

FINANCIJSKA AGENCIJA

OIB: 85821130368

Mazuranićevo šetalište 24b

21000 Split

Hrvatska

Nadležni trgovački sud u Splitu

Poslovni broj spisa St-273/2022

FINANCIJSKA AGENCIJA
RC SPLIT

21-06-2022

PREDSTEČAJNE NAGODBE
PRIMANJE I OTPREMA POŠTE

KLASA
BR: 8888

122-11/22-SC/52
07-02-22-301

PRIJAVA TRAZBINE VJEROVNIKA U PREDSTEČAJNOM POSTUPKU

PODACI O VJEROVNIKU:

Ime i prezime / tvrtka ili naziv BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o.

OIB 15413473504

Adresa / sjedište PUT SUPAVLA 21, 21000 Split

PODACI O DUŽNIKU:

Ime i prezime / tvrtka ili naziv BRODOSPLIT D.D.

OIB 18556905592

Adresa / sjedište PUT SUPAVLA 21, 21000 SPLIT

PODACI O TRAZBINI:

Pravna osnova tražbine (npr. ugovor, odluka suda ili drugog tijela, ako je u tijeku sudski postupak oznaku spisa i naznaku suda kod kojeg se postupak vodi)

1. jamac po Ugovoru o kreditu od 12.04.2019. godine, dodatku br 1 Ugovora od 11.10.2019., dodatku br 2 Ugovora od 12.04.2021., dodatku br 3 Ugovora od 12.10.2021. i dodatku br 4 Ugovora od 12.01.2022. sklopljenim između Brodosplit d.d. i VTB BANK (EUROPE) SE, Rusterstrase 7-9, 60325 Frankfurt am Main, Germany,

Iznos dospjele tražbine 0,00 (kn)

Glavnica 417.064.452,21 (kn)

Kamate (kn)

Iznos tražbine koja dospijeva nakon otvaranja predstečajnog postupka **417.064.452,21 (kn)**

Dokaz o postojanju tražbine (npr. račun, izvadak iz poslovnih knjiga)

Vjerovnik raspolaže ovršnom ispravom DA / NE za iznos **50.000.000,00 EUR**

Naziv ovršne isprave

? pretvoriti u
kune!

Obična zadužnica OV-2381/2019 od 16.04.2019.

PODACI O RAZLUČNOM PRAVU:

Pravna osnova razlučnog prava

Dio imovine na koji se odnosi razlučno pravo

Iznos tražbine _____ (kn)

Razlučni vjerovnik odriče se prava na odvojeno namirenje ODRIČEM / NE ODRIČEM

Razlučni vjerovnik pristaje da se odgodi namirenje iz predmeta na koji se odnosi njegovo razlučno pravo radi provedbe plana restrukturiranja PRISTAJEM / NE PRISTAJEM

PODACI O IZLUČNOM PRAVU:

Pravna osnova izlučnog prava

Dio imovine na koji se odnosi izlučno pravo

Izlučni vjerovnik pristaje da se izdvoji predmet na koji se odnosi njegovo izlučno pravo radi provedbe plana restrukturiranja PRISTAJEM / NE PRISTAJEM

Mjesto i datum

SPLIT, 18.06.2022.

Potpis vjerovnika
**BRODOGRADILIŠTE
SPECIJALNIH OBJEKATA d.o.o.**
Split
OIB: 15413473504

ZADUŽNICA

Dužnik: Tvrtka ili skraćena tvrtka/naziv/ime i prezime: **BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o.**
Sjedište/mjesto i adresa: **Put Supavla 21, Split (Grad Split), Republika Hrvatska**
OIB: **15413473504**

DAJE SUGLASNOST

da se radi naplate tražbine Vjerovnika: Tvrtka ili skraćena tvrtka/naziv/ime i prezime: **VTB Bank (Europe) SE**
Sjedište/mjesto i adresa: **Rüsterstraße 7-9, 60325 Frankfurt am Main, SR Njemačka**
OIB: **28284529780**
u iznosu glavnice od: **EUR 50.000.000,00 (pedeset milijuna eura i nula centi)**

uvećanom za: ² ugovorenu fiksnu kamatu po godišnjoj stopi od 3,00% (tri posto), te sa zateznom kamatom po stopi od: ³ 5,00% (pet posto) godišnje, a koja teče od dana dospelja određenog od strane vjerovnika prilikom podnošenja zadužnice na naplatu, do namirenja, zaplijene svi računi koje ima kod banaka te da se novac s tih računa, u skladu s izjavom sadržanom u ovoj zadužnici, isplaćuje vjerovniku.

Vjerovnik je ovlašten sam odrediti opseg ili vrijeme ispunjenja tražbine prilikom podnošenja zadužnice na naplatu, odnosno u prijedlogu za provedbu ovrhe ili prijedlogu za ovrhu.

Ova zadužnica izdaje se u jednom primjerku i ima učinak rješenja o ovrsi kojim se zapljuje tražbina po računu i prenosi na ovrhovoditelja po proteku roka od 60 dana od dana kada je isprava dostavljena Financijskoj agenciji (u daljnjem tekstu: Agencija), ako Agencija u tom roku ne zaprimi drukčiju odluku suda.

Na ovoj zadužnici ili u dodatnim ispravama uz ovu zadužnicu, istodobno kad i dužnik ili naknadno, obvezu prema vjerovniku mogu preuzeti i druge osobe u svojstvu jamaca plataca, davanjem pisane izjave koja je po svojem sadržaju i obliku ista s izjavom dužnika.

Ovu zadužnicu Agenciji dostavlja vjerovnik u izvorniku s učincima dostave sudskog rješenja o ovrsi izravno, putem davatelja poštanskih usluga preporučenom poštanskom pošiljkom s povratnicom neposrednom dostavom ili preko javnog bilježnika.

Vjerovnik može svoja prava iz ove zadužnice prenositi ispravom na kojoj je javno ovjeren njegov potpis na druge osobe, koje u tom slučaju stječu prava koja je po ovoj zadužnici imao vjerovnik.

Na temelju isprava iz članka 214. stavak 1. i 2. Ovršnog zakona, vjerovnik može po svom izboru zahtijevati na način propisan Ovršnim zakonom od Agencije naplatu svoje tražbine od dužnika ili jamaca plataca, ili i od dužnika i jamaca plataca.

Vjerovnik može od Agencije zahtijevati da mu vrati ovu zadužnicu ako njegova tražbina nije u cijelosti namirena. U tom će slučaju Agencija naznačiti na ovoj zadužnici iznos troškova, kamata i glavnice koji je naplaćen. Ako je vjerovnik u cijelosti namirio svoju tražbinu prema ispravi iz članka 214. stavak 1. i 2. Ovršnog zakona, Agencija će obavijestiti o tome dužnika ili jamca platca i na njegov mu je zahtjev predati.

Isprave iz članka 214. stavak 1. i 2. Ovršnog zakona imaju svojstvo ovršnih isprava na temelju kojih se može tražiti ovrha protiv dužnika ili jamaca platca na drugim predmetima ovrhe.

Dužnik odnosno jamac platca je suglasan i pristaje da mu javni bilježnik, nakon potvrde, izda izvornik ove zadužnice u skladu s odredbom članka 50. stavak 2. Zakona o javnom bilježništvu (»Narodne novine« 78/93, 29/94, 162/98, 16/07, 75/09, 120/16.).

Mjesto i datum izdavanja: Potpis dužnika:

Split, 16.4.2019.

Napomena: Iznos tražbine upisuje se slovima i brojevima. Ostali brojevi i datumi upisuju se samo brojevima. Rođeno ime i datum rođenja se ne upisuju. Prazna mjesta u tekstu nije potrebno popuniti crtama.

¹ Upisati tražbinu u kunama ili u kunama uz valutnu klauzulu ili u stranoj valuti, brojem i slovima

² Upisati ugovorne kamate i ostale sporedne tražbine ako ih ima, ili upisati riječi »bez uvećanja«

³ Upisati stopu zatezne kamate

Jamac platac: Tvrtka ili skraćena tvrtka/naziv/ime i prezime: _____

Sjedište/mjesto i adresa: _____

OIB: _____

DAJE SUGLASNOST

da se radi naplate tražbine vjerovnika iz ove zadužnice zaplijene svi moji računi kod banaka te da se novac s tih računa, u skladu s mojom izjavom sadržanom u ovoj zadužnici, isplaćuje vjerovniku-----

Mjesto i datum izdavanja:

Potpis jamca platca:

Jamac platac: Tvrtka ili skraćena tvrtka/naziv/ime i prezime: _____

Sjedište/mjesto i adresa: _____

OIB: _____

DAJE SUGLASNOST

da se radi naplate tražbine vjerovnika iz ove zadužnice zaplijene svi moji računi kod banaka te da se novac s tih računa, u skladu s mojom izjavom sadržanom u ovoj zadužnici, isplaćuje vjerovniku-----

Mjesto i datum izdavanja:

Potpis jamca platca:

Jamac platac: Tvrtka ili skraćena tvrtka/naziv/ime i prezime: _____

Sjedište/mjesto i adresa: _____

OIB: _____

DAJE SUGLASNOST

da se radi naplate tražbine vjerovnika iz ove zadužnice zaplijene svi moji računi kod banaka te da se novac s tih računa, u skladu s mojom izjavom sadržanom u ovoj zadužnici, isplaćuje vjerovniku-----

Mjesto i datum izdavanja:

Potpis jamca platca:



REPUBLIKA HRVATSKA

Javni bilježnik

Ilija Šarić

Split, Hrvatske bratske zajednice 3a

Obrazac zadužnice – stranica 3.

Poslovni broj: OV-2381/2019

Ja, javni bilježnik Ilija Šarić, Split, Hrvatske bratske zajednice 3a, potvrđujem da je stranka:

BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., MBS 060175259, OIB 15413473504, Split, PUT SUPAVLA 21, zastupano po direktoru TOMISLAV DEBELJAK, OIB 09971916975, BREGANA, VLADIMIRA NAZORA 32, čiju sam istovjetnost utvrdio uvidom u osobnu iskaznicu br. 112635120 PP Samobor, ovlaštenje za zastupanje utvrđeno je uvidom u sudski registar elektroničkim putem na današnji dan, kao dužnik

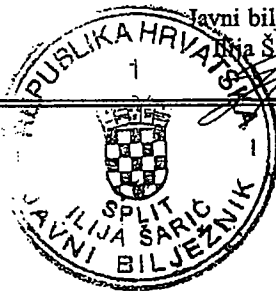
podnijela prednju privatnu ispravu: **ZADUŽNICA** od 16.4.2019. na potvrdu.

Potvrđujem da sam prednju privatnu ispravu ispitao i utvrdio da ona po svom obliku odgovara propisima o javnobilježničkim ispravama, a po svom sadržaju propisima o sadržaju ovršnog javnobilježničkog akta.

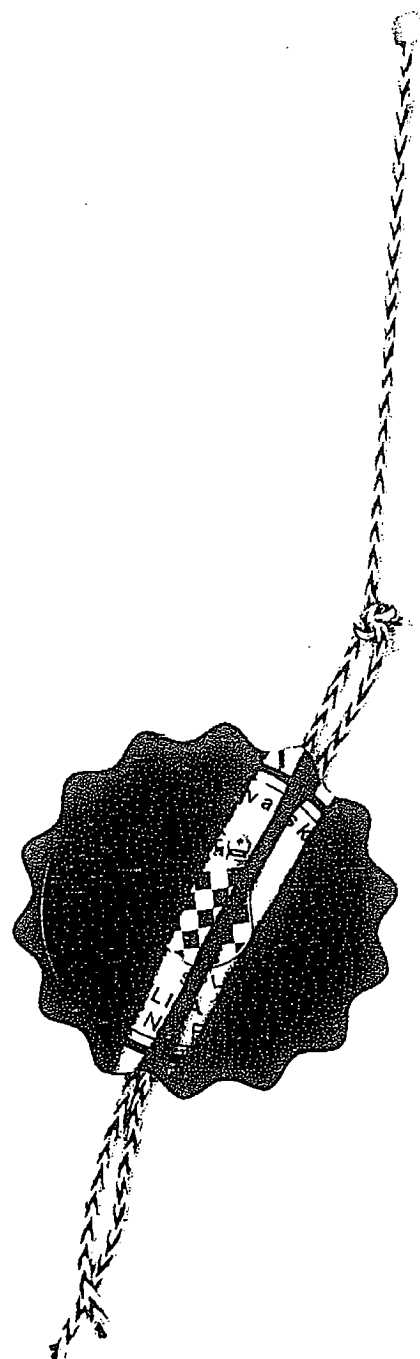
Sudioniku pravnog posla sam ispravu pročitao te ga upozorio da potvrđena privatna isprava ima snagu ovršnog javnobilježničkog akta. Sudionik izjavljuje da prihvća pravne posljedice koje iz toga proizlaze za njega i da to odgovara njegovoj volji.

Javnobilježnička nagrada zaračunata po čl. 7. Pravilnika o nagradama i naknadi troškova javnih bilježnika u ovršnom postupku u iznosu od 500,00 kn uvećana za PDV u iznosu od 125,00 kn.

Split, 16.04.2019.



Obrazac zadužnice – stranica 4.



EXECUTION VERSION

UP TO EUR 50,000,000

FACILITY AGREEMENT

dated 12 April 2019

for

BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

as Borrower

provided by

VTB BANK (EUROPE) SE

as Lender

WOLF THEISS

CONTENTS

Clause	Page
1. Definitions and Interpretations	5
2. The Facility	27
3. Purpose	27
4. Conditions of Utilisation	27
5. Utilisation	29
6. Repayment	31
7. Prepayment and cancellation	31
8. Interest	34
9. Interest Periods	34
10. Fees	35
11. Tax gross up and indemnities	37
12. Increased costs	40
13. Other indemnities	41
14. Mitigation by the Lender	42
15. Costs and expenses	43
16. Guarantee and indemnity	45
17. Representations	49
18. Information undertakings	58
19. General undertakings	61
20. Vessel related undertakings	67
21. Events of Default	74
22. Changes to the Lender	79
23. Changes to the Transaction Obligors	79
24. Payment mechanics	80
25. Set-off	83
26. Notices	83
27. Calculations and certificates	85
28. Partial invalidity	86
29. Remedies and waivers	86
30. Amendments and waivers	86
31. Confidential Information	86
32. Counterparts	89
33. Governing law	90
34. Enforcement	90

SCHEDULE 1	GUARANTORS	92
SCHEDULE 2	CONDITIONS PRECEDENT AND SUBSEQUENT	93
SCHEDULE 3	UTILISATION REQUEST	105
SCHEDULE 4	FORM OF TRANSFER CERTIFICATE	107
SCHEDULE 5	LIST OF EXISTING SECURITY	108
SCHEDULE 6	EXISTING FINANCIAL INDEBTEDNESS	109
SCHEDULE 7	EXISTING FINANCIAL SECURITY	110
SCHEDULE 8	LIST OF SECURITY DOCUMENTS	111

THIS AGREEMENT is dated 12 April 2019 and made between:

- (1) **BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo**, a company duly incorporated in Croatia, with its registered seat at Put Supavla 21, Split, Croatia, PIN (OIB): 18556905592, registered with the court registry of the Commercial Court in Split under registration number (MBS): 060175040, as borrower (the "**Borrower**");
- (2) **THE COMPANIES** listed in SCHEDULE 1 (*Guarantors*) as guarantors (the "**Guarantors**"); and
- (3) **VTB BANK (EUROPE) SE**, a financial institution duly incorporated in Germany with registered office at Rüsterstraße 7-9, 60325 Frankfurt am Main, Germany, PIN (OIB): 28284529780, registered with the District Court of Frankfurt am Main (*Amtsgericht Frankfurt am Main*) under registration number HRB 12169 (the "**Lender**")

(the Borrower, the Lender and the Guarantors collectively referred to as the "**Parties**", and individually as a "**Party**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement:

"Account" means:

- (a) in respect to Tranche A, the account to be specified by the Existing Financing Lender in the Pay-Off Letter to which the Lender shall disburse the Tranche A Loan; and
- (b) in respect to Tranche B, the following account of Polaris Exploration held with the Zagrebačka Banka d.d.:

IBAN: HR 64 2360 0001 1027 1364 8,

SWIFT: ZABAHR2X.

"Additional Financial Services Letter" means the letter executed by the Borrower and delivered to the Lender as a condition precedent under this Agreement in connection with the transactions contemplated by this Agreement.

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

"Agreement on Assignment for Security Purposes" means any security agreement entered into by and between the Borrower or a Vessel Owner and the Lender on or around the date of this Agreement, establishing a security interest in respect of receivables defined therein, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"Alternative Currency" means:

- (a) any of RUB, CHF, GBP, JPY, SGD or HKD as may be selected by the Lender in its discretion; or
- (b) if none of the currencies named in (a) above are available to be used, such other currency as agreed in writing by the Lender and the Borrower.

"Alternative Currency Exchange Rate" means

- (a) in respect of any Alternative Currency Notice which specifies RUB as the Alternative Currency, the rate of exchange of EUR into RUB fixed at or about 12.35 Moscow time on the date of such Alternative Currency Notice by JSC Moscow Exchange and published on moex.com/en/fixing as "MOEX EUR/RUB FX Fixing" provided that if such exchange rate is not published on that date or at such time or is not available with respect to the relevant Alternative Currency, the exchange rate agreed between the Lender and the

Borrower acting in good faith and in a commercially reasonable manner or, failing such agreement, the exchange rate notified by the Lender to the Borrower acting in good faith and in a commercially reasonable manner; and

- (b) in respect of any Alternative Currency Notice which specifies any Alternative Currency other than RUB, means, in respect of any conversion date, the rate of exchange of EUR into the relevant Alternative Currency fixed at 4.00 p.m. London time on that conversion date by WM Company and published on Bloomberg screen <WMCO (Spot Rate Current Daily Fixings, EUR Rate Source WMCD> provided that if such exchange rate is not published on that conversion date or is not available with respect to the relevant Alternative Currency, the exchange rate agreed between the Lender and the Borrower acting in good faith and in a commercially reasonable manner.

"Auditor" means Deloitte d.o.o., a company duly incorporated in Croatia, with its registered seat at Radnička cesta 80, Zagreb, Croatia, PIN (OIB): 11686457780, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 030022053, or any other international accounting firm acceptable to the Lender, engaged by the Borrower to audit the annual financial statements to be provided pursuant to Clause 18.2 (*Requirements as to financial statements*).

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Availability Period" means the period from and including the Signing Date to and including the date which is falling on the tenth Business Day after the Signing Date.

"Available Commitment" means in relation to a Tranche, the Lender's Commitment under that Tranche, minus:

the amount of its participation in any outstanding Loans; and

- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

"Available Facility" means, in relation to a Facility, the Lender's Available Commitment in respect of that Tranche.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in Zagreb and Frankfurt and which is a TARGET Day.

"Code" means the US Internal Revenue Code of 1986.

"Commitment" means a Tranche A Commitment or a Tranche B Commitment.

"Companies Act" means the Croatian Companies Act (Official Gazette 111/1993, as amended from time to time).

"Confidential Information" means all information relating to any Transaction Obligor, the Finance Documents or the Facility of which the Lender becomes aware in its capacity as, or for the purpose of becoming, the Lender or which is received by the Lender in relation to, or for the purpose of becoming the Lender under, the Finance Documents or the Facility from either any Transaction Obligor or any of its advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Lender of Clause 31 (*Confidential Information*);
- (b) is identified in writing at the time of delivery as non-confidential by any Transaction Obligor or any of its advisers; or
- (c) is known by the Lender before the date the information is disclosed or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Transaction Obligors and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Debenture Notes" means the Croatian law governed debenture (in Croatian: *zadužnica*) issued by each Obligor on or about the date of this Agreement allowing direct enforcement over all or substantially all of each Obligor's assets, in security for all amounts owing by the Borrower to the Lender under this Agreement, in form and substance satisfactory to the Lender, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"Default" means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Lender.

"Disposal Proceeds" means in respect of any of the Vessels the disposal proceeds received by the Borrower or any Vessel Owner from a disposal of any of the Vessels.

"Dispute" means the dispute between the Borrower and the Purchaser in relation to any additional amounts due on account of damages due and payable by the Purchaser to the Borrower under the Ship Building Agreement.

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"Environment" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

"Environmental Claim" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

"Environmental Law" means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

"Environmental Permits" means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of the Borrower conducted on or from the properties owned or used by the Borrower.

"Excluded Insurance Proceeds" means any Insurance Proceeds which the Borrower notifies the Lender are, or are to be, applied, in each case in accordance with the terms and conditions of the relevant Insurance or, if applicable, the Finance Documents:

- (a) to meet a third party claim;
- (b) to cover operating losses in respect of which the relevant Insurance claim was made; or

- (c) if agreed by the Lender in writing, in the replacement, reinstatement and/or repair of the assets in respect of which the relevant insurance claim was made.

"Existing Bank Loan" means the principal amount outstanding under the Existing Facility.

"Existing Security" means the security that secures the Existing Bank Loan as described in detail in SCHEDULE 5 (*List of Existing Security*).

"Existing Facility" means the EUR 33,000,000 short term foreign currency facility originally dated 28 March 2018, as amended from time to time, provided by the Existing Financing Lender to the Borrower (with a total outstanding principal amount of EUR 33,000,000 as at the date of this Agreement).

"Existing Facility Documentation" means, the credit documentation under which the Existing Bank Loan was made available, including but not limited to any credit agreement, security document and ancillary documentation entered into in relation to those relevant credit documents.

"Existing Financing Lender" means Zagrebačka Banka d.d., a credit institution duly incorporated in Croatia, with registered office at Trg bana Josipa Jelačića 10, 10000 Zagreb, Croatia, PIN (OIB): 92963223473, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 080000014.

"Existing Financial Indebtedness" means any and all Financial Indebtedness of the Borrower in existence as at the date of this Agreement as described in SCHEDULE 6 (*Existing Financial Indebtedness*).

"Existing Financial Security" means any and all Security provided or undertaken by the Borrower in security or reassurance for any obligation of any person (including any obligation in respect of the Existing Financial Indebtedness) as described in detail in SCHEDULE 7 (*Existing Financial Security*) (including for the avoidance of doubt, the Existing Security).

"Event of Default" means any event or circumstance specified as such in Clause 21 (*Events of Default*).

"Facility" means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

"Facility Office" means the office or offices through which the Lender will perform its obligations under this Agreement.

"FATCA" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

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

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

"Finance Document" means

- (a) this Agreement;
- (b) any Security Document;
- (c) the Subordination Agreement; or
- (d) any other document designated as such by the Lender and the Obligors.

"Financial Indebtedness" means any indebtedness for or 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 (including Croatian law promissory notes and debenture notes);
- (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 balance sheet liability;
- (e) without limiting the generality of paragraph (d) above, any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition of construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets and services and payment is due more than 90 days after the date of supply;

- (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (h) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (i) 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
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

"Financial Quarter" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"Financial Year" means the annual accounting period of each Obligor ending on or about 31 December each year.

"GAAP" means all accounting and similar rules, regulations and principles generally accepted and consistently applied including without limitation IFRS.

"HBOR" means Croatian Bank for Reconstruction and Development, duly incorporated in Croatia, with its registered seat at Strossmayerov trg 9, Zagreb, Croatia, PIN (OIB): 26702280390, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 3929370.

"HBOR Financial Indebtedness" means collectively all financial indebtedness incurred by Polar Expeditions and Polaris Exploration to HBOR or any other person in connection with the construction of Vessel 4 or otherwise.

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

"IAS" means the IAS Regulation 1606/2002.

"IFRS" means international accounting standards within the meaning of the IAS to the extent applicable to the relevant financial statements.

"Initial Valuation" means the Valuation of the Vessels prepared for the sole benefit and reliance of the Lender and delivered to the Lender as a condition precedent under this Agreement.

"Insurance Proceeds" means in respect of any of the Vessels any proceeds of Insurances (other than Excluded Insurance Proceeds), but in any event includes proceeds when any of the relevant Vessel is declared an actual or constructive total loss by any relevant insurer.

"Insurances" means any contract of insurance required under Clause 20.6 (*Insurances*).

"Insurer" or "Insurers" means, collectively:

- (a) in respect to Vessel 1, Wiener Osiguranje Vienna Insurance Group d.d., with its registered seat at Slovenska ulica 24, Zagreb, Croatia, PIN (OIB): 52848403362, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 080026313;
- (b) in respect to Vessel 2, Allianz Zagreb d.d., with its registered seat at Heinzelova 70, Zagreb, Croatia, PIN (OIB): 23759810849, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 080004103;
- (c) in respect to Vessel 3, Triglav osiguranje d.d., with its registered seat at Antuna Heinza 4, Zagreb, Croatia, PIN (OIB): 29743547503, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 040033293; or
- (d) any other insurer acceptable for the Lender for the purposes of underwriting an Insurance in respect of a Vessel.

"Intellectual Property" means

- (a) any patents, trade-marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each Borrower (which may now or in the future subsist).

"Interest Payment Date" means each (i) day corresponding to the day of the month of the Signing Date after the Signing Date and (ii) the Termination Date. If, however, any such day is not a Business Day, the Interest Payment Date will instead be the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

- (b) the time barring of claims under the Limitation Acts or Croatian law (if applicable), the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) directors' duties, corporate benefit, capital maintenance, financial assistance, fraudulent preference or thin capitalization laws or regulations (or analogous restrictions) under Croatian law;
- (d) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases;
- (e) similar principles, rights and remedies under the laws of any Relevant Jurisdiction; and
- (f) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinions supplied to Lender as a condition precedent under this Agreement on or before the first Utilisation Date.

"Lender" means the Lender or any other person which has become a Lender in accordance with Clause 22 (*Changes to the Lender*) which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"Limitation Acts" means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

"LMA" means the Loan Market Association.

"Loan" means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

"Material Adverse Effect" means, in each case in the reasonable opinion of the Lender, a material adverse effect on:

- (a) the business, operations, property or financial or other condition or prospects of the Obligors taken as a whole;
- (b) the ability of the Obligors taken as a whole to perform their obligations under the Finance Documents;
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents; or
- (d) the rights or remedies of the Lender under any of the Finance Documents.

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that

period is to end if there is one, or if there is not, on the immediately preceding Business Day;

- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

"Mortgage Agreement" means any security agreement entered into by and between the Borrower or the Vessel Owner and the Lender on or around the date of this Agreement, establishing a mortgage over any of the Vessels, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"New Lender" has the meaning given to that term in Clause 22 (*Changes to the Lender*).

"Obligor" means a Borrower or Guarantor.

"Original Financial Statements" means, in relation to the Borrower and each of the Guarantors, its audited standalone and (if applicable) consolidated financial statements for the Financial Year ended 2017.

"Original Jurisdiction" means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement.

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

"Party" means a party to this Agreement.

"Pay-Off Letter" means any pay-off letter issued by any Existing Financing Lender to the Lender, in the form agreed by the Lender, in relation to

- (a) the amount of the relevant Existing Bank Loan and accrued but unpaid interest up to and including the date of that letter (together with the actual calculation or the method of computation of the amount that must be repaid by the Borrower on the first Utilisation Date to the Existing Financing Lender);
- (b) the release, discharge, cancellation and deregistration of the Existing Security;
- (c) the termination of the Existing Facility Documentation (as relevant) upon such repayment (prepayment); and

- (d) the consent provided by the Existing Financing Lender for the Transaction Security to be signed and perfected according to the Security Documents (following in ranking and priority only the Existing Security).

"Perfection Requirements" means the making or the procuring of filings, stampings, registrations, notarisations, endorsements, translations and/or notifications of any Finance Document (and/or any Security created under it) necessary for the validity, enforceability (as against the relevant Obligor or any relevant third party) and/or perfection of that Finance Document.

"Permitted Financial Indebtedness" means Financial Indebtedness of the Borrower:

- (a) incurred under the Finance Documents;
- (b) constituting Existing Financial Indebtedness, provided that if such indebtedness:
 - (i) has been incurred under the Existing Facility Documentation, it is permitted only to the extent it is fully discharged in accordance with this Agreement and the Pay-Off Letter or otherwise repaid or discharged prior to the Utilisation;
 - (ii) has been incurred in relation to the HBOR Financial Indebtedness, it is permitted only to the extent the liability of the Borrower (whether as a joint debtor or by way of guarantee, suretyship, indemnity (the **"HBOR Guarantee"**) or similar obligations or liabilities including as a provider of any Security) does not at any time exceed €79,000,000 (the **"HBOR Exposure"**) and the HBOR Exposure is not varied such that it may become more onerous for the Borrower throughout the term of this Agreement without the prior written consent of the Lender;
 - (iii) that constitutes Trade Liabilities, it is permitted only to the extent the liability of the Borrower (whether as a debtor or by way of debenture notes, promissory notes, right of subrogation, indemnity or similar obligations or liabilities including on account of credit cards but not for loans, bonds or similar forms of borrowings) does not at any time exceed €17,000,000 (the **"Trade Exposure"**) and the Trade Exposure is not at any time throughout the term of this Agreement increased by more than 10% without the prior written consent of the Lender; and
- (c) constitutes Subordinated Debt (including interest accrued on the principal amount of such debt), it is permitted only to the extent such principal and interest remains subordinated on the terms of the Subordination Agreement; or
- (d) not permitted under paragraphs (a) and (b) above and agreed by the Lender in writing prior to such debt being incurred provided that such consent shall not be unreasonably withheld or delayed.

"Permitted Security" means:

- (a) the Transaction Security;

- (b) the Existing Security but only to the extent fully discharged, released or otherwise terminated in accordance with this Agreement and the Pay-Off Letter; and
- (c) Security that has been created in respect of:
- (i) Vessel 1 being:
- second rank mortgage registered on the basis of Warranty contract no. F-017-15 for orderly settlement of long-term liabilities dated 26 May 2015 in favour of the Ministry of Finance of Croatia in the amount of €12,667,000 increased for contractual interests, fees and expenses;
 - third rank mortgage registered on the basis of Agreement on security financial claim by establishing a mortgage on the vessel under construction dated 29 June 2017 in favour of the Purchaser in the amount of €6,000,000, increased for the agreed interest rate in the amount of 6,5% per annum calculated from the maturity date of the Purchaser claim until the payment;
- (ii) Vessel 2 being:
- second rank mortgage registered on the basis of Guarantee contract no. 1604002877 dated 27 day of April 2016 in favour of the Existing Financing Lender in the amount of HRK 28,396,042.14 increased for fees and expenses;
 - second rank mortgage registered on the basis of Guarantee contract no. 1604002878 dated 27 day of April 2016 in favour of the Existing Financing Lender in the amount of HRK 28,396,042.14 increased for fees and expenses;
- (iii) Vessel 3 being:
- second rank mortgage registered on the basis of Fourth Preferred Mortgage dated 26 day of October 2016 in favour of the Existing Financing Lender in the amount of EUR 1.265.000;
 - third rank mortgage registered on the basis of Sixth Preferred Mortgage Agreement dated 25 day of January 2017 in favour of the Existing Financing Lender in the amount of EUR 2,400,000;
- (d) the Security that has been created in respect of the HBOR Financial Indebtedness (as long as it remains Permitted Financial Indebtedness (within the HBOR Exposure) and the Security is substantially same as the Security existing in respect of the indebtedness as at the date of this Agreement);
- (e) the Security that has been in respect of Trade Liabilities (as long as it remains Permitted Financial Indebtedness (within the Trade Exposure) and the Security conforms to the type, category and nature of the Security described in the definition of "Trade Liabilities")

and does not comprise Security over the production assets and revenues of the Borrower or any of the Vessels);

- (f) any lien arising by operation of law and in the ordinary course of trading; and
- (g) any other Security that is released prior to the first Utilisation.

"Pledge Registry" means the Croatian Central Depository and Clearing Company that is in charge of registering the Security created by any Share Pledge Agreement.

"Polar Expeditions" means POLAR EXPEDITIONS Inc., with registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH 96960, Reg. No. 94597, (PIN) OIB: 53048583904.

"Polaris Exploration" means Polaris Exploration Inc., with registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH 96960, reg. No. 94596, (PIN) OIB: 64394615428.

"Purchaser" means Star Clippers Ltd., a company duly incorporated in Bahamas, with its registered seat at Sassoon House, Victoria Avenue, Nassau, Bahamas, PIN (OIB): 64949191302.

"Quarter Date" means each of 31 March, 30 June, 30 September and 31 December.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

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

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

"Repeating Representations" means, subject to Clause 17.33 (*Times when representations are made*), each of the representations set out in Clause 17 (*Representations*).

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

"Sanctioned Person" means any natural or legal person designated by Sanctions including but not limited to any natural or legal person:

- (a) listed on, or owned or controlled (in each case, within the meaning of the relevant Sanctions regimes), either directly or indirectly, by a person listed on any Sanctions List;

- (b) located in, incorporated under the laws of, or owned or controlled (in each case, within the meaning of the relevant Sanctions regimes), either directly or indirectly, by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions (being, at the date of this Agreement, Cuba, Iran, North Korea, Sudan, South Sudan, Syria and Crimea/Sevastopol);
- (c) acting on behalf of any of the persons listed above; or
- (d) subject of Sanctions with which the Lender is prohibited from dealing or otherwise engaging in any transaction pursuant to a Sanctions Authority.

"Sanctions" means any sanctions under:

- (a) the laws and regulations administered or enforced by the United States of America relating to economic or financial sanctions or trade embargoes;
- (b) the laws and regulations enacted by the European Union relating to economic or financial sanctions or trade embargoes;
- (c) the economic sanctions, embargoes or any other restrictive financial and economic measures enacted by the United Nations Security Council under Article 41 of the United Nations Charter; and
- (d) any sanction imposed by Croatia so long as those sanction are in conformity with those described in paragraphs (a) to (c) above

and provided in each case that any of the above sanctions are not disappplied by any blocking or similar regulation by the European Union and the Lender is required to comply with those sanctions.

"Sanctions Authority" means

- (a) the United Nations Security Council;
- (b) the European Union;
- (c) the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC),
- (d) Her Majesty's Treasury;
- (e) the respective governmental institutions competent in financial sanctions matters, and
- (f) any other governmental institution or agency with responsibility for imposing, administering or enforcing Sanctions with jurisdiction over the Lender or any Obligor.

"Sanctions List" means any list issued or maintained and published by any Sanctions Authority of persons subject to Sanctions (including investment or related restrictions), each as amended, supplemented or substituted from time to time, for example the Specially Designated Nationals and Blocked Persons list maintained by OFAC.

"Secured Liabilities" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to the Lender under each Finance Document.

"Secured Party" means the Lender, a Receiver or any Delegate.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Security Asset" means all of the assets of the Transaction Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

"Security Document" means:

- (a) each of the documents listed in SCHEDULE 8 (*List of Security Documents*);
- (b) any other document evidencing or creating Security over any asset to secure any obligation of any Obligor to a Secured Party under the Finance Documents; or
- (c) any other document designated as such by the Lender and the Obligors.

"Security Property" means:

- (a) the Transaction Security expressed to be granted in favour of the Lender and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in respect of the Secured Liabilities to the Lender and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Lender; and
- (c) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Lender is required by the terms of the Finance Documents to hold.

"Shareholder" means DIV BRODOGRADNJA d.o.o., a company duly incorporated in Croatia, with its registered seat at Bobovica 10/A, Samobor, Croatia, registered with the court register of the Commercial Court in Zagreb under the registration number (MBS) 080812968, OIB: 44993645694.

"Shares" means 8,909,175 shares of the Borrower, share designation BIST-R-A, registered with the Pledge Registry, representing 99.83% of the entire share capital of the Borrower.

"Share Pledge Agreement" means the security agreement entered into by and between the Shareholder and the Lender on or around the date of this Agreement, establishing a pledge over the Shares, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"Ship Building Agreement" means the agreement entered into by and between the Borrower and the Purchaser dated 2 October 2014, as amended from time to time, in relation to the construction of Vessel 1.

"Ship Registry" means the competent ship registry in Croatia or the Marshall Islands that is in charge of registering the Security created by any of the Mortgage Agreements.

"Signing Date" means the date of signing of this Agreement.

"Subordinated Creditor" means:

- (a) the Shareholder; or
- (b) any other person who becomes a Subordinated Creditor in accordance with the Subordination Agreement.

"Subordinated Debt" has, in relation to a Subordinated Creditor, the meaning given to it in the Subordination Agreement (providing for the subordination of any and all indebtedness provided by that Subordinated Creditor to any indebtedness owed by any Obligor to the Lender).

"Subordination Agreement" means the subordination agreement entered into or to be entered into by the Borrower, the Subordinated Creditors and the Lender in an agreed form.

"Subsidiary" means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and **control** for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"TARGET Day" means any day on which TARGET2 is open for the settlement of payments in euro.

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

"Termination Date" means the day falling six Month from the Signing Date.

"Total Commitments" means the aggregate of the Commitments being €50,000,000 at the date of this Agreement.

"Trade Liabilities" means liabilities incurred or undertaken in the ordinary course of trade of the Borrower on customary arm's length commercial terms on an unsecured basis or, if secured, Security is created only in respect of:

- (a) the goods purchased, procured or supplied in case of indebtedness of the type described in paragraphs (e) and (g) of the definition of "Financial Indebtedness" and the indebtedness and security (if any) is discharged in 90 days from the incurrence of such indebtedness at the latest;
- (b) the cash deposited as Security for stand-by letters of credit or advance payment or other guarantees in case of indebtedness of the type described in paragraph (i) of the definition of "Financial Indebtedness"; or
- (c) debenture notes or promissory notes constituting or evidencing such relevant indebtedness.

"Tranche A" means the Facility made available to the Borrower pursuant to paragraph 2.1(a) (*The Facility*).

"Tranche A Commitment" means the amount of €33,000,000 to the extent not cancelled, reduced or transferred by it under this Agreement.

"Tranche A Loan" means a loan made or to be made under Tranche A or the principal amount outstanding for the time being of that loan.

"Tranche B" means the Facility made available to the Borrower pursuant to paragraph 2.1(b) (*The Facility*).

"Tranche B Commitment" means the amount of €17,000,000 to the extent not cancelled, reduced or transferred by it under this Agreement.

"Tranche B Loan" means a loan made or to be made under Tranche B or the principal amount outstanding for the time being of that loan.

"Transaction" means any and all of the transactions contemplated by this Agreement (including but not limited to the refinancing of the Existing Bank Loan, taking Security in respect of the Vessels and other assets as relevant and providing funding in relation to the construction of Vessel 4).

"Transaction Document" means:

- (a) a Finance Document;
- (b) the Ship Building Agreement;
- (c) any of the Insurances;
- (d) any other document designated as such by the Lender and the Obligors.

"Transaction Obligor" means:

- (a) any Obligor;

- (b) any Subordinated Creditor;
- (c) any Vessel Owner; and/or
- (d) any other person that provides Security in respect of the Finance Documents or is party to a Finance Document as an obligor (howsoever defined).

"Transaction Security" means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

"Transfer Certificate" means a certificate substantially in the form set out in SCHEDULE 4 (*Form of Transfer Certificate*).

"Unpaid Sum" means any sum due and payable but unpaid by an Obligor under the Finance Documents.

"Ultimate Beneficial Owner" means Ms Vjera Debeljak, Ms Vedrana Debeljak and Mr Tomislav Debeljak, each citizen of Croatia.

"US" means the United States of America.

"US Tax Obligor" means:

- (a) a borrower which is resident for tax purposes in the US; or
- (b) an obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

"Utilisation" means the utilisation of the Facility.

"Utilisation Date" means the date of the Utilisation, being the date on which a Loan is to be made.

"Utilisation Request" means a notice substantially in the form set out in SCHEDULE 3 (*Utilisation Request*).

"Valuation" means a valuation (including the Initial Valuation), prepared in accordance with the applicable laws and regulations governing the valuation of vessels, in form and substance satisfactory to the Lender, issued by the Valuer and addressed to the Lender valuing the Borrower's or the relevant Vessel Owner's interests in each Vessel on a market value basis.

"Valuer" means any valuer approved by the Lender, appointed on market terms whereby customary reliance and, as applicable, duty of care is owed by such person or firm to the Lender (including but not limited to the Valuer that has prepared the Initial Valuation).

"VAT" means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

"Vessel" or "Vessels" means, collectively:

- (a) the ship under construction registered with the Registry of Ships under Construction of the Harbour's Master's Office in Split, Croatia, registered with folio number 537, designation BRODOSPLIT 483, port of registry Split, gross tonnage 8770, neto tonnage 2630, a passenger ship, of the name Flying Clipper, owned by the Borrower ("**Vessel 1**");
- (b) the ship under construction registered with the Registry of Ships under Construction of the Harbour's Master's Office in Split, Croatia, registered with folio number 516, designation BRODOSPLIT 475, port of registry Split, CFR number -1064, a passenger ship, of the name Picasso, owned by Vessel Owner B ("**Vessel 2**");
- (c) the mega-yacht registered with the Office of the Maritime Administrator of the Republic of Marshall Islands, imo. no. 9712838, official no. 71106, call letters V7PA6, of the name Katina, a commercial motor yacht, owned by Vessel Owner C ("**Vessel 3**");

as described in more detail in any relevant Security Document.

"Vessel 4" means the ship under construction built by the Borrower, as builder, for Polaris Exploration, as buyer, in accordance with the ship building agreement for construction of a polar expedition cruise vessel entered dated 21 March 2018 (as amended from time to time).

"Vessel Owner" or "Vessel Owners" means, collectively:

- (a) River Cruise Shipping Inc., a company duly incorporated in Marshall Islands, with its registered seat at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, Reg. No. 39831, PIN (OIB): 77920860623, registered with Articles of incorporation dated on 22 October 2015 ("**Vessel Owner 2**"); and
- (b) BS Star Shipping Inc., a company duly incorporated in Marshall Islands, with its registered seat at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, Reg. No. 61608, PIN (OIB): 35505742989, registered with Articles of incorporation dated 21 May 2013 ("**Vessel Owner 3**").

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:

- (i) the "**Borrower**", "**Lender**", "**Guarantor**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;

- (ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Borrower and the Lender;
- (iii) "**assets**" includes present and future properties, revenues and rights of every description;
- (iv) "**director**" and "**board of directors**" includes their equivalents in any jurisdiction (including, without limitation, the director (*direktor*) and managing board (*uprava*) of any Croatian company);
- (v) "**disposal**" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and "**dispose**" will be construed accordingly;
- (vi) a "**Finance Document**" or "**Transaction Document**" or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (vii) "**guarantee**" means (other than in Clause 16 (*Guarantee and indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (viii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (ix) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
- (x) a "**law**" includes any treaty, directive, decree, order, government ordinance, government emergency ordinance, regulation, government decision and any other legislative or administrative act, and any norms, rules, circulars, guidance notes or other subordinate legislation or administrative procedure or indication, and reference to any provision of any law includes that provision as amended, modified, republished or re-enacted;
- (xi) a "**regulation**" includes any regulation, rule, official directive, request or guideline customarily accepted and complied with by those targeted by such guideline (whether or not having the force of law) of any gov-

ernmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

- (xii) a "**share**" in any company or corporation includes a reference to the shares (*dionice*) or social parts (*poslovni udjeli*), as applicable, of any Croatian joint stock company or limited liability company (or similar entity);
 - (xiii) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xiv) a time of day is a reference to Zagreb time.
- (b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
 - (c) Section, Clause and Schedule headings are for ease of reference only.
 - (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (e) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

1.3 Currency symbols and definitions

"€", "EUR" and "euro" denote the single currency of the Participating Member States.

"HRK" or "**Croatian kuna**" means the lawful currency for the time being of Croatia.

1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

- (c) Any Receiver or any person described in paragraph (b) may, subject to this Clause 1.4 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

1.5 Croatian terms

In this Agreement, where it relates to a Transaction Obligor registered or incorporated in Croatia, a reference to:

- (a) a **"bankruptcy, insolvency, administration, (general) composition, compromise, moratorium, restructuring, reorganisation"** or the like includes, without limitation, bankruptcy proceedings (*stečajni postupak*), pre-bankruptcy proceedings (*predstečajni postupak*) and special administration proceedings (*postupak izvanredne uprave*);
- (b) a(n) **"attachment, sequestration, distress, execution"** or the like includes, without limitation, enforcement proceedings (*ovrha*) and preliminary injunctions (*prethodne mjere* and *privremene mjere*);
- (c) a **"liquidator"** includes, without limitation, liquidators (*likvidatori*);
- (d) a **"receiver, administrator, administrative receiver, compulsory manager"** includes, without limitation, bankruptcy administrator (*stečajni upravitelj*), pre-bankruptcy receiver (*povjerenik u predstečajnom postupku*) and special administration receiver (*izvanredni povjerenik*); and
- (e) a **"winding-up, dissolution"** or the like includes, without limitation, liquidation (*likvidacija*).

SECTION 2 THE FACILITY

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lender makes available to the Borrower:

- (a) a euro term loan facility in an aggregate amount equal to the Total Tranche A Commitments; and
- (b) a euro term loan facility in an aggregate amount equal to the Total Tranche B Commitments,

in each case in accordance with the terms and conditions of this Agreement.

3. PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed as follows:

- (a) the amounts borrowed by it under Tranche A, towards refinancing the Existing Bank Loan; and
- (b) the amounts borrowed by it under Tranche B towards financing of the construction of the Vessel 4.

3.2 Monitoring

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Lender will only be obliged to comply with Clause 5.4 (*Utilisation*) in relation to any Utilisation if on or before the first Utilisation Date for that Utilisation, the Lender has received all of the documents and other evidence listed in SCHEDULE 2A (*Conditions precedent for Tranche A*) of SCHEDULE 2 (*Conditions precedent and subsequent*) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied.

4.2 Further conditions precedent

The Lender will only be obliged to comply with Clause 5.4 (*Utilisation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (i) no Default is continuing or would result from the proposed Loan; and
- (ii) the Repeating Representations to be made by each Obligor are true in all material respects.

4.3 Additional conditions precedent for Tranche B

Subject to Clause 4.2 (*Further conditions precedent*), the Lender will only be obliged to comply with Clause 5.4 (*Utilisation*) in respect to Tranche B Loan if the Lender has received all of the documents and other evidence listed in SCHEDULE 2B (*Conditions precedent for Tranche B*) of SCHEDULE 2 (*Conditions precedent and subsequent*) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied.

SECTION 3 UTILISATION

5. UTILISATION

5.1 Delivery of a Utilisation Request

- (a) The Borrower may utilise Tranche A of the Facility by delivery to the Lender of a duly completed Utilisation Request not later than 11:00 a.m. on the third Business Day before the relevant Utilisation Date for the proposed borrowing.
- (b) The Borrower may utilise Tranche B of the Facility by delivery to the Lender of a duly completed Utilisation Request not later than 11:00 a.m. on the third Business Day before the relevant Utilisation Date for the proposed borrowing.

5.2 Completion of a Utilisation Request

- (a) The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it specifies the Tranche (which is to be utilised);
 - (ii) it specifies the amount (that is proposed to be utilised from that Tranche by the Borrower) and the Account to which that relevant Loan is to be disbursed;
 - (iii) it specifies the purpose of the Loan;
 - (iv) the proposed Utilisation Date is a Business Day within the Availability Period; and
 - (v) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*).
- (b) Only one Utilisation Request may be given under this Agreement in respect of each Tranche.

5.3 Currency and amount

- (a) The currency specified in the Utilisation Request must be euros.
- (b) The amount of the proposed Loan must be equal to or less than:
 - (i) in respect to Tranche A, the Tranche A Commitment; and
 - (ii) in respect to Tranche B, the Tranche B Commitment,

and in no event is more than the Available Facility.

5.4 Utilisation

If the conditions set out in this Agreement have been met, the Lender shall make the requested Loan available by the relevant Utilisation Date.

5.5 Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loan

Subject to the terms of this Agreement, the Borrower shall repay the Loan in full on the Termination Date.

6.2 Re-borrowing

The Borrower may not re-borrow any part of the Facility which is repaid.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

If, in any applicable jurisdiction, it is or becomes unlawful or contrary to any regulation including Sanctions for the Lender to perform any of its obligations as contemplated by this Agreement or a Finance Document or to fund or maintain its participation in any Loan or to make payments under this Agreement as required under this Agreement (including to a blocked account) or it becomes unlawful for any Affiliate of the Lender for that Lender to do so:

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) the Available Commitment of the Lender will be immediately cancelled; and
- (c) the Borrower shall repay the Loan on the last day of the Interest Period for the Loan occurring after the Lender has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

7.2 Change of control

If the Ultimate Beneficial Owner (or any of them individually) ceases to own beneficially (directly or indirectly through wholly-owned Subsidiaries) at least 99.83% of the share capital of the Borrower or there is any other change in the ownership structure of the Borrower (in each case, without the prior written consent of the Lender):

- (i) the Borrower shall promptly notify the Lender upon becoming aware of that event;
- (ii) the Lender shall not be obliged to fund the Loan; and

- (iii) the Lender may, by not less than five days' notice to the Borrower, cancel the Commitments and declare all outstanding Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon those Commitments will be cancelled and all such outstanding Loan and amounts will become immediately due and payable.

7.3 Insurance cover

If any of the Insurances is terminated, annulled or revoked and is not renewed or replaced in five Business Days by the Borrower to the satisfaction of the Lender, the Lender may, by not less than five days' notice to the Borrower, cancel the Commitments and declare all outstanding Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon those Commitments will be cancelled and all such outstanding Loan and amounts will become immediately due and payable.

7.4 Mandatory prepayment

The Borrower must apply the following amounts in prepayment of the Loans and payment of prepayment fees in accordance herewith:

- (a) ~~the amount of Disposal Proceeds; and~~
- (b) the amount of Insurance Proceeds.

7.5 Voluntary cancellation

Subject to Clause 10.3 (*Prepayment Fee*), the Borrower may, if it gives the Lender not less than five Business Days' prior notice, cancel the whole or any part (being a minimum amount of €5,000,000) of the Available Facility. Any cancellation under this Clause 7.5 shall reduce the Commitments of the Lender rateably.

7.6 Voluntary prepayment of Loans

- (a) The Borrower may, if it gives the Lender not less than five Business Days' prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of €5,000,000).
- (b) A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

7.7 Right of repayment and cancellation in relation to the Lender

- (a) If:

- (i) any sum payable to the Lender by an Obligor is required to be increased under paragraph 11.2(c) of Clause 11.2 (*Tax gross-up*); or
- (ii) the Lender claims indemnification from the Borrower under Clause 11.3 (*Tax indemnity*) or Clause 12.1 (*Increased costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Lender notice of cancellation of the Commitment and its intention to procure the repayment of each Loan.

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of the Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay each Loan together with all interest and other amounts accrued under the Finance Documents.

7.8 Restrictions

- (a) Any notice of cancellation or prepayment or repayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment or repayment under this Agreement shall be made together with accrued interest on the amount prepaid and subject any prepayment and cancellation fees payable under this Agreement, without premium or penalty.
- (c) The Borrower may not re-borrow any part of the Facility which is repaid, prepaid or cancelled.
- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If all or part of the Lender's participation in a Loan is repaid or prepaid, an amount of the Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

**SECTION 5
COSTS OF UTILISATION**

8. INTEREST

8.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is equal to 3.00 (three) per cent per annum (fixed rate).

8.2 Payment of interest

The Borrower shall pay accrued interest on the Loan on each Interest Payment Date.

8.3 Default interest

(a) If an Obligor fails to pay any amount (other than an interest payment) payable by it under a Finance Document on its due date, interest shall accrue on such overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (c) below, is 2.00 (two) per cent. per annum higher than the rate applicable under Clause 8.1 (*Calculation of interest*).

(b) Any interest accruing under this Clause 8.3 shall be immediately payable by the Obligors on demand by the Lender.

(c) If any overdue amount (other than an interest payment) consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

(i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

(ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 2.00 (two) per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.

9. INTEREST PERIODS

9.1 Interest Periods

(a) Each Interest Period shall be one Month.

(b) Each Interest Period for the Loan shall start on its Utilisation Date or (if already made) on the last day of its preceding Interest Period and end on the next Interest Payment Date.

- (c) No Interest Period for the Loan shall extend beyond the Termination Date.
- (d) Notwithstanding paragraph (b) above, the first Interest Period of the Tranche B Loan shall end on the same day as the current Interest Period of the Tranche A Loan. On the last day of those Interest Periods, the Loans shall be consolidated and treated as one Loan.

9.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, the Interest Payment date will occur on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not) while the duration of such Interest Period will remain the same.

10. FEES

10.1 Upfront Fee

- (a) The Borrower shall pay to the Lender an upfront fee computed at a rate of three (3.00) per cent. of the Total Commitments.
- (b) The upfront fee is due at Signing Date and payable within two Business Days from the day of disbursement of the Tranche B Loan. The upfront fee must be paid by the Borrower from its own funds to an account of the Lender as notified by the Lender to the Borrower on or before the due date in accordance herewith (and no amount borrowed or proposed to be borrowed hereunder may be used for this purpose).
- (c) Any amount payable under this Clause 10.1 is exclusive of any value added tax or any Tax of a similar nature which might be chargeable in connection with that amount. If any value added tax or other Tax of a similar nature is chargeable in respect of any amount payable under this Clause 10.1, it must promptly be paid by the Borrower.
- (d) All payments to be made by the Borrower under this Clause 10.1 shall be made free and clear of and without any deduction for and on account of any set-off, counterclaim or otherwise. The Borrower waives its rights to set-off any claims it might have against the Lender under or in connection with this Clause 10.1.
- (e) Any amount paid in relation to the upfront fee is non-refundable and non-creditable against any other fee or amount payable in connection with any other Finance Document.

10.2 Commitment fee

- (a) The Borrower shall pay to the Lender a commitment fee computed at the rate of 1.50 per cent. per annum on the unutilized amount of the Facility.

- (b) The accrued commitment fee is payable on each Interest Payment Date during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

10.3 Prepayment fee

- (a) Subject to paragraph (c) below, the Borrower must pay to the Lender a prepayment fee if:
 - (i) all or any part of the Loan is prepaid, on the date of such prepayment; or
 - (ii) all or any part of the Available Commitment is cancelled, on the date of such cancellation.
- (b) The amount of the prepayment fee shall be equal to the amount of interest which would have accrued on the Loan so prepaid or cancelled according to Clause 8.1 (*Calculation of interest*) from the date of that relevant prepayment or cancellation until the Termination Date (interest-make-whole).
- (c) No prepayment fee shall be payable under this Clause 10.3 if the prepayment is made under Clause 7.1 (*Illegality*) or Clause 7.7 (*Right of repayment and cancellation in relation to the Lender*).
- (d) Paragraphs (c) to (e) of Clause 10.1 (*Upfront Fee*) shall apply to this Clause 10.3.

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

11. TAX GROSS UP AND INDEMNITIES

11.1 Definitions

(a) In this Agreement:

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

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

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

"Tax Payment" means either the increase in a payment made by an Obligor to the Lender under Clause 11.2 (*Tax gross-up*) or a payment under Clause 11.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 11 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

11.2 Tax gross-up

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

(b) Each Obligor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, in respect of a payment payable to the Lender, the Lender shall notify the relevant Obligor on becoming so aware.

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

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

- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the relevant Obligor shall deliver to the Lender evidence reasonably satisfactory to that Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

11.3 Tax indemnity

- (a) The Obligors shall within three (3) Business Days of demand by the Lender pay to the Protected Party an amount equal to the loss, liability or cost which the Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Protected Party in respect of a Finance Document.
- (b) Clause (a) shall not apply:
 - (i) with respect to any Tax assessed on the Lender:
 - i. under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
 - ii. ~~under the law of the jurisdiction in which the Lender's Facility~~ Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender;
 - (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 11.2 (*Tax gross-up*).
- (c) The Protected Party making, or intending to make, a claim pursuant to paragraph (a) of this Clause 11.3 shall promptly notify the Obligors of the event which will give, or has given, rise to the claim.

11.4 Tax Credit

If an Obligor makes a Tax Payment and the Lender determines that:

- (a) a Tax Credit is attributable to that Tax Payment; and
- (b) the Lender has obtained, utilised and retained that Tax Credit,

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

11.5 Stamp taxes

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

11.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to the Lender which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, if VAT is or becomes chargeable on any supply made by the Lender to any Party under a Finance Document and the Lender is required to account to the relevant tax authority for the VAT, that Party must pay to the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of that VAT (and the Lender must promptly provide an appropriate VAT invoice to that Party).
- (b) Where a Finance Document requires any Party to reimburse or indemnify the Lender for any cost or expense, that Party shall reimburse or indemnify (as the case may be) the Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

11.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within 10 Business Days of a reasonable request by another Party:

 - (i) confirm to that other Party whether it is:

 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige the Lender to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

11.8 FATCA Deduction

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

12. INCREASED COSTS

12.1 Increased costs

- (a) Subject to Clause 12.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Lender, pay for the account of the Lender the amount of any Increased Costs incurred by the Lender or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.
- (b) In this Agreement "**Increased Costs**" means:

- (i) a reduction in the rate of return from the Facility or on the Lender's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by the Lender or any of its Affiliates to the extent that it is attributable to the Lender having entered into its Commitment or funding or performing its obligations under any Finance Document.

12.2 Increased cost claims

- (a) In case the Lender intends to make a claim pursuant to Clause 12.1 (*Increased costs*) shall notify the Borrower of the event giving rise to the claim.
- (b) The Lender shall, as soon as practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

12.3 Exceptions

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) Clause 12.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a FATCA Deduction required to be made by a Party;
 - (ii) compensated for by Clause 11.3 (*Tax indemnity*); or
 - (iii) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.
- (c) In this Clause 12.3, a reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 11.1 (*Definitions*).

13. OTHER INDEMNITIES

13.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
 - (i) making or filing a claim or proof against that Obligor; or

- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

13.2 Other indemnities

The Borrower shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Secured Party any cost, loss or liability incurred by that Secured Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) ~~a failure by an Obligor to pay any amount due under a Finance Document on its due date;~~
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Secured Party alone); or
- (d) a Loan (or part of a Loan) not being prepaid or repaid in accordance with a notice of prepayment or repayment given by the Borrower.

14. MITIGATION BY THE LENDER

14.1 Mitigation

- (a) The Lender shall, in consultation with the Obligors, take all reasonable steps to mitigate any circumstances which arise and which would result in the Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 11 (*Tax gross up and indemnities*), Clause 12 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

14.2 Limitation of liability

- (a) The Borrower shall promptly indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 14.1 (*Mitigation*).
- (b) The Lender is not obliged to take any steps under Clause 14.1 (*Mitigation*) if, in the opinion of the Lender, to do so might be prejudicial to it.

15. COSTS AND EXPENSES

15.1 Transaction expenses

The Borrower shall promptly on demand pay to the Lender the amount of all pre-agreed costs and expenses (including legal fees) incurred to it in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and
- (b) any other Finance Documents executed after the date of this Agreement.

15.2 Amendment costs

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 24.6 (*Change of currency*),

the Borrower shall, within three Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.

15.3 Valuations

- (a) The Lender may request a Valuation at any time.
- (b) The Borrower shall promptly on demand pay to the Lender the costs of:
 - (i) the Initial Valuation;
 - (ii) a Valuation obtained by the Lender in connection with an insurance event affecting any of the Vessel or the relevant Security created in respect thereof; and
 - (iii) a Valuation obtained by the Lender at any time when a Default is continuing or is likely to occur as a result of obtaining that Valuation.

- (c) The Borrower must supply to the Lender a copy of any valuation of any Vessel an Obligor obtains, promptly upon obtaining it.
- (d) Any Valuation not referred to in paragraph (b) above will be at the cost of the Lender.

15.4 Enforcement and preservation costs

The Borrower shall, within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and with any proceedings instituted by or against that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

SECTION 8 GUARANTEE

16. GUARANTEE AND INDEMNITY

16.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to the Lender punctual performance by the Borrower of all that Borrower's obligations under the Finance Documents;
- (b) undertakes with the Lender that whenever the Borrower does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on first demand pay that amount as if it was the principal obligor; and
- (c) agrees with the Lender that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Lender immediately on demand against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 16 if the amount claimed had been recoverable on the basis of a guarantee.

16.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by the Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

16.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of the Borrower or any security for those obligations or otherwise) is made by the Lender in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 16 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

16.4 Waiver of defences

The obligations of each Guarantor under this Clause 16 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 16 (without limitation and whether or not known to it or the Lender) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Affiliate of the Borrower;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

16.5 Immediate recourse

Each Guarantor waives any right it may have of first requiring the Lender to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 16.

16.6 Appropriations

Until all amounts which may be or become payable by the Borrower under or in connection with the Finance Documents have been irrevocably paid in full, the Lender may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Lender in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 16.

16.7 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Borrower under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 16:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 16.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with the Lender.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Lender by the Borrower under or in connection with the Finance Documents to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application in accordance with Clause 24 (*Payment mechanics*).

16.8 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Lender.

16.9 Limitation of Security

Each Guarantor agrees to become a Guarantor and to be bound by the terms of this Agreement and the other relevant Finance Documents as Guarantor in accordance with this Agreement; provided, however, that any provision or any term in the Agreement or any other Finance Document shall not be construed to create any obligation on any person or corporate body of the to act in violation of mandatory capital maintenance rules (in Croatian: *pravila za očuvanje kapitala*) ("**Croatian Capital Maintenance Rules**") within the meaning of Croatian laws, including, but without limitation to the relevant provisions of Companies Act. Should any liability or obligation of a Guarantor under this Agreement or any other Finance Document violate or contradict any of the Croatian Capital Maintenance

Rules as finally determined by the relevant competent authority, such liability or obligation shall be deemed to be replaced by a liability or obligation of a similar nature compliant with the Croatian Capital Maintenance Rules, which provides the best possible obligation or liability, including, without limitation, any alternative guarantee, indemnity or security interest (to the extent not prohibited by the Croatian Capital Maintenance Rules) in favour of the Lender.

SECTION 9
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 17 to the Lender at the times set out in Clause 17.33 (*Times when representations are made*).

17.1 Status

- (a) It is a duly incorporated and validly existing under the law of Croatia.
- (b) It has the power to own its assets and carry on its business as it is being conducted.
- (c) It is not a U.S. Tax Obligor.
- (d) It is neither insolvent nor over-indebted nor at risk to be insolvent or over-indebted.
- (e) As at the date of this Agreement and the date which is a Utilisation Date, SCHEDULE 6 (*Existing Financial Indebtedness*) and SCHEDULE 7 (*Existing Financial Security*) is true and correct in all respects and there are no liabilities or encumbrances that have not been disclosed to the Lender in those schedules.
- (f) Following the repayment of the Existing Bank Loan, Permitted Financial Indebtedness of the Borrower will comprise Trade Liabilities only (other than Financial Indebtedness that is created under the Finance Documents or constitutes Subordinated Debt).

17.2 Binding obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

17.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the Transaction Security do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or

- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

17.4 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

17.5 Validity and admissibility in evidence

- (a) All Authorisations required:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
 - (ii) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,have been obtained or effected and are in full force and effect.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Obligors have been obtained or effected and are in full force and effect.

17.6 Governing law and enforcement

- (a) Subject to the Legal Reservations, the choice of the governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
- (b) Subject to the Legal Reservations, any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

17.7 Deduction of Tax

It is not required to make any Tax Deduction from any payment it may make under any Finance Document to the Lender.

17.8 No filing or stamp taxes

Under the law of its Relevant Jurisdiction it is not necessary that the Transaction Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or

that any stamp, registration, notarial or similar Tax or fees be paid on or in relation to the Transaction Documents or the transactions contemplated by the Transaction Documents, except as required under the Security Documents.

17.9 VAT

The Obligors are not members of a value added tax group.

17.10 Taxation

(a) The Obligors:

- (i) are not overdue in the filing of any Tax returns in any Relevant Jurisdiction;
- (ii) have paid or discharged all Taxes due and payable by any of them (within the period prescribed for such payment) other than Taxes which the Borrower is contesting in good faith by appropriate proceedings and in respect of which reasonably adequate reserves have been established in each case to the satisfaction of the Lender;
- (iii) do not have any overdue Tax liabilities; and
- (iv) have not been informed of or are otherwise not aware of any claims or investigations that are pending or are reasonably likely to be launched or processed as against any of them on account of or in respect of Tax.

(b) The Obligors are residents for Tax purposes only in Croatia.

17.11 No default

- (a) No Event of Default and, as at the date of this Agreement and each Utilisation Date, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, or the performance of, or any transaction contemplated by, any Transaction Document.
- (b) As at the first Utilisation Date, there is no outstanding breach of any term of any Transaction Document and no person has disputed, repudiated or disclaimed liability under any Transaction Document or evidenced an intention to do so.
- (c) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or a termination event (however described) under any other agreement or instrument which is binding on it or to which any of its assets are subject which has or is reasonably likely to have a Material Adverse Effect.

17.12 Insolvency

(a) No:

- (i) corporate action, legal proceeding or other procedure or step described in Clause 21.7 (*Insolvency proceedings*); or
- (ii) creditors' process described in Clause 21.8 (*Creditors' process*),

has been taken or threatened in relation to any of the Obligors.

(b) None of the circumstances described in Clause 21.6 (*Insolvency*) applies to any of the Obligors.

17.13 Information

(a) All information supplied by it or on its behalf to the Lender in connection with the Transaction Documents and the Transaction (including, but not limited to the Dispute) was true and accurate as at the date it was provided or as at any date at which it was stated to be given.

(b) ~~Any information provided to the Lender in connection with the Transaction (including, but not limited to the Dispute) was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given.~~

(c) Any financial projection or forecast contained in the information referred to in paragraphs (a) and 17.3(b) above has been prepared as at their date on the basis of recent historical information and on the basis of reasonable assumptions.

(d) The expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of any information provided to the Lender in connection with the Transaction (including, but not limited to the Dispute) were made after commercially reasonable consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on commercially reasonable grounds.

(e) No event or circumstance has occurred or arisen and no information has been omitted from the information provided to the Lender in connection with the Transaction (including, but not limited to the Dispute) and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the information provided to the Lender in connection with the Transaction being untrue or misleading in any material respect to the best of the knowledge and belief of the Borrower after commercially reasonable enquiry.

- (f) It has not omitted to supply information which, if disclosed, would make any of the information referred to in paragraph (a) above untrue or misleading in any material respect.
- (g) As at the first Utilisation Date, nothing has occurred since the date of the information referred to in paragraph (a) above which, if disclosed, would make that information untrue or misleading in any material respect.

17.14 Financial statements

- (a) The Original Financial Statements were prepared in accordance with IFRS consistently applied.
- (b) The Original Financial Statements fairly present the relevant Obligor's financial condition as at the end of the relevant Financial Year and results of operations during the relevant Financial Year.
- (c) Its Original Financial Statements (if audited) give a true and fair view of its financial condition and results of operations during the relevant Financial Year.
- (d) There has been no material adverse change in the assets, business or financial condition of any Obligor since the date of the relevant Original Financial Statements.
- (e) Its most recent financial statements delivered pursuant to Clause 18.1 (*Financial statements*):
 - (i) have been prepared in accordance with IFRS as applied to the Original Financial Statements; and
 - (ii) fairly present its financial condition as at the end of the relevant Financial Year and operations during the relevant Financial Year.
- (f) Since the date of the most recent financial statements delivered pursuant to Clause 18.1 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition.
- (g) The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

17.15 Title to Vessels

- (a) The Borrower and each of the Vessel Owners has good and marketable title to the relevant Vessel, free from Security (other than those created by or pursuant to the Security Documents, any Existing Security which will be discharged and

released in accordance with the Pay-Off Letter and Permitted Security) and restrictions and onerous covenants.

- (b) The Vessels are not encumbered with any maritime or common lien in any jurisdiction or any other claim that has priority over or is otherwise privileged in respect to any Security that has been taken by the Lender in connection with this Agreement.
- (c) Without limiting the generality of the foregoing:
 - (i) the Borrower is the full registered owner of Vessel 1;
 - (ii) Vessel Owner 2 is full registered owner of Vessel 2; and
 - (iii) Vessel Owner 3 is full registered owner of Vessel 3.
- (d) From the first Utilisation Date:
 - (i) no breach of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of the Vessels;
 - (ii) there is no covenant, agreement, stipulation, reservation, condition, interest, right or other matter whatsoever adversely affecting the Vessels;
 - (iii) nothing has arisen or has been created or is outstanding which would be an overriding interest, or an unregistered interest which overrides first registration or a registered disposition, over the Vessels; and
 - (iv) the Borrower or the Vessel Owner have not received any notice of any adverse claim by any person in respect of the ownership of the Vessels or any interest in it which might reasonably be expected to be determined in favour of that person, nor has any acknowledgement been given to any such person in respect of the Vessels (other than the Dispute).
- (e) All deeds and documents necessary to show good and marketable title to the Borrower's and Vessel Owners' interests in the Vessels have been delivered to the Lender under SCHEDULE 2 (*Conditions precedent and subsequent*) and there are no deeds, contracts, covenants, documents, resolutions or Authorisations in existence which would make any of the statements set out in this Clause 17.15 untrue or misleading.

17.16 Information for reports & analysis

- (a) The information supplied by it or on its behalf to the lawyers, accountants, auditors, engineers or surveyors or other consultants who prepared any report or

analysis (including but not limited to the Dispute) for the purpose of this Agreement or the transactions contemplated thereby was true and accurate in all material respects as at the date of the relevant report or analysis (including but not limited to the Dispute) or (if appropriate) as at the date (if any) at which it is stated to be given.

- (b) The information referred to in paragraph (a) above was at the date it was expressed to be given complete and did not omit any information which, if disclosed would make that information untrue or misleading in any material respect.
- (c) As at the first Utilisation Date, nothing has occurred since the date of any information referred to in paragraph (a) above which, if disclosed, would make that information untrue or misleading in any material respect.

17.17 Valuation

- (a) All information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate in all material respects as at its date or (if appropriate) as at the date (if any) at which it is stated to be given.
- (b) It has not omitted to supply any information to the Valuer which, if disclosed, would adversely affect a Valuation.
- (c) As at the first Utilisation Date, nothing has occurred since the date the information referred to in paragraph (a) above was supplied which, if it had occurred prior to the Initial Valuation, would have adversely affected the Initial Valuation.

17.18 Pari passu ranking

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

17.19 No proceedings

- (a) No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect, have (to the best of its knowledge and belief (having made due and careful enquiries)) been started or threatened against it.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it.

17.20 No liabilities

- (a) The Borrower has not incurred Financial Indebtedness other than Financial Indebtedness permitted by this Agreement.
- (b) No Security or Quasi-Security exists over all or any of the present and future assets of an Obligor other than as permitted by this Agreement.
- (c) There are no Tax liabilities that have not been disclosed to the Lender.

17.21 Centre of main interests and establishments

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its Original Jurisdiction and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

17.22 Ranking of Security

Subject to the Legal Reservations, Perfection Requirements, discharge and release of the Existing Security in accordance with the Pay-Off Letter and Permitted Security, the security conferred by each Security Document constitutes or will constitute a security interest of the type described, over the assets referred to, in that Security Document.

17.23 Shares

- (a) The shares of the Borrower are validly issued, fully paid and not subject to any option to purchase or similar rights.
- (b) The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security.
- (c) There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any Obligor (including any option or right of pre-emption or conversion).

17.24 Transaction Documents, disclosures and other documents

- (a) There is no disclosure made in respect of the Transaction Documents which has or may have a material adverse effect on any of the information, opinions, intentions, forecasts and projections contained or referred to in the information provided to the Lender in connection with the Transaction.
- (b) The Ship Building Agreement and each Insurance contains all material terms of the underlying transaction in respect of the relevant Vessel and there are no agreements or arrangements in connection thereunder that have not been disclosed to the Lender.

17.25 No breach of laws

It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

17.26 Environmental laws

- (a) It is in compliance with Clause 20.7 (*Environmental matters*) and no circumstances have occurred which would prevent that performance or observation where failure to do so, would have a Material Adverse Effect.
- (b) No Environmental Claim is current or pending or threatened against it which if adversely determined, would have a Material Adverse Effect.

17.27 Ownership

The Shareholder is the legal and beneficial owner of the Shares.

17.28 Sanctions

- (a) To the best of its knowledge (after due enquiry), none of the Obligors or any of their respective directors, officers or employees (the "**Relevant Person or Entity**") is a Sanctioned Person, and none of Relevant Persons or Entities acts directly or indirectly on behalf of a Sanctioned Person.
- (b) Save as disclosed in writing to the Lender before the date of this Agreement, no Obligor is incorporated, located or resident in a country which is subject to Sanctions, if this is in breach of a specific sanctions program.
- (c) The Borrower is in compliance with all applicable Sanctions and is not engaged in any activities that would reasonably be expected to result in a Borrower being designated as a Sanctioned Person.

17.29 Anti-corruption law

It has conducted its business in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

17.30 Corporate documents

Its documents of incorporation as provided to the Lender are registered and valid.

17.31 Business Licenses

Any and all existing business licenses of the Borrower are valid and will remain valid following the execution and perfection of the Transaction Security or occurrence of the event as provided by Clause 7.2 (*Change of control*).

17.32 Acting as principal

In all matters relating to the Finance Documents, the Borrower is acting as a principal for its own account and not as agent and trustee or in any other capacity whatsoever on behalf of any third party.

17.33 Times when representations are made

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of this Agreement, on the date of each Utilisation Request, on each Utilisation Date and the first day of each Interest Period except those contained in paragraphs 18.1(a) 18.1(b) Clause 17.14 (*Financial statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement.

18. INFORMATION UNDERTAKINGS

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

18.1 Financial statements

Each Obligor shall supply to the Lender:

- (a) its management accounts consolidated (if applicable) for each Financial Quarter prepared in accordance with IFRS consistently applied, as soon as they are available, but in any event within 60 days after the end of the relevant Financial Quarter; and
- (b) its audited financial statements (comprising a balance sheet, profit and loss statement, cash flow statement and management discussion and analysis) consolidated (if applicable) for that Financial Year prepared in accordance with IFRS consistently applied, as soon as they are available, but in any event within 120 days after the end of each of its Financial Years.

18.2 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Borrower pursuant to Clause 18.1 (*Financial statements*) shall (i) be prepared by an accounting firm acceptable for the Lender, (ii) be certified by a director of the relevant company as fairly presenting (or, if audited, giving a true and fair view of) its financial condition as at the date as at which those financial statements were drawn up and (iii) include a balance sheet, profit and loss statement, cash-flow statement and a management commentary.
- (b) The Borrower shall procure that each set of financial statements delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using IFRS.

- (c) The Borrower shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using IFRS, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, the Obligors notifies the Lender that there has been a change in IFRS, the accounting practices or reference periods and its Auditors (or, if appropriate, the auditors of the Obligor) deliver to the Lender a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared.
- (d) Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.
- (e) The Borrower shall ensure that the Lender is at all times authorised to communicate directly with the Auditors provided that the Borrower receives a copy of any such communication.

18.3 Year-end

The Borrower shall ensure that each Financial Year-end falls on 31 December.

18.4 Information: miscellaneous

The Obligors shall supply to the Lender:

- (a) at the same time as they are dispatched, copies of all documents dispatched by an Obligor to its shareholders generally (or any class of them) or its creditors generally (or any class of them) at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations which are current, threatened or pending against any Obligor, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;
- (c) promptly, such further information regarding the financial condition, business and operations of any Obligor as the Lender may reasonably request;
- (d) promptly upon becoming aware of them, the details of any proposed change in the management or direct or indirect ownership of the Borrower or an Obligor;
- (e) information about the use of proceeds of Tranche B;
- (f) monthly reports about the progress with the construction and the completion of Vessel 1;
- (g) any information about the Dispute, promptly upon receipt by an Obligor;

- (h) information in case part of any Vessel (other than Vessel 4) is destroyed or materially damaged and any event or circumstance affecting such Vessel or the Security created in respect thereof (including any maritime or common law liens or similar encumbrances arising under law);
- (i) information on changes in respect to the Insurances, any claims made on those relevant Insurances and the receipt of any Insurance Proceeds; and
- (j) information on occurrence of any event as described under Clause 21.14 (*Expropriation*).

18.5 Notification of default

- (a) Each Obligor shall notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a written request by the Lender setting out in reasonable detail the reasons for such request, the Obligor shall supply to the Lender a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

18.6 "Know your customer" checks

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of an Obligor (or of a Holding Company of an Obligor), or the composition of the shareholders of an Obligor (or of a Holding Company of an Obligor) after the date of this Agreement (of which the Obligors must promptly upon becoming aware notify the Lender); or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or, in the case of the event described in par-

agraph (iii) above, on behalf of any prospective new Lender) in order for the Lender, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

19. GENERAL UNDERTAKINGS

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 Authorisations

The Borrower shall, and shall procure that each Vessel Owner will, promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Lender of any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
 - (i) enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document; or
 - (ii) own its assets and carry on its business as it is being conducted.

19.2 Compliance with laws

The Obligors shall comply and shall procure that each Vessel Owner will comply in all respects with all laws to which they may be subject, if failure so to comply has or is likely to have a Material Adverse Effect.

19.3 Negative pledge

In this Clause 19.3, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

- (a) The Borrower shall not, without the prior written consent of the Lender, create or permit to subsist any Security over any of its assets.
- (b) The Borrower shall not, without the prior written consent of the Lender:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor;

- (ii) sell, transfer or otherwise dispose of any of its receivables on re-course terms;
- (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (iv) enter into any other preferential arrangement having a similar effect,
in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security that is Permitted Security.

19.4 Disposals

- (a) The Borrower shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to dispose of all or any part of any asset (other than as permitted by the Transaction Documents).
- (b) Clause (a) above does not apply to any sale, lease, transfer or other disposal of any asset:
 - (i) made in the ordinary course of trading of the disposing entity; or
 - (ii) in exchange for other assets comparable or superior as to type, value and quality.
- (c) The Borrower must ensure that the Disposal Proceeds are immediately applied in accordance with Clause 7.4 above.

19.5 Financial Indebtedness

- (a) The Borrower may not incur or permit to be outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to any Permitted Financial Indebtedness.

19.6 Lending and guarantees

- (a) The Borrower may not be the creditor in respect of any loan or any form of credit to any person.
- (b) The Borrower may not give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which the Borrower assume any liabil-

ity of any other person other than any guarantee or indemnity given under the Finance Documents or as Permitted Financial Indebtedness.

- (c) Paragraph (a) above does not apply to loans extended by the Borrower to its Affiliates if the aggregate amount of those loans does not at any time exceed €200,000 in total and the debt is fully and finally discharged within 60 days.
- (d) Notwithstanding the generality of the foregoing the Borrower must in no later than 60 days from the Signing Date provide written evidence satisfactory to the Lender to the effect that the HBOR Guarantee (in so far as it relates to the HBOR Financial Indebtedness that has been incurred by Polar Expeditions) is cancelled and released by HBOR or otherwise terminated and no longer in effect (without there being any continued obligation or liability on an Obligor arising out of or in connection the HBOR Guarantee in so far as it relates to the HBOR Financial Indebtedness that has been incurred by Polar Expeditions).

19.7 Merger

No Obligor shall without the prior written consent of the Lender enter into any amalgamation, demerger, merger or corporate reconstruction.

19.8 Change of business

The Borrower shall procure that no change is made to the general nature and scope of the business of the Borrower from that carried on at the Signing Date, irrespective of whether such change would alter the general nature and scope of the business carried on by the Borrower.

19.9 Acquisitions

The Borrower may not make any acquisition or investment other than as permitted under this Agreement.

19.10 Other agreements

The Borrower may not enter into any material agreement other than:

- (a) the Transaction Documents;
- (b) any agreement in the ordinary course of business on arm's length terms;
- (c) any other agreement expressly allowed under any other term of this Agreement; and
- (d) with the prior written consent of the Lender.

19.11 Shares, dividends and share redemption

- (a) The Borrower may not, without the previous written consent of the Lender, issue any further shares or amend any rights attaching to its issued shares.
- (b) Except as permitted under paragraph (c) below, the Borrower shall not (unless expressly allowed under any other terms of this Agreement):
 - (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
 - (ii) repay or distribute any dividend or share premium reserve;
 - (iii) pay any management, advisory or other fee to or to the order of any of its direct or indirect shareholders (including for the avoidance of doubt any Ultimate Beneficial Owner) which would exceed €140,000 in total in any Month; or
 - (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.
- (c) Paragraph (b) above does not apply to any distribution that has been approved by the Lender in writing.

19.12 Preservation of assets

Each Obligor shall repair and maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

19.13 Pari passu ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of the Lender against it under the Finance Documents rank at least *pari passu* with the claims of all of its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

19.14 VAT group

The Borrower may not be a member of a value added tax group.

19.15 Taxes

- (a) The Borrower must pay all Taxes due and payable by it prior to the accrual of any fine or penalty for late payment, unless (and only to the extent that):
 - (i) payment of those Taxes is being contested in good faith;

- (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them; and
 - (iii) failure to pay those Taxes is not reasonably likely to have a Material Adverse Effect.
- (b) The Borrower must ensure that its residence for Tax purposes is in its Original Jurisdiction.

19.16 Ownership

The Borrower must ensure that at all times the Shares are legally and beneficially owned and controlled by the Shareholder.

19.17 Subordination

The Borrower shall ensure that any and all indebtedness of the Borrower owed to its shareholders or their Affiliates (including without limitation dividend payments, payments under any intercompany loans) shall be subordinated to the Facility during the term of this Agreement on the terms of the Subordination Agreement.

19.18 Intellectual Property

- (a) Each Obligor shall:
- (i) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Obligor;
 - (ii) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
 - (iii) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property necessary for the business of the relevant Obligor in full force and effect and record its interest in that Intellectual Property;
 - (iv) not use or permit the Intellectual Property necessary for the business of the relevant Obligor to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of that Intellectual Property or imperil the right of any Obligor to use such property; and
 - (v) not discontinue the use of the Intellectual Property necessary for the continuing business of any Obligor.
- (b) Failure to comply with any part of paragraph (a) above shall not be a breach of this Clause 19.18 (*Intellectual Property*) to the extent that any dealing with In-

tellectual Property which would otherwise be a breach of paragraph (a) above is approved by the Lenders.

19.19 Financial assistance

Each Obligor shall comply in all respects with any financial assistance legislation in any Relevant Jurisdiction including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

19.20 Centre of main interests and establishments

Each Obligor must take all necessary actions to ensure that, at all times, for the purposes of the Regulation, its centre of main interest (as that term is used in Article 3(1) of the Regulation) is its jurisdiction of incorporation and that it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction, such actions to include, without limitation, the taking of all corporate actions in that jurisdiction and the employment of no employees other than in that jurisdiction (and only to the extent permitted under this Agreement).

19.21 Claims on valuers or advisers etc.

~~Each Obligor, in its capacity as addressee or co-addressee of any report, shall not (without the prior written consent of the Lender) bring any claim in respect of that report against the provider of that report.~~

19.22 Compliance with Sanctions

The Borrower shall and shall ensure that each Obligor will:

- (a) not maintain or undertake any activity or conduct (including by omission) which would cause the Lender to be in breach of Sanctions;
- (b) not, and shall not permit or authorize any other person, directly or indirectly, to use, lend, contribute, or otherwise make available proceeds or other services provided by the Lender to the Borrower for any purposes which may lead to a violation of Sanctions by the Lender;
- (c) not, act directly or indirectly for or on behalf or at the directive of any Sanctioned Person or in a manner that would contribute to a violation of Sanctions by the Lender;
- (d) not use any revenue or benefit derived from any activity or dealing with a Sanctioned Person to discharge any obligation due to the Lender;
- (e) ~~notify the Lender without undue delay and provide the Lender with the relevant documents in case actions to be performed by the Lender require a prior authorization from the competent authority due to Sanctions;~~

- (f) notify the Lender without undue delay upon becoming aware of the occurrence of any event or circumstance relating to Sanctions which could reasonably be expected to result in the Lender having the right to require repayment under Clause 7.1 (*Illegality*).

19.23 Conditions Subsequent

The Transaction Obligors must comply with SCHEDULE 2C (*Conditions subsequent*) of SCHEDULE 2 (*Conditions precedent and subsequent*) as set out therein.

19.24 Further Assurance

The Borrower shall (at their own expense) take whatever action the Lender may reasonably request for:

- (a) perfecting and protecting the Security created or intended to be created by the Security Documents over any Security Asset (including but not limited to any future Security Asset or Security Asset acquired, created, generated or brought about by law to the Lender);
- (b) facilitating, following an Event of Default and following a notice served by the Lender on the Borrower or any of them pursuant to Clause 21.17 (*Acceleration*), any enforcement and realization of Security,
- (c) including (but not limited to) the execution of any transfer, assignment or assurance of property, the giving of a notice, order or direction and the making of any registration which the Lender may reasonably consider expedient.

19.25 Amendments to corporate documents

In case any Obligor makes any amendments whatsoever to any its corporate documents, including but not limited to its statute or incorporation deed, it shall provide the Lender with certified copies of the documentation evidencing such amendments within three Business Days of the registration of such changes.

19.26 Changes to the management

The Borrower undertakes to inform the Lender within ten Business Days of any change to the members of the Management Board of the Borrower.

19.27 Application of FATCA

The Borrower shall procure that no Obligor shall become a US Tax Obligor.

20. VESSEL RELATED UNDERTAKINGS

20.1 Title

- (a) The Borrower shall, and it shall procure that the Vessel Owner will, exercise their rights and comply in all respects with any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Vessels.
- (b) The Borrower may not agree, and it shall procure that the Vessel Owner does not agree, to any amendment, supplement, waiver, surrender or release of any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Vessels.
- (c) The Borrower must, and it must procure that the Vessel Owner will, promptly take all such steps as may be necessary or desirable to enable the Security created by the Security Documents to be registered, where appropriate, at the applicable registry.
- (d) The Borrower and each Vessel Owner shall ensure that:
 - (i) each Vessel is at all time operated in accordance with the relevant laws and regulations; and
 - (ii) none of the Vessels is modified in any material fashion without the prior written consent of the Lender.
- (e) ~~The Borrower may not, and it shall procure that the Vessel Owner of Vessel 1~~ and Vessel 2 does not, lease Vessel 1 and Vessel 2 to any person including a charter-party without obtaining prior consent from the Lender.

20.2 Notices

The Borrower must, within 14 days after the receipt by the Borrower or Vessel Owner of any application, requirement, order or notice served or given by any public or local or any other authority or any landlord with respect to the Vessels (or any part of it):

- (a) deliver a copy to the Lender; and
- (b) inform the Lender of the steps taken or proposed to be taken to comply with the relevant requirement, order or notice.

20.3 Investigation of title

The Borrower must grant the Lender or its lawyers on request all facilities within the power of the Borrower to enable the Lender or its lawyers to:

- (a) carry out investigations of title to the Vessels; and
- (b) ~~make such enquiries in relation to any part of the Vessel as a prudent mortgagee might carry out.~~

20.4 Power to remedy

- (a) If a Borrower fails to perform any obligations under the Finance Documents affecting the Vessels, it must allow the Lender or its agents and contractors:

 - (i) to enter any facility where the Vessel is located;
 - (ii) to comply with or object to any notice served on the relevant Borrower in respect of the Vessels; and
 - (iii) to take any action that the Lender may reasonably consider necessary to prevent or remedy any breach of any such term or to comply with or object to any such notice.
- (b) The Borrower must immediately on request by the Lender pay the costs and expenses of the Lender or its agents and contractors incurred in connection with any action taken by it under this Clause 20.4.
- (c) The Lender shall not be obliged to account as mortgagee in possession as a result of any action taken under this Clause 20.4.
- (d) In case enforcement in respect to the Vessels is initiated by the Lender on the basis of a Mortgage Agreement, the Borrower shall, and it shall procure that the Vessel Owner will, allow the Lender to undertake any measures that the Lender deems appropriate and necessary for sake of the enforcement.

20.5 Access

- (a) The Borrower will ensure that representatives of the Lender (including all consultants) and the Lender are allowed, within a reasonable time of a written notice:

 - (i) access during normal business hours to inspect and examine:

 - (A) the relevant Vessel; and
 - (B) the records and technical and other data with respect to the Vessel; and
 - (ii) to meet with supervisors on behalf of the Borrower and the Vessel Owner.

20.6 Insurances

- (a) The Borrower must ensure that at all times from the Signing Date Insurances are maintained at all times in full force and effect, which in respect of each Vessel provide insurance cover in respect of:

- (i) Hull and machinery insurance for Vessel 3 for the fair market value of the ship as established in the most recent Valuation;
 - (ii) Builder's Risk insurance for Vessel 1 and 2 for value equal at least to the contract price of Vessel 1;
 - (iii) War risks insurance;
 - (iv) Protection and indemnity insurance (only for the Vessel in operation. Vessels under construction do not have P&I insurance – the P&I risks are covered by the Builder's Risk insurance policy); and
 - (v) Pollution risks insurance for Vessel 3.
- (b) The Borrower must procure that the Insurances comply with the following requirements:
- (i) each of the Insurances must contain:
 - (A) a non-invalidating and non-vitiating clause under which the Insurances will not be avoided or vitiated as against any insured party as a result of any circumstances beyond the control of that insured party or any misrepresentation, non-disclosure, or breach of any policy term or condition, on the part of any other insured party or any agent of any other insured party;
 - (B) a waiver of the rights of subrogation of the insurer as against each Obligor, each Secured Party and the tenants or users of the Vessels other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of the Vessels or any Insurance; and
 - (C) a loss payable clause (in Croatian: *vinkulacija*) under which the Lender is named as first loss payee in respect of any claim or series of connected claims (other than in respect of any claim under any public liability and third party liability insurances);
 - (ii) each insurer must give at least 30 days' notice to the Lender if it proposes to:
 - (A) repudiate, rescind or cancel any Insurance;
 - (B) treat any Insurance as avoided in whole or in part;

(C) treat any Insurance as expired due to non-payment of premium; or

(D) otherwise decline any claim under any Insurance by or on behalf of any insured party,

and, in respect of paragraph (C) above, must in the notice give the Lender the opportunity to rectify any such non-payment of premium within the notice period; and

(iii) the Borrower must be free to assign or otherwise grant Security over all amounts payable to it under each of its Insurances and all its rights in connection with those amounts in favour of the Lender.

(c) The Borrower must use all reasonable endeavours to ensure that the Lender receives copies of the Insurances, receipts for the payment of premiums for insurance and any information in connection with the Insurances and claims under them which the Lender may reasonably require.

(d) The Borrower must promptly notify the Lender of:

(i) the proposed terms of any future renewal of any of the Insurances;

(ii) any amendment, supplement, extension, termination, avoidance or cancellation of any of the Insurances made or, to its knowledge, threatened or pending;

(iii) any claim, and any actual or threatened refusal of any claim, under any of the Insurances; and

(iv) any event or circumstance which has led or may lead to a breach by any Obligor of any term of this Clause 20.6.

(e) Each Obligor and Vessel Owner must:

(i) comply with the terms of the Insurances;

(ii) not do or permit anything to be done which may make void or voidable any of the Insurances; and

(iii) comply with all reasonable risk improvement requirements of its insurers.

(f) The Borrower must ensure that:

(i) each premium for the Insurances is paid within the period permitted for payment of that premium; and

- (ii) all other things necessary are done so as to keep each of the Insurances in force.
- (g) If an Obligor or Vessel Owner fails to comply with any term of this Clause 20.6, the Lender may, at the expense of the Obligors, effect any Insurance and generally do such things and take such other action as the Lender may reasonably consider necessary or desirable to prevent or remedy any breach of this Clause 20.6.
- (h) The Borrower shall ensure that all Insurances are made with the Insurer and/or placed through brokers approved by the Lender in writing and the Borrower shall not settle any claim of Insurance without first having consulted with the Lender.

20.7 Environmental matters

- (a) The Borrower must:
 - (i) comply and ensure that any relevant third party complies with all Environmental Law;
 - (ii) ~~obtain, maintain and ensure compliance with all requisite Environmental Permits applicable to them or to the relevant Vessel; and~~
 - (iii) implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to them or the relevant Vessel,
 - (iv) where failure to do so has or is reasonably likely to have a Material Adverse Effect or result in any liability for the Lender.
- (b) The Borrower must, promptly upon becoming aware, notify the Lender of:
 - (i) any Environmental Claim started, or to their knowledge, threatened;
 - (ii) any circumstances reasonably likely to result in an Environmental Claim; or
 - (iii) any suspension, revocation or notification of any Environmental Permit.
- (c) The Borrower must indemnify the Lender against any loss or liability which:
 - (iv) the Lender incurs as a result of any actual or alleged breach of any Environmental Law by any person; and
 - (v) would not have arisen if a Finance Document had not been entered into,

- (vi) unless it is caused by the Lender's gross negligence or wilful misconduct.

20.8 Ship related covenants

The Borrower must ensure that:

- (i) each Vessel maintains its registration with the ship registry of the flag state;
- (ii) no Vessel has dual or bareboat registration;
- (iii) it will not change the Vessel's classification society without the prior written consent of the Lender;
- (iv) Vessel 3 complies with laws, including the International Safety Management Code, International Ship and Port Facility Code and international environmental laws;
- (v) Vessel 3's class notation is maintained, and the relevant Vessel complies with mandatory classification requirements;
- (vi) it will submit Vessel 3 for periodic surveys by the relevant classification society;
- (vii) the relevant Vessel is not engaged in any trade which contravenes Sanctions and that the ship is not used by a Sanctioned charterer; and
- (viii) an adequate GPS device is incorporated and maintained on each Vessel that will enable the Lender to track the Vessel at any time.

20.9 Minimum loan to value covenant

- (a) The Borrower shall ensure that the Minimum Value Ratio is at all times at least 50%.
- (b) For the purposes of any Finance Document:

"Minimum Value Ratio" means the outstanding Loan divided by the Charges Adjusted Aggregate Market Value.

"Charges Adjusted Aggregate Market Value" means the aggregate fair market value of the Vessels as established in the most recent Valuation reduced by the value of any mortgages or charges ranked prior to the mortgages established in the favour of the Lender in accordance with the Transaction Security.

21. EVENTS OF DEFAULT

21.1 Non-payment

The Transaction Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within three Business Days of its due date.

21.2 Financial Covenant

Any requirement of Clause 20.9 (*Minimum loan to value covenant*) is not satisfied.

21.3 Other obligations

- (a) The Transaction Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within five Business Days of the earlier of (i) the Lender giving notice to the Borrower and (ii) any Transaction Obligor becoming aware of the failure to comply.

21.4 Misrepresentation

Any representation or statement made or deemed to be made by a Transaction Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

21.5 Cross default

- (a) Any Financial Indebtedness of any Obligor is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

- (c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of any Obligor as a result of an event of default (however described).
- (d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) Clauses from (a) to (d) above shall not apply in respect to Financial Indebtedness the aggregate amount of which at any time is less than of €1,000,000.

21.6 Insolvency

- (a) An Obligor:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts; or
 - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding the Lender in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

21.7 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor;

- (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor;
 - (iv) enforcement of any Security over any assets of any Obligor; or,
 - (v) or any analogous procedure or step is taken in any jurisdiction.
- (b) This Clause 21.7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement.

21.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor and is not discharged within 14 days.

21.9 Cessation of business

An Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of any disposal allowed under this Agreement.

21.10 Unlawfulness and invalidity

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Security Documents ceases to be effective or any subordination created under the Subordination Agreement is or becomes unlawful.
- (b) Any obligation or obligations of any Transaction Obligor under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lender under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Subordination Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than the Lender) to be ineffective.

21.11 Repudiation and rescission of agreements

A Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security

or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

21.12 Subordination Agreement

- (a) Any party to a Subordination Agreement (other than the Lender) fails to comply with the provisions of, or does not perform its obligations under, that Subordination Agreement; or
- (b) a representation or warranty given by that party in a Subordination Agreement is incorrect in any material respect,
- (c) and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within fourteen calendar days of the earlier of the Lender giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

21.13 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any Obligor or its assets which, are reasonably likely to be adversely determined and if were to be so determined, have or are reasonably likely to have a Material Adverse Effect.

21.14 Expropriation

The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, compulsory acquisition, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor or any of its assets or the shares in that Obligor (including without limitation the displacement of all or part of the management of any Obligor) resulting in a Material Adverse Effect.

21.15 Total loss or major damage

Any of the Vessels (other than Vessel 4) is destroyed or materially damaged, except when the remaining Vessels value satisfy the Minimum Value Ratio.

21.16 Material adverse change

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

21.17 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Lender may by notice to the Obligors:

- (a) cancel the Total Commitments whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender; and/or
- (d) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

SECTION 10
CHANGES TO PARTIES

22. CHANGES TO THE LENDER

22.1 Assignments and transfers by the Lender

Subject to this Clause 22, the Lender (the "**Existing Lender**") may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

to any other person other than an individual (the "**New Lender**"). Each Obligor gives its express consent to such assignment and transfer in accordance herewith.

Any transfer and/or assignment by the Lender pursuant to this Clause 22 shall be perfected and effective:

- (c) in respect to the Existing Lender, when the Existing Lender and the New Lender execute the Transfer Certificate;
- (d) in respect to the Obligors, upon notification of such transfer to the Borrower by the New Lender.

The Obligors undertake to promptly carry out any formalities which would be necessary in order to confirm the validity and enforceability of the Security Documents following any transfer or assignment.

23. CHANGES TO THE TRANSACTION OBLIGORS

23.1 Assignments and transfer by Transaction Obligors

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents (including by way of any corporate transformation or restructuring).

**SECTION 12
ADMINISTRATION**

24. PAYMENT MECHANICS

24.1 Payments to the Lender

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to respective other Party (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Lender, in each case, specifies.

24.2 Partial payments

- (a) ~~If the Lender receives a payment that is insufficient to discharge all the~~ amounts then due and payable by an Obligor under the Finance Documents, the Lender shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
 - (i) **firstly**, in or towards payment *pro rata* of any accrued interest on the Loans due but unpaid under the Finance Documents;
 - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, commission, costs, expenses and fees due but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under this Agreement; and
 - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Lender may vary order set out in paragraphs (a)(i) to (a)(iv) above. Any such variation may include the re-ordering of obligations set out in any such paragraph.
- (c) ~~Paragraphs (a) and (b) above will override any appropriation made by an Obli-~~gor.

24.3 No set-off by Obligors

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

24.4 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

24.5 Currency of account

- (a) Subject to paragraphs (b) and (c) below, EUR is the currency of the account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than EUR shall be paid in that other currency.

24.6 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender; and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the European interbank market and otherwise to reflect the change in currency.

24.7 Disruption to Payment Systems etc.

If either the Lender determines (in its discretion) that a Disruption Event has occurred or the Lender is notified by the Obligor that a Disruption Event has occurred:

- (a) the Lender may, and shall if requested to do so by a Borrower, consult with the Obligor with a view to agreeing with the Obligor such changes to the operation or administration of the Facility as the Lender may deem necessary in the circumstances;
- (b) the Lender shall not be obliged to consult with the Obligor in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) any such changes agreed upon by the Lender and the Obligor shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 30 (*Amendments and waivers*);
- (d) ~~the Lender shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Lender) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 24.7.~~

24.8 Alternative Currencies

- (a) Notwithstanding any other provision of the Finance Documents, if a payment is required to be made under a Finance Document (a "**Relevant Payment**") and it would be illegal for the Borrower under any applicable law or regulation to make, or the Lender (and any relevant correspondent bank or account bank) under any applicable law or regulation to receive, process or remit that Relevant Payment in EUR but would be legal for the Borrower to make, and the Lender (and any relevant correspondent bank or account bank) to receive, process and remit such Relevant Payment in an Alternative Currency, then the Lender may notify (such notice, an "**Alternative Currency Notice**") the Borrower in respect of such Relevant Payment the Alternative Currency to be used, the Alternative Currency Exchange Rate, the Alternative Amount to be paid in respect of such Relevant Payment and the account into which such payment shall be made. The Alternative Currency Notice shall be dated not earlier than two Business Days prior to the due date for such Relevant Payment.

- (b) The Borrower shall promptly notify the Lender upon becoming aware that any Relevant Payment has become illegal under any applicable law or regulation but failure to do so shall not prejudice the right of the Lender to deliver an Alternative Currency Notice.
- (c) An Obligor shall make any payment under this Clause 24.8 on the terms specified by an Alternative Currency Notice delivered in accordance with this Clause 24.8 but nothing in this Clause 24.8 shall extend the due date of any amount due under the Finance Documents.
- (d) Clause 7.1 (*Illegality*) shall not apply in respect of any Relevant Payment (and any foreign exchange spot transactions necessary to make such payment) if and to the extent that such Relevant Payment is duly made in accordance with this Clause 24.8.
- (e) In circumstances where the Lender has issued an Alternative Currency Notice or informed the Borrower in writing that it intends to issue an Alternative Currency Notice in respect of any Relevant Payment, the Borrower shall be entitled to open an additional bank account denominated in the relevant Alternative Currency and solely for the purposes of effecting that Relevant Payment.

25. SET-OFF

The Lender may set off any matured obligation due from an Obligor under the Finance Documents against any matured obligation owed by the Lender to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

26. NOTICES

26.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by email (signed PDF scan) or letter.

26.2 Addresses

The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Obligor, that identified with its name below;
- (b) in the case of the Lender, that identified with its name below; and

or any substitute address or fax number or department or officer as the Party may notify to the Lender (or the Lender may notify to the other Parties, if a change is made by the Lender) by not less than five Business Days' notice.

26.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of email, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;
 - (iii) and, if a particular department or officer is specified as part of its address details provided under Clause 26.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with paragraphs (a) to (b), after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

26.4 Notification of address and email address

Promptly upon changing its address or email address, the Lender shall notify the other Parties.

26.5 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and the Lender may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 26.5.

26.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document or otherwise required by Croatian law.

27. CALCULATIONS AND CERTIFICATES

27.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

27.2 Certificates and Determinations

Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

27.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the European interbank market differs, in accordance with that market practice.

28. PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

29. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

30. AMENDMENTS AND WAIVERS

Any term of the Finance Documents may be amended or waived only with the consent of the Lender and the Borrower and any such amendment or waiver will be binding on all Parties and the Obligors express their consent for their guarantees expressed herein to remain valid also for the amended or waived part.

31. CONFIDENTIAL INFORMATION

31.1 Confidentiality

The Lender agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 31.2 (*Disclosure of Confidential Information*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

31.2 Disclosure of Confidential Information

The Lender may disclose (and the Obligors expressly release the Lender from any applicable banking secrecy obligation for this purpose):

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that the Lender shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed of its confidential nature except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Lender and, in each case, and to any of that person's Affiliates, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Representatives and professional advisers;
 - (iii) appointed by the Lender or by a person to whom paragraph (i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (ii));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) above(b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

- (vii) to whom information is required to be disclosed in connection with any Insurance;
- (viii) to whom or for whose benefit the Lender charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 22 (*Changes to the Lender*);
- (ix) to whom information is required to be disclosed in connection with, and for the purposes of, drafting, execution, perfection, enforcement of Finance Documents;
- (x) to whom information is required to be disclosed in connection with, and for the purposes of refinancing of the Existing Facility;
- (xi) who is a Party or an Obligor or Affiliate thereof; or
- (xii) with the consent of the Obligor;

in each case, such Confidential Information as the Lender shall consider appropriate if:

- (A) ~~in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given~~ has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
 - (C) in relation to paragraphs (b)(v) to (b)(viii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;
- (c) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or

the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

31.3 Entire agreement

This Clause 31 constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

31.4 Notification of disclosure

The Lender agrees (to the extent permitted by law and regulation) to inform the Obligors:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 31.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 31.

31.5 Continuing obligations

The obligations in this Clause 31 are continuing and, in particular, shall survive and remain binding on the Lender for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which the Lender otherwise ceases to be the Lender.

32. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

SECTION 13
GOVERNING LAW AND ENFORCEMENT

33. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

34. ENFORCEMENT

34.1 Arbitration

- (a) Unless specifically provided for in another Finance Document in relation to that Finance Document (for the purposes of this clause, an **Excluded Finance Document**), any dispute arising out of, relating to or having any connection with any Finance Document other than an Excluded Finance Document (for the purposes of this clause, a **Qualifying Finance Document**), including any dispute as to the existence, validity, interpretation, performance, breach or termination or the consequences of the nullity of any Qualifying Finance Document and any dispute relating to any non-contractual obligations arising out of or in connection with any Qualifying Finance Document (for the purposes of this clause, a **Dispute**), shall be referred to and finally resolved by arbitration under the LCIA Arbitration Rules (for the purposes of this clause, the **Rules**).
- (b) The Rules are incorporated by reference into this clause and capitalised terms used in this clause which are not otherwise defined in this Agreement have the meaning given to them in the Rules.
- (c) The number of arbitrators shall be three. The claimant (or claimants jointly) shall nominate one arbitrator for appointment by the LCIA Court. The respondent (or respondents jointly) shall nominate one arbitrator for appointment by the LCIA Court. The LCIA Court shall appoint the chairman.
- (d) Each Party:
 - (i) expressly agrees and consents to this procedure for nominating and appointing the Arbitral Tribunal; and
 - (ii) to the extent that it is not permitted to choose its own arbitrator pursuant to this clause (with a view to the fact that arbitrators are nominated by the claimants and/or the respondents jointly, as relevant), irrevocably and unconditionally waives any right to choose its own arbitrator.
- (e) The seat, or legal place of arbitration, shall be London. The language used in the arbitral proceedings shall be English. This arbitration agreement shall be governed by English law.

- (f) All documents submitted in connection with the proceedings shall be in the English language or, if in another language, accompanied by an English translation.
- (g) Service of any Request for Arbitration made pursuant to this clause must be at the address given for the sending of notices under each relevant Qualifying Finance Document and in a manner provided for in that document.

34.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor:
 - (i) irrevocably appoints Tatham Maccines LLP, 1 Gracechurch Street, London, EC3V0DD, United Kingdom, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Obligors must immediately (and in any event within 14 days of such event taking place) appoint another agent on terms acceptable to the Lender. Failing this, the Lender may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
GUARANTORS

Name of Guarantor	Registration number (or equivalent, if any)
DIV GRUPA d.o.o	PIN (OIB): 33890755814, (MBS): 080127368
BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o.	PIN: 15413473504 (MBS): 060175259

SCHEDULE 2
CONDITIONS PRECEDENT AND SUBSEQUENT

SCHEDULE 2A
CONDITIONS PRECEDENT FOR TRANCHE A

1.1. Transaction Obligors

- (a) A copy of the constitutional documents of each Transaction Obligor.
- (b) A copy of an extract for each Transaction Obligor from the commercial, trade or similar registry from its Original Jurisdiction, dated not earlier than three days before the date of this Agreement, confirming that it is duly registered and/or is good standing in its Original Jurisdiction and it is not insolvent (including a certificate of good standing for any Transaction Obligors registered or incorporated under the laws of the Marshall Islands).
- (c) A copy of (A) a resolution of the management board and (B) for the Borrower and DIV GRUPA d.o.o., a resolution of the supervisory board, and (C) for Transaction Obligors other than the Borrower, a resolution of the shareholders' meeting:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (iv) in the case of each Transaction Obligor other than the Borrower, authorising the Borrower to act as its agent in connection with the Finance Documents.
- (d) A certified or notarised specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above.
- (e) A certificate of each Transaction Obligor (signed by authorized director(s)) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Transaction Obligor to be exceeded.

- (f) A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each copy document specified in this SCHEDULE 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (g) Confirmation issued by the Commercial Court indicating that no bankruptcy or pre-bankruptcy request has been filed or is pending against the Transaction Obligors not older than 2 Business Days at the date of the Utilisation Request.
- (h) A certificate of the Borrower confirming it is considered a large or medium enterprise under the Croatian Accountancy Act.
- (i) A structure chart setting out the ownership of each Obligor.
- (j) Completion of know your customer procedures and provision FATCA information requirements satisfactory to the Lender in respect to each Obligor.
- (k) Evidence that no Default, mandatory prepayment event or Material Adverse Change is existing in respect to any Obligor.
- (l) Evidence that financing in accordance with this Agreement is in compliance with the Sanctions and applicable export restrictions.
- (m) Receipt of all required Lender's internal authorisations to execute the Facility.
- (n) An original of the executed Additional Financial Services Letter providing the Lender with the right of first offer to act as debt provider, funder or counterparty or adviser (as relevant) in respect of new Financial Indebtedness proposed to be issued, incurred or otherwise agreed by an entity controlled by the Ultimate Beneficial Owner.

1.2. Finance Documents

Originals of each of the following duly signed (notarized or solemnised where necessary) documents:

- (a) this Agreement;
- (b) the Subordination Agreement; and
- (c) each Security Document duly executed, in the relevant legal form, all as listed in SCHEDULE 8 (*Security Documents*).

1.3. Security

Evidence in form and substance acceptable to the Lender that the Security created pursuant to the relevant Security Documents has been created and, as applicable, perfected, including, if applicable, registration in the relevant registries, as follows:

- (a) Evidence that the Mortgage Agreement between the Lender and the Borrower on establishment of fourth ranking mortgage over the Vessel 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs, has been duly registered with the Ship Registry and perfected, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the mortgage with the Ship Registry;
- (b) Evidence that the Mortgage Agreement between the Lender and the Vessel Owner 2 on establishment of third ranking mortgage over the Vessel 2, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs, has been duly registered with the Ship Registry and perfected, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the mortgage with the Ship Registry;
- (c) Evidence that the Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of third ranking mortgage over the Vessel 3, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs, has been duly filed for registration with the Ship Registry;
- (d) Evidence that the statement for discharge of the second rank mortgage registered over Vessel 3 on the basis of Fourth Preferred Mortgage dated 26 day of October 2016 in favour of the Existing Financing Lender in the amount of EUR 1,265.000, has been duly filed for registration with the Ship Registry;
- (e) evidence that the Agreement on Subordination of Mortgage Priority Ranking on the Vessel 1 between the Lender, the Existing Financing Lender and the Borrower, regarding the mortgage on the Vessel 1, has been duly pre-registered (in Croatian: *predbilježba*) with the relevant Ship Registry, including the original of the final and binding (in Croatian: *pravomoćno*) decree on pre-registration of the subordination of the mortgage priority ranking with the Ship Registry;
- (f) evidence that the Agreement on Subordination of Mortgage Priority Ranking on the Vessel 2 between the Lender, the Existing Financing Lender and the Vessel Owner 2, regarding the mortgage on the Vessel 2, has been duly pre-registered (in Croatian: *predbilježba*) with the relevant Ship Registry, including the original of the final and binding (in Croatian: *pravomoćno*) decree on pre-registration of the subordination of the mortgage priority ranking with the Ship Registry;
- (g) Evidence that the Share Pledge Agreement between the Lender and the Shareholder on the first ranking pledge over the Shares in the Borrower, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs, has been duly registered with the Pledge Registry and perfected, including the original of the notification of the Pledge Registry on the registration of the pledge;

- (h) the original debenture note issued by the Borrower, in favour of the Lender, in the form of a solemnized document (in Croatian: *solemnizirana isprava*), has been handed to the Lender together with an evidence of debenture note's registration with the Croatian Registry of Debentures (in Croatian: *Hrvatski registar zadužnica*);
- (i) the original debenture note issued by the company DIV GRUPA d.o.o., as guarantor, in favour of the Lender, in the form of a solemnized document (in Croatian: *solemnizirana isprava*), has been handed to the Lender together with an evidence of debenture note's registration with the Croatian Registry of Debentures (in Croatian: *Hrvatski registar zadužnica*);
- (j) the original debenture note issued by the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., as guarantor, in favour of the Lender, in the form of a solemnized document (in Croatian: *solemnizirana isprava*), has been handed to the Lender together with an evidence of debenture note's registration with the Croatian Registry of Debentures (in Croatian: *Hrvatski registar zadužnica*);
- (k) evidence of notification by the Borrower, as insured, to the relevant insurer (i.e., issuer of each relevant Insurance policy insuring risks related to the Vessel 1), on the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Lender and the Borrower, duly acknowledged by the relevant insurer;
- (l) evidence of notification by the Vessel Owner 2, as insured, to the relevant insurer (issuer of each relevant Insurance policy insuring risks related to the Vessel 2), on the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 2, duly acknowledged by the relevant insurer;
- (m) evidence of notification by the Vessel Owner 3, as insured, to the relevant insurer (issuer of each relevant Insurance policy insuring risks related to the Vessel 3), on the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 3, duly acknowledged by the relevant insurer;
- (n) evidence of notification by the Borrower, as contractual party to the Shipbuilding Agreement, to the Purchaser, as its debtor under the Shipbuilding Agreement, on the assignment of contractual claims established under the Agreement on Assignment for Security Purposes between the Lender and the Borrower, duly acknowledged by the Purchaser, or if such acknowledgment cannot be obtained, evidence that the delivery of the notification has been duly made.

If, solely for the reason that the Existing Financing Lender refuses to enter into the Agreements on Subordination of Mortgage Priority Ranking as set out in items 1.3 (e) and (f), and as a result thereof the conditions precedent set out in items 1.3 (e) and (f)

cannot be satisfied, the following conditions precedent shall apply instead (and for the avoidance of doubt conditions precedent set out in items 1.3 (e) and (f) should not be further considered):

- (a) evidence that the Mortgage Agreement between the Lender and the Borrower on establishment of the first ranking mortgage over the Vessel 1, conditional upon deletion of the currently existing first ranking mortgage over the Vessel 1 granted in favour of the Existing Financing Lender, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly but conditionally registered with the relevant Ship Registry, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the mortgage with the Ship Registry;
- (b) evidence that the Mortgage Agreement between the Lender and the Vessel Owner 2 on establishment of the first ranking mortgage over the Vessel 2, conditional upon deletion of the currently existing first ranking mortgage over the Vessel 2 granted in favour of the Existing Financing Lender, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly but conditionally registered with the relevant Ship Registry, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the mortgage with the Ship Registry;

1.4. Refinancing

- (a) An original of the executed Pay-Off Letter, duly signed by the Existing Financing Lender and acknowledged by the Transaction Obligors, evidencing that the Existing Security has been or will be discharged on or about the first Utilisation Date in accordance with the terms of the Pay-Off Letter.
- (b) Evidence satisfactory to the Lender that the Borrower has paid all interest, fees, costs and any other amount outstanding in relation to the Existing Facility as specified by the Pay-Off Letter to the Existing Financing Lender or it has transferred the amount corresponding to the amount of all interest, fees, costs and any other amount outstanding in relation to the Existing Facility as specified by the Pay-Off Letter to the Lender as specified by the Lender to the Borrower for payment in discharge of the Existing Bank Loan.
- (c) A funds flow statement setting out the application of funds borrowed under this Agreement in relation to the repayment of the Existing Indebtedness and the other purposes as permitted under or required by this Agreement (including but not limited to the use of proceeds under Tranche B).

1.5. Financial Information

The Original Financial Statements.

1.6. Vessels

- (a) A copy of an up-to-date extract from the relevant Ship Registry (dated no earlier than 30 days of the proposed Utilisation Date) in respect of each ship comprising the Vessel evidencing the Borrower and Vessel Owner title to the Vessel (showing no encumbrance other than as permitted by this Agreement).
- (b) A copy of the Initial Valuation.
- (c) All Insurance policies held by the Borrower and Vessel Owner in respect of the Vessel.
- (d) Evidence that the Insurance policies are effective in accordance with their terms.
- (e) Declaration of Class from the classification society DNV GL dated March 18, 2019 confirming completion of sea trials and all relevant sea trials tests except for voluntary class notations HC (E/3);
- (f) A copy of the Ship Building Agreement.

1.7. Tax

- (a) A copy of the VAT registration certificate of each Borrower.
- (b) A confirmation from the competent tax authority confirming that the Borrower have no overdue tax liabilities (being not older than 15 days).

1.8. Legal opinions

- (a) A legal opinion issued by Wolf Theiss, legal advisers to the Lender as to English law, in a form acceptable to the Lender.
- (b) A legal opinion issued by Wolf Theiss, legal advisers to the Lender as to Croatian law, in a form acceptable to the Lender.
- (c) A legal opinion issued by CMS, legal advisers to the Lender as to Dutch law, in a form acceptable to the Lender.
- (d) A legal opinion issued by Reeder and Simpson P.C., legal advisers to the Lender as to the laws of the Marshall Islands, in a form acceptable to the Lender.

1.9. Other documents and evidence

- (a) The Utilisation Request (which complies with this Agreement).
- (b) Evidence that any other fees, and the costs and expenses (e.g. legal fees) then due from the Borrower pursuant to Clause 10 (*Fees*) and Clause 15 (*Costs and expenses*) have been paid or will be paid by the Borrower by the first Utilisation Date.

- (c) A copy of any other Authorisation or other document, opinion or assurance which the Lender (acting reasonably) considers to be necessary (if it has notified the Obligors accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (d) Evidence that the process agent has accepted its appointment to serve as agent for service of process in respect of each relevant Finance Document to serve as agent of process on behalf of each relevant Obligor in accordance with Clause 34.2 (*Service of process*) where this is required.

SCHEDULE 2B

CONDITIONS PRECEDENT FOR TRANCHE B

- (a) The Borrower shall provide to the Lender evidence acceptable to the Lender within 10 Business Days from the Signing Date:
- (i) evidence that the Agreement on Subordination of Mortgage Priority Ranking on Vessel 1 between the Lender, the Existing Financing Lender and the Borrower, regarding the mortgage on the Vessel 1 has been duly registered and perfected (i.e., that the pre-registration has been validly justified), and as a consequence that the Mortgage Agreement between the Lender and the Borrower is registered in the first rank in the mortgage amount of up to EUR 33,000,000, increased for the relevant interests and costs, including the original of the decree on registration of the mortgage with the Ship Registry;
 - (ii) evidence that the Agreement on Subordination of Mortgage Priority Ranking on Vessel 2 between the Lender, the Existing Financing Lender and the Vessel Owner 2, regarding the mortgage on the Vessel 2 has been duly registered and perfected (i.e., that the pre-registration has been validly justified), and as a consequence that the Mortgage Agreement between the Lender and the Borrower is registered in the first rank in the mortgage amount of up to EUR 33,000,000, increased for the relevant interests and costs, including the original of the decree on registration of the mortgage with the Ship Registry;
 - (iii) evidence that the mortgage of the Existing Financing Lender over the Vessel 1, as a security for liabilities up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly deleted from the Ship Registry, including the original of the decree on deletion of the mortgage from the Ship Registry;
 - (iv) evidence that the mortgage of the Existing Financing Lender over the Vessel 2, as a security for liabilities up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly deleted from the Ship Registry, including the original of the decree on deletion of the mortgage from the Ship Registry;
 - (v) the original debenture note, issued by the Borrower, in favour of the Existing Financing Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), has been returned to the Borrower and destroyed;
 - (vi) the original debenture note, issued by the company DIV GRUPA d.o.o., in favour of the Existing Financing Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), has been returned to the company DIV GRUPA d.o.o. and destroyed;
 - (vii) the original debenture note, issued by the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., in favour of the Exist-

ing Financing Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), has been returned to the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o. and destroyed;

- (viii) evidence of notification by the Existing Financing Lender and the Borrower to the relevant insurer (i.e., issuer of each relevant Insurance policy insuring risks related to the Vessel 1), on the termination of the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Existing Financing Lender and the Borrower, duly acknowledged by the relevant insurer;
 - (ix) evidence of notification by the Existing Financing Lender and the Vessel Owner 2 to the relevant insurer (i.e., issuer of each relevant Insurance policy insuring risks related to the Vessel 2), on the termination of the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Existing Financing Lender and the Vessel Owner 2, duly acknowledged by the relevant insurer;
 - (x) evidence of notification by the Existing Financing Lender and the Vessel Owner 3 to the relevant insurer (i.e., issuer of each relevant Insurance policy insuring risks related to the Vessel 3), on the termination of the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Existing Financing Lender and the Vessel Owner 3, duly acknowledged by the relevant insurer;
 - (xi) evidence of notification by the Existing Financing Lender and the Borrower to the Purchaser, on the termination of the assignment of contractual claims established under the Agreement on Assignment for Security Purposes between the Existing Financing Lender and the Borrower, duly acknowledged by the Purchaser, or if such acknowledgment cannot be obtained, evidence that the delivery of the notification has been duly made;
- (b) If, solely for the reason that the Existing Financing Lender refuses to enter into the Agreements on Subordination of Mortgage Priority Ranking as set out in item 1.3 (e) and (f) of SCHEDULE 2A, and as a result thereof the conditions subsequent set out in item (a)(i) and (a)(ii) of this SCHEDULE 2B, cannot be satisfied, the following conditions subsequent shall apply (and for the avoidance of doubt conditions subsequent listed under items (a)(i) and (a)(ii) of this SCHEDULE 2B should not be further considered):
- (i) evidence that the first ranking mortgage established under the Mortgage Agreement between the Lender and the Borrower on establishment of the first ranking mortgage over the Vessel 1, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has become fully effective;
 - (ii) evidence that the first ranking mortgage established under the Mortgage Agreement between the Lender and the Borrower on establishment of the first

ranking mortgage over the Vessel 2, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has become fully effective.

SCHEDULE 2C

CONDITIONS SUBSEQUENT

- (a) The Borrower shall provide to the Lender evidence acceptable to the Lender
- (i) within 5 Business Days from the Utilisation Date of Tranche A:
- the original copy of each Insurance policy securing risks related to the Vessel 1, evidencing the Lender being designated as first loss payee (in Croatian: *vinkulacija*) and the Existing Financing Lender being deleted as first loss payee, has been handed to the Lender by the Borrower;
 - the original copy of each Insurance policy securing risks related to the Vessel 2, evidencing the Lender being designated as first loss payee (in Croatian: *vinkulacija*) and the Existing Financing Lender being deleted as first loss payee or designated as second loss payee, has been handed to the Lender by the Vessel Owner 2;
 - the original copy of each Insurance policy securing risks related to the Vessel 3, evidencing the Lender being designated as first loss payee (in Croatian: *vinkulacija*) and the Existing Financing Lender being deleted as first loss payee or designated as second loss payee, has been handed to the Lender by the Vessel Owner 3;
- (ii) within 30 days from the Signing Date:
- evidence that the Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of the first ranking mortgage over the Vessel 3, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly registered with the relevant Ship Registry (finally and binding, not subject to possible appeals);
 - evidence that the Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of third ranking mortgage over the Vessel 3, up to the amount of EUR 17,000,000,00 increased for the relevant interests and costs, has been duly registered with the relevant Ship Registry and perfected (finally and binding, not subject to possible appeals);
 - evidence that the mortgage of the Existing Financing Lender over the Vessel 3, as a security for liabilities up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly deleted with the relevant Ship Registry and perfected (finally and binding, not subject to possible appeals).
- (iii) within 60 days from the Signing Date:

- evidence that the relevant HBOR Guarantee in relation to Polar Expeditions has been cancelled or otherwise terminated in accordance with Clause 19.6 (*Lending and guarantees*).

**SCHEDULE 3
UTILISATION REQUEST**

From: BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

To: VTB BANK (EUROPE) SE

Dated: [●] 2019

Dear Sirs,

**BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo – EUR 50,000,000 Facility Agreement
dated [●] 2019 (the Agreement)**

1. We refer to the Agreement. This is the Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)

Amount: € [●], or, if less, in each case the available [Tranche A Commitment] or [Tranche B Commitment].

Tranche: [Tranche A] or [Tranche B]
3. We confirm that on the date of this Utilisation Request:
 - (i) each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied;
 - (ii) representations from Clause 17. (*Representations*) and undertakings from Clause 18. (*Information undertakings*) 19. (*General undertakings*) and 20 (*Vessel undertakings*) are still existing and valid; and
 - (iii) the requirement from Clause 20.9 (*Minimum loan to value covenant*) is satisfied.
4. The proceeds of all Loans should be credited to:
 - (i) in case of Tranche A: [relevant Account as set out in the Pay-Off Letter]
 - (ii) in case of Tranche B to the account of Polar Expedition held with the Existing Lender, according to the following account details:

Bank: Zagrebačka Banka d.d.
IBAN: HR 64 2360 0001 1027 1364 8
SWIFT: ZABHR2X

5. The purpose of the Loan under each Tranche is as set out in Clause 3 (*Purpose*) of the Agreement.
6. This Utilisation Request is irrevocable.

Yours faithfully,

authorised signatory for
BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

**SCHEDULE 4
FORM OF TRANSFER CERTIFICATE**

From: [*The Existing Lender*] (the "**Existing Lender**") and [*The New Lender*] (the "**New Lender**")

Dated: [●]

**VTB BANK (EUROPE) SE – EUR 50,000,000 Facility Agreement
dated [●] 2019 (the Agreement)**

7. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
8. We refer to Clause 22:
 - (b) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 22 all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participation in Loans under the Agreement as specified in the Schedule.
 - (c) The proposed Transfer Date is [●].
 - (d) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 26.2 (*Addresses*) are set out in the Schedule.
9. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 22.
10. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
11. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
12. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

SCHEDULE 5
LIST OF EXISTING SECURITY

- (a) First ranking mortgage registered in favor of the Existing Financing Lender over Vessel 1 securing the amount of EUR 33,000,000 increased for applicable interest, fess and costs;
- (b) First ranking mortgage Existing Financing Lender over Vessel 2 securing the amount of EUR 33,000,000 increased for applicable interest, fess and costs;
- (c) First ranking mortgage Existing Financing Lender over Vessel 3 securing the amount of EUR 33,000,000 increased for applicable interest, fess and costs;
- (d) Insurance policy securing risks related to the Vessel 1, with first loss payee designation in favor of the Existing Financing Lender (in Croatian: *vinkulacija*);
- (e) Insurance policy securing risks related to the Vessel 2, with first loss payee designation in favor of the Existing Financing Lender (in Croatian: *vinkulacija*);
- (f) Insurance policy securing risks related to the Vessel 3, with first loss payee designation in favor of the Existing Financing Lender (in Croatian: *vinkulacija*);
- (g) Claims assignment, whereby the Borrower has assigned its rights and receivables under the Ship Building Agreement in favour of the Existing Financing Lender;
- (h) Insurance policies proceeds assignments, whereby the Borrower and/or the relevant insured entities have assigned their rights under the insurance policies securing Vessel 1, Vessel 2 and Vessel 3 in favour of the Existing Financing Lender;
- (i) Debenture Note, issued by the Borrower, securing the amount of EUR 33,000,000 increased for applicable interest, fess and costs, notarisation number OV-1837/2018;
- (j) Debenture Note, issued by DIV GRUPA d.o.o., securing the amount of EUR 33,000,000 increased for applicable interest, fess and costs, number OV-1836/2018; and
- (k) Debenture Note, issued by BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., securing the amount of EUR 33,000,000 increased for applicable interest, fess and costs, number OV-1838/2018.

SCHEDULE 6
EXISTING FINANCIAL INDEBTEDNESS

Agreed form – Provided separately

SCHEDULE 7
EXISTING FINANCIAL SECURITY

Agreed form – Provided separately

SCHEDULE 8
LIST OF SECURITY DOCUMENTS

- (a) Mortgage Agreement between the Lender and the Borrower on establishment mortgage over the Vessel 1, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (b) Mortgage Agreement between the Lender and the Vessel Owner 2 on establishment of mortgage over the Vessel 2, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (c) Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of mortgage over the Vessel 3, whereby signatures have been duly notarised, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (d) Share Pledge Agreement between the Lender and the Shareholder on the first ranking pledge over the Shares in the Borrower, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (e) Agreement on Assignment for Security Purposes between the Lender and the Borrower on assignment of claims arising in relation to the Ship Building Agreement and the Insurance Proceeds in respect to Vessel 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (f) Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 2 on the assignment of Insurance Proceeds in respect to Vessel 2, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs;
- (g) Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 3 on assignment of Insurance Proceeds in respect to Vessel 3, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (h) Debenture Note, allowing direct enforcement over all accounts and assets of the Borrower, granted by the Borrower in favour of the Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (i) Debenture Note, allowing direct enforcement over all accounts and assets of the company DIV GRUPA d.o.o., granted by the company DIV GRUPA d.o.o. in favour of the Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (j) Debenture Note, allowing direct enforcement over all accounts and assets of the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., granted by the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o. in

favour of the Lender in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;

- (k) Insurance policy securing risks related to the Vessel 1, with first loss payee designation in favour of the Lender (in Croatian: *vinkulacija*);
- (l) Insurance policy securing risks related to the Vessel 2, with first loss payee designation in favour of the Lender (in Croatian: *vinkulacija*); and
- (m) Insurance policy securing risks related to the Vessel 3, with first loss payee designation in favour of the Lender (in Croatian: *vinkulacija*).

SIGNATURE PAGE

TO THE UP TO EUR 50,000,000 FACILITY AGREEMENT

THE BORROWER

BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

By: **TONISLAV DEBEČAK**

Address: Put Supavla 21, Split, Croatia

Fax: +385 21 382 526

Attention: **UPRAVA**



THE GUARANTORS

DIV GRUPA D.O.O.

By: TONISLAV DEBEČAK

DIV GRUPA d.o.o.

10430 SAMOBOR, Bobovica 10/A
Tel. 01 3377-000, Fax. 01 3376-155
OIB: 33890755814

5

Address: Bobovica 10/A, Samobor, Croatia

Fax: +385 1 3376 155

Attention: UPRAVA

BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o.

By: TOMISLAV DEBEČAK



Address: Put Supavla 21, Split, Croatia

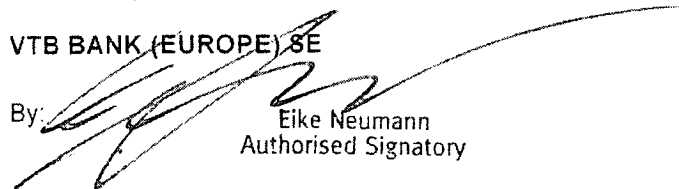
Fax: +385 21 382 526

Attention: UPRAVA

THE LENDER

VTB BANK (EUROPE) SE

By:



Eike Neumann
Authorised Signatory



Torsten Müller
Head of Client Coverage Germany
Executive Director

By:

Address: Rüsterstraße 7-9, 60325 Frankfurt am Main, Germany

Email: Loans.Administration@vtb.eu

Attention: Loan Administration

AMENDMENT AND RESTATEMENT AGREEMENT

dated 11 October 2019

for

BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

as Borrower

and

THE ORIGINAL GUARANTORS

and

THE ACCEDING GUARANTOR

as Guarantors

VTB BANK (EUROPE) SE

as Lender

**RELATING TO AN UP TO
€50,000,000 FACILITY AGREEMENT
DATED 12 APRIL 2019**

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION.....	4
2.	EFFECTIVE DATE.....	5
3.	REPRESENTATIONS	6
4.	GUARANTOR ACCESSION.....	6
5.	CONTINUITY.....	6
6.	MISCELLANEOUS.....	6
7.	GOVERNING LAW	7

SCHEDULES

SCHEDULE 1 CONDITIONS PRECEDENT AND SUBSEQUENT	8
SCHEDULE 2 RESTATED AGREEMENT	15

THIS AGREEMENT is dated 11 October 2019 and made between:

- (1) **BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo**, a company duly incorporated in Croatia, with its registered seat at Put Supavla 21, Split, Croatia, PIN (OIB): 18556905592, registered with the court registry of the Commercial Court in Split under registration number (MBS): 060175040, as borrower (the "**Borrower**");
- (2) **THE COMPANIES** listed in SCHEDULE 1 (*Guarantors*) as guarantors (the "**Original Guarantors**");
- (3) **XB AHTS HERO SHIPPING, INC.**, a company duly incorporated in Marshall Islands, with its registered seat at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, Reg. No. 61825, PIN (OIB): 87820609933, registered with Articles of Incorporation dated 3 June 2013 as guarantor (the "**Acceding Guarantor**"); and

(the Original Guarantors and the Acceding Guarantor, collectively, the "**Guarantors**")
- (4) **VTB BANK (EUROPE) SE**, a financial institution duly incorporated in Germany with registered office at Rüsterstraße 7-9, 60325 Frankfurt am Main, Germany, PIN (OIB): 28284529780, registered with the District Court of Frankfurt am Main (*Amtsgericht Frankfurt am Main*) under registration number HRB 12169 (the "**Lender**")

(the Borrower, the Lender and the Guarantors collectively referred to as the "**Parties**", and individually as a "**Party**").

IT IS AGREED as follows:

RECITALS:

- (A) The Lender under the Original Facility Agreement (as defined below) made available, in aggregate, up to €50,000,000 term loan facilities to the Borrower.
- (B) The Lender, the Borrower and each Original Guarantor have agreed to amend and restate the Original Facility Agreement (as defined below) in accordance with the terms hereof in the form as set out in SCHEDULE 2 (*Restated Agreement*).
- (C) The Acceding Guarantor as the new owner of Vessel 1 has agreed to accede to the Original Facility Agreement (as defined below) as a Guarantor.
- (D) This Agreement shall take effect as a deed notwithstanding the fact that it may have been signed by the Lender under hand.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Amendment Documents" means this Agreement and the Restated Agreement.

"Effective Date" means the later of:

- (a) date on which the Lender confirms in writing to the Borrower that it has received each of the documents and evidence listed in Schedule 1A (*Conditions Precedent*) in a form and substance satisfactory to it (the **CP Satisfaction**); and
- (b) 14 October 2019 (provided that the CP Satisfaction has occurred on or before this date).

"Longstop Time" means 11:59 p.m. (Frankfurt am Main time) on 14 October 2019 or such later date as agreed in writing between the Lender and the Borrower.

"Original Facility Agreement" means the up to €50,000,000 term loan facilities agreement dated 12 April 2019 between, amongst others, the Borrower and the Lender.

"Restated Agreement" means the Original Facility Agreement, as amended and restated by this Agreement, the terms of which are set out in Schedule 2 (*Restated Agreement*).

1.2 Incorporation of defined terms

- (a) Unless a contrary indication appears, a term defined in any other Finance Document (including, for the avoidance of doubt, the Restated Agreement) has the same meaning in this Agreement.
- (b) The principles of construction set out in Clause 1.2 (*Interpretation*) of the Original Facility Agreement shall have effect as if set out in this Agreement except that references to the Original Facility Agreement are to be construed as references to this Agreement.

1.3 Clauses

In this Agreement any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires, a reference to a Clause or a Schedule to this Agreement.

1.4 Designation

In accordance with the Original Facility Agreement, the Borrower and the Lender designate each Amendment Document as a Finance Document.

2. EFFECTIVE DATE

- 2.1 On and from the Effective Date, the Original Facility Agreement shall be amended as set out in the Restated Agreement, and any references to the Original Facility Agreement in any Finance Document or otherwise shall be construed as references to the Restated Agreement.

- 2.2 If the Effective Date does not occur on 14 October 2019 before the Longstop Time, the transactions contemplated in Clause 2.1 above will not occur.

3. REPRESENTATIONS

The representations set out in Clause 17 of the Restated Agreement are deemed to be made by the Borrower (by reference to the facts and circumstances then existing, as if references to the Original Facility Agreement are references to the Restated Agreement and in the case of the representations made on the date of this Agreement, as if the Effective Date had occurred) on:

- (a) the date of this Agreement; and
- (b) the Effective Date.

4. COVENANTS

The Borrower shall ensure that each of the documents and evidence listed in Schedule 1B (*Conditions Subsequent*) are delivered to the Lender in a form and substance satisfactory to the Lender within the time periods set out in Schedule 1B (*Conditions Subsequent*).

5. GUARANTOR ACCESSION

- 5.1 ~~The Acceding Guarantor agrees to become a Guarantor and to be bound by the terms of the Original Facility Agreement and the other Finance Documents as a Guarantor under Clause 16 (*Guarantee and indemnity*) of the Original Facility Agreement, as amended and restated by this Agreement.~~

- 5.2 The Obligors confirm that no Default is continuing or would occur as a result of the accession of the Acceding Guarantor and the Acceding Guarantor becoming an Obligor as set out in paragraph 5.1 above.

6. CONTINUITY

6.1 Continuing obligations

- (a) The provisions of the Finance Documents shall, save as amended by this Agreement, continue in full force and effect with respect to the Lender and the Borrower and from the Effective Date, the Original Facility Agreement and this Agreement shall be read and construed as one document.
- (b) Except to the extent expressly stated in this Agreement, no waiver is given by this Agreement or the Restated Agreement, and the Lender expressly reserves all its rights under all Finance Documents.

7. MISCELLANEOUS

7.1 Incorporation of terms

The provisions of Clause 28 (*Notices*), Clause 30 (*Partial Invalidity*), Clause 31 (*Remedies and waivers*) and Clause 35 (*Jurisdiction*) of the Restated Agreement shall be incorporated into this Agreement as if set out in full in this Agreement and as if references in those clauses to "this Agreement" or "the Finance Documents" are references to this Agreement.

7.2 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

8. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

9. SERVICE OF PROCESS

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor:
 - (i) irrevocably appoints Tatham Law LLP, 150 Minories, London, EC3N 1LS, United Kingdom, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Obligors must immediately (and in any event within 14 days of such event taking place) appoint another agent on terms acceptable to the Lender. Failing this, the Lender may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
CONDITIONS PRECEDENT AND SUBSEQUENT

SCHEDULE 1A
CONDITIONS PRECEDENT

1.1. Transaction Obligors

- (a) A copy of the constitutional documents of each Transaction Obligor.
- (b) A copy of an extract for each Transaction Obligor from the commercial, trade or similar registry from its Original Jurisdiction, dated not earlier than three days before the date of this Agreement, confirming that it is duly registered and/or is good standing in its Original Jurisdiction and it is not insolvent (including a certificate of good standing for any Transaction Obligors registered or incorporated under the laws of the Marshall Islands).
- (c) A copy of (A) a resolution of the management board and (B) for the Borrower and DIV GRUPA d.o.o., a resolution of the supervisory board, and ~~(C) for Transaction Obligors other than the Borrower, a resolution of the shareholders' meeting:~~
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (iv) in the case of each Transaction Obligor other than the Borrower, authorising the Borrower to act as its agent in connection with the Finance Documents.
- (d) A certified or notarised specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above.
- (e) ~~A certificate of each Transaction Obligor (signed by authorized director(s))~~ confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Transaction Obligor to be exceeded.

- (f) A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each copy document specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (g) A structure chart setting out the ownership of each Obligor and their respective Subsidiaries, including the Vessel Owner 1.

1.2. Finance Documents

Originals of each of the following duly signed (notarized or solemnised where necessary) documents:

- (a) this Agreement; and
- (b) the deed of confirmation in respect of Subordination Agreement (in the agreed form); and
- (c) each Security Document duly executed, in the relevant legal form, all as listed in Clause 1.3 (*Security*) of this Schedule 1A (*Conditions Precedent*).

1.3. Security

Evidence in form and substance acceptable to the Lender that the Security created pursuant to the relevant Security Documents has been created and, as applicable, perfected, including, if applicable, registration in the relevant registries, as follows:

- (a) Evidence that the Security Confirmation Agreement between the Lender, the Borrower and the Acceding Guarantor, for confirmation of mortgage agreements and assignment for security purposes in relation to Vessel 1, has been duly executed in a form of a solemnized document (in Croatian: *solemnizirana isprava*); and evidence of notification by the Acceding Guarantor, as insured, to the relevant insurer (issuer of each relevant Insurance policy insuring risks related to Vessel 1) on the assignment of insurance claims;
- (b) Evidence that the Agreement on Assignment for Security Purposes between the Lender and the Acceding Guarantor on assignment of claims arising in relation to the new Ship Building Agreement dated 5 July 2019 between the Borrower as builder and the Acceding Guarantor as the buyer of Vessel 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs, has been duly executed; and evidence of notification by the Acceding Guarantor, as contractual party to the new Ship Building Agreement to the Borrower as its debtor under the new Ship Building Agreement, on the assignment of contractual claims established under the Agreement on Assignment for Security Purposes, duly acknowledged by the Borrower;

- (c) Evidence that the Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 3 on assignment of claims arising in relation to the new Insurance policy, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs, has been duly executed; and evidence of notification by the Vessel Owner 3, as insured, to the relevant insurer (issuer of the new Insurance policy and each relevant Insurance policy insuring risks related to Vessel 3) on the assignment of insurance claims;
- (d) Evidence that the Agreement on Authorization of Vessel Sale between the Lender, the Borrower and the Acceding Guarantor, authorizing the Lender to execute the sale process of Vessel 1 acting in the name and for the benefit of the Acceding Guarantor, has been duly executed and relevant signatures certified by a notary public;
- (e) Evidence that the Personal Guarantee of Mr. Tomislav Debeljak as the Ultimate Beneficial Owner of the Borrower has been duly executed;
- (f) Evidence that the Share Pledge Agreement between the Lender, the Borrower and DIV GRUPA d.o.o. on the first ranking pledge over the shares in the company DIV CRUISES d.o.o., concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs; has been duly filed with the relevant Croatian pledge registry and duly registered with the company's book of shares; including the evidence that the Special Powers of Attorney (as per Schedule 2 and Schedule 3 of the Share Pledge Agreement) have been duly executed and relevant signatures of the Borrower and DIV GRUPA d.o.o. certified by a notary public;
- (g) Evidence that the Share Pledge Agreement between the Lender and DIV GRUPA d.o.o. on the first ranking pledge over the shares in the company DIV BRODOGRADNJA d.o.o., concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs; has been duly filed with the relevant Croatian pledge registry and duly registered with the company's book of shares; including the evidence that the Special Power of Attorney (as per Schedule 2 of the Share Pledge Agreement) has been duly executed and relevant signatures of DIV GRUPA d.o.o. certified by a notary public;
- (h) Evidence that the Share Pledge Agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Acceding Guarantor, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs; has been duly executed and noted in the internal register of mortgages and pledges of the Acceding Guarantor; including the evidence that the Irrevocable Proxy (as per Appendix A of the Share Pledge Agreement), Letter of Resignation (as

per Appendix B of the Share Pledge Agreement) and Letter of Undertaking (as per Appendix C of the Share Pledge Agreement) have been duly executed by the relevant signatories;

- (i) Evidence that the Share Pledge Agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 2, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs; has been duly executed and noted in the internal register of mortgages and pledges of the Vessel Owner 2; including the evidence that the Irrevocable Proxy (as per Appendix A of the Share Pledge Agreement), Letter of Resignation (as per Appendix B of the Share Pledge Agreement) and Letter of Undertaking (as per Appendix C of the Share Pledge Agreement) have been duly executed by the relevant signatories;
- (j) Evidence that the Share Pledge Agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 3, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs; has been duly executed and noted in the internal register of mortgages and pledges of the Vessel Owner 3; including the evidence that the Irrevocable Proxy (as per Appendix A of the Share Pledge Agreement), Letter of Resignation (as per Appendix B of the Share Pledge Agreement) and Letter of Undertaking (as per Appendix C of the Share Pledge Agreement) have been duly executed by the relevant signatories.

1.4. Financial Information

- (a) The report referred to in paragraph (a) of Clause 18.1 (*Financial statements*) of the Restated Agreement, with estimates up to 31 December 2020.
- (b) A business plan for the Borrower for the period of three years after the Effective Date.
- (c) The Vessel 1 Sale Protocol (Milestones).
- (d) Evidence that the guarantee or suretyship or any similar reassurance provided by the Borrower in relation to the construction loan provided by HBOR to an SPV owned by the Borrower regarding the vessel "Hondius" has been finally and irrevocably discharged and released by HBOR without any further liability of the Borrower thereunder.

1.5. Vessels

- (a) A copy of an up-to-date extract from the relevant Ship Registry (dated no earlier than 30 days of the proposed Effective Date) in respect of each ship comprising the Vessel evidencing the Borrower and Vessel Owner title to the Vessel (showing no encumbrance other than as permitted by this Agreement).

- (b) All Insurance policies held by the Borrower and Vessel Owners in respect of the Vessels.
- (c) Evidence that the Insurance policies are effective in accordance with their terms.

1.6. Legal opinions

- (a) A legal opinion issued by Wolf Theiss, legal advisers to the Lender as to English law, in a form acceptable to the Lender.
- (b) A legal opinion issued by Wolf Theiss, legal advisers to the Lender as to Croatian law, in a form acceptable to the Lender.
- (c) A legal opinion issued by Reeder and Simpson P.C., legal advisers to the Lender as to the laws of the Marshall Islands, in a form acceptable to the Lender.

1.7. Other documents and evidence

- (a) Evidence that any other fees, and the costs and expenses (e.g. legal fees) then due from the Borrower pursuant to Clause 10-(Fees) and Clause 15 (Costs and expenses) have been paid or will be paid by the Borrower by the Effective Date.
- (b) A copy of any other Authorisation or other document, opinion or assurance which the Lender (acting reasonably) considers to be necessary (if it has notified the Obligors accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (c) Evidence that the process agent has accepted its appointment to serve as agent for service of process in respect of each relevant Finance Document to serve as agent of process on behalf of the Acceding Guarantor in accordance with Clause 34.2 (*Service of process*) where this is required.
- (d) All "know your customer" documentation and FATCA information required by the Lender in respect of any Obligor and completion of all relevant checks by the Lender in this respect.

SCHEDULE 1B
CONDITIONS SUBSEQUENT

The Borrower shall provide to the Lender evidence acceptable to the Lender

- within 5 Business Days from the Effective Date:

- (a) that the notification by the Acceding Guarantor, as insured, to the relevant insurer (issuer of each relevant Insurance policy insuring risks related to Vessel 1) on the assignment of insurance claims, under the Security Confirmation Agreement between the Lender, the Borrower and the Acceding Guarantor for confirmation of mortgage agreements and assignment for security purposes in relation to Vessel 1, has been duly acknowledged by the relevant insurer;
- (b) that the notification by the Vessel Owner 3, as insured, to the relevant insurer (issuer of each relevant Insurance policy insuring risks related to Vessel 3) on the assignment of insurance claims, under the Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 3 in relation to the new Insurance policy, has been duly acknowledged by the relevant insurer;
- (c) that the Share Pledge Agreement between the Lender, the Borrower and DIV GRUPA d.o.o. on the first ranking pledge over the shares in the company DIV CRUISES d.o.o., concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs, has been duly registered with the relevant Croatian pledge registry and perfected, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the pledge with the relevant Croatian pledge registry;
- (d) that the Share Pledge Agreement between the Lender and DIV GRUPA d.o.o. on the first ranking pledge over the shares in the company DIV BRODOGRADNJA d.o.o., concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs; has been duly registered with the relevant Croatian pledge registry and perfected, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the pledge with the relevant Croatian pledge registry;

- by 25 October 2019:

- (e) the original copy of the new Insurance policy securing risks related to the Vessel 3, evidencing the Lender being designated as first loss payee (in Croatian: *vinkulacija*), has been handed to the Lender by the Vessel Owner 3;

- by 31 October 2019:

- (f) that the Insurance policy for the Vessel 1 has been extended for the following insurance term as applicable under the relevant insurance agreement.

SCHEDULE 2
RESTATED AGREEMENT

UP TO EUR 50,000,000

FACILITY AGREEMENT

dated 12 April 2019

as amended and restated on _____ October 2019

for

BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

as Borrower

provided by

VTB BANK (EUROPE) SE

as Lender

WOLF THEISS

CONTENTS

Clause	Page
1. Definitions and Interpretations	5
2. The Facility.....	31
3. Purpose.....	31
4. Conditions of Utilisation	31
5. Utilisation	33
6. Repayment.....	35
7. Prepayment and cancellation.....	35
8. Interest.....	38
9. Interest Periods	38
10. Fees.....	39
11. Tax gross up and indemnities	41
12. Increased costs	44
13. Other indemnities	45
14. Mitigation by the Lender	46
15. Costs and expenses	47
16. Guarantee and indemnity	49
17. Representations	53
18. Information undertakings	62
19. General undertakings	66
20. Vessel related undertakings.....	72
21. Events of Default.....	81
22. Changes to the Lender	87
23. Changes to the Transaction Obligors	87
24. Payment mechanics	88
25. Set-off	91
26. Notices.....	91
27. Calculations and certificates	93
28. Partial invalidity	94
29. Remedies and waivers	94
30. Amendments and waivers.....	94
31. Confidential Information.....	94
32. Counterparts	97
33. Governing law	98
34. Enforcement.....	98

SCHEDULE 1	GUARANTORS	100
SCHEDULE 2	CONDITIONS PRECEDENT AND SUBSEQUENT.....	101
SCHEDULE 3	UTILISATION REQUEST	112
SCHEDULE 4	FORM OF TRANSFER CERTIFICATE	114
SCHEDULE 5	LIST OF EXISTING SECURITY.....	115
SCHEDULE 6	EXISTING FINANCIAL INDEBTEDNESS.....	116
SCHEDULE 7	EXISTING FINANCIAL SECURITY.....	117
SCHEDULE 8	LIST OF SECURITY DOCUMENTS.....	118
SCHEDULE 9	FORM OF COMPLIANCE CERTIFICATE	121

THIS AGREEMENT is dated 12 April 2019, and amended and restated on ____ October 2019, and made between:

- (1) **BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo**, a company duly incorporated in Croatia, with its registered seat at Put Supavla 21, Split, Croatia, PIN (OIB): 18556905592, registered with the court registry of the Commercial Court in Split under registration number (MBS): 060175040, as borrower (the "**Borrower**");
- (2) **THE COMPANIES** listed in SCHEDULE 1 (*Guarantors*) as guarantors (the "**Guarantors**"); and
- (3) **VTB BANK (EUROPE) SE**, a financial institution duly incorporated in Germany with registered office at Rüterstraße 7-9, 60325 Frankfurt am Main, Germany, PIN (OIB): 28284529780, registered with the District Court of Frankfurt am Main (*Amtsgericht Frankfurt am Main*) under registration number HRB 12169 (the "**Lender**")

(the Borrower, the Lender and the Guarantors collectively referred to as the "**Parties**", and individually as a "**Party**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement:

"Account" means:

- (a) in respect to Tranche A, the account to be specified by the Existing Financing Lender in the Pay-Off Letter to which the Lender shall disburse the Tranche A Loan; and
- (b) in respect to Tranche B, the following account of Polaris Exploration held with the Zagrebačka Banka d.d.:
IBAN: HR 64 2360 0001 1027 1364 8,
SWIFT: ZABHR2X.

"Additional Financial Services Letter" means the letter executed by the Borrower and delivered to the Lender as a condition precedent under this Agreement in connection with the transactions contemplated by this Agreement.

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

"Agreement on Assignment for Security Purposes" means any security agreement entered into by and between the Borrower or a Vessel Owner and the Lender on or around the date of this Agreement, establishing a security interest in respect of receivables defined therein, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"Agreement on Authorization of Vessel Sale" means any agreement entered into by and between the Lender, the Borrower and the Vessel Owner 1 on or around the date of this Agreement, authorizing the Lender to execute the sale process of Vessel 1 acting in the name and for the benefit of the Vessel Owner 1, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"Alternative Currency" means:

- (a) any of RUB, CHF, GBP, JPY, SGD or HKD as may be selected by the Lender in its discretion; or
- (b) if none of the currencies named in (a) above are available to be used, such other currency as agreed in writing by the Lender and the Borrower.

"Alternative Currency Exchange Rate" means

- (a) in respect of any Alternative Currency Notice which specifies RUB as the Alternative Currency, the rate of exchange of EUR into RUB fixed at or about 12.35 Moscow time on the date of such Alternative Currency Notice by JSC Moscow Exchange and published on moex.com/en/fixing as "MOEX EUR/RUB FX Fixing" provided that if such exchange rate is not published on that date or at such time or is not available with respect to the relevant Alternative Currency, the exchange rate agreed between the Lender and the Borrower acting in good faith and in a commercially reasonable manner or, failing such agreement, the exchange rate notified by the Lender to the Borrower acting in good faith and in a commercially reasonable manner; and
- (b) in respect of any Alternative Currency Notice which specifies any Alternative Currency other than RUB, means, in respect of any conversion date, the rate of exchange of EUR into the relevant Alternative Currency fixed at 4.00 p.m. London time on that conversion date by WM Company and published on Bloomberg screen <WMCO (Spot Rate Current Daily Fixings, EUR Rate Source WMCD> provided that if such exchange rate is not published on that conversion date or is not available with respect to the relevant Alternative Currency, the exchange rate agreed between the Lender and the Borrower acting in good faith and in a commercially reasonable manner.

"Alternative Purchaser" means any purchaser of Vessel 1 other than the Purchaser.

"Applicable Interest Rate" mean the rate of interest (a fixed rate) applicable to the Loan (the **Applicable Rate**) in each of the time periods (each such period a **Relevant Period**) as set out in the table below:

	Relevant Period	Applicable Rate (per annum)
1	14 October 2019 up to (and including) 14 April 2020	9%
2	15 April 2020 up to (and including) 15 October 2020	12%
3	16 October 2020 up to (and including) the Termination Date	15%

provided however that the Applicable Rate shall remain set at 9% per annum up to 15 July 2020 if the Export Credit Finance Facility has been entered into at any time before 14 April 2020.

"Auditor" means Deloitte d.o.o., a company duly incorporated in Croatia, with its registered seat at Radnička cesta 80, Zagreb, Croatia, PIN (OIB): 11686457780, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 030022053, or any other international accounting firm acceptable to the Lender, engaged by the Borrower to audit the annual financial statements to be provided pursuant to Clause 18.2 (*Requirements as to financial statements*).

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Availability Period" means the period from and including the Signing Date to and including the date which is falling on the tenth Business Day after the Signing Date.

"Available Commitment" means in relation to a Tranche, the Lender's Commitment under that Tranche, minus:

the amount of its participation in any outstanding Loans; and

- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

"Available Facility" means, in relation to a Facility, the Lender's Available Commitment in respect of that Tranche.

"Borrower Euro Account" means a current account opened by the Borrower with the Lender.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in Zagreb and Frankfurt and which is a TARGET Day.

"Code" means the US Internal Revenue Code of 1986.

"Commitment" means a Tranche A Commitment or a Tranche B Commitment.

"Companies Act" means the Croatian Companies Act (Official Gazette 111/1993, as amended from time to time).

"Compliance Certificate" means a certificate substantially in the form set out in SCHEDULE 9 (*Form of Compliance Certificate*).

"Confidential Information" means all information relating to any Transaction Obligor, the Finance Documents or the Facility of which the Lender becomes aware in its capacity as, or for the purpose of becoming, the Lender or which is received by the Lender in relation to, or for the purpose of becoming the Lender under, the Finance Documents or the Facility from either any Transaction Obligor or any of its advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Lender of Clause 31 (*Confidential Information*);
- (b) is identified in writing at the time of delivery as non-confidential by any Transaction Obligor or any of its advisers; or
- (c) is known by the Lender before the date the information is disclosed or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is

aware, unconnected with the Transaction Obligors and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Debenture Notes" means the Croatian law governed debenture (in Croatian: *zadužnica*) issued by each Obligor on or about the date of this Agreement allowing direct enforcement over all or substantially all of each Obligor's assets, in security for all amounts owing by the Borrower to the Lender under this Agreement, in form and substance satisfactory to the Lender, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"Default" means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Lender.

"Disposal" means a sale, transfer or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions) and including, for the avoidance of doubt, the proceeds of any Disposal of any of the Vessels or any other vessel owned by an Obligor or any of its Subsidiaries (including any special purpose vehicle).

"Disposal Proceeds" means the consideration receivable by any Obligor or any of their Subsidiaries (including any amount receivable in repayment of intercompany debt) for any Disposal made by any Obligor or any of its Subsidiaries except for Excluded Disposal Proceeds, after deducting:

- (a) any reasonable expenses which are incurred by the disposing entity with respect to that Disposal to persons who are not an Obligor (or a Subsidiary of an Obligor); and
- (b) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

"Dispute" means the dispute between the Borrower and the Purchaser in relation to any additional amounts due on account of damages due and payable by the Purchaser to the Borrower under the Ship Building Agreement.

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

- (i) from performing its payment obligations under the Finance Documents; or
- (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"Effective Date" has the meaning given to that term in the Amendment Documents.

"Environment" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

"Environmental Claim" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

"Environmental Law" means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

"Environmental Permits" means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of the Borrower conducted on or from the properties owned or used by the Borrower.

"Excluded Disposal Proceeds" means proceeds of Disposals (i) falling under paragraphs (b)(i) and (ii) of Clause 19.4 (*Disposals*) or (ii) of proceeds of Disposals where the market value of the disposed asset (or undertaking or business, if relevant) or the consideration received for that asset (whichever is higher) does not exceed €1,000,000.

"Excluded Insurance Proceeds" means any Insurance Proceeds which the Borrower notifies the Lender are, or are to be, applied, in each case in accordance with the terms and conditions of the relevant Insurance or, if applicable, the Finance Documents:

- (a) to meet a third party claim;
- (b) to cover operating losses in respect of which the relevant Insurance claim was made; or
- (c) if agreed by the Lender in writing, in the replacement, reinstatement and/or repair of the assets in respect of which the relevant insurance claim was made.

"Existing Bank Loan" means the principal amount outstanding under the Existing Facility.

"Existing Security" means the security that secures the Existing Bank Loan as described in detail in SCHEDULE 5 (*List of Existing Security*).

"Existing Facility" means the EUR 33,000,000 short term foreign currency facility originally dated 28 March 2018, as amended from time to time, provided by the Existing Financing Lender to the Borrower (with a total outstanding principal amount of EUR 33,000,000 as at the date of this Agreement).

"Existing Facility Documentation" means, the credit documentation under which the Existing Bank Loan was made available, including but not limited to any credit agreement, security document and ancillary documentation entered into in relation to those relevant credit documents.

"Existing Financing Lender" means Zagrebačka Banka d.d., a credit institution duly incorporated in Croatia, with registered office at Trg bana Josipa Jelačića 10, 10000 Zagreb, Croatia, PIN (OIB): 92963223473, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 080000014.

"Existing Financial Indebtedness" means any and all Financial Indebtedness of the Borrower in existence as at the date of this Agreement as described in SCHEDULE 6 (*Existing Financial Indebtedness*).

"Existing Financial Security" means any and all Security provided or undertaken by the Borrower in security or reinsurance for any obligation of any person (including any obligation in respect of the Existing Financial Indebtedness) as described in detail in SCHEDULE 7 (*Existing Financial Security*) (including for the avoidance of doubt, the Existing Security).

"Export Credit Finance Facility" means any export credit finance facility that might be entered into between the relevant borrower (being a wholly owned Subsidiary of the Borrower established as a special purpose company or a non-related party being a customer of the Borrower in respect of the relevant vessel) and the Lender as lender on conditions acceptable to the Lender including that the loan is made in respect of the sale of a vessel by the Borrower (or its Subsidiary); the amount of the loan is at least €30,000,000; insurance cover is provided by HBOR in respect of that loan and the proposed purchaser for that vessel is acceptable to the Lender.

"Event of Default" means any event or circumstance specified as such in Clause 21 (*Events of Default*).

"Facility" means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

"Facility Office" means the office or offices through which the Lender will perform its obligations under this Agreement.

"FATCA" means:

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

"FATCA Application Date" means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

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

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

"Finance Document" means

- (a) this Agreement;
- (b) the Amendment Documents;
- (c) any Security Document;
- (d) the Subordination Agreement; or
- (e) any other document designated as such by the Lender and the Obligors.

"Financial Indebtedness" means any indebtedness for or 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 (including Croatian law promissory notes and debenture notes);
- (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 balance sheet liability;
- (e) without limiting the generality of paragraph (d) above, any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition of construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets and services and payment is due more than 90 days after the date of supply;
- (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (h) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (i) 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
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

"Financial Quarter" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"Financial Year" means the annual accounting period of each Obligor ending on or about 31 December each year.

"GAAP" means all accounting and similar rules, regulations and principles generally accepted and consistently applied including without limitation IFRS.

"HBOR" means Croatian Bank for Reconstruction and Development, duly incorporated in Croatia, with its registered seat at Strossmayerov trg 9, Zagreb, Croatia, PIN (OIB): 26702280390, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 3929370.

"HBOR Financial Indebtedness" means all financial indebtedness incurred (or to be incurred) by Polaris Exploration to HBOR in connection with the construction of Vessel 4 or otherwise in an amount not exceeding €87,900,000.

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

"IAS" means the IAS Regulation 1606/2002.

"IFRS" means international accounting standards within the meaning of the IAS to the extent applicable to the relevant financial statements.

"Initial Valuation" means the Valuation of the Vessels prepared for the sole benefit and reliance of the Lender and delivered to the Lender as a condition precedent under this Agreement.

"Insurance Proceeds" means in respect of any of the Vessels any proceeds of Insurances (other than Excluded Insurance Proceeds), but in any event includes proceeds when any of the relevant Vessel is declared an actual or constructive total loss by any relevant insurer.

"Insurances" means any contract of insurance required under Clause 20.6 (*Insurances*).

"Insurer" or "Insurers" means, collectively:

- (a) in respect to Vessel 1, Wiener Osiguranje Vienna Insurance Group d.d., with its registered seat at Slovenska ulica 24, Zagreb, Croatia, PIN (OIB): 52848403362, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 080026313;
- (b) in respect to Vessel 2, Allianz Zagreb d.d., with its registered seat at Heinzelova 70, Zagreb, Croatia, PIN (OIB): 23759810849, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 080004103;
- (c) in respect to Vessel 3, Triglav osiguranje d.d., with its registered seat at Antuna Heinza 4, Zagreb, Croatia, PIN (OIB): 29743547503, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 040033293; or
- (d) any other insurer acceptable for the Lender for the purposes of underwriting an Insurance in respect of a Vessel.

"Intellectual Property" means

- (a) any patents, trade-marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information,

knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and

- (b) the benefit of all applications and rights to use such assets of each Borrower (which may now or in the future subsist).

"Interest Payment Date" means each (i) day corresponding to the day of the month of the Signing Date after the Signing Date and (ii) the Termination Date. If, however, any such day is not a Business Day, the Interest Payment Date will instead be the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts or Croatian law (if applicable), the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) directors' duties, corporate benefit, capital maintenance, financial assistance, fraudulent preference or thin capitalization laws or regulations (or analogous restrictions) under Croatian law;
- (d) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases;
- (e) similar principles, rights and remedies under the laws of any Relevant Jurisdiction; and
- (f) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinions supplied to Lender as a condition precedent under this Agreement on or before the first Utilisation Date.

"Lender" means the Lender or any other person which has become a Lender in accordance with Clause 22 (*Changes to the Lender*) which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"Limitation Acts" means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

"LMA" means the Loan Market Association.

"Loan" means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

"Material Adverse Effect" means, in each case in the reasonable opinion of the Lender, a material adverse effect on:

- (a) the business, operations, property or financial or other condition or prospects of the Obligors taken as a whole;
- (b) the ability of the Obligors taken as a whole to perform their obligations under the Finance Documents;
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents; or
- (d) the rights or remedies of the Lender under any of the Finance Documents.

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

"Mortgage Agreement" means any security agreement entered into by and between the Borrower or the Vessel Owner and the Lender on or around the date of this Agreement, establishing a mortgage over any of the Vessels, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"New Lender" has the meaning given to that term in Clause 22 (*Changes to the Lender*).

"Obligor" means the Borrower or a Guarantor.

"Original Financial Statements" means, in relation to the Borrower and each of the Guarantors, its audited standalone and (if applicable) consolidated financial statements for the Financial Year ended 2017.

"Original Jurisdiction" means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement.

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

"Party" means a party to this Agreement.

"Pay-Off Letter" means any pay-off letter issued by any Existing Financing Lender to the Lender, in the form agreed by the Lender, in relation to

- (a) the amount of the relevant Existing Bank Loan and accrued but unpaid interest up to and including the date of that letter (together with the actual calculation or the method of computation of the amount that must be repaid by the Borrower on the first Utilisation Date to the Existing Financing Lender);
- (b) the release, discharge, cancellation and deregistration of the Existing Security;
- (c) the termination of the Existing Facility Documentation (as relevant) upon such repayment (prepayment); and
- (d) the consent provided by the Existing Financing Lender for the Transaction Security to be signed and perfected according to the Security Documents (following in ranking and priority only the Existing Security).

"Perfection Requirements" means the making or the procuring of filings, stampings, registrations, notarisations, endorsements, translations and/or notifications of any Finance Document (and/or any Security created under it) necessary for the validity, enforceability (as against the relevant Obligor or any relevant third party) and/or perfection of that Finance Document.

"Permitted Financial Indebtedness" means Financial Indebtedness of the Borrower:

- (a) incurred under the Finance Documents;
- (b) constituting Existing Financial Indebtedness, provided that if such indebtedness:
 - (i) has been incurred under the Existing Facility Documentation, it is permitted only to the extent it is fully discharged in accordance with this Agreement and the Pay-Off Letter or otherwise repaid or discharged prior to the Utilisation;
 - (ii) has been incurred in relation to the HBOR Financial Indebtedness, it is permitted only to the extent the liability of the Borrower (whether as a joint debtor or by way of guarantee, suretyship, indemnity (the **"HBOR Guarantee"**) or similar obligations or liabilities including as a provider of any Security) does not at any time exceed €87,900,000 (the **"HBOR Exposure"**) and the HBOR Exposure is not varied such that it may become more onerous for the Borrower throughout the term of this Agreement without the prior written consent of the Lender;
 - (iii) that constitutes Trade Liabilities, it is permitted only to the extent the liability of the Borrower (whether as a debtor or by way of debenture notes, promissory

notes, right of subrogation, indemnity or similar obligations or liabilities including on account of credit cards but not for loans, bonds or similar forms of borrowings) does not at any time exceed €17,000,000 (the "**Trade Exposure**") and the Trade Exposure is not at any time throughout the term of this Agreement increased by more than 10% without the prior written consent of the Lender; and

- (c) constitutes Subordinated Debt (including interest accrued on the principal amount of such debt), it is permitted only to the extent such principal and interest remains subordinated on the terms of the Subordination Agreement; or
- (d) not permitted under paragraphs (a) and (b) above and agreed by the Lender in writing prior to such debt being incurred provided that such consent shall not be unreasonably withheld or delayed.

"Permitted Security" means:

- (a) the Transaction Security;
- (b) the Existing Security but only to the extent fully discharged, released or otherwise terminated in accordance with this Agreement and the Pay-Off Letter; and

(c) Security that has been created in respect of:

(i) Vessel 1 being:

- second rank mortgage registered on the basis of Warranty contract no. F-017-15 for orderly settlement of long-term liabilities dated 26 May 2015 in favour of the Ministry of Finance of Croatia in the amount of €12,667,000 increased for contractual interests, fees and expenses;
- third rank mortgage registered on the basis of Agreement on security financial claim by establishing a mortgage on the vessel under construction dated 29 June 2017 in favour of the Purchaser in the amount of €6,000,000, increased for the agreed interest rate in the amount of 6,5% per annum calculated from the maturity date of the Purchaser claim until the payment;

(ii) Vessel 2 being:

- second rank mortgage registered on the basis of Guarantee contract no. 1604002877 dated 27 day of April 2016 in favour of the Existing Financing Lender in the amount of HRK 28,396,042.14 increased for fees and expenses;
- ~~second rank mortgage registered on the basis of~~ Guarantee contract no. 1604002878 dated 27 day of April 2016 in favour of the Existing Financing Lender in the amount of HRK 28,396,042.14 increased for fees and expenses;

(iii) Vessel 3 being:

- second rank mortgage registered on the basis of Fourth Preferred Mortgage dated 26 day of October 2016 in favour of the Existing Financing Lender in the amount of EUR 1.265.000;
- third rank mortgage registered on the basis of Sixth Preferred Mortgage Agreement dated 25 day of January 2017 in favour of the Existing Financing Lender in the amount of EUR 2,400,000;

- (d) the Security that has been created in respect of the HBOR Financial Indebtedness (as long as it remains Permitted Financial Indebtedness (within the HBOR Exposure) and the Security is substantially same as the Security existing in respect of the indebtedness as at the date of this Agreement);
- (e) the Security that has been created in respect of Trade Liabilities (as long as it remains Permitted Financial Indebtedness (within the Trade Exposure) and the Security conforms to the type, category and nature of the Security described in the definition of "Trade Liabilities" and does not comprise Security over the production assets and revenues of the Borrower or any of the Vessels);
- (f) any lien arising by operation of law and in the ordinary course of trading; and
- (g) any other Security that is released prior to the first Utilisation.

"Pledge Registry" means the Croatian Central Depositary and Clearing Company that is in charge of registering the Security created by any Share Pledge Agreement.

"Plovidba" means Brodosplit-plovidba d.o.o., a limited liability company duly incorporated in Croatia, with its registered seat at Put Supavla 21/B, Split, Croatia, registered with the court register of the Commercial Court in Split under the registration number (MBS) 060177963, PIN (OIB): 11302085213, a fully owned Subsidiary of the Borrower that in turn owns the entire issued share capital of Vessel Owner 1.

"Polaris Exploration" means Polaris Exploration Inc., with registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH 96960, reg. No.94596, (PIN) OIB: 64394615428, a wholly owned Subsidiary of the Borrower.

"Purchaser" means Star Clippers Ltd., a company duly incorporated in Bahamas, with its registered seat at Sassoon House, Victoria Avenue, Nassau, Bahamas, PIN (OIB): 64949191302.

"Quarter Date" means each of 31 March, 30 June, 30 September and 31 December.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

"Recovery Proceeds" means any proceeds of a claim, suit, action or any other proceedings (whether by way of judgment, award, injunction, restitution, settlement or other arrangement in-

cluding without limitation set-off) of any nature against, with or otherwise involving the Purchaser (or, if applicable, any Alternative Purchaser) in relation to the Dispute, the Ship Building Agreement or otherwise in respect of the Vessel 1 Sale, and after deducting:

- (a) any reasonable expenses which are incurred by an Obligor to persons who are not members of the Target Group; and
- (b) any Tax incurred and required to be paid by an Obligor (as reasonably determined by that Obligor on the basis of existing rates and taking into account any available credit, deduction or allowance).

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

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

"Repeating-Representations" means, subject to Clause 17.33 (*Times when representations are made*), each of the representations set out in Clause 17 (*Representations*).

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

"Sanctioned Person" means any natural or legal person designated by Sanctions including but not limited to any natural or legal person:

- (a) listed on, or owned or controlled (in each case, within the meaning of the relevant Sanctions regimes), either directly or indirectly, by a person listed on any Sanctions List;
- (b) located in, incorporated under the laws of, or owned or controlled (in each case, within the meaning of the relevant Sanctions regimes), either directly or indirectly, by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions (being, at the date of this Agreement, Cuba, Iran, North Korea, Sudan, South Sudan, Syria and Crimea/Sevastopol);
- (c) acting on behalf of any of the persons listed above; or
- (d) subject of Sanctions with which the Lender is prohibited from dealing or otherwise engaging in any transaction pursuant to a Sanctions Authority.

"Sanctions" means any sanctions under:

- (a) the laws and regulations administered or enforced by the United States of America relating to economic or financial sanctions or trade embargoes;
- (b) the laws and regulations enacted by the European Union relating to economic or financial sanctions or trade embargoes;
- (c) the economic sanctions, embargoes or any other restrictive financial and economic measures enacted by the United Nations Security Council under Article 41 of the United Nations Charter; and
- (d) any sanction imposed by Croatia so long as those sanction are in conformity with those described in paragraphs (a) to (c) above

and provided in each case that any of the above sanctions are not disapplied by any blocking or similar regulation by the European Union and the Lender is required to comply with those sanctions.

"Sanctions Authority" means

- (a) the United Nations Security Council;
- (b) the European Union;
- (c) the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC);
- (d) Her Majesty's Treasury;
- (e) the respective governmental institutions competent in financial sanctions matters, and
- (f) any other governmental institution or agency with responsibility for imposing, administering or enforcing Sanctions with jurisdiction over the Lender or any Obligor.

"Sanctions List" means any list issued or maintained and published by any Sanctions Authority of persons subject to Sanctions (including investment or related restrictions), each as amended, supplemented or substituted from time to time, for example the Specially Designated Nationals and Blocked Persons list maintained by OFAC.

"Secured Liabilities" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to the Lender under each Finance Document.

"Secured Party" means the Lender, a Receiver or any Delegate.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Security Asset" means all of the assets of the Transaction Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

"Security Document" means:

- (a) each of the documents listed in SCHEDULE 8 (*List of Security Documents*);
- (b) any other document evidencing or creating Security over any asset to secure any obligation of any Obligor to a Secured Party under the Finance Documents; or
- (c) any other document designated as such by the Lender and the Obligors.

"Security Property" means:

- (a) the Transaction Security expressed to be granted in favour of the Lender and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in respect of the Secured Liabilities to the Lender and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Lender; and
- (c) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Lender is required by the terms of the Finance Documents to hold.

"Shareholder" means DIV-BRODOGRADNJA d.o.o., a company duly incorporated in Croatia, with its registered seat at Bobovica 10/A, Samobor, Croatia, registered with the court register of the Commercial Court in Zagreb under the registration number (MBS) 080812968, OIB: 44993645694.

"Shares" means 8,909,175 shares of the Borrower, share designation BIST-R-A, registered with the Pledge Registry, representing 99.83% of the entire share capital of the Borrower.

"Share Pledge Agreement" means the security agreement entered into by and between the Shareholder and the Lender on or around the date of this Agreement, establishing a pledge over the Shares, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"Ship Building Agreement" means the agreement entered into by and between the Borrower and the Purchaser dated 2 October 2014, as amended from time to time, in relation to the construction of Vessel 1.

"Ship Registry" means the competent ship registry in Croatia, Malta or the Marshall Islands that is in charge of registering the Security created by any of the Mortgage Agreements.

"Signing Date" means the date of signing of this Agreement.

"Subordinated Creditor" means:

- (a) the Shareholder; or

- (b) any other person who becomes a Subordinated Creditor in accordance with the Subordination Agreement.

"Subordinated Debt" has, in relation to a Subordinated Creditor, the meaning given to it in the Subordination Agreement (providing for the subordination of any and all indebtedness provided by that Subordinated Creditor to any indebtedness owed by any Obligor to the Lender).

"Subordination Agreement" means the subordination agreement entered into or to be entered into by the Borrower, the Subordinated Creditors and the Lender in an agreed form.

"Subsidiary" means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and **control** for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"TARGET Day" means any day on which TARGET2 is open for the settlement of payments in euro.

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

"Termination Date" means 12 April 2021.

"Total Commitments" means the aggregate of the Commitments being €50,000,000 at the date of this Agreement.

"Trade Liabilities" means liabilities incurred or undertaken in the ordinary course of trade of the Borrower on customary arm's length commercial terms on an unsecured basis or, if secured, Security is created only in respect of:

- (a) the goods purchased, procured or supplied in case of indebtedness of the type described in paragraphs (e) and (g) of the definition of "Financial Indebtedness" and the indebtedness and security (if any) is discharged in 90 days from the incurrence of such indebtedness at the latest;
- (b) the cash deposited as Security for stand-by letters of credit or advance payment or other guarantees in case of indebtedness of the type described in paragraph (i) of the definition of "Financial Indebtedness"; or
- (c) debenture notes or promissory notes constituting or evidencing such relevant indebtedness.

"Tranche A" means the Facility made available to the Borrower pursuant to paragraph 2.1(a) (*The Facility*).

"Tranche A Commitment" means the amount of €33,000,000 to the extent not cancelled, reduced or transferred by it under this Agreement.

"Tranche A Loan" means a loan made or to be made under Tranche A or the principal amount outstanding for the time being of that loan.

"Tranche B" means the Facility made available to the Borrower pursuant to paragraph 2.1(b) (*The Facility*).

"Tranche B Commitment" means the amount of €17,000,000 to the extent not cancelled, reduced or transferred by it under this Agreement.

"Tranche B Loan" means a loan made or to be made under Tranche B or the principal amount outstanding for the time being of that loan.

"Transaction" means any and all of the transactions contemplated by this Agreement (including but not limited to the refinancing of the Existing Bank Loan, taking Security in respect of the Vessels and other assets as relevant and providing funding in relation to the construction of Vessel 4).

"Transaction Document" means:

- (a) a Finance Document;
- (b) the Ship Building Agreement;
- (c) the Vessel 1 Transfer Documentation;
- (d) any of the Insurances;
- (e) any other document designated as such by the Lender and the Obligors.

"Transaction Obligor" means:

- (a) any Obligor;
- (b) any Subordinated Creditor;
- (c) any Vessel Owner; and/or
- (d) any other person that provides Security in respect of the Finance Documents or is party to a Finance Document as an obligor (howsoever defined).

"Transaction Security" means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

"Transfer Certificate" means a certificate substantially in the form set out in SCHEDULE 4 (*Form of Transfer Certificate*).

"Unpaid Sum" means any sum due and payable but unpaid by an Obligor under the Finance Documents.

"Ultimate Beneficial Owner" means Ms Vjera Debeljak, Ms Vedrana Debeljak and Mr Tomislav Debeljak, each citizen of Croatia.

"US" means the United States of America.

"US Tax Obligor" means:

- (a) a borrower which is resident for tax purposes in the US; or
- (b) an obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

"Utilisation" means the utilisation of the Facility.

"Utilisation Date" means the date of the Utilisation, being the date on which a Loan is to be made.

"Utilisation Request" means a notice substantially in the form set out in SCHEDULE 3 (*Utilisation Request*).

"Valuation" means a valuation (including the Initial Valuation), prepared

- (a) in accordance with the applicable laws and regulations governing the valuation of the Vessels, in form and substance satisfactory to the Lender, issued by the Valuer and addressed to the Lender valuing each Vessel Owner's interests in the relevant Vessel; and
 - (b) in relation to the Shares,
- in each case on a market value basis.

"Valuer" means any valuer approved by the Lender, appointed on market terms whereby customary reliance and, as applicable, duty of care is owed by such person or firm to the Lender (including but not limited to the Valuer that has prepared the Initial Valuation).

"VAT" means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

"Vessel" or "Vessels" means, collectively:

- (a) the ship under construction registered with the Registry of Ships under Construction of the Harbour's Master's Office in Split, Croatia, registered with folio number 537, designation BRODOSPLIT 483, port of registry Split, gross tonnage 8770, net tonnage 2630, a passenger ship, of the name Flying Clipper, owned by Vessel Owner 1 ("**Vessel 1**");
- (b) the ship under construction registered with the Registry of Ships under Construction of the Harbour's Master's Office in Split, Croatia, registered with folio number 516, designation BRODOSPLIT 475, port of registry Split, CFR number -1064, a passenger ship, of the name Picasso, owned by Vessel Owner 2 ("**Vessel 2**");
- (c) the mega-yacht registered with the Office of the Maritime Administrator of the Republic of Marshall Islands, imo. no. 9712838, official no. 71106, call letters V7PA6, of the name Katina, a commercial motor yacht, owned by Vessel Owner 3 ("**Vessel 3**");

as described in more detail in any relevant Security Document.

"Vessel 1 Sale" means the proposed sale of Vessel 1 to the Purchaser or any Alternative Purchaser acceptable to the Lender.

"Vessel 1 Sale Conditions" means that at all time during the process aimed at the Vessel 1 Sale the Obligors will (and shall ensure that all of their Affiliates will):

- (a) promptly without delay inform the Lender about any fact, event or circumstance affecting the Vessel 1 Sale or Vessel 1;
- (b) in particular and without limiting the foregoing, inform the Lender about all financial and other material conditions of any offer made or received from the Purchaser or an Alternative Purchaser;
- (c) follow and comply in full with the Vessel 1 Sale Protocol (Milestones);
- (d) give reasonable prior notice to the Lender and, if so requested by the Lender, allow a representative of the Lender to attend all major inspections or construction site visits (including by courts or authorities) relating to Vessel 1;
- (e) ensure that the Lender is given all records of such inspections or visits (including any relevant Authorisations or specifications relating to Vessel 1 or any major part thereof);
- (f) organise formal meetings with the management of the Obligors to discuss any development in relation to the Vessel 1 Sale and the relevant management team must be so available, subject to reasonable notice and not more than once a month (unless the Lender believes, acting reasonably, that a Default may be outstanding);

- (g) if so requested by the Lender, allow the Lender and their representatives or advisers to attend meetings with the Purchaser or any Alternative Purchaser and to address questions or make representations to the parties involved in relation to the Vessel 1 Sale and the Obligor shall have due regard to those representations; and
- (h) if and to the extent the Vessel 1 Sale has not been completed (on terms acceptable to the Lender) on or before 12 July 2020 (the **Vessel 1 Sale Completion Deadline**), any Security interest any Secured Party has in Vessel 1 shall become enforceable and the relevant Secured Party shall have as mortgagee in possession or any other manner permitted by the relevant Finance Documents including but not limited to the Agreement on Authorization of Vessel Sale the power to sell the Vessel 1 as if Clause 21.17 (*Acceleration*) applied, provided that failure to complete the Vessel 1 Sale by the Vessel 1 Sale Completion Deadline shall not:
 - (i) by and itself constitute an Event of Default provided that the Lender shall have an unfettered right to declare an Event of Default for any other event or circumstance having occurred under the Finance Documents including any non-compliance by any Obligor of any other term of the Finance Documents; and
 - (ii) attract any power to sale as described above if the Lender is satisfied that the relevant documentation relating to the Vessel 1 Sale has been signed or executed (as relevant) in form and substance acceptable to the Lender and the relevant Disposal Proceeds will be received and applied by the Borrower in accordance with this Agreement by no later than 12 January 2021.

"Vessel 1 Sale Protocol (Milestones)" means a step plan including any relevant milestones with the applicable date attached to each of such milestones in respect of the Vessel 1 Sale, containing a detailed step plan for the time frame and closing of the proposed sale or other disposal of Vessel 1, and delivered as a condition precedent under the Amendment Documents.

"Vessel 1 Transfer Documentation" means the documentation effecting the sale of Vessel 1 by the Borrower to Vessel Owner 1, comprising a ship purchase agreement, a ship building agreement and a series set-off arrangements entered into by and amongst the Borrower, Vessel Owner 1 and Plovidba as a result of which Vessel 1 was transferred to Vessel Owner 1 on a cashless basis.

"Vessel 4" means the ship under construction built by the Borrower by the name "Ultramarine" (hull number 487), as builder, for Polaris Exploration, as buyer, in accordance with the ship building agreement for construction of a polar expedition cruise vessel entered dated 21 March 2018 (as amended from time to time).

"Vessel Owner" or "Vessel Owners" means, collectively:

- (a) XB AHTS Hero Shipping Inc., a company duly incorporated in Marshall Islands, with its registered seat at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, Reg. No. 61825, PIN (OIB): 87820609933, registered with Articles of Incorporation dated on 3 June 2013 (the "**Vessel Owner 1**")
- (b) River Cruise Shipping Inc., a company duly incorporated in Marshall Islands, with its registered seat at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, Reg. No. 39831, PIN (OIB): 77920860623, registered with Articles of Incorporation dated on 22 October 2015 ("**Vessel Owner 2**"); and
- (c) BS Star Shipping Inc., a company duly incorporated in Marshall Islands, with its registered seat at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, Reg. No. 61608, PIN (OIB): 35505742989, registered with Articles of Incorporation dated 21 May 2013 ("**Vessel Owner 3**").

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) the "**Borrower**", "**Lender**", "**Guarantor**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
 - (ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Borrower and the Lender;
 - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
 - (iv) "**director**" and "**board of directors**" includes their equivalents in any jurisdiction (including, without limitation, the director (*direktor*) and managing board (*uprava*) of any Croatian company);
 - (v) "**disposal**" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and "**dispose**" will be construed accordingly;
 - (vi) a "**Finance Document**" or "**Transaction Document**" or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (vii) "**guarantee**" means (other than in Clause 16 (*Guarantee and indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of

any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

- (viii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (ix) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
 - (x) a "**law**" includes any treaty, directive, decree, order, government ordinance, government emergency ordinance, regulation, government decision and any other legislative or administrative act, and any norms, rules, circulars, guidance notes or other subordinate legislation or administrative procedure or indication, and reference to any provision of any law includes that provision as amended, modified, republished or re-enacted;
 - (xi) a "**regulation**" includes any regulation, rule, official directive, request or guideline customarily accepted and complied with by those targeted by such guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (xii) a "**share**" in any company or corporation includes a reference to the shares (*dionice*) or social parts (*poslovni udjeli*), as applicable, of any Croatian joint stock company or limited liability company (or similar entity);
 - (xiii) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xiv) a time of day is a reference to Zagreb time.
- (b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Section, Clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document

has the same meaning in that Finance Document or notice as in this Agreement.

- (e) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

1.3 Currency symbols and definitions

"€", "EUR" and "euro" denote the single currency of the Participating Member States.

"HRK" or "Croatian kuna" means the lawful currency for the time being of Croatia.

1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver or any person described in paragraph (b) may, subject to this Clause 1.4 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

1.5 Croatian terms

In this Agreement, where it relates to a Transaction Obligor registered or incorporated in Croatia, a reference to:

- (a) a "**bankruptcy, insolvency, administration, (general) composition, compromise, moratorium, restructuring, reorganisation**" or the like includes, without limitation, bankruptcy proceedings (*stečajni postupak*), pre-bankruptcy proceedings (*predstečajni postupak*) and special administration proceedings (*postupak izvanredne uprave*);
- (b) a(n) "**attachment, sequestration, distress, execution**" or the like includes, without limitation, enforcement proceedings (*ovrha*) and preliminary injunctions (*prethodne mjere* and *privremene mjere*);
- (c) a "**liquidator**" includes, without limitation, liquidators (*likvidatori*);
- (d) a "**receiver, administrator, administrative receiver, compulsory manager**" includes, without limitation, bankruptcy administrator (*stečajni upravitelj*), pre-bankruptcy receiver (*povjerenik u predstečajnom postupku*) and special administration receiver (*izvanredni povjerenik*); and

- (e) a "**winding-up, dissolution**" or the like includes, without limitation, liquidation (*likvidacija*).

SECTION 2 THE FACILITY

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lender makes available to the Borrower:

- (a) a euro term loan facility in an aggregate amount equal to the Total Tranche A Commitments; and
- (b) a euro term loan facility in an aggregate amount equal to the Total Tranche B Commitments,

in each case in accordance with the terms and conditions of this Agreement.

3. PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed as follows:

- (a) the amounts borrowed by it under Tranche A, towards refinancing the Existing Bank Loan; and
- (b) the amounts borrowed by it under Tranche B towards financing of the construction of the Vessel 4.

3.2 Monitoring

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Lender will only be obliged to comply with Clause 5.4 (*Utilisation*) in relation to any Utilisation if on or before the first Utilisation Date for that Utilisation, the Lender has received all of the documents and other evidence listed in SCHEDULE 2A (*Conditions precedent for Tranche A*) of SCHEDULE 2 (*Conditions precedent and subsequent*) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied.

4.2 Further conditions precedent

The Lender will only be obliged to comply with Clause 5.4 (*Utilisation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (i) no Default is continuing or would result from the proposed Loan; and
- (ii) the Repeating Representations to be made by each Obligor are true in all material respects.

4.3 Additional conditions precedent for Tranche B

Subject to Clause 4.2 (*Further conditions precedent*), the Lender will only be obliged to comply with Clause 5.4 (*Utilisation*) in respect to Tranche B Loan if the Lender has received all of the documents and other evidence listed in SCHEDULE 2B (*Conditions precedent for Tranche B*) of SCHEDULE 2 (*Conditions precedent and subsequent*) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied.

SECTION 3 UTILISATION

5. UTILISATION¹

5.1 Delivery of a Utilisation Request

- (a) The Borrower may utilise Tranche A of the Facility by delivery to the Lender of a duly completed Utilisation Request not later than 11:00 a.m. on the third Business Day before the relevant Utilisation Date for the proposed borrowing.
- (b) The Borrower may utilise Tranche B of the Facility by delivery to the Lender of a duly completed Utilisation Request not later than 11:00 a.m. on the third Business Day before the relevant Utilisation Date for the proposed borrowing.

5.2 Completion of a Utilisation Request

- (a) The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it specifies the Tranche (which is to be utilised);
 - ~~(ii) it specifies the amount (that is proposed to be utilised from that Tranche by the Borrower) and the Account to which that relevant Loan is to be disbursed;~~
 - (iii) it specifies the purpose of the Loan;
 - (iv) the proposed Utilisation Date is a Business Day within the Availability Period; and
 - (v) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*).
- (b) Only one Utilisation Request may be given under this Agreement in respect of each Tranche.

5.3 Currency and amount

- (a) The currency specified in the Utilisation Request must be euros.
- (b) The amount of the proposed Loan must be equal to or less than:
 - (i) in respect to Tranche A, the Tranche A Commitment; and
 - (ii) in respect to Tranche B, the Tranche B Commitment,

¹ Not restated – Facilities fully drawn.

and in no event is more than the Available Facility.

5.4 Utilisation

If the conditions set out in this Agreement have been met, the Lender shall make the requested Loan available by the relevant Utilisation Date.

5.5 Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loan

Subject to the terms of this Agreement, the Borrower shall repay the Loan in full on the Termination Date.

6.2 Re-borrowing

The Borrower may not re-borrow any part of the Facility which is repaid.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

If, in any applicable jurisdiction, it is or becomes unlawful or contrary to any regulation including Sanctions for the Lender to perform any of its obligations as contemplated by this Agreement or a Finance Document or to fund or maintain its participation in any Loan or to make payments under this Agreement as required under this Agreement (including to a blocked account) or it becomes unlawful for any Affiliate of the Lender for that Lender to do so:

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) the Available Commitment of the Lender will be immediately cancelled; and
- (c) the Borrower shall repay the Loan on the last day of the Interest Period for the Loan occurring after the Lender has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

7.2 Change of control

If the Ultimate Beneficial Owner (or any of them individually) ceases to own beneficially (directly or indirectly through wholly-owned Subsidiaries) at least 99.83% of the share capital of the Borrower or there is any other change in the ownership structure of the Borrower (in each case, without the prior written consent of the Lender):

- (i) the Borrower shall promptly notify the Lender upon becoming aware of that event;
- (ii) the Lender shall not be obliged to fund the Loan; and

- (iii) the Lender may, by not less than five days' notice to the Borrower, cancel the Commitments and declare all outstanding Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon those Commitments will be cancelled, and all such outstanding Loan and amounts will become immediately due and payable.

7.3 Insurance cover

If any of the Insurances is terminated, annulled or revoked and is not renewed or replaced in five Business Days by the Borrower to the satisfaction of the Lender, the Lender may, by not less than five days' notice to the Borrower, cancel the Commitments and declare all outstanding Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon those Commitments will be cancelled and all such outstanding Loan and amounts will become immediately due and payable.

7.4 Mandatory prepayment

The Borrower must apply the following amounts in prepayment of the Loans in accordance herewith:

- (a) the amount of Disposal Proceeds;
- (b) the amount of Insurance Proceeds; and
- (c) the amount of Recovery Proceeds.

7.5 Voluntary cancellation

The Borrower may, if it gives the Lender not less than five Business Days' prior notice, cancel the whole or any part (being a minimum amount of €5,000,000) of the Available Facility. Any cancellation under this Clause 7.5 shall reduce the Commitments of the Lender rateably.

7.6 Voluntary prepayment of Loans

- (a) The Borrower may, if it gives the Lender not less than five Business Days' prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of €1,000,000).
- (b) A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

7.7 Right of repayment and cancellation in relation to the Lender

- (a) If:

- (i) any sum payable to the Lender by an Obligor is required to be increased under paragraph 11.2(c) of Clause 11.2 (*Tax gross-up*); or
- (ii) the Lender claims indemnification from the Borrower under Clause 11.3 (*Tax indemnity*) or Clause 12.1 (*Increased costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Lender notice of cancellation of the Commitment and its intention to procure the repayment of each Loan.

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of the Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay each Loan together with all interest and other amounts accrued under the Finance Documents.

7.8 Restrictions

- (a) Any notice of cancellation or prepayment or repayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment or repayment under this Agreement shall be made together with accrued interest on the amount prepaid, but otherwise without premium or penalty.
- (c) The Borrower may not re-borrow any part of the Facility which is repaid, prepaid or cancelled.
- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If all or part of the Lender's participation in a Loan is repaid or prepaid, an amount of the Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

SECTION 5 COSTS OF UTILISATION

8. INTEREST

8.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the Applicable Interest Rate (in each case, a fixed rate).

8.2 Payment of interest

The Borrower shall pay accrued interest on the Loan on each Interest Payment Date.

8.3 Default interest

- (a) If an Obligor fails to pay any amount (other than an interest payment) payable by it under a Finance Document on its due date, interest shall accrue on such overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (c) below, is 2.00 (two) per cent. per annum higher than the rate applicable under Clause 8.1 (*Calculation of interest*).
- (b) Any interest accruing under this Clause 8.3 shall be immediately payable by the Obligors on demand by the Lender.
- (c) If any overdue amount (other than an interest payment) consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 2.00 (two) per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.

9. INTEREST PERIODS

9.1 Interest Periods

- (a) Each Interest Period shall be one Month.
- (b) Each Interest Period for the Loan shall start on its Utilisation Date or (if already made) on the last day of its preceding Interest Period and end on the next Interest Payment Date.

- (c) No Interest Period for the Loan shall extend beyond the Termination Date.
- (d) Notwithstanding paragraph (b) above, the first Interest Period of the Tranche B Loan shall end on the same day as the current Interest Period of the Tranche A Loan. On the last day of those Interest Periods, the Loans shall be consolidated and treated as one Loan.

9.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, the Interest Payment date will occur on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not) while the duration of such Interest Period will remain the same.

10. FEES²

10.1 Upfront Fee

- (a) The Borrower shall pay to the Lender an upfront fee computed at a rate of three (3.00) per cent. of the Total Commitments.
- (b) ~~The upfront fee is due at Signing Date and payable within two Business Days from the day of disbursement of the Tranche B Loan. The upfront fee must be paid by the Borrower from its own funds to an account of the Lender as notified by the Lender to the Borrower on or before the due date in accordance herewith (and no amount borrowed or proposed to be borrowed hereunder may be used for this purpose).~~
- (c) Any amount payable under this Clause 10.1 is exclusive of any value added tax or any Tax of a similar nature which might be chargeable in connection with that amount. If any value added tax or other Tax of a similar nature is chargeable in respect of any amount payable under this Clause 10.1, it must promptly be paid by the Borrower.
- (d) All payments to be made by the Borrower under this Clause 10.1 shall be made free and clear of and without any deduction for and on account of any set-off, counterclaim or otherwise. The Borrower waives its rights to set-off any claims it might have against the Lender under or in connection with this Clause 10.1.
- (e) Any amount paid in relation to the upfront fee is non-refundable and non-creditable against any other fee or amount payable in connection with any other Finance Document.

² Not restated.

10.2 Commitment fee

- (a) The Borrower shall pay to the Lender a commitment fee computed at the rate of 1.50 per cent. per annum on the unutilized amount of the Facility.
- (b) The accrued commitment fee is payable on each Interest Payment Date during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

11. TAX GROSS UP AND INDEMNITIES

11.1 Definitions

(a) In this Agreement:

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

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

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

"**Tax Payment**" means either the increase in a payment made by an Obligor to the Lender under Clause 11.2 (*Tax gross-up*) or a payment under Clause 11.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 11 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

11.2 Tax gross-up

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

(b) Each Obligor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, in respect of a payment payable to the Lender, the Lender shall notify the relevant Obligor on becoming so aware.

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

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

- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the relevant Obligor shall deliver to the Lender evidence reasonably satisfactory to that Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

11.3 Tax indemnity

- (a) The Obligors shall within three (3) Business Days of demand by the Lender pay to the Protected Party an amount equal to the loss, liability or cost which the Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Protected Party in respect of a Finance Document.
- (b) Clause (a) shall not apply:
 - (i) with respect to any Tax assessed on the Lender:
 - i. under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
 - ii. under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender;
 - (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 11.2 (*Tax gross-up*).
- (c) The Protected Party making, or intending to make, a claim pursuant to paragraph (a) of this Clause 11.3 shall promptly notify the Obligors of the event which will give, or has given, rise to the claim.

11.4 Tax Credit

If an Obligor makes a Tax Payment and the Lender determines that:

- (a) a Tax Credit is attributable to that Tax Payment; and
- (b) the Lender has obtained, utilised and retained that Tax Credit,

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

11.5 Stamp taxes

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

11.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to the Lender which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, if VAT is or becomes chargeable on any supply made by the Lender to any Party under a Finance Document and the Lender is required to account to the relevant tax authority for the VAT, that Party must pay to the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of that VAT (and the Lender must promptly provide an appropriate VAT invoice to that Party).
- (b) Where a Finance Document requires any Party to reimburse or indemnify the Lender for any cost or expense, that Party shall reimburse or indemnify (as the case may be) the Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

11.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within 10 Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige the Lender to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

11.8 FATCA Deduction

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

12. INCREASED COSTS

12.1 Increased costs

- (a) Subject to Clause 12.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Lender, pay for the account of the Lender the amount of any Increased Costs incurred by the Lender or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.
- (b) In this Agreement "**Increased Costs**" means:

- (i) a reduction in the rate of return from the Facility or on the Lender's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by the Lender or any of its Affiliates to the extent that it is attributable to the Lender having entered into its Commitment or funding or performing its obligations under any Finance Document.

12.2 Increased cost claims

- (a) In case the Lender intends to make a claim pursuant to Clause 12.1 (*Increased costs*) shall notify the Borrower of the event giving rise to the claim.
- (b) The Lender shall, as soon as practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

12.3 Exceptions

- (a) ~~attributable to a Tax Deduction required by law to be made by an Obligor;~~
- (b) Clause 12.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a FATCA Deduction required to be made by a Party;
 - (ii) compensated for by Clause 11.3 (*Tax indemnity*); or
 - (iii) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.
- (c) In this Clause 12.3, a reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 11.1 (*Definitions*).

13. OTHER INDEMNITIES

13.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
 - (i) making or filing a claim or proof against that Obligor; or

- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

13.2 Other indemnities

The Borrower shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Secured Party any cost, loss or liability incurred by that Secured Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date;
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Secured Party alone); or
- (d) a Loan (or part of a Loan) not being prepaid or repaid in accordance with a notice of prepayment or repayment given by the Borrower.

14. MITIGATION BY THE LENDER

14.1 Mitigation

- (a) The Lender shall, in consultation with the Obligors, take all reasonable steps to mitigate any circumstances which arise and which would result in the Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 11 (*Tax gross up and indemnities*), Clause 12 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

14.2 Limitation of liability

- (a) The Borrower shall promptly indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 14.1 (*Mitigation*).
- (b) The Lender is not obliged to take any steps under Clause 14.1 (*Mitigation*) if, in the opinion of the Lender, to do so might be prejudicial to it.

15. COSTS AND EXPENSES

15.1 Transaction expenses

The Borrower shall promptly on demand pay to the Lender the amount of all pre-agreed costs and expenses (including legal fees) incurred to it in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and
- (b) any other Finance Documents executed after the date of this Agreement.

15.2 Amendment costs

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 24.6 (*Change of currency*),

the Borrower shall, within three Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.

15.3 Valuations

- (a) The Borrower must at its own cost provide the Lender with a Valuation in each calendar year (each such Valuation an "**Annual Valuation**") such that an Annual Valuation must in any event be delivered to the Lender in less than twelve month from the date when the previous Valuation was provided to the Lender in respect of the relevant Vessel or the Shares (as applicable).
- (b) Notwithstanding the provision of any Annual Valuation, the Lender may request a Valuation at any time.

(c) The Borrower shall promptly on demand pay to the Lender the costs of:

- (i) the Initial Valuation;

- (ii) a Valuation obtained by the Lender in connection with an insurance event affecting any of the Vessel or the relevant Security created in respect thereof; and
 - (iii) a Valuation obtained by the Lender at any time when a Default is continuing or is likely to occur as a result of obtaining that Valuation.
- (d) The Borrower must supply to the Lender a copy of any valuation of any Vessel an Obligor obtains, promptly upon obtaining it.
- (e) Any Valuation not referred to in paragraph (c) above will be at the cost of the Lender.

15.4 Enforcement and preservation costs

The Borrower shall, within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and with any proceedings instituted by or against that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

SECTION 8 GUARANTEE

16. GUARANTEE AND INDEMNITY

16.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to the Lender punctual performance by the Borrower of all that Borrower's obligations under the Finance Documents;
- (b) undertakes with the Lender that whenever the Borrower does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on first demand pay that amount as if it was the principal obligor; and
- (c) agrees with the Lender that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Lender immediately on demand against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. ~~The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 16 if the amount claimed had been recoverable on the basis of a guarantee.~~

16.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by the Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

16.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of the Borrower or any security for those obligations or otherwise) is made by the Lender in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 16 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

16.4 Waiver of defences

~~The obligations of each Guarantor under this Clause 16 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 16 (without limitation and whether or not known to it or the Lender) including:~~

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Affiliate of the Borrower;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

16.5 Immediate recourse

Each Guarantor waives any right it may have of first requiring the Lender to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 16.

16.6 Appropriations

Until all amounts which may be or become payable by the Borrower under or in connection with the Finance Documents have been irrevocably paid in full, the Lender may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Lender in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 16.

16.7 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Borrower under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 16:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 16.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with the Lender.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Lender by the Borrower under or in connection with the Finance Documents to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application in accordance with Clause 24 (*Payment mechanics*).

16.8 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Lender.

16.9 Limitation of Security

Each Guarantor agrees to become a Guarantor and to be bound by the terms of this Agreement and the other relevant Finance Documents as Guarantor in accordance with this Agreement; provided, however, that any provision or any term in the Agreement or any other Finance Document shall not be construed to create any obligation on any person or corporate body of the to act in violation of mandatory capital maintenance rules (in Croatian: pravila za očuvanje kapitala) ("**Croatian Capital Maintenance Rules**") within the meaning of Croatian laws, including, but without limitation to the relevant provisions of Companies Act. Should any liability or obligation of a Guarantor under this Agreement or any other Finance Document violate or contradict any of the Croatian Capital Maintenance

Rules as finally determined by the relevant competent authority, such liability or obligation shall be deemed to be replaced by a liability or obligation of a similar nature compliant with the Croatian Capital Maintenance Rules, which provides the best possible obligation or liability, including, without limitation, any alternative guarantee, indemnity or security interest (to the extent not prohibited by the Croatian Capital Maintenance Rules) in favour of the Lender.

SECTION 9
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 17 to the Lender at the times set out in Clause 17.33 (*Times when representations are made*).

17.1 Status

- (a) It is a duly incorporated and validly existing under the law of Croatia.
- (b) It has the power to own its assets and carry on its business as it is being conducted.
- (c) It is not a U.S. Tax Obligor.
- (d) It is neither insolvent nor over-indebted nor at risk to be insolvent or over-indebted.
- (e) As at the date of this Agreement and the date which is a Utilisation Date, ~~SCHEDULE 6 (*Existing Financial Indebtedness*) and SCHEDULE 7 (*Existing Financial Security*) is true and correct in all respects and there are no liabilities or encumbrances that have not been disclosed to the Lender in those schedules.~~
- (f) Following the repayment of the Existing Bank Loan, Permitted Financial Indebtedness of the Borrower will comprise Trade Liabilities only (other than Financial Indebtedness that is created under the Finance Documents or constitutes Subordinated Debt).

17.2 Binding obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

17.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the Transaction Security do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) ~~its constitutional documents; or~~

- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

17.4 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

17.5 Validity and admissibility in evidence

- (a) All Authorisations required:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
 - (ii) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,have been obtained or effected and are in full force and effect.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Obligors have been obtained or effected and are in full force and effect.

17.6 Governing law and enforcement

- (a) Subject to the Legal Reservations, the choice of the governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
- (b) Subject to the Legal Reservations, any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

17.7 Deduction of Tax

It is not required to make any Tax Deduction from any payment it may make under any Finance Document to the Lender.

17.8 No filing or stamp taxes

Under the law of its Relevant Jurisdiction it is not necessary that the Transaction Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or

that any stamp, registration, notarial or similar Tax or fees be paid on or in relation to the Transaction Documents or the transactions contemplated by the Transaction Documents, except as required under the Security Documents.

17.9 VAT

The Obligors are not members of a value added tax group.

17.10 Taxation

(a) The Obligors:

- (i) are not overdue in the filing of any Tax returns in any Relevant Jurisdiction;
- (ii) have paid or discharged all Taxes due and payable by any of them (within the period prescribed for such payment) other than Taxes which the Borrower is contesting in good faith by appropriate proceedings and in respect of which reasonably adequate reserves have been established in each case to the satisfaction of the Lender;
- (iii) do not have any overdue Tax liabilities; and
- (iv) have not been informed of or are otherwise not aware of any claims or investigations that are pending or are reasonably likely to be launched or processed as against any of them on account of or in respect of Tax.

(b) The Obligors are residents for Tax purposes only in Croatia.

17.11 No default

- (a) No Event of Default and, as at the date of this Agreement and each Utilisation Date, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, or the performance of, or any transaction contemplated by, any Transaction Document.
- (b) As at the first Utilisation Date, there is no outstanding breach of any term of any Transaction Document and no person has disputed, repudiated or disclaimed liability under any Transaction Document or evidenced an intention to do so.
- (c) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or a termination event (however described) under any other agreement or instrument which is binding on it or to which any of its assets are subject which has or is reasonably likely to have a Material Adverse Effect.

17.12 Insolvency

- (a) No:

 - (i) corporate action, legal proceeding or other procedure or step described in Clause 21.7 (*Insolvency proceedings*); or
 - (ii) creditors' process described in Clause 21.8 (*Creditors' process*),

has been taken or threatened in relation to any of the Obligors.
- (b) None of the circumstances described in Clause 21.6 (*Insolvency*) applies to any of the Obligors.

17.13 Information

- (a) All information supplied by it or on its behalf to the Lender in connection with the Transaction Documents and the Transaction (including, but not limited to the Dispute) was true and accurate as at the date it was provided or as at any date at which it was stated to be given.
- (b) Any information provided to the Lender in connection with the Transaction (including, but not limited to the Dispute) was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given.
- (c) Any financial projection or forecast contained in the information referred to in paragraphs (a) and 17.3(b) above has been prepared as at their date on the basis of recent historical information and on the basis of reasonable assumptions.
- (d) The expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of any information provided to the Lender in connection with the Transaction (including, but not limited to the Dispute) were made after commercially reasonable consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on commercially reasonable grounds.
- (e) No event or circumstance has occurred or arisen and no information has been omitted from the information provided to the Lender in connection with the Transaction (including, but not limited to the Dispute) and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the information provided to the Lender in connection with the Transaction being untrue or misleading in any material respect to the best of the knowledge and belief of the Borrower after commercially reasonable enquiry.

- (f) It has not omitted to supply information which, if disclosed, would make any of the information referred to in paragraph (a) above untrue or misleading in any material respect.
- (g) As at the first Utilisation Date, nothing has occurred since the date of the information referred to in paragraph (a) above which, if disclosed, would make that information untrue or misleading in any material respect.

17.14 Financial statements

- (a) The Original Financial Statements were prepared in accordance with IFRS consistently applied.
- (b) The Original Financial Statements fairly present the relevant Obligor's financial condition as at the end of the relevant Financial Year and results of operations during the relevant Financial Year.
- (c) Its Original Financial Statements (if audited) give a true and fair view of its financial condition and results of operations during the relevant Financial Year.
- (d) There has been no material adverse change in the assets, business or financial condition of any Obligor since the date of the relevant Original Financial Statements.
- (e) Its most recent financial statements delivered pursuant to Clause 18.1 (*Financial statements*):
 - (i) have been prepared in accordance with IFRS as applied to the Original Financial Statements; and
 - (ii) fairly present its financial condition as at the end of the relevant Financial Year and operations during the relevant Financial Year.
- (f) Since the date of the most recent financial statements delivered pursuant to Clause 18.1 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition.
- (g) The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

17.15 Title to Vessels

- (a) The Borrower and each of the Vessel Owners has good and marketable title to the relevant Vessel, free from Security (other than those created by or pursuant to the Security Documents, any Existing Security which will be discharged and

released in accordance with the Pay-Off Letter and Permitted Security) and restrictions and onerous covenants.

- (b) The Vessels are not encumbered with any maritime or common lien in any jurisdiction or any other claim that has priority over or is otherwise privileged in respect to any Security that has been taken by the Lender in connection with this Agreement.
- (c) Without limiting the generality of the foregoing:
 - (i) Vessel Owner 1 is the full registered owner of Vessel 1;
 - (ii) Vessel Owner 2 is full registered owner of Vessel 2; and
 - (iii) Vessel Owner 3 is full registered owner of Vessel 3.
- (d) From the first Utilisation Date:
 - (i) no breach of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of the Vessels;
 - (ii) there is no covenant, agreement, stipulation, reservation, condition, interest, right or other matter whatsoever adversely affecting the Vessels;
 - (iii) nothing has arisen or has been created or is outstanding which would be an overriding interest, or an unregistered interest which overrides first registration or a registered disposition, over the Vessels; and
 - (iv) the Borrower or the Vessel Owner have not received any notice of any adverse claim by any person in respect of the ownership of the Vessels or any interest in it which might reasonably be expected to be determined in favour of that person, nor has any acknowledgement been given to any such person in respect of the Vessels (other than the Dispute).
- (e) All deeds and documents necessary to show good and marketable title to the Borrower's and Vessel Owners' interests in the Vessels have been delivered to the Lender under SCHEDULE 2 (*Conditions precedent and subsequent*) and there are no deeds, contracts, covenants, documents, resolutions or Authorisations in existence which would make any of the statements set out in this Clause 17.15 untrue or misleading.

17.16 Information for reports & analysis

- (a) The information supplied by it or on its behalf to the lawyers, accountants, auditors, engineers or surveyors or other consultants who prepared any report or

analysis (including but not limited to the Dispute) for the purpose of this Agreement or the transactions contemplated thereby was true and accurate in all material respects as at the date of the relevant report or analysis (including but not limited to the Dispute) or (if appropriate) as at the date (if any) at which it is stated to be given.

- (b) The information referred to in paragraph (a) above was at the date it was expressed to be given complete and did not omit any information which, if disclosed would make that information untrue or misleading in any material respect.
- (c) As at the first Utilisation Date, nothing has occurred since the date of any information referred to in paragraph (a) above which, if disclosed, would make that information untrue or misleading in any material respect.

17.17 Valuation

- (a) All information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate in all material respects as at its date or (if appropriate) as at the date (if any) at which it is stated to be given.
- (b) ~~It has not omitted to supply any information to the Valuer which, if disclosed, would adversely affect a Valuation.~~
- (c) As at the first Utilisation Date, nothing has occurred since the date the information referred to in paragraph (a) above was supplied which, if it had occurred prior to the Initial Valuation, would have adversely affected the Initial Valuation.

17.18 Pari passu ranking

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

17.19 No proceedings

- (a) No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect, have (to the best of its knowledge and belief (having made due and careful enquiries)) been started or threatened against it.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably ~~likely to have a Material Adverse Effect~~ has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it.

17.20 No liabilities

- (a) The Borrower has not incurred Financial Indebtedness other than Financial Indebtedness permitted by this Agreement.
- (b) No Security or Quasi-Security exists over all or any of the present and future assets of an Obligor other than as permitted by this Agreement.
- (c) There are no Tax liabilities that have not been disclosed to the Lender.

17.21 Centre of main interests and establishments

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its Original Jurisdiction and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

17.22 Ranking of Security

Subject to the Legal Reservations, Perfection Requirements, discharge and release of the Existing Security in accordance with the Pay-Off Letter and Permitted Security, the security conferred by each Security Document constitutes or will constitute a security interest of the type described, over the assets referred to, in that Security Document.

17.23 Shares

- (a) The shares of the Borrower are validly issued, fully paid and not subject to any option to purchase or similar rights.
- (b) The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security.
- (c) There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any Obligor (including any option or right of pre-emption or conversion).

17.24 Transaction Documents, disclosures and other documents

- (a) There is no disclosure made in respect of the Transaction Documents which has or may have a material adverse effect on any of the information, opinions, intentions, forecasts and projections contained or referred to in the information provided to the Lender in connection with the Transaction.
- (b) The Ship Building Agreement and each Insurance contains all material terms of the underlying transaction in respect of the relevant Vessel and there are no agreements or arrangements in connection thereunder that have not been disclosed to the Lender.

17.25 No breach of laws

It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

17.26 Environmental laws

- (a) It is in compliance with Clause 20.7 (*Environmental matters*) and no circumstances have occurred which would prevent that performance or observation where failure to do so, would have a Material Adverse Effect.
- (b) No Environmental Claim is current or pending or threatened against it which if adversely determined, would have a Material Adverse Effect.

17.27 Ownership

- (a) The Shareholder is the legal and beneficial owner of the Shares.
- (b) The Borrower is the legal and beneficial owner of the entire issued share capital of Plovdiva.
- (c) Plovdiva is the legal and beneficial owner of the entire issued share capital of Vessel Owner 1.

17.28 Sanctions

- (a) To the best of its knowledge (after due enquiry), none of the Obligors or any of their respective directors, officers or employees (the "**Relevant Person or Entity**") is a Sanctioned Person, and none of Relevant Persons or Entities acts directly or indirectly on behalf of a Sanctioned Person.
- (b) Save as disclosed in writing to the Lender before the date of this Agreement, no Obligor is incorporated, located or resident in a country which is subject to Sanctions, if this is in breach of a specific sanctions program.
- (c) The Borrower is in compliance with all applicable Sanctions and is not engaged in any activities that would reasonably be expected to result in a Borrower being designated as a Sanctioned Person.

17.29 Anti-corruption law

It has conducted its business in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

17.30 Corporate documents

Its documents of incorporation as provided to the Lender are registered and valid.

17.31 Business Licenses

Any and all existing business licenses of the Borrower are valid and will remain valid following the execution and perfection of the Transaction Security or occurrence of the event as provided by Clause 7.2 (*Change of control*).

17.32 Acting as principal

In all matters relating to the Finance Documents, the Borrower is acting as a principal for its own account and not as agent and trustee or in any other capacity whatsoever on behalf of any third party.

17.33 Times when representations are made

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of this Agreement, on the date of each Utilisation Request, on each Utilisation Date and the first day of each Interest Period except those contained in paragraphs 18.1(b) 18.1(c) Clause 17.14 (*Financial statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement.

18. INFORMATION UNDERTAKINGS

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

18.1 Financial statements

Each Obligor (or in the case of the report set out in paragraph (a) below, the Borrower) shall supply to the Lender:

- (a) in the form of the template agreed with the Lender, a liquidity report (with management discussion and analysis) for the Borrower and each of its Subsidiaries (on a consolidated basis) detailing the cash flow and liquidity position of the Borrower and each of its Subsidiaries (jointly) for the then current and immediately following Financial Year, and each such report must
 - (i) contain information (A) on a monthly basis for the current calendar year (both historical and forecast information) and the following six months and (B) on a quarterly basis for the periods thereafter;
 - (ii) present each material project of the Borrower or its Subsidiaries at that relevant time separately, and
 - (iii) be delivered to the Lender no later than the first Business Day of each month;

- (b) its management accounts on a standalone basis and consolidated (if applicable) for each Financial Quarter prepared in accordance with IFRS consistently applied, as soon as they are available, but in any event within 60 days after the end of the relevant Financial Quarter; and
- (c) its audited financial statements (comprising a balance sheet, profit and loss statement, cash flow statement and management discussion and analysis) on a standalone basis and consolidated (if applicable) for that Financial Year prepared in accordance with IFRS consistently applied, as soon as they are available, but in any event within 120 days after the end of each of its Financial Years.

18.2 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Borrower pursuant to Clause 18.1 (*Financial statements*) shall (i) be prepared by an accounting firm acceptable for the Lender, (ii) be certified by a director of the relevant company as fairly presenting (or, if audited, giving a true and fair view of) its financial condition as at the date as at which those financial statements were drawn up and (iii) include a balance sheet, profit and loss statement, cash-flow statement and a management commentary.
- (b) ~~The Borrower shall procure that each set of financial statements delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using IFRS.~~
- (c) The Borrower shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using IFRS, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, the Obligors notifies the Lender that there has been a change in IFRS, the accounting practices or reference periods and its Auditors (or, if appropriate, the auditors of the Obligor) deliver to the Lender a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared.
- (d) Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.
- (e) The Borrower shall ensure that the Lender is at all times authorised to communicate directly with the Auditors provided that the Borrower receives a copy of any such communication.

18.3 Compliance Certificate

- (a) The Borrower shall supply a Compliance Certificate to the Lender with the financial statements of DIV Grupa d.o.o. delivered to the Lender pursuant to paragraph (b) of Clause 18.1 (*Financial statements*).
- (b) The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 20.10 (*Current Ratio*).
- (c) Each Compliance Certificate shall be signed by two directors of DIV Grupa d.o.o.

18.4 Year-end

The Borrower shall ensure that each Financial Year-end falls on 31 December.

18.5 Information: miscellaneous

The Obligors shall supply to the Lender:

- (a) at the same time as they are dispatched, copies of all documents dispatched by an Obligor to its shareholders generally (or any class of them) or its creditors generally (or any class of them) at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations which are current, threatened or pending against any Obligor, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;
- (c) promptly, such further information regarding the financial condition, business and operations of any Obligor as the Lender may reasonably request;
- (d) promptly upon becoming aware of them, the details of any proposed change in the management or direct or indirect ownership of the Borrower or an Obligor;
- (e) information about the use of proceeds of Tranche B;
- (f) monthly reports about the progress of the sale process of Vessel 1;
- (g) promptly upon receipt by an Obligor (or an Affiliate), any information about the Dispute, including but not limited to copies of any actual or proposed arrangement, settlement, correspondence (including without prejudice correspondence) or other written communication (including legal or other advice or expert opinion) provided to or by an Obligor in relation to the Dispute or any other matter, transaction or dealing with or affecting Vessel 1;
- (h) information in case part of any Vessel (other than Vessel 4) is destroyed or materially damaged and any event or circumstance affecting such Vessel or the

Security created in respect thereof (including any maritime or common law liens or similar encumbrances arising under law);

- (i) information on changes in respect to the Insurances, any claims made on those relevant Insurances and the receipt of any Insurance Proceeds; and
- (j) information on occurrence of any event as described under Clause 21.14 (*Expropriation*).

18.6 Notification of default

- (a) Each Obligor shall notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a written request by the Lender setting out in reasonable detail the reasons for such request, the Obligor shall supply to the Lender a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

18.7 "Know your customer" checks

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of an Obligor (or of a Holding Company of an Obligor), or the composition of the shareholders of an Obligor (or of a Holding Company of an Obligor) after the date of this Agreement (of which the Obligors must promptly upon becoming aware notify the Lender); or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Lender, such Lender or, in the case of the event described in paragraph (iii)

above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

19. GENERAL UNDERTAKINGS

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 Authorisations

The Borrower shall, and shall procure that each Vessel Owner will, promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Lender of any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
 - (i) enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document; or
 - (ii) own its assets and carry on its business as it is being conducted.

19.2 Compliance with laws

The Obligors shall comply and shall procure that each Vessel Owner will comply in all respects with all laws to which they may be subject, if failure so to comply has or is likely to have a Material Adverse Effect.

19.3 Negative pledge

In this Clause 19.3, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

- (a) The Borrower shall not, without the prior written consent of the Lender, create or permit to subsist any Security over any of its assets.
- (b) The Borrower shall not, without the prior written consent of the Lender:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security that is Permitted Security.

19.4 Disposals

(a) The Borrower shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to dispose of all or any part of any asset.

(b) Clause (a) above does not apply to any Disposal of any asset:

(i) made in the ordinary course of trading of the disposing entity;

(ii) in exchange for other assets comparable or superior as to type, value and quality;

(iii) permitted by the Transaction Documents, or

(iv) the Vessel 1 Sale if the Vessel 1 Sale Conditions have been complied with in full to the satisfaction of the Lender.

(c) The Borrower must ensure that the Disposal Proceeds are immediately applied in accordance with Clause 7.4 above.

19.5 Financial Indebtedness

(a) The Borrower may not incur or permit to be outstanding any Financial Indebtedness.

(b) Paragraph (a) above does not apply to any Permitted Financial Indebtedness.

19.6 Lending and guarantees

(a) The Borrower may not be the creditor in respect of any loan or any form of credit to any person.

(b) The Borrower may not give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which the Borrower assume any liabil-

ity of any other person other than any guarantee or indemnity given under the Finance Documents or as Permitted Financial Indebtedness.

- (c) Paragraph (a) above does not apply to loans extended by the Borrower to its Affiliates if the aggregate amount of those loans does not at any time exceed €200,000 in total and the debt is fully and finally discharged within 60 days.

19.7 Merger

No Obligor shall without the prior written consent of the Lender enter into any amalgamation, demerger, merger or corporate reconstruction.

19.8 Change of business

The Borrower shall procure that no change is made to the general nature and scope of the business of the Borrower from that carried on at the Signing Date, irrespective of whether such change would alter the general nature and scope of the business carried on by the Borrower.

19.9 Acquisitions

The Borrower may not make any acquisition or investment other than as permitted under this Agreement.

19.10 Other agreements

The Borrower may not enter into any material agreement other than:

- (a) the Transaction Documents;
- (b) any agreement in the ordinary course of business on arm's length terms;
- (c) any other agreement expressly allowed under any other term of this Agreement; and
- (d) with the prior written consent of the Lender.

19.11 Shares, dividends and share redemption

- (a) The Borrower may not, without the previous written consent of the Lender, issue any further shares or amend any rights attaching to its issued shares.
- (b) Except as permitted under paragraph (c) below, the Borrower shall not (unless expressly allowed under any other terms of this Agreement):
 - (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);

- (ii) repay or distribute any dividend or share premium reserve;
 - (iii) pay any management, advisory or other fee to or to the order of any of its direct or indirect shareholders (including for the avoidance of doubt any Ultimate Beneficial Owner) which would exceed €140,000 in total in any Month; or
 - (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.
- (c) Paragraph (b) above does not apply to any distribution that has been approved by the Lender in writing.

19.12 Preservation of assets

Each Obligor shall repair and maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

19.13 Pari passu ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of the Lender against it under the Finance Documents rank at least *pari-passu* with the claims of all of its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

19.14 VAT group

The Borrower may not be a member of a value added tax group.

19.15 Taxes

- (a) The Borrower must pay all Taxes due and payable by it prior to the accrual of any fine or penalty for late payment, unless (and only to the extent that):
 - (i) payment of those Taxes is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them; and
 - (iii) failure to pay those Taxes is not reasonably likely to have a Material Adverse Effect.
- (b) The Borrower must ensure that its residence for Tax purposes is in its Original Jurisdiction.

19.16 Ownership

- (a) The Borrower must ensure that at all times the Shares are legally and beneficially owned and controlled by the Shareholder.

- (b) The Borrower must ensure that at all times it is the legal and beneficial owner of the entire issued share capital of Plovdiva.
- (c) The Borrower must ensure that at all times Plovdiva is the legal and beneficial owner of the entire issued share capital of Vessel Owner 1.

19.17 Subordination

The Borrower shall ensure that any and all indebtedness of the Borrower owed to its shareholders or their Affiliates (including without limitation dividend payments, payments under any intercompany loans) shall be subordinated to the Facility during the term of this Agreement on the terms of the Subordination Agreement.

19.18 Intellectual Property

- (a) Each Obligor shall:
 - (i) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Obligor;
 - (ii) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
 - (iii) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property necessary for the business of the relevant Obligor in full force and effect and record its interest in that Intellectual Property;
 - (iv) not use or permit the Intellectual Property necessary for the business of the relevant Obligor to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of that Intellectual Property or imperil the right of any Obligor to use such property; and
 - (v) not discontinue the use of the Intellectual Property necessary for the continuing business of any Obligor.
- (b) Failure to comply with any part of paragraph (a) above shall not be a breach of this Clause 19.18 (*Intellectual Property*) to the extent that any dealing with Intellectual Property which would otherwise be a breach of paragraph (a) above is approved by the Lenders.

19.19 Financial assistance

Each Obligor shall comply in all respects with any financial assistance legislation in any Relevant Jurisdiction including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

19.20 Centre of main interests and establishments

Each Obligor must take all necessary actions to ensure that, at all times, for the purposes of the Regulation, its centre of main interest (as that term is used in Article 3(1) of the Regulation) is its jurisdiction of incorporation and that it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction, such actions to include, without limitation, the taking of all corporate actions in that jurisdiction and the employment of no employees other than in that jurisdiction (and only to the extent permitted under this Agreement).

19.21 Claims on valuers or advisers etc.

Each Obligor, in its capacity as addressee or co-addressee of any report, shall not (without the prior written consent of the Lender) bring any claim in respect of that report against the provider of that report.

19.22 Compliance with Sanctions

The Borrower shall and shall ensure that each Obligor will:

- (a) not maintain or undertake any activity or conduct (including by omission) which would cause the Lender to be in breach of Sanctions;
- (b) not, and shall not permit or authorize any other person, directly or indirectly, to use, lend, contribute, or otherwise make available proceeds or other services provided by the Lender to the Borrower for any purposes which may lead to a violation of Sanctions by the Lender;
- (c) not, act directly or indirectly for or on behalf or at the directive of any Sanctioned Person or in a manner that would contribute to a violation of Sanctions by the Lender;
- (d) not use any revenue or benefit derived from any activity or dealing with a Sanctioned Person to discharge any obligation due to the Lender;
- (e) notify the Lender without undue delay and provide the Lender with the relevant documents in case actions to be performed by the Lender require a prior authorization from the competent authority due to Sanctions;
- (f) notify the Lender without undue delay upon becoming aware of the occurrence of any event or circumstance relating to Sanctions which could reasonably be expected to result in the Lender having the right to require repayment under Clause 7.1 (*Illegality*).

19.23 Conditions Subsequent

The Transaction Obligors must comply with SCHEDULE 2C (*Conditions subsequent*) of SCHEDULE 2 (*Conditions precedent and subsequent*) as set out therein.

19.24 Further Assurance

The Borrower shall (at their own expense) take whatever action the Lender may reasonably request for:

- (a) perfecting and protecting the Security created or intended to be created by the Security Documents over any Security Asset (including but not limited to any future Security Asset or Security Asset acquired, created, generated or brought about by law to the Lender);
- (b) facilitating, following an Event of Default and following a notice served by the Lender on the Borrower or any of them pursuant to Clause 21.17 (*Acceleration*), any enforcement and realization of Security,
- (c) including (but not limited to) the execution of any transfer, assignment or assurance of property, the giving of a notice, order or direction and the making of any registration which the Lender may reasonably consider expedient.

19.25 Amendments to corporate documents

In case any Obligor makes any amendments whatsoever to any its corporate documents, including but not limited to its statute or incorporation deed, it shall provide the Lender with certified copies of the documentation evidencing such amendments within three Business Days of the registration of such changes.

19.26 Changes to the management

The Borrower undertakes to inform the Lender within ten Business Days of any change to the members of the Management Board of the Borrower.

19.27 Application of FATCA

The Borrower shall procure that no Obligor shall become a US Tax Obligor.

19.28 Payment transactions

The Borrower shall ensure that all of its revenues denominated in the euro currency are paid to the Borrower Euro Account and no other current account is opened or used by the Borrower for its payments in the euro currency at any time prior to the Termination Date. The Borrower Euro Account must be opened by the Borrower in 30 days from the Effective Date at the latest.

20. VESSEL RELATED UNDERTAKINGS

20.1 Title

- (a) The Borrower shall, and it shall procure that the Vessel Owner will, exercise their rights and comply in all respects with any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Vessels.
- (b) The Borrower may not agree, and it shall procure that the Vessel Owner does not agree, to any amendment, supplement, waiver, surrender or release of any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Vessels.
- (c) The Borrower must, and it must procure that the Vessel Owner will, promptly take all such steps as may be necessary or desirable to enable the Security created by the Security Documents to be registered, where appropriate, at the applicable registry.
- (d) The Borrower and each Vessel Owner shall ensure that:
 - (i) each Vessel is at all time operated in accordance with the relevant laws and regulations; and
 - (ii) none of the Vessels is modified in any material fashion without the prior written consent of the Lender.
- (e) ~~The Borrower may not, and it shall procure that the Vessel Owner of Vessel 1 and Vessel 2 does not, lease Vessel 1 and Vessel 2 to any person including a charter-party without obtaining prior consent from the Lender.~~

20.2 Notices

The Borrower must, within 14 days after the receipt by the Borrower or Vessel Owner of any application, requirement, order or notice served or given by any public or local or any other authority or any landlord with respect to the Vessels (or any part of it):

- (a) deliver a copy to the Lender; and
- (b) inform the Lender of the steps taken or proposed to be taken to comply with the relevant requirement, order or notice.

20.3 Investigation of title

The Borrower must grant the Lender or its lawyers on request all facilities within the power of the Borrower to enable the Lender or its lawyers to:

- (a) carry out investigations of title to the Vessels; and
- (b) ~~make such enquiries in relation to any part of the Vessel as a prudent mortgagee might carry out.~~

20.4 Power to remedy

- (a) If a Borrower fails to perform any obligations under the Finance Documents affecting the Vessels, it must allow the Lender or its agents and contractors:
 - (i) to enter any facility where the Vessel is located;
 - (ii) to comply with or object to any notice served on the relevant Borrower in respect of the Vessels; and
 - (iii) to take any action that the Lender may reasonably consider necessary to prevent or remedy any breach of any such term or to comply with or object to any such notice.
- (b) The Borrower must immediately on request by the Lender pay the costs and expenses of the Lender or its agents and contractors incurred in connection with any action taken by it under this Clause 20.4.
- (c) The Lender shall not be obliged to account as mortgagee in possession as a result of any action taken under this Clause 20.4.
- (d) In case enforcement in respect to the Vessels is initiated by the Lender on the basis of a Mortgage Agreement, the Borrower shall, and it shall procure that the Vessel Owner will, allow the Lender to undertake any measures that the Lender deems appropriate and necessary for sake of the enforcement.

20.5 Access

- (a) The Borrower will ensure that representatives of the Lender (including all consultants) and the Lender are allowed, within a reasonable time of a written notice:
 - (i) access during normal business hours to inspect and examine:
 - (A) the relevant Vessel; and
 - (B) the records and technical and other data with respect to the Vessel; and
 - (ii) to meet with supervisors on behalf of the Borrower and the Vessel Owner.

20.6 Insurances

- (a) The Borrower must ensure that at all times from the Signing Date Insurances are maintained at all times in full force and effect, which in respect of each Vessel provide insurance cover in respect of:

- (i) Hull and machinery insurance for Vessel 3 for the fair market value of the ship as established in the most recent Valuation;
 - (ii) Builder's Risk insurance for Vessel 1 and 2 for value equal at least to the contract price of Vessel 1;
 - (iii) War risks insurance;
 - (iv) Protection and indemnity insurance (only for the Vessel in operation. Vessels under construction do not have P&I insurance – the P&I risks are covered by the Builder's Risk insurance policy); and
 - (v) Pollution risks insurance for Vessel 3.
- (b) The Borrower must procure that the Insurances comply with the following requirements:
- (i) each of the Insurances must contain:
 - (A) a non-invalidating and non-vitiating clause under which the Insurances will not be avoided or vitiated as against any insured party as a result of any circumstances beyond the control of that insured party or any misrepresentation, non-disclosure, or breach of any policy term or condition, on the part of any other insured party or any agent of any other insured party;
 - (B) a waiver of the rights of subrogation of the insurer as against each Obligor, each Secured Party and the tenants or users of the Vessels other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of the Vessels or any Insurance; and
 - (C) a loss payable clause (in Croatian: *vinkulacija*) under which the Lender is named as first loss payee in respect of any claim or series of connected claims (other than in respect of any claim under any public liability and third party liability insurances);
 - (ii) each insurer must give at least 30 days' notice to the Lender if it proposes to:
 - (A) repudiate, rescind or cancel any Insurance;
 - (B) treat any Insurance as avoided in whole or in part;

(C) treat any Insurance as expired due to non-payment of premium; or

(D) otherwise decline any claim under any Insurance by or on behalf of any insured party,

and, in respect of paragraph (C) above, must in the notice give the Lender the opportunity to rectify any such non-payment of premium within the notice period; and

(iii) the Borrower must be free to assign or otherwise grant Security over all amounts payable to it under each of its Insurances and all its rights in connection with those amounts in favour of the Lender.

(c) The Borrower must use all reasonable endeavours to ensure that the Lender receives copies of the Insurances, receipts for the payment of premiums for insurance and any information in connection with the Insurances and claims under them which the Lender may reasonably require.

(d) The Borrower must promptly notify the Lender of:

(i) the proposed terms of any future renewal of any of the Insurances;

(ii) any amendment, supplement, extension, termination, avoidance or cancellation of any of the Insurances made or, to its knowledge, threatened or pending;

(iii) any claim, and any actual or threatened refusal of any claim, under any of the Insurances; and

(iv) any event or circumstance which has led or may lead to a breach by any Obligor of any term of this Clause 20.6.

(e) Each Obligor and Vessel Owner must:

(i) comply with the terms of the Insurances;

(ii) not do or permit anything to be done which may make void or voidable any of the Insurances; and

(iii) comply with all reasonable risk improvement requirements of its insurers.

(f) The Borrower must ensure that:

(i) each premium for the Insurances is paid within the period permitted for payment of that premium; and

- (ii) all other things necessary are done so as to keep each of the Insurances in force.
- (g) If an Obligor or Vessel Owner fails to comply with any term of this Clause 20.6, the Lender may, at the expense of the Obligors, effect any Insurance and generally do such things and take such other action as the Lender may reasonably consider necessary or desirable to prevent or remedy any breach of this Clause 20.6.
- (h) The Borrower shall ensure that all Insurances are made with the Insurer and/or placed through brokers approved by the Lender in writing and the Borrower shall not settle any claim of Insurance without first having consulted with the Lender.

20.7 Environmental matters

- (a) The Borrower must:
 - (i) comply and ensure that any relevant third party complies with all Environmental Law;
 - (ii) ~~obtain, maintain and ensure compliance with all requisite Environmental Permits applicable to them or to the relevant Vessel; and~~
 - (iii) implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to them or the relevant Vessel,
 - (iv) where failure to do so has or is reasonably likely to have a Material Adverse Effect or result in any liability for the Lender.
- (b) The Borrower must, promptly upon becoming aware, notify the Lender of:
 - (i) any Environmental Claim started, or to their knowledge, threatened;
 - (ii) any circumstances reasonably likely to result in an Environmental Claim; or
 - (iii) any suspension, revocation or notification of any Environmental Permit.
- (c) The Borrower must indemnify the Lender against any loss or liability which:
 - (iv) the Lender incurs as a result of any actual or alleged breach of any Environmental Law ~~by any person; and~~
 - (v) would not have arisen if a Finance Document had not been entered into,

- (vi) unless it is caused by the Lender's gross negligence or wilful misconduct.

20.8 Ship related covenants

The Borrower must ensure that:

- (i) each Vessel maintains its registration with the ship registry of the flag state;
- (ii) no Vessel has dual or bareboat registration;
- (iii) it will not change the Vessel's classification society without the prior written consent of the Lender;
- (iv) Vessel 3 complies with laws, including the International Safety Management Code, International Ship and Port Facility Code and international environmental laws;
- (v) Vessel 3's class notation is maintained, and the relevant Vessel complies with mandatory classification requirements;
- (vi) it will submit Vessel 3 for periodic surveys by the relevant classification society;
- (vii) the relevant Vessel is not engaged in any trade which contravenes Sanctions and that the ship is not used by a Sanctioned charterer; and
- (viii) an adequate GPS device is incorporated and maintained on each Vessel that will enable the Lender to track the Vessel at any time.

20.9 Minimum loan to value covenant

- (a) The Obligors shall ensure that the Minimum Value Ratio is at all times at least 50%.
- (b) For the purposes of any Finance Document:

"Minimum Value Ratio" means the outstanding Loan divided by the Charges Adjusted Aggregate Market Value.

"Charges Adjusted Aggregate Market Value" means the aggregate fair market value of the Vessels as established in the most recent Valuation reduced by the value of any mortgages or charges ranked prior to the mortgages established in the favour of the Lender in accordance with the Transaction Security.

20.10 Current ratio

- (a) The Obligors must ensure that the Current Ratio is at all times at least 1.25.

(b) For the purposes of any Finance Document:

"Borrowings" means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of DIV Grupa d.o.o. and its Subsidiaries for or in respect of:

- (i) moneys borrowed and debit balances at banks or other financial institutions;
- (ii) any acceptances under any acceptance credit or bill discount facility (or de-materialized equivalent);
- (iii) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (iv) any finance lease;
- (v) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirements for de-recognition under IFRS);
- (vi) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability of an entity which is not a Subsidiary of DIV Grupa d.o.o. which liability would fall within one of the other paragraphs of this definition;
- (vii) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under IFRS;
- (viii) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 60 days after the date of supply;
- (ix) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and lease-back agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under IFRS; and
- (x) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (i) to (ix) above.

"Current Assets" means the aggregate (on a consolidated basis) of all inventory, work in progress, trade and other receivables of DIV Grupa d.o.o. and its Subsidiaries including prepayments in relation to operating items and sundry debtors (but excluding cash at hand) expected to be realised within twelve months from the date of computation but **excluding** amounts in respect of:

- (i) receivables in relation to Tax;
- (ii) exceptional and other non-operating items;
- (iii) insurance claims; and
- (iv) any interest owing to any member of the group; and
- (v) amounts owed by the Purchaser in connection with the Dispute.

"Current Liabilities" means the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of DIV Grupa d.o.o. and its Subsidiaries expected to be settled within twelve months from the date of computation but **excluding** amounts in respect of:

- (i) liabilities for Borrowings and Finance Charges;
- (ii) liabilities for Tax; and
- (iii) exceptional and other non-operating items.

"Current Ratio" means the ratio of Current Assets to Current Liabilities as expressed by the formula set out below:

$$X = \frac{A}{B} \text{ where}$$

- (i) X = Current Ratio;
- (ii) A= Current Assets;
- (iii) B = Current Liabilities.

"Finance Charges" means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Borrowings paid or payable by DIV Grupa d.o.o. and its Subsidiaries (calculated on a consolidated basis) in cash or capitalised in respect of that Relevant Period:

- (i) including any upfront fees or costs;
- (ii) including the interest (but not the capital) element of payments in respect of finance leases;

- (iii) including any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) DIV Grupa d.o.o. or any of its Subsidiaries under any interest rate hedging arrangement;
- (iv) together with the amount of any cash dividends or distributions paid or made by DIV Grupa d.o.o. in respect of that Relevant Period and so that no amount shall be added (or deducted) more than once.

"Quarter Date" means each 31 March, 30 June, 30 September and 31 December in each year.

"Relevant Period" means any period of twelve months starting on a Quarter Date and ending on the numerically corresponding Quarter Date in the next subsequent calendar year.

- (c) The Current Ratio shall be calculated in accordance with IFRS and tested by reference to the financial statements of DIV Grupa d.o.o. delivered pursuant to paragraph (b) of Clause 18.1 (*Financial statements*) and each Compliance Certificate delivered pursuant to Clause 18.3 (*Compliance Certificate*).

21. EVENTS OF DEFAULT

21.1 Non-payment

The Transaction Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within three Business Days of its due date.

21.2 Financial Covenant

- (a) Any requirement of Clause 20.9 (*Minimum loan to value covenant*) is not satisfied.
- (b) Any requirement of Clause 20.10 (*Current Ratio*) is not satisfied provided that no Event Default under this clause will occur in relation to which the Lender's rights under Clause 21.17 (*Acceleration*) will be exercised further provided however that the Lender shall be without any further condition entitled to exercise its rights under the Agreement on Authorisation of Vessel Sale and any other Finance Document in so far as it is necessary or advisable to facilitate the

sale or other actions the Lender is entitled to under the Agreement on Authorization of Vessel Sale.

21.3 Other obligations

- (a) The Transaction Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within five Business Days of the earlier of (i) the Lender giving notice to the Borrower and (ii) any Transaction Obligor becoming aware of the failure to comply.

21.4 Misrepresentation

Any representation or statement made or deemed to be made by a Transaction Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

21.5 Cross default

- (a) Any Financial Indebtedness of any Obligor is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of any Obligor as a result of an event of default (however described).
- (d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) Clauses from (a) to (d) above shall not apply in respect to Financial Indebtedness the aggregate amount of which at any time is less than of €1,000,000.

21.6 Insolvency

- (a) An Obligor:
 - (i) is unable or admits inability to pay its debts as they fall due;

- (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts; or
 - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding the Lender in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

21.7 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor;
 - (iv) enforcement of any Security over any assets of any Obligor; or,
 - (v) or any analogous procedure or step is taken in any jurisdiction.
- (b) This Clause 21.7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement.

21.8 Creditors' process

~~Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor and is not discharged within 14 days.~~

21.9 Cessation of business

An Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of any disposal allowed under this Agreement.

21.10 Unlawfulness and invalidity

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Security Documents ceases to be effective or any subordination created under the Subordination Agreement is or becomes unlawful.
- (b) Any obligation or obligations of any Transaction Obligor under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lender under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Subordination Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than the Lender) to be ineffective.

21.11 Repudiation and rescission of agreements

A Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

21.12 Subordination Agreement

- (a) Any party to a Subordination Agreement (other than the Lender) fails to comply with the provisions of, or does not perform its obligations under, that Subordination Agreement; or
- (b) a representation or warranty given by that party in a Subordination Agreement is incorrect in any material respect,
- (c) and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within fourteen calendar days of the earlier of the Lender giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

21.13 Litigation

- (a) Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any Obligor or its assets which, are reasonably likely to be adversely determined and if were to be so determined, have or are reasonably likely to have a Material Adverse Effect.
- (b) Without limiting the generality of the foregoing, in connection with or by reference to the Dispute:
 - (i) any claim, suit, action or any other proceedings is adjudicated, decided, ordered or awarded (or settled without the prior written consent of the Lender) in a manner that is final, non-appealable and binding on the Borrower or another Obligor or any of its or their Subsidiaries (the **Relevant Parties**) and that results in an obligation of a Relevant Party to pay any sum to any other party or participant to or in the Dispute whether by way of damages, either in contract or in tort, compensation, restitution or any other remedy such as confiscation, expropriation, seizure, attachment or arrest of any material assets of the Relevant Parties (including without limitation any of the Vessels) or in any other loss by the Relevant Parties or any of them; or
 - (ii) the Vessel 1 Transfer Documentation is found, adjudicated or ordered to be void, illegal or unenforceable and the Relevant Parties do not amend, novate, replace or substitute such documentation with a new arrangement that is acceptable to the Lender in its exclusive discretion within 14 days from the Vessel 1 Transfer Documentation being found, adjudicated or ordered to be void, illegal or unenforceable.

21.14 Expropriation

The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, compulsory acquisition, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor or any of its assets or the shares in that Obligor (including without limitation the displacement of all or part of the management of any Obligor) resulting in a Material Adverse Effect.

21.15 Total loss or major damage

Any of the Vessels (other than Vessel 4) is destroyed or materially damaged, except when the remaining Vessels value satisfy the Minimum Value Ratio.

21.16 Material adverse change

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

21.17 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Lender may by notice to the Obligor:

- (a) cancel the Total Commitments whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender; and/or
- (d) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

**SECTION 10
CHANGES TO PARTIES**

22. CHANGES TO THE LENDER

22.1 Assignments and transfers by the Lender

Subject to this Clause 22, the Lender (the "**Existing Lender**") may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

to any other person other than an individual (the "**New Lender**"). Each Obligor gives its express consent to such assignment and transfer in accordance herewith.

Any transfer and/or assignment by the Lender pursuant to this Clause 22 shall be perfected and effective:

- (c) in respect to the Existing Lender, when the Existing Lender and the New Lender execute the Transfer Certificate;
- ~~(d) in respect to the Obligors, upon notification of such transfer to the Borrower by the New Lender.~~

The Obligors undertake to promptly carry out any formalities which would be necessary in order to confirm the validity and enforceability of the Security Documents following any transfer or assignment.

23. CHANGES TO THE TRANSACTION OBLIGORS

23.1 Assignments and transfer by Transaction Obligors

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents (including by way of any corporate transformation or restructuring).

SECTION 12 ADMINISTRATION

24. PAYMENT MECHANICS

24.1 Payments to the Lender

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to respective other Party (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Lender, in each case, specifies.

24.2 Partial payments

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lender shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
 - (i) **firstly**, in or towards payment *pro rata* of any accrued interest on the Loans due but unpaid under the Finance Documents;
 - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, commission, costs, expenses and fees due but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under this Agreement; and
 - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Lender may vary order set out in paragraphs (a)(i) to (a)(iv) above. Any such variation may include the re-ordering of obligations set out in any such paragraph.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

24.3 No set-off by Obligors

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

24.4 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

24.5 Currency of account

- (a) Subject to paragraphs (b) and (c) below, EUR is the currency of the account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than EUR shall be paid in that other currency.

24.6 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender; and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the European interbank market and otherwise to reflect the change in currency.

24.7 Disruption to Payment Systems etc.

If either the Lender determines (in its discretion) that a Disruption Event has occurred or the Lender is notified by the Obligor that a Disruption Event has occurred:

- (a) the Lender may, and shall if requested to do so by a Borrower, consult with the Obligor with a view to agreeing with the Obligor such changes to the operation or administration of the Facility as the Lender may deem necessary in the circumstances;
- (b) the Lender shall not be obliged to consult with the Obligor in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) any such changes agreed upon by the Lender and the Obligor shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 30 (*Amendments and waivers*);
- (d) the Lender shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Lender) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 24.7.

24.8 Alternative Currencies

- (a) Notwithstanding any other provision of the Finance Documents, if a payment is required to be made under a Finance Document (a "**Relevant Payment**") and it would be illegal for the Borrower under any applicable law or regulation to make, or the Lender (and any relevant correspondent bank or account bank) under any applicable law or regulation to receive, process or remit that Relevant Payment in EUR but would be legal for the Borrower to make, and the Lender (and any relevant correspondent bank or account bank) to receive, process and remit such Relevant Payment in an Alternative Currency, then the Lender may notify (such notice, an "**Alternative Currency Notice**") the Borrower in respect of such Relevant Payment the Alternative Currency to be used, the Alternative Currency Exchange Rate, the Alternative Amount to be paid in respect of such Relevant Payment and the account into which such payment shall be made. The Alternative Currency Notice shall be dated not earlier than two Business Days prior to the due date for such Relevant Payment.

- (b) The Borrower shall promptly notify the Lender upon becoming aware that any Relevant Payment has become illegal under any applicable law or regulation but failure to so shall not prejudice the right of the Lender to deliver an Alternative Currency Notice.
- (c) An Obligor shall make any payment under this Clause 24.8 on the terms specified by an Alternative Currency Notice delivered in accordance with this Clause 24.8 but nothing in this Clause 24.8 shall extend the due date of any amount due under the Finance Documents.
- (d) Clause 7.1 (*Illegality*) shall not apply in respect of any Relevant Payment (and any foreign exchange spot transactions necessary to make such payment) if and to the extent that such Relevant Payment is duly made in accordance with this Clause 24.8.
- (e) In circumstances where the Lender has issued an Alternative Currency Notice or informed the Borrower in writing that it intends to issue an Alternative Currency Notice in respect of any Relevant Payment, the Borrower shall be entitled to open an additional bank account denominated in the relevant Alternative Currency and solely for the purposes of effecting that Relevant Payment.

25. SET-OFF

The Lender may set off any matured obligation due from an Obligor under the Finance Documents against any matured obligation owed by the Lender to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

26. NOTICES

26.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by email (signed PDF scan) or letter.

26.2 Addresses

The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Obligor, that identified with its name below;
- (b) in the case of the Lender, that identified with its name below; and

or any substitute address or fax number or department or officer as the Party may notify to the Lender (or the Lender may notify to the other Parties, if a change is made by the Lender) by not less than five Business Days' notice.

26.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of email, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;
 - (iii) and, if a particular department or officer is specified as part of its address details provided under Clause 26.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with paragraphs (a) to (b), after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

26.4 Notification of address and email address

Promptly upon changing its address or email address, the Lender shall notify the other Parties.

26.5 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and the Lender may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 26.5.

26.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document or otherwise required by Croatian law.

27. CALCULATIONS AND CERTIFICATES

27.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

27.2 Certificates and Determinations

Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

27.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the European interbank market differs, in accordance with that market practice.

28. PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

29. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

30. AMENDMENTS AND WAIVERS

Any term of the Finance Documents may be amended or waived only with the consent of the Lender and the Borrower and any such amendment or waiver will be binding on all Parties and the Obligors express their consent for their guarantees expressed herein to remain valid also for the amended or waived part.

31. CONFIDENTIAL INFORMATION

31.1 Confidentiality

The Lender agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 31.2 (*Disclosure of Confidential Information*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

31.2 Disclosure of Confidential Information

The Lender may disclose (and the Obligors expressly release the Lender from any applicable banking secrecy obligation for this purpose):

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that the Lender shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed of its confidential nature except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Lender and, in each case, and to any of that person's Affiliates, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Representatives and professional advisers;
 - (iii) appointed by the Lender or by a person to whom paragraph (i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (ii));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) above(b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

- (vii) to whom information is required to be disclosed in connection with any Insurance;
- (viii) to whom or for whose benefit the Lender charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 22 (*Changes to the Lender*);
- (ix) to whom information is required to be disclosed in connection with, and for the purposes of, drafting, execution, perfection, enforcement of Finance Documents;
- (x) to whom information is required to be disclosed in connection with, and for the purposes of refinancing of the Existing Facility;
- (xi) who is a Party or an Obligor or Affiliate thereof; or
- (xii) with the consent of the Obligor;

in each case, such Confidential Information as the Lender shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
 - (C) in relation to paragraphs (b)(v) to (b)(viii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;
- (c) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or

the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

31.3 Entire agreement

This Clause 31 constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

31.4 Notification of disclosure

The Lender agrees (to the extent permitted by law and regulation) to inform the Obligors:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 31.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) ~~upon becoming aware that Confidential Information has been disclosed in breach of this Clause 31.~~

31.5 Continuing obligations

The obligations in this Clause 31 are continuing and, in particular, shall survive and remain binding on the Lender for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which the Lender otherwise ceases to be the Lender.

32. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

SECTION 13
GOVERNING LAW AND ENFORCEMENT

33. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

34. ENFORCEMENT

34.1 Arbitration

- (a) Unless specifically provided for in another Finance Document in relation to that Finance Document (for the purposes of this clause, an **Excluded Finance Document**), any dispute arising out of, relating to or having any connection with any Finance Document other than an Excluded Finance Document (for the purposes of this clause, a **Qualifying Finance Document**), including any dispute as to the existence, validity, interpretation, performance, breach or termination or the consequences of the nullity of any Qualifying Finance Document and any dispute relating to any non-contractual obligations arising out of or in connection with any Qualifying Finance Document (for the purposes of this clause, a **Dispute**), shall be referred to and finally resolved by arbitration under the LCIA Arbitration Rules (for the purposes of this clause, the **Rules**).
- (b) The Rules are incorporated by reference into this clause and capitalised terms used in this clause which are not otherwise defined in this Agreement have the meaning given to them in the Rules.
- (c) The number of arbitrators shall be three. The claimant (or claimants jointly) shall nominate one arbitrator for appointment by the LCIA Court. The respondent (or respondents jointly) shall nominate one arbitrator for appointment by the LCIA Court. The LCIA Court shall appoint the chairman.
- (d) Each Party:
 - (i) expressly agrees and consents to this procedure for nominating and appointing the Arbitral Tribunal; and
 - (ii) to the extent that it is not permitted to choose its own arbitrator pursuant to this clause (with a view to the fact that arbitrators are nominated by the claimants and/or the respondents jointly, as relevant), irrevocably and unconditionally waives any right to choose its own arbitrator.
- (e) The seat, or legal place of arbitration, shall be London. The language used in the arbitral proceedings shall be English. This arbitration agreement shall be governed by English law.

- (f) All documents submitted in connection with the proceedings shall be in the English language or, if in another language, accompanied by an English translation.
- (g) Service of any Request for Arbitration made pursuant to this clause must be at the address given for the sending of notices under each relevant Qualifying Finance Document and in a manner provided for in that document.

34.2 Service of process³

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor:
 - (i) irrevocably appoints Tatham Maccines LLP, 1 Gracechurch Street, London, EC3V0DD, United Kingdom, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) ~~If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Obligors must immediately~~
(and in any event within 14 days of such event taking place) appoint another agent on terms acceptable to the Lender. Failing this, the Lender may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

³ Not restated.

SCHEDULE 1
GUARANTORS

Name of Guarantor	Registration number (or equivalent, if any)
DIV GRUPA d.o.o	PIN (OIB): 33890755814, (MBS): 080127368
BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o.	PIN: 15413473504 (MBS): 060175259
XB AHTS Hero Shipping, Inc.	Reg. No. 61825

SCHEDULE 2
CONDITIONS PRECEDENT AND SUBSEQUENT⁴

SCHEDULE 2A
CONDITIONS PRECEDENT FOR TRANCHE A

1.1. Transaction Obligors

- (a) A copy of the constitutional documents of each Transaction Obligor.
- (b) A copy of an extract for each Transaction Obligor from the commercial, trade or similar registry from its Original Jurisdiction, dated not earlier than three days before the date of this Agreement, confirming that it is duly registered and/or is good standing in its Original Jurisdiction and it is not insolvent (including a certificate of good standing for any Transaction Obligors registered or incorporated under the laws of the Marshall Islands).
- (c) A copy of (A) a resolution of the management board and (B) for the Borrower and DIV GRUPA d.o.o., a resolution of the supervisory board, and (C) for Transaction Obligors other than the Borrower, a resolution of the shareholders' meeting:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (iv) in the case of each Transaction Obligor other than the Borrower, authorising the Borrower to act as its agent in connection with the Finance Documents.
- (d) A certified or notarised specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above.
- (e) A certificate of each Transaction Obligor (signed by authorized director(s)) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments ~~would not cause any borrowing, guarantee, security or similar~~ limit binding on any Transaction Obligor to be exceeded.

⁴ Not restated – conditions precedent set out in the amendment and restatement agreement.

- (f) A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each copy document specified in this SCHEDULE 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (g) Confirmation issued by the Commercial Court indicating that no bankruptcy or pre-bankruptcy request has been filed or is pending against the Transaction Obligors not older than 2 Business Days at the date of the Utilisation Request.
- (h) A certificate of the Borrower confirming it is considered a large or medium enterprise under the Croatian Accountancy Act.
- (i) A structure chart setting out the ownership of each Obligor.
- (j) Completion of know your customer procedures and provision FATCA information requirements satisfactory to the Lender in respect to each Obligor.
- (k) Evidence that no Default, mandatory prepayment event or Material Adverse Change is existing in respect to any Obligor.
- (l) Evidence that financing in accordance with this Agreement is in compliance with the Sanctions and applicable export restrictions.
- (m) Receipt of all required Lender's internal authorisations to execute the Facility.
- (n) An original of the executed Additional Financial Services Letter providing the Lender with the right of first offer to act as debt provider, funder or counterparty or adviser (as relevant) in respect of new Financial Indebtedness proposed to be issued, incurred or otherwise agreed by an entity controlled by the Ultimate Beneficial Owner.

1.2. Finance Documents

Originals of each of the following duly signed (notarized or solemnised where necessary) documents:

- (a) this Agreement;
- (b) the Subordination Agreement; and
- (c) each Security Document duly executed, in the relevant legal form, all as listed in SCHEDULE 8 (*Security Documents*).

1.3. Security

Evidence in form and substance acceptable to the Lender that the Security created pursuant to the relevant Security Documents has been created and, as applicable, perfected, including, if applicable, registration in the relevant registries, as follows:

- (a) Evidence that the Mortgage Agreement between the Lender and the Borrower on establishment of fourth ranking mortgage over the Vessel 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs, has been duly registered with the Ship Registry and perfected, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the mortgage with the Ship Registry;
- (b) Evidence that the Mortgage Agreement between the Lender and the Vessel Owner 2 on establishment of third ranking mortgage over the Vessel 2, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs, has been duly registered with the Ship Registry and perfected, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the mortgage with the Ship Registry;
- (c) Evidence that the Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of third ranking mortgage over the Vessel 3, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs, has been duly filed for registration with the Ship Registry;
- ~~(d) Evidence that the statement for discharge of the second rank mortgage registered over Vessel 3 on the basis of Fourth-Preferred-Mortgage dated 26 day of October 2016 in favour of the Existing Financing Lender in the amount of EUR 1,265.000, has been duly filed for registration with the Ship Registry;~~
- (e) evidence that the Agreement on Subordination of Mortgage Priority Ranking on the Vessel 1 between the Lender, the Existing Financing Lender and the Borrower, regarding the mortgage on the Vessel 1, has been duly pre-registered (in Croatian: *predbilježba*) with the relevant Ship Registry, including the original of the final and binding (in Croatian: *pravomoćno*) decree on pre-registration of the subordination of the mortgage priority ranking with the Ship Registry;
- (f) evidence that the Agreement on Subordination of Mortgage Priority Ranking on the Vessel 2 between the Lender, the Existing Financing Lender and the Vessel Owner 2, regarding the mortgage on the Vessel 2, has been duly pre-registered (in Croatian: *predbilježba*) with the relevant Ship Registry, including the original of the final and binding (in Croatian: *pravomoćno*) decree on pre-registration of the subordination of the mortgage priority ranking with the Ship Registry;
- (g) Evidence that the Share Pledge Agreement between the Lender and the Shareholder on the first ranking pledge over the Shares in the Borrower, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs, has been duly registered with the Pledge Registry and perfected, including the original of the notification of the Pledge Registry on the registration of the pledge;

- (h) the original debenture note issued by the Borrower, in favour of the Lender, in the form of a solemnized document (in Croatian: *solemnizirana isprava*), has been handed to the Lender together with an evidence of debenture note's registration with the Croatian Registry of Debentures (in Croatian: *Hrvatski registar zadužnica*);
- (i) the original debenture note issued by the company DIV GRUPA d.o.o., as guarantor, in favour of the Lender, in the form of a solemnized document (in Croatian: *solemnizirana isprava*), has been handed to the Lender together with an evidence of debenture note's registration with the Croatian Registry of Debentures (in Croatian: *Hrvatski registar zadužnica*);
- (j) the original debenture note issued by the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., as guarantor, in favour of the Lender, in the form of a solemnized document (in Croatian: *solemnizirana isprava*), has been handed to the Lender together with an evidence of debenture note's registration with the Croatian Registry of Debentures (in Croatian: *Hrvatski registar zadužnica*);
- (k) evidence of notification by the Borrower, as insured, to the relevant insurer (i.e., issuer of each relevant Insurance policy insuring risks related to the Vessel 1), on the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Lender and the Borrower, duly acknowledged by the relevant insurer;
- (l) evidence of notification by the Vessel Owner 2, as insured, to the relevant insurer (issuer of each relevant Insurance policy insuring risks related to the Vessel 2), on the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 2, duly acknowledged by the relevant insurer;
- (m) evidence of notification by the Vessel Owner 3, as insured, to the relevant insurer (issuer of each relevant Insurance policy insuring risks related to the Vessel 3), on the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 3, duly acknowledged by the relevant insurer;
- (n) evidence of notification by the Borrower, as contractual party to the Shipbuilding Agreement, to the Purchaser, as its debtor under the Shipbuilding Agreement, on the assignment of contractual claims established under the Agreement on Assignment for Security Purposes between the Lender and the Borrower, duly acknowledged by the Purchaser, or if such acknowledgment cannot be obtained, evidence that the delivery of the notification has been duly made.

If, solely for the reason that the Existing Financing Lender refuses to enter into the Agreements on Subordination of Mortgage Priority Ranking as set out in items 1.3 (e) and (f), and as a result thereof the conditions precedent set out in items 1.3 (e) and (f)

cannot be satisfied, the following conditions precedent shall apply instead (and for the avoidance of doubt conditions precedent set out in items 1.3 (e) and (f) should not be further considered):

- (a) evidence that the Mortgage Agreement between the Lender and the Borrower on establishment of the first ranking mortgage over the Vessel 1, conditional upon deletion of the currently existing first ranking mortgage over the Vessel 1 granted in favour of the Existing Financing Lender, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly but conditionally registered with the relevant Ship Registry, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the mortgage with the Ship Registry;
- (b) evidence that the Mortgage Agreement between the Lender and the Vessel Owner 2 on establishment of the first ranking mortgage over the Vessel 2, conditional upon deletion of the currently existing first ranking mortgage over the Vessel 2 granted in favour of the Existing Financing Lender, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly but conditionally registered with the relevant Ship Registry, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the mortgage with the Ship Registry;

1.4. Refinancing

- (a) An original of the executed Pay-Off Letter, duly signed by the Existing Financing Lender and acknowledged by the Transaction Obligors, evidencing that the Existing Security has been or will be discharged on or about the first Utilisation Date in accordance with the terms of the Pay-Off Letter.
- (b) Evidence satisfactory to the Lender that the Borrower has paid all interest, fees, costs and any other amount outstanding in relation to the Existing Facility as specified by the Pay-Off Letter to the Existing Financing Lender or it has transferred the amount corresponding to the amount of all interest, fees, costs and any other amount outstanding in relation to the Existing Facility as specified by the Pay-Off Letter to the Lender as specified by the Lender to the Borrower for payment in discharge of the Existing Bank Loan.
- (c) A funds flow statement setting out the application of funds borrowed under this Agreement in relation to the repayment of the Existing Indebtedness and the other purposes as permitted under or required by this Agreement (including but not limited to the use of proceeds under Tranche B).

1.5. Financial Information

The Original Financial Statements.

1.6. Vessels

- (a) A copy of an up-to-date extract from the relevant Ship Registry (dated no earlier than 30 days of the proposed Utilisation Date) in respect of each ship comprising the Vessel evidencing the Borrower and Vessel Owner title to the Vessel (showing no encumbrance other than as permitted by this Agreement).
- (b) A copy of the Initial Valuation.
- (c) All Insurance policies held by the Borrower and Vessel Owner in respect of the Vessel.
- (d) Evidence that the Insurance policies are effective in accordance with their terms.
- (e) Declaration of Class from the classification society DNV GL dated March 18, 2019 confirming completion of sea trials and all relevant sea trials tests except for voluntary class notations HC (E/3);
- (f) A copy of the Ship Building Agreement.

1.7. Tax

- (a) A copy of the VAT registration certificate of each Borrower.
- (b) A confirmation from the competent tax authority confirming that the Borrower have no overdue tax liabilities (being not older than 15 days).

1.8. Legal opinions

- (a) A legal opinion issued by Wolf Theiss, legal advisers to the Lender as to English law, in a form acceptable to the Lender.
- (b) A legal opinion issued by Wolf Theiss, legal advisers to the Lender as to Croatian law, in a form acceptable to the Lender.
- (c) A legal opinion issued by CMS, legal advisers to the Lender as to Dutch law, in a form acceptable to the Lender.
- (d) A legal opinion issued by Reeder and Simpson P.C., legal advisers to the Lender as to the laws of the Marshall Islands, in a form acceptable to the Lender.

1.9. Other documents and evidence

- (a) The Utilisation Request (which complies with this Agreement).
- (b) Evidence that any other fees, and the costs and expenses (e.g. legal fees) then due from the Borrower pursuant to Clause 10 (*Fees*) and Clause 15 (*Costs and expenses*) have been paid or will be paid by the Borrower by the first Utilisation Date.

- (c) A copy of any other Authorisation or other document, opinion or assurance which the Lender (acting reasonably) considers to be necessary (if it has notified the Obligors accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (d) Evidence that the process agent has accepted its appointment to serve as agent for service of process in respect of each relevant Finance Document to serve as agent of process on behalf of each relevant Obligor in accordance with Clause 34.2 (*Service of process*) where this is required.

SCHEDULE 2B

CONDITIONS PRECEDENT FOR TRANCHE B

- (a) The Borrower shall provide to the Lender evidence acceptable to the Lender within 10 Business Days from the Signing Date:
- (i) evidence that the Agreement on Subordination of Mortgage Priority Ranking on Vessel 1 between the Lender, the Existing Financing Lender and the Borrower, regarding the mortgage on the Vessel 1 has been duly registered and perfected (i.e., that the pre-registration has been validly justified), and as a consequence that the Mortgage Agreement between the Lender and the Borrower is registered in the first rank in the mortgage amount of up to EUR 33,000,000, increased for the relevant interests and costs, including the original of the decree on registration of the mortgage with the Ship Registry;
 - (ii) evidence that the Agreement on Subordination of Mortgage Priority Ranking on Vessel 2 between the Lender, the Existing Financing Lender and the Vessel Owner 2, regarding the mortgage on the Vessel 2 has been duly registered and perfected (i.e., that the pre-registration has been validly justified), and as a consequence that the Mortgage Agreement between the Lender and the Borrower is registered in the first rank in the mortgage amount of up to EUR 33,000,000, increased for the relevant interests and costs, including the original of the decree on registration of the mortgage with the Ship Registry;
 - (iii) evidence that the mortgage of the Existing Financing Lender over the Vessel 1, as a security for liabilities up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly deleted from the Ship Registry, including the original of the decree on deletion of the mortgage from the Ship Registry;
 - (iv) evidence that the mortgage of the Existing Financing Lender over the Vessel 2, as a security for liabilities up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly deleted from the Ship Registry, including the original of the decree on deletion of the mortgage from the Ship Registry;
 - (v) the original debenture note, issued by the Borrower, in favour of the Existing Financing Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), has been returned to the Borrower and destroyed;
 - (vi) the original debenture note, issued by the company DIV GRUPA d.o.o., in favour of the Existing Financing Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), has been returned to the company DIV GRUPA d.o.o. and destroyed;
 - (vii) the original debenture note, issued by the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., in favour of the Exist-

ing Financing Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), has been returned to the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o. and destroyed;

- (viii) evidence of notification by the Existing Financing Lender and the Borrower to the relevant insurer (i.e., issuer of each relevant Insurance policy insuring risks related to the Vessel 1), on the termination of the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Existing Financing Lender and the Borrower, duly acknowledged by the relevant insurer;
 - (ix) evidence of notification by the Existing Financing Lender and the Vessel Owner 2 to the relevant insurer (i.e., issuer of each relevant Insurance policy insuring risks related to the Vessel 2), on the termination of the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Existing Financing Lender and the Vessel Owner 2, duly acknowledged by the relevant insurer;
 - (x) evidence of notification by the Existing Financing Lender and the Vessel Owner 3 to the relevant insurer (i.e., issuer of each relevant Insurance policy insuring risks related to the Vessel 3), on the termination of the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Existing Financing Lender and the Vessel Owner 3, duly acknowledged by the relevant insurer;
 - (xi) evidence of notification by the Existing Financing Lender and the Borrower to the Purchaser, on the termination of the assignment of contractual claims established under the Agreement on Assignment for Security Purposes between the Existing Financing Lender and the Borrower, duly acknowledged by the Purchaser, or if such acknowledgment cannot be obtained, evidence that the delivery of the notification has been duly made;
- (b) If, solely for the reason that the Existing Financing Lender refuses to enter into the Agreements on Subordination of Mortgage Priority Ranking as set out in item 1.3 (e) and (f) of SCHEDULE 2A, and as a result thereof the conditions subsequent set out in item (a)(i) and (a)(ii) of this SCHEDULE 2B, cannot be satisfied, the following conditions subsequent shall apply (and for the avoidance of doubt conditions subsequent listed under items (a)(i) and (a)(ii) of this SCHEDULE 2B should not be further considered):
- (i) evidence that the first ranking mortgage established under the Mortgage Agreement between the Lender and the Borrower on establishment of the first ranking mortgage over the Vessel 1, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has become fully effective;
 - (ii) evidence that the first ranking mortgage established under the Mortgage Agreement between the Lender and the Borrower on establishment of the first

ranking mortgage over the Vessel 2, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has become fully effective.

SCHEDULE 2C

CONDITIONS SUBSEQUENT

- (a) The Borrower shall provide to the Lender evidence acceptable to the Lender
- (i) within 5 Business Days from the Utilisation Date of Tranche A:
- the original copy of each Insurance policy securing risks related to the Vessel 1, evidencing the Lender being designated as first loss payee (in Croatian: *vinkulacija*) and the Existing Financing Lender being deleted as first loss payee, has been handed to the Lender by the Borrower;
 - the original copy of each Insurance policy securing risks related to the Vessel 2, evidencing the Lender being designated as first loss payee (in Croatian: *vinkulacija*) and the Existing Financing Lender being deleted as first loss payee or designated as second loss payee, has been handed to the Lender by the Vessel Owner 2;
 - the original copy of each Insurance policy securing risks related to the Vessel 3, evidencing the Lender being designated as first loss payee (in Croatian: *vinkulacija*) and the Existing Financing Lender being deleted as first loss payee or designated as second loss payee, has been handed to the Lender by the Vessel Owner 3;
- (ii) within 30 days from the Signing Date:
- evidence that the Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of the first ranking mortgage over the Vessel 3, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly registered with the relevant Ship Registry (finally and binding, not subject to possible appeals);
 - evidence that the Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of third ranking mortgage over the Vessel 3, up to the amount of EUR 17,000,000,00 increased for the relevant interests and costs, has been duly registered with the relevant Ship Registry and perfected (finally and binding, not subject to possible appeals);
 - evidence that the mortgage of the Existing Financing Lender over the Vessel 3, as a security for liabilities up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly deleted with the relevant Ship Registry and perfected (finally and binding, not subject to possible appeals).

SCHEDULE 3
UTILISATION REQUEST⁵

From: BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

To: VTB BANK (EUROPE) SE

Dated: [●] 2019

Dear Sirs,

**BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo – EUR 50,000,000 Facility Agreement
dated [●] 2019 (the Agreement)**

1. We refer to the Agreement. This is the Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)

Amount: € [●], or, if less, in each case the available [Tranche A Commitment] or [Tranche B Commitment].

Tranche: [Tranche A] or [Tranche B]
3. We confirm that on the date of this Utilisation Request:
 - (i) each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied;
 - (ii) representations from Clause 17. (*Representations*) and undertakings from Clause 18. (*Information undertakings*) 19. (*General undertakings*) and 20 (*Vessel undertakings*) are still existing and valid; and
 - (iii) the requirement from Clause 20.9 (*Minimum loan to value covenant*) is satisfied.
4. The proceeds of all Loans should be credited to:
 - (i) in case of Tranche A: [relevant Account as set out in the Pay-Off Letter]

⁵ Not restated

(ii) in case of Tranche B to the account of Polar Expedition held with the Existing Lender, according to the following account details:
Bank: Zagrebačka Banka d.d.
IBAN: HR 64 2360 0001 1027 1364 8
SWIFT: ZABHR2X

5. The purpose of the Loan under each Tranche is as set out in Clause 3 (*Purpose*) of the Agreement.

6. This Utilisation Request is irrevocable.

Yours faithfully,

authorised signatory for
BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

SCHEDULE 4
FORM OF TRANSFER CERTIFICATE

From: [*The Existing Lender*] (the "**Existing Lender**") and [*The New Lender*] (the "**New Lender**")

Dated: [●]

VTB BANK (EUROPE) SE – EUR 50,000,000 Facility Agreement
dated 12 April 2019 and amended and restated on ____ October 2019 (the Agreement)

7. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
8. We refer to Clause 22:
 - (b) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 22 all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participation in Loans under the Agreement as specified in the Schedule.
 - (c) The proposed Transfer Date is [●].
 - (d) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 26.2 (*Addresses*) are set out in the Schedule.
9. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 22.
10. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
11. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
12. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

SCHEDULE 5
LIST OF EXISTING SECURITY

- (a) First ranking mortgage registered in favor of the Existing Financing Lender over Vessel 1 securing the amount of EUR 33,000,000 increased for applicable interest, fees and costs;
- (b) First ranking mortgage Existing Financing Lender over Vessel 2 securing the amount of EUR 33,000,000 increased for applicable interest, fees and costs;
- (c) First ranking mortgage Existing Financing Lender over Vessel 3 securing the amount of EUR 33,000,000 increased for applicable interest, fees and costs;
- (d) Insurance policy securing risks related to the Vessel 1, with first loss payee designation in favor of the Existing Financing Lender (in Croatian: *vinkulacija*);
- (e) Insurance policy securing risks related to the Vessel 2, with first loss payee designation in favor of the Existing Financing Lender (in Croatian: *vinkulacija*);
- (f) Insurance policy securing risks related to the Vessel 3, with first loss payee designation in favor of the Existing Financing Lender (in Croatian: *vinkulacija*);
- (g) Claims assignment, whereby the Borrower has assigned its rights and receivables under the Ship Building Agreement in favour of the Existing Financing Lender;
- (h) Insurance policies proceeds assignments, whereby the Borrower and/or the relevant insured entities have assigned their rights under the insurance policies securing Vessel 1, Vessel 2 and Vessel 3 in favour of the Existing Financing Lender;
- (i) Debenture Note, issued by the Borrower, securing the amount of EUR 33,000,000 increased for applicable interest, fees and costs, notarisation number OV-1837/2018;
- (j) Debenture Note, issued by DIV GRUPA d.o.o., securing the amount of EUR 33,000,000 increased for applicable interest, fees and costs, number OV-1836/2018; and
- (k) Debenture Note, issued by BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., securing the amount of EUR 33,000,000 increased for applicable interest, fees and costs, number OV-1838/2018.

SCHEDULE 6
EXISTING FINANCIAL INDEBTEDNESS

Agreed form – Provided separately

SCHEDULE 7
EXISTING FINANCIAL SECURITY

Agreed form – Provided separately

SCHEDULE 8
LIST OF SECURITY DOCUMENTS

- (a) Mortgage Agreement between the Lender and the Borrower on establishment of mortgage over the Vessel 1, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests, fees and costs;
- (b) Mortgage Agreement between the Lender and the Borrower on establishment of mortgage over the Vessel 1, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (c) Mortgage Agreement between the Lender and the Vessel Owner 2 on establishment of mortgage over the Vessel 2, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests, fees and costs;
- (d) Mortgage Agreement between the Lender and the Vessel Owner 2 on establishment of mortgage over the Vessel 2, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (e) Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of mortgage over the Vessel 3, whereby signatures have been duly notarised, as a security for Secured Liabilities, up to the amount of EUR 17,000,000, increased for the relevant interests, fees and costs;
- (f) Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of mortgage over the Vessel 3, whereby signatures have been duly notarised, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests, fees and costs;
- (g) Share Pledge Agreement between the Lender and the Shareholder on the first ranking pledge over the Shares in the Borrower, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (h) Agreement on Assignment for Security Purposes between the Lender and the Borrower on assignment of claims arising in relation to the Ship Building Agreement and the Insurance Proceeds in respect to Vessel 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (i) Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 2 on the assignment of Insurance Proceeds in respect to Vessel 2, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs;
- (j) Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 3 on assignment of Insurance Proceeds in respect to Vessel 3, as a security for

Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;

- (k) Debenture Note, allowing direct enforcement over all accounts and assets of the Borrower, granted by the Borrower in favour of the Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (l) Debenture Note, allowing direct enforcement over all accounts and assets of the company DIV GRUPA d.o.o., granted by the company DIV GRUPA d.o.o. in favour of the Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (m) Debenture Note, allowing direct enforcement over all accounts and assets of the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., granted by the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o. in favour of the Lender in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (n) Insurance policy securing risks related to the Vessel 1, with first loss payee designation in favour of the Lender (in Croatian: *vinkulacija*);
- (o) Insurance policy securing risks related to the Vessel 2, with first loss payee designation in favour of the Lender (in Croatian: *vinkulacija*); and
- (p) Insurance policy securing risks related to the Vessel 3, with first loss payee designation in favour of the Lender (in Croatian: *vinkulacija*) and the Insurance policy securing risks related to the Vessel 3, with second loss payee designation in favour of the Lender (in Croatian: *vinkulacija*);
- (q) New Insurance policy securing risks related to the Vessel 3, with first loss payee designation in favour of the Lender (in Croatian: *vinkulacija*);
- (r) Security Confirmation Agreement between the Lender, the Borrower and the Vessel Owner 1 for confirmation of mortgage agreements and assignment for security purposes in relation to the Vessel 1, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*);
- (s) Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 1 on assignment of claims arising in relation to the new Ship Building Agreement dated 5 July 2019 between the Borrower as builder and the Vessel Owner 1 as the buyer of the Vessel 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (t) Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 3 on assignment of claims arising in relation to the new Insurance policy, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;

- (u) Agreement on Authorization of Vessel Sale between the Lender, the Borrower and the Vessel Owner 1, authorizing the Lender to execute the sale process of the Vessel 1 acting in the name and for the benefit of the Vessel Owner 1;
- (v) Personal Guarantee of Mr. Tomislav Debeljak as the Ultimate Beneficial Owner of the Borrower;
- (w) Share Pledge Agreement between the Lender, the Borrower and DIV GRUPA d.o.o. on the first ranking pledge over the shares in the company DIV CRUISES d.o.o., concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (x) Share Pledge Agreement between the Lender and DIV GRUPA d.o.o. on the first ranking pledge over the shares in the company DIV BRODOGRADNJA d.o.o., concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (y) Share Pledge Agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (z) Share Pledge Agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 2, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (aa) Share Pledge Agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 3, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs.

SCHEDULE 9
FORM OF COMPLIANCE CERTIFICATE

To: VTB Bank Europe SE as Lender

From: DIV GRUPA d.o.o.

BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

Dated: [] 20[]

Dear Sirs

**BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo –
EUR 50,000,000 Facility Agreement
dated 12 April 2019 and as amended and restated on ____ October 2019 (the Agreement)**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that the Current Ratio is [] in respect of the Quarter Date falling on [].
3. [We confirm that no Default is continuing.]*

Signed:	
Director	Director
of	of
DIV Grupa d.o.o.	DIV Grupa d.o.o.

We hereby confirm and certify the above statements under paragraph 2 above to be true and correct:

.....
[for and behalf of

SIGNATURE PAGE⁶
TO THE UP TO EUR 50,000,000 FACILITY AGREEMENT

⁶ Not restated

THE BORROWER

BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

By:

Address: Put Supavla 21, Split, Croatia

Fax:

Attention:

THE GUARANTORS

DIV GRUPA D.O.O.

By:

Address: Bobovica 10/A, Samobor, Croatia

Fax:

Attention:

BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o.

By:

Address: Put Supavla 21, Split, Croatia

Fax:

Attention:

THE LENDER

VTB BANK (EUROPE) SE

By:

By:

Address: Rüsterstraße 7-9, 60325 Frankfurt am Main, Germany

Email: Loans.Administration@vtb.eu

Attention: Loan Administration

**SIGNATURE PAGE
TO THE AMENDMENT AND RESTATEMENT AGREEMENT**

THE BORROWER

EXECUTED AS A DEED by)
BRODOGRAĐEVNA INDUSTRIJA SPLIT,)
dioničko društvo)

Signature



acting by)

Print signatory's name: TONISUNO DEBZIGAK

Title: PREDSJEDNIK UPRAVE

THE GUARANTORS

EXECUTED AS A DEED by
DIV GRUPA D.O.O.

)
)
)
)
)

Signature



acting by

Print signatory's name: TONISLAV DEBELAK

Title: PREDSEDNIK UDRUGE

EXECUTED AS A DEED by
BRODOSPLIT-BRODOGRADILIŠTE
SPECIJALNIH OBJEKATA d.o.o.

Signature

acting by

Print signatory's name: JUNJUN DEBELJAK

Title: DIJEKTOR

THE ACCEEDING GUARANTOR

EXECUTED AS A DEED by
XB AHTS HERO SHIPPING, INC.

)
)
)
)
)



Signature

acting by

Print signatory's name: VEDRANA DEBELJAK

Title: director

THE LENDER

VTB BANK (EUROPE) SE

By:



Arthur Iliyav
Chairman of the Board

By:



Peter Petrik
Executive Director

VTB Bank (Europe) SE
Address: Rusterstraße 7-9, 60325 Frankfurt am Main, Germany

Email: Loans.Administration@vtb.eu

Attention: Loan Administration

AMENDMENT AND RESTATEMENT AGREEMENT

dated 12 April 2021

for

BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

as Borrower

and

THE GUARANTORS

as Guarantors

and

VTB BANK (EUROPE) SE

as Lender

RELATING TO AN UP TO
€50,000,000 FACILITY AGREEMENT
DATED 12 APRIL 2019

AS AMENDED AND RESTATED ON 11 OCTOBER 2019

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION.....	4
2.	EFFECTIVE DATE.....	5
3.	REPRESENTATIONS.....	5
4.	COVENANTS.....	6
5.	CONTINUITY.....	6
6.	MISCELLANEOUS.....	6
7.	GOVERNING LAW.....	6
8.	SERVICE OF PROCESS.....	7

SCHEDULES

Schedule 1 CONDITIONS PRECEDENT	8
Schedule 2 RESTATED AGREEMENT	13

THIS AGREEMENT is dated 12 April 2021 and made between:

- (1) **BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo**, a company duly incorporated in Croatia, with its registered seat at Put Supavla 21, Split, Croatia, PIN (OIB): 18556905592, registered with the court registry of the Commercial Court in Split under registration number (MBS): 060175040, as borrower (the "**Borrower**");
- (2) **THE COMPANIES** listed in SCHEDULE 1 (*Guarantors*) as guarantors (the "**Guarantors**");
- (3) **VTB BANK (EUROPE) SE**, a financial institution duly incorporated in Germany with registered office at Rüsterstraße 7-9, 60325 Frankfurt am Main, Germany, PIN (OIB): 28284529780, registered with the District Court of Frankfurt am Main (*Amtsgericht Frankfurt am Main*) under registration number HRB 12169 (the "**Lender**")

(the Borrower, the Lender and the Guarantors collectively referred to as the "**Parties**", and individually as a "**Party**").

IT IS AGREED as follows:

RECITALS:

- (A) The Lender under the Original Amended Facility Agreement (as defined below) made available, in aggregate, up to €50,000,000 term loan facilities to the Borrower.
- (B) The Lender, the Borrower and the Guarantors have agreed to amend and restate the Original Amended Facility Agreement (as defined below) in accordance with the terms hereof in the form as set out in SCHEDULE 2 (*Restated Agreement*).
- (C) This Agreement shall take effect as a deed notwithstanding the fact that it may have been signed by the Lender under hand.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Second Amendment Documents**" means this Agreement and the Restated Agreement.

"**Effective Date**" means 12 April 2021 provided that by that date the Lender confirms in writing to the Borrower that it has received each of the documents and evidence listed in Schedule 1A (*Conditions Precedent*) in a form and substance satisfactory to it (the CP Satisfaction).

"Original Amended Facility Agreement" means the up to €50,000,000 term loan facilities agreement dated 12 April 2019 between, amongst others, the Borrower and the Lender, as amended and restated on 11 October 2019.

"Restated Agreement" means the Original Amended Facility Agreement, as amended and restated by this Agreement, the terms of which are set out in Schedule 2 (*Restated Agreement*).

1.2 Incorporation of defined terms

- (a) Unless a contrary indication appears, a term defined in any other Finance Document (including, for the avoidance of doubt, the Restated Agreement) has the same meaning in this Agreement.
- (b) The principles of construction set out in Clause 1.2 (*Interpretation*) of the Original Amended Facility Agreement shall have effect as if set out in this Agreement except that references to the Original Amended Facility Agreement are to be construed as references to this Agreement.

1.3 Clauses

In this Agreement any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires, a reference to a Clause or a Schedule to this Agreement.

1.4 Designation

In accordance with the Original Amended Facility Agreement, the Borrower and the Lender designate each Second Amendment Document as a Finance Document.

2. EFFECTIVE DATE

- 2.1 On and from the Effective Date, the Original Amended Facility Agreement shall be amended as set out in the Restated Agreement, and any references to the Original Amended Facility Agreement in any Finance Document or otherwise shall be construed as references to the Restated Agreement.
- 2.2 If by the Effective Date the Lender does not confirm in writing to the Borrower that it has received each of the documents and evidence listed in Schedule 1A (*Conditions Precedent*) in a form and substance satisfactory to it (the CP Satisfaction), the transactions contemplated in Clause 2.1 above will not occur and the Original Amended Facility Agreement and any other Finance Documents will continue to exist in their original form.

3. REPRESENTATIONS

The representations set out in Clause 17 of the Restated Agreement are deemed to be made by the Borrower (by reference to the facts and circumstances then existing, as if references to the Original Amended Facility Agreement are references to the Restated

Agreement and in the case of the representations made on the date of this Agreement, as if the Effective Date had occurred) on:

- (a) the date of this Agreement; and
- (b) the Effective Date.

4. COVENANTS

The Borrower shall ensure that each of the documents and evidence listed in Schedule 1B (*Conditions Subsequent*) are delivered to the Lender in a form and substance satisfactory to the Lender within the time periods set out in Schedule 1B (*Conditions Subsequent*).

5. CONTINUITY

5.1 Continuing obligations

- (a) The provisions of the Finance Documents shall, save as amended by this Agreement, continue in full force and effect with respect to the Lender and the Borrower and from the Effective Date, the Original Amended Facility Agreement and this Agreement shall be read and construed as one document.
- (b) Except to the extent expressly stated in this Agreement, no waiver is given by this Agreement or the Restated Agreement, and the Lender expressly reserves all its rights under all Finance Documents.

6. MISCELLANEOUS

6.1 Incorporation of terms

The provisions of Clause 28 (*Notices*), Clause 30 (*Partial Invalidity*), Clause 31 (*Remedies and waivers*) and Clause 35 (*Jurisdiction*) of the Restated Agreement shall be incorporated into this Agreement as if set out in full in this Agreement and as if references in those clauses to "this Agreement" or "the Finance Documents" are references to this Agreement.

6.2 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

7. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

8. SERVICE OF PROCESS

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor:
- (i) irrevocably appoints Tatham Law LLP, 150 Minories, London, EC3N 1LS, United Kingdom, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Obligors must immediately (and in any event within 14 days of such event taking place) appoint another agent on terms acceptable to the Lender. Failing this, the Lender may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
CONDITIONS PRECEDENT AND SUBSEQUENT

SCHEDULE 1A
CONDITION PRECEDENT

1.1. Transaction Obligors

- (a) A copy of the constitutional documents of each Transaction Obligor.
- (b) A copy of an extract for each Transaction Obligor from the commercial, trade or similar registry from its Original Jurisdiction, dated not earlier than three days before the date of this Agreement, confirming that it is duly registered and/or is good standing in its Original Jurisdiction and it is not insolvent (including a certificate of good standing for any Transaction Obligors registered or incorporated under the laws of the Marshall Islands).
- (c) A copy of (A) a resolution of the management board and (B) for the Borrower and DIV GRUPA d.o.o., a resolution of the supervisory board, and (C) for Transaction Obligors other than the Borrower, a resolution of the shareholders' meeting:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (iv) in the case of each Transaction Obligor other than the Borrower, authorising the Borrower to act as its agent in connection with the Finance Documents.
- (d) A certified or notarised specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above.
- (e) A certificate of each Transaction Obligor (signed by authorized director(s)) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit-binding on any Transaction Obligor to be exceeded.

- (f) A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each copy document specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (g) A structure chart setting out the ownership of each Obligor and their respective Subsidiaries, including the Vessel Owner 1.

1.2. Finance Documents

Originals of each of the following duly signed (notarized or solemnised where necessary) documents:

- (a) this Agreement; and
- (b) the deed of confirmation in respect of Subordination Agreement (in the agreed form); and
- (c) each Security Document duly executed, in the relevant legal form, all as listed in Clause 1.3 (*Security*) of this Schedule 1 (*Conditions Precedent*).

1.3. Security

Evidence in form and substance acceptable to the Lender that the Security created pursuant to the relevant Security Documents has been created and, as applicable, perfected, including, if applicable, registration in the relevant registries, as follows:

- (a) the deed of confirmation in respect of personal guarantee of Mr. Tomislav Debeljak as the Ultimate Beneficial Owner of the Borrower (in the agreed form);
- (b) the deed of confirmation in respect to the share pledge agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs (in the agreed form);
- (c) the deed of confirmation in respect to the share pledge agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 2, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs (in the agreed form);
- (d) the deed of confirmation in respect to the share pledge agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 3, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;

1.4. Financial Information

- (a) The report referred to in paragraph (a) of Clause 18.1 (*Financial statements*) of the Restated Agreement, with estimates up to 31 December 2021.
- (b) Pipeline of projects (orderbook) in 2021 for the Brodosplit Group and DIV Grupa d.o.o.
- (c) Business plan for 2021 (three statements) for the Brodosplit Group
- (d) Compliance certificates (Q1, Q3 and Q4 2020) for DIV Grupa d.o.o.
- (e) ESG questionnaire in the provided form for the Borrower and DIV Grupa d.o.o.
- (f) Letter of HBOR confirming the full repayment of the financing within the extended tenor.

1.5. Vessels

- (a) A copy of an up-to-date extract from the relevant Ship Registry (dated no earlier than 30 days of the proposed Effective Date) in respect of each ship comprising the Vessel evidencing the Borrower and Vessel Owner title to the Vessel (showing no encumbrance other than as permitted by this Agreement).
- (b) All Insurance policies held by the Borrower and Vessel Owners in respect of the Vessels.
- (c) Evidence that the Insurance policies are effective in accordance with their terms.

1.6. Legal opinions

- (a) A legal opinion issued by Wolf Theiss, legal advisers to the Lender as to English law, in a form acceptable to the Lender.
- (b) A legal opinion issued by Wolf Theiss, legal advisers to the Lender as to Croatian law, in a form acceptable to the Lender.
- (c) A legal opinion issued by Reeder and Simpson P.C., legal advisers to the Lender as to the laws of the Marshall Islands, in a form acceptable to the Lender.

1.7. Other documents and evidence

- (a) Evidence that the facility agent has received a notice of cancellation executed by Polaris Expeditions, Inc. as borrower in respect of the cancellation of EUR 500,000 of the commitment available under the Facility Agreement (up to EUR 32,000,000 Committed and EUR 11,000,000 Uncommitted Term Loan Facility)

dated 27 May 2020 entered into between, among others, Polaris Expeditions Inc. and the Lender and other parties in various capacities.

- (b) Evidence that the facility agent has received a utilisation request executed by Polaris Expeditions Inc. for utilisation of EUR 1,500,000 of the commitments available under the Facility Agreement (up to EUR 32,000,000 Committed and EUR 11,000,000 Uncommitted Term Loan Facility) dated 27 May 2020 entered into between, among others, Polaris Expeditions Inc. and the Lender and other parties in various capacities, including the instruction of the Borrower as shipbuilder under the above mentioned Facility Agreement that an amount of EUR 666,666.67 of the utilisation shall be used in and towards payment of interest under this Agreement to the Lender.
- (c) A copy of any other Authorisation or other document, opinion or assurance which the Lender (acting reasonably) considers to be necessary (if it has notified the Obligors accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (d) Evidence that the process agent has accepted its appointment to serve as agent for service of process in respect of each relevant Finance Document to serve as agent of process on behalf of each relevant party in accordance with the relevant Finance Documents where this is required.
- (e) All "know your customer" documentation and FATCA information required by the Lender in respect of any Obligor and completion of all relevant checks by the Lender in this respect.

SCHEDULE 1B
CONDITIONS SUBSEQUENT

1.1. Fees

Within 5 Business Days from the Effective Date, the Borrower shall provide to the Lender evidence acceptable to the Lender :

- evidence that any fees, and the costs and expenses (e.g. legal fees) due from the Borrower pursuant to Clause 10 (*Fees*) and Clause 15 (*Costs and expenses*) of the Original Amended Facility Agreement, including the costs and expenses in relation to the amended thereof in accordance with this Agreement, have been paid by the Borrower.

1.2. Valuation Report

Within 2 months from the Effective Date, the Borrower shall provide to the Lender:

- a valuation report in relation to the Shares pledged in favour of the Lender in accordance with the Share Pledge Agreement prepared at the cost of the Borrower by a valuator selected by the Lender with a duty of care in respect to the Lender, unless HBOR provides the Lender with a commitment letter covering the repayment of any and all amounts due under the Restated Agreement prior to the Termination Date.

SCHEDULE 2
RESTATED AGREEMENT

UP TO EUR 50,000,000

FACILITY AGREEMENT

dated 12 April 2019

as amended and restated 11 October 2019 and 12 April 2021

for

BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo
as Borrower

provided by

VTB BANK (EUROPE) SE
as Lender

WOLF THE

CONTENTS

Clause	Page
1. Definitions and Interpretations	5
2. The Facility	30
3. Purpose	30
4. Conditions of Utilisation	30
5. Utilisation	32
6. Repayment	34
7. Prepayment and cancellation	34
8. Interest	37
9. Interest Periods	37
10. Fees	38
11. Tax gross up and indemnities	40
12. Increased costs	43
13. Other indemnities	44
14. Mitigation by the Lender	45
15. Costs and expenses	46
16. Guarantee and indemnity	48
17. Representations	52
18. Information undertakings	61
19. General undertakings	65
20. Vessel related undertakings	71
21. Events of Default	80
22. Changes to the Lender	86
23. Changes to the Transaction Obligors	86
24. Payment mechanics	87
25. Set-off	90
26. Notices	90
27. Calculations and certificates	92
28. Partial invalidity	93
29. Remedies and waivers	93
30. Amendments and waivers	93
31. Confidential Information	93
32. Counterparts	96
33. Governing law	97
34. Enforcement	97

SCHEDULE 1	GUARANTORS	99
SCHEDULE 2	CONDITIONS PRECEDENT AND SUBSEQUENT.....	100
SCHEDULE 3	UTILISATION REQUEST	111
SCHEDULE 4	FORM OF TRANSFER CERTIFICATE	113
SCHEDULE 5	LIST OF EXISTING SECURITY	114
SCHEDULE 6	EXISTING FINANCIAL INDEBTEDNESS.....	115
SCHEDULE 7	EXISTING FINANCIAL SECURITY.....	116
SCHEDULE 8	LIST OF SECURITY DOCUMENTS.....	117
SCHEDULE 9	FORM OF COMPLIANCE CERTIFICATE	120

THIS AGREEMENT is dated 12 April 2019, amended and restated on 11 October 2019, and amended and restated on 12 April 2021, made between:

- (1) **BRODOGRAĐEVNA INDUSTRIJA SPLIT**, dioničko društvo, a company duly incorporated in Croatia, with its registered seat at Put Supavla 21, Split, Croatia, PIN (OIB): 18556905592, registered with the court registry of the Commercial Court in Split under registration number (MBS): 060175040, as borrower (the "**Borrower**");
- (2) **THE COMPANIES** listed in SCHEDULE 1 (*Guarantors*) as guarantors (the "**Guarantors**"); and
- (3) **VTB BANK (EUROPE) SE**, a financial institution duly incorporated in Germany with registered office at Rüsterstraße 7-9, 60325 Frankfurt am Main, Germany, PIN (OIB): 28284529780, registered with the District Court of Frankfurt am Main (*Amtsgericht Frankfurt am Main*) under registration number HRB 12169 (the "**Lender**")

(the Borrower, the Lender and the Guarantors collectively referred to as the "**Parties**", and individually as a "**Party**").

IT IS AGREED as follows:

**SECTION 1
INTERPRETATION**

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement:

"Account" means:

- (a) in respect to Tranche A, the account to be specified by the Existing Financing Lender in the Pay-Off Letter to which the Lender shall disburse the Tranche A Loan; and
- (b) in respect to Tranche B, the following account of Polaris Exploration held with the Zagrebačka Banka d.d.:
IBAN: HR 64 2360 0001 1027 1364 8,
SWIFT: ZABHR2X.

"Additional Financial Services Letter" means the letter executed by the Borrower and delivered to the Lender as a condition precedent under this Agreement in connection with the transactions contemplated by this Agreement.

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

"Agreement on Assignment for Security Purposes" means any security agreement entered into by and between the Borrower or a Vessel Owner and the Lender on or around the date of this Agreement, establishing a security interest in respect of receivables defined therein, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"Agreement on Authorization of Vessel Sale" means any agreement entered into by and between the Lender, the Borrower and the Vessel Owner 1 on or around the date of this Agreement, authorizing the Lender to execute the sale process of Vessel 1 acting in the name and for the benefit of the Vessel Owner 1, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"Alternative Currency" means:

- (a) any of RUB, CHF, GBP, JPY, SGD or HKD as may be selected by the Lender in its discretion; or
- (b) if none of the currencies named in (a) above are available to be used, such other currency as agreed in writing by the Lender and the Borrower.

"Alternative Currency Exchange Rate" means

- (a) in respect of any Alternative Currency Notice which specifies RUB as the Alternative Currency, the rate of exchange of EUR into RUB fixed at or about 12.35 Moscow time on the date of such Alternative Currency Notice by JSC Moscow Exchange and published on moex.com/en/fixing as "MOEX EUR/RUB FX Fixing" provided that if such exchange rate is not published on that date or at such time or is not available with respect to the relevant Alternative Currency, the exchange rate agreed between the Lender and the Borrower acting in good faith and in a commercially reasonable manner or, failing such agreement, the exchange rate notified by the Lender to the Borrower acting in good faith and in a commercially reasonable manner; and
- (b) in respect of any Alternative Currency Notice which specifies any Alternative Currency other than RUB, means, in respect of any conversion date, the rate of exchange of EUR into the relevant Alternative Currency fixed at 4.00 p.m. London time on that conversion date by WM Company and published on Bloomberg screen <WMCO (Spot Rate Current Daily Fixings, EUR Rate Source WMCD> provided that if such exchange rate is not published on that conversion date or is not available with respect to the relevant Alternative Currency, the exchange rate agreed between the Lender and the Borrower acting in good faith and in a commercially reasonable manner.

"Alternative Purchaser" means any purchaser of Vessel 1 other than the Purchaser.

"Auditor" means Deloitte d.o.o., a company duly incorporated in Croatia, with its registered seat at Radnička cesta 80, Zagreb, Croatia, PIN (OIB): 11686457780, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 030022053, or any other international accounting firm acceptable to the Lender, engaged by the Borrower to audit the annual financial statements to be provided pursuant to Clause 18.2 (*Requirements as to financial statements*).

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Availability Period" means the period from and including the Signing Date to and including the date which is falling on the tenth Business Day after the Signing Date.

"Available Commitment" means in relation to a Tranche, the Lender's Commitment under that Tranche, minus:

the amount of its participation in any outstanding Loans; and

- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

"Available Facility" means, in relation to a Facility, the Lender's Available Commitment in respect of that Tranche.

"Borrower Euro Account" means a current account opened by the Borrower with the Lender.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in Zagreb and Frankfurt and which is a TARGET Day.

"**Code**" means the US Internal Revenue Code of 1986.

"**Commitment**" means a Tranche A Commitment or a Tranche B Commitment.

"**Companies Act**" means the Croatian Companies Act (Official Gazette 111/1993, as amended from time to time).

"**Compliance Certificate**" means a certificate substantially in the form set out in SCHEDULE 9 (*Form of Compliance Certificate*).

"**Confidential Information**" means all information relating to any Transaction Obligor, the Finance Documents or the Facility of which the Lender becomes aware in its capacity as, or for the purpose of becoming, the Lender or which is received by the Lender in relation to, or for the purpose of becoming the Lender under, the Finance Documents or the Facility from either any Transaction Obligor or any of its advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) ~~is or becomes public information other than as a direct or indirect result of any breach by the Lender of Clause 31 (*Confidential Information*);~~
- (b) is identified in writing at the time of delivery as non-confidential by any Transaction Obligor or any of its advisers; or
- (c) is known by the Lender before the date the information is disclosed or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Transaction Obligors and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"**Debenture Notes**" means the Croatian law governed debenture (in Croatian: *zadužnica*) issued by each Obligor on or about the date of this Agreement allowing direct enforcement over all or substantially all of each Obligor's assets, in security for all amounts owing by the Borrower to the Lender under this Agreement, in form and substance satisfactory to the Lender, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"**Default**" means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Lender.

~~"Disposal" means a sale, transfer or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions) and~~

including, for the avoidance of doubt, the proceeds of any Disposal of any of the Vessels or any other vessel owned by an Obligor or any of its Subsidiaries (including any special purpose vehicle).

"Disposal Proceeds" means the consideration receivable by any Obligor or any of their Subsidiaries (including any amount receivable in repayment of intercompany debt) for any Disposal made by any Obligor or any of its Subsidiaries except for Excluded Disposal Proceeds, after deducting:

- (a) any reasonable expenses which are incurred by the disposing entity with respect to that Disposal to persons who are not an Obligor (or a Subsidiary of an Obligor); and
- (b) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

"Dispute" means the dispute between the Borrower and the Purchaser in relation to any additional amounts due on account of damages due and payable by the Purchaser to the Borrower under the Ship Building Agreement.

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"Effective Date" has the meaning given to that term in the Amendment Documents.

"Environment" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);

- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

"Environmental Claim" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

"Environmental Law" means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

"Environmental Permits" means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of the Borrower conducted on or from the properties owned or used by the Borrower.

"Excluded Disposal Proceeds" means proceeds of Disposals (i) falling under paragraphs (b)(i) and (ii) of Clause 19.4 (*Disposals*) or (ii) of proceeds of Disposals where the market value of the disposed asset (or undertaking or business, if relevant) or the consideration received for that asset (whichever is higher) does not exceed €1,000,000.

"Excluded Insurance Proceeds" means any Insurance Proceeds which the Borrower notifies the Lender are, or are to be, applied, in each case in accordance with the terms and conditions of the relevant Insurance or, if applicable, the Finance Documents:

- (a) to meet a third party claim;
- (b) to cover operating losses in respect of which the relevant Insurance claim was made; or
- (c) if agreed by the Lender in writing, in the replacement, reinstatement and/or repair of the assets in respect of which the relevant insurance claim was made.

"Existing Bank Loan" means the principal amount outstanding under the Existing Facility.

"Existing Security" means the security that secures the Existing Bank Loan as described in detail in SCHEDULE 5 (*List of Existing Security*).

"Existing Facility" means the EUR 33,000,000 short term foreign currency facility originally dated 28 March 2018, as amended from time to time, provided by the Existing Financing Lender to the Borrower (with a total outstanding principal amount of EUR 33,000,000 as at the date of this Agreement).

"Existing Facility Documentation" means, the credit documentation under which the Existing Bank Loan was made available, including but not limited to any credit agreement, security document and ancillary documentation entered into in relation to those relevant credit documents.

"Existing Financing Lender" means Zagrebačka Banka d.d., a credit institution duly incorporated in Croatia, with registered office at Trg bana Josipa Jelačića 10, 10000 Zagreb, Croatia, PIN (OIB): 92963223473, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 080000014.

"Existing Financial Indebtedness" means any and all Financial Indebtedness of the Borrower in existence as at the date of this Agreement as described in SCHEDULE 6 (*Existing Financial Indebtedness*).

"Existing Financial Security" means any and all Security provided or undertaken by the Borrower in security or reinsurance for any obligation of any person (including any obligation in respect of the Existing Financial Indebtedness) as described in detail in SCHEDULE 7 (*Existing Financial Security*) (including for the avoidance of doubt, the Existing Security).

"Export Credit Finance Facility" means any export credit finance facility that might be entered into between the relevant borrower (being a wholly owned Subsidiary of the Borrower established as a special purpose company or a non-related party being a customer of the Borrower in respect of the relevant vessel) and the Lender as lender on conditions acceptable to the Lender including that: the loan is made in respect of the sale of a vessel by the Borrower (or its Subsidiary); the amount of the loan is at least €30,000,000; insurance cover is provided by HBOR in respect of that loan and the proposed purchaser for that vessel is acceptable to the Lender.

"Event of Default" means any event or circumstance specified as such in Clause 21 (*Events of Default*).

"Facility" means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

"Facility Office" means the office or offices through which the Lender will perform its obligations under this Agreement.

"FATCA" means:

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

"FATCA Application Date" means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

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

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

"Finance Document" means

- (a) this Agreement;
- (b) the Amendment Documents;
- (c) the Second Amendment Documents;
- (d) any Security Document;
- (e) the Subordination Agreement; or
- (f) any other document designated as such by the Lender and the Obligors.

"Financial Indebtedness" means any indebtedness for or 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 (including Croatian law promissory notes and debenture notes);
- (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 balance sheet liability;
- (e) without limiting the generality of paragraph (d) above, any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition of construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets and services and payment is due more than 90 days after the date of supply;

- (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (h) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (i) 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
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

"Financial Quarter" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"Financial Year" means the annual accounting period of each Obligor ending on or about 31 December each year.

"GAAP" means all accounting and similar rules, regulations and principles generally accepted and consistently applied including without limitation IFRS.

"HBOR" means Croatian Bank for Reconstruction and Development, duly incorporated in Croatia, with its registered seat at Strossmayerov trg 9, Zagreb, Croatia, PIN (OIB): 26702280390, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 3929370.

"HBOR Financial Indebtedness" means all financial indebtedness incurred (or to be incurred) by Polaris Exploration to HBOR in connection with the construction of Vessel 4 or otherwise in an amount not exceeding €87,900,000.

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

"IAS" means the IAS Regulation 1606/2002.

"IFRS" means international accounting standards within the meaning of the IAS to the extent applicable to the relevant financial statements.

"Initial Valuation" means the Valuation of the Vessels prepared for the sole benefit and reliance of the Lender and delivered to the Lender as a condition precedent under this Agreement.

"Insurance Proceeds" means in respect of any of the Vessels any proceeds of Insurances (other than Excluded Insurance Proceeds), but in any event includes proceeds when any of the relevant Vessel is declared an actual or constructive total loss by any relevant insurer.

"Insurances" means any contract of insurance required under Clause 20.6 (*Insurances*).

"Insurer" or "Insurers" means, collectively:

- (a) in respect to Vessel 1, Wiener Osiguranje Vienna Insurance Group d.d., with its registered seat at Slovenska ulica 24, Zagreb, Croatia, PIN (OIB): 52848403362, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 080026313;
- (b) in respect to Vessel 2, Allianz Zagreb d.d., with its registered seat at Heinzelova 70, Zagreb, Croatia, PIN (OIB): 23759810849, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 080004103;
- (c) in respect to Vessel 3, Triglav osiguranje d.d., with its registered seat at Antuna Heinza 4, Zagreb, Croatia, PIN (OIB): 29743547503, registered with the court registry of the Commercial Court in Zagreb under registration number (MBS): 040033293; or
- (d) any other insurer acceptable for the Lender for the purposes of underwriting an Insurance in respect of a Vessel.

"Intellectual Property" means

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each Borrower (which may now or in the future subsist).

"Interest Payment Date" means each (i) day corresponding to the day of the month of the Signing Date after the Signing Date and (ii) the Termination Date. If, however, any such day is not a Business Day, the Interest Payment Date will instead be the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

"Legal Reservations" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

- (b) the time barring of claims under the Limitation Acts or Croatian law (if applicable), the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) directors' duties, corporate benefit, capital maintenance, financial assistance, fraudulent preference or thin capitalization laws or regulations (or analogous restrictions) under Croatian law;
- (d) the limitation of the enforcement of the terms of leases of real property by laws of general application to those leases;
- (e) similar principles, rights and remedies under the laws of any Relevant Jurisdiction; and
- (f) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinions supplied to Lender as a condition precedent under this Agreement on or before the first Utilisation Date.

"Lender" means the Lender or any other person which has become a Lender in accordance with Clause 22 (*Changes to the Lender*) which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"Limitation Acts" means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

"LMA" means the Loan Market Association.

"Loan" means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

"Material Adverse Effect" means, in each case in the reasonable opinion of the Lender, a material adverse effect on:

- (a) the business, operations, property or financial or other condition or prospects of the Obligors taken as a whole;
- (b) the ability of the Obligors taken as a whole to perform their obligations under the Finance Documents;
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purported to be granted pursuant to any of, the Finance Documents; or
- (d) the rights or remedies of the Lender under any of the Finance Documents.

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that

period is to end if there is one, or if there is not, on the immediately preceding Business Day;

- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

"Mortgage Agreement" means any security agreement entered into by and between the Borrower or the Vessel Owner and the Lender on or around the date of this Agreement, establishing a mortgage over any of the Vessels, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"New Lender" has the meaning given to that term in Clause 22 (*Changes to the Lender*).

"Obligor" means the Borrower or a Guarantor.

"Original Financial Statements" means, in relation to the Borrower and each of the Guarantors, its audited standalone and (if applicable) consolidated financial statements for the Financial Year ended 2017.

"Original Jurisdiction" means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement.

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

"Party" means a party to this Agreement.

"Pay-Off Letter" means any pay-off letter issued by any Existing Financing Lender to the Lender, in the form agreed by the Lender, in relation to

- (a) the amount of the relevant Existing Bank Loan and accrued but unpaid interest up to and including the date of that letter (together with the actual calculation or the method of computation of the amount that must be repaid by the Borrower on the first Utilisation Date to the Existing Financing Lender);
- (b) the release, discharge, cancellation and deregistration of the Existing Security;
- (c) the termination of the Existing Facility Documentation (as relevant) upon such repayment (prepayment); and

- (d) the consent provided by the Existing Financing Lender for the Transaction Security to be signed and perfected according to the Security Documents (following in ranking and priority only the Existing Security).

"Perfection Requirements" means the making or the procuring of filings, stampings, registrations, notarisations, endorsements, translations and/or notifications of any Finance Document (and/or any Security created under it) necessary for the validity, enforceability (as against the relevant Obligor or any relevant third party) and/or perfection of that Finance Document.

"Permitted Financial Indebtedness" means Financial Indebtedness of the Borrower:

- (a) incurred under the Finance Documents;
- (b) constituting Existing Financial Indebtedness, provided that if such indebtedness:
 - (i) has been incurred under the Existing Facility Documentation, it is permitted only to the extent it is fully discharged in accordance with this Agreement and the Pay-Off Letter or otherwise repaid or discharged prior to the Utilisation;
 - (ii) has been incurred in relation to the HBOR Financial Indebtedness, it is permitted only to the extent the liability of the Borrower (whether as a joint debtor or by way of guarantee, suretyship, indemnity (the **"HBOR Guarantee"**) or similar obligations or liabilities including as a provider of any Security) does not at any time exceed €87,900,000 (the **"HBOR Exposure"**) and the HBOR Exposure is not varied such that it may become more onerous for the Borrower throughout the term of this Agreement without the prior written consent of the Lender;
 - (iii) that constitutes Trade Liabilities, it is permitted only to the extent the liability of the Borrower (whether as a debtor or by way of debenture notes, promissory notes, right of subrogation, indemnity or similar obligations or liabilities including on account of credit cards but not for loans, bonds or similar forms of borrowings) does not at any time exceed €17,000,000 (the **"Trade Exposure"**) and the Trade Exposure is not at any time throughout the term of this Agreement increased by more than 10% without the prior written consent of the Lender;
and
- (c) constitutes Subordinated Debt (including interest accrued on the principal amount of such debt), it is permitted only to the extent such principal and interest remains subordinated on the terms of the Subordination Agreement; or
- (d) not permitted under paragraphs (a) and (b) above and agreed by the Lender in writing prior to such debt being incurred provided that such consent shall not be unreasonably withheld or delayed.

"Permitted Security" means:

- (a) the Transaction Security;

(b) Security that has been created in respect of:

(i) Vessel 1 being:

- second rank mortgage registered on the basis of Warranty contract no. F-017-15 for orderly settlement of long-term liabilities dated 26 May 2015 in favour of the Ministry of Finance of Croatia in the amount of €12,667,000 increased for contractual interests, fees and expenses;
- third rank mortgage registered on the basis of Agreement on security financial claim by establishing a mortgage on the vessel under construction dated 29 June 2017 in favour of the Purchaser in the amount of €6,000,000, increased for the agreed interest rate in the amount of 6,5% per annum calculated from the maturity date of the Purchaser claim until the payment;

(c) the Security that has been created in respect of the HBOR Financial Indebtedness (as long as it remains Permitted Financial Indebtedness (within the HBOR Exposure) and the Security is substantially same as the Security existing in respect of the indebtedness as at the date of this Agreement);

(d) the Security that has been created in respect of Trade Liabilities (as long as it remains Permitted Financial Indebtedness (within the Trade Exposure) and the Security conforms to the type, category and nature of the Security described in the definition of "Trade Liabilities" and does not comprise Security over the production assets and revenues of the Borrower or any of the Vessels);

(e) any lien arising by operation of law and in the ordinary course of trading; and

(f) any other Security that is released prior to the first Utilisation.

"Pledge Registry" means the Croatian Central Depositary and Clearing Company that is in charge of registering the Security created by any Share Pledge Agreement.

"Plovidba" means Brodosplit-plovidba d.o.o., a limited liability company duly incorporated in Croatia, with its registered seat at Put Supavla 21/B, Split, Croatia, registered with the court register of the Commercial Court in Split under the registration number (MBS) 060177963, PIN (OIB): 11302085213, a fully owned Subsidiary of the Borrower that in turn owns the entire issued share capital of Vessel Owner 1.

"Polaris Exploration" means Polaris Exploration Inc., with registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH 96960, reg. No.94596, (PIN) OIB: 64394615428, a wholly owned Subsidiary of the Borrower.

"Purchaser" means Star Clippers Ltd., a company duly incorporated in Bahamas, with its registered seat at Sassoon House, Victoria Avenue, Nassau, Bahamas, PIN (OIB): 64949191302.

"Quarter-Date" means each of 31 March, 30 June, 30 September and 31 December.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Security Assets.

"Recovery Proceeds" means any proceeds of a claim, suit, action or any other proceedings (whether by way of judgment, award, injunction, restitution, settlement or other arrangement including without limitation set-off) of any nature against, with or otherwise involving the Purchaser (or, if applicable, any Alternative Purchaser) in relation to the Dispute, the Ship Building Agreement or otherwise in respect of the Vessel 1 Sale, and after deducting:

- (a) any reasonable expenses which are incurred by an Obligor to persons who are not members of the Target Group; and
- (b) any Tax incurred and required to be paid by an Obligor (as reasonably determined by that Obligor on the basis of existing rates and taking into account any available credit, deduction or allowance).

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

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Security Documents entered into by it.

"Repeating Representations" means, subject to Clause 17.33 (*Times when representations are made*), each of the representations set out in Clause 17 (*Representations*).

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

"Sanctioned Person" means any natural or legal person designated by Sanctions including but not limited to any natural or legal person:

- (a) listed on, or owned or controlled (in each case, within the meaning of the relevant Sanctions regimes), either directly or indirectly, by a person listed on any Sanctions List;
- (b) located in, incorporated under the laws of, or owned or controlled (in each case, within the meaning of the relevant Sanctions regimes), either directly or indirectly, by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions (being, at the date of this Agreement, Cuba, Iran, North Korea, Sudan, South Sudan, Syria and Crimea/Sevastopol);
- (c) acting on behalf of any of the persons listed above; or

- (d) subject of Sanctions with which the Lender is prohibited from dealing or otherwise engaging in any transaction pursuant to a Sanctions Authority.

"Sanctions" means any sanctions under:

- (a) the laws and regulations administered or enforced by the United States of America relating to economic or financial sanctions or trade embargoes;
- (b) the laws and regulations enacted by the European Union relating to economic or financial sanctions or trade embargoes;
- (c) the economic sanctions, embargoes or any other restrictive financial and economic measures enacted by the United Nations Security Council under Article 41 of the United Nations Charter; and
- (d) any sanction imposed by Croatia so long as those sanction are in conformity with those described in paragraphs (a) to (c) above

and provided in each case that any of the above sanctions are not disapplied by any blocking or similar regulation by the European Union and the Lender is required to comply with those sanctions.

"Sanctions Authority" means

- (a) the United Nations Security Council;
- (b) the European Union;
- (c) the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC);
- (d) Her Majesty's Treasury;
- (e) the respective governmental institutions competent in financial sanctions matters, and
- (f) any other governmental institution or agency with responsibility for imposing, administering or enforcing Sanctions with jurisdiction over the Lender or any Obligor.

"Sanctions List" means any list issued or maintained and published by any Sanctions Authority of persons subject to Sanctions (including investment or related restrictions), each as amended, supplemented or substituted from time to time, for example the Specially Designated Nationals and Blocked Persons list maintained by OFAC.

"Secured Liabilities" means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to the Lender under each Finance Document.

"Secured Party" means the Lender, a Receiver or any Delegate.

"**Security**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Asset**" means all of the assets of the Transaction Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

"**Security Document**" means:

- (a) each of the documents listed in SCHEDULE 8 (*List of Security Documents*);
- (b) any other document evidencing or creating Security over any asset to secure any obligation of any Obligor to a Secured Party under the Finance Documents; or
- (c) any other document designated as such by the Lender and the Obligors.

"**Security Property**" means:

- (a) the Transaction Security expressed to be granted in favour of the Lender and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Transaction Obligor to pay amounts in respect of the Secured Liabilities to the Lender and secured by the Transaction Security together with all representations and warranties expressed to be given by a Transaction Obligor or any other person in favour of the Lender; and
- (c) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Lender is required by the terms of the Finance Documents to hold.

"**Shareholder**" means DIV BRODOGRADNJA d.o.o., a company duly incorporated in Croatia, with its registered seat at Bobovica 10/A, Samobor, Croatia, registered with the court register of the Commercial Court in Zagreb under the registration number (MBS) 080812968, OIB: 44993645694.

"**Shares**" means 8,909,175 shares of the Borrower, share designation BIST-R-A, registered with the Pledge Registry, representing 99.83% of the entire share capital of the Borrower.

"**Share Pledge Agreement**" means the security agreement entered into by and between the Shareholder and the Lender on or around the date of this Agreement, establishing a pledge over the Shares, as described in more detail in SCHEDULE 8 (*List of Security Documents*).

"**Ship Building Agreement**" means the agreement entered into by and between the Borrower and the Purchaser dated 2 October 2014, as amended from time to time, in relation to the construction of Vessel 1.

"**Ship Registry**" means the competent ship registry in Croatia, Malta or the Marshall Islands that is in charge of registering the Security created by any of the Mortgage Agreements.

"Signing Date" means the date of signing of this Agreement.

"Subordinated Creditor" means:

- (a) the Shareholder; or
- (b) any other person who becomes a Subordinated Creditor in accordance with the Subordination Agreement.

"Subordinated Debt" has, in relation to a Subordinated Creditor, the meaning given to it in the Subordination Agreement (providing for the subordination of any and all indebtedness provided by that Subordinated Creditor to any indebtedness owed by any Obligor to the Lender).

"Subordination Agreement" means the subordination agreement entered into or to be entered into by the Borrower, the Subordinated Creditors and the Lender in an agreed form.

"Subsidiary" means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and **control** for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"TARGET Day" means any day on which TARGET2 is open for the settlement of payments in euro.

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

"Termination Date" means 12 October 2021..

"Total Commitments" means the aggregate of the Commitments being €50,000,000 at the date of this Agreement.

"Trade Liabilities" means liabilities incurred or undertaken in the ordinary course of trade of the Borrower on customary arm's length commercial terms on an unsecured basis or, if secured, Security is created only in respect of:

- (a) the goods purchased, procured or supplied in case of indebtedness of the type described in paragraphs (e) and (g) of the definition of "Financial Indebtedness" and the indebtedness and security (if any) is discharged in 90 days from the incurrence of such indebtedness at the latest;

- (b) the cash deposited as Security for stand-by letters of credit or advance payment or other guarantees in case of indebtedness of the type described in paragraph (i) of the definition of "Financial Indebtedness"; or
- (c) debenture notes or promissory notes constituting or evidencing such relevant indebtedness.

"Tranche A" means the Facility made available to the Borrower pursuant to paragraph 2.1(a) (*The Facility*).

"Tranche A Commitment" means the amount of €33,000,000 to the extent not cancelled, reduced or transferred by it under this Agreement.

"Tranche A Loan" means a loan made or to be made under Tranche A or the principal amount outstanding for the time being of that loan.

"Tranche B" means the Facility made available to the Borrower pursuant to paragraph 2.1(b) (*The Facility*).

"Tranche B Commitment" means the amount of €17,000,000 to the extent not cancelled, reduced or transferred by it under this Agreement.

"Tranche B Loan" means a loan made or to be made under Tranche B or the principal amount outstanding for the time being of that loan.

"Transaction" means any and all of the transactions contemplated by this Agreement (including but not limited to the refinancing of the Existing Bank Loan, taking Security in respect of the Vessels and other assets as relevant and providing funding in relation to the construction of Vessel 4).

"Transaction Document" means:

- (a) a Finance Document;
- (b) the Ship Building Agreement;
- (c) the Vessel 1 Transfer Documentation;
- (d) any of the Insurances;
- (e) any other document designated as such by the Lender and the Obligors.

"Transaction Obligor" means:

- (a) any Obligor;
- (b) any Subordinated Creditor;
- (c) any Vessel Owner; and/or

- (d) any other person that provides Security in respect of the Finance Documents or is party to a Finance Document as an obligor (howsoever defined).

"Transaction Security" means the Security created or evidenced or expressed to be created or evidenced under the Security Documents.

"Transfer Certificate" means a certificate substantially in the form set out in SCHEDULE 4 (*Form of Transfer Certificate*).

"Unpaid Sum" means any sum due and payable but unpaid by an Obligor under the Finance Documents.

"Ultimate Beneficial Owner" means Ms Vjera Debeljak, Ms Vedrana Debeljak and Mr Tomislav Debeljak, each citizen of Croatia.

"US" means the United States of America.

"US Tax Obligor" means:

- (a) a borrower which is resident for tax purposes in the US; or

- (b) ~~an obligor some or all of whose payments under the Finance Documents are from~~
sources within the US for US federal income tax purposes.

"Utilisation" means the utilisation of the Facility.

"Utilisation Date" means the date of the Utilisation, being the date on which a Loan is to be made.

"Utilisation Request" means a notice substantially in the form set out in SCHEDULE 3 (*Utilisation Request*).

"Valuation" means a valuation (including the Initial Valuation), prepared

- (a) in accordance with the applicable laws and regulations governing the valuation of the Vessels, in form and substance satisfactory to the Lender, issued by the Valuer and addressed to the Lender valuing each Vessel Owner's interests in the relevant Vessel; and

- (b) in relation to the Shares,

in each case on a market value basis.

"Valuer" means any valuer approved by the Lender, appointed on market terms whereby customary reliance and, as applicable, duty of care is owed by such person or firm to the Lender (including but not limited to the Valuer that has prepared the Initial Valuation).

"VAT" means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

"Vessel" or "Vessels" means, collectively:

- (a) the ship under construction registered with the Registry of Ships under Construction of the Harbour's Master's Office in Split, Croatia, registered with folio number 537, designation BRODOSPLIT 483, port of registry Split, gross tonnage 8770, net tonnage 2630, a passenger ship, of the name Flying Clipper, owned by Vessel Owner 1 ("Vessel 1");
- (b) the ship under construction registered with the Registry of Ships under Construction of the Harbour's Master's Office in Split, Croatia, registered with folio number 516, designation BRODOSPLIT 475, port of registry Split, CFR number -1064, a passenger ship, of the name Picasso, owned by Vessel Owner 2 ("Vessel 2");
- (c) the mega-yacht registered with the Office of the Maritime Administrator of the Republic of Marshall Islands, imo. no. 9712838, official no. 71106, call letters V7PA6, of the name Katina, a commercial motor yacht, owned by Vessel Owner 3 ("Vessel 3");

as described in more detail in any relevant Security Document.

"Vessel 1 Sale" means the proposed sale of Vessel 1 to the Purchaser or any Alternative Purchaser acceptable to the Lender.

"Vessel 1 Sale Conditions" means that at all time during the process aimed at the Vessel 1 Sale the Obligors will (and shall ensure that all of their Affiliates will):

- (a) promptly without delay inform the Lender about any fact, event or circumstance affecting the Vessel 1 Sale or Vessel 1;
- (b) in particular and without limiting the foregoing, inform the Lender about all financial and other material conditions of any offer made or received from the Purchaser or an Alternative Purchaser;
- (c) follow and comply in full with the Vessel 1 Sale Protocol (Milestones);
- (d) give reasonable prior notice to the Lender and, if so requested by the Lender, allow a representative of the Lender to attend all major inspections or construction site visits (including by courts or authorities) relating to Vessel 1;
- (e) ensure that the Lender is given all records of such inspections or visits (including any relevant Authorisations or specifications relating to Vessel 1 or any major part thereof);

- (f) organise formal meetings with the management of the Obligors to discuss any development in relation to the Vessel 1 Sale and the relevant management team must be so available, subject to reasonable notice and not more than once a month (unless the Lender believes, acting reasonably, that a Default may be outstanding);
- (g) if so requested by the Lender, allow the Lender and their representatives or advisers to attend meetings with the Purchaser or any Alternative Purchaser and to address questions or make representations to the parties involved in relation to the Vessel 1 Sale and the Obligors shall have due regard to those representations; and
- (h) if and to the extent the Vessel 1 Sale has not been completed (on terms acceptable to the Lender) on or before 12 July 2020 (the **Vessel 1 Sale Completion Deadline**), any Security interest any Secured Party has in Vessel 1 shall become enforceable and the relevant Secured Party shall have as mortgagee in possession or any other manner permitted by the relevant Finance Documents including but not limited to the Agreement on Authorization of Vessel Sale the power to sell the Vessel 1 as if Clause 21.17 (*Acceleration*) applied, provided that failure to complete the Vessel 1 Sale by the Vessel 1 Sale Completion Deadline shall not:
 - (i) by and itself constitute an Event of Default provided that the Lender shall have an unfettered right to declare an Event of Default for any other event or circumstance having occurred under the Finance Documents including any non-compliance by any Obligor of any other term of the Finance Documents; and
 - (ii) attract any power to sale as described above if the Lender is satisfied that the relevant documentation relating to the Vessel 1 Sale has been signed or executed (as relevant) in form and substance acceptable to the Lender and the relevant Disposal Proceeds will be received and applied by the Borrower in accordance with this Agreement by no later than 12 January 2021.

"Vessel 1 Sale Protocol (Milestones)" means a step plan including any relevant milestones with the applicable date attached to each of such milestones in respect of the Vessel 1 Sale, containing a detailed step plan for the time frame and closing of the proposed sale or other disposal of Vessel 1, and delivered as a condition precedent under the Amendment Documents.

"Vessel 1 Transfer Documentation" means the documentation effecting the sale of Vessel 1 by the Borrower to Vessel Owner 1, comprising a ship purchase agreement, a ship building agreement and a series set-off arrangements entered into by and amongst the Borrower, Vessel Owner 1 and Plovdiva as a result of which Vessel 1 was transferred to Vessel Owner 1 on a cashless basis.

"Vessel 4" means the ship under construction built by the Borrower by the name "Ultramarine" (hull number 487), as builder, for Polaris Exploration, as buyer, in accordance with the ship building agreement for construction of a polar expedition cruise vessel entered dated 21 March 2018 (as amended from time to time).

"Vessel Owner" or "Vessel Owners" means, collectively:

- (a) XB AHTS Hero Shipping Inc., a company duly incorporated in Marshall Islands, with its registered seat at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, Reg. No. 61825, PIN (OIB): 87820609933, registered with Articles of Incorporation dated on 3 June 2013 (the "Vessel Owner 1")
- (b) River Cruise Shipping Inc., a company duly incorporated in Marshall Islands, with its registered seat at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, Reg. No. 39831, PIN (OIB): 77920860623, registered with Articles of Incorporation dated on 22 October 2015 ("Vessel Owner 2"); and
- (c) BS Star Shipping Inc., a company duly incorporated in Marshall Islands, with its registered seat at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, Reg. No. 61608, PIN (OIB): 35505742989, registered with Articles of Incorporation dated 21 May 2013 ("Vessel Owner 3").

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) the "Borrower", "Lender", "Guarantor" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
 - (ii) a document in "agreed form" is a document which is previously agreed in writing by or on behalf of the Borrower and the Lender;
 - (iii) "assets" includes present and future properties, revenues and rights of every description;
 - (iv) "director" and "board of directors" includes their equivalents in any jurisdiction (including, without limitation, the director (*direktor*) and managing board (*uprava*) of any Croatian company);
 - (v) "disposal" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and "dispose" will be construed accordingly;
 - (vi) a "Finance Document" or "Transaction Document" or any other agreement or instrument is a reference to that Finance Document or

Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;

- (vii) "guarantee" means (other than in Clause 16 (*Guarantee and indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (viii) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (ix) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
- (x) a "law" includes any treaty, directive, decree, order, government ordinance, government emergency ordinance, regulation, government decision and any other legislative or administrative act, and any norms, rules, circulars, guidance notes or other subordinate legislation or administrative procedure or indication, and reference to any provision of any law includes that provision as amended, modified, republished or re-enacted;
- (xi) a "regulation" includes any regulation, rule, official directive, request or guideline customarily accepted and complied with by those targeted by such guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (xii) a "share" in any company or corporation includes a reference to the shares (*dionice*) or social parts (*poslovni udjeli*), as applicable, of any Croatian joint stock company or limited liability company (or similar entity);
- (xiii) a provision of law is a reference to that provision as amended or re-enacted; and
- (xiv) a time of day is a reference to Zagreb time.

- (b) The determination of the extent to which a rate is "for a period equal in length" to an Interest Period shall disregard any inconsistency arising from the

last day of that Interest Period being determined pursuant to the terms of this Agreement.

- (c) Section, Clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

1.3 Currency symbols and definitions

"€", "EUR" and "euro" denote the single currency of the Participating Member States.

"HRK" or "Croatian kuna" means the lawful currency for the time being of Croatia.

1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver or any person described in paragraph (b) may, subject to this Clause 1.4 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

1.5 Croatian terms

In this Agreement, where it relates to a Transaction Obligor registered or incorporated in Croatia, a reference to:

- (a) a "**bankruptcy, insolvency, administration, (general) composition, compromise, moratorium, restructuring, reorganisation**" or the like includes, without limitation, bankruptcy proceedings (*stečajni postupak*), pre-bankruptcy proceedings (*predstečajni postupak*) and special administration proceedings (*postupak izvanredne uprave*);
- (b) a(n) "**attachment, sequestration, distress, execution**" or the like includes, without limitation, enforcement proceedings (*ovrha*) and preliminary injunctions (*prethodne mjere* and *privremene mjere*);

- (c) a "liquidator" includes, without limitation, liquidators (*likvidatori*);
- (d) a "receiver, administrator, administrative receiver, compulsory manager" includes, without limitation, bankruptcy administrator (*stečajni upravitelj*), pre-bankruptcy receiver (*povjerenik u predstečajnom postupku*) and special administration receiver (*izvanredni povjerenik*); and
- (e) a "winding-up, dissolution" or the like includes, without limitation, liquidation (*likvidacija*).

**SECTION 2
THE FACILITY**

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lender makes available to the Borrower:

- (a) a euro term loan facility in an aggregate amount equal to the Total Tranche A Commitments; and
- (b) a euro term loan facility in an aggregate amount equal to the Total Tranche B Commitments,

in each case in accordance with the terms and conditions of this Agreement.

3. PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed as follows:

- (a) the amounts borrowed by it under Tranche A, towards refinancing the Existing Bank Loan; and
- (b) the amounts borrowed by it under Tranche B towards financing of the construction of the Vessel 4.

3.2 Monitoring

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Lender will only be obliged to comply with Clause 5.4 (*Utilisation*) in relation to any Utilisation if on or before the first Utilisation Date for that Utilisation, the Lender has received all of the documents and other evidence listed in SCHEDULE 2A (*Conditions precedent for Tranche A*) of SCHEDULE 2 (*Conditions precedent and subsequent*) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied.

4.2 Further conditions precedent

The Lender will only be obliged to comply with Clause 5.4 (*Utilisation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (i) no Default is continuing or would result from the proposed Loan; and
- (ii) the Repeating Representations to be made by each Obligor are true in all material respects.

4.3 Additional conditions precedent for Tranche B

Subject to Clause 4.2 (*Further conditions precedent*), the Lender will only be obliged to comply with Clause 5.4 (*Utilisation*) in respect to Tranche B Loan if the Lender has received all of the documents and other evidence listed in SCHEDULE 2B (*Conditions precedent for Tranche B*) of SCHEDULE 2 (*Conditions precedent and subsequent*) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied.

SECTION 3 UTILISATION

5. UTILISATION¹

5.1 Delivery of a Utilisation Request

- (a) The Borrower may utilise Tranche A of the Facility by delivery to the Lender of a duly completed Utilisation Request not later than 11:00 a.m. on the third Business Day before the relevant Utilisation Date for the proposed borrowing.
- (b) The Borrower may utilise Tranche B of the Facility by delivery to the Lender of a duly completed Utilisation Request not later than 11:00 a.m. on the third Business Day before the relevant Utilisation Date for the proposed borrowing.

5.2 Completion of a Utilisation Request

- (a) The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it specifies the Tranche (which is to be utilised);
 - (ii) it specifies the amount (that is proposed to be utilised from that Tranche by the Borrower) and the Account to which that relevant Loan is to be disbursed;
 - (iii) it specifies the purpose of the Loan;
 - (iv) the proposed Utilisation Date is a Business Day within the Availability Period; and
 - (v) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*).
- (b) Only one Utilisation Request may be given under this Agreement in respect of each Tranche.

5.3 Currency and amount

- (a) The currency specified in the Utilisation Request must be euros.
- (b) The amount of the proposed Loan must be equal to or less than:
 - (i) in respect to Tranche A, the Tranche A Commitment; and
 - (ii) in respect to Tranche B, the Tranche B Commitment,

¹ Not restated – Facilities fully drawn.

and in no event is more than the Available Facility.

5.4 Utilisation

If the conditions set out in this Agreement have been met, the Lender shall make the requested Loan available by the relevant Utilisation Date.

5.5 Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loan

Subject to the terms of this Agreement, the Borrower shall repay the Loan in full on the Termination Date.

6.2 Re-borrowing

The Borrower may not re-borrow any part of the Facility which is repaid.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

If, in any applicable jurisdiction, it is or becomes unlawful or contrary to any regulation including Sanctions for the Lender to perform any of its obligations as contemplated by this Agreement or a Finance Document or to fund or maintain its participation in any Loan or to make payments under this Agreement as required under this Agreement (including to a blocked account) or it becomes unlawful for any Affiliate of the Lender for that Lender to do so:

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) the Available Commitment of the Lender will be immediately cancelled; and
- (c) the Borrower shall repay the Loan on the last day of the Interest Period for the Loan occurring after the Lender has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

7.2 Change of control

If the Ultimate Beneficial Owner (or any of them individually) ceases to own beneficially (directly or indirectly through wholly-owned Subsidiaries) at least 99.83% of the share capital of the Borrower or there is any other change in the ownership structure of the Borrower (in each case, without the prior written consent of the Lender):

- (i) the Borrower shall promptly notify the Lender upon becoming aware of that event;
- (ii) the Lender shall not be obliged to fund the Loan; and

- (iii) the Lender may, by not less than five days' notice to the Borrower, cancel the Commitments and declare all outstanding Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon those Commitments will be cancelled, and all such outstanding Loan and amounts will become immediately due and payable.

7.3 Insurance cover

If any of the Insurances is terminated, annulled or revoked and is not renewed or replaced in five Business Days by the Borrower to the satisfaction of the Lender, the Lender may, by not less than five days' notice to the Borrower, cancel the Commitments and declare all outstanding Loan, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon those Commitments will be cancelled and all such outstanding Loan and amounts will become immediately due and payable.

7.4 Mandatory prepayment

The Borrower must apply the following amounts in prepayment of the Loans in accordance herewith:

- (a) the amount of Disposal Proceeds;
- (b) the amount of Insurance Proceeds; and
- (c) the amount of Recovery Proceeds.

7.5 Voluntary cancellation

The Borrower may, if it gives the Lender not less than five Business Days' prior notice, cancel the whole or any part (being a minimum amount of €5,000,000) of the Available Facility. Any cancellation under this Clause 7.5 shall reduce the Commitments of the Lender rateably.

7.6 Voluntary prepayment of Loans

- (a) The Borrower may, if it gives the Lender not less than five Business Days' prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of €1,000,000).
- (b) A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

7.7 Right of repayment and cancellation in relation to the Lender

- (a) If:

- (i) any sum payable to the Lender by an Obligor is required to be increased under paragraph 11.2(c) of Clause 11.2 (*Tax gross-up*); or
- (ii) the Lender claims indemnification from the Borrower under Clause 11.3 (*Tax indemnity*) or Clause 12.1 (*Increased costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Lender notice of cancellation of the Commitment and its intention to procure the repayment of each Loan.

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of the Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay each Loan together with all interest and other amounts accrued under the Finance Documents.

7.8 Restrictions

- (a) Any notice of cancellation or prepayment or repayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment or repayment under this Agreement shall be made together with accrued interest on the amount prepaid, but otherwise without premium or penalty.
- (c) The Borrower may not re-borrow any part of the Facility which is repaid, prepaid or cancelled.
- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If all or part of the Lender's participation in a Loan is repaid or prepaid, an amount of the Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

SECTION 5
COSTS OF UTILISATION

8. INTEREST

8.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is 11 per cent per annum.

8.2 Payment of interest

The Borrower shall pay accrued interest on the Loan on each Interest Payment Date.

8.3 Default interest

(a) If an Obligor fails to pay any amount (other than an interest payment) payable by it under a Finance Document on its due date, interest shall accrue on such overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (c) below, is 2.00 (two) per cent. per annum higher than the rate applicable under Clause 8.1 (*Calculation of interest*).

(b) Any interest accruing under this Clause 8.3 shall be immediately payable by the Obligors on demand by the Lender.

(c) If any overdue amount (other than an interest payment) consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

(i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

(ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 2.00 (two) per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.

9. INTEREST PERIODS

9.1 Interest Periods

(a) Each Interest Period shall be six Months.

(b) Each Interest Period for the Loan shall start on its Utilisation Date or (if already made) on the last day of its preceding Interest Period and end on the next Interest Payment Date.

(c) No Interest Period for the Loan shall extend beyond the Termination Date.

- (d) Notwithstanding paragraph (b) above, the first Interest Period of the Tranche B Loan shall end on the same day as the current Interest Period of the Tranche A Loan. On the last day of those Interest Periods, the Loans shall be consolidated and treated as one Loan.

9.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, the Interest Payment Date will occur on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not) while the duration of such Interest Period will remain the same.

10. FEES

10.1 Upfront Fee

- (a) The Borrower shall pay to the Lender an upfront fee computed at a rate of three (3.00) per cent. of the Total Commitments.
- (b) The upfront fee is due at Signing Date and payable within two Business Days from the day of disbursement of the Tranche B Loan. The upfront fee must be paid by the Borrower from its own funds to an account of the Lender as notified by the Lender to the Borrower on or before the due date in accordance herewith (and no amount borrowed or proposed to be borrowed hereunder may be used for this purpose).
- (c) Any amount payable under this Clause 10.1 is exclusive of any value added tax or any Tax of a similar nature which might be chargeable in connection with that amount. If any value added tax or other Tax of a similar nature is chargeable in respect of any amount payable under this Clause 10.1, it must promptly be paid by the Borrower.
- (d) All payments to be made by the Borrower under this Clause 10.1 shall be made free and clear of and without any deduction for and on account of any set-off, counterclaim or otherwise. The Borrower waives its rights to set-off any claims it might have against the Lender under or in connection with this Clause 10.1.
- (e) Any amount paid in relation to the upfront fee is non-refundable and non-creditable against any other fee or amount payable in connection with any other Finance Document.

10.2 Commitment fee

- (a) The Borrower shall pay to the Lender a commitment fee computed at the rate of 1.50 per cent. per annum on the unutilized amount of the Facility.
- (b) The accrued commitment fee is payable on each Interest Payment Date during the Availability Period, on the last day of the Availability Period and, if cancelled

in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

10.3 Prepayment fee

- (a) The Borrower must pay to the Lender a repayment fee on the date of repayment or prepayment of all or any part of the Loan.
- (b) The amount of the applicable repayment fee (the **Applicable Prepayment Fee**) is set out in the table below for any relevant period (the **Relevant Repayment Period**) during the term of this Agreement:

	Relevant Repayment Period	Relevant Repayment Fee
1	12 April 2021 up to (and including) 12 June 2021	0% of the repaid amount
2	13 June 2021 up to (and including) 13 August 2021	1% of the repaid amount
3	14 August 2021 up to (and including) Termination Date	2.5% of the repaid amount

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

11. TAX GROSS UP AND INDEMNITIES

11.1 Definitions

(a) In this Agreement:

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

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

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

"**Tax Payment**" means either the increase in a payment made by an Obligor to the Lender under Clause 11.2 (*Tax gross-up*) or a payment under Clause 11.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 11 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

11.2 Tax gross-up

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

(b) Each Obligor shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, in respect of a payment payable to the Lender, the Lender shall notify the relevant Obligor on becoming so aware.

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

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

- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the relevant Obligor shall deliver to the Lender evidence reasonably satisfactory to that Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

11.3 Tax indemnity

- (a) The Obligors shall within three (3) Business Days of demand by the Lender pay to the Protected Party an amount equal to the loss, liability or cost which the Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Protected Party in respect of a Finance Document.
- (b) Clause (a) shall not apply:
 - (i) with respect to any Tax assessed on the Lender:
 - i. under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
 - ii. ~~under the law of the jurisdiction in which the Lender's Facility~~ Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender;
 - (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 11.2 (*Tax gross-up*).
- (c) The Protected Party making, or intending to make, a claim pursuant to paragraph (a) of this Clause 11.3 shall promptly notify the Obligors of the event which will give, or has given, rise to the claim.

11.4 Tax Credit

If an Obligor makes a Tax Payment and the Lender determines that:

- (a) a Tax Credit is attributable to that Tax Payment; and
- (b) the Lender has obtained, utilised and retained that Tax Credit,

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

11.5 Stamp taxes

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

11.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to the Lender which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, if VAT is or becomes chargeable on any supply made by the Lender to any Party under a Finance Document and the Lender is required to account to the relevant tax authority for the VAT, that Party must pay to the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of that VAT (and the Lender must promptly provide an appropriate VAT invoice to that Party).
- (b) Where a Finance Document requires any Party to reimburse or indemnify the Lender for any cost or expense, that Party shall reimburse or indemnify (as the case may be) the Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

11.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within 10 Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige the Lender to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

11.8 FATCA Deduction

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

12. INCREASED COSTS

12.1 Increased costs

- (a) Subject to Clause 12.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Lender, pay for the account of the Lender the amount of any Increased Costs incurred by the Lender or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.
- (b) In this Agreement "Increased Costs" means:

- (i) a reduction in the rate of return from the Facility or on the Lender's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by the Lender or any of its Affiliates to the extent that it is attributable to the Lender having entered into its Commitment or funding or performing its obligations under any Finance Document.

12.2 Increased cost claims

- (a) In case the Lender intends to make a claim pursuant to Clause 12.1 (*Increased costs*) shall notify the Borrower of the event giving rise to the claim.
- (b) The Lender shall, as soon as practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

12.3 Exceptions

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) Clause 12.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a FATCA Deduction required to be made by a Party;
 - (ii) compensated for by Clause 11.3 (*Tax indemnity*); or
 - (iii) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.
- (c) In this Clause 12.3, a reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 11.1 (*Definitions*).

13. OTHER INDEMNITIES

13.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
 - (i) making or filing a claim or proof against that Obligor; or

- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

13.2 Other indemnities

The Borrower shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Secured Party any cost, loss or liability incurred by that Secured Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date;
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Secured Party alone); or
- (d) a Loan (or part of a Loan) not being prepaid or repaid in accordance with a notice of prepayment or repayment given by the Borrower.

14. MITIGATION BY THE LENDER

14.1 Mitigation

- (a) The Lender shall, in consultation with the Obligors, take all reasonable steps to mitigate any circumstances which arise and which would result in the Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 11 (*Tax gross up and indemnities*), Clause 12 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

14.2 Limitation of liability

- (a) The Borrower shall promptly indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 14.1 (*Mitigation*).
- (b) The Lender is not obliged to take any steps under Clause 14.1 (*Mitigation*) if, in the opinion of the Lender, to do so might be prejudicial to it.

15. COSTS AND EXPENSES

15.1 Transaction expenses

The Borrower shall promptly on demand pay to the Lender the amount of all pre-agreed costs and expenses (including legal fees) incurred to it in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement or in a Security Document; and
- (b) any other Finance Documents executed after the date of this Agreement.

15.2 Amendment costs

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 24.6 (*Change of currency*),

the Borrower shall, within three Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.

15.3 Valuations

- (a) The Borrower must at its own cost provide the Lender with a Valuation in each calendar year (each such Valuation an "Annual Valuation") such that an Annual Valuation must in any event be delivered to the Lender in less than twelve month from the date when the previous Valuation was provided to the Lender in respect of the relevant Vessel or the Shares (as applicable).
- (b) Notwithstanding the provision of any Annual Valuation, the Lender may request a Valuation at any time.
- (c) The Borrower shall promptly on demand pay to the Lender the costs of:
 - (i) the Initial Valuation;

- (ii) a Valuation obtained by the Lender in connection with an insurance event affecting any of the Vessel or the relevant Security created in respect thereof; and
- (iii) a Valuation obtained by the Lender at any time when a Default is continuing or is likely to occur as a result of obtaining that Valuation.
- (d) The Borrower must supply to the Lender a copy of any valuation of any Vessel an Obligor obtains, promptly upon obtaining it.
- (e) Any Valuation not referred to in paragraph (c) above will be at the cost of the Lender.

15.4 Enforcement and preservation costs

The Borrower shall, within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document or the Transaction Security and with any proceedings instituted by or against that Secured Party as a consequence of it entering into a Finance Document, taking or holding the Transaction Security, or enforcing those rights.

**SECTION 8
GUARANTEE**

16. GUARANTEE AND INDEMNITY

16.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to the Lender punctual performance by the Borrower of all that Borrower's obligations under the Finance Documents;
- (b) undertakes with the Lender that whenever the Borrower does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on first demand pay that amount as if it was the principal obligor; and
- (c) agrees with the Lender that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Lender immediately on demand against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 16 if the amount claimed had been recoverable on the basis of a guarantee.

16.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by the Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

16.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of the Borrower or any security for those obligations or otherwise) is made by the Lender in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 16 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

16.4 Waiver of defences

The obligations of each Guarantor under this Clause 16 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 16 (without limitation and whether or not known to it or the Lender) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Affiliate of the Borrower;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

16.5 Immediate recourse

Each Guarantor waives any right it may have of first requiring the Lender to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 16.

16.6 Appropriations

Until all amounts which may be or become payable by the Borrower under or in connection with the Finance Documents have been irrevocably paid in full, the Lender may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Lender in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 16.

16.7 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Borrower under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 16:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 16.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with the Lender.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Lender by the Borrower under or in connection with the Finance Documents to be repaid in full on trust for the Lender and shall promptly pay or transfer the same to the Lender or as the Lender may direct for application in accordance with Clause 24 (*Payment mechanics*).

16.8 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Lender.

16.9 Limitation of Security

Each Guarantor agrees to become a Guarantor and to be bound by the terms of this Agreement and the other relevant Finance Documents as Guarantor in accordance with this Agreement; provided, however, that any provision or any term in the Agreement or any other Finance Document shall not be construed to create any obligation on any person or corporate body of the to act in violation of mandatory capital maintenance rules (in Croatian: *pravila za očuvanje kapitala*) ("**Croatian Capital Maintenance Rules**") within the meaning of Croatian laws, including, but without limitation to the relevant provisions of Companies Act. Should any liability or obligation of a Guarantor under this Agreement or any other Finance Document violate or contradict any of the Croatian Capital Maintenance

Rules as finally determined by the relevant competent authority, such liability or obligation shall be deemed to be replaced by a liability or obligation of a similar nature compliant with the Croatian Capital Maintenance Rules, which provides the best possible obligation or liability, including, without limitation, any alternative guarantee, indemnity or security interest (to the extent not prohibited by the Croatian Capital Maintenance Rules) in favour of the Lender.

SECTION 9
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 17 to the Lender at the times set out in Clause 17.33 (*Times when representations are made*).

17.1 Status

- (a) It is a duly incorporated and validly existing under the law of Croatia.
- (b) It has the power to own its assets and carry on its business as it is being conducted.
- (c) It is not a U.S. Tax Obligor.
- (d) It is neither insolvent nor over-indebted nor at risk to be insolvent or over-indebted.
- (e) As at the date of this Agreement and the date which is a Utilisation Date, SCHEDULE 6 (*Existing Financial Indebtedness*) and SCHEDULE 7 (*Existing Financial Security*) is true and correct in all respects and there are no liabilities or encumbrances that have not been disclosed to the Lender in those schedules.
- (f) Following the repayment of the Existing Bank Loan, Permitted Financial Indebtedness of the Borrower will comprise Trade Liabilities only (other than Financial Indebtedness that is created under the Finance Documents or constitutes Subordinated Debt).

17.2 Binding obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a party are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

17.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the Transaction Security do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or

- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

17.4 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

17.5 Validity and admissibility in evidence

- (a) All Authorisations required:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
 - (ii) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect.

- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Obligors have been obtained or effected and are in full force and effect.

17.6 Governing law and enforcement

- (a) Subject to the Legal Reservations, the choice of the governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
- (b) Subject to the Legal Reservations, any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

17.7 Deduction of Tax

It is not required to make any Tax Deduction from any payment it may make under any Finance Document to the Lender.

17.8 No filing or stamp taxes

Under the law of its Relevant Jurisdiction it is not necessary that the Transaction Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or

that any stamp, registration, notarial or similar Tax or fees be paid on or in relation to the Transaction Documents or the transactions contemplated by the Transaction Documents, except as required under the Security Documents.

17.9 VAT

The Obligors are not members of a value added tax group.

17.10 Taxation

(a) The Obligors:

- (i)** are not overdue in the filing of any Tax returns in any Relevant Jurisdiction;
- (ii)** have paid or discharged all Taxes due and payable by any of them (within the period prescribed for such payment) other than Taxes which the Borrower is contesting in good faith by appropriate proceedings and in respect of which reasonably adequate reserves have been established in each case to the satisfaction of the Lender;
- (iii)** do not have any overdue Tax liabilities; and
- (iv)** have not been informed of or are otherwise not aware of any claims or investigations that are pending or are reasonably likely to be launched or processed as against any of them on account of or in respect of Tax.

(b) The Obligors are residents for Tax purposes only in Croatia.

17.11 No default

- (a)** No Event of Default and, as at the date of this Agreement and each Utilisation Date, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, or the performance of, or any transaction contemplated by, any Transaction Document.
- (b)** As at the first Utilisation Date, there is no outstanding breach of any term of any Transaction Document and no person has disputed, repudiated or disclaimed liability under any Transaction Document or evidenced an intention to do so.
- (c)** No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or a termination event (however described) under any other agreement or instrument which is binding on it or to which any of its assets are subject which has or is reasonably likely to have a Material Adverse Effect.

17.12 Insolvency

- (a) No:
- (i) corporate action, legal proceeding or other procedure or step described in Clause 21.7 (*Insolvency proceedings*); or
 - (ii) creditors' process described in Clause 21.8 (*Creditors' process*).
- has been taken or threatened in relation to any of the Obligors.
- (b) None of the circumstances described in Clause 21.6 (*Insolvency*) applies to any of the Obligors.

17.13 Information

- (a) All information supplied by it or on its behalf to the Lender in connection with the Transaction Documents and the Transaction (including, but not limited to the Dispute) was true and accurate as at the date it was provided or as at any date at which it was stated to be given.
- (b) Any information provided to the Lender in connection with the Transaction (including, but not limited to the Dispute) was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given.
- (c) Any financial projection or forecast contained in the information referred to in paragraphs (a) and 17.3(b) above has been prepared as at their date on the basis of recent historical information and on the basis of reasonable assumptions.
- (d) The expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of any information provided to the Lender in connection with the Transaction (including, but not limited to the Dispute) were made after commercially reasonable consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on commercially reasonable grounds.
- (e) No event or circumstance has occurred or arisen and no information has been omitted from the information provided to the Lender in connection with the Transaction (including, but not limited to the Dispute) and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the information provided to the Lender in connection with the Transaction being untrue or misleading in any material respect to the best of the knowledge and belief of the Borrower after commercially reasonable enquiry.

- (f) It has not omitted to supply information, which, if disclosed, would make any of the information referred to in paragraph (a) above untrue or misleading in any material respect.
- (g) As at the first Utilisation Date, nothing has occurred since the date of the information referred to in paragraph (a) above which, if disclosed, would make that information untrue or misleading in any material respect.

17.14 Financial statements

- (a) The Original Financial Statements were prepared in accordance with IFRS consistently applied.
- (b) The Original Financial Statements fairly present the relevant Obligor's financial condition as at the end of the relevant Financial Year and results of operations during the relevant Financial Year.
- (c) Its Original Financial Statements (if audited) give a true and fair view of its financial condition and results of operations during the relevant Financial Year.
- (d) There has been no material adverse change in the assets, business or financial condition of any Obligor since the date of the relevant Original Financial Statements.
- (e) Its most recent financial statements delivered pursuant to Clause 18.1 (*Financial statements*):
 - (i) have been prepared in accordance with IFRS as applied to the Original Financial Statements; and
 - (ii) fairly present its financial condition as at the end of the relevant Financial Year and operations during the relevant Financial Year.
- (f) Since the date of the most recent financial statements delivered pursuant to Clause 18.1 (*Financial statements*) there has been no material adverse change in its business, assets or financial condition.
- (g) The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

17.15 Title to Vessels

- (a) The Borrower and each of the Vessel Owners has good and marketable title to the relevant Vessel, free from Security (other than those created by or pursuant to the Security Documents, any Existing Security which will be discharged and

released in accordance with the Pay-Off Letter and Permitted Security) and restrictions and onerous covenants.

- (b) The Vessels are not encumbered with any maritime or common lien in any jurisdiction or any other claim that has priority over or is otherwise privileged in respect to any Security that has been taken by the Lender in connection with this Agreement.
- (c) Without limiting the generality of the foregoing:
 - (i) Vessel Owner 1 is the full registered owner of Vessel 1;
 - (ii) Vessel Owner 2 is full registered owner of Vessel 2; and
 - (iii) Vessel Owner 3 is full registered owner of Vessel 3.
- (d) From the first Utilisation Date:
 - (i) no breach of any law, regulation or covenant is outstanding which adversely affects or might reasonably be expected to adversely affect the value, saleability or use of the Vessels;
 - (ii) there is no covenant, agreement, stipulation, reservation, condition, interest, right or other matter whatsoever adversely affecting the Vessels;
 - (iii) nothing has arisen or has been created or is outstanding which would be an overriding interest, or an unregistered interest which overrides first registration or a registered disposition, over the Vessels; and
 - (iv) the Borrower or the Vessel Owner have not received any notice of any adverse claim by any person in respect of the ownership of the Vessels or any interest in it which might reasonably be expected to be determined in favour of that person, nor has any acknowledgement been given to any such person in respect of the Vessels (other than the Dispute).
- (e) All deeds and documents necessary to show good and marketable title to the Borrower's and Vessel Owners' interests in the Vessels have been delivered to the Lender under SCHEDULE 2 (*Conditions precedent and subsequent*) and there are no deeds, contracts, covenants, documents, resolutions or Authorisations in existence which would make any of the statements set out in this Clause 17.15 untrue or misleading.

17.16 Information for reports & analysis

- (a) The information supplied by it or on its behalf to the lawyers, accountants, auditors, engineers or surveyors or other consultants who prepared any report or

analysis (including but not limited to the Dispute) for the purpose of this Agreement or the transactions contemplated thereby was true and accurate in all material respects as at the date of the relevant report or analysis (including but not limited to the Dispute) or (if appropriate) as at the date (if any) at which it is stated to be given.

- (b) The information referred to in paragraph (a) above was at the date it was expressed to be given complete and did not omit any information which, if disclosed would make that information untrue or misleading in any material respect.
- (c) As at the first Utilisation Date, nothing has occurred since the date of any information referred to in paragraph (a) above which, if disclosed, would make that information untrue or misleading in any material respect.

17.17 Valuation

- (a) All information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate in all material respects as at its date or (if appropriate) as at the date (if any) at which it is stated to be given.
- (b) It has not omitted to supply any information to the Valuer which, if disclosed, would adversely affect a Valuation.
- (c) As at the first Utilisation Date, nothing has occurred since the date the information referred to in paragraph (a) above was supplied which, if it had occurred prior to the Initial Valuation, would have adversely affected the Initial Valuation.

17.18 Pari passu ranking

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

17.19 No proceedings

- (a) No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect, have (to the best of its knowledge and belief (having made due and careful enquiries)) been started or threatened against it.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it.

17.20 No liabilities

- (a) The Borrower has not incurred Financial Indebtedness other than Financial Indebtedness permitted by this Agreement.
- (b) No Security or Quasi-Security exists over all or any of the present and future assets of an Obligor other than as permitted by this Agreement.
- (c) There are no Tax liabilities that have not been disclosed to the Lender.

17.21 Centre of main interests and establishments

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its Original Jurisdiction and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

17.22 Ranking of Security

Subject to the Legal Reservations, Perfection Requirements, discharge and release of the Existing Security in accordance with the Pay-Off Letter and Permitted Security, the security conferred by each Security Document constitutes or will constitute a security interest of the type described, over the assets referred to, in that Security Document.

17.23 Shares

- (a) The shares of the Borrower are validly issued, fully paid and not subject to any option to purchase or similar rights.
- (b) The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security.
- (c) There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any Obligor (including any option or right of pre-emption or conversion).

17.24 Transaction Documents, disclosures and other documents

- (a) There is no disclosure made in respect of the Transaction Documents which has or may have a material adverse effect on any of the information, opinions, intentions, forecasts and projections contained or referred to in the information provided to the Lender in connection with the Transaction.
 - (b) The Ship Building Agreement and each Insurance contains all material terms of the underlying transaction in respect of the relevant Vessel and there are no agreements or arrangements in connection thereunder that have not been disclosed to the Lender.
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17.25 No breach of laws

It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

17.26 Environmental laws

- (a) It is in compliance with Clause 20.7 (*Environmental matters*) and no circumstances have occurred which would prevent that performance or observation where failure to do so, would have a Material Adverse Effect.
- (b) No Environmental Claim is current or pending or threatened against it which if adversely determined, would have a Material Adverse Effect.

17.27 Ownership

- (a) The Shareholder is the legal and beneficial owner of the Shares.
- (b) The Borrower is the legal and beneficial owner of the entire issued share capital of Plovdiva.
- (c) Plovdiva is the legal and beneficial owner of the entire issued share capital of Vessel Owner 1.

17.28 Sanctions

- (a) To the best of its knowledge (after due enquiry), none of the Obligor or any of their respective directors, officers or employees (the "**Relevant Person or Entity**") is a Sanctioned Person, and none of Relevant Persons or Entities acts directly or indirectly on behalf of a Sanctioned Person.
- (b) Save as disclosed in writing to the Lender before the date of this Agreement, no Obligor is incorporated, located or resident in a country which is subject to Sanctions, if this is in breach of a specific sanctions program.
- (c) The Borrower is in compliance with all applicable Sanctions and is not engaged in any activities that would reasonably be expected to result in a Borrower being designated as a Sanctioned Person.

17.29 Anti-corruption law

It has conducted its business in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

17.30 Corporate documents

Its documents of incorporation as provided to the Lender are registered and valid.

17.31 Business Licenses

Any and all existing business licenses of the Borrower are valid and will remain valid following the execution and perfection of the Transaction Security or occurrence of the event as provided by Clause 7.2 (*Change of control*).

17.32 Acting as principal

In all matters relating to the Finance Documents, the Borrower is acting as a principal for its own account and not as agent and trustee or in any other capacity whatsoever on behalf of any third party.

17.33 Times when representations are made

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of this Agreement, on the date of each Utilisation Request, on each Utilisation Date and the first day of each Interest Period except those contained in paragraphs 18.1(b) 18.1(c) Clause 17.14 (*Financial statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement.

18. INFORMATION UNDERTAKINGS

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

18.1 Financial statements

Each Obligor (or in the case of the report set out in paragraph (a) below, the Borrower) shall supply to the Lender:

- (a) in the form of the template agreed with the Lender, a liquidity report (with management discussion and analysis) for the Borrower and each of its Subsidiaries (on a consolidated basis) detailing the cash flow and liquidity position of the Borrower and each of its Subsidiaries (jointly) for the then current and immediately following Financial Year, and each such report must
 - (i) contain information (A) on a monthly basis for the current calendar year (both historical and forecast information) and the following six months and (B) on a quarterly basis for the periods thereafter;
 - (ii) present each material project of the Borrower or its Subsidiaries at that relevant time separately, and
 - (iii) be delivered to the Lender no later than the first Business Day of each month;

- (b) its management accounts on a standalone basis and consolidated (if applicable) for each Financial Quarter prepared in accordance with IFRS consistently applied, as soon as they are available, but in any event within 60 days after the end of the relevant Financial Quarter; and
- (c) its audited financial statements (comprising a balance sheet, profit and loss statement, cash flow statement and management discussion and analysis) on a standalone basis and consolidated (if applicable) for that Financial Year prepared in accordance with IFRS consistently applied, as soon as they are available, but in any event within 120 days after the end of each of its Financial Years.

18.2 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Borrower pursuant to Clause 18.1 (*Financial statements*) shall (i) be prepared by an accounting firm acceptable for the Lender, (ii) be certified by a director of the relevant company as fairly presenting (or, if audited, giving a true and fair view of) its financial condition as at the date as at which those financial statements were drawn up and (iii) include a balance sheet, profit and loss statement, cash-flow statement and a management commentary.
- (b) The Borrower shall procure that each set of financial statements delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using IFRS.
- (c) The Borrower shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using IFRS, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, the Obligor notifies the Lender that there has been a change in IFRS, the accounting practices or reference periods and its Auditors (or, if appropriate, the auditors of the Obligor) deliver to the Lender a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared.
- (d) Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.
- (e) The Borrower shall ensure that the Lender is at all times authorised to communicate directly with the Auditors provided that the Borrower receives a copy of any such communication.

18.3 Compliance Certificate

- (a) The Borrower shall supply a Compliance Certificate to the Lender with the financial statements of DIV Grupa d.o.o. delivered to the Lender pursuant to paragraph (b) of Clause 18.1 (*Financial statements*).
- (b) The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 20.10 (*Current Ratio*).
- (c) Each Compliance Certificate shall be signed by two directors of DIV Grupa d.o.o.

18.4 Year-end

The Borrower shall ensure that each Financial Year-end falls on 31 December.

18.5 Information: miscellaneous

The Obligors shall supply to the Lender:

- (a) at the same time as they are dispatched, copies of all documents dispatched by an Obligor to its shareholders generally (or any class of them) or its creditors generally (or any class of them) at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or investigations which are current, threatened or pending against any Obligor, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;
- (c) promptly, such further information regarding the financial condition, business and operations of any Obligor as the Lender may reasonably request;
- (d) promptly upon becoming aware of them, the details of any proposed change in the management or direct or indirect ownership of the Borrower or an Obligor;
- (e) information about the use of proceeds of Tranche B;
- (f) monthly reports about the progress of the sale process of Vessel 1;
- (g) promptly upon receipt by an Obligor (or an Affiliate), any information about the Dispute, including but not limited to copies of any actual or proposed arrangement, settlement, correspondence (including without prejudice correspondence) or other written communication (including legal or other advice or expert opinion) provided to or by an Obligor in relation to the Dispute or any other matter, transaction or dealing with or affecting Vessel 1;
- (h) information in case part of any Vessel (other than Vessel 4) is destroyed or materially damaged and any event or circumstance affecting such Vessel or the

Security created in respect thereof (including any maritime or common law liens or similar encumbrances arising under law);

- (i) information on changes in respect to the Insurances, any claims made on those relevant Insurances and the receipt of any Insurance Proceeds; and
- (j) information on occurrence of any event as described under Clause 21.14 (*Expropriation*).

18.6 Notification of default

- (a) Each Obligor shall notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a written request by the Lender setting out in reasonable detail the reasons for such request, the Obligor shall supply to the Lender a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

18.7 "Know your customer" checks

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of an Obligor (or of a Holding Company of an Obligor), or the composition of the shareholders of an Obligor (or of a Holding Company of an Obligor) after the date of this Agreement (of which the Obligors must promptly upon becoming aware notify the Lender); or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Lender, such Lender or, in the case of the event described in paragraph (iii)

above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

19. GENERAL UNDERTAKINGS

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 Authorisations

The Borrower shall, and shall procure that each Vessel Owner will, promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Lender of any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
 - (i) enable it to perform its obligations under the Transaction Documents and to ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document; or
 - (ii) own its assets and carry on its business as it is being conducted.

19.2 Compliance with laws

The Obligors shall comply and shall procure that each Vessel Owner will comply in all respects with all laws to which they may be subject, if failure so to comply has or is likely to have a Material Adverse Effect.

19.3 Negative pledge

In this Clause 19.3, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

- (a) The Borrower shall not, without the prior written consent of the Lender, create or permit to subsist any Security over any of its assets.
- (b) The Borrower shall not, without the prior written consent of the Lender:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor;
 - (ii) ~~sell, transfer or otherwise dispose of any of its receivables on re-~~
course terms;

(iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security that is Permitted Security.

19.4 Disposals

(a) The Borrower shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to dispose of all or any part of any asset.

(b) Clause (a) above does not apply to any Disposal of any asset:

(i) made in the ordinary course of trading of the disposing entity;

(ii) in exchange for other assets comparable or superior as to type, value and quality;

(iii) permitted by the Transaction Documents, or

(iv) the Vessel 1 Sale if the Vessel 1 Sale Conditions have been complied with in full to the satisfaction of the Lender.

(c) The Borrower must ensure that the Disposal Proceeds are immediately applied in accordance with Clause 7.4 above.

19.5 Financial Indebtedness

(a) The Borrower may not incur or permit to be outstanding any Financial Indebtedness.

(b) Paragraph (a) above does not apply to any Permitted Financial Indebtedness.

19.6 Lending and guarantees

(a) The Borrower may not be the creditor in respect of any loan or any form of credit to any person.

(b) The Borrower may not give or allow to be outstanding any guarantee or indemnity to or for the benefit of any person in respect of any obligation of any other person or enter into any document under which the Borrower assume any liabil-

ity of any other person other than any guarantee or indemnity given under the Finance Documents or as Permitted Financial Indebtedness.

- (c) Paragraph (a) above does not apply to loans extended by the Borrower to its Affiliates if the aggregate amount of those loans does not at any time exceed €200,000 in total and the debt is fully and finally discharged within 60 days.

19.7 Merger

No Obligor shall without the prior written consent of the Lender enter into any amalgamation, demerger, merger or corporate reconstruction.

19.8 Change of business

The Borrower shall procure that no change is made to the general nature and scope of the business of the Borrower from that carried on at the Signing Date, irrespective of whether such change would alter the general nature and scope of the business carried on by the Borrower.

19.9 Acquisitions

The Borrower may not make any acquisition or investment other than as permitted under this Agreement.

19.10 Other agreements

The Borrower may not enter into any material agreement other than:

- (a) the Transaction Documents;
- (b) any agreement in the ordinary course of business on arm's length terms;
- (c) any other agreement expressly allowed under any other term of this Agreement; and
- (d) with the prior written consent of the Lender.

19.11 Shares, dividends and share redemption

- (a) The Borrower may not, without the previous written consent of the Lender, issue any further shares or amend any rights attaching to its issued shares.
 - (b) Except as permitted under paragraph (c) below, the Borrower shall not (unless expressly allowed under any other terms of this Agreement):
 - (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
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- (ii) repay or distribute any dividend or share premium reserve;
 - (iii) pay any management, advisory or other fee to or to the order of any of its direct or indirect shareholders (including for the avoidance of doubt any Ultimate Beneficial Owner) which would exceed €140,000 in total in any Month; or
 - (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.
- (c) Paragraph (b) above does not apply to any distribution that has been approved by the Lender in writing.

19.12 Preservation of assets

Each Obligor shall repair and maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

19.13 Pari passu ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of the Lender against it under the Finance Documents rank at least *pari passu* with the claims of all of its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

19.14 VAT group

The Borrower may not be a member of a value added tax group.

19.15 Taxes

- (a) The Borrower must pay all Taxes due and payable by it prior to the accrual of any fine or penalty for late payment, unless (and only to the extent that):
- (i) payment of those Taxes is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them; and
 - (iii) failure to pay those Taxes is not reasonably likely to have a Material Adverse Effect.
- (b) The Borrower must ensure that its residence for Tax purposes is in its Original Jurisdiction.

19.16 Ownership

- (a) The Borrower must ensure that at all times the Shares are legally and beneficially owned and controlled by the Shareholder.

- (b) The Borrower must ensure that at all times it is the legal and beneficial owner of the entire issued share capital of Plovdiva.
- (c) The Borrower must ensure that at all times Plovdiva is the legal and beneficial owner of the entire issued share capital of Vessel Owner 1.

19.17 Subordination

The Borrower shall ensure that any and all indebtedness of the Borrower owed to its shareholders or their Affiliates (including without limitation dividend payments, payments under any intercompany loans) shall be subordinated to the Facility during the term of this Agreement on the terms of the Subordination Agreement.

19.18 Intellectual Property

- (a) Each Obligor shall:
 - (i) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Obligor;
 - (ii) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
 - (iii) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property necessary for the business of the relevant Obligor in full force and effect and record its interest in that Intellectual Property;
 - (iv) not use or permit the Intellectual Property necessary for the business of the relevant Obligor to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of that Intellectual Property or imperil the right of any Obligor to use such property; and
 - (v) not discontinue the use of the Intellectual Property necessary for the continuing business of any Obligor.
- (b) Failure to comply with any part of paragraph (a) above shall not be a breach of this Clause 19.18 (*Intellectual Property*) to the extent that any dealing with Intellectual Property which would otherwise be a breach of paragraph (a) above is approved by the Lenders.

19.19 Financial assistance

Each Obligor shall comply in all respects with any financial assistance legislation in any Relevant Jurisdiction including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

19.20 Centre of main interests and establishments

Each Obligor must take all necessary actions to ensure that, at all times, for the purposes of the Regulation, its centre of main interest (as that term is used in Article 3(1) of the Regulation) is its jurisdiction of incorporation and that it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction, such actions to include, without limitation, the taking of all corporate actions in that jurisdiction and the employment of no employees other than in that jurisdiction (and only to the extent permitted under this Agreement).

19.21 Claims on valuers or advisers etc.

Each Obligor, in its capacity as addressee or co-addressee of any report, shall not (without the prior written consent of the Lender) bring any claim in respect of that report against the provider of that report.

19.22 Compliance with Sanctions

The Borrower shall and shall ensure that each Obligor will:

- (a) not maintain or undertake any activity or conduct (including by omission) which would cause the Lender to be in breach of Sanctions;
- (b) not, and shall not permit or authorize any other person, directly or indirectly, to use, lend, contribute, or otherwise make available proceeds or other services provided by the Lender to the Borrower for any purposes which may lead to a violation of Sanctions by the Lender;
- (c) not, act directly or indirectly for or on behalf or at the directive of any Sanctioned Person or in a manner that would contribute to a violation of Sanctions by the Lender;
- (d) not use any revenue or benefit derived from any activity or dealing with a Sanctioned Person to discharge any obligation due to the Lender;
- (e) notify the Lender without undue delay and provide the Lender with the relevant documents in case actions to be performed by the Lender require a prior authorization from the competent authority due to Sanctions;
- (f) notify the Lender without undue delay upon becoming aware of the occurrence of any event or circumstance relating to Sanctions which could reasonably be expected to result in the Lender having the right to require repayment under Clause 7.1 (*Illegality*).

19.23 Conditions Subsequent

The Transaction Obligors must comply with SCHEDULE 2C (*Conditions subsequent*) of SCHEDULE 2 (*Conditions precedent and subsequent*) as set out therein.

19.24 Further Assurance

The Borrower shall (at their own expense) take whatever action the Lender may reasonably request for:

- (a) perfecting and protecting the Security created or intended to be created by the Security Documents over any Security Asset (including but not limited to any future Security Asset or Security Asset acquired, created, generated or brought about by law to the Lender);
- (b) facilitating, following an Event of Default and following a notice served by the Lender on the Borrower or any of them pursuant to Clause 21.17 (*Acceleration*), any enforcement and realization of Security,
- (c) including (but not limited to) the execution of any transfer, assignment or assurance of property, the giving of a notice, order or direction and the making of any registration which the Lender may reasonably consider expedient.

19.25 Amendments to corporate documents

In case any Obligor makes any amendments whatsoever to any its corporate documents, including but not limited to its statute or incorporation deed, it shall provide the Lender with certified copies of the documentation evidencing such amendments within three Business Days of the registration of such changes.

19.26 Changes to the management

The Borrower undertakes to inform the Lender within ten Business Days of any change to the members of the Management Board of the Borrower.

19.27 Application of FATCA

The Borrower shall procure that no Obligor shall become a US Tax Obligor.

19.28 Payment transactions

The Borrower shall ensure that all of its revenues denominated in the euro currency are paid to the Borrower Euro Account and no other current account is opened or used by the Borrower for its payments in the euro currency at any time prior to the Termination Date. The Borrower Euro Account must be opened by the Borrower in 30 days from the Effective Date at the latest.

20. VESSEL RELATED UNDERTAKINGS

20.1 Title

- (a) The Borrower shall, and it shall procure that the Vessel Owner will, exercise their rights and comply in all respects with any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Vessels.
- (b) The Borrower may not agree, and it shall procure that the Vessel Owner does not agree, to any amendment, supplement, waiver, surrender or release of any covenant, stipulation or obligation (restrictive or otherwise) at any time affecting the Vessels.
- (c) The Borrower must, and it must procure that the Vessel Owner will, promptly take all such steps as may be necessary or desirable to enable the Security created by the Security Documents to be registered, where appropriate, at the applicable registry.
- (d) The Borrower and each Vessel Owner shall ensure that:
 - (i) each Vessel is at all time operated in accordance with the relevant laws and regulations; and
 - (ii) none of the Vessels is modified in any material fashion without the prior written consent of the Lender.
- (e) The Borrower may not, and it shall procure that the Vessel Owner of Vessel 1 and Vessel 2 does not, lease Vessel 1 and Vessel 2 to any person including a charter-party without obtaining prior consent from the Lender.

20.2 Notices

The Borrower must, within 14 days after the receipt by the Borrower or Vessel Owner of any application, requirement, order or notice served or given by any public or local or any other authority or any landlord with respect to the Vessels (or any part of it):

- (a) deliver a copy to the Lender; and
- (b) inform the Lender of the steps taken or proposed to be taken to comply with the relevant requirement, order or notice.

20.3 Investigation of title

The Borrower must grant the Lender or its lawyers on request all facilities within the power of the Borrower to enable the Lender or its lawyers to:

- (a) carry out investigations of title to the Vessels; and
- (b) make such enquiries in relation to any part of the Vessel as a prudent mortgagee might carry out.

20.4 Power to remedy

- (a) If a Borrower fails to perform any obligations under the Finance Documents affecting the Vessels, it must allow the Lender or its agents and contractors:
 - (i) to enter any facility where the Vessel is located;
 - (ii) to comply with or object to any notice served on the relevant Borrower in respect of the Vessels; and
 - (iii) to take any action that the Lender may reasonably consider necessary to prevent or remedy any breach of any such term or to comply with or object to any such notice.
- (b) The Borrower must immediately on request by the Lender pay the costs and expenses of the Lender or its agents and contractors incurred in connection with any action taken by it under this Clause 20.4.
- (c) The Lender shall not be obliged to account as mortgagee in possession as a result of any action taken under this Clause 20.4.
- (d) In case enforcement in respect to the Vessels is initiated by the Lender on the basis of a Mortgage Agreement, the Borrower shall, and it shall procure that the Vessel Owner will, allow the Lender to undertake any measures that the Lender deems appropriate and necessary for sake of the enforcement.

20.5 Access

- (a) The Borrower will ensure that representatives of the Lender (including all consultants) and the Lender are allowed, within a reasonable time of a written notice:
 - (i) access during normal business hours to inspect and examine:
 - (A) the relevant Vessel; and
 - (B) the records and technical and other data with respect to the Vessel; and
 - (ii) to meet with supervisors on behalf of the Borrower and the Vessel Owner.

20.6 Insurances

- (a) The Borrower must ensure that at all times from the Signing Date Insurances are maintained at all times in full force and effect, which in respect of each Vessel provide insurance cover in respect of:

- (i) Hull and machinery insurance for Vessel 3 for the fair market value of the ship as established in the most recent Valuation;
 - (ii) Builder's Risk insurance for Vessel 1 and 2 for value equal at least to the contract price of Vessel 1;
 - (iii) War risks insurance;
 - (iv) Protection and indemnity insurance (only for the Vessel in operation. Vessels under construction do not have P&I insurance – the P&I risks are covered by the Builder's Risk insurance policy); and
 - (v) Pollution risks insurance for Vessel 3.
- (b) The Borrower must procure that the Insurances comply with the following requirements:
- (i) each of the Insurances must contain:
 - (A) a non-invalidating and non-vitiating clause under which the Insurances will not be avoided or vitiated as against any insured party as a result of any circumstances beyond the control of that insured party or any misrepresentation, non-disclosure, or breach of any policy term or condition, on the part of any other insured party or any agent of any other insured party;
 - (B) a waiver of the rights of subrogation of the insurer as against each Obligor, each Secured Party and the tenants or users of the Vessels other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of the Vessels or any Insurance; and
 - (C) a loss payable clause (in Croatian: *vinkulacija*) under which the Lender is named as first loss payee in respect of any claim or series of connected claims (other than in respect of any claim under any public liability and third party liability insurances);
 - (ii) each insurer must give at least 30 days' notice to the Lender if it proposes to:
 - (A) repudiate, rescind or cancel any Insurance;
 - (B) treat any Insurance as avoided in whole or in part;

(C) treat any Insurance as expired due to non-payment of premium; or

(D) otherwise decline any claim under any Insurance by or on behalf of any insured party,

and, in respect of paragraph (C) above, must in the notice give the Lender the opportunity to rectify any such non-payment of premium within the notice period; and

(iii) the Borrower must be free to assign or otherwise grant Security over all amounts payable to it under each of its Insurances and all its rights in connection with those amounts in favour of the Lender.

(c) The Borrower must use all reasonable endeavours to ensure that the Lender receives copies of the Insurances, receipts for the payment of premiums for insurance and any information in connection with the Insurances and claims under them which the Lender may reasonably require.

(d) The Borrower must promptly notify the Lender of:

(i) the proposed terms of any future renewal of any of the Insurances;

(ii) any amendment, supplement, extension, termination, avoidance or cancellation of any of the Insurances made or, to its knowledge, threatened or pending;

(iii) any claim, and any actual or threatened refusal of any claim, under any of the Insurances; and

(iv) any event or circumstance which has led or may lead to a breach by any Obligor of any term of this Clause 20.6.

(e) Each Obligor and Vessel Owner must:

(i) comply with the terms of the Insurances;

(ii) not do or permit anything to be done which may make void or voidable any of the Insurances; and

(iii) comply with all reasonable risk improvement requirements of its insurers.

(f) The Borrower must ensure that:

(i) each premium for the Insurances is paid within the period permitted for payment of that premium; and

- (ii) all other things necessary are done so as to keep each of the Insurances in force.
- (g) If an Obligor or Vessel Owner fails to comply with any term of this Clause 20.6, the Lender may, at the expense of the Obligors, effect any Insurance and generally do such things and take such other action as the Lender may reasonably consider necessary or desirable to prevent or remedy any breach of this Clause 20.6.
- (h) The Borrower shall ensure that all Insurances are made with the Insurer and/or placed through brokers approved by the Lender in writing and the Borrower shall not settle any claim of Insurance without first having consulted with the Lender.

20.7 Environmental matters

- (a) The Borrower must:
 - (i) comply and ensure that any relevant third party complies with all Environmental Law;
 - (ii) obtain, maintain and ensure compliance with all requisite Environmental Permits applicable to them or to the relevant Vessel; and
 - (iii) implement procedures to monitor compliance with and to prevent liability under any Environmental Law applicable to them or the relevant Vessel;
 - (iv) where failure to do so has or is reasonably likely to have a Material Adverse Effect or result in any liability for the Lender.
- (b) The Borrower must, promptly upon becoming aware, notify the Lender of:
 - (i) any Environmental Claim started, or to their knowledge, threatened;
 - (ii) any circumstances reasonably likely to result in an Environmental Claim; or
 - (iii) any suspension, revocation or notification of any Environmental Permit.
- (c) The Borrower must indemnify the Lender against any loss or liability which:
 - (iv) the Lender incurs as a result of any actual or alleged breach of any Environmental Law by any person; and
 - (v) would not have arisen if a Finance Document had not been entered into,

- (vi) unless it is caused by the Lender's gross negligence or wilful misconduct.

20.8 Ship related covenants

The Borrower must ensure that:

- (i) each Vessel maintains its registration with the ship registry of the flag state;
- (ii) no Vessel has dual or bareboat registration;
- (iii) it will not change the Vessel's classification society without the prior written consent of the Lender;
- (iv) Vessel 3 complies with laws, including the International Safety Management Code, International Ship and Port Facility Code and international environmental laws;
- (v) Vessel 3's class notation is maintained, and the relevant Vessel complies with mandatory classification requirements;
- (vi) it will submit Vessel 3 for periodic surveys by the relevant classification society;
- (vii) the relevant Vessel is not engaged in any trade which contravenes Sanctions and that the ship is not used by a Sanctioned charterer; and
- (viii) an adequate GPS device is incorporated and maintained on each Vessel that will enable the Lender to track the Vessel at any time.

20.9 Minimum loan to value covenant

- (a) The Obligors shall ensure that the Minimum Value Ratio is at all times at least 50%.
- (b) For the purposes of any Finance Document:

"Minimum Value Ratio" means the outstanding Loan divided by the Charges Adjusted Aggregate Market Value.

"Charges Adjusted Aggregate Market Value" means the aggregate fair market value of the Vessels as established in the most recent Valuation reduced by the value of any mortgages or charges ranked prior to the mortgages established in the favour of the Lender in accordance with the Transaction Security.

20.10 Current ratio

- (a) The Obligors must ensure that the Current Ratio is at all times at least 1.25.

(b) For the purposes of any Finance Document:

"**Borrowings**" means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of DIV Grupa d.o.o. and its Subsidiaries for or in respect of:

- (i) moneys borrowed and debit balances at banks or other financial institutions;
- (ii) any acceptances under any acceptance credit or bill discount facility (or de-materialized equivalent);
- (iii) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (iv) any finance lease;
- (v) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirements for de-recognition under IFRS);
- (vi) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability of an entity which is not a Subsidiary of DIV Grupa d.o.o. which liability would fall within one of the other paragraphs of this definition;
- (vii) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under IFRS;
- (viii) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 60 days after the date of supply;
- (ix) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and lease-back agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under IFRS; and
- (x) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (i) to (ix) above.

"**Current Assets**" means the aggregate (on a consolidated basis) of all inventory, work in progress, trade and other receivables of DIV Grupa d.o.o. and its Subsidiaries including prepayments in relation to operating items and sundry debtors (but excluding cash at hand) expected to be realised within twelve months from the date of computation but **excluding** amounts in respect of:

- (i) receivables in relation to Tax;
- (ii) exceptional and other non-operating items;
- (iii) insurance claims; and
- (iv) any interest owing to any member of the group; and
- (v) amounts owed by the Purchaser in connection with the Dispute.

"**Current Liabilities**" means the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of DIV Grupa d.o.o. and its Subsidiaries expected to be settled within twelve months from the date of computation but **excluding** amounts in respect of:

- (i) liabilities for Borrowings and Finance Charges;
- (ii) liabilities for Tax; and
- (iii) exceptional and other non-operating items.

"**Current Ratio**" means the ratio of Current Assets to Current Liabilities as expressed by the formula set out below:

$$X = \frac{A}{B} \text{ where}$$

- (i) X = Current Ratio;
- (ii) A = Current Assets;
- (iii) B = Current Liabilities.

"**Finance Charges**" means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Borrowings paid or payable by DIV Grupa d.o.o. and its Subsidiaries (calculated on a consolidated basis) in cash or capitalised in respect of that Relevant Period:

- (i) including any upfront fees or costs;
- (ii) including the interest (but not the capital) element of payments in respect of finance leases;

- (iii) including any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) DIV Grupa d.o.o. or any of its Subsidiaries under any interest rate hedging arrangement;
- (iv) together with the amount of any cash dividends or distributions paid or made by DIV Grupa d.o.o. in respect of that Relevant Period and so that no amount shall be added (or deducted) more than once.

"Quarter Date" means each 31 March, 30 June, 30 September and 31 December in each year.

"Relevant Period" means any period of twelve months starting on a Quarter Date and ending on the numerically corresponding Quarter Date in the next subsequent calendar year.

- (c) The Current Ratio shall be calculated in accordance with IFRS and tested by reference to the financial statements of DIV Grupa d.o.o. delivered pursuant to paragraph (b) of Clause 18.1 (*Financial statements*) and each Compliance Certificate delivered pursuant to Clause 18.3 (*Compliance Certificate*).

21. EVENTS OF DEFAULT

21.1 Non-payment

The Transaction Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within three Business Days of its due date.

21.2 Financial Covenant

- (a) Any requirement of Clause 20.9 (*Minimum loan to value covenant*) is not satisfied.
- (b) Any requirement of Clause 20.10 (*Current Ratio*) is not satisfied provided that no Event Default under this clause will occur in relation to which the Lender's rights under Clause 21.17 (*Acceleration*) will be exercised further provided however that the Lender shall be without any further condition entitled to exercise its rights under the Agreement on Authorisation of Vessel Sale and any other Finance Document in so far it is necessary or advisable to facilitate the

sale or other actions the Lender is entitled to under the Agreement on Authorisation of Vessel Sale.

21.3 Other obligations

- (a) The Transaction Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within five Business Days of the earlier of (i) the Lender giving notice to the Borrower and (ii) any Transaction Obligor becoming aware of the failure to comply.

21.4 Misrepresentation

Any representation or statement made or deemed to be made by a Transaction Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

21.5 Cross default

- (a) Any Financial Indebtedness of any Obligor is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of any Obligor as a result of an event of default (however described).
- (d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) Clauses from (a) to (d) above shall not apply in respect to Financial Indebtedness the aggregate amount of which at any time is less than of €1,000,000.

21.6 Insolvency

- (a) An Obligor:
 - (i) is unable or admits inability to pay its debts as they fall due;

- (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts; or
 - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding the Lender in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

21.7 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor;
 - (iv) enforcement of any Security over any assets of any Obligor; or,
 - (v) or any analogous procedure or step is taken in any jurisdiction.
- (b) This Clause 21.7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement.

21.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor and is not discharged within 14 days.

21.9 Cessation of business

An Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of any disposal allowed under this Agreement.

21.10 Unlawfulness and invalidity

- (a) It is or becomes unlawful for a Transaction Obligor to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Security Documents ceases to be effective or any subordination created under the Subordination Agreement is or becomes unlawful.
- (b) Any obligation or obligations of any Transaction Obligor under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lender under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Subordination Agreement ~~ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than the Lender) to be ineffective.~~

21.11 Repudiation and rescission of agreements

A Transaction Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

21.12 Subordination Agreement

- (a) Any party to a Subordination Agreement (other than the Lender) fails to comply with the provisions of, or does not perform its obligations under, that Subordination Agreement; or
- (b) a representation or warranty given by that party in a Subordination Agreement is incorrect in any material respect,
- (c) and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within fourteen calendar days of the earlier of the Lender giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

21.13 Litigation

- (a) Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any Obligor or its assets which, are reasonably likely to be adversely determined and if were to be so determined, have or are reasonably likely to have a Material Adverse Effect.
- (b) Without limiting the generality of the foregoing, in connection with or by reference to the Dispute:
 - (i) any claim, suit, action or any other proceedings is adjudicated, decided, ordered or awarded (or settled without the prior written consent of the Lender) in a manner that is final, non-appealable and binding on the Borrower or another Obligor or any of its or their Subsidiaries (the **Relevant Parties**) and that results in an obligation of a Relevant Party to pay any sum to any other party or participant to or in the Dispute whether by way of damages, either in contract or in tort, compensation, restitution or any other remedy such as confiscation, expropriation, seizure, attachment or arrest of any material assets of the Relevant Parties (including without limitation any of the Vessels) or in any other loss by the Relevant Parties or any of them; or
 - (ii) the Vessel 1 Transfer Documentation is found, adjudicated or ordered to be void, illegal or unenforceable and the Relevant Parties do not amend, novate, replace or substitute such documentation with a new arrangement that is acceptable to the Lender in its exclusive discretion within 14 days from the Vessel 1 Transfer Documentation being found, adjudicated or ordered to be void, illegal or unenforceable.

21.14 Expropriation

The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, compulsory acquisition, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor or any of its assets or the shares in that Obligor (including without limitation the displacement of all or part of the management of any Obligor) resulting in a Material Adverse Effect.

21.15 Total loss or major damage

Any of the Vessels (other than Vessel 4) is destroyed or materially damaged, except when the remaining Vessels value satisfy the Minimum Value Ratio.

21.16 Material adverse change

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

21.17 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Lender may by notice to the Obligor:

- (a) cancel the Total Commitments whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender; and/or
- (d) exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

**SECTION 10
CHANGES TO PARTIES**

22. CHANGES TO THE LENDER

22.1 Assignments and transfers by the Lender

Subject to this Clause 22, the Lender (the "**Existing Lender**") may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

to any other person other than an individual (the "**New Lender**"). Each Obligor gives its express consent to such assignment and transfer in accordance herewith.

Any transfer and/or assignment by the Lender pursuant to this Clause 22 shall be perfected and effective:

- (c) in respect to the Existing Lender, when the Existing Lender and the New Lender execute the Transfer Certificate;
- (d) in respect to the Obligors, upon notification of such transfer to the Borrower by the New Lender.

The Obligors undertake to promptly carry out any formalities which would be necessary in order to confirm the validity and enforceability of the Security Documents following any transfer or assignment.

23. CHANGES TO THE TRANSACTION OBLIGORS

23.1 Assignments and transfer by Transaction Obligors

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents (including by way of any corporate transformation or restructuring).

**SECTION 12
ADMINISTRATION**

24. PAYMENT MECHANICS

24.1 Payments to the Lender

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to respective other Party (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Lender, in each case, specifies.

24.2 Partial payments

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lender shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
 - (i) **firstly**, in or towards payment *pro rata* of any accrued interest on the Loans due but unpaid under the Finance Documents;
 - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, commission, costs, expenses and fees due but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under this Agreement; and
 - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Lender may vary order set out in paragraphs (a)(i) to (a)(iv) above. Any such variation may include the re-ordering of obligations set out in any such paragraph.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

24.3 No set-off by Obligor

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

24.4 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

24.5 Currency of account

- (a) Subject to paragraphs (b) and (c) below, EUR is the currency of the account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than EUR shall be paid in that other currency.

24.6 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender; and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the European interbank market and otherwise to reflect the change in currency.

24.7 Disruption to Payment Systems etc.

If either the Lender determines (in its discretion) that a Disruption Event has occurred or the Lender is notified by the Obligor that a Disruption Event has occurred:

- (a) the Lender may, and shall if requested to do so by a Borrower, consult with the Obligor with a view to agreeing with the Obligor such changes to the operation or administration of the Facility as the Lender may deem necessary in the circumstances;
- (b) the Lender shall not be obliged to consult with the Obligor in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) any such changes agreed upon by the Lender and the Obligor shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 30 (*Amendments and waivers*);
- (d) ~~the Lender shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Lender) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 24.7.~~

24.8 Alternative Currencies

- (a) Notwithstanding any other provision of the Finance Documents, if a payment is required to be made under a Finance Document (a "**Relevant Payment**") and it would be illegal for the Borrower under any applicable law or regulation to make, or the Lender (and any relevant correspondent bank or account bank) under any applicable law or regulation to receive, process or remit that Relevant Payment in EUR but would be legal for the Borrower to make, and the Lender (and any relevant correspondent bank or account bank) to receive, process and remit such Relevant Payment in an Alternative Currency, then the Lender may notify (such notice, an "**Alternative Currency Notice**") the Borrower in respect of such Relevant Payment the Alternative Currency to be used, the Alternative Currency Exchange Rate, the Alternative Amount to be paid in respect of such Relevant Payment and the account into which such payment shall be made. The Alternative Currency Notice shall be dated not earlier than two Business Days prior to the due date for such Relevant Payment.

- (b) The Borrower shall promptly notify the Lender upon becoming aware that any Relevant Payment has become illegal under any applicable law or regulation but failure to do so shall not prejudice the right of the Lender to deliver an Alternative Currency Notice.
- (c) An Obligor shall make any payment under this Clause 24.8 on the terms specified by an Alternative Currency Notice delivered in accordance with this Clause 24.8 but nothing in this Clause 24.8 shall extend the due date of any amount due under the Finance Documents.
- (d) Clause 7.1 (*Illegality*) shall not apply in respect of any Relevant Payment (and any foreign exchange spot transactions necessary to make such payment) if and to the extent that such Relevant Payment is duly made in accordance with this Clause 24.8.
- (e) In circumstances where the Lender has issued an Alternative Currency Notice or informed the Borrower in writing that it intends to issue an Alternative Currency Notice in respect of any Relevant Payment, the Borrower shall be entitled to open an additional bank account denominated in the relevant Alternative Currency and solely for the purposes of effecting that Relevant Payment.

25. SET-OFF

The Lender may set off any matured obligation due from an Obligor under the Finance Documents against any matured obligation owed by the Lender to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

26. NOTICES

26.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by email (signed PDF scan) or letter.

26.2 Addresses

The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Obligor, that identified with its name below;
- (b) in the case of the Lender, that identified with its name below; and

or any substitute address or fax number or department or officer as the Party may notify to the Lender (or the Lender may notify to the other Parties, if a change is made by the Lender) by not less than five Business Days' notice.

26.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of email, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;
 - (iii) and, if a particular department or officer is specified as part of its address details provided under Clause 26.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with paragraphs (a) to (b), after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

26.4 Notification of address and email address

Promptly upon changing its address or email address, the Lender shall notify the other Parties.

26.5 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure web-site) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and the Lender may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 26.5.

26.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document or otherwise required by Croatian law.

27. CALCULATIONS AND CERTIFICATES

27.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

27.2 Certificates and Determinations

Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

27.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the European interbank market differs, in accordance with that market practice.

28. PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

29. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

30. AMENDMENTS AND WAIVERS

Any term of the Finance Documents may be amended or waived only with the consent of the Lender and the Borrower and any such amendment or waiver will be binding on all Parties and the Obligors express their consent for their guarantees expressed herein to remain valid also for the amended or waived part.

31. CONFIDENTIAL INFORMATION

31.1 Confidentiality

The Lender agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 31.2 (*Disclosure of Confidential Information*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

31.2 Disclosure of Confidential Information

The Lender may disclose (and the Obligors expressly release the Lender from any applicable banking secrecy obligation for this purpose):

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that the Lender shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed of its confidential nature except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Lender and, in each case, and to any of that person's Affiliates, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Representatives and professional advisers;
 - (iii) appointed by the Lender or by a person to whom paragraph (i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (ii));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) above/(b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

- (vii) to whom information is required to be disclosed in connection with any Insurance;
- (viii) to whom or for whose benefit the Lender charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 22 (*Changes to the Lender*);
- (ix) to whom information is required to be disclosed in connection with, and for the purposes of, drafting, execution, perfection, enforcement of Finance Documents;
- (x) to whom information is required to be disclosed in connection with, and for the purposes of refinancing of the Existing Facility;
- (xi) who is a Party or an Obligor or Affiliate thereof; or
- (xii) with the consent of the Obligor;

in each case, such Confidential Information as the Lender shall consider appropriate if:

- (A) ~~in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;~~
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to paragraphs (b)(v) to (b)(viii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;
- (c) ~~to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or~~

the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

31.3 Entire agreement

This Clause 31 constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

31.4 Notification of disclosure

The Lender agrees (to the extent permitted by law and regulation) to inform the Obligors:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 31.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 31.

31.5 Continuing obligations

The obligations in this Clause 31 are continuing and, in particular, shall survive and remain binding on the Lender for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which the Lender otherwise ceases to be the Lender.

32. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

SECTION 13
GOVERNING LAW AND ENFORCEMENT

33. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

34. ENFORCEMENT

34.1 Arbitration

- (a) Unless specifically provided for in another Finance Document in relation to that Finance Document (for the purposes of this clause, an **Excluded Finance Document**), any dispute arising out of, relating to or having any connection with any Finance Document other than an Excluded Finance Document (for the purposes of this clause, a **Qualifying Finance Document**), including any dispute as to the existence, validity, interpretation, performance, breach or termination or the consequences of the nullity of any Qualifying Finance Document and any dispute relating to any non-contractual obligations arising out of or in connection with any Qualifying Finance Document (for the purposes of this clause, a **Dispute**), shall be referred to and finally resolved by arbitration under the LCIA Arbitration Rules (for the purposes of this clause, the **Rules**).
- (b) The Rules are incorporated by reference into this clause and capitalised terms used in this clause which are not otherwise defined in this Agreement have the meaning given to them in the Rules.
- (c) The number of arbitrators shall be three. The claimant (or claimants jointly) shall nominate one arbitrator for appointment by the LCIA Court. The respondent (or respondents jointly) shall nominate one arbitrator for appointment by the LCIA Court. The LCIA Court shall appoint the chairman.
- (d) Each Party:
 - (i) expressly agrees and consents to this procedure for nominating and appointing the Arbitral Tribunal; and
 - (ii) to the extent that it is not permitted to choose its own arbitrator pursuant to this clause (with a view to the fact that arbitrators are nominated by the claimants and/or the respondents jointly, as relevant), irrevocably and unconditionally waives any right to choose its own arbitrator.
- (e) The seat, or legal place of arbitration, shall be London. The language used in the arbitral proceedings shall be English. This arbitration agreement shall be governed by English law.

- (f) All documents submitted in connection with the proceedings shall be in the English language or, if in another language, accompanied by an English translation.
- (g) Service of any Request for Arbitration made pursuant to this clause must be at the address given for the sending of notices under each relevant Qualifying Finance Document and in a manner provided for in that document.

34.2 Service of process²

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor:
 - (i) irrevocably appoints Tatham Maccines LLP, 1 Gracechurch Street, London, EC3V0DD, United Kingdom, as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Obligors must immediately (and in any event within 14 days of such event taking place) appoint another agent on terms acceptable to the Lender. Failing this, the Lender may appoint another agent for this purpose.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

² Not restated.

SCHEDULE 1
GUARANTORS

Name of Guarantor	Registration number (or equivalent, if any)
DIV GRUPA d.o.o	PIN (OIB): 33890755814, (MBS): 080127368
BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o.	PIN: 15413473504 (MBS): 060175259
XB AHTS Hero Shipping, Inc.	Reg. No. 61825

SCHEDULE 2
CONDITIONS PRECEDENT AND SUBSEQUENT³

SCHEDULE 2A
CONDITIONS PRECEDENT FOR TRANCHE A

1.1. Transaction Obligors

- (a) A copy of the constitutional documents of each Transaction Obligor.
- (b) A copy of an extract for each Transaction Obligor from the commercial, trade or similar registry from its Original Jurisdiction, dated not earlier than three days before the date of this Agreement, confirming that it is duly registered and/or is good standing in its Original Jurisdiction and it is not insolvent (including a certificate of good standing for any Transaction Obligors registered or incorporated under the laws of the Marshall Islands).
- (c) A copy of (A) a resolution of the management board and (B) for the Borrower and DIV GRUPA d.o.o., a resolution of the supervisory board, and (C) for Transaction Obligors other than the Borrower, a resolution of the shareholders' meeting:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (iv) in the case of each Transaction Obligor other than the Borrower, authorising the Borrower to act as its agent in connection with the Finance Documents.
- (d) A certified or notarised specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above.
- (e) A certificate of each Transaction Obligor (signed by authorized director(s)) confirming that borrowing or guaranteeing or securing, as appropriate, the Total

³ Not restated – conditions precedent set out in the second amendment and restatement agreement dated on or about 12 April 2021.

Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Transaction Obligor to be exceeded.

- (f) A certificate of an authorised signatory of the relevant Transaction Obligor certifying that each copy document specified in this SCHEDULE 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (g) Confirmation issued by the Commercial Court indicating that no bankruptcy or pre-bankruptcy request has been filed or is pending against the Transaction Obligors not older than 2 Business Days at the date of the Utilisation Request.
- (h) A certificate of the Borrower confirming it is considered a large or medium enterprise under the Croatian Accountancy Act.
- (i) A structure chart setting out the ownership of each Obligor.
- (j) Completion of know your customer procedures and provision FATCA information requirements satisfactory to the Lender in respect to each Obligor.
- (k) ~~Evidence that no Default, mandatory prepayment event or Material Adverse Change is existing in respect to any Obligor.~~
- (l) Evidence that financing in accordance with this Agreement is in compliance with the Sanctions and applicable export restrictions.
- (m) Receipt of all required Lender's internal authorisations to execute the Facility.
- (n) An original of the executed Additional Financial Services Letter providing the Lender with the right of first offer to act as debt provider, funder or counterparty or adviser (as relevant) in respect of new Financial Indebtedness proposed to be issued, incurred or otherwise agreed by an entity controlled by the Ultimate Beneficial Owner.

1.2. Finance Documents

Originals of each of the following duly signed (notarized or solemnised where necessary) documents:

- (a) this Agreement;
- (b) the Subordination Agreement; and
- (c) each Security Document duly executed, in the relevant legal form, all as listed in SCHEDULE 8 (*Security Documents*).

1.3. Security

Evidence in form and substance acceptable to the Lender that the Security created pursuant to the relevant Security Documents has been created and, as applicable, perfected, including, if applicable, registration in the relevant registries, as follows:

- (a) Evidence that the Mortgage Agreement between the Lender and the Borrower on establishment of fourth ranking mortgage over the Vessel 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs, has been duly registered with the Ship Registry and perfected, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the mortgage with the Ship Registry;
- (b) Evidence that the Mortgage Agreement between the Lender and the Vessel Owner 2 on establishment of third ranking mortgage over the Vessel 2, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs, has been duly registered with the Ship Registry and perfected, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the mortgage with the Ship Registry;
- (c) Evidence that the Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of third ranking mortgage over the Vessel 3, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs, has been duly filed for registration with the Ship Registry;
- (d) Evidence that the statement for discharge of the second rank mortgage registered over Vessel 3 on the basis of Fourth Preferred Mortgage dated 26 day of October 2016 in favour of the Existing Financing Lender in the amount of EUR 1,265.000, has been duly filed for registration with the Ship Registry;
- (e) evidence that the Agreement on Subordination of Mortgage Priority Ranking on the Vessel 1 between the Lender, the Existing Financing Lender and the Borrower, regarding the mortgage on the Vessel 1, has been duly pre-registered (in Croatian: *predbilježba*) with the relevant Ship Registry, including the original of the final and binding (in Croatian: *pravomoćno*) decree on pre-registration of the subordination of the mortgage priority ranking with the Ship Registry;
- (f) evidence that the Agreement on Subordination of Mortgage Priority Ranking on the Vessel 2 between the Lender, the Existing Financing Lender and the Vessel Owner 2, regarding the mortgage on the Vessel 2, has been duly pre-registered (in Croatian: *predbilježba*) with the relevant Ship Registry, including the original of the final and binding (in Croatian: *pravomoćno*) decree on pre-registration of the subordination of the mortgage priority ranking with the Ship Registry;
- (g) Evidence that the Share Pledge Agreement between the Lender and the Shareholder on the first ranking pledge over the Shares in the Borrower, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased

for the relevant interests and costs, has been duly registered with the Pledge Registry and perfected, including the original of the notification of the Pledge Registry on the registration of the pledge;

- (h) the original debenture note issued by the Borrower, in favour of the Lender, in the form of a solemnized document (in Croatian: *solemnizirana isprava*), has been handed to the Lender together with an evidence of debenture note's registration with the Croatian Registry of Debentures (in Croatian: *Hrvatski registar zadužnica*);
- (i) the original debenture note issued by the company DIV GRUPA d.o.o., as guarantor, in favour of the Lender, in the form of a solemnized document (in Croatian: *solemnizirana isprava*), has been handed to the Lender together with an evidence of debenture note's registration with the Croatian Registry of Debentures (in Croatian: *Hrvatski registar zadužnica*);
- (j) the original debenture note issued by the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., as guarantor, in favour of the Lender, in the form of a solemnized document (in Croatian: *solemnizirana isprava*), has been handed to the Lender together with an evidence of debenture note's registration with the Croatian Registry of Debentures (in Croatian: *Hrvatski registar zadužnica*);
- (k) evidence of notification by the Borrower, as insured, to the relevant insurer (i.e., issuer of each relevant Insurance policy insuring risks related to the Vessel 1), on the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Lender and the Borrower, duly acknowledged by the relevant insurer;
- (l) evidence of notification by the Vessel Owner 2, as insured, to the relevant insurer (issuer of each relevant Insurance policy insuring risks related to the Vessel 2), on the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 2, duly acknowledged by the relevant insurer;
- (m) evidence of notification by the Vessel Owner 3, as insured, to the relevant insurer (issuer of each relevant Insurance policy insuring risks related to the Vessel 3), on the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 3, duly acknowledged by the relevant insurer;
- (n) evidence of notification by the Borrower, as contractual party to the Shipbuilding Agreement, to the Purchaser, as its debtor under the Shipbuilding Agreement, on the assignment of contractual claims established under the Agreement on Assignment for Security Purposes between the Lender and the Borrower, duly acknowledged by the Purchaser, or if such acknowledgment cannot be obtained, evidence that the delivery of the notification has been duly made.

If, solely for the reason that the Existing Financing Lender refuses to enter into the Agreements on Subordination of Mortgage Priority Ranking as set out in items 1.3 (e) and (f), and as a result thereof the conditions precedent set out in items 1.3 (e) and (f) cannot be satisfied, the following conditions precedent shall apply instead (and for the avoidance of doubt conditions precedent set out in items 1.3 (e) and (f) should not be further considered):

- (a) evidence that the Mortgage Agreement between the Lender and the Borrower on establishment of the first ranking mortgage over the Vessel 1, conditional upon deletion of the currently existing first ranking mortgage over the Vessel 1 granted in favour of the Existing Financing Lender, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly but conditionally registered with the relevant Ship Registry, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the mortgage with the Ship Registry;
- (b) evidence that the Mortgage Agreement between the Lender and the Vessel Owner 2 on establishment of the first ranking mortgage over the Vessel 2, conditional upon deletion of the currently existing first ranking mortgage over the Vessel 2 granted in favour of the Existing Financing Lender, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly but conditionally registered with the relevant Ship Registry, including the original of the final and binding (in Croatian: *pravomoćno*) decree on registration of the mortgage with the Ship Registry;

1.4. Refinancing

- (a) An original of the executed Pay-Off Letter, duly signed by the Existing Financing Lender and acknowledged by the Transaction Obligors, evidencing that the Existing Security has been or will be discharged on or about the first Utilisation Date in accordance with the terms of the Pay-Off Letter.
- (b) Evidence satisfactory to the Lender that the Borrower has paid all interest, fees, costs and any other amount outstanding in relation to the Existing Facility as specified by the Pay-Off Letter to the Existing Financing Lender or it has transferred the amount corresponding to the amount of all interest, fees, costs and any other amount outstanding in relation to the Existing Facility as specified by the Pay-Off Letter to the Lender as specified by the Lender to the Borrower for payment in discharge of the Existing Bank Loan.
- (c) A funds flow statement setting out the application of funds borrowed under this Agreement in relation to the repayment of the Existing Indebtedness and the other purposes as permitted under or required by this Agreement (including but not limited to the use of proceeds under Tranche B).

1.5. Financial Information

The Original Financial Statements.

1.6. Vessels

- (a) A copy of an up-to-date extract from the relevant Ship Registry (dated no earlier than 30 days of the proposed Utilisation Date) in respect of each ship comprising the Vessel evidencing the Borrower and Vessel Owner title to the Vessel (showing no encumbrance other than as permitted by this Agreement).
- (b) A copy of the Initial Valuation.
- (c) All Insurance policies held by the Borrower and Vessel Owner in respect of the Vessel.
- (d) Evidence that the Insurance policies are effective in accordance with their terms.
- (e) Declaration of Class from the classification society DNV GL dated March 18, 2019 confirming completion of sea trials and all relevant sea trials tests except for voluntary class notations HC (E/3);
- (f) A copy of the Ship Building Agreement.

1.7. Tax

- (a) A copy of the VAT registration certificate of each Borrower.
- (b) A confirmation from the competent tax authority confirming that the Borrower have no overdue tax liabilities (being not older than 15 days).

1.8. Legal opinions

- (a) A legal opinion issued by Wolf Theiss, legal advisers to the Lender as to English law, in a form acceptable to the Lender.
- (b) A legal opinion issued by Wolf Theiss, legal advisers to the Lender as to Croatian law, in a form acceptable to the Lender.
- (c) A legal opinion issued by CMS, legal advisers to the Lender as to Dutch law, in a form acceptable to the Lender.
- (d) A legal opinion issued by Reeder and Simpson P.C., legal advisers to the Lender as to the laws of the Marshall Islands, in a form acceptable to the Lender.

1.9. Other documents and evidence

- (a) The Utilisation Request (which complies with this Agreement).

- (b) Evidence that any other fees, and the costs and expenses (e.g. legal fees) then due from the Borrower pursuant to Clause 10 (*Fees*) and Clause 15 (*Costs and expenses*) have been paid or will be paid by the Borrower by the first Utilisation Date.
- (c) A copy of any other Authorisation or other document, opinion or assurance which the Lender (acting reasonably) considers to be necessary (if it has notified the Obligors accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (d) Evidence that the process agent has accepted its appointment to serve as agent for service of process in respect of each relevant Finance Document to serve as agent of process on behalf of each relevant Obligor in accordance with Clause 34.2 (*Service of process*) where this is required.

SCHEDULE 2B

CONDITIONS PRECEDENT FOR TRANCHE B

- (a) The Borrower shall provide to the Lender evidence acceptable to the Lender within 10 Business Days from the Signing Date:
- (i) evidence that the Agreement on Subordination of Mortgage Priority Ranking on Vessel 1 between the Lender, the Existing Financing Lender and the Borrower, regarding the mortgage on the Vessel 1 has been duly registered and perfected (i.e., that the pre-registration has been validly justified), and as a consequence that the Mortgage Agreement between the Lender and the Borrower is registered in the first rank in the mortgage amount of up to EUR 33,000,000, increased for the relevant interests and costs, including the original of the decree on registration of the mortgage with the Ship Registry;
 - (ii) evidence that the Agreement on Subordination of Mortgage Priority Ranking on Vessel 2 between the Lender, the Existing Financing Lender and the Vessel Owner 2, regarding the mortgage on the Vessel 2 has been duly registered and perfected (i.e., that the pre-registration has been validly justified), and as a consequence that the Mortgage Agreement between the Lender and the Borrower is registered in the first rank in the mortgage amount of up to EUR 33,000,000, increased for the relevant interests and costs, including the original of the decree on registration of the mortgage with the Ship Registry;
 - (iii) evidence that the mortgage of the Existing Financing Lender over the Vessel 1, as a security for liabilities up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly deleted from the Ship Registry, including the original of the decree on deletion of the mortgage from the Ship Registry;
 - (iv) evidence that the mortgage of the Existing Financing Lender over the Vessel 2, as a security for liabilities up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly deleted from the Ship Registry, including the original of the decree on deletion of the mortgage from the Ship Registry;
 - (v) the original debenture note, issued by the Borrower, in favour of the Existing Financing Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), has been returned to the Borrower and destroyed;
 - (vi) the original debenture note, issued by the company DIV GRUPA d.o.o., in favour of the Existing Financing Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), has been returned to the company DIV GRUPA d.o.o. and destroyed;
 - (vii) the original debenture note, issued by the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., in favour of the Exist-

ing Financing Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), has been returned to the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o. and destroyed;

- (viii) evidence of notification by the Existing Financing Lender and the Borrower to the relevant insurer (i.e., issuer of each relevant Insurance policy insuring risks related to the Vessel 1), on the termination of the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Existing Financing Lender and the Borrower, duly acknowledged by the relevant insurer;
 - (ix) evidence of notification by the Existing Financing Lender and the Vessel Owner 2 to the relevant insurer (i.e., issuer of each relevant Insurance policy insuring risks related to the Vessel 2), on the termination of the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Existing Financing Lender and the Vessel Owner 2, duly acknowledged by the relevant insurer;
 - (x) evidence of notification by the Existing Financing Lender and the Vessel Owner 3 to the relevant insurer (i.e., issuer of each relevant Insurance policy insuring risks related to the Vessel 3), on the termination of the assignment of insurance claims established under the Agreement on Assignment for Security Purposes between the Existing Financing Lender and the Vessel Owner 3, duly acknowledged by the relevant insurer;
 - (xi) evidence of notification by the Existing Financing Lender and the Borrower to the Purchaser, on the termination of the assignment of contractual claims established under the Agreement on Assignment for Security Purposes between the Existing Financing Lender and the Borrower, duly acknowledged by the Purchaser, or if such acknowledgment cannot be obtained, evidence that the delivery of the notification has been duly made;
- (b) If, solely for the reason that the Existing Financing Lender refuses to enter into the Agreements on Subordination of Mortgage Priority Ranking as set out in item 1.3 (e) and (f) of SCHEDULE 2A, and as a result thereof the conditions subsequent set out in item (a)(i) and (a)(ii) of this SCHEDULE 2B, cannot be satisfied, the following conditions subsequent shall apply (and for the avoidance of doubt conditions subsequent listed under items (a)(i) and (a)(ii) of this SCHEDULE 2B should not be further considered):
- (i) evidence that the first ranking mortgage established under the Mortgage Agreement between the Lender and the Borrower on establishment of the first ranking mortgage over the Vessel 1, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has become fully effective;
 - (ii) evidence that the first ranking mortgage established under the Mortgage Agreement between the Lender and the Borrower on establishment of the first

ranking mortgage over the Vessel 2, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has become fully effective.

SCHEDULE 2C

CONDITIONS SUBSEQUENT

- (a) The Borrower shall provide to the Lender evidence acceptable to the Lender
- (i) within 5 Business Days from the Utilisation Date of Tranche A:
- the original copy of each Insurance policy securing risks related to the Vessel 1, evidencing the Lender being designated as first loss payee (in Croatian: *vinkulacija*) and the Existing Financing Lender being deleted as first loss payee, has been handed to the Lender by the Borrower;
 - the original copy of each Insurance policy securing risks related to the Vessel 2, evidencing the Lender being designated as first loss payee (in Croatian: *vinkulacija*) and the Existing Financing Lender being deleted as first loss payee or designated as second loss payee, has been handed to the Lender by the Vessel Owner 2;
 - the original copy of each Insurance policy securing risks related to the Vessel 3, evidencing the Lender being designated as first loss payee (in Croatian: *vinkulacija*) and the Existing Financing Lender being deleted as first loss payee or designated as second loss payee, has been handed to the Lender by the Vessel Owner 3;
- (ii) within 30 days from the Signing Date:
- evidence that the Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of the first ranking mortgage over the Vessel 3, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly registered with the relevant Ship Registry (finally and binding, not subject to possible appeals);
 - evidence that the Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of third ranking mortgage over the Vessel 3, up to the amount of EUR 17,000,000,00 increased for the relevant interests and costs, has been duly registered with the relevant Ship Registry and perfected (finally and binding, not subject to possible appeals);
 - evidence that the mortgage of the Existing Financing Lender over the Vessel 3, as a security for liabilities up to the amount of EUR 33,000,000, increased for the relevant interests and costs, has been duly deleted with the relevant Ship Registry and perfected (finally and binding, not subject to possible appeals).

SCHEDULE 3
UTILISATION REQUEST⁴

From: BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

To: VTB BANK (EUROPE) SE

Dated: [●] 2019

Dear Sirs,

**BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo – EUR 50,000,000 Facility Agreement
dated [●] 2019 (the Agreement)**

1. We refer to the Agreement. This is the Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)

Amount: € [●], or, if less, in each case the available [Tranche A Commitment] or [Tranche B Commitment].

Tranche: [Tranche A] or [Tranche B]

3. We confirm that on the date of this Utilisation Request:

- (i) each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied;
- (ii) representations from Clause 17. (*Representations*) and undertakings from Clause 18. (*Information undertakings*) 19. (*General undertakings*) and 20 (*Vessel undertakings*) are still existing and valid; and
- (iii) the requirement from Clause 20.9 (*Minimum loan to value covenant*) is satisfied.

4. The proceeds of all Loans should be credited to:

- (i) in case of Tranche A: [relevant Account as set out in the Pay-Off Letter]

⁴ Not restated

- (ii) in case of Tranche B to the account of Polar Expedition held with the Existing Lender, according to the following account details:
Bank: Zagrebačka Banka d.d.
IBAN: HR 64 2360 0001 1027 1364 8
SWIFT: ZABHR2X

5. The purpose of the Loan under each Tranche is as set out in Clause 3 (*Purpose*) of the Agreement.
6. This Utilisation Request is irrevocable.

Yours faithfully,

authorised signatory for
BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

SCHEDULE 4
FORM OF TRANSFER CERTIFICATE

From: [*The Existing Lender*] (the "Existing Lender") and [*The New Lender*] (the "New Lender")

Dated: [●]

VTB BANK (EUROPE) SE – EUR 50,000,000 Facility Agreement
dated 12 April 2019 and amended and restated on 11 October 2019 and ____ April 2021 (the
Agreement)

7. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
8. We refer to Clause 22:
 - (b) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 22 all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participation in Loans under the Agreement as specified in the Schedule.
 - (c) The proposed Transfer Date is [●].
 - (d) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 26.2 (*Addresses*) are set out in the Schedule.
9. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 22.
10. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
11. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
12. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's

Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

SCHEDULE 5
LIST OF EXISTING SECURITY

- (a) First ranking mortgage registered in favor of the Existing Financing Lender over Vessel 1 securing the amount of EUR 33,000,000 increased for applicable interest, fees and costs;
- (b) First ranking mortgage Existing Financing Lender over Vessel 2 securing the amount of EUR 33,000,000 increased for applicable interest, fees and costs;
- (c) First ranking mortgage Existing Financing Lender over Vessel 3 securing the amount of EUR 33,000,000 increased for applicable interest, fees and costs;
- (d) Insurance policy securing risks related to the Vessel 1, with first loss payee designation in favor of the Existing Financing Lender (in Croatian: *vinkulacija*);
- (e) Insurance policy securing risks related to the Vessel 2, with first loss payee designation in favor of the Existing Financing Lender (in Croatian: *vinkulacija*);
- (f) Insurance policy securing risks related to the Vessel 3, with first loss payee designation in favor of the Existing Financing Lender (in Croatian: *vinkulacija*);
- (g) Claims assignment, whereby the Borrower has assigned its rights and receivables under the Ship Building Agreement in favour of the Existing Financing Lender;
- (h) Insurance policies proceeds assignments, whereby the Borrower and/or the relevant insured entities have assigned their rights under the insurance policies securing Vessel 1, Vessel 2 and Vessel 3 in favour of the Existing Financing Lender;
- (i) Debenture Note, issued by the Borrower, securing the amount of EUR 33,000,000 increased for applicable interest, fees and costs, notarisation number OV-1837/2018;
- (j) Debenture Note, issued by DIV GRUPA d.o.o., securing the amount of EUR 33,000,000 increased for applicable interest, fees and costs, number OV-1836/2018; and
- (k) Debenture Note, issued by BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., securing the amount of EUR 33,000,000 increased for applicable interest, fees and costs, number OV-1836/2018.

SCHEDULE 6
EXISTING FINANCIAL INDEBTEDNESS

Agreed form – Provided separately

SCHEDULE 7
EXISTING FINANCIAL SECURITY

Agreed form – Provided separately

SCHEDULE 8
LIST OF SECURITY DOCUMENTS

- (a) Mortgage Agreement between the Lender and the Borrower on establishment of mortgage over the Vessel 1, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests, fees and costs;
- (b) Mortgage Agreement between the Lender and the Borrower on establishment of mortgage over the Vessel 1, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (c) Mortgage Agreement between the Lender and the Vessel Owner 2 on establishment of mortgage over the Vessel 2, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests, fees and costs;
- (d) Mortgage Agreement between the Lender and the Vessel Owner 2 on establishment of mortgage over the Vessel 2, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (e) Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of mortgage over the Vessel 3, whereby signatures have been duly notarised, as a security for Secured Liabilities, up to the amount of EUR 17,000,000, increased for the relevant interests, fees and costs;
- (f) Mortgage Agreement between the Lender and the Vessel Owner 3 on establishment of mortgage over the Vessel 3, whereby signatures have been duly notarised, as a security for Secured Liabilities, up to the amount of EUR 33,000,000, increased for the relevant interests, fees and costs;
- (g) Share Pledge Agreement between the Lender and the Shareholder on the first ranking pledge over the Shares in the Borrower, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (h) Agreement on Assignment for Security Purposes between the Lender and the Borrower on assignment of claims arising in relation to the Ship Building Agreement and the Insurance Proceeds in respect to Vessel 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (i) Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 2 on the assignment of Insurance Proceeds in respect to Vessel 2, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests and costs;
- (j) Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 3 on assignment of Insurance Proceeds in respect to Vessel 3, as a security for

Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;

- (k) Debenture Note, allowing direct enforcement over all accounts and assets of the Borrower, granted by the Borrower in favour of the Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (l) Debenture Note, allowing direct enforcement over all accounts and assets of the company DIV GRUPA d.o.o., granted by the company DIV GRUPA d.o.o. in favour of the Lender, in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (m) Debenture Note, allowing direct enforcement over all accounts and assets of the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o., granted by the company BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o. in favour of the Lender in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (n) Insurance policy securing risks related to the Vessel 1, with first loss payee designation in favour of the Lender (in Croatian: *vinkulacija*);
- (o) Insurance policy securing risks related to the Vessel 2, with first loss payee designation in favour of the Lender (in Croatian: *vinkulacija*); and
- (p) Insurance policy securing risks related to the Vessel 3, with first loss payee designation in favour of the Lender (in Croatian: *vinkulacija*) and the Insurance policy securing risks related to the Vessel 3, with second loss payee designation in favour of the Lender (in Croatian: *vinkulacija*);
- (q) New Insurance policy securing risks related to the Vessel 3, with first loss payee designation in favour of the Lender (in Croatian: *vinkulacija*);
- (r) Security Confirmation Agreement between the Lender, the Borrower and the Vessel Owner 1 for confirmation of mortgage agreements and assignment for security purposes in relation to the Vessel 1, concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*);
- (s) Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 1 on assignment of claims arising in relation to the new Ship Building Agreement dated 5 July 2019 between the Borrower as builder and the Vessel Owner 1 as the buyer of the Vessel 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (t) Agreement on Assignment for Security Purposes between the Lender and the Vessel Owner 3 on assignment of claims arising in relation to the new Insurance policy, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;

- (u) Agreement on Authorization of Vessel Sale between the Lender, the Borrower and the Vessel Owner 1, authorizing the Lender to execute the sale process of the Vessel 1 acting in the name and for the benefit of the Vessel Owner 1;
- (v) Personal Guarantee of Mr. Tomislav Debeljak as the Ultimate Beneficial Owner of the Borrower;
- (w) Share Pledge Agreement between the Lender, the Borrower and DIV GRUPA d.o.o. on the first ranking pledge over the shares in the company DIV CRUISES d.o.o., concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (x) Share Pledge Agreement between the Lender and DIV GRUPA d.o.o. on the first ranking pledge over the shares in the company DIV BRODOGRADNJA d.o.o., concluded in a form of a solemnized document (in Croatian: *solemnizirana isprava*), as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- (y) Share Pledge Agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;
- ~~(z) Share Pledge Agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 2, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs;~~
- (aa) Share Pledge Agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 3, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs.
- (bb) Deed of confirmation in respect of personal guarantee of Mr. Tomislav Debeljak as the Ultimate Beneficial Owner of the Borrower.
- (cc) Deed of confirmation in respect to the share pledge agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 1, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs.
- (dd) Deed of confirmation in respect to the share pledge agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 2, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs (in the agreed form).
- (ee) Deed of confirmation in respect to the share pledge agreement between the Lender and BRODOSPLIT-PLOVIDBA d.o.o. on the first ranking pledge over the shares in the Vessel Owner 3, as a security for Secured Liabilities, up to the amount of EUR 50,000,000, increased for the relevant interests, fees and costs.

SCHEDULE 9
FORM OF COMPLIANCE CERTIFICATE

To: VTB Bank Europe SE as Lender

From: DIV GRUPA d.o.o.

BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

Dated: [] 20[]

Dear Sirs

**BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo –
EUR 50,000,000 Facility Agreement
dated 12 April 2019 and as amended and restated on ____ October 2019 (the Agreement)**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that the Current Ratio is [] in respect of the Quarter Date falling on [].
3. [We confirm that no Default is continuing.]*

Signed:	
Director	Director
of	of
DIV Grupa d.o.o.	DIV Grupa d.o.o.

We hereby confirm and certify the above statements under paragraph 2 above to be true and correct:

.....
[for and behalf of

SIGNATURE PAGE⁵

TO THE UP TO EUR 50,000,000 FACILITY AGREEMENT

⁵ Not restated

THE BORROWER

BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo

By:

Address: Put Supavla 21, Split, Croatia

Fax:

Attention:

THE GUARANTORS

DIV GRUPA D.O.O.

By:

Address: Bobovica 10/A, Samobor, Croatia

Fax:

Attention:

BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA d.o.o.

By:

Address: Put Supavla 21, Split, Croatia

Fax:

Attention:

THE LENDER

VTB BANK (EUROPE) SE

By:

By:

Address: Rusterstraße 7-9, 60325 Frankfurt am Main, Germany

Email: Loans.Administration@vtb.eu

Attention: Loan Administration

**SIGNATURE PAGE
TO THE AMENDMENT AND RESTATEMENT AGREEMENT**

THE BORROWER

EXECUTED AS A DEED by
BRODOGRAĐEVNA INDUSTRIJA SPLIT,
dioničko društvo

Signature

A handwritten signature in dark ink, consisting of several overlapping, sweeping strokes, positioned over a horizontal line.

acting by

Print signatory's name: TOMISLAV DEBEČAL

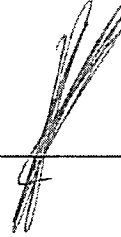
Title: _____

THE GUARANTORS

EXECUTED AS A DEED by
DIV GRUPA D.O.O.

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)
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)
)

Signature

A handwritten signature in dark ink, consisting of several overlapping, sweeping strokes, positioned over a horizontal line.

acting by

Print signatory's name: TOHISLAV DEBEVAR

Title: _____

EXECUTED AS A DEED by
BRODOSPLIT-BRODOGRADILIŠTE
SPECIJALNIH OBJEKATA d.o.o.

Signature

acting by

Print signatory's name: TONISLAV DEBEČAR

Title: _____

EXECUTED AS A DEED by
XB AHTS HERO SHIPPING, INC.

)

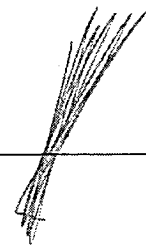
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Signature

A handwritten signature in dark ink, consisting of several overlapping, sweeping strokes, positioned over a horizontal line.

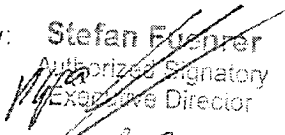
acting by

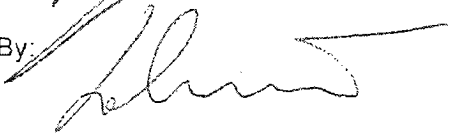
Print signatory's name: DOMISLAV DEBEČAK

Title: _____

THE LENDER

VTB BANK (EUROPE) SE

By:  Stefan Fuenrer
Authorized Signatory
Executive Director

By: 

PATRICK LEHNERT

Address: Rüsterstraße 7-9, 60325 Frankfurt am Main, Germany

Email: Loans.Administration@vtb.eu

Attention: Loan Administration