended, together, in each case, with the regulations promulgated and the guidance issued pursuant thereto.

Event of Default means an event specified as such in Clause 19 (Default) of this Agreement.

Excess Risks means, in respect of a Vessel:

- (a) the proportion of claims for general average, salvage and salvage charges which are not recoverable as a result of the value at which that Vessel is assessed for the purpose of such claims exceeding her hull and machinery insured value; and
- (b) collision liabilities not recoverable in full under the hull and machinery insurance by reason of those liabilities exceeding such proportion of the insured value of that Vessel as is covered by the hull and machinery insurance.

Facility means the credit facility made available under this Agreement.

Facility Office means in respect of a Lender, the office through which that Lender will perform its obligations under this Agreement from time to time, which at the date of this Agreement is, in respect of Sumitomo Mitsui Banking Corporation, Brussels Branch, Avenue des Arts, 58, B-1000 Brussels, Belgium; or such other address as a Lender may notify to the Facility Agent from time to time.

Fee Letter means any letter entered into by reference to this Agreement between one or more Administrative Parties and the Borrower setting out the amount of certain fees referred to in this Agreement.

Final Maturity Date means the earlier of (a) the twelfth anniversary of the Delivery Date of the Vessel which is delivered latest in time and (b) 23 December, 2021.

Finance Document means:

- (a) this Agreement;
- (b) each Security Document;
- (c) the DPP;
- (d) each Swap Agreement;
- (e) the Fee Letter;
- (f) each Manager's Undertaking;
- (g) a Transfer Certificate; and
- (h) any other document designated as such by the Facility Agent and the Borrower.

Finance Party means a Lender, a Swap Counterparty or an Administrative Party.

Financial Indebtedness means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any acceptance credit;
- (c) any bond, note, debenture, loan stock or other similar instrument;
- (d) any redeemable preference share;
- (e) any agreement treated as a finance or capital lease in accordance with U.S. GAAP;
- (f) receivables sold or discounted (otherwise than on a non-recourse basis);

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- (g) the acquisition cost of any asset to the extent payable after its acquisition or possession by the party liable where the deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset;
- (h) any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount);
- (i) any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing;
- (j) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; or
- (k) any guarantee, indemnity or similar assurance against financial loss of any person.

General Assignment means, in respect of a Vessel, the assignment of the Shipbuilding Contract and the Refund Guarantee granted or to be granted by the Borrower in favour of the Security Trustee, together with all notices and acknowledgements entered into in connection therewith, substantially in the form of Appendix 6.

Hazardous Material means any element or substance, whether natural or artificial, and whether consisting of gas, liquid, solid or vapour, whether on its own or in any combination with any other element or substance, which is listed, identified, defined or determined by any Environmental Law or other Applicable Law to be, to have been, or to be capable of being or becoming harmful to mankind or any living organism or damaging to the Environment, including, without limitation, oil (as defined in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended).

Holding Company means a holding company within the meaning of section 736 of the Companies Act 1985.

Increased Cost means:

(a) an additional or increased cost;

(b) a reduction in the rate of return under a Finance Document or on its overall capital; or

(c) a reduction of an amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates but only to the extent attributable to that Finance Party having entered into any Finance Document or funding or performing its obligations under any Finance Document.

Insurances Assignment means, in respect of a Vessel, the assignment of the Obligatory Insurances granted or to be granted in favour of the Security Trustee by the Borrower in the form of Appendix 1 together with any and all notices and acknowledgements entered into in connection therewith.

Insurers means the underwriters or insurance companies with whom any Obligatory Insurances are effected and the managers of any protection and indemnity or war risks association in which any of the Vessels may at any time be entered.

ISM Code means the International Safety Management Code (including the guidelines on its implementation), adopted by the International Maritime Organization Assembly as Resolutions A.741(18) and A.788(19), as the same may have been or may be amended or supplemented from time to time. The terms *safety management system*, *Safety Management Certificate*, *Document of Compliance* and *major non-conformity* shall have the same meanings as are given to them in the ISM Code.

ISPS Code means the International Ship and Port Facility Security Code adopted by the International Maritime Organization Assembly as the same may have been or may be amended or supplemented from time to time.

Lender means:

(a) an Original Lender; or

(b) any person which becomes a party to this Agreement after the date of this Agreement pursuant to Clause 28.2 (Assignment and transfers by Lenders);

and **Lenders** means all of them.

LIBOR means for a Term of any Loan or overdue amount:

(a) the applicable Screen Rate; or

(b) if no Screen Rate is available for the relevant currency or Term of that Loan or overdue amount, the arithmetic mean (rounded upward to four decimal places) of the rates, as supplied to the Facility Agent at its request, quoted by the Reference Banks to leading banks in the London interbank market,

as of 11.00 a.m. on the second London Business Day before the start of the Term for the offering of deposits in the currency of that Loan or overdue amount for a period comparable to that Term.

Loans means together the Vessel 1 Loan, the Vessel 2 Loan, the Vessel 3 Loan and the Vessel 4 Loan (each a **Loan**).

London Business Day means a day (other than a Saturday or a Sunday) on which banks are open for business in London.

Losses means each and every liability, loss, charge, claim, demand, action, proceeding, damage, judgment, order or other sanction, enforcement, penalty, fine, fee, commission, interest, lien, salvage, general average, cost and expense of whatsoever nature suffered or incurred by or imposed on the Lenders.

Majority Lenders means Lenders:

(a) whose share in the outstanding Loans and whose undrawn Commitments then aggregate not less than 66 2/3 per cent. of the aggregate of all the outstanding Loans and the undrawn Commitments of all the Lenders;

(b) if there is no Loan then outstanding, whose undrawn Commitments then aggregate not less than 66 2/3 per cent. of the Total Commitments; or

(c) if there is no Loan then outstanding and the Total Commitments have been reduced to zero, whose Commitments aggregated not less than 66 2/3 per cent. of the Total Commitments immediately before the reduction.

Management Agreement means the management agreement made or to be made between the Borrower and the Manager.

Management Agreement Assignment means the assignment of the Management Agreement in form and substance acceptable to the Facility Agent granted or to be granted in favour of the Security Trustee by the Borrower together with any and all notices and acknowledgements entered into in connection therewith.

Manager means Seaspan Management Services Limited of Clarendon House, 2 Church Street, Hamilton, HM 11, Bermuda or such other professional manager or managers as may be approved by the Facility Agent (acting in accordance with the instructions of the Majority Lenders) from time to time.

Manager's Undertaking means a letter of undertaking to be issued by the Manager to the Security Trustee confirming it shall not make a claim to security ranking ahead of the Lenders' security in respect of a Vessel in form and substance satisfactory to the Security Trustee.

Mandatory Cost means, as the context so requires, the amount calculated by each Lender and notified to the Facility Agent in accordance with Clause 21.16 or the aggregate of the amounts so calculated and notified.

Margin means 0.60 per cent. per annum.

Market Value means, in respect of a Vessel, the average of two valuations each certified in Dollars and carried out by two Approved Valuers, reporting to the Facility Agent by way of written reports in form and substance satisfactory to the Facility Agent (acting reasonably) on the basis of a sale for prompt delivery of the Vessel for cash (free of Security Interests), on a without charter basis and at arm's-length on normal commercial terms as between willing seller and buyer.

Material Adverse Effect means a material adverse effect on:

- (a) the ability of the Borrower to perform all of its payment obligations under this Agreement; or
- (b) the validity or enforceability of this Agreement.

Maximum Available Loan Amount means in respect of each Vessel, the lesser of:

- (a) 65 per cent. of the relevant Vessel Delivered Costs of that Vessel; and
- (b) fifty four million six hundred thousand Dollars (US\$54,600,000).

Maximum Facility Amount means two hundred and eighteen million four hundred thousand Dollars (US\$218,400,000) being the total of the Maximum Available Loan Amounts for all Vessels.

Measurement Period means, at any time, the last four (4) fiscal quarters for the Borrower provided always that until four (4) fiscal quarters have elapsed from the date of this Agreement, the period from the date of this Agreement until the date of determination.

Mortgage means, in respect of a Vessel, the first priority Hong Kong ship mortgage to be given by the Borrower in favour of the Security Trustee, in respect of each Vessel, on the Delivery Date of that Vessel in the form attached at Appendix 2.

Obligatory Insurances means in respect of each Vessel:

- (a) all contracts and policies of insurance and all entries in clubs and/or associations which are from time to time required to be effected and maintained in accordance with this Agreement in respect of each of the Vessels; and
- (b) all benefits under the contracts, policies and entries under paragraph (a) above and all claims in respect of them and the return of premiums.

Party means a party to this Agreement or any Finance Document.

Permitted Liens means, in respect of a Vessel:

- (a) Security Interests created by the Security Documents;

- (b) liens for unpaid crew's wages including wages of the master and stevedores employed by the Vessel, outstanding in the ordinary course of trading for not more than one calendar month after the due date for payment;
- (c) liens for salvage;
- (d) liens for classification or scheduled dry docking or for necessary repairs to that Vessel whose aggregate cost does not exceed US\$1,500,000 at any one time in respect of that Vessel;
- (e) liens for collision;
- (f) liens for master's disbursements incurred in the ordinary course of trading;
- (g) statutory and common law liens of carriers, warehousemen, mechanics, suppliers, materials men, repairers or other similar liens, including maritime liens, in each case arising in the ordinary course of business, outstanding for not more than one month whose aggregate value does not exceed US\$500,000; and

in the case of paragraphs (b) to (g) inclusive provided that the amounts which give rise to such liens are paid when due (or, in the case of paragraph (b) or (g) above, within one month of such amount being outstanding) or, if not paid when due are being disputed in good faith by appropriate proceedings (and for the payment of which adequate reserves or security are at the relevant time maintained or provided), provided further that such proceedings, whether by payment of adequate security into Court or otherwise, do not give rise to a material risk of the relevant Vessel or any interest therein being seized, sold, forfeited or otherwise lost or of criminal liability on the Security Trustee.

Post-Delivery Period means, in respect of a Vessel, the period from the Delivery Date of that Vessel until the Final Maturity Date.

Pro Rata Share means:

- (a) for the purpose of determining a Lender's share in a utilisation of the Facility, the proportion which its Commitment bears to the Total Commitments; and
- (b) for any other purpose on a particular date:
 - (i) the proportion which a Lender's share of the Loans (if any) bears to all the Loans;
 - (ii) if there is no Loan outstanding on that date, the proportion which its Commitment bears to the Total Commitments on that date; or
 - (iii) if the Total Commitments have been cancelled, the proportion which its Commitment bore to the Total Commitments immediately before being cancelled.

Quarter Day means each of the 30th March, 30th June, 30th September, 30th December in each year provided always that such date is a Business Day.

Rate Fixing Day means two (2) London Business Days before the first day of the relevant Term for a Drawing, or unless market practice differs in the London interbank market for a currency, in which case the Rate Fixing Day for that currency will be determined by the

Facility Agent in accordance with market practice in the London interbank market (and if quotations would normally be given by leading banks in the London interbank market on more than one day, the Rate Fixing Day will be the last of those days).

Reference Banks means Sumitomo Mitsui Banking Corporation and any other bank or financial institution appointed as such by the Facility Agent (acting on the instructions of the Majority Lenders) under this Agreement.

Refund Guarantees means, in respect of a Vessel, the refund guarantee, issued by the Refund Guarantor in favour of the Borrower or such other refund guarantee as may replace the same from time to time (with the approval of the Facility Agent, acting on the instructions of the Majority Lenders).

Refund Guarantor means Calyon, Seoul Branch or such other refund guarantor (being an international bank with a minimum rating of BBB+ by S&P or any other bank approved by the Facility Agent, acting on the instructions of the Majority Lenders) as may replace the same from time to time (with the approval of the Facility Agent, acting on the instructions of the Majority Lenders).

Related Contracts means any or all of the following (as the context requires):

- (a) the Shipbuilding Contracts;
- (b) the Refund Guarantees;
- (c) the Obligatory Insurances;
- (d) the Time Charters; and
- (e) the Management Agreement.

Release means an emission, spill, release or discharge into or upon the air, surface water, groundwater, or soils of any Hazardous Materials for which the Borrower has any liability under Environmental Law, except in accordance with a valid Environmental Approval.

Repayment Date means each of the eighteen (18) dates falling at six-monthly intervals as detailed in the Repayment Schedule.

Repayment Instalment means each instalment which is payable for repayment of that Loan in accordance with the Repayment Schedule.

Repayment Schedule means the Schedule of Repayment Dates as detailed in Schedule 7 (Repayment Schedule), to be replaced as required in accordance with Clause 5.1(b) (Repayment of the Loans).

Request means a request made by the Borrower for a Drawing, substantially in the form of Schedule 4 (Form of Payment Request).

Required Insurance Amount means, in respect of a Vessel, at any date of determination, 120 per cent. of the aggregate principal amount of the outstanding portion of Loan relating to that Vessel plus, if positive, the mark to market under any Swap Agreements related or apportioned to that Vessel.

Requisition Compensation means, in respect of a Vessel, all moneys or other compensation payable by reason of requisition for title to, or other compulsory acquisition of, that Vessel including requisition for hire.

Retention Account means the bank account to be opened by the Borrower with the Account Bank and designated Seaspan Corporation Retention Account .

Retention Account Charge means the fixed charge or, as the case may be, pledge in respect of all monies standing to the credit from time to time of the Retention Account granted or to be granted by the Borrower in favour of the Security Trustee on or about the date of this Agreement, together with any and all notices and acknowledgements entered into in connection therewith.

Scheduled Delivery Date means:

- (a) for Vessel 1, 20 April 2009;
- (b) for Vessel 2, 5 August 2009;
- (c) for Vessel 3, 20 November 2009; and
- (d) for Vessel 4, 23 December 2009.

Screen Rate means, for LIBOR, and in respect of a Term, the percentage rate per annum for a period substantially the same as the relevant Term displayed on page 3750 of the Telerate screen. If the relevant page is replaced or the service ceases to be available, the Facility Agent may specify another page or service displaying the appropriate rate.

Seaspan Group means:

- (a) any of Kyle Washington, Kevin Washington, Gerry Wang, Graham Porter, Dennis Washington or any of their estate, spouse, and/or descendants; or
- (b) any trust for the benefit of the persons listed in (a) above; or
- (c) an Affiliate of any of the persons listed in (a) or (b) above.

Secured Liabilities means all present and future obligations and liabilities (actual or contingent) of the Borrower to the Finance Parties or any of them under or in connection with any Finance Document.

Security Agreements means:

- (a) the General Assignments;
- (b) the Mortgages;
- (c) the Deeds of Covenant;

- (d) the Insurances Assignments;
- (e) the Management Agreement Assignment;
- (f) the Manager s Undertaking;

(g) the Time Charter and Earnings Assignments;

(h) the Retention Account Charge;

(i) the Swap Agreement Assignments; and

(j) any other document designated as such in writing by the Borrower, the Security Trustee and the Facility Agent.

Security Assets means any asset which is the subject of a Security Interest created by a Security Document and any interest or profit in respect of an investment in accordance with Clause 20.5 (Investments).

Security Document means:

(a) each Security Agreement; and

(b) any other document evidencing or creating security over any asset of the Borrower to secure any obligation of the Borrower to the Finance Parties or any of them under the Finance Documents.

Security Interest means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a similar effect.

Shipbuilding Contract means, in respect of each Vessel, the agreement between the Builder and the Borrower dated 8 August 2006.

SMBCE means Sumitomo Mitsui Banking Corporation Europe Limited.

S & P means Standard & Poor's Ratings Group and any successor thereto.

Subsidiary means:

(a) a subsidiary within the meaning of section 736 of the Companies Act 1985; and

(b) unless the context otherwise requires, a subsidiary undertaking within the meaning of section 258 of the Companies Act 1985.

Swap Agreements means, if any, each of the ISDA Master Agreements (and the confirmation thereunder) entered into or to be entered into in respect of interest rate swaps in respect of the Loans (or any part of the Loans) by any Swap Counterparty and the Borrower.

Swap Agreement Assignment means, in respect of each Swap Agreement, the assignment of that Swap Agreement to be granted by the Borrower in favour of the Security Trustee (for and on behalf of itself and the Finance Parties) in the form attached at Appendix 4, together with any and all notices and acknowledgements entered into in connection therewith.

Swap Counterparty means any party to a Swap Agreement who provides interest rate hedging facilities to the Borrower in respect of the Loans.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including, without limitation, any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

Tax Deduction means a deduction or withholding for or on account of Tax made from a payment under a Finance Document by a payer for or on account of Tax imposed on that payer by any jurisdiction from which such payment is made or within which such payment arises.

Tax Payment means a payment made by the Borrower to a Lender in any way relating to a Tax Deduction or under any indemnity given by the Borrower in respect of Tax under any Finance Document.

Term means each period determined under this Agreement by reference to which interest payable on a Loan or an overdue amount is calculated.

Time Charter means, in respect of each Vessel, the time charterparty entered into by the Borrower and the Charterer or such other time charterparty entered into from time to time in respect of a Vessel in accordance with this Agreement.

Time Charter and Earnings Assignment means, in respect of a Vessel, the assignment of the Time Charter and the Earnings granted or to be granted by the Borrower in favour of the Security Trustee in the form attached at Appendix 5, together with any and all notices and acknowledgements entered into in connection therewith.

Total Commitments means the aggregate of the Commitments of all the Lenders.

Total Loss means in relation to a Vessel:

- (a) actual, constructive, compromised, agreed or arranged total loss of that Vessel;
- (b) requisition for title or other compulsory acquisition of that Vessel otherwise than by requisition for hire;
- (c) capture, seizure, arrest, detention, or confiscation of that Vessel by any government or by persons acting or purporting to act on behalf of any government or by any other person which deprives the Borrower of that Vessel or as the case may be the Charterer of the use of that Vessel for more than sixty (60) days after that occurrence; and
- (d) requisition for hire of that Vessel by any government or by persons acting or purporting to act on behalf of any government which deprives the Borrower or as the case may be the Charterer of the use of that Vessel for a period of sixty (60) days, other than a charter of the Vessel to a government or government agency approved by the Borrower and by the Facility Agent (acting on the instructions of the Majority Lenders).

Transfer Certificate means a certificate, substantially in the form of Schedule 6 (Form of Transfer Certificate), with such amendments as the Facility Agent and the Borrower may approve or reasonably require or any other form agreed between the Facility Agent and the Borrower.

U.S. GAAP means generally accepted accounting principles adopted and accepted in the United States of America (i) on the date of this Agreement when used in the context of calculating the financed covenants set out in Clause 17 and (ii) otherwise, from time to time.

Utilisation Date means each date on which the Facility or any part thereof is utilised.

Vessel 1 means the 5,100 TEU vessel to be constructed in accordance with the relevant Shipbuilding Contract, with Hull No. 1970.

Vessel 2 means the 5,100 TEU vessel to be constructed in accordance with the relevant Shipbuilding Contract, with Hull No. 1971.

Vessel 3 means the 5,100 TEU vessel to be constructed in accordance with the relevant Shipbuilding Contract, with Hull No. 1972.

Vessel 4 means the 5,100 TEU vessel to be constructed in accordance with the relevant Shipbuilding Contract, with Hull No. 1973.

Vessel 1 Loan means such part of the Facility as is drawn down in respect of Vessel 1 and is in the maximum principal amount of the lesser of:

(a) fifty four million six hundred thousand Dollars (US\$54,600,000);

(b) 65 per cent. of the Vessel Delivered Costs relating to Vessel 1; and

(c) when aggregated with the Vessel 2 Loan, the Vessel 3 Loan and the Vessel 4 Loan, the Maximum Facility Amount or the principal amount thereof from time to time outstanding under this Agreement.

Vessel 2 Loan means such part of the Facility as is drawn down in respect of Vessel 2 and is in the maximum principal amount of the lesser of:

(a) fifty four million six hundred thousand Dollars (US\$54,600,000);

(b) 65 per cent. of the Vessel Delivered Costs relating to Vessel 2; and

(c) when aggregated with the Vessel 1 Loan, the Vessel 3 Loan and the Vessel 4 Loan, the Maximum Facility Amount; or the principal amount thereof from time to time outstanding under this Agreement.

Vessel 3 Loan means such part of the Facility as is drawn down in respect of Vessel 3 and is in the maximum principal amount of the lesser of:

(a) fifty four million six hundred thousand Dollars (US\$54,600,000);

(b) 65 per cent. of the Vessel Delivered Costs in relation to Vessel 3; and

(c) when aggregated with the Vessel 1 Loan, the Vessel 2 Loan and the Vessel 4 Loan, the Maximum Facility Amount, or the principal amount thereof from time to time outstanding under this Agreement.

Vessel 4 Loan means such part of the Facility as is drawn down in respect of Vessel 4 and is in the maximum principal amount of the lesser of:

(a) fifty four million six hundred thousand Dollars (US\$54,600,000);

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(b) 65 per cent. of the Vessel Delivered Costs in relation to Vessel 4; and

(c) when aggregated with the Vessel 1 Loan, the Vessel 2 Loan and the Vessel 3 Loan, the Maximum Facility Amount, or the principal amount thereof from time to time outstanding under this Agreement.

Vessel Contract Price means, in respect of a Vessel, the amount of seventy seven million three hundred and fifty thousand Dollars (US\$77,350,000) as evidenced in the relevant Shipbuilding Contract.

Vessel Delivered Costs means, in respect of each Vessel, the aggregate of:

- (a) the Vessel Contract Price;
- (b) all other costs and expenses in connection with the Shipbuilding Contract (such costs and expenses to be documented to the reasonable satisfaction of the Facility Agent);
- (c) fees, commissions, interest, costs and expenses due prior to the Delivery Date under the Finance Documents; and
- (d) legal fees;

which amount shall be in the maximum amount of the lesser of (i) eighty four million Dollars (US\$84,000,000) per Vessel and (ii) three hundred and thirty six million Dollars (US\$336,000,000) in total. Sums included in the Vessel Delivered Costs and not covered by the aggregate amount of the Refund Guarantees shall not exceed one million five hundred thousand Dollars (US\$1,500,000) per Vessel.

Vessels means together Vessel 1, Vessel 2, Vessel 3 and Vessel 4 and **Vessel** means any of them.

1.2 Construction

(a) In this Agreement, unless the contrary intention appears, a reference to:

(i) an **amendment** includes a supplement, novation, restatement or re-enactment and **amended** will be construed accordingly; **assets** includes present and future properties, revenues and rights of every description;

an **authorisation** includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration or notarisation;

disposal means a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary, and **dispose** will be construed accordingly;

indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money;

a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality and their successors in title, permitted assigns and permitted transferees;

a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

- (ii) a currency is a reference to the lawful currency for the time being of the relevant country;
 - (iii) a Default being outstanding means that it has not been cured, remedied or waived;
 - (iv) a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
 - (v) a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Agreement;
 - (vi) a Finance Document or another document is a reference to that Finance Document or other document as amended;
 - (vii) a time of day is a reference to London time; and
 - (viii) words importing the plural shall include the singular and vice versa.
- (b) Unless the contrary intention appears, a reference to a **month** or **months** is a reference to a period starting on (and including) one day in a calendar month and ending on (but excluding) the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:
- (i) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
 - (ii) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and
 - (iii) notwithstanding subparagraph (i) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.
- (c) Unless expressly provided to the contrary in a Finance Document, a person who is not a party to a Finance Document may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any term of any Finance Document, the consent of any third party is not required for any variation (including any release or compromise of any liability) or termination of that Finance Document.
- (d) Unless the contrary intention appears or unless the context otherwise permits:
- (i) a reference to a Party will not include that Party if it has ceased to be a Party under this Agreement;

- (ii) a word or expression used in any other Finance Document or in any notice given in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement; and

(iii) any obligation of the Borrower under the Finance Documents which is not a payment obligation remains in force in accordance with its terms for so long as any payment obligation of the Borrower is or may be outstanding under the Finance Documents.

(e) The headings in this Agreement do not affect its interpretation.

2. FACILITY AND PURPOSE

2.1 Facility

Subject to the terms of this Agreement, the Lenders shall make available to the Borrower a term loan facility in a maximum aggregate amount equal to the Maximum Facility Amount. The term loan facility shall be made available in four Loans (Vessel 1 Loan, Vessel 2 Loan, Vessel 3 Loan and Vessel 4 Loan). Each Loan shall be capable of being drawn, up to the relevant Maximum Available Loan Amount, in one or more Drawings on the dates described in Clause 4.2(a) (Completion of Requests).

2.2 Purpose

Each Loan may be used only in or towards financing the construction, acquisition and Vessel Delivered Costs of the Vessel to which it relates including reimbursing the Borrower for any amount of Vessel Delivered Costs paid by the Borrower.

2.3 No obligation to monitor

No Finance Party is obliged to monitor or verify the utilisation of any Loan.

2.4 Nature of a Finance Party's rights and obligations

Unless otherwise agreed by all the Finance Parties:

- (a) the obligations of a Finance Party under the Finance Documents are several;
- (b) failure by a Finance Party to perform its obligations does not affect the obligations of any other Party under the Finance Documents;
- (c) no Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents;
- (d) the rights of a Finance Party under the Finance Documents are separate and independent rights;
- (e) a Finance Party may, except as otherwise stated in the Finance Documents, separately enforce those rights; and
- (f) a debt arising under the Finance Documents to a Finance Party is a separate and independent debt.

3. CONDITIONS PRECEDENT

3.1 Conditions precedent documents

- (a) A Drawing under a Loan (other than in respect of a Delivery Date Instalment) may not occur until the Facility Agent has notified the Borrower and the Lenders that it has received all of the documents and evidence set out in Part 1 of Schedule 2 (Initial

Conditions Precedent Documents) in form and substance satisfactory to the Facility Agent or that it expects to receive outstanding documents or evidence on or before the date of the relevant Drawing. The Facility Agent must give this notification to the Borrower and the Lenders promptly upon being so satisfied.

- (b) A Drawing representing the amount of a Delivery Date Instalment may not occur until the Facility Agent has notified the Borrower and the Lenders that it has received all of the documents and evidence set out in Part 2 of Schedule 2 (Delivery Date Conditions Precedent Documents) in form and substance satisfactory to the Facility Agent or that it expects to receive outstanding documents or evidence on or before the relevant Delivery Date. The Facility Agent must give this notification to the Borrower and the Lenders promptly upon being so satisfied.
- (c) If the Borrower has made a Request in respect of a Delivery Date Instalment, the Borrower will not sign a Protocol of Delivery and Acceptance in respect of the Vessel to which the Request relates unless the Facility Agent has confirmed that the conditions precedent referred to in Clause 3.1(a) or Clause 3.1(b) (as applicable) above have been or will, simultaneously with such signing, be satisfied.
- (d) Immediately following the date of a Drawing in respect of a Delivery Date Instalment the Borrower shall provide to the Facility Agent all documents and evidence set out in Schedule 3 (Conditions Subsequent to Delivery Date Instalment) in form and substance satisfactory to the Facility Agent.

3.2 Further conditions precedent

The obligations of each Lender to advance any Drawing are subject to the further conditions precedent that on both the date of the Request and the Utilisation Date for that Loan:

- (a) the representations made under Clause 14 (Representations) are correct in all material respects; and
- (b) no Default is outstanding or would result from the Drawing.

3.3 Maximum Number

A Request may not be given if, as a result of the Drawing to be made pursuant to that Request, there would be more than an aggregate amount of eight (8) Drawings outstanding at any one time under the Loans.

4. UTILISATION

4.1 Giving of Requests

- (a) The Borrower may borrow each Loan by giving to the Facility Agent a duly completed Request in respect of a Drawing under that Loan.
- (b) Unless the Facility Agent otherwise agrees, the latest time for receipt by the Facility Agent of a duly completed Request is 12:00 noon (New York time) four (4) Business Days prior to the proposed date for the borrowing.

(c) Each Request is irrevocable.

4.2 Completion of Requests

A Request for a Drawing under a Loan will not be regarded as having been duly completed unless:

- (a) the Utilisation Date is a Business Day falling within the Availability Period;
- (b) in respect of a Drawing under a Loan, it is in an amount which does not exceed the Vessel Delivered Costs then due in respect of the relevant Vessel;
- (c) in respect of a Drawing under a Loan, it is in an amount which, when aggregated with the amounts drawn down or to be drawn down under any other Requests in respect of Drawings under that Loan, does not exceed the Maximum Available Loan Amount;
- (d) the amount requested for the Drawing does not exceed, when aggregated with the amounts drawn down or to be drawn down under any other Requests in respect of Drawings under any other Loans, the Maximum Facility Amount;
- (e) the proposed Term complies with this Agreement.

Only one Drawing may be requested in a Request.

4.3 Advance of Loans

- (a) The Facility Agent must promptly and in any event three (3) Business Days before the Rate Fixing Day notify each Lender of the details of the requested Drawing and the amount of its share in that Drawing.
- (b) The amount of each Lender's share of the Loan will be its Pro Rata Share on the proposed Utilisation Date.
- (c) No Lender is obliged to participate in a Drawing if, as a result, its share in the Loans would exceed its Commitment.
- (d) If the conditions set out in this Agreement have been met, each Lender must make its share in the Drawing available by the Utilisation Date through its Facility Office.

4.4 Capitalisation

For each Loan, from the period of the date of the first Drawing under this Agreement in respect of such Loan until the Delivery Date of the relevant Vessel, the commitment fee payable in accordance with Clause 22.1 and interest calculated and payable in accordance with Clause 7.2 relating to that Vessel's Loan, shall accrue on the Loan relating to that Vessel and shall, on the last day of each Term during such period, be capitalised and added to the principal amount of the Loan outstanding provided always that such sum does not exceed the Maximum Available Loan Amount.

5. REPAYMENT

5.1 Repayment of the Loans

- (a) The Borrower must repay the Loans to the Facility Agent on each Repayment Date in accordance with the Repayment Schedule. Each Repayment Instalment will be applied by the Facility Agent amongst the Loans *pro rata* against the principal amounts outstanding in respect of each Loan. The first Repayment Date will be thirty six (36) months after the Scheduled Delivery Date of Vessel 4.

- (b) The Facility Agent shall notify the Borrower and the Lenders of any change in the amount or the timing of any Repayment Instalment, as soon as practicable after the occurrence of an event which will have such an effect. In the event of any such notification, the Facility Agent shall replace the relevant Repayment Schedule attached at Schedule 7 (Repayment Schedule) with a new Repayment Schedule reflecting the correct Repayment Instalments and the correct Repayment Dates and promptly provide a copy thereof to the Borrower and the Lenders. To the extent that such change results from a reduction in the principal amount of the Loans from that assumed when the then current Repayment Schedule was produced, any such reduction (other than a prepayment in accordance with Clause 6.7) shall be applied *pro rata* against the Repayment Instalments.

- (c) In any event, each Loan shall be repaid in full on the Final Maturity Date. Together with the eighteenth and final Repayment Instalment a balloon of no more than ninety seven million six hundred thousand Dollars (US\$97,600,000) shall be payable.

6. PREPAYMENT AND CANCELLATION

6.1 Mandatory prepayment - illegality

- (a) If it becomes, or to the knowledge of any Lender is to become, unlawful in any jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or a Finance Document or to fund or maintain its share in one or more of the Loans (the **Event of Illegality**), that Lender shall notify the Facility Agent and the Borrower.

- (b) After notification under paragraph (a) above, the Borrower and that Lender shall thereafter consult with each other and use reasonable commercial efforts for a period of thirty (30) days or in the event that the Event of Illegality takes effect before the expiration of thirty (30) days, for the maximum number of days available before the Event of Illegality takes effect with a view to restructuring the Facility in such a way as to avoid the effect of the Event of Illegality.

- (c) If agreement cannot be reached between the parties within the period specified in paragraph (b) above:
 - (i) the Borrower shall repay the share of that Lender in the relevant Loan or Loans on the date specified in paragraph (d) below to the extent required to resolve the illegality; and

 - (ii) the Commitment of that Lender will be immediately cancelled.

- (d) The date for repayment of a Lender's share in a Loan or Loans will be:
 - (i) the last day of the current Term of that Loan; or

 - (ii) if earlier, the date specified by that Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by Applicable Law).

6.2 Mandatory prepayment Change of Control of Borrower

- (a) The Borrower must promptly notify the Facility Agent if it becomes aware of a Change of Control.
- (b) After notification under paragraph (a) above or if the Facility Agent otherwise becomes aware of the same and (acting on the instructions of the Majority Lenders) so notifies the Borrower at any time within thirty (30) days, the Borrower shall make an offer to the Facility Agent within five (5) Business Days of such notice to repay all of the outstanding Loans within thirty (30) days of such notice. Any failure of the Borrower to make an offer in accordance with this Clause will be an Event of Default (and not subject to any applicable grace periods set out in Clause 19 hereof).

6.3 Mandatory prepayment - Change of control of the Charterer

- (a) The Borrower must promptly notify the Facility Agent if it becomes aware of any person or group of persons acting in concert gaining control of the Charterer, be it direct or indirect.
- (b) If, after notification under paragraph (a) above or if the Facility Agent otherwise becomes aware of the same in respect of the Charterer, the Facility Agent (acting on the instructions of all of the Lenders) considers that the change of control of the Charterer has, or is reasonably likely when it takes effect to have, a Material Adverse Effect, the Facility Agent shall promptly notify the Borrower of such conclusion and the provisions of the balance of this Clause 6.3 shall have effect.
- (c) After notification under paragraph (b) above, the Borrower shall have six (6) months to obtain a suitable substitute charterer, such substitute charterer to be satisfactory in all respects to all of the Lenders.
- (d) The Borrower shall procure that the substitute charterer enters into any and all documents equivalent in all material respects to the documents currently existing and entered into by the relevant Charterer or such other documents as are acceptable to the Lenders.
- (e) If the Borrower is unable to obtain a suitable substitute charterer in accordance with the terms of this Clause 6.3, the Borrower shall immediately prepay all outstanding Loans.

- (f) In paragraph (a) above:

control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract or otherwise by Applicable Law, and **controls** and **controlled** shall be construed in like manner; and

acting in concert has the meaning given to it in the City Code on Takeovers and Mergers.

6.4 Mandatory prepayment Charter Breach, Expiration or Termination of Charter

Unless the Borrower complies with the provisions of Clause 16.25(c) (Charter Breach, Expiration or Termination of Charter) or the Security Trustee receives additional security satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders), upon

the Charter Breach, expiration or termination of a Time Charter in accordance with 16.25(b) (Charter Breach, Expiration or Termination of Charter), the Borrower shall be obliged to prepay an amount of the Loan relating to the relevant Vessel to ensure that the aggregate of the Market Value of the Vessels then delivered is not less than 125% of the aggregate principal amount of the outstanding Loans in respect of those Vessels.

6.5 Mandatory prepayment Sale, Total Loss or non-delivery of a Vessel

- (a) Unless, prior to the expiry of the periods referred to in (i), (ii) and (iii) below, the Borrower complies with the provisions of Clause 6.6 below, the Borrower shall prepay the proportion of the Loan then outstanding that the Market Value of the Vessel the subject of the sale, Total Loss or non-delivery bears to the aggregate Market Value of the Vessels in the following circumstances and at the following times:
- (i) if that Vessel is sold, on or before the date falling ninety (90) days after the date on which the sale is completed by delivery of that Vessel to a buyer; or
 - (ii) if there is a Total Loss on or before the date falling ninety (90) days after the Date of Total Loss; or
 - (iii) if a Vessel is not delivered, on or before the date falling one hundred and twenty (120) days after the cancellation of a Shipbuilding Contract.
- (b) The Borrower shall, immediately on receipt of the same, credit to the Retention Account the sale, Total Loss or Refund Guarantee proceeds received by the Borrower in respect of the Vessel the subject of the sale, Total Loss or non-delivery. Such proceeds shall remain in the Retention Account until either (i) they are to be applied in or towards satisfaction of the prepayment obligations of the Borrower pursuant to Clause 6.5(a) or (ii) the provisions of Clause 6.6 are complied with, in which event such proceeds shall be released to the Borrower.

6.6 Vessel substitution

- (a) In the event that a Vessel is sold or becomes a Total Loss or is not delivered to the Borrower, the Borrower may, at any time within ninety (90) days after the sale of the Vessel, the Date of Total Loss of the Vessel or the date of cancellation of the Shipbuilding Contract, substitute the Vessel with a replacement vessel in accordance with the terms of this Clause 6.6. The replacement vessel shall be required:
- (i) to undergo a valuation conducted to determine its Market Value;
 - (ii) as at the time of substitution, to be of at least equal value to the latest Market Value of the Vessel (assuming, where relevant, that the Vessel had not become the subject of a Total Loss), provided always that the value of the replacement vessel may be less than the latest Market Value of the Vessel if the Borrower prepays, at the time of substitution, an amount of the Loan relating to such Vessel equal to the difference between the value of the replacement vessel and the latest Market Value of the Vessel (discounting the effects of any Total Loss upon the value of the Vessel);
 - (iii) to have a similar remaining useful life as the Vessel; and

- (iv) to be time chartered under a time charter in form and substance in all material respects acceptable to the Facility Agent with a time charterer acceptable in all respects to the Facility Agent, with a term extending at least to the Final Maturity Date,
such determinations to be made by the Facility Agent (acting on the instructions of the Majority Lenders) (the **Replacement Vessel**).
- (b) Any such request by the Borrower pursuant to Clause 6.6(a) above (the **Replacement Request**) shall be made to the Facility Agent in writing at least thirty (30) Business Days prior to the proposed date of substitution (the **Substitution Date**) and shall be accompanied by evidence of compliance by the Borrower with the conditions specified in Clause 6.6 above.
- (c) Subject to satisfaction of the above conditions in full, the Facility Agent (acting on the instructions of the Majority Lenders) shall agree to the replacement of the Vessel by the Replacement Vessel on the Substitution Date provided that:
- (i) as at the date of the Replacement Request and at the Substitution Date, no Default or Event of Default has occurred and is continuing;
- (ii) there are no material and adverse tax, credit or other relevant implications which it is possible may arise as a result of the substitution;
- (iii) the Facility Agent has received a survey in respect of the Replacement Vessel, reasonably satisfactory to the Facility Agent; and
- (iv) on or prior to the Substitution Date, the Borrower will have executed equivalent Security Documents in relation to the Replacement Vessel, including but not limited to a first priority ship mortgage in a jurisdiction acceptable to the Facility Agent, an assignment of the earnings, obligatory insurances and any management and charter arrangements in respect of the Replacement Vessel, and such other security documents as the Facility Agent (acting on the instructions of the Majority Lenders) may determine appropriate in order to place the Finance Parties in substantially the same position in all respects (*mutatis mutandis*) as they would have been in prior to the Substitution Date.
- (d) All costs in connection with the Replacement Request (including but not limited to the costs of any legal advisors and any costs incurred in valuing and surveying the Replacement Vessel) shall be for the account of the Borrower.

6.7 Voluntary prepayment

- (a) The Borrower may, by giving not less than ten (10) days prior written notice to the Facility Agent, prepay the Loans in whole or from time to time in part on the last day of any Term.
- (b) A prepayment must be in a minimum amount of US\$2,000,000 up until thirty six (36) months after the Delivery Date of Vessel 4 and US\$5,000,000 thereafter and in any event in integral multiples of US\$1,000,000.

- (c) Unless the Facility Agent (acting on the instructions of the Majority Lenders) otherwise agrees, any voluntary prepayment under this Clause 6.7 shall be applied against the Repayment Instalments of the relevant Loan in the order of their maturity.

- (d) No amount prepaid under this Agreement may be reborrowed.

6.8 Automatic cancellation

The obligation of a Lender to advance the undrawn amount of its Commitment in relation to the relevant Loan will be automatically cancelled at the close of business on the last day of the relevant Availability Period.

6.9 Voluntary cancellation

- (a) The Borrower may, by giving not less than ten (10) days prior notice to the Facility Agent, cancel the unutilised amount of the Total Commitments in whole or in part.

- (b) Partial cancellation of the Total Commitments must be in a minimum amount of US\$5,000,000 and in integral multiples of US\$2,500,000 in excess of US\$5,000,000.

- (c) Any cancellation in whole or in part will be applied against the Commitment of each Lender *pro rata*.

6.10 Voluntary prepayment and cancellation

- (a) If the Borrower is, or will be, required to pay to a Lender a Tax Payment or an Increased Cost, the Borrower may, while the requirement continues, give notice to the Facility Agent requesting prepayment and cancellation in respect of that Lender.

- (b) After notification under paragraph (a) above:
 - (i) the Borrower must repay or prepay that Lender's share in each Loan made to it on the date specified in paragraph (c) below; and

 - (ii) the Commitment of that Lender will be immediately cancelled.

- (c) The date for repayment or prepayment of a Lender's share in a Loan(s) will be the last day of the current Term for the relevant Loan or, if earlier, the date specified by the Borrower in the notice delivered to the Facility Agent.

6.11 Partial prepayment of Loans

- (a) Except where this Clause 6 expressly provides otherwise, any partial prepayment will be applied against the remaining Repayment Instalments, in the order of their maturity.

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- (b) Upon any such partial prepayment, the Facility Agent shall replace the Repayment Schedule attached at Schedule 7 (Repayment Schedule) with a new Repayment Schedule reflecting the correct Repayment Instalments and promptly provide a copy thereof to the Borrower.

- (c) No amount prepaid under this Agreement may subsequently be re-borrowed.

6.12 Miscellaneous provisions

- (a) Any notice of prepayment and/or cancellation under this Agreement is irrevocable and must specify the relevant date(s).
- (b) All prepayments under this Agreement must be made with accrued interest on the amount prepaid. All prepayments shall also be subject to Break Costs in respect of any amounts prepaid to the Lenders.
- (c) No prepayment or cancellation is allowed except in accordance with the express terms of this Agreement.

7. INTEREST

7.1 Calculation of interest

- (a) The rate of interest on each Loan for each Term is the percentage rate per annum equal to the aggregate of:
 - (i) the Margin; and
 - (ii) LIBOR (together, the **Interest Rate**).
- (b) Interest shall be calculated by reference to the actual number of days elapsed and on the basis of a year of 360 days. Interest shall accrue from and including the first day of each Term to but excluding the last day of such Term.

7.2 Payment of interest

Except where it is provided to the contrary in this Agreement, the Borrower must pay accrued interest on each Loan on the last day of each Term.

7.3 Interest on overdue amounts

- (a) If the Borrower fails to pay any amount payable by it under the Finance Documents, it must immediately on demand by the Facility Agent pay interest on the overdue amount from its due date up to the date of actual payment, both before, on and after judgment.
- (b) If the overdue amount is a principal amount of a Loan or is an amount accruing in respect of interest on a Loan and becomes due and payable prior to the last day of its current Term, then:
 - (i) the first Term for that overdue amount will be the unexpired portion of that Term and the rate of interest on the overdue amount for that first Term will be two (2) per cent. per annum above the Interest Rate; and

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- (ii) thereafter, any subsequent Term for that overdue amount shall be selected by the Facility Agent (acting on the instructions of the Majority Lenders, acting reasonably) who may select successive Terms of any duration up to six (6) months, and the rate of interest on the overdue amount will be two (2) per cent. per annum above the Interest Rate.

After the expiry of the first Term for that overdue amount, the rate on the overdue amount will be calculated in accordance with paragraph (c) below.

- (c) In respect of any amounts outstanding other than in accordance with paragraph (b) above, interest on such overdue amount is payable at a rate determined by the Facility Agent to be two (2) per cent. per annum above the Interest Rate. For this purpose, the Facility Agent may (acting on the instructions of the Majority Lenders, acting reasonably) select successive Terms of any duration of up to six (6) months.
- (d) Interest (if unpaid) on an overdue amount will be compounded with that overdue amount at the end of each of its Terms but will remain immediately due and payable.

7.4 Notification of rates of interest

The Facility Agent must promptly notify each Party of the determination of a rate of interest under this Agreement and the Mandatory Cost payable, if any.

7.5 Mandatory Cost

The Borrower shall pay to the Facility Agent the Mandatory Cost, if any, for each Loan on the last day of the Term in respect of which it has been calculated.

8. TERMS

8.1 Selection

- (a) Each Loan has successive Terms.
- (b) The Borrower must select the first Term for a Loan in the relevant Request and each subsequent Term in an irrevocable notice received by the Facility Agent no later than 11:00am (London time) three (3) Business Days before the Rate Fixing Day for that Term. Each Term for a Loan will start on its Utilisation Date or on the expiry of its preceding Term. If the Borrower fails to select a Term for an outstanding Loan under this paragraph (b), that Term will, subject to the other provisions of this Clause, be for a period of six (6) months.
- (c) Subject to the following provisions of this Clause 8 and paragraph (b) above, each Term for a Loan prior to the Post-Delivery Period in respect of that Loan shall be for a period of one (1), two (2), three (3) or six (6) months or any other period agreed by the Lenders in their absolute discretion. Each Term for a Loan during the Post-Delivery Period in respect of that Loan shall be for a period of six (6) months or such other period requested by the Borrower and accepted by the Facility Agent. If a Term would otherwise overrun the relevant Repayment Date, it will be shortened so that it ends on the relevant Repayment Date.

8.2 Consolidation

The first Term for the Drawing under a Loan will commence on its Utilisation Date and each subsequent Term shall commence on the last day of the previous Term provided always that the first Term for the Drawings under the second and subsequent Loans shall end on the last day of the current Term for existing Drawings under the then existing Loan(s).

8.3 No overrunning the Final Maturity Date

If a Term would otherwise overrun the Final Maturity Date, it will be shortened so that it ends on the Final Maturity Date.

8.4 Other adjustments

The Facility Agent and the Borrower may enter into such other arrangements as they may agree for the adjustment of Terms and the consolidation and/or splitting of Loans.

9. MARKET DISRUPTION

9.1 Failure of the Reference Bank to supply a rate

If LIBOR is to be calculated by reference to the Reference Banks but if the Reference Banks are unable to supply a rate by 11.00 a.m. London time on the Rate Fixing Day, the applicable LIBOR will be calculated in accordance with Clause 9.2 (Market disruption).

9.2 Market disruption

(a) A market disruption event shall arise where:

- (i) no, or only one, Reference Bank supplies a rate by 11.00 a.m. on the Rate Fixing Day; or
- (ii) the Facility Agent receives by close of business on the Rate Fixing Day notification from any Lender or Lenders whose aggregate shares in the relevant Loan exceed 35 per cent. of that Loan that the cost to them of obtaining matching deposits in the relevant interbank market is in excess of LIBOR for the relevant Term.

(b) The Facility Agent must promptly notify the Borrower and the Lenders of a market disruption event.

(c) After notification under paragraph (b) above, the rate of interest on the affected Loan for the relevant Term will be the aggregate of the applicable:

- (i) Margin;
- (ii) the rate notified to the Facility Agent by those Lenders as soon as practicable, and in any event before interest is due to be paid in respect of that Term, to be that which expresses as a percentage rate per annum the cost to those Lenders of funding the Loan from whatever source each of them may reasonably select; and
- (iii) any increase in Mandatory Cost above the level of Mandatory Cost prevailing at the date of this Agreement.

9.3 Alternative basis of interest or funding

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- (a) If a market disruption event occurs and the Facility Agent or the Borrower so require, the Borrower and the Facility Agent must enter into negotiations for a period of not more than thirty (30) days with a view to agreeing to an alternative basis for determining the rate of interest and/or funding for the affected Loan and any future Loan.

- (b) Any alternative basis agreed between the Borrower and the Facility Agent will be, with the prior written consent of all the Lenders, binding on all the Parties hereto.

10. TAXES

10.1 Tax gross-up

- (a) The Borrower must make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by an Applicable Law.
- (b) If a Tax Deduction is required by an Applicable Law to be made by the Borrower or, as the case may be, the Facility Agent, the amount of the payment due from the Borrower will be increased, or, as the case may be, the Borrower shall make an additional payment, so that the amount (after making the Tax Deduction) received by the recipient is equal to the payment which would have been due if no Tax Deduction had been required.
- (c) If the Borrower is required to make a Tax Deduction, the Borrower must make the minimum Tax Deduction and must make any payment required in connection with that Tax Deduction within the time allowed by the Applicable Law.
- (d) Within fifteen (15) days of making either a Tax Deduction or a payment required in connection with a Tax Deduction the Borrower must deliver to the Facility Agent for the relevant Finance Party, documents or other information (or certified copies thereof) evidencing satisfactorily to that Finance Party (acting reasonably) that the Tax Deduction has been made or (as applicable) the app