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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
In re: : Chapter 11  
: :  
EXCEL MARITIME CARRIERS LTD., et al., : Case No. 13-23060 (RDD)  
: (Jointly Administered)  
Debtors. :  
: :  
: :  
----- x

**AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF EXCEL  
MARITIME CARRIERS LTD. AND CERTAIN OF ITS AFFILIATES**

Dated: January 23, 2014

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## INTRODUCTION

Excel Maritime Carriers Ltd. and its affiliated debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors") propose the following amended joint chapter 11 plan of reorganization for the resolution of the outstanding Claims against and Interests in the Debtors. Reference is made to the Disclosure Statement, filed contemporaneously herewith, for a discussion of (i) certain information relating to the Debtors, (ii) a summary and analysis of this Plan, and (iii) certain matters related to the confirmation and the consummation of this Plan. Subject to certain restrictions and requirements set forth in section 1127 of title 11 of the United States Code and Rule 3019 of the Federal Rules of Bankruptcy Procedure, and, subject to Section 12.3 herein, the Debtors reserve the right to alter, amend, or modify this Plan, subject to, the consent of each of the other Consenting Parties, or to revoke or withdraw this Plan.

## ARTICLE I

### DEFINED TERMS AND RULES OF INTERPRETATION

*Defined Terms.* As used herein, capitalized terms shall have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

**1.1** *1145 Offered Shares* means Tranche A Offered Shares and Tranche B Offered Shares.

**1.2** *1145 Rights Offering* means the rights offering whereby all Eligible Holders will be offered the opportunity to subscribe for up to their Pro Rata share of the 1145 Offered Shares.

**1.3** *1145 Subscription Agreements* means the agreements to be entered into by and between Excel and an Eligible Holder pursuant to which such Eligible Holder exercises its Tranche A Subscription Rights and/or Tranche B Subscription Rights, which shall be in form and substance acceptable to each of the Consenting Parties.

**1.4** *4(a)(2) Offered Shares* means the shares offered pursuant to the 4(a)(2) Subscription Rights at a price of \$16.25 per share.

**1.5** *4(a)(2) Rights Offering* means the rights offering whereby all Eligible Holders who are Accredited Investors and who timely return validly completed Accredited Investor questionnaires to the Subscription Agent pursuant to the Rights Offering Procedures, will be offered the opportunity to subscribe for the 4(a)(2) Offered Shares.

**1.6** *4(a)(2) Subscription Agreements* means the agreements to be entered into by and between Excel and Eligible Holders pursuant to which such Eligible Holders who are Accredited Investors, and who timely return validly completed Accredited Investor questionnaires to the Subscription Agent pursuant to the Rights Offering Procedures, exercise

their 4(a)(2) Subscription Rights with respect to the New Common Stock offered pursuant to section 4(a)(2) of the Securities Act, which shall be in form and substance acceptable to each of the Consenting Parties.

**1.7** *4(a)(2) Subscription Rights* means the rights of Eligible Holders who are Accredited Investors, and who timely return validly completed Accredited Investor questionnaires to the Subscription Agent, to subscribe for an aggregate number of shares equal to the number of shares not subscribed for pursuant to the Tranche A Subscription Rights (which subscription rights include certain oversubscription rights, as described in Section 3.3(g)(2) below), subject to Pro Rata reduction in accordance with each such Eligible Holder's participation in the 4(a)(2) Rights Offering.

**1.8** *Accredited Investor* means an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under Section 4(a)(2) of the Securities Act.

**1.9** *Adequate Protection Payment* means the adequate protection payment to be made by Excel on or before January 2, 2014 to the Secured Lenders in the amount of \$6,176,868.76 in accordance with the Final Cash Collateral Order and the Stipulated Cash Collateral Order.

**1.10** *Administrative Agent* means Wilmington Trust (London) Ltd., in its capacity as administrative agent under the Syndicate Credit Facility, or its successor in such capacity.

**1.11** *Administrative Claim* means a Claim for costs and expenses of administration of the Chapter 11 Cases under sections 503(b) or 507(b) of the Bankruptcy Code, including, but not limited to: (a) any actual and necessary costs and expenses, incurred on or after the Petition Date, of preserving the Estates and operating the businesses of the Debtors; (b) Professional Fee Claims; (c) all fees and charges assessed against the Estates under section 1930 of title 28 of the United States Code; (d) claims under section 503(b)(9) of the Bankruptcy Code; and (e) the reasonable and documented outstanding fees and expenses of (i) Christiana Trust as indenture trustee, including those of Moses & Singer LLP, up to \$450,000, and (ii) Bracewell & Giuliani LLP, as counsel to Ivory, up to \$600,000 less the \$250,000 pre-petition retainer previously paid to Bracewell & Giuliani LLP.

**1.12** *Allowed* means, with respect to any Claim, such Claim or any portion thereof that has been allowed (a) by a Final Order of the Bankruptcy Court, (b) pursuant to the terms of this Plan, (c) by agreement between the Holder of such Claim and the Debtors or Reorganized Debtors, (d) by an order of a court in which such Claim could have been determined, resolved or adjudicated if the Chapter 11 Cases had not been commenced, or (e) a Disputed Claim, proof of which was filed on or prior to the Bar Date, and (1) as to which no objection was filed by the Claims Objection Bar Date, unless such Claim is to be determined in a forum other than the Bankruptcy Court, in which case such Claim will not become allowed until determined by a Final Order of such other forum and allowed by a Final Order of the Bankruptcy Court, or (2) as to which an objection was filed by the Claims Objection Bar Date, to the extent allowed by a Final Order of the Bankruptcy Court. Notwithstanding the foregoing, Claims against the Debtors allowed solely for the purpose of voting to accept or reject the Plan pursuant

to the Disclosure Statement Approval Order or other order of the Bankruptcy Court shall not be considered Allowed Claims hereunder.

**1.13 Amended and Restated Senior Secured Credit Facility** means that certain amended and restated financing facility in a principal amount not to exceed \$300 million to be entered into between Reorganized Excel and its Subsidiary Reorganized Debtors and the lenders party thereto on the Effective Date which (including the covenants included therein and any documents executed in connection therewith) shall be acceptable to each of the Consenting Parties, a form of which was filed as part of the Plan Supplement.

**1.14 Angelo Gordon** means Angelo, Gordon & Co. and certain of its affiliates.

**1.15 Avoidance Action** means any claim or cause of action of an Estate arising out of or maintainable pursuant to sections 506(c), 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552(b) or 553 of the Bankruptcy Code or under any other similar applicable law, regardless of whether or not such action has been commenced prior to the Effective Date.

**1.16 Bankruptcy Code** means title 11 of the United States Code, as now in effect or hereafter amended to the extent such amendments apply to the Chapter 11 Cases.

**1.17 Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of New York, or any other court with jurisdiction over the Chapter 11 Cases.

**1.18 Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended to the extent such amendments apply to the Chapter 11 Cases.

**1.19 Bar Date** means (i) October 18, 2013 at 5:00 p.m. (Eastern Time), the date by which each Holder of a Claim against any of the Debtors other than a governmental unit must have filed a proof of claim against such Debtor(s) or (ii) December 30, 2013 at 5:00 p.m. (Eastern Time), the date by which each governmental unit with a Claim against any of the Debtors must have filed a proof of claim against such Debtor(s), as applicable in each case.

**1.20 Bar Date Order** means that certain Order Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3003(c)(3) and Approving Form and Manner of Notice Thereof [Docket. No. 302].

**1.21 Bareboat Charter Settlement Claims** means claims arising against Excel under that certain settlement, dated as of December 5, 2012, among Coal Glory AS, Iron Man AS, Linda Leah AS, Excel and certain of Excel's non-Debtor Subsidiaries.

**1.22 Business Day** means any day, other than a Saturday, Sunday, or "legal holiday" (as defined in Bankruptcy Rule 9006(a)).

**1.23 Cash** means legal tender of the United States of America, and equivalents thereof.

**1.24 *Causes of Action*** means any action, proceeding, agreement, claim, cause of action, controversy, demand, right, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license and franchise of any kind or character whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. Causes of Action also include: (a) any right of setoff, counterclaim or recoupment and any claim arising under contracts or for breaches of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any state law fraudulent transfer claim; and (f) any claim listed in the Plan Supplement.

**1.25 *Chapter 11 Case(s)*** means (a) when used with reference to a particular Debtor, the case under chapter 11 of the Bankruptcy Code commenced by such Debtor in the Bankruptcy Court and (b) when used with reference to all Debtors, the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors in the Bankruptcy Court jointly administered as Case No. 13-23060.

**1.26 *Christine Holdings*** means Christine Shipco Holdings Corp.

**1.27 *Christine Shipco*** means Christine Shipco LLC.

**1.28 *Christine Shipco Facility*** means that certain secured loan agreement, dated as of April 26, 2010, as amended and supplemented by a first supplemental agreement dated as of July 27, 2011, and as further amended and supplemented by a second supplemental agreement dated as of March 30, 2012, between non-Debtor Christine Shipco, as borrower, and DVB, as lender.

**1.29 *Christine Shipco Facility Guaranty*** means that certain guarantee and indemnity dated as of April 26, 2010 made between Excel, as guarantor, and DVB.

**1.30 *Christine Shipco Facility Secured Guaranty Claim*** means any Claim pursuant to the terms of the Christine Shipco Facility Guaranty.

**1.31 *Christine Shipco Guaranty Security*** means the indirect interest in Christine Shipco owned by Excel.

**1.32 *Christine Shipco LLC Agreement*** means the Limited Liability Company Agreement of Christine Shipco, a Marshall Islands Limited Liability Company, dated March 30, 2007.

**1.33 *Claim*** means a "claim" as defined in section 101(5) of the Bankruptcy Code.

**1.34 *Claims Objection Bar Date*** means, for each Claim, the latest of (a) the date that is one hundred and eighty (180) days after the Effective Date, (b) as to a particular

Claim, one hundred and eighty (180) days after the filing of a Proof of Claim, or request for payment of such Claim, and (c) such other period of limitation as may be specifically fixed by an order of the Bankruptcy Court for objecting to Claims.

**1.35** *Class* means a category of Claims or Interests, as described in Article III hereof.

**1.36** *Co-Investment Rights* means the 1145 Rights Offering and the 4(a)(2) Rights Offering, which together consist of the Tranche A Subscription Rights, the Tranche B Subscription Rights and the 4(a)(2) Subscription Rights.

**1.37** *Confirmation* means the confirmation of this Plan by the Bankruptcy Court pursuant to section 1129 of the Bankruptcy Code.

**1.38** *Confirmation Date* means the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.

**1.39** *Confirmation Hearing* means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

**1.40** *Confirmation Order* means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code which order shall be acceptable to each of the Consenting Parties.

**1.41** *Consenting Parties* means each of (i) the Debtors, (ii) the Requisite Consenting Lenders, (iii) the Creditors' Committee and (iv) Ivory.

**1.42** *Creditors' Committee* means the statutory committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

**1.43** *Cure Claim* means a Claim based upon any and all amounts payable to a counterparty of an executory contract or unexpired lease at the time such contract or lease is assumed by such Debtor pursuant to section 365(b) of the Bankruptcy Code.

**1.44** *D&O Liability Insurance Policies* means all insurance policies of any of the Debtors for directors', managers' and officers' liability.

**1.45** *Debtors* means Excel Maritime Carriers LLC, Excel Maritime Carriers Ltd., Amanda Enterprises Ltd., Barland Holdings Inc., Candy Enterprises Inc., Castalia Services Ltd., Centel Shipping Company Ltd., Coal Gypsy Shipco LLC, Coal Hunter Shipco LLC, Coal Pride Shipco LLC, Fianna Navigation S.A., Fountain Services Ltd., Grain Express Shipco LLC, Grain Harvester Shipco LLC, Harvey Development Corp., Ingram Ltd., Iron Anne Shipco LLC, Iron Beauty Shipco LLC, Iron Bill Shipco LLC, Iron Bradyn Shipco LLC, Iron Brooke Shipco LLC, Iron Fuzeyya Shipco LLC, Iron Kalypso Shipco LLC, Iron Knight Shipco LLC, Iron Lindrew Shipco LLC, Iron Manolis Shipco LLC, Iron Miner Shipco LLC, Iron Vassilis Shipco LLC, Kirmar Shipco LLC, Liegh Jane Navigation S.A., Lowlands Beilun Shipco LLC, Marias Trading Inc., Ore Hansa Shipco LLC, Pascha Shipco LLC, Point Holdings Ltd., Sandra Shipco

LLC, Santa Barbara Shipco LLC, Snapper Marine Ltd., Tanaka Services Ltd., Teagan Shipholding S.A., Thurman International Ltd., Whitelaw Enterprises Co., and Yasmine International Inc.

**1.46** *Disclosure Statement* means the Disclosure Statement with Respect to this Amended Joint Chapter 11 Plan of Reorganization of Excel Maritime Carriers Ltd. and Certain of its Affiliates which shall be in form and substance acceptable to each of the Consenting Parties.

**1.47** *Disclosure Statement Approval Order* means the order of the Bankruptcy Court in the Chapter 11 Cases approving, among other things, the adequacy of the Disclosure Statement within the meaning of section 1125(a) of the Bankruptcy Code and solicitation procedures related thereto which order shall be in form and substance acceptable to each of the Consenting Parties.

**1.48** *Disputed Claim* means (a) any Claim as to which the Debtors or other parties-in-interest in accordance with applicable law have interposed an objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, or any claim otherwise disputed by the Debtors, the Reorganized Debtors, or other party-in-interest in accordance with applicable law, which objection has not been withdrawn or determined by a Final Order, (b) if there are schedules, any Claim scheduled by the Debtors as contingent, unliquidated, or disputed, (c) any Claim which amends a Claim scheduled by the Debtors as contingent, unliquidated, or disputed, or (d) any Claim prior to it having become an Allowed Claim.

**1.49** *Drag-Along Sale* has the meaning set forth in Section 5.11 below.

**1.50** *DVB* means DVB Bank SE.

**1.51** *Effective Date* means a Business Day on or after the Confirmation Date specified by the Debtors with the consent of each of the Consenting Parties on which (a) no stay of the Confirmation Order is in effect and (b) the conditions to effectiveness set forth in Article VIII hereof have been satisfied or waived.

**1.52** *Eligible Holder* means any Holder of a Claim in Class 8 other than a Holder of a Disputed Claim.

**1.53** *Escrow Agreement* means that certain Escrow Agreement dated March 29, 2012, by and between Excel and Seward & Kissel LLP, as escrow agent, as amended from time to time.

**1.54** *Escrow Funds* means the \$20 million deposited by Ivory with Seward & Kissel LLP pursuant to the terms of the Escrow Agreement.

**1.55** *Estate(s)* means, individually, the estate of any of the Debtors and, collectively, the estates of all of the Debtors created under section 541 of the Bankruptcy Code.

**1.56** *Excel* means Excel Maritime Carriers Ltd., a company incorporated under the laws of Liberia.

**1.57** *Exculpated Claim* means any Claim related to any act or omission in connection with, relating to or arising out of the Debtors' in or out of court restructuring efforts, the Debtors' Chapter 11 Cases, formulation, preparation, dissemination, negotiation or filing of the Disclosure Statement or the Plan, or any contract, instrument, release or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of consummation of the Plan, the administration and implementation of the Plan, including the issuance of Plan securities, or the distribution of property under the Plan or any other related agreement; *provided, however,* that Exculpated Claims shall not include any act or omission that is determined in a Final Order to have constituted willful misconduct, or intentional fraud to the extent imposed by applicable non-bankruptcy law. For the avoidance of doubt, no Cause of Action, obligation or liability expressly preserved by the Plan or the Plan Supplement constitutes an Exculpated Claim.

**1.58** *Exculpated Parties* means the Released Parties.

**1.59** *Exhibit* means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement, as amended, modified or supplemented from time to time.

**1.60** *Final Cash Collateral Order* means that certain Final Order Under 11 U.S.C. §§ 105, 361, 362, 363(c), 363(c), 507 and 552 and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 (I) Authorizing the Debtors to Use Cash Collateral and (II) Granting Adequate Protection entered in these Chapter 11 Cases [Docket No. 133].

**1.61** *Final Order* means an order or judgment, the operation or effect of which has not been reversed, stayed, modified, or amended, and as to which order or judgment (a) the time to appeal, seek certiorari, or request reargument or further review or rehearing has expired and no appeal, petition for certiorari, or request for reargument or further review or rehearing has been timely filed, or (b) any appeal that has been or may be taken or any petition for certiorari or request for reargument or further review or rehearing that has been or may be filed, has been resolved by the highest court to which the order or judgment was appealed, from which certiorari was sought, or to which the request was made, and no further appeal or petition for certiorari or request for reargument or further review or rehearing has been or can be taken or granted.

**1.62** *German Bareboat Charters* means the bareboat charter agreements entered into in respect of the vessels MV Barbara, MV Coal Age, MV Fearless I and MV King Coal, by Excel's non-Debtor Subsidiaries Barbara Shipco LLC, Coal Age Shipco LLC, Fearless Shipco LLC and King Coal Shipco LLC respectively, as such charters were amended, restated or varied from time to time.

**1.63** *German Owners* means (x) the counterparties to the German Bareboat Charters KUNUK Mobiliengesellschaft mbH & Co. KG, JATAGA Mobiliengesellschaft mbH & Co. KG, Sea Class 10 GmbH & Co. KG, Sea Class 9 GmbH & Co. KG, and (y) their successors,

controllers or agents, including but not limited to, (i) KUMAL Schiffahrtbeteiligungen GmbH as successor to JATAGA Mobiliengesellschaft mbH & Co. KG and (ii) Dr. Philip Heinke as liquidator of each of KUNUK Mobiliengesellschaft mbH & Co. KG, KUMAL Schiffahrtbeteiligungen GmbH, Sea Class 10 GmbH & Co. KG, Sea Class 9 GmbH & Co. KG and each of his successors, and (z) their designees or assignees including but not limited to Commerzbank Aktiengesellschaft.

**1.64** *Holdco* means a limited liability company to be formed under the laws of the Republic of the Marshall Islands on or before the Effective Date and to which all the New Common Stock shall be transferred on the Effective Date. Holdco will be an affiliate of the Debtors. The formation and governance documents for Holdco shall be included in the Plan Supplement and shall be acceptable to each of the Consenting Parties.

**1.65** *Holdco LLC Agreement* means the limited liability company operating agreement governing the formation and governance of Holdco, in form and substance satisfactory to each of the Consenting Parties (but including the provisions contained in Section 5.11 of the Plan) and consistent in all material respects with the terms of this Plan and in the form included in the Plan Supplement (or with such other modifications as are satisfactory to each of the Consenting Parties in accordance with such parties' rights as set forth in Section 5.11 of this Plan) (but including the provisions contained in Section 5.11 of the Plan).

**1.66** *Holdco Unit* means the limited liability company equity interests in Holdco.

**1.67** *Holder* means a holder of a Claim or Interest, as applicable.

**1.68** *Impaired* means, when used in reference to a Claim, a Claim that is in a class that is impaired within the meaning of section 1124 of the Bankruptcy Code.

**1.69** *Impaired Excel General Unsecured Claim* means (i) any unsecured Claim or Cause of Action against Excel, other than an Unimpaired Excel General Unsecured Claim or a Claim or Cause of Action that is (a) covered under any of the Debtors' insurance policies, (b) a Trade Claim, (c) held by a Person over whom a United States court could not otherwise exercise personal jurisdiction, provided that the holder of any such Cause of Action properly filed a proof of claim prior to the Bar Date if required pursuant to the Bar Date Order, (d) a Section 510(b) Claim or (e) Secured; and (ii) includes but is not limited to (a) a Bareboat Charter Settlement Claim, (b) a Noteholder Claim, (c) a Syndicate Credit Facility Deficiency Claim, (d) a Swap Claim, and (e) the Robertson Damages Claim. For the avoidance of doubt, Claims held by any insider or affiliate of one or more of the Debtors shall not be treated as Impaired Excel General Unsecured Claims.

**1.70** *Impaired Subsidiary Debtor General Unsecured Claim* means any unsecured Claim or Cause of Action against a Subsidiary Debtor, other than an Unimpaired Subsidiary Debtor General Unsecured Claim, that is (i) held by an insider or affiliate of one or more Subsidiary Debtors or (ii) held by a Person over whom a United States court could exercise personal jurisdiction, and (iii) notwithstanding (i) and (ii) herein, excludes any Claim or Cause of Action that is (a) held by an insider or affiliate of a Subsidiary Debtor and relates to a Subsidiary



Debtor's pre-existing and ordinary course management, employee compensation, consulting or brokerage contracts, (b) covered under any of the Debtors' insurance policies or is held by a Person over whom a United States court could not otherwise exercise personal jurisdiction, provided that such Person properly filed a proof of claim prior to the Bar Date if required pursuant to the Bar Date Order, (c) a Trade Claim, or (d) Secured.

**1.71 *Indemnification Provisions*** means each of the indemnification provisions, agreements or obligations in place as of the Petition Date, whether in the bylaws, certificate of incorporation or other formation documents, board resolutions or employment contracts, for the Debtors and the current and former directors, officers, members, employees, attorneys, other professionals and agents of the Debtors.

**1.72 *Intercompany Claim*** means any Claim held by a Debtor or Non-Debtor affiliate against a Debtor or Non-Debtor affiliate.

**1.73 *Interest*** means the legal, equitable, contractual, and other rights of any Person with respect to any capital stock or other ownership interest in any Debtor, whether or not transferable, and any option, warrant, or right to purchase, sell, or subscribe for an ownership interest or other equity security in any Debtor.

**1.74 *Ivory*** means Ivory Shipping Inc.

**1.75 *Ivory Investment*** means Ivory's contribution of no less than \$25 million and up to \$35 million in cash to Reorganized Excel, subject to reduction on account of the Co-Investment Rights as described in Section 5.4 below.

**1.76 *Ivory Subscription Rights*** means (i) to the extent applicable Eligible Holders do not fully exercise the Tranche A Subscription Rights (including oversubscription rights related thereto) and 4(a)(2) Subscription Rights, Ivory's right to purchase shares equal to the number of unsubscribed 4(a)(2) Offered Shares, and (ii) Ivory's right to purchase shares equal to the number of unsubscribed Tranche B Offered Shares. Ivory will receive a subscription agreement in relation to the Ivory Subscription Rights, in a form to be agreed by the Consenting Parties that will be no more restrictive or adverse than the 4(a)(2) Subscription Agreements, at a later date.

**1.77 *Lien*** has the meaning set forth in section 101(37) of the Bankruptcy Code.

**1.78 *Loan Documents*** means the "Loan Documents" as defined in the Syndicate Credit Facility.

**1.79 *Majority Interest Holders*** has the meaning set forth in Section 5.11 below.

**1.80 *Management Incentive Plan*** means the management incentive plan to be implemented by Reorganized Excel pursuant to Section 5.12 below with terms acceptable to each of the Consenting Parties and which also shall be included in the Plan Supplement.

**1.81** *New Common Stock* means the common stock of Reorganized Excel.

**1.82** *Non-Tax Priority Claim* means a Claim, other than an Administrative Claim or Priority Tax Claim, which is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code.

**1.83** *Noteholder Claims* means all Claims against Excel of Holders of 1.875% unsecured senior convertible notes issued by Excel pursuant to that certain indenture dated October 10, 2007 with Deutsche Bank Trust Company Americas as indenture trustee.

**1.84** *Oaktree* means certain investment funds and accounts managed by Oaktree Capital Management, L.P. and certain of its affiliates, in their capacity as Secured Lenders.

**1.85** *Offered Shares* means the Tranche A Offered Shares and Tranche B Offered Shares, and to the extent applicable, the 4(a)(2) Offered Shares, representing in the aggregate 2.9% of the New Common Stock to be offered for sale at an aggregate purchase price of \$10.0 million in cash (based on a total post-money equity value of \$330 million) to the applicable Eligible Holders pursuant to the Co-Investment Rights.

**1.86** *Other Secured Claims* means all Secured Claims other than a Syndicate Credit Facility Secured Claim.

**1.87** *Person* means a "person" as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, corporation, general or limited partnership, limited liability company, joint venture, joint stock company, firm, trust, estate, unincorporated organization, association, government, governmental agency, or other entity, in each case whether acting in an individual, fiduciary or other capacity.

**1.88** *Petition Date* means, with respect to a Debtor, the date on which such Debtor filed its petition for relief commencing its Chapter 11 Case.

**1.89** *Plan* means this chapter 11 plan of reorganization, including the Exhibits and all supplements, appendices, and schedules hereto, either in its current form or as the same may be amended, modified or supplemented from time to time with the consent of the Consenting Parties.

**1.90** *Plan Supplement* means the compilation of documents, schedules and exhibits to the Plan to be filed by the Debtors, including any exhibits to the Plan to the extent not attached to the Plan, and including the Amended and Restated Senior Secured Credit Facility, Holdco formation and governance documents, the identity of the members of the new board of directors of Reorganized Excel, a summary of the terms of the Management Incentive Plan and the Rejected Executory Contract and Unexpired Lease List, which shall be filed at least four business days prior to the Voting Deadline (except for the Holdco LLC Agreement, which shall be filed by January 7, 2014) and shall, with the exception of the identity of the members of the new board of directors of Reorganized Excel, be in form and substance satisfactory to each of the Consenting Parties (or with such other modifications as are satisfactory to each of the Consenting Parties).

**1.91 *Plan Term Sheet*** means that term sheet, attached hereto as Exhibit B, for restructuring of the Debtors executed by each of the Consenting Parties as of November 22, 2013, including certain Secured Lenders and certain Holders of Noteholder Claims that executed such term sheet in their capacity as creditors of Excel.

**1.92 *Primary Equity*** means the New Common Stock to be issued to the Secured Lenders, the Holders of Allowed Impaired Excel General Unsecured Claims, and Ivory, prior to dilution on account of the Co-Investment Rights.

**1.93 *Priority Tax Claim*** means a Claim of a governmental unit of the kind specified in sections 502(i), 507(a)(8), or 1129(a)(9)(D) of the Bankruptcy Code.

**1.94 *Pro Rata*** means a proportional share, so that the ratio of the amount of property distributed on account of an Allowed Claim in a class is the same as the ratio such Claim bears to the total amount of all Claims in such class.

**1.95 *Professional*** means (a) any professional employed in the Chapter 11 Cases pursuant to sections 327, 328, or 1103 of the Bankruptcy Code or otherwise and (b) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

**1.96 *Professional Fee Claim*** means an Administrative Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses, or other charges incurred on or after the Petition Date and prior to and including the Effective Date.

**1.97 *Reinstated*** means (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim so as to leave such Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code; *provided, however*, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, and affirmative covenants regarding corporate existence, prohibiting certain transactions, change of control or actions contemplated by this Plan, or conditioning such transactions or actions on certain factors, shall not be required to be cured to achieve reinstatement, *provided further* that the Debtors may in consultation with the other Consenting Parties, at their option, satisfy their obligations to the holder of a Secured Claim that has been Reinstated by surrendering the property that is security for such a claim at the time such Reinstated Claim matures or otherwise comes due.

**1.98 *Rejected Executory Contract and Unexpired Lease List*** means the list (as may be amended) to be included in the Plan Supplement of executory contracts and unexpired leases that will be rejected pursuant to section 365 of the Bankruptcy Code, which shall be acceptable to the Consenting Parties.

**1.99 *Released Parties*** means (a) the Debtors, (b) Argon S.A., Boston Industries S.A., Starling Trading Co, Jake Trading Inc., Tanew Holdings Inc., Lhada Holdings Inc., and Ivory; (c) the Administrative Agent, in its capacity as such, (d) the Steering Committee and its members, in their capacity as such, (e) the Creditors' Committee and its members, in their

capacity as such; (f) the Secured Lenders, in their capacity as such, and (g) with respect to each of the foregoing persons in clauses (a) through (f), such Persons' subsidiaries, affiliates, members, officers, directors, agents, financial advisors, accountants, investment bankers, consultants, attorneys, employees, partners, affiliates and representatives, in each case, only in their capacity as such.

**1.100 *Reorganized*** means, with respect to a Debtor, the successor to such Debtor on and after the Effective Date.

**1.101 *Reorganized Excel*** means Excel on and after the Effective Date.

**1.102 *Requisite Consenting Lenders*** means Secured Lenders holding more than two thirds in amount of the Syndicate Credit Facility Claims.

**1.103 *Retained Actions*** means all claims, causes of action, rights of action, suits and proceedings, whether in law or in equity, whether known or unknown, which any Debtor, any Debtor's Estate, or any Reorganized Debtor may hold against any Person, including, without limitation, (a) claims and causes of action brought prior to the Effective Date, (b) claims and causes of action against any Persons for failure to pay for products or services provided or rendered by any of the Debtors or Reorganized Debtors, (c) claims and causes of action relating to strict enforcement of any of the Debtors' or Reorganized Debtors' intellectual property rights, including patents, copyrights and trademarks, (d) claims and causes of action seeking the recovery of any of the Debtors' or the Reorganized Debtors' accounts receivable or other receivables or rights to payment created or arising in the ordinary course of any of the Debtors' or the Reorganized Debtors' businesses, including, without limitation, claim overpayments and tax refunds, and (e) all Avoidance Actions; *provided, however*, that Retained Actions shall not include those claims, causes of action, rights of action, suits and proceedings, whether in law or in equity, whether known or unknown, released under Article IX herein.

**1.104 *Rights Offering Procedures*** means the procedures for implementing the Co-Investment Rights which procedures shall be acceptable to each of the Consenting Parties and which are attached hereto as Exhibit A.

**1.105 *RMI*** means Robertson Maritime Investors, LLC.

**1.106 *Robertson Damages Claim*** means the claim for damages filed by RMI against all Debtors in connection with the transfer of membership interests in Christine Shipco from an affiliate of Excel to Excel and from Excel to an affiliate of Excel.

**1.107 *Section 510(b) Claim*** means any Claim of the type described in section 510(b) of the Bankruptcy Code.

**1.108 *Section 1145 Stipulated Value*** means \$36 million, which amount is stipulated to among the Consenting Parties solely for purposes of compliance with section 1145 of the Bankruptcy Code by Holders of Class 8 – Impaired Excel General Unsecured Claims other than Holders of Syndicate Credit Deficiency Claims, and solely in connection with the Co-Investment Rights.

**1.109 Secured** means, when referring to a Claim, (a) secured by a Lien on property in which the Estate of a Debtor against which the Claim is asserted has an interest, which Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, to the extent of the value of the creditor's interest in the Estate's interest in such property as determined pursuant to section 506(a) of the Bankruptcy Code; (b) subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the property subject to setoff; or (c) otherwise Allowed pursuant to the Plan as a Secured Claim.

**1.110 Secured Lenders** means those lenders party to the Syndicate Credit Facility from time to time and their affiliates holding Syndicate Credit Facility Claims.

**1.111 Securities Act** means the Securities Act of 1933, as amended, and the rules and regulations promulgated pursuant thereto.

**1.112 Steering Committee** means that certain steering committee of Secured Lenders.

**1.113 Stipulated Cash Collateral Order** means that Stipulation and Consent Order (I) Authorizing the Debtors to Continue to Use Cash Collateral and (II) Granting Adequate Protection entered on November 25, 2013 [Docket No. 442].

**1.114 Subscription Agent** means Donlin, Recano & Company, Inc.

**1.115 Subscription Agreements** means one or more agreements to be entered into by and between Excel and an Eligible Holder pursuant to which such Eligible Holder exercises its applicable Subscription Rights, and which include the 1145 Subscription Agreement and 4(a)(2) Subscription Agreement, as applicable, each of which shall be in form and substance acceptable to each of the Consenting Parties.

**1.116 Subscription Rights** means the non-transferable, non-certificated subscription rights to purchase Offered Shares in connection with the Co-Investment Rights on the terms and subject to the conditions set forth in this Plan, the Rights Offering Procedures and the Subscription Agreements.

**1.117 Subsidiary Debtors** means each of the Debtors other than Excel.

**1.118 Swap Claims** means all Claims of counterparties to the Unsecured Swaps.

**1.119 Syndicate Credit Facility** means that certain Senior Secured Credit Facility, dated as of April 14, 2008 as amended by Amendment No. 1 to Senior Secured Credit Facility, dated as of March 31, 2009, as further amended by Amendment No. 2 to Senior Secured Credit Facility, dated as of June 1, 2010, as further amended by Amendment No. 3 to Senior Secured Credit Facility, dated as of December 23, 2010, as further amended by Amendment No. 4 to Senior Secured Credit Facility, dated as of July 22, 2011, as further amended by Amendment No. 5 to Senior Secured Credit Facility, dated as of March 30, 2012, as corrected by Immaterial Error Correction, dated as of August 21, 2012, as further amended by Amendment No. 6 to Senior Secured Credit Facility, dated as of September 30, 2012, as further amended by

Amendment No. 7 to the Senior Secured Credit Facility, dated as of December 31, 2012, as further amended by Amendment No. 8 to the Senior Secured Credit Facility, dated as of January 31, 2013, as further amended by Amendment No. 9 to the Senior Secured Credit Facility, dated as of February 28, 2013, as further amended by Amendment No. 10 to the Senior Secured Credit Facility, dated as of March 31, 2013, as further amended by Amendment 11 to the Senior Secured Credit Facility, dated as of April 30, 2013, and as otherwise amended, modified or supplemented from time to time.

**1.120 *Syndicate Credit Facility Claims*** means the Claims held by the Secured Lenders, including any Syndicate Credit Facility Deficiency Claim and Syndicate Credit Facility Secured Claims.

**1.121 *Syndicate Credit Facility Deficiency Claim*** means the unsecured Claim arising under the Syndicate Credit Facility or the Loan Documents. For the avoidance of doubt, the Consenting Parties reserve all rights with respect to the amount, if any, and treatment of a Syndicate Credit Facility Deficiency Claim, if any, held by the Secured Lenders for all other purposes including, but not limited to, voting on and receiving distributions, in each case with respect to any plan of reorganization that is not consistent with the plan of reorganization described in the Plan Term Sheet.

**1.122 *Syndicate Credit Facility Secured Claims*** means any Secured Claims arising under the Syndicate Credit Facility or the Loan Documents.

**1.123 *Trade Claims*** means all unsecured claims arising from the provision of goods, materials or services by trade vendors and service providers, including commissions related thereto, incurred by the Debtors in the ordinary course of the Debtors' business.

**1.124 *Tranche A Offered Shares*** means 307,692 shares of New Common Stock, representing 1.5% of all New Common Stock to be offered to Eligible Holders at an offering price of \$16.25 per share or a total purchase price of \$5.0 million.

**1.125 *Tranche A Subscription Rights*** means the first \$5.0 million of the Co-Investment Rights.

**1.126 *Tranche B Offered Shares*** means 289,872 shares of New Common Stock, representing 1.4% of all New Common Stock to be offered to Eligible Holders at an offering price of \$17.25 per share or a total purchase price of \$5.0 million.

**1.127 *Tranche B Subscription Rights*** means the second \$5.0 million of the Co-Investment Rights.

**1.128 *Unimpaired*** means a Claim or Interest that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

**1.129 *Unimpaired Excel General Unsecured Claim*** means any unsecured Claim or Cause of Action against Excel that is not a Christine Shipco Facility Secured Guaranty Claim, Impaired Excel General Unsecured Claim, Other Secured Claim, Priority Non-Tax Claim, Section 510(b) Claim, or Syndicate Credit Facility Claim and includes, among other

things, (i) Trade Claims, (ii) any Cause of Action to the extent such Cause of Action (x) is covered under any of the Debtors' insurance policies or (y) is held by a Person over whom a United States court could not otherwise exercise personal jurisdiction, provided that the holder of any such Cause of Action properly filed a proof of claim prior to the Bar Date if required pursuant to the Bar Date Order, and (iii) any Claim or Cause of Action held by an insider or affiliate of Excel that relates to Excel's pre-existing and ordinary course management, employee compensation, consulting or brokerage contracts.

**1.130 *Unimpaired Subsidiary Debtor General Unsecured Claim*** means any unsecured Claim or Cause of Action against a Subsidiary Debtor that is not an Impaired Subsidiary General Unsecured Claim, Other Secured Claim, Priority Non-Tax Claim or Syndicate Credit Facility Claim and includes, among other Claims, (i) Trade Claims, (ii) any Cause of Action to the extent such Cause of Action (x) is covered under any of the Debtors' insurance policies or (y) is held by a Person over whom a United States court could not otherwise exercise personal jurisdiction, provided that the holder of any such Cause of Action properly filed a proof of claim prior to the Bar Date if required pursuant to the Bar Date Order, and (iii) any Claim or Cause of Action held by an insider or affiliate of a Subsidiary Debtor that relates to a Subsidiary Debtor's pre-existing and ordinary course management, employee compensation, consulting or brokerage contracts.

**1.131 *Unsecured Swaps*** means the unsecured interest rate swaps entered into between (a) Excel and Eurobank EFG Private Bank Luxembourg S.A. on March 29, 2011; and (b) Excel and Marfin Popular Bank Public Co. Ltd., Greek Branch on July 11, 2011.

**1.132 *Voting Deadline*** means January 16, 2014 at 4:00 p.m. (Prevailing Eastern Time) unless extended by the Debtors with the consent of the Requisite Consenting Lenders and the Creditors' Committee.

***Rules Of Interpretation And Computation Of Time.*** For purposes of this Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions with any modifications subject to the consent of each of the Consenting Parties; (c) any reference in this Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified, or supplemented pursuant to this Plan; (d) any reference to an entity as a Holder of a Claim or Interest includes that entity's successors and assigns; (e) all references in this Plan to Sections and Articles are references to Sections and Articles of or to this Plan; (f) the words "herein," "hereunder," and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply; (j) "including" means "including without limitation;" and (k) with

reference to any distribution under this Plan, "on" a date means on or as soon as reasonably practicable after that date.

**Exhibits.** All Exhibits are incorporated into and are a part of this Plan as if set forth in full herein, and, to the extent not annexed hereto, such Exhibits shall be filed with the Bankruptcy Court on or after the Petition Date, but in any event, at least four business days prior to the deadline that the Bankruptcy Court sets for parties in interest to file objections to Confirmation, and shall, unless otherwise provided in this Plan, be in form and substance satisfactory to each of the Consenting Parties. Holders of Claims and Interests may obtain a copy of the Exhibits upon written request to the Debtors. Upon their filing, the Exhibits may be inspected (i) in the office of the clerk of the Bankruptcy Court or its designee during normal business hours; (ii) on the Bankruptcy Court's website at <http://www.nysb.uscourts.gov> (registration required) or (iii) at the Debtors' noticing agent's website at [www.donlinrecano.com/EXM](http://www.donlinrecano.com/EXM) at no charge.

## ARTICLE II

### **TREATMENT OF UNCLASSIFIED CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified and are not entitled to vote on this Plan.

**2.1 Administrative Claims.** On, or as soon as reasonably practicable after, the latest of (a) the Effective Date, (b) the date on which an Administrative Claim becomes an Allowed Administrative Claim, or (c) the date on which an Allowed Administrative Claim becomes payable under any agreement relating thereto, each Holder of such Allowed Administrative Claim shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Administrative Claim, Cash equal to the unpaid portion of such Allowed Administrative Claim. Notwithstanding the foregoing, (y) any Allowed Administrative Claim based on a liability incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreement relating thereto and (z) any Allowed Administrative Claim may be paid on such other terms as may be agreed to between the Holder of such Claim and the Debtors in consultation with the other Consenting Parties or the Reorganized Debtors.

**2.2 Priority Tax Claim.** On, or as soon as reasonably practicable after, the later of (a) the Effective Date or (b) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Priority Tax Claim, in the sole discretion of the Debtors, (i) Cash equal to the unpaid portion of such Holder's Allowed Priority Tax Claim, (ii) treatment in any other manner such that such Holder's Allowed Priority Tax Claim shall be paid in accordance with the provisions of section 1129(a)(9)(C) of the Bankruptcy Code, or (iii) such other treatment as to which the Debtors in consultation with the other Consenting Parties or the Reorganized Debtors and such Holder shall have agreed upon in writing.



**2.3 Professional Fees.** Each Professional requesting compensation pursuant to sections 330, 331 or 503(b) of the Bankruptcy Code for services rendered in connection with the Chapter 11 Cases prior to the Effective Date shall file with the Bankruptcy Court an application for allowance of final compensation and reimbursement of expenses in the Chapter 11 Cases on or before the 30<sup>th</sup> day following the Effective Date. Without limiting the foregoing, the Reorganized Debtors may pay the charges incurred by the Reorganized Debtors on and after the Effective Date for any Professional's fees, disbursements, expenses or related support services, without application to or approval by the Bankruptcy Court.

**ARTICLE III**

**CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

**3.1 Introduction.**

The Plan, though proposed jointly, constitutes separate plans proposed by each of the Debtors. Therefore, except as expressly specified herein, the classifications set forth below shall be deemed to apply separately with respect to each Plan proposed by the Debtors. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified, and the respective treatment of such Claims is set forth in Article II of this Plan.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving distributions pursuant to this Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

**3.2 Summary of Classes.**

<b>Class</b>	<b>Claims and Interests</b>	<b>Treatment – Entitlement to Vote</b>
1	Priority Non-Tax Claims; applicable to all Debtors	Unimpaired – Deemed to have accepted this Plan and not entitled to vote.
2	Syndicate Credit Facility Secured Claims; applicable to all Debtors	Impaired – Entitled to vote.
3	Christine Shipco Facility Secured Guaranty Claim; applicable to Excel only	Unimpaired – Deemed to have accepted this Plan and not entitled to vote.
4	Other Secured Claims; applicable to all Debtors	Unimpaired – Deemed to have accepted this Plan and not entitled to vote.
5	There is no Class 5 in this Plan	<i>[reserved]</i>
6	Impaired Subsidiary Debtor General Unsecured Claims	Impaired – Deemed to have rejected this Plan and not entitled to vote.
7	Unimpaired Subsidiary Debtor General Unsecured Claims	Unimpaired – Deemed to have accepted this Plan and not entitled to vote.
8	Impaired Excel General Unsecured Claims	Impaired – Entitled to vote.
9	Unimpaired Excel General Unsecured Claims	Unimpaired – Deemed to have accepted this Plan and not entitled to vote.

10	Section 510(b) Claims; applicable to Excel only	Impaired – Deemed to have rejected this Plan and not entitled to vote.
11	Interests in Excel; applicable to Excel only	Impaired – Deemed to have rejected this Plan and not entitled to vote.
12	Interests in Debtors other than Excel	Unimpaired – Deemed to have accepted this Plan and not entitled to vote.

### 3.3 *Treatment of Classes.*

(a) **Class 1 – Non-Tax Priority Claims.**

1. Impairment and Voting. Class 1 Claims in respect of all Debtors are Unimpaired. Each Holder of an Allowed Non-Tax Priority Claim is not entitled to vote to accept or reject the Plan and shall be conclusively deemed to have accepted the Plan.

2. Distribution. Unless the Holder of any such Claim and the Debtors agree to a different treatment, on the Effective Date, each Holder of an Allowed Non-Tax Priority Claim shall have its Claim paid in full in cash.

(b) **Class 2 – Syndicate Credit Facility Secured Claims**

1. Impairment and Voting. Class 2 Claims in respect of all Debtors are Impaired. Pursuant to section 1126 of the Bankruptcy Code, each Holder of an Allowed Class 2 Syndicate Credit Facility Secured Claim is entitled to vote to accept or reject this Plan.

2. Allowance and Distribution. Upon the Effective Date, the Syndicate Credit Facility Secured Claims shall be Allowed for all purposes in the aggregate amount of \$579 million. On the Effective Date, each Holder of an Allowed Syndicate Credit Facility Secured Claim shall receive, in full and final satisfaction, release, discharge of, and in exchange for, such Syndicate Credit Facility Secured Claim, its Pro Rata share of (a) the Amended and Restated Senior Secured Credit Facility; and (b) 16.7 million shares of New Common Stock, representing 83.3% of all New Common Stock to be issued under this Plan, prior to dilution on account of the Co-Investment Rights.<sup>1</sup>

Additionally, on the Effective Date, the Debtors shall pay the reasonable fees and documented expenses of (i) Oaktree in its capacity as a secured lender, including the fees and expenses of Paul, Weiss, Rifkind, Wharton & Garrison LLP, its counsel, incurred prior to and subsequent to the commencement of the Chapter 11 Cases in connection with the restructuring of the Debtors, (ii) Angelo Gordon in its capacity as a secured lender and primarily related to the negotiation and documentation of corporate governance related to Holdco, up to \$400,000, including those of Wachtell, Lipton, Rosen & Katz, its counsel, and (iii) the Agent for the Syndicate Credit Facility, including those of Blackstone Group International Partners LLP, Freshfields Bruckhaus Deringer US LLP, and Holland & Knight LLP as advisors to the Agent

<sup>1</sup> If fully diluted, such New Common Stock shall represent 82% of all New Common Stock issued under this Plan as set forth in the Plan Term Sheet.

and the Secured Lenders, incurred in connection with the restructuring of the Debtors, to the extent not previously paid in connection with the Final Cash Collateral Order and the Stipulated Cash Collateral Order.

All New Common Stock issued to Holders of Allowed Class 2 Claims pursuant to the Plan shall be deemed to automatically and without the need for any action be contributed to Holdco pursuant to Section 5.7 of the Plan.

(c) **Class 3 – Christine Shipco Facility Secured Guaranty Claim**

1. Impairment and Voting. The Class 3 Claim is Unimpaired, and the Holder of the Allowed Class 3 Claim is conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holder of the Class 3 Claim is not entitled to vote to accept or reject this Plan.

2. Distribution. The Holder of the Class 3 Claim will have such Claim Reinstated on the Effective Date, provided that, with respect to the Class 3 Claim only, the Debtors may not satisfy their obligations thereunder by surrendering the property that is security for the Claim at such time as the Reinstated Claim matures or otherwise comes due. Furthermore, after the Effective Date, the Holder of the Class 3 Claim may exercise any and all of its remedies under the Christine Shipco Facility Guaranty as such Guaranty existed on the Petition Date, except that non-monetary defaults existing prior to the Effective Date will be deemed to be cured, and the Holder of the Class 3 Claim's contractual rights shall be in effect and enforceable as of the Effective Date, including without limitation, with respect to the transactions contemplated under the Plan.

(d) **Class 4 – Other Secured Claims**

1. Impairment and Voting. Class 4 Claims in respect of all Debtors are Unimpaired, and the Holders of Allowed Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan.

2. Distribution. Holders of Class 4 Claims will have such Claims Reinstated on the Effective Date.

(e) **Class 6 – Impaired Subsidiary Debtor General Unsecured Claims**

1. Impairment and Voting. Class 6 Claims are Impaired, and the Holders of Allowed Class 6 Claims are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan.

2. Distribution. Holders of Class 6 Claims shall not receive or retain any property under the Plan on account of such Claims and the obligations of the Debtors and Reorganized Debtors on account of such Claims shall be discharged.

(f) **Class 7 – Unimpaired Subsidiary Debtor General Unsecured Claims**

1. Impairment and Voting. Class 7 Claims are Unimpaired, and the Holders of Allowed Class 7 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 7 Claims are not entitled to vote to accept or reject this Plan.

2. Distribution. Holders of Class 7 Claims will have such Claims Reinstated on the Effective Date.

(g) **Class 8 – Impaired Excel General Unsecured Claims**

1. Impairment and Voting. Class 8 Claims are Impaired. Pursuant to section 1126 of the Bankruptcy Code, each Holder of an Allowed Class 8 Claim is entitled to vote to accept or reject the Plan.

2. Allowance and Distribution. The aggregate amount of the Syndicate Credit Facility Deficiency Claims shall be either \$179.8 million, if the Adequate Protection Payment is made on or before January 2, 2014, or \$185,930,760.71, if the Adequate Protection Payment is not made by Excel on or before January 2, 2014, and shall be Allowed solely for voting purposes in such applicable amount in connection with the Plan and such claims shall be, subject to the next sentence, included within the class of Impaired Excel General Unsecured Claims (for the avoidance of doubt, subject to the next sentence, the Holders of Syndicate Credit Facility Claims, on account of and to the extent of the Syndicate Credit Facility Deficiency Claims, shall have all of the rights belonging to the Holders of Class 8 Claims including, without limitation, all rights to distributions and the Co-Investment Rights). The Consenting Parties reserve all rights with respect to the amount, if any, and treatment of a Syndicate Credit Facility Deficiency Claim, if any, held by the Secured Lenders for all other purposes including, but not limited to, voting on and receiving distributions, in each case with respect to any plan of reorganization that is not consistent with the plan of reorganization described in the Plan Term Sheet. On the Effective Date, and immediately prior to the transfer of the New Common Stock to Holdco and the issuance of the Holdco Units in accordance with Section 5.7 hereof, each Holder of an Allowed Impaired Excel General Unsecured Claim will receive, in full and final satisfaction, release, discharge of, and in exchange for, such Allowed Impaired Excel General Unsecured Claim, (a) its Pro Rata share of 1.6 million shares of New Common Stock, representing 8.0% of the New Common Stock to be issued under this Plan, subject to dilution on account of the Co-Investment Rights and (b) its Pro Rata share of the Tranche A Offered Shares and Tranche B Offered Shares subscribed for pursuant to such Holders' Co-Investment Rights.

For purposes of this Plan, the claims held by holders of Excel's 1.875% unsecured convertible senior notes will be allowed on the Effective Date in the amount of \$152,005,566.41 on account of unpaid principal and interest due and owing as of the Petition Date (but, for the avoidance of doubt, excluding the Administrative Claims of Christiana Trust as indenture trustee, including with respect to the fees and expenses of Moses & Singer, of up to \$450,000). The Consenting Parties reserve all rights with respect to the amount of claims held by holders of Excel's 1.875% unsecured convertible senior notes for all other purposes including, but not limited to, voting on and receiving distributions, in each case with respect to any plan of

reorganization that is not consistent with the plan of reorganization described in the Plan Term Sheet.

Holders of Allowed Class 8 Claims may exercise their Co-Investment Rights pursuant to two separate rights offerings: the 1145 Rights Offering and 4(a)(2) Rights Offering. The Co-Investment Rights pursuant to the 1145 Rights Offering shall be split into two \$5.0 million tranches. The Tranche A Subscription Rights shall dilute pro rata the Primary Equity. Each Holder of an Allowed Impaired Excel General Unsecured Claim shall have the right to subscribe for any unsubscribed portion of the Tranche A Offered Shares up to the full amount of the Tranche A Subscription Rights subject to Pro Rata reduction to the extent the Tranche A Subscription Rights are oversubscribed and the individual limits on oversubscription described below, if applicable.

The Tranche B Subscription Rights shall reduce the Ivory Investment on a dollar-for-dollar basis. Ivory shall have the exclusive right to purchase shares equal to the number of unsubscribed Tranche B Offered Shares with respect to the full amount of the Tranche B Subscription Rights.

Each Holder's aggregate Tranche A Subscription Rights (including oversubscription rights related thereto), when taken together with such Holder's Tranche B Subscription Rights, shall be limited to 75% of such Holder's Pro Rata portion of the Section 1145 Stipulated Value. This limit does not apply to the 4(a)(2) Rights Offering.

Additionally, Holders of Allowed Class 8 Claims who are Accredited Investors, and who timely return an Accredited Investor Questionnaire to the Subscription Agent pursuant to the Rights Offering Procedures, will have the opportunity to participate in the 4(a)(2) Rights Offering. Notwithstanding anything to the contrary in the Plan, (i) upon the completion of the 1145 Rights Offering and 4(a)(2) Rights Offering, Ivory shall have the exclusive right to purchase shares equal to the number of 1145 Offered Shares and 4(a)(2) Offered Shares remaining unsubscribed pursuant to section 4(a)(2) of the Securities Act and (ii) in no event shall the fact that the Co-Investment Rights are being offered pursuant to two rights offerings diminish Ivory's right to purchase up to 10.1% of the New Common Stock, subject to the rights of Holders of Impaired Excel General Unsecured Claims to exercise their Co-Investment Rights.

Holders of Syndicate Credit Facility Deficiency Claims shall have all of the rights belonging to the Holders of Allowed Impaired Excel General Unsecured Claims under this Plan including, without limitation, all rights to distributions and the Co-Investment Rights. If the class of Impaired Excel General Unsecured Claims votes to accept the Plan, then on the Effective Date, the Holders of Syndicate Credit Facility Deficiency Claims shall be deemed automatically and without the need for any action to have waived their entitlement to any distributions of Primary Equity and the Co-Investment Rights on account of their Syndicate Credit Facility Deficiency Claims, and the other Holders of Allowed Impaired Excel General Unsecured Claims Pro Rata participation in the Co-Investment Rights and distributions of Primary Equity shall be increased accordingly.

All New Common Stock issued to Holders of Allowed Class 8 Claims pursuant to the Plan and the exercise of the Co-Investment Rights shall be deemed automatically and without the need for any action to be contributed to Holdco pursuant to Section 5.7 of the Plan.

(h) **Class 9 – Unimpaired Excel General Unsecured Claims**

1. Impairment and Voting. Class 9 Claims are Unimpaired, and the Holders of Allowed Class 9 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 9 Claims are not entitled to vote to accept or reject this Plan.

2. Distribution. Holders of Class 9 Claims will have such Claims Reinstated on the Effective Date.

(i) **Class 10 – Section 510(b) Claims**

1. Impairment and Voting. Class 10 Claims against Excel are Impaired, and the Holders of Allowed Class 10 Claims are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the Holders of Class 10 Claims against Excel are not entitled to vote to accept or reject this Plan.

2. Distribution. The Holders of Section 510(b) Claims shall not receive or retain any property under the Plan on account of such Section 510(b) Claims and the obligations of the Debtors and Reorganized Debtors on account of Section 510(b) Claims shall be discharged.

(j) **Class 11 – Interests in Excel**

1. Impairment and Voting. Class 11 Interests in Excel are Impaired, and the Holders of Allowed Class 11 Interests are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the Holders of Class 11 Interests in Excel are not entitled to vote to accept or reject this Plan.

2. Distribution. On the Effective Date, all Interests in Excel shall be deemed to be cancelled automatically without further action by the Debtors or Reorganized Debtors and the obligations of the Debtors and Reorganized Debtors thereunder shall be discharged. Holders of Interests in Excel shall not receive or retain any property under the Plan on account of such Interests.

(k) **Class 12 – Interests in Debtors Other than Excel**

1. Impairment and Voting. Class 12 Interests in respect of all Debtors other than Excel are Unimpaired, and the Holders of Allowed Class 12 Interests are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 12 Interests in Debtors Other than Excel are not entitled to vote to accept or reject this Plan.

2. Distribution. Holders of Class 12 Interests will have such Interests Reinstated on the Effective Date.

**3.4 Intercompany Claims.** On the Effective Date, all Intercompany Claims shall, at the election of Excel, be either (a) Reinstated, (b) released, waived, and discharged, or (c) contributed to, or dividended to, the capital of the obligor.

**3.5 *Special Provision Regarding Unimpaired Classes of Claims.*** Except as otherwise provided in this Plan, nothing shall affect the Debtors' or the Reorganized Debtors' rights and defenses, both legal and equitable, with respect to any Claims in Unimpaired Classes, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs against or recoupments of Claims in Unimpaired Classes.

## ARTICLE IV

### ACCEPTANCE OF THIS PLAN

**4.1 *Classes Entitled to Vote.*** Classes 2 and 8 are Impaired and entitled to vote to accept or reject this Plan. Classes 1, 3, 4, 7, 9, and 12 are Unimpaired and, therefore, are not entitled to vote. Classes 6, 10 and 11 are deemed to have rejected this Plan and are not entitled to vote.

**4.2 *Elimination of Classes.*** To the extent applicable, any Class that does not contain any Allowed Claims or any Claims temporarily allowed for voting purposes under Bankruptcy Rule 3018, as of the date of the commencement of the Confirmation Hearing, shall be deemed to have been deleted from this Plan for purposes of (a) voting to accept or reject this Plan and (b) determining whether it has accepted or rejected this Plan under section 1129(a)(8) of the Bankruptcy Code.

**4.3 *Cramdown.*** The Debtors reserve the right to request confirmation of this Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code.

## ARTICLE V

### MEANS FOR IMPLEMENTATION OF THIS PLAN

**5.1 *Continued Legal Existence.*** Except as otherwise provided for in this Plan, each of the Debtors will continue to exist after the Effective Date as a separate legal entity, with all the powers of such an entity under applicable law in the jurisdiction in which each applicable Debtor is organized, incorporated or otherwise formed and pursuant to such Debtor's articles of organization or formation, operating agreement and other organizational documents in effect as of the Effective Date (provided that such organizational documents shall be amended to prohibit the Reorganized Debtors from issuing non-voting equity securities to the extent necessary to comply with section 1123(a) of the Bankruptcy Code).

**5.2 *Officers and Directors of Holdco and Reorganized Excel.*** On the Effective Date, each of the members of the existing board of directors of Excel shall be deemed to have resigned in such capacity. The Debtors' businesses will continue to be managed, as of the Effective Date, by existing management. Mr. Gabriel Panayotides shall serve as Chief Executive Officer of Reorganized Excel. From the Effective Date until the date that is two years after the Effective Date, the board of directors of Holdco (the "Board") shall consist of seven members, and shall be constituted as follows: (a) Oaktree shall have the right to designate three members of the Board; (b) Angelo Gordon shall have the right to designate two members of the

Board, one of which designees shall be subject to the consent of Oaktree (such consent not to be unreasonably withheld); and (c) the current board of directors of the Debtors shall have the right to designate two members of the Board. At least four business days prior to the Voting Deadline, Excel will file a notice with the Bankruptcy Court designating the members of the boards of directors of Holdco and Reorganized Excel who will be appointed automatically without any requirement of further action by stockholders, members, creditors, directors, or managers of the Debtors, the Reorganized Debtors or Holdco. Such notice shall also include compensation, if any, to be paid to the members of the boards of directors of Holdco and Reorganized Excel to the extent such compensation, if any, has been determined at that time. Current Excel director Apostolos Kontoyannis shall be paid a performance bonus of \$350,000 on the Effective Date.

**5.3 *Officers of Reorganized Debtors.*** Subject to Section 5.2 above, all officers of the Debtors in office as of the Effective Date will continue in office after the Effective Date until and unless removed by the applicable Reorganized Debtors' board of directors to be appointed as soon as practicable after the Effective Date, subject to any restrictions imposed under this Plan or any agreements executed in connection with implementation of this Plan.

**5.4 *Ivory Investment.*** On the Effective Date, Ivory will (1)(x) contribute to Excel at least \$5 million and up to an additional \$10 million in cash, subject to the exercise of the Co-Investment Rights and the Ivory Subscription Rights and (y) release all of its claims to and waive all of its rights in respect of the Escrow Funds; and (2) agree to a settlement (as set forth herein) of Adversary Case No. 13-08338. In exchange for the foregoing, Ivory shall receive 1,739,231 shares of New Common Stock, representing up to 8.7% of the New Common Stock, subject to dilution and reduction, as applicable, on account of the Co-Investment Rights and without taking into account Ivory's right to purchase shares equal to the number of shares not taken up by holders of Class 8 Claims pursuant to the Co-Investment Rights. All New Common Stock issued to Ivory, including any New Common Stock issued pursuant to the oversubscription rights described in Section 3.3(g) above, shall be exempt from registration under Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder.

**5.5 *Compromise and Settlement of Adversary Case No. 13-08338.*** Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for Ivory's (x) settlement and release of all of its claims to and waiver of all of its rights in respect of the Escrow Funds, and (y) contribution to Excel of at least \$5 million and up to an additional \$10 million in cash (subject to the exercise of the Co-Investment Rights and the Ivory Subscription Rights), the provisions of the Plan, including the Ivory Investment, shall constitute a good faith compromise and settlement of Adversary Case No. 13-08338, including all claims, interests and controversies relating to the Escrow Funds, and any and all claims and Causes of Action related thereto against Ivory, and its affiliates, members, officers, directors, agents, financial advisors, accountants, investment bankers, consultants, attorneys, employees, partners, and representatives. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of Adversary Case No. 13-08338, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates and Holders of Claims and Interests and is fair, equitable and reasonable.



**5.6 *Compromise and Settlement of Dispute with RMI.*** Pursuant to Bankruptcy Rule 9019 and in consideration for RMI's (i) waiver of all objections to confirmation of the Plan, (ii) waiver of any purported right to participate or share in any distributions to be made under the Plan, including any distributions on account of the Co-Investment Rights, (iii) withdrawal of all of RMI's proofs of claims filed against the Debtors in these Chapter 11 Cases, (iv) acknowledgment that, on and after the Effective Date, the right of first offer contained in the Christine Shipco LLC Agreement shall not be triggered in the case of a transfer of all or any part of the interest of a member of Christine Shipco to an affiliate of the transferring member, and (v) acknowledgement that Christine Holdings is the second member of Christine Shipco, on and as of the Effective Date, the Debtors, the Reorganized Debtors, the Estates and non-Debtor affiliates, including without limitation Christine Shipco and Christine Holdings and RMI and its affiliates (collectively, the "RMI Settlement Parties") agree as follows:

(a) each of the Debtors, the Reorganized Debtors, the Estates and non-Debtor affiliates, including without limitation Christine Shipco and Christine Holdings shall be deemed to release and discharge RMI from any and all Claims and Causes of Action, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, the Reorganized Debtors, the Estates or non-Debtor affiliates, including without limitation Christine Shipco and Christine Holdings, would have been legally entitled to assert, based on or relating to, or in any manner arising from, in whole or in part, the Christine Shipco LLC Agreement including any alleged breaches thereof, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date;

(b) RMI and its affiliates shall be deemed to release and discharge the Debtors, the Reorganized Debtors, the Estates and non-Debtor affiliates, including without limitation Christine Shipco and Christine Holdings, from any and all Claims and Causes of Action, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that RMI would have been legally entitled to assert, based on or relating to, or in any manner arising from, in whole or in part, the Christine Shipco LLC Agreement including any alleged breaches thereof, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date;

(c) the RMI Settlement Parties shall be deemed to acknowledge and agree that the right of first offer contained in the Christine Shipco LLC Agreement shall be in full force and effect on and after the Effective Date, provided that such right of first offer shall not be triggered in case of a transfer of all or any part of a member's interest to an affiliate of the transferring member, provided further that the transferring member gives ten (10) business days prior written notice of such transfer to the non-transferring member; and

(d) the RMI Settlement Parties have agreed to certain changes to member distributions and the corporate governance of Christine Shipco. Certain of these

changes remain subject to DVB's consent, and as a result, such changes will be ratified when and if such consent is obtained. The RMI Settlement Parties shall use their reasonable good-faith efforts to obtain DVB's consent to such changes post-confirmation.

The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement between the Debtors and RMI, as well as a finding by the Bankruptcy Court that such compromise and settlement is in the best interests of the Debtors, their Estates and Holders of Claims and Interests and is fair, equitable and reasonable.

**5.7 Co-Investment Rights.** Pursuant to and in accordance with the Rights Offering Procedures and the Subscription Agreements, each Eligible Holder shall receive Subscription Rights to subscribe for (i) the Tranche A Offered Shares at an offering price equal to \$16.25 per share, (ii) the Tranche B Offered Shares at an offering price equal to \$17.25 per share, and (iii) to the extent applicable, with respect to Eligible Holders who are Accredited Investors, the 4(a)(2) Offered Shares, at an offering price equal to \$16.25 per share. On, or as soon as reasonably practicable after, the Effective Date, the Reorganized Debtors will distribute the applicable Offered Shares purchased by each Eligible Holder that has properly exercised its applicable Subscription Rights in accordance with the delivery instructions set forth in such Eligible Holder's applicable Subscription Agreements.

Secured Lenders, Holders of Allowed Impaired Excel General Unsecured Claims and Ivory shall not be required to execute the Holdco LLC Agreement before receiving their respective distributions of Holdco Units under the Plan; any such Persons who do not execute the Holdco LLC Agreement shall be automatically deemed to have accepted the terms of the Holdco LLC Agreement (in their capacity as members of Holdco) and to be parties thereto without further action. The Holdco LLC Agreement shall be adopted on the Effective Date and shall be deemed to be valid, binding, and enforceable in accordance with its terms, and each holder of Holdco Units shall be bound thereby.

**5.8 Transfer of New Common Stock to Holdco and Issuance of Holdco Units.** On the Effective Date, and immediately after the issuance of the New Common Stock under the Plan, all holders of New Common Stock shall be deemed to have transferred their shares of New Common Stock to Holdco automatically pursuant to the terms of this Plan and without further action required. Subject to the terms herein, the Secured Lenders, the Holders of Allowed Impaired Excel General Unsecured Claims and Ivory shall receive Holdco Units in the same percentages as they held New Common Stock in Reorganized Excel on the Effective Date after the exercise of the Co-Investment Rights.

**5.9 Section 1145 Exemption and Section 4(a)(2) Exemptions.** Pursuant to section 1145 of the Bankruptcy Code, the issuance and allocation of New Common Stock as Primary Equity to the Secured Lenders and the Holders of Allowed Impaired Excel General Unsecured Claims and any 1145 Offered Shares issued to the Holders of Allowed Impaired Excel General Unsecured Claims pursuant to the 1145 Subscription Rights, and the issuance of Holdco Units pursuant to Section 5.8 of the Plan in exchange for such shares and 1145 Offered Shares, shall be exempt from registration under the Securities Act without further act or action by any Person, and from any state or local law requiring registration for offer or sale of a security.

The Section 1145 exemption will not apply to any securities issued under the 4(a)(2) Rights Offering or to Ivory under the Plan. Securities issued pursuant to the 4(a)(2) Rights Offering or to Ivory will be issued pursuant to an exemption under section 4(a)(2) of the Securities Act, and may not be transferred or resold absent registration or exemption under the Securities Act or any applicable state securities law.

**5.10 Available Information.** Reorganized Excel shall make available on its website (including to prospective transferees) (i) unaudited quarterly and audited annual financial statements, on a timely basis, and (ii) to the extent not covered by (i), such information as is provided to the lenders under the Amended and Restated Senior Secured Credit Facility; provided that Reorganized Excel's obligation to provide the information described in (i) above shall commence after the first full quarter following the Effective Date.

**5.11 Contractual Transferability & Registration Rights.** The Holdco Units to be issued under the Plan pursuant to Section 5.8 hereof (including in the hands of subsequent transferees), shall be freely transferable without being subject to any right of first offer, right of first refusal, board approval or any other restriction, except for restrictions (i) imposed by applicable securities laws and (ii) on transfers that would cause Reorganized Excel or Holdco to become subject to the reporting obligations under the Securities Exchange Act of 1934. The Holdco LLC Agreement shall provide holders of Holdco Units that are affiliates of Holdco (including, if applicable, Ivory) with customary demand registration rights to sell their Holdco Units, piggy-back registration rights and marketing cooperation covenants; provided that such demand registration right cannot be exercised until the date that is eighteen (18) months after the Effective Date.

**5.12 Minority Protections.** The Holdco LLC Agreement shall contain minority protections with respect to pre-emptive rights, restrictions on affiliate transactions that are not on arms' length terms and certain amendments to the provisions of Holdco's governing documents as described below. The Holdco LLC Agreement shall also provide for the holders of at least 60% of the Holdco Units (the "Majority Interest Holders") to be entitled to drag-along rights in connection with a sale of Holdco to a party unaffiliated with the selling holder(s) (a "Drag-Along Sale"), which drag-along rights shall include, without limitation, an agreement by the holders of Holdco Units to grant a voting proxy to the Majority Interest Holders in connection with such Drag-Along Sale, subject to definitive documentation, including any governance and/or shareholder arrangements among the lenders under the Amended and Restated Senior Secured Credit Facility, which will not have any adverse impact on the minority rights set forth herein. If (i) such Drag-Along Sale is proposed within the first 12 months after the Effective Date and (ii) more than 50% of the fair market value of the consideration to be received by the holders of Holdco Units in such Drag-Along Sale consists of equity securities that are not publicly traded, then the issuer of such equity securities shall adopt corporate governance provisions substantially similar to those contained in the Plan (including, without limitation, the provisions relating to Contractual Transferability set forth in Section 5.11 of the Plan and Available Information set forth in Section 5.10 of the Plan). In the event that holders desire to sell at least 50% of the outstanding Holdco Units in one or a series of related transactions, the other holders of Holdco Units shall have tag-along rights in connection with such sale.

The provisions of the Holdco LLC Agreement set forth herein (including, without limitation, the provisions relating to Contractual Transferability set forth in Section 5.11 and Available Information set forth in Section 5.10) shall not be modified, amended or waived within the first year following the Effective Date, and thereafter shall not be modified, amended or waived without the prior written consent of both (A) holders of a majority of the equity securities in Holdco, excluding for the purposes of such calculation equity securities held by members who are affiliates of Holdco (which shall, for the avoidance of doubt, include on the Effective Date Oaktree and its affiliates and Ivory and its affiliates); and (B) Ivory, if (i) Ivory or its affiliates still own any equity securities of Holdco and (ii) such modification, amendment or waiver has a disproportionately adverse effect on Ivory or its affiliates as compared with the effect on non-affiliate holders of equity securities in Holdco.

**5.13 Management Incentive Plan.** On the Effective Date, the Management Incentive Plan shall become effective without any requirement of further action by stockholders, members, creditors, directors, or managers of the Debtors, the Reorganized Debtors or Holdco. The Management Incentive Plan may dilute the Holdco Units to be distributed under this Plan.

**5.14 Corporate Action.** Each of the matters provided for under this Plan involving the corporate structure of any Debtor, Reorganized Debtor or Holdco or any corporate action to be taken by, or required of, any Debtor, Reorganized Debtor or Holdco shall be deemed to have occurred and be effective as provided herein, and shall be authorized, approved and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by stockholders, members, creditors, directors, or managers of the Debtors, the Reorganized Debtors or Holdco.

Such actions shall include, but are not limited to the following steps which shall occur in the following order to implement the provisions of this Plan:

1. Secured Lenders shall exchange a portion of their Allowed Syndicate Credit Facility Secured Claims for (a) an amount of Amended and Restated Senior Secured Credit Facility, and a portion of their Allowed Syndicate Credit Facility Secured Claims for (b) New Common Stock, all as set forth in Section 3.3(b).
2. Holders of Allowed Impaired Excel General Unsecured Claims shall exchange their Allowed Impaired Excel General Unsecured Claims for (a) the remaining New Common Stock (before the cash subscription described in Step 4 below), and (b) the Co-Investment Rights as provided in Section 3.3(g).
3. The Class 11 Interests in Excel shall be cancelled for no consideration as provided in Sections 3.3(j) and 5.20.
4. Ivory and Holders of Allowed Impaired Excel General Unsecured Claims shall contribute cash to the Company in exchange for New Common Stock pursuant to the Ivory Investment and the Co-Investment Rights as provided in Sections 3.3(g) and 5.4.

5. (A) Secured Lenders shall contribute their New Common Stock (received in Step (1)(b)) to Holdco in exchange for Holdco Units and (B) Ivory and the Holders of Allowed Impaired Excel General Unsecured Claims shall contribute their New Common Stock ((received in Steps 2(a) and 4, as applicable) to Holdco in exchange for Holdco Units, as provided in Section 5.8.

**5.15 *Effectuating Documents; Further Transactions.*** Each of the Debtors and Reorganized Debtors, and their respective officers and designees, is authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions, as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan, or to otherwise comply with applicable law.

**5.16 *Check the Box Election.*** Holdco shall make a check-the-box election on Internal Revenue Service Form 8832 (or successor form) to be treated as a corporation for United States federal income tax purposes, effective on the date of its formation, and in any event, before the Effective Date.

**5.17 *Preservation of Causes of Action.*** In accordance with section 1123(b)(3) of the Bankruptcy Code, the Reorganized Debtors will retain and may (but are not required to) enforce all Retained Actions. After the Effective Date, the Reorganized Debtors, in their sole and absolute discretion, shall have the right to bring, settle, release, compromise, or enforce such Retained Actions (or decline to do any of the foregoing), without further approval of the Bankruptcy Court. The failure of the Debtors to specifically list any claim, right of action, suit, proceeding, or other Retained Action in this Plan or the Disclosure Statement does not, and will not be deemed to, constitute a waiver or release by the Debtors or the Reorganized Debtors of such claim, right of action, suit, proceeding or other Retained Action, and, therefore, no preclusion doctrine, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches will apply to such claim, right of action, suit, proceeding, or other Retained Action upon or after the confirmation or consummation of this Plan.

**5.18 *Exemption From Certain Transfer Taxes and Recording Fees.*** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers from a Debtor to a Reorganized Debtor or to any other Person or entity pursuant to this Plan, or any agreement regarding the transfer of title to or ownership of any of the Debtors' real or personal property, will not be subject to any document recording tax, stamp tax, conveyance fee, sales tax, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, and the Confirmation Order will direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

**5.19 *Dissolution of Creditors' Committee.*** The Creditors' Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code. On the Effective Date, the Creditors' Committee shall be dissolved and the Creditors' Committee's members shall be deemed released

of all their duties, responsibilities, and obligations in connection with the Chapter 11 Cases or this Plan and its implementation, and the retention or employment of the Creditors' Committee's attorneys, accountants, professionals, and other agents shall terminate, except with respect to (i) all Professional Fee Claims, (ii) any appeals of the Confirmation Order and (iii) any other matters to which the Creditors' Committee is a party on or before the Effective Date.

**5.20 Cancellation of Existing Securities and Agreements.** Except as provided in this Plan or in the Confirmation Order, or for the purpose of evidencing a right to distribution hereunder or a contractual right to indemnification or reimbursement of the Administrative Agent, on the Effective Date, (i) all indentures, notes, stock, bonds, purchase rights, instruments, guarantees, certificates, warrants, options, puts, agreements (including registration rights agreements), and other documents evidencing or giving rise to Claims and Interests against and in the Debtors shall be canceled, and the obligations of the Debtors thereunder or in any way related thereto shall be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote, or other approval or authorization by any Person; *provided, however,* notwithstanding Confirmation or the occurrence of the Effective Date, any such indenture, guarantee, or agreement that governs the rights of the Holder of a Claim shall continue in effect solely for purposes of (a) allowing Holders of Syndicate Credit Facility Secured Claims and Impaired Excel General Unsecured Claims to receive distributions under the Plan as provided herein; *provided further, however,* that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order or the Plan, or result in any expense or liability to the Reorganized Debtors, except to the extent set forth in or provided for under this Plan; *provided further, however,* that the cancellation of indentures, notes, stock, bonds, purchase rights, instruments, guarantees, certificates, warrants, options, puts, agreements and other documents hereunder shall not itself alter the obligations or rights among third parties (apart from the Debtors, the Reorganized Debtors, and the non-Debtor affiliates).

## ARTICLE VI

### PROVISIONS GOVERNING DISTRIBUTIONS

**6.1 Allowed Claims and Interests.** Notwithstanding any provision herein to the contrary, the Debtors or the Reorganized Debtors shall make distributions only to Holders of Allowed Claims. A Holder of a Disputed Claim shall receive only a distribution on account thereof when and to the extent that such Holder's Disputed Claim becomes an Allowed Claim.

**6.2 Plan Distributions.** Distributions under the Plan may be made into the account(s) of the Holder of Allowed Claims and/or the account(s) of an affiliate of such Holder, as designated by such Holder. Distributions to the Holders of Class 2 Syndicate Credit Facility Secured Claims shall be made based on information provided to the Debtors at least one business day prior to the Effective Date by the Administrative Agent regarding the identity of the Holders of such Class 2 Claims and the value of such Claims held by each such Holder as of one business day prior to the Effective Date.

**6.3 Fractional Shares.** No fractional shares of New Common Stock or Holdco Units shall be issued or distributed under this Plan. The actual distribution of shares of New Common Stock or Holdco Units shall be rounded to the next higher or lower whole number as follows: (a) fractions less than one-half ( $\frac{1}{2}$ ) shall be rounded to the next lower whole number and (b) fractions equal to or greater than one-half ( $\frac{1}{2}$ ) shall be rounded to the next higher whole number. No consideration shall be provided in lieu of fractional shares that are rounded down.

**6.4 Withholding and Reporting Requirements.** In connection with this Plan and all distributions hereunder, the Reorganized Debtors shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Reorganized Debtors shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

**6.5 Setoffs.** The Reorganized Debtors may, pursuant to applicable law, but shall not be required to, set off against any Claim the payments or other distributions to be made pursuant to this Plan in respect of such Claim, claims of any nature whatsoever that the Debtors or the Reorganized Debtors may have against the Holder of such Claim; *provided, however,* that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Reorganized Debtors of any such Claim that the Debtors or the Reorganized Debtors may have against such Holder.

**6.6 Allocation Between Principal and Accrued Interest.** For tax purposes, the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof) and, thereafter, to interest, if any, accrued through the Effective Date.

## ARTICLE VII

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

**7.1 Assumption of Executory Contracts and Unexpired Leases.** On the Effective Date, all executory contracts and unexpired leases of the Debtors shall be deemed assumed in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except (a) those executory contracts or unexpired leases that have previously expired or terminated pursuant to their own terms, (b) subject of a motion to reject filed on or before, and pending on, the Effective Date, or (c) identified on the Rejected Executory Contract and Unexpired Lease List on or prior to the Effective Date. The Debtors, with the consent of the other Consenting Parties, reserve all rights to amend or otherwise supplement the Rejected Executory Contract and Unexpired Lease List through the Effective Date.

**7.2 D&O Liability Insurance Policies and Indemnification Provisions.** Notwithstanding anything herein to the contrary, as of the Effective Date, the D&O Liability Insurance Policies and Indemnification Provisions belonging or owed to directors, officers, and employees of the Debtors (or the Estates) who served or were employed at any time by the Debtors shall be deemed to be, and shall be treated as though they are, executory contracts and

the Debtors shall assume (and assign to the Reorganized Debtors if necessary to continue the D&O Liability Insurance Policies in full force) all of the D&O Liability Insurance Policies and Indemnification Provisions pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption of each of the D&O Liability Insurance Policies and Indemnification Provisions. On or before the Effective Date, the Reorganized Debtors shall obtain reasonably sufficient tail coverage (i.e., D&O insurance coverage that extends beyond the end of the policy period) under a directors and officers' liability insurance policy for the current and former directors, officers and managers for a period of six (6) years after the Effective Date on terms reasonably acceptable to each of the Consenting Parties.

**7.3 Cure of Defaults and Adequate Assurance.** Any monetary defaults under each executory contract and unexpired lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date, subject to the limitations described below, or on such other terms as the parties to such executory contracts or unexpired leases may otherwise agree.

**The Debtor asserts, and this section of the Plan provides, that no Cure Claim is due to any counterparty to an executory contract or unexpired lease in order to assume any executory contract or unexpired lease under section 365(b)(1)(A) of the Bankruptcy Code. Any counterparty to an executory contract or unexpired lease that will be assumed under the Plan that asserts a Cure Claim must be paid in order to assume such executory contract or unexpired lease must file an objection asserting the amount of the Cure Claim with the Bankruptcy Court on or before the deadline for objecting to Confirmation of the Plan. Failure to object before the objection deadline to the proposed Cure Claim of \$0.00 for an executory contract or unexpired lease shall constitute consent to the assumption of such executory contract or unexpired lease, including the proposed Cure Claim of \$0.00, and an acknowledgement that such assumption satisfies all requirements of section 365(b) of the Bankruptcy Code.** If any such objection to a Cure Claim of \$0.00 is filed and is not resolved at or prior to the Confirmation Hearing, such executory contract or expired lease shall not be assumed until the dispute regarding the amount of the Cure Claim is resolved by agreement or order of the Bankruptcy Court; provided, however, the Reorganized Debtors shall be authorized to reject any executory contract or unexpired lease to the extent the Reorganized Debtors, in the exercise of their sound business judgment, conclude that the amount of the Cure Claim as determined by the Bankruptcy Court, renders assumption of such executory contract or unexpired lease unfavorable to the Reorganized Debtors.

Except as otherwise provided in the Confirmation Order, the only adequate assurance of future performance shall be the promise of the applicable Reorganized Debtor to perform all obligations under any executory contract or unexpired lease under the Plan. The Debtors reserve the right, with the consent of the other Consenting Parties, to file a motion on or before the Confirmation Date to assume or reject any executory contract and unexpired lease.

Assumption of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy related defaults, arising under any assumed executory



contract or unexpired lease at any time before the effective date of the assumption. Any proof of Claim filed with respect to an executory contract or unexpired lease that has been assumed shall be deemed disallowed and expunged upon satisfaction of the Cure Claim in accordance with the procedures described above, without further notice to or action, order or approval of the Bankruptcy Court.

**7.4 Claims Based on Rejection of Executory Contracts or Unexpired Leases.** All proofs of Claim with respect to Claims arising from the rejection of executory contracts and unexpired leases, if any, must be filed with the Bankruptcy Court on or prior to 30 days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. Unless otherwise ordered by the Bankruptcy Court or otherwise provided herein, any Claims arising from the rejection of executory contracts and unexpired leases not filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates or their property without the need for any objection by the Reorganized Debtors or further notice to, or action, order, or approval of the Bankruptcy Court. All such Claims shall, as of the Effective Date, be subject to the discharge and permanent injunction set forth in Article X hereof. All Allowed Claims arising from the rejection of the Debtors' executory contracts and unexpired leases shall be classified as Class 6 Claims or Class 8 Claims, as applicable, against the applicable Debtor and shall be treated in accordance with Article III of the Plan. The deadline to object to Claims arising from the rejection of executory contracts and unexpired leases, if any, shall be the later of (a) 180 days following the date on which such Claim was filed, and (b) such other period of limitation as may be specifically fixed by an order of the Bankruptcy Court for objecting to such Claims.

## ARTICLE VIII

### CONFIRMATION AND CONSUMMATION OF THIS PLAN

**8.1 Condition To Entry of the Confirmation Order.** The following are conditions precedent to Confirmation, each of which must be satisfied or waived by each of the Consenting Parties in accordance with the terms hereof:

(a) The Plan and all schedules, documents, supplements and exhibits relating to the Plan will have been filed in form and substance acceptable to each of the Consenting Parties, unless otherwise provided in this Plan.

(b) The proposed Confirmation Order will be in form and substance acceptable to each of the Consenting Parties.

**8.2 Conditions To Effective Date.** The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived by each of the Consenting Parties in accordance with the terms hereof:

(a) The Confirmation Order shall be in full force and effect and not subject to any stay, and shall provide, among other things, that (i) the New Common Stock and Holdco Units issued under the Plan (other than the New Common Stock and Holdco Units

offered pursuant to the 4(a)(2) Rights Offering and to Ivory) shall be exempt from the registration requirements of the Securities Act and similar state statutes pursuant to section 1145 of the Bankruptcy Code and (ii) that the New Common Stock and Holdco Units issued pursuant to the 4(a)(2) Rights Offering and to Ivory shall be exempt from registration under Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder.

(b) The Amended and Restated Senior Secured Credit Facility shall have been executed and delivered, and all conditions precedent to its effectiveness shall have been satisfied.

(c) The Holdco LLC Agreement shall be in full force and effect.

(d) The Plan and Confirmation Order shall not authorize the Debtors to incur any material debt other than the debt incurred in connection with the Amended and Restated Senior Secured Credit Facility.

(e) All authorizations, consents, and regulatory approvals required, if any, in connection with the consummation of this Plan shall have been obtained.

(f) The Debtors shall have received the Ivory Investment and such funds shall be available for contribution.

(g) Ivory and Excel shall have delivered instructions to Seward & Kissel LLP as escrow agent to release the Escrow Funds to Excel on the Effective Date, and such funds shall be available for release by Seward & Kissel LLP as Escrow Agent to Excel, subject to the escrow agent's rights under the Escrow Agreement, which rights are preserved, including, but not limited to, sections 8, 9 and 11 (Fees) of the Escrow Agreement.

(h) All other actions, documents, and agreements necessary to implement this Plan shall have been effected or executed.

(i) The Plan and all schedules, documents, supplements and exhibits relating to the Plan shall be in form and substance acceptable to each of the Consenting Parties, unless otherwise specifically provided in the Plan.

(j) The Plan Supplement documents shall be adopted in the form in which such documents were filed with the Plan Supplement (or with such other modifications as are satisfactory to each of the Consenting Parties).

**8.3 Waiver Of Conditions.** Each of the Consenting Parties may waive, in whole or in part, the conditions to the occurrence of the Effective Date, without any notice to other parties in interest or the Bankruptcy Court and without a hearing. The waiver of a condition to the occurrence of the Effective Date shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

## ARTICLE IX

### EFFECT OF PLAN CONFIRMATION

**9.1 *Binding Effect.*** This Plan shall be binding upon and inure to the benefit of the Debtors, their Estates, all current and former Holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, the Reorganized Debtors.

**9.2 *Revesting of Assets.*** Except as otherwise explicitly provided in this Plan, on the Effective Date, all property comprising the Estates shall revest in the Reorganized Debtors, free and clear of all Claims, Liens, charges, encumbrances, rights, and Interests of creditors and equity security holders. As of the Effective Date, the Reorganized Debtors may operate their businesses and use, acquire, and dispose of property and settle and compromise Claims or Interests without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by this Plan or the Confirmation Order.

**9.3 *Compromise and Settlement of Claims and Interests.*** Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests and controversies relating to the contractual, legal and subordination rights that a Holder of a Claim may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates and Holders of Claims and Interests and is fair, equitable and reasonable. In accordance with the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against them and Causes of Action against other Persons.

**9.4 *Discharge of the Debtors.*** Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided herein, the distributions, rights and treatment that are provided herein shall be in full and final satisfaction, settlement, release and discharge, effective as of the Effective Date, of all Claims, Interests and Causes of Action of any nature whatsoever, including, without limitation, claims arising under maritime law in any foreign jurisdiction that provides for the seizure or arrest of any vessel of the Debtors under any theory of law or equity (including any claim arising under South African law on the basis that the vessel is an "associated ship" as defined in the South African Admiralty Jurisdiction Regulation Act 1983, and/or of an allegation under the law of any other jurisdiction that any Debtor has or had control of or was associated in any way with any vessel owned and/or operated by a Debtor and/or non-Debtor and of any vessel in respect of which an alleged liability, including a liability of any third party, was incurred), any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims

and Interests, including demands, liabilities and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a proof of Claim or Interest based upon such Claim, debt, right or Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (ii) a Claim or Interest based upon such Claim, debt, right or Interest is Allowed or disallowed pursuant to section 502 of the Bankruptcy Code; or (iii) the Holder of such a Claim or Interest has accepted the Plan. Except as otherwise provided herein, any default by the Debtors or their affiliates with respect to any Claim or Interest that existed before or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring, except as otherwise expressly provided herein.

### **9.5 Releases and Related Matters.**

#### **(a) Releases by the Debtors.**

**Pursuant to section 1123(b) of the Bankruptcy Code and to the extent allowed by applicable law, and except as otherwise specifically provided in the Plan or the Plan Supplement, for good and valuable consideration, including the service of the Released Parties to facilitate the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtors, the Reorganized Debtors, the Estates and non-Debtor affiliates from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, the Reorganized Debtors, the Estates or the non-Debtor affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the Plan Supplement, the business or contractual arrangements between any Debtor, Reorganized Debtor, Estate or non-Debtor affiliate and any Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date; *provided, however* that nothing in this Section 9.5 shall be construed to release any party or entity from intentional fraud, willful misconduct, or criminal conduct, as determined by a Final Order.**

**(b) Releases by the Holders of Claims and Interests.**

Except as otherwise provided in the Plan or the Plan Supplement, as of the Effective Date, each Holder of a Claim or Interest shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released and discharged the Debtors, the Reorganized Debtors, the Estates, non-Debtor affiliates and the Released Parties from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative Claims, assertable on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan or the Plan Supplement, the business or contractual arrangements between any Debtor, Reorganized Debtor, Estate or non-Debtor affiliate and any Released Party, the restructuring of Claims and Interests before or during the Chapter 11 Cases, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, upon any other act or omission, transaction, agreement, event or other occurrence including or pertaining to the Debtors and taking place on or before the Effective Date, *provided, however* that nothing in this Section 9.5 shall be construed to release any party or entity from intentional fraud, willful misconduct, or criminal conduct, as determined by a Final Order; *provided further, however* that this Section 9.5 shall not release the Debtors, the Reorganized Debtors, the Estates, non-Debtor affiliates or the Released Parties from any Cause of Action held by a governmental entity existing as of the Effective Date based on (i) the Internal Revenue Code or other domestic state, city, or municipal tax code, (ii) the environmental laws of the United States or any domestic state, city, or municipality, (iii) any criminal laws of the United States or any domestic state, city, or municipality, (iv) the Securities and Exchange Act of 1934 (as now in effect or hereafter amended), the Securities Act, or other securities laws of the United States or any domestic state, city or municipality, (v) the Employee Retirement Income Security Act of 1974, as amended, or (vi) the laws and regulations of the Bureau of Customs and Border Protection of the United States Department of Homeland Security. Notwithstanding anything to the contrary in this Section 9.5(b), a Holder of Class 11 Interests in Excel shall only be deemed to provide the releases set forth in this section if such Holder did not affirmatively opt out of the Plan releases by completing and returning a form to Donlin, Recano & Company, Inc. by the Voting Deadline.

**9.6 Exculpation and Limitation of Liability.** Except as otherwise specifically provided in the Plan or Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim, and in all respects such Persons shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Debtors, the Reorganized Debtors, and the Released Parties have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and

**distribution of the Plan securities pursuant to the Plan, and therefore are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.**

**9.7 Injunction.**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS, OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED, DISCHARGED OR EXCULPATED PURSUANT TO THIS ARTICLE IX ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (2) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (3) CREATING, PERFECTING OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH PERSONS OR THE PROPERTY OR ESTATES OF SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (4) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, SETTLED OR DISCHARGED PURSUANT TO THE PLAN; AND (5) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR PROCEEDING THAT CONTEMPLATES THE SEIZURE OR ARREST OF ANY PROPERTY OF THE DEBTORS, INCLUDING ANY VESSEL, WHETHER UNDER SOUTH AFRICAN LAW OR THE LAW OF ANY OTHER JURISDICTION, AND WHETHER ON THE BASIS THAT THE VESSEL IS AN "ASSOCIATED SHIP" AS DEFINED IN THE SOUTH AFRICAN ADMIRALTY JURISDICTION REGULATION ACT 1983, AND/OR OF AN ALLEGATION THAT ANY DEBTOR HAS OR HAD CONTROL OF OR WAS ASSOCIATED IN ANY WAY WITH ANY VESSEL OWNED AND/OR OPERATED BY A DEBTOR AND/OR A NON-DEBTOR AND OF ANY VESSEL IN RESPECT OF WHICH AN ALLEGED LIABILITY, INCLUDING A LIABILITY OF ANY THIRD PARTY, WAS INCURRED, OR OTHERWISE.

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF ALL CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE AGAINST THE DEBTORS OR ANY OF THEIR ASSETS, PROPERTY OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE INTERESTS SHALL BE CANCELLED.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN OR IN OBLIGATIONS ISSUED PURSUANT HERETO FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND DISCHARGED, AND ALL INTERESTS SHALL BE CANCELLED, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE. ALL PERSONS SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE DEBTORS' ESTATES, THE REORGANIZED DEBTORS, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS OR ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

**9.8** *Term of Bankruptcy Injunction or Stays.* Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date.

**9.9** *Limitation on Article IX.* For the avoidance of doubt, the provisions set forth in this Article IX shall not affect the rights of the Holder of the Class 3 Christine Shipco Facility Secured Guaranty Claim to assert its contractual rights under the Christine Shipco Facility and Reinstated Christine Shipco Facility Guaranty, including as against non-Debtors Christine Shipco and Christine Holdings.

## ARTICLE X

### PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS

**10.1** *Disputed Claims.* All Disputed Claims against the Debtors shall be subject to the provisions of this Article X.

**10.2** *Objection Deadline.* Unless otherwise ordered by the Bankruptcy Court, objections to Claims shall be filed with the Bankruptcy Court and served upon the holders of each such Claim to which objections are made on or before the Claims Objection Bar Date. If an objection to a Claim is timely filed, a subsequent amendment to the objection shall also be deemed timely, even if filed subsequent to the deadline for filing the original Claim objection, and even if the amendment raises facts or legal theories not raised in the original Claim objection.

**10.3** *Prosecution of Objections.* After the Confirmation Date, the Debtors or the Reorganized Debtors, as the case may be, shall have the authority to file, litigate to final judgment, settle, or withdraw objections to Disputed Claims.

**10.4 *No Distributions Pending Allowance.*** No payments or distributions shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until all objections to such Disputed Claim are resolved and such Disputed Claim becomes an Allowed Claim in whole or in part.

## ARTICLE XI

### RETENTION OF JURISDICTION

**11.1 *Retention of Jurisdiction.*** Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and this Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

(a) resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease with respect to which any Debtor or Reorganized Debtor may be liable, and to hear, determine, and, if necessary, liquidate any Claims arising therefrom;

(b) decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications, involving the Debtors that may be pending on the Effective Date;

(c) enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all contracts, instruments, releases, and other agreements or documents created in connection with this Plan, the Disclosure Statement, or the Confirmation Order;

(d) resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of this Plan or any contract, instrument, release, or other agreement or document that is executed or created pursuant to this Plan, or any entity's rights arising from, or obligations incurred in connection with, this Plan or such documents;

(e) modify this Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with this Plan or the Confirmation Order, or remedy any defect or omission, or reconcile any inconsistency, in any Bankruptcy Court order, this Plan, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with this Plan, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate this Plan;

(f) hear and determine all applications for compensation and reimbursement of expenses of Professionals under this Plan or under sections 330, 331, 503(b) and 1129(a)(4) of the Bankruptcy Code; *provided, however*, that from and after the Effective Date the payment of fees and expenses of the Reorganized Debtors, including professional fees,



shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

(g) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation, or enforcement of this Plan or the Confirmation Order;

(h) adjudicate controversies arising out of the administration of the Estates or the implementation of this Plan;

(i) recover all assets of the Debtors and property of the Estates, wherever located;

(j) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason, or in any respect, modified, stayed, reversed, revoked, or vacated, or distributions pursuant to this Plan are enjoined or stayed;

(k) hear and resolve all matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(l) determine any other matters that may arise in connection with, or relate to, this Plan, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with this Plan, or the Confirmation Order;

(m) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases including but not limited to any effort to seize or arrest any vessel of the Debtors in South African waters or elsewhere on account of prepetition claims of the German Owners;

(n) hear and determine such other matters related hereto that are not inconsistent with the Bankruptcy Code or title 28 of the United States Code; and

(o) enter an order closing the Chapter 11 Cases.

**11.2 *Failure of Bankruptcy Court to Exercise Jurisdiction.*** If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter, including the matters set forth in Section 11.1 of the Plan, the provisions of this Article XI shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## **ARTICLE XII**

### **MISCELLANEOUS PROVISIONS**

**12.1 *Payment Of Statutory Fees.*** All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date.

**12.2 *Amendment Or Modification Of This Plan.*** Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code and subject further to the consent of the Consenting Parties, as provided for in this Plan, the Debtors reserve the right to alter, amend, or modify this Plan at any time prior to or after the Confirmation Date, including, without limitation the right to withdraw the Plan as to any particular Debtor and seek to confirm and consummate the Plan with respect to the other Debtors. A Holder of a Claim that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder.

**12.3 *Revocation, Withdrawal, or Non-Consummation.*** The Debtors reserve the right to revoke or withdraw this Plan at any time prior to the Confirmation Date and to file other plans of reorganization. If the Debtors revoke or withdraw this Plan, or if Confirmation or consummation of this Plan does not occur, then (i) this Plan shall be null and void in all respects, (ii) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount any Claim or Class of Claims or any release contemplated hereby), assumption of executory contracts or leases effected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void, and (iii) nothing contained in this Plan, and no acts taken in preparation for consummation of this Plan, shall (A) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors or any other Person, (B) prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors, or (C) constitute an admission of any sort by the Debtors or any other Person.

**12.4 *Notice.*** All notices, requests, and demands relating to this Plan, to be effective, shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtors, to:

Excel Maritime Carriers Ltd.  
17<sup>th</sup> Km of National Road of Athens-Lamia & Finikos Street  
14564 Nea Kifisia, Greece  
Attention: Pavlos Kanellopoulos  
Fax: +30 210 6209 528  
Email: pkan@excelmaritime.com

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP  
4 Times Square  
New York, New York 10036  
Fax: (212) 735-2000  
Attention: Jay M. Goffman, Esq.  
Attention: Mark A. McDermott, Esq.

If to the Administrative Agent, to:

Wilmington Trust (London) Limited  
Third Floor  
1 King's Arms Yard  
London EC2R 7AF  
United Kingdom  
Tel: +44 (0) 20 7397 3605  
Fax: +44 (0) 20 7397 3601  
Attention: Paul Barton

with a copy to,

Counsel to the Agent for the Syndicate Credit Facility:

Holland & Knight  
10 St. James Avenue  
Boston, MA 02116  
Fax: (617) 523-6850  
Attention: John J. Monaghan, Esq.

and

Counsel to Oaktree:

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Fax: (212) 757-3990  
Attention: Alan W. Kornberg, Esq.  
Attention: Elizabeth R. McColm, Esq.

If to the Creditors' Committee, to:

Akin Gump Strauss Hauer & Feld LLP  
One Bryant Park  
New York, NY 10036  
Fax: (212) 872-1002  
Attention: Michael S. Stamer, Esq.

and

1700 Pacific Avenue  
Suite 4100  
Dallas, TX 75201  
Fax: (214) 969-4343  
Attention: Sarah Link Schultz, Esq.

**12.5 Governing Law.** Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however* that corporate governance matters relating to the Debtors or the Reorganized Debtors, as applicable, not incorporated in New York shall be governed by the laws of the jurisdiction in which the applicable Debtor or Reorganized Debtor is incorporated.

*Remainder of Page Left Intentionally Blank*

Dated: January 23, 2013

EXCEL MARITIME CARRIERS LTD.  
(for itself and on behalf of the other  
Debtors)

By: /s/ Pavlos Kanellopoulos  
Name: Pavlos Kanellopoulos  
Title: Chief Financial Officer

EXHIBIT A

Subscription Agreements and Rights Offering Procedures

**Rule 1145 Subscription Agreement**

**EXCEL MARITIME CARRIERS LTD.**

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**RULE 1145 SUBSCRIPTION AGREEMENT**

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**Copy # \_\_\_\_\_**

## NOTICES

THIS RULE 1145 SUBSCRIPTION AGREEMENT HAS BEEN PREPARED ON A CONFIDENTIAL BASIS SOLELY FOR THE BENEFIT OF ELIGIBLE HOLDERS IN CONNECTION WITH THE PRIVATE PLACEMENT OF SECURITIES OF EXCEL MARITIME CARRIERS LTD. (THE "COMPANY") PURSUANT TO THE AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF THE COMPANY AND ITS SUBSIDIARIES THAT COMMENCED JOINTLY ADMINISTERED CASES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE (AS SUCH TERM IS HEREINAFTER DEFINED) (THE "PLAN"). ANY REPRODUCTION OR DISTRIBUTION OF THIS RULE 1145 SUBSCRIPTION AGREEMENT, OR RETRANSMITTAL OF ITS CONTENTS, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMPANY IS PROHIBITED.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED, APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY. NONE OF THE FOREGOING AUTHORITIES HAVE PASSED UPON, OR ENDORSED THE MERITS OF, THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THE COMPANY'S AMENDED DISCLOSURE STATEMENT WITH RESPECT TO THE DEBTORS AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION DATED NOVEMBER 26, 2013 (THE "DISCLOSURE STATEMENT") PREVIOUSLY DISTRIBUTED. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE SECURITIES REFERRED TO HEREIN HAVE NOT BEEN REGISTERED WITH THE SEC UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATE. THE SECURITIES WILL BE OFFERED AND SOLD PURSUANT TO THE EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY SECTION 1145 OF THE BANKRUPTCY CODE. THIS RULE 1145 SUBSCRIPTION AGREEMENT IS NOT AN OFFER TO SELL TO OR A SOLICITATION OF AN OFFER TO BUY FROM, NOR WILL ANY SECURITIES BE OFFERED OR SOLD TO, ANY PERSON IN ANY JURISDICTION IN WHICH SUCH OFFER, SOLICITATION, PURCHASE OR SALE WOULD BE UNLAWFUL UNDER THE SECURITIES LAWS OF SUCH JURISDICTION.

THE COMPANY MAKES NO REPRESENTATION TO ANY OFFEREE OR PURCHASER OF THE SECURITIES REGARDING THE LEGALITY OF AN INVESTMENT THEREIN BY SUCH OFFEREE OR PURCHASER UNDER APPLICABLE LEGAL INVESTMENT OR SIMILAR LAWS.

PROSPECTIVE INVESTORS SHOULD NOT CONSTRUE THE CONTENTS OF THIS RULE 1145 SUBSCRIPTION AGREEMENT, THE DISCLOSURE STATEMENT OR ANY PRIOR OR SUBSEQUENT COMMUNICATIONS FROM THE COMPANY OR ANY OF ITS



AGENTS, OFFICERS OR REPRESENTATIVES, AS LEGAL OR TAX ADVICE. EACH OFFEREE SHOULD CONSULT HIS OWN ADVISORS AS TO LEGAL, TAX AND RELATED MATTERS CONCERNING AN INVESTMENT IN THE COMPANY.

THIS INVESTMENT INVOLVES A HIGH DEGREE OF RISK. IT IS SPECULATIVE AND SUITABLE ONLY FOR PERSONS WHO HAVE SUBSTANTIAL FINANCIAL RESOURCES AND HAVE NO NEED FOR LIQUIDITY IN THIS INVESTMENT. FURTHER, THIS INVESTMENT SHOULD ONLY BE MADE BY THOSE WHO UNDERSTAND OR HAVE BEEN ADVISED WITH RESPECT TO THE TAX CONSEQUENCES OF AND RISK FACTORS ASSOCIATED WITH THE INVESTMENT, INCLUDING, BUT NOT LIMITED TO, THE RISKS ARISING FROM THE ABSENCE OF CURRENT OR HISTORICAL FINANCIAL INFORMATION REGARDING THE COMPANY, AND WHO ARE ABLE TO BEAR THE SUBSTANTIAL ECONOMIC RISK OF THE INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

## **RULE 1145 SUBSCRIPTION AGREEMENT**

Rule 1145 Subscription Agreement (this "Agreement"), by and between Excel Maritime Carriers Ltd., a company incorporated under the laws of Liberia (including any successor as contemplated by the Plan (as defined below), the "Company"), and the undersigned (the "Subscriber"), shall be deemed executed as of the date the Company executes a counterpart to this Agreement previously executed by the Subscriber.

WHEREAS, on July 1, 2013, the Company and certain of its affiliates (collectively, the "Debtors") commenced cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, supplemented or otherwise modified from time to time, the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, the Debtors submitted an Amended Disclosure Statement with respect to the Debtors' Amended Joint Chapter 11 Plan of Reorganization, dated as of November 26, 2013 (the "Disclosure Statement"), to certain holders of claims against the Debtors in connection with the solicitation of acceptances of the Amended Joint Chapter 11 Plan of Reorganization of Excel Maritime Carriers Ltd. and Certain of its Affiliates, dated as of November 26, 2013 (the "Plan");

WHEREAS, capitalized terms used but not defined in this Agreement have the meaning given to them in the Plan;

WHEREAS, pursuant to the Plan, each Eligible Holder will be granted Tranche A Subscription Rights entitling such Eligible Holder to purchase up to its Pro Rata Tranche A Offered Shares at the Tranche A Purchase Price, as calculated in accordance with Item 2a(ii)(A) of such Eligible Holder's Beneficial Holder Convertible Note Subscription Form or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, as applicable, and the Rule 1145 Rights Offering Procedures;

WHEREAS, pursuant to the Plan, each Eligible Holder will be granted Tranche B Subscription Rights entitling such Eligible Holder to purchase up to its Pro Rata Tranche B Offered Shares at the Tranche B Purchase Price, as calculated in accordance with Item 2a(ii)(B) of such Eligible Holder's Beneficial Holder Convertible Note Subscription Form or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, as applicable, and the Rule 1145 Rights Offering Procedures;

WHEREAS, each Eligible Holder who exercises its Tranche A Subscription Rights in whole will be granted Over-Subscription Rights entitling such Eligible Holder to purchase, subject to availability, up to its Pro Rata Excess Shares at the Tranche A Purchase Price, as calculated in accordance with Item 2a(iii) of such Eligible Holder's Beneficial Holder Convertible Note Subscription Form or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, as applicable, and the Rule 1145 Rights Offering Procedures (such offering of the Tranche A Subscription Rights, the Tranche B Subscription Rights and the Over-Subscription Rights, the "Rule 1145 Rights Offering");

WHEREAS, each Subscriber that holds a Syndicate Credit Deficiency Claim shall be entitled to exercise Tranche A Subscription Rights, Tranche B Subscription Rights and, to the extent applicable, Over-Subscription Rights, in the Rule 1145 Rights Offering, provided, however that such Tranche A Subscription Rights, Tranche B Subscription Rights and, to the extent applicable, Over-Subscription Rights, shall be deemed forever and irrevocably relinquished and waived on the Effective Date if the class of Impaired Excel General Unsecured Claims votes to accept the Plan. In the event that the class of Impaired Excel General Unsecured Claims votes to accept the Plan, any Rule 1145 Subscription Agreement and any Syndicate Credit Deficiency Claims Subscription Form returned by a holder of a Syndicate Credit Deficiency Claim to the Subscription Agent will be deemed null and void and any funds paid by such holder will be returned in accordance with the provisions of this Agreement.

WHEREAS, any Subscriber that does not hold a Syndicate Credit Deficiency Claim has certified that it is an Eligible Holder and held on the Record Date (i) the aggregate principal amount of the Company's 1.875% Convertible Senior Notes due 2027 (the "Convertible Notes") set forth in Item 1 of such Eligible Holder's Beneficial Holder Convertible Note Subscription Form and/or (ii) any (A) claim arising under certain swap agreements entered into by the Company and Eurobank EFG Private Bank Luxembourg S.A. and Marfin Popular Bank Public Co. Ltd., Greek Branch, respectively; (B) claim for damages alleged by Robertson Maritime Investors, LLC; and/or (C) claim arising under a settlement with certain bareboat charter parties, dated December 5, 2012 (such claims described in (A) through (C), collectively, the "Other Impaired Excel General Unsecured Claims") which are valued at the aggregate amount set forth on Item 1 of such Eligible Holder's Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form;

WHEREAS, any Subscriber that holds a Syndicate Credit Deficiency Claim has certified that it is an Eligible Holder and held on the Record Date an unsecured claim arising under that certain senior secured credit facility, dated as of April 14, 2008, as amended, modified or supplemented from time to time; and

WHEREAS, the Subscriber wishes to subscribe to purchase Tranche A Offered Shares and Tranche B Offered Shares and, to extent applicable, Excess Shares as set forth herein on the terms and subject to the conditions of the Rule 1145 Rights Offering and in accordance with the Plan.

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Subscriber and the Company hereby represent and agree as follows:

1. SUBSCRIPTION.

(a) Any Subscriber that does not hold a Syndicate Credit Deficiency Claim hereby agrees to subscribe for that number of Tranche A Offered Shares and Tranche B Offered

Shares and, to the extent applicable, Excess Shares, of Common Stock set forth in Item 2b of such Eligible Holder's Beneficial Holder Convertible Note Subscription Form or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, as applicable, (collectively, the "Rule 1145 Shares"); provided, however, that the right to purchase Excess Shares shall apply only to the Tranche A Subscription Rights offered, to the extent not purchased by Subscribers who exercise their respective Tranche A Subscription Rights. Once all subscriptions have been received, any Excess Shares subscribed for shall be, if necessary, subject to reduction on a *pro rata* basis so that no Eligible Holder can subscribe for more than its Pro Rata Excess Shares. In addition, to the extent that the class of Impaired Excel General Unsecured Claims votes to reject the Plan, the *pro rata* share for each Eligible Holder will be determined by multiplying (a) the total number of either Tranche A Offered Shares or Tranche B Offered Shares by (b) the quotient obtained by dividing (i) the amount of Impaired Excel General Unsecured Claims held by that Eligible Holder by (ii) the total amount of Impaired Excel General Unsecured Claims inclusive of the Syndicate Credit Deficiency Claims rounded to the nearest whole share. The Subscriber will pay to the Subscription Agent the applicable Purchase Price for such Rule 1145 Shares set forth in Item 2c of such Eligible Holder's Beneficial Holder Convertible Note Subscription Form or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, as applicable, at the time it returns this Agreement to the Subscription Agent, but in no event later than the Subscription Expiration Deadline by wire transfer of immediately available funds in accordance with the instructions included on Item 3 of such Eligible Holder's Beneficial Holder Convertible Note Subscription Form or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, as applicable.

(b) Any Subscriber that holds a Syndicate Credit Deficiency Claim hereby agrees to subscribe for that number of Tranche A Offered Shares and Tranche B Offered Shares and, to the extent applicable, Excess Shares, of Common Stock set forth in Item 2b of such holder's Syndicate Credit Deficiency Claim Subscription Form, provided, however, that the right to purchase Excess Shares shall apply only to the Tranche A Subscription Rights offered, to the extent not purchased by Subscribers who exercise their respective Tranche A Subscription Rights. Notwithstanding the foregoing, Tranche A Subscription Rights, Tranche B Subscription Rights and, to the extent applicable, Over-Subscription Rights, of any Subscriber that holds a Syndicate Credit Deficiency Claim shall be deemed forever and irrevocably relinquished and waived on the Effective Date if the class of Impaired Excel General Unsecured Claims votes to accept the Plan. In the event that the class of Impaired Excel General Unsecured Claims votes to accept the Plan, any Rule 1145 Subscription Agreement and any Syndicate Credit Deficiency Claims Subscription Form returned by a holder of a Syndicate Credit Deficiency Claim to the Subscription Agent will be deemed null and void and any funds paid by such holder will be returned, without interest, as soon as reasonably practicable, but in any event within six (6) Business Days after acceptance or rejection of the Plan is filed with the Bankruptcy Court.

(c) In the event that funds received by the Subscription Agent in payment for the Subscriber's Rule 1145 Shares in accordance with the instructions provided with this Agreement are less than the applicable Purchase Price (as set forth in Item 2c of such Eligible Holder's Beneficial Holder Convertible Note Subscription Form or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, as applicable), the number of

Rule 1145 Shares deemed to be purchased by the Subscriber pursuant to this Agreement will be the lesser of (i) the number of Rule 1145 Shares set forth set forth in Item 2b of such Eligible Holder's Beneficial Holder Convertible Note Subscription Form or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, as applicable, and (ii) a number determined by dividing the amount of such funds received in accordance with the instructions included with this Agreement by the Tranche A Purchase Price or Tranche B Purchase Price, as applicable. Funds will first be applied against payment for the Tranche A Offered Shares, including any Excess Shares, with the remaining funds applied to the purchase of the Tranche B Offered Shares. Any Tranche A Offered Shares subscribed for but eliminated from the number of Rule 1145 Shares deemed purchased, pursuant to the previous sentence, shall be deemed part of the Excess Shares.

(d) In the event that the Subscription Agent receives more funds from the Subscriber than the aggregate Purchase Price for the Subscriber's Rule 1145 Shares, then such funds, to the extent of such overpayment, will be returned, without interest, to the Subscriber as soon as reasonably practicable, but in any event within six (6) Business Days after the Subscription Expiration Deadline.

(e) In the event that the Subscription Agent receives more funds from the Subscriber than the aggregate Purchase Price for the Subscriber's Rule 1145 Shares as a result of any reduction of the Eligible Holder's subscription for Excess Shares as described in paragraph 1(a), then such funds, to the extent of such overpayment, will be returned, without interest, to the Subscriber as soon as reasonably practicable, but in any event within six (6) Business Days after the Subscription Expiration Deadline.

(f) Subject to the conditions specified in Section 5, the closing of the issuance of Rule 1145 Shares contemplated by this Agreement (the "Closing") will take place at the offices of Skadden, Arps, Slate, Meagher & Flom LLP on the Effective Date. The date on which the Closing occurs is the "Closing Date."

(g) In the event the Closing does not take place on or before February 14, 2014, a Subscriber may request any funds sent to the Subscription Agent in payment for such Subscriber's Rule 1145 Shares in accordance with the instructions provided with this Agreement be promptly returned to the Subscriber. Upon receipt of such request, the Subscription Agent shall promptly, but in any event within six (6) Business Days, return such funds to the Subscriber and the applicable Subscriber Rule 1145 Shares shall be designated Excess Shares.

## 2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to the Subscriber as of the date hereof as follows:

(a) The Company is and, as of the Effective Date, will be, duly organized and validly existing under the laws of Liberia.

(b) Subject to the entry of the Bankruptcy Court's confirmation order relating to the Plan and occurrence of the Closing, (i) the Company will have the requisite corporate

power and authority to execute and deliver this Agreement, (ii) this Agreement and the consummation by the Company of the transactions contemplated hereby will have been duly authorized by all requisite corporate action and (iii) this Agreement will have been duly and validly executed and delivered by the Company and will constitute the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(c) The Rule 144 Shares, when issued in accordance with the provisions hereof, will be validly issued by the Company, and will represent fully paid and nonassessable shares of the Company.

(d) Except for the representations and warranties contained in this Section 2, none of the Company and any other Person on behalf of the Company makes any other express or implied representation or warranty with respect to the Company or any other information provided to the Subscriber. Neither the Company nor any other Person will have or be subject to any liability or indemnification obligation to the Subscriber or any other Person resulting from the distribution to the Subscriber, or use by the Subscriber of, any such information, including the Disclosure Statement and any other information, documents, projections, forecasts or other material made available to the Subscriber, unless any such information is included in a representation or warranty contained in this Section 2.

### 3. REPRESENTATIONS AND WARRANTIES OF THE SUBSCRIBER.

The Subscriber represents and warrants to the Company as of the date hereof as follows:

(a) The Subscriber is an Eligible Holder and held on the Record Date (i) the aggregate principal amount of Convertible Notes set forth on Item 1 of such Eligible Holder's Beneficial Holder Convertible Note Subscription Form and/or (ii) Other Impaired Excel General Unsecured Claims which are valued at the aggregate amount set forth on Item 1 of such Eligible Holder's Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, and/or (iii) a Syndicate Credit Deficiency Claim valued at the aggregate amount set forth on Item 1 of such Subscriber's Syndicate Credit Deficiency Claim Subscription Form.

(b) The Subscriber has the requisite corporate or other applicable power and authority to execute and deliver this Agreement and the Beneficial Holder Convertible Note Subscription Form, Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form or Syndicate Credit Deficiency Claims Subscription Form, as applicable, and to perform its obligations hereunder and thereunder. This Agreement and the consummation by Subscriber of the transactions contemplated hereby have been duly authorized by all requisite action. This Agreement has been duly and validly executed and delivered by Subscriber and constitutes the valid and binding obligation of Subscriber, enforceable against Subscriber in accordance with its terms. Except to the extent Subscriber is an individual, Subscriber is a duly organized entity validly existing under the laws of the jurisdiction of its incorporation or formation.

(c) Except as provided under applicable state securities laws and subject to the conditions contained in Section 6, this subscription is and shall be irrevocable, except that the

Subscriber shall have no obligation hereunder if this Agreement is for any reason rejected or this offering is for any reason cancelled.

(d) The Subscriber understands that the Rule 1145 Shares have not been registered under the Securities Act nor qualified under any state securities laws and that the Rule 1145 Shares are being offered and sold pursuant to an exemption from such registration and qualification requirements based in part upon the Subscriber's representations contained herein.

(e) The Subscriber has read and understands this Agreement, the Plan, the Disclosure Statement and the Beneficial Holder Convertible Note Subscription Form, Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form or Syndicate Credit Deficiency Claims Subscription Form, as applicable, and understands the terms and conditions herein and therein and the risks associated with the Company and its business as described in the Disclosure Statement. The Subscriber has, to the extent deemed necessary by the Subscriber, discussed with legal counsel the representations, warranties and agreements that the Subscriber is making herein.

(f) No third-party consents or approvals are required to be obtained, made or given in order to permit the Subscriber to execute and deliver this Agreement and to perform its obligations hereunder.

(g) Neither the execution and delivery of this Agreement by the Subscriber nor the consummation of any of the transactions contemplated hereby will violate or conflict with, or result in a breach of, or constitute a default under (whether upon notice or the passage of time or both) any (i) contract to which the Subscriber is a party or (ii) applicable laws, regulations, orders, judgments and decrees to which the Subscriber is subject.

(h) Other than as set forth in this Agreement, the Plan, the Disclosure Statement, the Beneficial Holder Convertible Note Subscription Form, Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form or Syndicate Credit Deficiency Claims Subscription Form, as applicable, the Subscriber is not relying upon any other information, representation or warranty by the Company. The Subscriber has consulted, to the extent deemed appropriate by the Subscriber, with the Subscriber's own advisors as to the financial, tax, legal and related matters concerning an investment in the Rule 1145 Shares and on that basis believes that an investment in the Rule 1145 Shares is suitable and appropriate for the Subscriber.

(i) The foregoing representations and warranties will be true on the date hereof and as of the Closing Date and will survive delivery of this Agreement. If any of such representations and warranties is not true prior to acceptance of this Agreement by the Company or prior to the Closing Date, the Subscriber will give written notice of such fact to the Company, specifying which representations and warranties are not true and the reasons therefor.

4. SUBSCRIBER ACKNOWLEDGMENTS.

The Subscriber further acknowledges the following as of the date hereof and as of the Closing Date:

(a) The Rule 1145 Shares purchased pursuant hereto will be initially issued in the name of the Subscriber, a controlled Affiliate of the Subscriber or a Related Fund, as indicated on such Subscriber's Beneficial Holder Convertible Note Subscription Form, Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form or Syndicate Credit Deficiency Claims Subscription Form, as applicable.

(b) This Agreement contains its irrevocable firm commitment, subject only to the terms and conditions of this Agreement and the Rule 1145 Rights Offering, to purchase the Rule 1145 Shares, subject to *pro rata* adjustment as provided for in this Agreement and in the Rule 1145 Rights Offering Procedures.

(c) Except to the extent provided in this Agreement, the Plan or the Disclosure Statement, the Company makes no representation or warranty in connection with the purchase of the Rule 1145 Shares.

(d) No federal or state agency has made or will make any finding or determination as to the adequacy or accuracy of any information provided to the Subscriber in connection with its consideration of its investment in the Rule 1145 Shares or as to the fairness of this private placement for investment, nor any recommendation or endorsement of the Rule 1145 Shares.

(e) The Company will be relying on representations, warranties and agreements made by the Subscriber to the Company, and the covenants agreed to by the Subscriber, herein. The Subscriber agrees to provide, if requested, any additional information that may reasonably be required to determine its eligibility to purchase the Rule 1145 Shares. If there is any change in any of the information provided by the Subscriber, or if any of the Subscriber's representations and warranties becomes inaccurate in any respect, the Subscriber will furnish such revised or corrected information to the Company as soon as reasonably practicable, but in any event prior to the Expiration Date.

(f) The Subscriber understands and acknowledges that all calculations, including, to the extent applicable, the calculation of (i) the value of the Subscriber's or any other Eligible Holder's Other Impaired Excel General Unsecured Claims (ii) the value of the Subscriber's Syndicate Credit Deficiency Claim or (iii) the Subscriber's or any other Eligible Holder's Rule 1145 Shares, shall be made in good faith by the Company with the consent of each of the Consenting Parties (as defined in the Plan) and in accordance with any Claim amounts included in the Plan, and any disputes regarding such calculations shall be subject to a final and binding determination by the Bankruptcy Court.

(g) The Disclosure Statement contains projections. The projections are subjective in many respects and are based on expectations, estimates, opinions and beliefs of the



Company's management with respect to its financial condition, business and industry performance, general economic, market and financial conditions and other matters, all of which are difficult to predict and many of which are beyond the Company's control. Accordingly, there can be no assurance that the estimates and assumptions made in preparing the projections will prove accurate or that the forecasts will be realized. In addition, the projections do not and cannot take into account such factors as general economic conditions, unforeseen changes and developments in available technologies and products, the entry into the Company's market of significant additional competitors, natural disasters, the terms and conditions of future financings of the Company, and other risks inherent to the business of the Company. While management believes that the projections reflect the possible future results of the Company's operations, such results cannot be guaranteed. The Subscriber acknowledges that it is prepared for the substantial economic risks involved in the purchase of the Rule 1145 Shares, including the total loss of its investment. The Company will not be under any duty to update the projections included in the Disclosure Statement prior to or after the Closing Date.

(h) If the Subscriber is an underwriter, any Rule 1145 Shares it subscribes for will be "restricted securities" and may not be resold under the Securities Act and applicable state Blue Sky Laws absent an effective registration statement under the Securities Act or pursuant to an applicable exemption from registration, including Rule 144 promulgated under the Securities Act. Section 1145(b)(1) of the Bankruptcy Code defines an "underwriter" as one who, except with respect to "ordinary trading transactions" of an entity that is not an "issuer," (a) purchases a claim against, interest in, or claim for an administrative expense in the case concerning the debtor, if such purchase is with a view to distribution of any security received or to be received in exchange for such claim or interest; or (b) offers to sell securities offered or sold under a plan for the holders of such securities; or (c) offers to buy securities offered or sold under a plan from the holders of such securities, if such offer to buy is (i) with a view to distribution of such securities and (ii) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or (d) is an issuer of the securities within the meaning of section 2(a)(11) of the Securities Act. In addition, a person who receives a fee in exchange for purchasing an issuer's securities could also be considered an underwriter within the meaning of section 2(a)(11) of the Securities Act.

## 5. COVENANT OF THE COMPANY

(a) Plan Supplement. Except to the extent otherwise agreed by the Consenting Parties, the Company shall file all documents included within the Plan Supplement (as defined in the Plan) with the Bankruptcy Court at least five (5) Business Days prior to the Subscription Expiration Deadline (except for the Holdco LLC Agreement, which shall be filed by January 7, 2014).

## 6. CONDITIONS TO CLOSING.

(a) Conditions to Each Party's Obligations. The respective obligations of the Subscriber and the Company to consummate the transactions contemplated by this Agreement are subject to the occurrence of the Effective Date.

(b) Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement with the Subscriber are subject to the satisfaction or waiver, at or prior to the Closing, of the following conditions:

(i) All representations and warranties of the Subscriber in Section 3 of this Agreement must be true, correct and complete in all respects on the Closing Date;

(ii) All acknowledgments of the Subscriber in Section 4 of this Agreement must be true, correct and complete in all respects on the Closing Date;

(iii) The Plan shall have been confirmed by the Bankruptcy Court; and

(iv) Compliance by the Subscriber with the Rule 1145 Rights Offering Procedures governing the Rule 1145 Rights Offering, including payment by the Subscriber of the Purchase Price.

(c) Conditions to Obligations of the Subscriber. The obligations of the Subscriber to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver, at or prior to the Closing, of the following conditions:

(i) All representations and warranties of the Company in Section 2 of this Agreement must be true and correct in all material respects on the Closing Date;

(ii) Compliance by the Company with the Rule 1145 Rights Offering Procedures governing the Rule 1145 Rights Offering;

(iii) Compliance by the Company with the covenant set forth in Section 5(a) of this Agreement; and

(iv) The Plan and the Plan Supplement (including all exhibits thereto) shall be effective at Closing with no material changes from the forms on file with the Bankruptcy Court by the deadline set forth in Section 5(a) above.

## 7. TERMINATION.

This Agreement will terminate upon the earlier of (i) termination or rejection of the Plan by all classes entitled to vote, (ii) receipt by the Company of written notice of termination from the Subscriber, provided such notice is received by the Subscription Expiration Deadline, and (iii) April 1, 2014. In the event this Agreement is terminated, any payments received pursuant to Section 1(a) of this Agreement will be returned to the Subscriber as soon as reasonably practicable, but in any event, within six (6) Business Days.

## 8. INTERPRETATION OF THIS AGREEMENT.

(a) Terms Defined. As used in this Agreement, the following terms have the respective meanings set forth below:

"Affiliate": With respect to any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (including with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person (whether through ownership of securities or partnership or other ownership interests, by agreement, contract, obligation, promise, undertaking or understanding, whether written or oral, or otherwise).

"Beneficial Holder Convertible Note Subscription Form": The subscription form to be completed by beneficial holders of Convertible Notes included as Schedule 1B hereto.

"Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form": The subscription form to be completed by beneficial holders of Other Impaired Excel General Unsecured Claims included as Schedule 1D hereto.

"Business Day": Any day that is not a Saturday, Sunday, legal holiday or other day on which commercial banks in New York, New York are authorized or required by applicable law to close.

"Debtors": The Company, Excel Maritime Carriers LLC, Amanda Enterprises Ltd., Barland Holdings Inc., Candy Enterprises Inc., Castalia Services Ltd., Centel Shipping Company Ltd., Coal Gypsy Shipco LLC, Coal Hunter Shipco LLC, Coal Pride Shipco LLC, Fianna Navigation S.A., Fountain Services Ltd., Grain Express Shipco LLC, Grain Harvester Shipco LLC, Harvey Development Corp., Ingram Ltd., Iron Anne Shipco LLC, Iron Beauty Shipco LLC, Iron Bill Shipco LLC, Iron Bradyn Shipco LLC, Iron Brooke Shipco LLC, Iron Fuzeyya Shipco LLC, Iron Kalypso Shipco LLC, Iron Knight Shipco LLC, Iron Lindrew Shipco LLC, Iron Manolis Shipco LLC, Iron Miner Shipco LLC, Iron Vassilis Shipco LLC, Kirmar Shipco LLC, Liegh Jane Navigation S.A., Lowlands Beilun Shipco LLC, Marias Trading Inc., Ore Hansa Shipco LLC, Pascha Shipco LLC, Point Holdings Ltd., Sandra Shipco LLC, Santa Barbara Shipco LLC, Snapper Marine Ltd., Tanaka Services Ltd., Teagan Shipholding S.A., Thurman International Ltd., Whitelaw Enterprises Co., and Yasmine International Inc.

"Effective Date": The date the Plan becomes effective.

"Eligible Holder": Any holder of an Impaired Excel General Unsecured Claim as of the Record Date.

"Excess Shares": Certain Tranche A Offered Shares that are not otherwise purchased pursuant to the exercise of Tranche A Subscription Rights that are to be offered to any Eligible Holder who exercises in full its Tranche A Subscription Rights in the Rule 1145 Rights Offering; provided, however, that no Eligible Holder will have the right to purchase any Excess Shares if \$5,000,000 of Tranche A Offered Shares are subscribed for pursuant to the exercise by any Eligible Holder of Tranche A Subscription

Rights. The right to purchase Excess Shares shall apply only to the Tranche A Subscription Rights offered, to the extent not purchased by Eligible Holders who exercise their respective Tranche A Subscription Rights.

"Impaired Excel General Unsecured Claims": A claim arising by virtue of an Eligible Holder holding Convertible Notes, Other Impaired Excel General Unsecured Claim or Syndicate Credit Deficiency Claim as of the Record Date.

"Master Convertible Note Subscription Form": The subscription form to be completed by the Nominee of any beneficial holders of Convertible Notes included as Schedule 1C hereto.

"New Common Stock": The shares of common stock of the reorganized Company, par value \$0.01 per share.

"Nominee": Broker, bank, commercial bank, transfer agent, trust company, dealer, or other agent or nominee, as applicable.

"Other Impaired Excel General Unsecured Claims": Any (A) unsecured deficiency claim arising under the Company's senior secured syndicate credit facility dated April 14, 2008; (B) claim arising under certain swap agreements entered into by the Company and Eurobank EFG Private Bank Luxembourg S.A. and Marfin Popular Bank Public Co. Ltd., Greek Branch, respectively; (C) claim for damages alleged by Robertson Maritime Investors, LLC; and/or (D) claim arising under a settlement with certain bareboat charter parties, dated December 5, 2012.

"Over-Subscription Rights": The non-Transferable, non-certificated subscription rights to purchase Excess Shares in connection with the Rule 1145 Rights Offering on the terms and subject to the conditions set forth in the Plan, these Rule 1145 Rights Offering Procedures and the Rule 1145 Subscription Agreement. The right to purchase Excess Shares shall apply only to the Tranche A Subscription Rights offered, to the extent not purchased by Eligible Holders who exercise their respective Tranche A Subscription Rights.

"Person": An individual, partnership, limited liability company, joint-stock company, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

"Pro Rata Excess Shares": The number of Excess Shares that an Eligible Holder can subscribe for in the Rule 1145 Rights Offering, which is equal to (a) the total number of Excess Shares multiplied by (b) the quotient obtained by dividing (i) the amount of Impaired Excel General Unsecured Claims held by that Eligible Holder by (ii) the total amount of Impaired Excel General Unsecured Claims held by Eligible Holders who elect to subscribe for unsubscribed shares, rounded down to the nearest whole share; provided, however, that (x) if such *pro rata* allocation results in any Eligible Holder being allocated a greater number of Excess Shares than such Eligible Holder subscribed

for pursuant to the exercise of such Eligible Holder's Over-Subscription Rights, then such Eligible Holder will be allocated only such number of Excess Shares as such Eligible Holder subscribed for and the remaining Excess Shares will be allocated among all other Eligible Holders exercising Over-Subscription Rights on the same *pro rata* basis outlined above and (y) the total amount of any Eligible Holder's Pro Rata Tranche A Offered Shares, Pro Rata Excess Shares and Pro Rata Tranche B Offered Shares shall in no instance exceed 75% of such Eligible Holder's *pro rata* portion of the Section 1145 Stipulated Value. Such proration will be repeated until all Excess Shares have been allocated to the full extent of the Over-Subscription Rights; provided, further no Syndicate Credit Deficiency Claims shall be included for purposes of such calculation if such Syndicate Credit Deficiency Claims have been waived pursuant to Section 1(b).

"Pro Rata Tranche A Offered Shares": The number of Tranche A Offered Shares that an Eligible Holder can subscribe for in the Rule 1145 Rights Offering, which is equal to (a) the total number of Tranche A Offered Shares multiplied by (b) the quotient obtained by dividing (i) the aggregate value of all Impaired General Unsecured Claims held by such Eligible Holder as of the Record Date by (ii) the aggregate value of all Impaired General Unsecured Claims held by all Eligible Holders as of the Record Date; provided, however, no Syndicate Credit Deficiency Claims shall be included for purposes of such calculation if such Syndicate Credit Deficiency Claims have been waived pursuant to Section 1(b).

"Pro Rata Tranche B Offered Shares": The number of Tranche B Offered Shares that an Eligible Holder can subscribe for in the Rule 1145 Rights Offering, which is equal to (a) the total number of Tranche B Offered Shares multiplied by (b) the quotient obtained by dividing (i) the aggregate value of all Impaired General Unsecured Claims held by such Eligible Holder as of the Record Date by (ii) the aggregate value of all Impaired General Unsecured Claims held by all Eligible Holders as of the Record Date; provided, however, no Syndicate Credit Deficiency Claims shall be included for purposes of such calculation if such Syndicate Credit Deficiency Claims have been waived pursuant to Section 1(b).

"Purchase Price": The applicable purchase price set forth in Item 2c of an Eligible Holder's Beneficial Holder Convertible Note Subscription Form or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, as applicable.

"Record Date": December 9, 2013.

"Related Fund": With respect to the Subscriber, any fund, account or investment vehicle that is controlled or managed by (a) the Subscriber, (b) a controlled Affiliate of the Subscriber or (c) the same investment manager or advisor as the Subscriber or an Affiliate of such investment manager or advisor.

"Rule 1145 Rights Offering Instructions": The instructions included as Schedule 1A hereto.

"Rule 1145 Shares": Has the meaning set forth in Section 1 of the Rule 1145 Rights Offering Procedures included as Exhibit A hereto.

"Rule 1145 Subscription Agreement": This agreement.

"Section 1145 Stipulated Value": means \$36 million, which amount is stipulated to among the Consenting Parties solely for purposes of compliance with section 1145 of the Bankruptcy Code by Holders of Impaired Excel General Unsecured Claims other than Holders of Syndicate Credit Deficiency Claims, and solely in connection with the Co-Investment Rights.

"Subscription Agent": Donlin Recano & Company, Inc., or any other entity designated as such by the Company, in its capacity as a subscription agent and escrow agent in connection with the Rule 1145 Rights Offering.

"Subscription Commencement Date": The date on which Rule 1145 Subscription Agreements are first sent to Eligible Holders.

"Subscription Expiration Deadline": 5:00 p.m. New York City Time on January 17, 2014, the date by which properly completed Rule 1145 Subscription Agreements and the Purchase Price will be required to be delivered to the Subscription Agent as provided in the Rule 1145 Subscription Agreements.

"Subscription Period": The period beginning on the Subscription Commencement Date and ending on the Subscription Expiration Deadline.

"Syndicate Credit Deficiency Claims": means the unsecured Claim arising under the Syndicate Credit Facility or the Loan Documents. For the avoidance of doubt, the Consenting Parties reserve all rights with respect to the amount, if any, and treatment of a Syndicate Credit Facility Deficiency Claim, if any, held by the Secured Lenders for all other purposes including, but not limited to, voting on and receiving distributions, in each case with respect to any plan of reorganization that is not consistent with the plan of reorganization described in the Plan Term Sheet.

"Syndicate Credit Deficiency Claims Subscription Form": The subscription form, to be completed by beneficial holders of Syndicate Credit Deficiency Claims, will be filled only if the class of Impaired Excel General Unsecured Claims votes not to accept the Plan, included as Schedule 1E hereto.

"Tranche A Offered Shares": 307,692 shares of New Common Stock to be offered to Eligible Holders in the Rule 1145 Rights Offering at the Tranche A Purchase Price.

"Tranche A Purchase Price" means \$16.25 per share.

"Tranche A Subscription Rights": The non-Transferable, non-certificated subscription rights to purchase Tranche A Offered Shares in connection with the Rule

1145 Rights Offering on the terms and subject to the conditions set forth in the Plan, these Rule 1145 Rights Offering Procedures and the Rule 1145 Subscription Agreement.

"Tranche B Offered Shares": 289,872 shares of New Common Stock to be offered to Eligible Holders in the Rule 1145 Rights Offering at the Tranche B Purchase Price.

"Tranche B Purchase Price" means \$17.25 per share.

"Tranche B Subscription Rights": The non-Transferable, non-certificated subscription rights to purchase Tranche B Offered Shares in connection with the Rule 1145 Rights Offering on the terms and subject to the conditions set forth in the Plan, these Rule 1145 Rights Offering Procedures and the Rule 1145 Subscription Agreement.

"Transfer": Any resale, sale, assignment, pledge, hypothecation, distribution or other disposition or encumbrance.

(b) Directly or Indirectly. Where any provision in this Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision will be applicable whether such action is taken directly or indirectly by such Person.

(c) Governing Law; Jurisdiction. THIS AGREEMENT, AND ALL CLAIMS ARISING OUT OF OR RELATING THERETO, WILL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK. THE SUBSCRIBER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF, AND VENUE IN, THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW YORK AND WAIVES ANY OBJECTION BASED ON *FORUM NON CONVENIENS*.

(d) Section Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and should not be deemed to constitute a part thereof.

(e) Construction. This Agreement has been freely and fairly negotiated between the parties. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this Agreement. The words "include", "includes", and "including" will be deemed to be followed by "without limitation." Pronouns in masculine, feminine and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words "this Agreement", "herein", "hereof", "hereby", "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

9. MISCELLANEOUS.

(a) Notices.

(i) The Subscriber acknowledges that a completed and signed copy of this Agreement, the Beneficial Holder Convertible Note Subscription Form or Master Convertible Note Subscription Form, as applicable, and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form or Syndicate Credit Deficiency Claims Subscription Form, as applicable, together with payment of the Purchase Price, must be received by the Subscription Agent in accordance with the instructions included herewith prior to the Subscription Expiration Deadline for the subscription contemplated hereby to be valid.

(ii) Except as otherwise provided in this Agreement, following execution of this Agreement, all demands, notices, requests, consents and other communications under this Agreement must be in writing, sent contemporaneously to all of the notice parties set forth below and deemed given when delivered, if delivered by hand or upon confirmation of transmission, if delivered by facsimile, or if no response to the effect that an email cannot be delivered to the sender is received within two (2) hours, if delivered by email, during standard business hours (from 8:00 A.M. to 6:00 P.M. at the place of receipt) at the addresses and facsimile numbers set forth below:

(A) if to the Subscriber, at his or her address or facsimile number shown on the Beneficial Holder Convertible Note Subscription Form and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, as applicable, or at such other address or facsimile number as the Subscriber may have furnished the Company and the Subscription Agent in writing; and

(B) if to the Company, at (or at such other address or facsimile number as it may have furnished in writing to the Subscriber):

Excel Maritime Carriers Ltd.  
17<sup>th</sup> Km National Road Athens –  
Lamia & Finikos Street  
145 64 Nea Kifisia  
Athens, Greece  
Attn: Pavlos Kanellopoulos

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036  
Attn: Jay Goffman and Mark McDermott  
Facsimile: 212-735-2000  
jay.goffman@skadden.com; mark.mcdermott@skadden.com

(b) Expenses and Taxes. The Company will pay, and hold the Subscriber harmless from any and all liabilities (including interest and penalties) with respect to, or resulting from any delay or failure in paying, stamp and other taxes (other than income taxes), if any,



which may be payable or determined to be payable on the execution and delivery of this Agreement or acquisition of the securities pursuant to this Agreement.

(c) Reproduction of Documents. This Agreement and all documents relating hereto may not be reproduced or distributed by the Subscriber without the prior written consent of the Company.

(d) Assignment; Successors. This Agreement is not assignable by the Subscriber without the prior written consent of the Company. This Agreement and the rights, powers and duties set forth herein will inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.

(e) Entire Agreement; Amendment and Waiver. This Agreement constitutes the entire understanding of the parties hereto and supersedes all prior understandings among such parties with respect to the matters covered herein. This Agreement may be amended, and the observance of any term of this Agreement may be waived, with (and only with) the written consent of the Company and the Subscriber.

(f) Severability. If any provision of this Agreement or the application of such provision to any Person or circumstance is held to be invalid by any court of competent jurisdiction, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid will not be affected thereby.

(g) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement.

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Please indicate your acceptance and approval of the foregoing in the space provided below.

EXCEL MARITIME CARRIERS LTD.

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

Title:

ACCEPTED AND APPROVED

as of the \_\_\_\_ day of \_\_\_\_\_, 2013

SUBSCRIBER: \_\_\_\_\_  
(Please provide full legal name)

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Postal Code: \_\_\_\_\_

Country: \_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

Email Address: \_\_\_\_\_

If U.S. person, check here and attach IRS Form W-9:  U.S. person

If Non-U.S. person, check here and attach appropriate IRS Form W-8:  Non-U.S. person

**Exhibit A**

**RULE 1145 RIGHTS OFFERING PROCEDURES**

**Each Tranche A Offered Share, Tranche B Offered Share and Excess Share is being distributed and issued by the Debtors without registration under the Securities Act of 1933, as amended (the "Securities Act"), in reliance upon the exemption provided in section 1145 of the Bankruptcy Code.**

**None of the Tranche A Subscription Rights, Tranche B Subscription Rights or any Over-Subscription Rights distributed in connection with these Rule 1145 Rights Offering Procedures have been or will be registered under the Securities Act, nor any State or local law requiring registration for offer and sale of a security, and no Tranche A Subscription Rights, Tranche B Subscription Rights or Over-Subscription Rights may be sold or independently Transferred.**

**None of the Tranche A Offered Shares, Tranche B Offered Shares or Excess Shares have been or will be registered under the Securities Act, nor any state or local law requiring registration for offer or sale of a security.**

**The Rule 1145 Rights Offering is being conducted in good faith and in compliance with the Bankruptcy Code. In accordance with section 1125(e) of the Bankruptcy Code, a debtor or any of its agents that participate, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, in the offer, issuance, sale, or purchase of a security, offered or sold under the plan of the debtor, of an affiliate participating in a joint plan with the debtor, or of a newly organized debtor under the plan, is not liable, on account of such participation, for violation of any applicable law, rule, or regulation governing the offer, issuance, sale or purchase of securities.**

**Terms used and not defined herein or in the Rule 1145 Subscription Agreement shall have the meaning assigned to them in the Plan (as defined below).**

To Eligible Holders<sup>1</sup> and Nominees of Eligible Holders:

On November 26, 2013, the Debtors (as defined below) filed the Amended Joint Chapter 11 Plan of Reorganization of the Debtors with the United States Bankruptcy Court for the Southern District of New York (as such plan of reorganization may be amended or modified from time to time in accordance with its terms, the "Plan"), and the Disclosure Statement with respect to the Plan (as such disclosure statement may be amended from time to time in accordance with its terms, the "Disclosure Statement"). Pursuant to the Plan, each holder of an Impaired Excel General Unsecured Claim as of the Record Date, has the right to participate in the Rule 1145 Rights Offering of the Tranche A Offered Shares, Tranche B Offered Shares and Excess Shares, in accordance with the terms and conditions of the Rule 1145 Subscription Agreement and these Rule 1145 Rights Offering Procedures.

Pursuant to the Plan, each Eligible Holder will receive Tranche A Subscription Rights, Tranche B Subscription Rights and, to the extent applicable, Over-Subscription Rights to subscribe for its Pro Rata Tranche A Offered Shares and Pro Rata Tranche B Offered Shares and, to the extent applicable, its Pro Rata Excess Shares, provided that it timely and properly executes and delivers its Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable) and/or Syndicate Credit Deficiency Claims Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), as applicable, to the Subscription Agent or its Nominee, as applicable, in advance of the Subscription Expiration Deadline. Each Nominee will receive a Master Convertible Note Subscription Form which it shall use to summarize the Tranche A Subscription Rights, Tranche B Subscription Rights and, to the extent applicable, Over-Subscription Rights, exercised by each Eligible Holder that returns a Beneficial Holder Convertible Note Subscription Form to such Nominee. Please note that all Beneficial Holder Convertible Note Subscription Forms (with accompanying IRS Form W-9 or appropriate W-8, as applicable) must

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<sup>1</sup> "Eligible Holder" means any holder of an Impaired Excel General Unsecured Claim as of the Record Date.

be returned to the applicable Nominee early enough to be processed and for such Nominee to prepare and deliver the Master Convertible Note Subscription Form and a copy of all Beneficial Holder Convertible Note Subscription Forms (with accompanying IRS Forms) to the Subscription Agent prior to the Subscription Expiration Deadline.

No Eligible Holder shall be entitled to participate in the Rule 1145 Rights Offering unless the purchase price for the Tranche A Offered Shares and Tranche B Offered Shares and, to the extent applicable, Excess Shares it subscribes for is received by the Subscription Agent in advance of the Subscription Expiration Deadline. Any Eligible Holder submitting payment via its Nominee must tender such payment to its Nominee in sufficient time to allow the Nominee to forward such payment to the Subscription Agent in advance of the Subscription Expiration Deadline.

**Holders of Syndicate Credit Deficiency Claims shall be entitled to participate in the Rule 1145 Rights Offering, provided that if the class of Impaired Excel General Unsecured Claims votes to accept the Plan, the Tranche A Subscription Rights, Tranche B Subscription Rights and, to the extent applicable, Over-Subscription Rights, of any holders of Syndicate Credit Deficiency Claims shall be deemed forever and irrevocably relinquished and waived on the Effective Date. If the class of Impaired Excel General Unsecured Claims does not vote to accept the Plan, the *pro rata* share for each Eligible Holder will be determined by multiplying (a) the total number of either Tranche A Offered Shares or Tranche B Offered Shares by (b) the quotient obtained by dividing (i) the amount of Impaired Excel General Unsecured Claims held by that Eligible Holder by (ii) the total amount of Impaired Excel General Unsecured Claims (inclusive of Syndicate Credit Deficiency Claims) rounded to the nearest whole share.**

In order to facilitate participation in the Rule 1145 Rights Offering, each Impaired Excel General Unsecured Claim will be determined to be Allowed or disallowed by no later than January 16, 2014, for purposes of participating in the 1145 Rights Offering. In the event that the holder of an Impaired Excel General Unsecured Claim that is disputed wishes to participate in the Rule 1145 Rights Offering, such holder must file a motion pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure seeking allowance of such claim and obtain a ruling on such motion by no later than January 16, 2014. Unless such a motion is timely filed and ruled upon, holders of disputed Impaired Excel General Unsecured Claims will be deemed to be disallowed for purposes of participating in the Rule 1145 Rights Offering.

Eligible Holders will receive materials regarding the Rule 1145 Rights Offering based on the current amount of Allowed Impaired Excel General Unsecured Claims. If any disputed Impaired Excel General Unsecured Claims become Allowed by no later than January 16, 2014, the total amount of Allowed Impaired Excel General Unsecured Claims will increase. In that event, the amount of Offered Shares that Eligible Holders will be entitled to purchase pursuant to the Rule 1145 Rights Offering will decrease.

**In order to participate in the Rule 1145 Rights Offering, you must complete all the steps outlined below. If all of the steps outlined below are not completed by the Subscription Expiration Deadline, you shall be deemed to have forever and irrevocably relinquished and waived your right to participate in the Rule 1145 Rights Offering.**

**1. Rule 1145 Rights Offering**

Eligible Holders have the right, but not the obligation, to participate in the Rule 1145 Rights Offering.

Subject to the terms and conditions set forth in the Plan, these Rule 1145 Rights Offering Procedures and the Rule 1145 Subscription Agreements:

Each Eligible Holder is entitled to subscribe for (i) its Pro Rata Tranche A Offered Shares at the Tranche A Purchase Price, (ii) its Pro Rata Tranche B Offered Shares at the Tranche B Purchase Price and (iii) to the extent such Eligible Holder subscribes for the full amount of its Pro Rata Tranche A Offered Shares, its Pro Rata Excess Shares at the Tranche A Purchase Price, subject to the individual limits included in the calculations under Item 2 of such Eligible Holder's Beneficial Holder Convertible Note Subscription Form, Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form or Syndicate Credit Deficiency Claims Subscription Form, as applicable. The number of Tranche A Offered Shares, Tranche B Offered Shares and Excess Shares actually subscribed for and purchased by an Eligible Holder shall be referred to as such Eligible Holder's "*Rule 1145 Shares*."

Notwithstanding the foregoing, holders of Syndicate Credit Deficiency Claims shall be entitled to participate in the Rule 1145 Rights Offering, provided that if the class of Impaired Excel General Unsecured Claims votes to accept the Plan, the Tranche A Subscription Rights, Tranche B Subscription Rights and, to the extent applicable, Over-Subscription Rights, of any holders of Syndicate Credit Deficiency Claims shall be deemed forever and irrevocably relinquished and waived on the Effective Date. In the event that the class of Impaired Excel General Unsecured Claims votes to accept the Plan, any Rule 1145 Subscription Agreement and any Syndicate Credit Deficiency Claims Subscription Form returned by a holder of a Syndicate Credit Deficiency Claim to the Subscription Agent will be deemed null and void and any funds paid by such holder will be returned in accordance with the provisions of the Rule 1145 Subscription Agreement. **If the class of Impaired Excel General Unsecured Claims does not vote to accept the Plan, the *pro rata* share for each Eligible Holder will be determined by multiplying (a) the total number of either Tranche A Offered Shares or Tranche B Offered Shares by (b) the quotient obtained by dividing (i) the amount of Impaired Excel General Unsecured Claims held by that Eligible Holder by (ii) the total amount of Impaired Excel General Unsecured Claims (inclusive of Syndicate Credit Deficiency Claims) rounded to the nearest whole share.**

**SUBJECT TO THE TERMS AND CONDITIONS OF THE SUBSCRIPTION AGREEMENT, ALL SUBSCRIPTIONS SET FORTH IN THE SUBSCRIPTION AGREEMENTS ARE IRREVOCABLE.**

**2. Subscription Period**

The Rule 1145 Rights Offering will commence on the Subscription Commencement Date and will expire on the Subscription Expiration Deadline. Each Eligible Holder intending to purchase Common Stock in the Rule 1145 Rights Offering must affirmatively elect to exercise its Tranche A Subscription Rights, Tranche B Subscription Rights and any Over-Subscription Rights in the manner set forth in the Rule 1145 Rights Offering Instructions included with the Rule 1145 Subscription Agreements (consistent herewith, including as described in Section 5 hereof) on or prior to the Subscription Expiration Deadline.

Any exercise of Tranche A Subscription Rights, Tranche B Subscription Rights or Over-Subscription Rights after the Subscription Expiration Deadline will not be allowed and any purported exercise received by the Subscription Agent after the Subscription Expiration Deadline, regardless of when the documents or payment relating to such exercise were sent, will not be honored.

### 3. Delivery of Rule 1145 Subscription Agreements

Each Eligible Holder may exercise all or any portion of such Eligible Holder's Tranche A Subscription Rights or Tranche B Subscription Rights, but subject to the terms and conditions of the Rule 1145 Subscription Agreement, the exercise of any Tranche A Subscription Rights or Tranche B Subscription Rights will be irrevocable. Each Eligible Holder may exercise all or any portion of such Eligible Holder's Over-Subscription Rights only if such Eligible Holder exercises all of such Eligible Holder's Tranche A Subscription Rights, but subject to the terms and conditions of the Rule 1145 Subscription Agreement, the exercise of any Over-Subscription Rights will be irrevocable. In order to facilitate the exercise of the Tranche A Subscription Rights, Tranche B Subscription Rights and, to the extent applicable, Over-Subscription Rights, beginning on the Subscription Commencement Date, the Subscription Agent will send a Rule 1145 Subscription Agreement to each Eligible Holder or its Nominee, as applicable, together with appropriate instructions for the proper completion, due execution and timely delivery of the Rule 1145 Subscription Agreement and the payment of the applicable Purchase Price for its Rule 1145 Shares.

### 4. Exercise of Subscription Rights

In order to validly exercise Tranche A Subscription Rights, Tranche B Subscription Rights and any Over-Subscription Rights, each Eligible Holder must:

- (a) return a duly executed Rule 1145 Subscription Agreement to the Subscription Agent or its Nominee, as applicable, so that such Rule 1145 Subscription Agreement is actually received by the Subscription Agent on or before the Subscription Expiration Deadline;
- (b) return a duly completed and executed Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable) or Syndicate Credit Deficiency Claims Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), as applicable, to the Subscription Agent or its Nominee, as applicable, so that such form and the Master Convertible Note Subscription Form, as applicable, are actually received by the Subscription Agent on or before the Subscription Expiration Deadline; and
- (c) at the same time it returns its Rule 1145 Subscription Agreement and Beneficial Holder Convertible Note Subscription Form, Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form or Syndicate Credit Deficiency Claims Subscription Form, as applicable, to the Subscription Agent or its Nominee, as applicable, but in no event later than the Subscription Expiration Deadline, pay, or arrange for the payment by its Nominee of, the applicable Purchase Price to the Subscription Agent by wire transfer **ONLY** of immediately available funds in accordance with the instructions included in Item 3 of the Beneficial Holder Convertible Note Subscription Form, Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form or Syndicate Credit Deficiency Claims Subscription Form, as applicable.

**Holders of Convertible Notes** – With respect to (a), (b) and (c) above you must duly complete, execute and return your Beneficial Holder Convertible Note Subscription Form in accordance with the instructions herein **directly to your Nominee** in sufficient time to allow your Nominee to process your instructions and deliver to the Subscription Agent your completed Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), Rule 1145 Subscription Agreement and payment on or before the Subscription Expiration Deadline.

In the event that funds received by the Subscription Agent in payment for such Eligible Holder's Rule 1145 Shares are less than the applicable Purchase Price, the number of such Eligible Holder's Rule 1145 Shares deemed to be purchased by the Eligible Holder will be the lesser of (i) the number of such Eligible Holder's Rule 1145 Shares requested by such Eligible Holder and (ii) a number determined by dividing the amount of such funds received by the Tranche A Purchase Price or Tranche B Purchase Price, as applicable. Funds will first be applied against payment for the Tranche A Offered Shares, including any Excess Shares, with the remaining funds applied to the purchase of the Tranche B Offered Shares

The payments of cash made in accordance with the Rule 1145 Rights Offering will be deposited and held by the Subscription Agent in a segregated escrow account until administered in connection with the settlement of the Rule 1145 Rights Offering on the Effective Date. The Subscription Agent may not use such funds for any other purpose prior to such Effective Date and may not encumber or permit such funds to be encumbered with any lien or similar encumbrance. Such funds held by the Subscription Agent shall not be deemed part of the Debtors' bankruptcy estate.

**5. Transfer Restriction; Revocation**

The Tranche A Subscription Rights, Tranche B Subscription Rights and Over-Subscription Rights are not Transferable. Any Transfer or attempted Transfer of the Tranche A Subscription Rights, Tranche B Subscription Rights or Over-Subscription Rights will be null and void, and no purported transferee will be treated as the holder of any Tranche A Subscription Rights, Tranche B Subscription Rights or Over-Subscription Rights. Once an Eligible Holder has properly exercised its Tranche A Subscription Rights, Tranche B Subscription Rights and any Over-Subscription Rights, subject to the terms and conditions of the Rule 1145 Subscription Agreement, such exercise will not be permitted to be revoked.

**6. Return of Payment**

If the Rule 1145 Rights Offering is not consummated, any cash paid to the Subscription Agent will be returned, without interest, to the applicable Eligible Holder as soon as reasonably practicable, but in any event within six (6) Business Days, after the earlier of (a) the Subscription Expiration Deadline and (b) the date on which the Rule 1145 Rights Offering is terminated.

In the event that the Subscription Agent receives more funds from an Eligible Holder than the aggregate Purchase Price for such Eligible Holder's Rule 1145 Shares, giving effect to any applicable *pro rata* reduction of such Eligible Holder's subscription or over-subscription then such funds, to the extent of such overpayment, will be returned, without interest, to the applicable Eligible Holder as soon as reasonably practicable, but in any event within six (6) Business Days after such determination is made.

In the event that the class of Impaired Excel General Unsecured Claims votes to accept the Plan, any funds paid by a holder of a Syndicate Credit Deficiency Claim in connection with its exercise of Tranche A Subscription Rights, Tranche B Subscription Rights and, to the extent applicable, Over-Subscription Rights, will be returned, without interest, as soon as reasonably practicable, but in any event within six (6) Business Days after acceptance or rejection of the Plan is filed with the Bankruptcy Court.

**7. Settlement of the Rule 1145 Rights Offering and Distribution of the Offered Shares**

On the Effective Date, and immediately after the issuance of the Rule 1145 Shares under the Plan, all Eligible Holders shall transfer any Rule 1145 Shares they have subscribed for in the Rule 1145 Rights Offering to Holdco automatically pursuant to the terms of the Plan and without further action required. Subject to the terms in the Plan, such Eligible Holders shall receive Holdco Units in the same percentages as they held Rule 1145 Shares in Reorganized Excel on the Effective Date after the exercise of their Tranche A Subscription Rights, Tranche B Subscription Rights and any Over-Subscription Rights. On the Effective Date (or as soon as reasonably practicable thereafter), the Company's will distribute the physical stock certificates representing the Holdco Units of Eligible Holder that properly exercised its rights in the Rule 1145 Rights Offering in accordance with the delivery instructions set forth in such Eligible Holder's Rule 1145 Subscription Agreement.

**8. Fractional Rule 1145 Shares**

No fractional shares will be issued in the Rule 1145 Rights Offering. All share allocations (including each Eligible Holder's Rule 1145 Shares) will be calculated to one decimal place and rounded down to the closest whole share.

**9. Validity of Exercise of Tranche A Subscription Rights, Tranche B Subscription Rights and Over-Subscription Rights**

All questions concerning the timeliness, viability, form and eligibility of any exercise of Tranche A Subscription Rights, Tranche B Subscription Rights and any Over-Subscription Rights (including each Eligible Holder's Rule 1145 Shares) will be determined in good faith by the Company, with the consent of each of the Consenting Parties and if necessary, subject to a final and binding determination by the Bankruptcy Court. The Company may waive any defect or irregularity, or permit a defect or irregularity to be corrected within such time as they may determine in good faith, or reject the purported exercise of any Tranche A Subscription Rights, Tranche B Subscription Rights and any Over-Subscription Rights. Rule 1145 Subscription Agreements will be deemed not to have been received or accepted until all irregularities have been waived or cured within such time as the Company determines in good faith. In addition, the Company may permit any such defect or irregularity to be cured within such time as it may determine in good faith to be appropriate.

*Before exercising any Tranche A Subscription Rights, Tranche B Subscription Rights or Over-Subscription Rights, Eligible Holders should read the Disclosure Statement and Plan for information relating to the Debtors and risk factors to be considered.*

**10. Modification of Procedures**

The Company reserves the right to modify or adopt additional procedures consistent with the provisions of the Rule 1145 Rights Offering Procedures to effectuate the Rule 1145 Rights Offering and to issue the Rule 1145 Shares with the consent of each of the Consenting Parties, provided, however, that the Company shall provide prompt written notice to each Eligible Holder of any material modification to these Rule 1145 Rights Offering Procedures made after the commencement of the Rule 1145 Rights Offering. In so doing, the Company may execute and enter into agreements and take further action that the Company determines in good faith are necessary and appropriate to effect and implement the Rule 1145 Rights Offering and the issuance of the Rule 1145 Shares. Nothing in this paragraph shall be construed so as to permit the Company to modify the terms of this Rule 1145 Subscription Agreement without the consent of the Subscriber.

**11. Inquiries And Transmittal of Documents; Subscription Agent**

The Rule 1145 Rights Offering Instructions included with the Rule 1145 Subscription Agreement should be carefully read and strictly followed.

Questions relating to the Rule 1145 Rights Offering should be directed to the Subscription Agent at the following phone number:

(212) 771-1128

The risk of non-delivery of all documents and payments to the Subscription Agent and any Nominee is on the Eligible Holder electing to exercise its Tranche A Subscription Rights, Tranche B Subscription Rights and any Over-Subscription Rights and not the Company or the Subscription Agent.



Schedule 1A.

**RIGHTS OFFERING INSTRUCTIONS**

Terms used and not defined herein or in the Rule 1145 Subscription Agreement shall have the meaning assigned to them in the Plan (as defined below).

To elect to participate in the Rule 1145 Rights Offering, you must follow the instructions set out below:

1. **Insert** the amount of your claim or Convertible Note holding, as applicable, that you held as of the Record Date in Item 1 of your Beneficial Holder Convertible Note Subscription Form (if your Nominee holds your Convertible Notes on your behalf and you do not know the amount, please contact your Nominee immediately) and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form and/or Syndicate Credit Deficiency Claims Subscription Form, as applicable.
2. **Complete** the calculation in Item 2a(i) of your Beneficial Holder Convertible Note Subscription Form and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form and/or Syndicate Credit Deficiency Claims Subscription Form, as applicable, which calculates your total Maximum Participation Amount (i.e. the maximum amount of Rule 1145 Shares you are entitled to purchase in the Rule 1145 Rights Offering).
3. **Complete** the calculation in Item 2a(ii)(A) of your Beneficial Holder Convertible Note Subscription Form and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form and/or Syndicate Credit Deficiency Claims Subscription Form, as applicable, which calculates the maximum aggregate purchase price of your Pro Rata Tranche A Offered Shares, each share of which shall be purchased at the Tranche A Purchase Price (Basic Tranche A Co-Investment Right).
4. **Complete** the calculation in Item 2a(ii)(B) of your Beneficial Holder Convertible Note Subscription Form and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form and/or Syndicate Credit Deficiency Claims Subscription Form, as applicable, which calculates the maximum aggregate purchase price of your Pro Rata Tranche B Offered Shares, each share of which shall be purchased at the Tranche B Purchase Price (Basic Tranche B Co-Investment Right).
5. **Complete** the calculation in Item 2a(iii) of your Beneficial Holder Convertible Note Subscription Form and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form and/or Syndicate Credit Deficiency Claims Subscription Form, as applicable, which calculates the maximum aggregate purchase price of your Pro Rata Excess Shares for which you can subscribe at the Tranche A Purchase Price, to the extent you have subscribed for your entire Pro Rata Tranche A Offered Shares (Over-Subscription Right), subject to pro rata reduction as described in the Rule 1145 Subscription Agreement.
6. **Complete** Item 2b of your Beneficial Holder Convertible Note Subscription Form and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form and/or Syndicate Credit Deficiency Claims Subscription Form, as applicable, indicating the number of Tranche A Offered Shares, Tranche B Offered Shares and, to the extent applicable, Excess Shares you wish to purchase. Such amount must be in whole shares and the aggregate purchase price therefor cannot exceed your Maximum Participation Amount.
7. **Complete** the calculation in Item 2c of your Beneficial Holder Convertible Note Subscription Form and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form and/or Syndicate Credit Deficiency Claims Subscription Form, as applicable, which calculates the Purchase Price for the amount of Tranche A Offered Shares, Tranche B Offered Shares and, to the extent applicable, any Excess Shares that you wish to purchase.
8. **Read and complete** the certification in Item 4 of your Beneficial Holder Convertible Note Subscription Form and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form and/or Syndicate Credit Deficiency Claims Subscription Form, as applicable.
9. **Read and countersign** the Rule 1145 Subscription Agreement. Such execution shall indicate your acceptance and approval of the terms and conditions set forth therein.
10. **Read, complete and sign** an IRS Form W-9 if you are a U.S. person. If you are a non-U.S. person, read, complete and sign an appropriate IRS Form W-8. These forms may be obtained from the IRS at its website: [www.irs.gov](http://www.irs.gov).

- 11. Return** your signed Rule 1145 Subscription Agreement and Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable) and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable) and/or Syndicate Credit Deficiency Claims Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), as applicable, to the Subscription Agent or your Nominee, as applicable, in advance of the Subscription Expiration Deadline. Please note that all Beneficial Holder Convertible Note Subscription Forms must be returned to your Nominee early enough to be processed and for your Nominee to prepare and deliver the Master Convertible Note Subscription Form to the Subscription Agent prior to the Subscription Expiration Deadline.
- 12. Arrange for full payment** of the aggregate Purchase Price, calculated in accordance with Item 2c of your Beneficial Holder Convertible Note Subscription Form and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form and/or Syndicate Credit Deficiency Claims Subscription Form, as applicable, to the Subscription Agent by wire transfer of immediately available funds in accordance with the instructions set forth below. Such payment must be received prior to the Subscription Expiration Deadline.

For Eligible Holders that do not hold Convertible Notes via a Nominee, payment shall be made to:

Name of Account:	DONLIN RECANO AND CO INC E/F EXCEL MARITIME CARRIERS LTD
Bank Account No.:	7763056015
Bank Name:	TD Bank
Bank Address:	317 Madison Avenue, New York, NY 10017
Routing Number:	026013673
Reference:	[Name of Nominee/Subscriber]

For Eligible Holders that hold Convertible Notes via a Nominee, payment should be made in accordance with the instructions provided by your Nominee. Eligible Holders that hold Convertible Notes via a Nominee, must transmit payment to their Nominee for such Nominee to process such payment and deliver it to the Subscription Agent prior to the Subscription Expiration Deadline.

**The Subscription Expiration Deadline is 5:00 p.m. New York City Time on January 17, 2014.**

**Please note that any Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), Rule 1145 Subscription Agreement and payment of the Purchase Price must be received by the broker, bank, commercial bank, transfer agent, trust company, dealer, or other agent or nominee (as applicable, the "Nominee"), in accordance with your Nominee's procedures and instructions, in sufficient time to allow such Nominee to deliver the Master Convertible Note Subscription Form to the Subscription Agent by the Subscription Expiration Date or the subscription represented by your Beneficial Holder Convertible Note Subscription Form will not be counted and will be deemed forever relinquished and waived.**

**Please note that any Beneficial Holder Other Impaired Excel General Unsecured Claim Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable) and/or Syndicate Credit Deficiency Claims Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), Rule 1145 Subscription Agreement and payment of the Purchase Price must be received by the Subscription Agent by the Subscription Expiration Date or the subscription represented by your Beneficial Holder Other Impaired Excel General Unsecured Claim Subscription Form and/or Syndicate Credit Deficiency Claims Subscription Form will not be counted and will be deemed forever relinquished and waived.**

Schedule 1B.

**EXCEL MARITIME CARRIERS LTD.  
BENEFICIAL HOLDER CONVERTIBLE NOTE SUBSCRIPTION FORM  
FOR RIGHTS OFFERING  
IN CONNECTION WITH DEBTORS'  
AMENDED DISCLOSURE STATEMENT DATED NOVEMBER 26, 2013**

**SUBSCRIPTION EXPIRATION DEADLINE**

**The Subscription Expiration Deadline is 5:00 p.m. New York City Time on January 17, 2014.**

**Please note that your Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), Rule 1145 Subscription Agreement and payment of the Purchase Price must be received by your Nominee in sufficient time to allow such Nominee to deliver the Master Convertible Note Subscription Form to the Subscription Agent by the Subscription Expiration Date or the subscription represented by your Beneficial Holder Convertible Note Subscription Form will not be counted and will be deemed forever relinquished and waived.**

**Please consult the Plan, the Rule 1145 Subscription Agreement and the Rule 1145 Rights Offering Procedures for additional information with respect to this Beneficial Holder Convertible Note Subscription Form.**

**Item 1. Amount of Convertible Notes.**

I certify that I am a beneficial holder of Convertible Notes in the following amount as of the Record Date (insert amount on the line below) or that I am the authorized signatory of that beneficial holder.

*[Insert amount of Convertible Notes, including accrued and unpaid interest through July 1, 2013, held at the Record Date]*

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**Item 2. Rights.**

Each Eligible Holder is entitled to subscribe for (i) its Pro Rata Tranche A Offered Shares, (ii) its Pro Rata Tranche B Offered Shares and (iii) to the extent such Eligible Holder subscribes for its entire Pro Rata Tranche A Offered Shares, its Pro Rata Excess Shares (collectively, the "Maximum Total Participation Amount"), subject to the individual limits included in the calculations under Item 2 below. To subscribe fill out Items 2a, 2b and 2c and 3 below and read and complete Item 4 below.

**2a. Calculation of Maximum Total Participation Amount.** The maximum amount of Rule 1145 Shares for which the undersigned beneficial holder may subscribe for in the rights offering is calculated as follows:

**If the class of Impaired Excel General Unsecured Claims does not vote to accept the Plan, the *pro rata* share for each Eligible Holder will be determined by multiplying (a) the total number of either Tranche A Offered Shares or Tranche B Offered Shares by (b) the quotient obtained by dividing (i) the amount of Impaired Excel General Unsecured Claims held by that Eligible Holder by (ii) the total amount of Impaired Excel General Unsecured Claims inclusive of the Syndicate Credit Deficiency Claims rounded to the nearest whole share.**

**(i) Maximum Total Participation Amount:**

$\$36,000,000.00 \times 75\% \times [\text{Amount of Convertible Notes (including accrued and unpaid interest as of July 1, 2012)} / \$163,384,158.16^1]$

**(ii)(A) Maximum Pro Rata Tranche A Offered Shares (Basic Tranche A Co-Investment Right Amount):**

Tranche A Offered Shares (307,692)  $\times [\text{Amount of Convertible Notes (including accrued and unpaid interest as of July 1, 2012)} / \$163,384,158.16^2]$

**(ii)(B) Maximum Pro Rata Tranche B Offered Shares (Basic Tranche B Co-Investment Right Amount):**

Tranche B Offered Shares (289,872)  $\times [\text{Amount of Convertible Notes (including accrued and unpaid interest as of July 1, 2012)} / \$163,384,158.16^3]$

**(iii) Maximum Pro Rata Excess Shares (Over-Subscription Right Amount):**

Maximum Total Participation Amount –  $((\text{Maximum Pro Rata Tranche A Offered Shares} \times 16.25) + (\text{Tranche B Offered Shares listed in 2b} \times 17.25)) / 16.25$

**2b. Exercise Amount.** By filling in the following blanks, you are indicating that the undersigned Eligible Holder is interested in purchasing the number of Rule 1145 Shares specified below (specify an amount of the Rule 1145 Shares, the aggregate dollar value of which is not greater than the Maximum Participation Amount calculated in Item 2a(i) above), on the terms and subject to the conditions set forth in the Rule 1145 Subscription Agreement and Rule 1145 Rights Offering Procedures.

**Number of Tranche A Offered Shares**

**Number of Tranche B Offered Shares**

**Number of Excess Shares**

**Total:**

(Note: Total must be in whole shares and the aggregate Purchase Price therefor must not exceed the undersigned Eligible Holder's Maximum Participation Amount).

**2c. Calculation of Purchase Price.** The Purchase Price for the amount of the Rule 1145 Shares you are interested in purchasing, as set forth in Item 2b above, is calculated as follows:

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<sup>1</sup> \$163,384,158.16 assuming no additional Impaired Excel General Unsecured Claims are allowed. \$343,138,050.11 if the class of Impaired Excel General Unsecured Claims does not vote to accept the Plan, assuming no additional Impaired Excel General Unsecured Claims are allowed.

<sup>2</sup> \$163,384,158.16 assuming no additional Impaired Excel General Unsecured Claims are allowed. \$343,138,050.11 if the class of Impaired Excel General Unsecured Claims does not vote to accept the Plan, assuming no additional Impaired Excel General Unsecured Claims are allowed.

<sup>3</sup> \$163,384,158.16 assuming no additional Impaired Excel General Unsecured Claims are allowed. \$343,138,050.11 if the class of Impaired Excel General Unsecured Claims does not vote to accept the Plan, assuming no additional Impaired Excel General Unsecured Claims are allowed.

$$\begin{aligned}
 & [Total\ Tranche\ A\ Offered\ Shares\ Amount\ from\ Item\ 2b\ above] \times \$16.25 \\
 & \quad + \\
 & [Total\ Excess\ Shares\ Amount\ from\ Item\ 2b\ above\ (if\ applicable)] \times \$16.25 \\
 & \quad + \\
 & [Total\ Tranche\ B\ Offered\ Shares\ Amount\ from\ Item\ 2b\ above] \times \$17.25 \\
 & \text{Total} =
 \end{aligned}$$

**Item 3. Payment and Delivery Instructions**

Payment of the Purchase Price calculated pursuant to Item 2c above shall be made by wire transfer ONLY of immediately available funds in accordance with the procedures of your Nominee.

Please mail or deliver your completed Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable) and your properly executed Rule 1145 Subscription Agreement and deliver payment of the Purchase Price to your Nominee **in sufficient time** to allow such Nominee to deliver the Master Convertible Note Subscription Form (and associated documentation) and all funds to the Subscription Agent by the Subscription Expiration Date.

Please provide your Nominee with bank account information for the return of any excess funds:

Name of Account:	[•]
Bank Account No.:	[•]
Bank Name:	[•]
Bank Address:	[•]
Routing Number:	[•]
Special Instructions:	[•]

**PLEASE NOTE: NO SUBSCRIPTION WILL BE VALID UNLESS THIS BENEFICIAL HOLDER CONVERTIBLE NOTE SUBSCRIPTION FORM AND THE SIGNED SUBSCRIPTION AGREEMENT IS VALIDLY SUBMITTED TO YOUR NOMINEE IN SUFFICIENT TIME TO ALLOW YOUR NOMINEE TO DELIVER THE MASTER CONVERTIBLE NOTE SUBSCRIPTION FORM TO THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE AND PAYMENT OF YOUR PURCHASE PRICE IS RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE.**

**Item 4. Certification.**

I certify that (i) as of the date hereof, the undersigned was the beneficial holder of the Convertible Notes set forth in Item 1 above at the Record Date and will continue to be the beneficial owner thereof through the Subscription Expiration Deadline, (ii) I have received a copy of the Plan, the Rule 1145 Subscription Agreement, the Rule 1145 Rights Offering Procedures and the Rule 1145 Rights Offering Instructions and (iii) I understand that the exercise my rights under the Rule 1145 Rights Offering is subject to all the terms and conditions set forth in the Plan, the Rule 1145 Subscription Agreement and Rule 1145 Rights Offering Procedures.

By electing to subscribe for the amount of Rule 1145 Shares designated under Item 2 above, I am hereby instructing my Nominee to arrange for (i) the completion and delivery of its Master Convertible Note Subscription Form to the Subscription Agent and (ii) payment of the Purchase Price on or before the Rule 1145 Subscription Agreement Deadline.

**I acknowledge that, by executing the Rule 1145 Subscription Agreement and this Beneficial Holder Convertible Note Subscription Form, the undersigned Eligible Holder has elected to subscribe for the amount of the Rule 1145 Shares designated under Item 2 above and will be bound to pay for the Rule 1145 Shares it has subscribed for and that it may be liable to the Debtors to the extent of any nonpayment.**

Date:

Name of Beneficial

Eligible Holder:

Name of Nominee:

U.S. Federal Tax  
EIN/SSN (optional)

If Non-U.S. person, check   
here and attach  
appropriate IRS Form W-  
8

If U.S. person, check here   
and attach IRS Form W-9

Signature:

Name of Signatory:

Title:

Address:

Telephone Number:

Fax:

Email:

**Please indicate on the lines provided below the Eligible Holder's name and address as you would like it to be reflected on the Company's records for the Rule 1145 Shares:**

**Registration Name/  
Name of Controlled  
Affiliate or Related  
Fund in Whose Name  
Rule 1145 Shares Should  
be Issued:**

**Address:**

**PLEASE RETURN THIS BENEFICIAL HOLDER CONVERTIBLE NOTE SUBSCRIPTION FORM (WITH ACCOMPANYING IRS FORM W-9 OR APPROPRIATE IRS FORM W-8, AS APPLICABLE), THE SUBSCRIPTION AGREEMENT AND PAYMENT OF THE PURCHASE PRICE ONLY TO YOUR NOMINEE. DO NOT RETURN THIS FORM DIRECTLY TO THE SUBSCRIPTION AGENT.**

Schedule 1C.

**EXCEL MARITIME CARRIERS LTD.  
MASTER CONVERTIBLE NOTE SUBSCRIPTION FORM  
FOR RIGHTS OFFERING  
IN CONNECTION WITH DEBTORS'  
AMENDED DISCLOSURE STATEMENT DATED NOVEMBER 26, 2013**

For use by brokers, banks, commercial banks, transfer agents, trust companies, dealers, or other agents or nominees for beneficial holders of Excel Maritime Carriers Ltd.'s 1.875% unsecured senior convertible notes issued pursuant to that certain indenture dated October 10, 2007 [CUSIP No. 300668AA8] (the "Convertible Notes").

**YOUR MASTER CONVERTIBLE NOTE SUBSCRIPTION FORM, COPIES OF THE BENEFICIAL HOLDER CONVERTIBLE NOTE SUBSCRIPTION FORMS (WITH ACCOMPANYING TAX FORMS) AND SUBSCRIPTION AGREEMENTS AND PAYMENTS OF THE SUBSCRIPTION PAYMENT AMOUNT MUST BE RECEIVED BY THE SUBSCRIPTION AGENT, BY 5:00 P.M. (NEW YORK CITY TIME) ON JANUARY 17, 2014, (THE "SUBSCRIPTION EXPIRATION DEADLINE") OR THE SUBSCRIPTIONS REPRESENTED BY THIS MASTER CONVERTIBLE NOTE SUBSCRIPTION FORM WILL NOT BE COUNTED AND WILL BE DEEMED FOREVER RELINQUISHED AND WAIVED.**

**PLEASE LEAVE SUFFICIENT TIME FOR YOUR MASTER CONVERTIBLE NOTE SUBSCRIPTION FORM TO REACH THE SUBSCRIPTION AGENT AND BE PROCESSED.**

**PLEASE CONSULT THE PLAN, THE SUBSCRIPTION AGREEMENT AND THE RIGHTS OFFERING PROCEDURES FOR ADDITIONAL INFORMATION WITH RESPECT TO THIS MASTER CONVERTIBLE NOTE SUBSCRIPTION FORM. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE SUBSCRIPTION AGENT AT (212) 771-1128.**

**Item 1. Certification of Authority to Subscribe.**

The undersigned certifies that it (please check the applicable box):

- Is a broker, bank or other nominee for the beneficial holders of the Convertible Notes listed in Item 2 below, and is the registered holder of such shares, or
- Is acting under a power of attorney and/or agency (a copy of which will be provided upon request) granted by the broker, bank, or other nominee that is the registered holder of the Convertible Notes listed in Item 2 below.

**Item 2. Convertible Note Beneficial Holder Information.**

The undersigned certifies that the information provided below (including any information provided on additional sheets attached hereto) is a true and accurate schedule of the beneficial holders of the Convertible Notes, as identified by their respective account numbers, that have delivered duly completed Beneficial Holder Convertible Note Subscription Forms to the undersigned, which forms are attached hereto.

**(Please complete the information requested below. Attach additional sheets if necessary)**

<b>Your Customer Account Number for Each Beneficial Holder</b>	<b>Number of Convertible Notes (Item 1)<sup>1</sup></b>	<b>Maximum Pro Rata Tranche A Offered Shares (cannot exceed the amount)</b>	<b>Maximum Pro Rata Tranche B Offered Shares</b>	<b>Maximum Pro Rata Excess Shares (cannot exceed the Amount)</b>	<b>Exercise Amount (Item 2b)</b>	<b>Maximum Total Purchase Price (Item 2a(i))</b>

<sup>1</sup> Item numbers reference the applicable section of the Beneficial Holder Convertible Note Subscription Form

		calculated in Item 2a(ii)(A))	(cannot exceed the amount calculated in Item 2a(ii)(B))	calculated in Item 2a(iii))		

**Item 3. Payment and Delivery Instructions**

All cash payments with respect to the exercise of Tranche A Subscription Rights, Tranche B Subscription Rights and Over-Subscription Rights that are being transmitted by this Master Convertible Note Subscription Form shall be made by wire transfer of immediately available funds in accordance with the instructions set forth below.

Name of Account:	DONLIN RECANO AND CO INC E/F EXCEL MARITIME CARRIERS LTD
Bank Account No.:	7763056015
Bank Name:	TD Bank
Bank Address:	317 Madison Avenue, New York, NY 10017
Routing Number:	026013673
Reference:	[Name of Nominee]

Please email, mail or deliver your completed subscription form (together with any duly completed and received Beneficial Holder Convertible Note Subscription Forms (with accompanying IRS Forms W-9 or appropriate W-8, as applicable) and Rule 1145 Subscription Agreements) to:

Donlin, Recano & Company, Inc.  
Attn: Excel Maritime Carriers LTD Subscription Agent  
419 Park Avenue South, Suite 1206  
New York, NY 10016  
Tel: (212) 771 1128  
Email: ExcelRightsOffering@donlinrecano.com

Please provide bank account information for the return of any excess funds:

Name of Account:	[•]
Bank Account No.:	[•]
Bank Name:	[•]
Bank Location:	[•]
Routing Number:	[•]
Special Instructions:	

**PLEASE NOTE: NO SUBSCRIPTION WILL BE VALID UNLESS THIS MASTER CONVERTIBLE NOTE SUBSCRIPTION FORM, TOGETHER WITH THE APPLICABLE DULY COMPLETED AND EXECUTED BENEFICIAL HOLDER CONVERTIBLE NOTE SUBSCRIPTION FORMS (WITH ACCOMPANYING IRS FORM W-9 OR APPROPRIATE IRS FORM W-8, AS APPLICABLE) AND EXECUTED SUBSCRIPTION AGREEMENTS, ARE VALIDLY SUBMITTED ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE AND PAYMENT OF THE AGGREGATE PURCHASE PRICE IS RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE THE**



**SUBSCRIPTION EXPIRATION DEADLINE, 5:00 P.M. NEW YORK CITY TIME ON JANUARY 17, 2014.**

**ADDITIONAL INSTRUCTIONS IF YOU ARE RETURNING FORMS VIA EMAIL**

**PROPERLY EXECUTED MASTER CONVERTIBLE NOTE SUBSCRIPTION FORMS ALONG WITH RESPECTIVE BENEFICIAL HOLDER CONVERTIBLE NOTE SUBSCRIPTION FORMS (WITH ACCOMPANYING TAX FORMS) AND SUBSCRIPTION AGREEMENTS CAN BE E-MAILED TO THE SUBSCRIPTION AGENT AT [ExcelRightsOffering@donlinrecano.com](mailto:ExcelRightsOffering@donlinrecano.com) BY THE SUBSCRIPTION EXPIRATION DEADLINE PROVIDED THAT THE ORIGINAL MASTER SUBSCRIPTION FORM(S) WITH ORIGINAL MEDALLION STAMP AND SIGNATURE IS MAILED OR DELIVERED TO THE SUBSCRIPTION AGENT PROMPTLY THEREAFTER.**

**Item 4. Additional Certification.**

The undersigned certifies that for each beneficial holder whose exercise of rights are being transmitted by this Master Convertible Note Subscription Form (i) it is the authorized signatory of such beneficial holder of the amount of Convertible Notes listed under Item 1. of the Beneficial Holder Convertible Note Subscription Form, (ii) the beneficial holder is entitled to participate in the Rule 1145 Rights Offering, (iii) the beneficial holder has been provided with a copy of the Plan, the Rule 1145 Subscription Agreement, the Rule 1145 Rights Offering Procedures and the Rule 1145 Rights Offering Instructions and other applicable materials and (iv) true and correct copies of the Beneficial Holder Convertible Note Subscription Form have been received from each beneficial holder.

Date:

Name of Nominee:

DTC Participant Number:

U.S. Federal Tax  
EIN/SSN (optional)

Signature:

Name:

Title:

Address:

Telephone Number:

Fax:

Email:

Schedule 1D.

**EXCEL MARITIME CARRIERS LTD.  
BENEFICIAL HOLDER OTHER IMPAIRED EXCEL GENERAL UNSECURED CLAIMS SUBSCRIPTION FORM  
FOR RIGHTS OFFERING  
IN CONNECTION WITH DEBTORS'  
AMENDED DISCLOSURE STATEMENT DATED NOVEMBER 26, 2013**

**SUBSCRIPTION EXPIRATION DEADLINE**

The Subscription Expiration Deadline is 5:00 p.m. New York City Time on January 17, 2014.

Please leave sufficient time for your Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable) to reach the Subscription Agent and be processed.

Please consult the Plan, the Rule 1145 Subscription Agreement and the Rule 1145 Rights Offering Procedures for additional information with respect to this Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form.

**Item 1. Amount of Other Impaired Excel General Unsecured Claim.**

I certify that I am a beneficial holder of [*describe claim*] in the following amount (insert amount on the line below) or that I am the authorized signatory of that beneficial holder:

[*Amount of claim*]

**Item 2. Rights.**

Each Eligible Holder is entitled to subscribe for (i) its Pro Rata Tranche A Offered Shares, (ii) its Pro Rata Tranche B Offered Shares and (iii) to the extent such Eligible Holder subscribes for its entire Pro Rata Tranche A Offered Shares, its Pro Rata Excess Shares (collectively, the "Maximum Total Participation Amount"), subject to the individual limits included in the calculations under Item 2 below. To subscribe fill out Items 2a, 2b and 2c and 3 below and read and complete Item 4 below.

**2a. Calculation of Maximum Total Participation Amount.** The maximum amount of Rule 1145 Shares for which the undersigned beneficial holder may subscribe for in the rights offering is calculated as follows:

**If the class of Impaired Excel General Unsecured Claims does not vote to accept the Plan, the *pro rata* share for each Eligible Holder will be determined by multiplying (a) the total number of either Tranche A Offered Shares or Tranche B Offered Shares by (b) the quotient obtained by dividing (i) the amount of Impaired Excel General Unsecured Claims held by that Eligible Holder by (ii) the total amount of Impaired Excel General Unsecured Claims inclusive of the Syndicate Credit Deficiency Claims rounded to the nearest whole share.**

**(i) Maximum Total Participation Amount:**

$\$36,000,000.00 \times 75\% \times [\text{Amount of Claim}/\$163,384,158.16^1]$

<sup>1</sup> \$163,384,158.16 assuming no additional Impaired Excel General Unsecured Claims are allowed. \$343,138,050.11 if the class of Impaired Excel General Unsecured Claims does not vote to accept the Plan, assuming no additional Impaired Excel General Unsecured Claims are allowed.

**(ii)(A) Maximum Pro Rata Tranche A Offered Shares (Basic Tranche A Co-Investment Right Amount):**

Tranche A Offered Shares (307,692) x [Amount of Claim/\$163,384,158.16<sup>2</sup>]

**(ii)(B) Maximum Pro Rata Tranche B Offered Shares (Basic Tranche B Co-Investment Right Amount):**

Tranche B Offered Shares (289,872) x [Amount of Claim/\$163,384,158.16<sup>3</sup>]

**(iii) Maximum Pro Rata Excess Shares (Over-Subscription Right Amount):**

Maximum Total Participation Amount – ((Maximum Pro Rata Tranche A Offered Shares x 16.25) + (Tranche B Offered Shares listed in 2b x 17.25))/ 16.25

**2b. Exercise Amount.** By filling in the following blanks, you are indicating that the undersigned Eligible Holder is interested in purchasing the number of Rule 1145 Shares specified below (specify an amount of the Rule 1145 Shares, the aggregate dollar value of which is not greater than the Maximum Participation Amount calculated in Item 2a(i) above), on the terms and subject to the conditions set forth in the Rule 1145 Subscription Agreement and Rule 1145 Rights Offering Procedures.

**Number of Tranche A Offered Shares**

**Number of Tranche B Offered Shares**

**Number of Excess Shares**

**Total:**

(Note: Total must be in whole shares and the aggregate Purchase Price therefor must not exceed the undersigned Eligible Holder's Maximum Participation Amount).

**2c. Calculation of Purchase Price.** The Purchase Price for the amount of the Rule 1145 Shares you are interested in purchasing, as set forth in Item 2b above, is calculated as follows:

$$\begin{aligned} & [Total\ Tranche\ A\ Offered\ Shares\ Amount\ from\ Item\ 2b\ above] \times [\$16.25] \\ & \qquad \qquad \qquad + \\ & [Total\ Excess\ Shares\ Amount\ from\ Item\ 2b\ above\ (if\ applicable)] \times [\$16.25] \\ & \qquad \qquad \qquad + \\ & [Total\ Tranche\ B\ Offered\ Shares\ Amount\ from\ Item\ 2b\ above] \times [\$17.25] \\ & \qquad \qquad \qquad Total = \end{aligned}$$

**Item 3. Payment and Delivery Instructions**

<sup>2</sup> \$163,384,158.16 assuming no additional Impaired Excel General Unsecured Claims are allowed. \$343,138,050.11 if the class of Impaired Excel General Unsecured Claims does not vote to accept the Plan, assuming no additional Impaired Excel General Unsecured Claims are allowed.

<sup>3</sup> \$163,384,158.16 assuming no additional Impaired Excel General Unsecured Claims are allowed. \$343,138,050.11 if the class of Impaired Excel General Unsecured Claims does not vote to accept the Plan, assuming no additional Impaired Excel General Unsecured Claims are allowed.

Payment of the Purchase Price calculated pursuant to Item 2c above shall be made by wire transfer of immediately available funds in accordance with the instructions set forth below.

Name of Account:	DONLIN RECANO AND CO INC E/F EXCEL MARITIME CARRIERS LTD
Bank Account No.:	7763056015
Bank Name:	TD Bank
Bank Address:	317 Madison Avenue, New York, NY 10017
Routing Number:	026013673
Reference:	[Name of Subscriber]

Please email, mail or deliver your completed Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form (with accompanying IRS Form W-9 or appropriate IRS Form W-8, as applicable) and Rule 1145 Subscription Agreements to:

Donlin, Recano & Company, Inc.  
Attn: Excel Maritime Carriers LTD Subscription Agent  
419 Park Avenue South, Suite 1206  
New York, NY 10016  
Tel: (212) 771 1128  
Email: ExcelRightsOffering@donlinrecano.com

Please provide bank account information for the return of any excess funds:

Name of Account:	[•]
Bank Account No.:	[•]
Bank Name:	[•]
Bank Location:	[•]
Routing Number:	[•]
Special Instructions:	

**PLEASE NOTE: NO SUBSCRIPTION WILL BE VALID UNLESS THIS BENEFICIAL HOLDER OTHER IMPAIRED EXCEL GENERAL UNSECURED CLAIMS SUBSCRIPTION FORM (WITH ACCOMPANYING IRS FORM W-9 OR APPROPRIATE IRS FORM W-8, AS APPLICABLE) AND THE SIGNED SUBSCRIPTION AGREEMENT IS VALIDLY SUBMITTED TO THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE AND PAYMENT OF YOUR PURCHASE PRICE IS RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE.**

**ADDITIONAL INSTRUCTIONS IF YOU ARE RETURNING FORMS VIA EMAIL**

**YOUR PROPERLY EXECUTED BENEFICIAL HOLDER OTHER IMPAIRED EXCEL GENERAL UNSECURED CLAIMS SUBSCRIPTION FORMS (WITH ACCOMPANYING IRS FORM W-9 OR APPROPRIATE IRS FORM W-8, AS APPLICABLE) AND SUBSCRIPTION AGREEMENTS CAN BE E-MAILED TO THE SUBSCRIPTION AGENT AT [ExcelRightsOffering@donlinrecano.com](mailto:ExcelRightsOffering@donlinrecano.com) BY THE SUBSCRIPTION EXPIRATION DEADLINE PROVIDED THAT YOUR ORIGINAL BENEFICIAL HOLDER OTHER IMPAIRED EXCEL GENERAL UNSECURED CLAIMS SUBSCRIPTION FORM WITH ORIGINAL MEDALLION STAMP AND SIGNATURE IS MAILED OR DELIVERED TO THE SUBSCRIPTION AGENT PROMPTLY THEREAFTER.**

**Item 4. Certification.**

I certify that (i) as of the date hereof, the undersigned was the beneficial holder of the [*describe claim*] set forth in Item 1 above at the Record Date and will continue to be the beneficial owner thereof through the Subscription Expiration Deadline, (ii) I have received a copy of the Plan, the Rule 1145 Subscription Agreement, the Rule 1145 Rights Offering Procedures and the Rule 1145 Rights Offering Instructions and (iii) I understand that the exercise of my rights under the Rule 1145 Rights Offering is subject to all the terms and conditions set forth in the Plan, the Rule 1145 Subscription Agreement and Rule 1145 Rights Offering Procedures.

**I acknowledge that, by executing the Rule 1145 Subscription Agreement and this Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, the undersigned Eligible Holder has elected to subscribe for the amount of the Rule 1145 Shares designated under Item 2 above and will be bound to pay for the Rule 1145 Shares it has subscribed for and that it may be liable to the Debtors to the extent of any nonpayment. If payment is not received prior to the Subscription Expiration Deadline, you shall be deemed to have forever and irrevocably relinquished and waived your right to participate in the Rule 1145 Rights Offering.**

Date:

Name of Beneficial  
Eligible Holder:

U.S. Federal Tax  
EIN/SSN (optional)

If Non-U.S. person, check   
here and attach  
appropriate IRS Form W-  
8

If U.S. person, check here   
and attach IRS Form W-9

Signature:

Name of Signatory:

Title:

Address:

Telephone Number:

Fax:

Email:

**Please indicate on the lines provided below the Eligible Holder's name and address as you would like it to be reflected on the Company's records for the Rule 1145 Shares:**

**Registration Name/  
Name of Controlled  
Affiliate or Related  
Fund in Whose Name  
Rule 1145 Shares Should  
be Issued:**

*(Please provide full legal  
name)*

**Address:**

Schedule 1E.

**EXCEL MARITIME CARRIERS LTD.  
SYNDICATE CREDIT DEFICIENCY CLAIMS SUBSCRIPTION FORM  
FOR RIGHTS OFFERING  
IN CONNECTION WITH DEBTORS'  
AMENDED DISCLOSURE STATEMENT DATED NOVEMBER 26, 2013**

**SUBSCRIPTION EXPIRATION DEADLINE**

**The Subscription Expiration Deadline is 5:00 p.m. New York City Time on January 17, 2014.**

**Please leave sufficient time for your Syndicate Credit Deficiency Claims Subscription Form (with accompanying IRS Form W-9 or appropriate IRS Form W-8, as applicable) to reach the Subscription Agent and be processed.**

**Please consult the Plan, the Rule 1145 Subscription Agreement and the Rule 1145 Rights Offering Procedures for additional information with respect to this Syndicate Credit Deficiency Claims Subscription Form.**

**PLEASE NOTE THAT IF THE CLASS OF IMPAIRED GENERAL UNSECURED CLAIMS VOTES TO ACCEPT THE PLAN, ON THE EFFECTIVE DATE, YOU WILL BE DEEMED TO HAVE FOREVER AND IRREVOCABLY RELINQUISHED AND WAIVED YOUR RIGHT TO PARTICIPATE IN THE RIGHTS OFFERING AND THIS SYNDICATE CREDIT DEFICIENCY CLAIMS SUBSCRIPTION FORM SHALL BE CONSIDERED NULL AND VOID.**

**Item 1. Amount of Claim.**

I certify that I am a beneficial holder of Syndicate Credit Deficiency Claim, in the following amount (insert amount on the line below) or that I am the authorized signatory of that beneficial holder:

*[Amount of claim]*

**Item 2. Rights.**

Provided that the class of Impaired Excel General Unsecured Claims votes to reject the Plan, each holder of a Syndicate Credit Deficiency Claim is entitled to subscribe for (i) its Pro Rata Tranche A Offered Shares, (ii) its Pro Rata Tranche B Offered Shares and (ii) to the extent such Eligible Holder subscribes for its entire Pro Rata Tranche A Offered Shares, its Pro Rata Excess Shares (collectively, the "Maximum Total Participation Amount"), subject to the individual limits included in the calculations under Item 2 below. To subscribe fill out Items 2a, 2b and 2c and 3 below and read and complete Item 4 below.

**2a. Calculation of Maximum Total Participation Amount.** The maximum amount of Rule 1145 Shares for which the undersigned beneficial holder may subscribe for in the rights offering is calculated as follows:

**(i) Maximum Total Participation Amount:**

$$\$36,000,000.00 \times 75\% \times [\text{Amount of Claim}/\$343,138,050.11]^1$$

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<sup>1</sup> \$343,138,050.11 assuming no additional Impaired Excel General Unsecured Claims are allowed.

**(ii)(A) Maximum Pro Rata Tranche A Offered Shares (Basic Tranche A Co-Investment Right Amount):**

$$\text{Tranche A Offered Shares (307,692)} \times [\text{Amount of Claim}/\$343,138,050.11]^2$$

**(ii)(B) Maximum Pro Rata Tranche B Offered Shares (Basic Tranche B Co-Investment Right Amount):**

$$\text{Tranche B Offered Shares (289,872)} \times [\text{Amount of Claim}/\$343,138,050.11]^3$$

**(iii) Maximum Pro Rata Excess Shares (Over-Subscription Right Amount):**

$$\text{Maximum Total Participation Amount} - ((\text{Maximum Pro Rata Tranche A Offered Shares} \times 16.25) + (\text{Tranche B Offered Shares listed in 2b} \times 17.25)) / 16.25$$

**2b. Exercise Amount.** By filling in the following blanks, you are indicating that the undersigned Eligible Holder is interested in purchasing the number of Rule 1145 Shares specified below (specify an amount of the Rule 1145 Shares, the aggregate dollar value of which is not greater than the Maximum Participation Amount calculated in Item 2a(i) above), on the terms and subject to the conditions set forth in the Rule 1145 Subscription Agreement and Rule 1145 Rights Offering Procedures.

**Number of Tranche A Offered Shares**

**Number of Tranche B Offered Shares**

**Number of Excess Shares**

**Total:**

(Note: Total must be in whole shares and the aggregate Purchase Price therefor must not exceed the undersigned Eligible Holder's Maximum Participation Amount).

**2c. Calculation of Purchase Price.** The Purchase Price for the amount of the Rule 1145 Shares you are interested in purchasing, as set forth in Item 2b above, is calculated as follows:

$$\begin{aligned} & [\text{Total Tranche A Offered Shares Amount from Item 2b above}] \times [\$16.25] \\ & \quad + \\ & [\text{Total Excess Shares Amount from Item 2b above (if applicable)}] \times [\$16.25] \\ & \quad + \\ & [\text{Total Tranche B Offered Shares Amount from Item 2b above}] \times [\$17.25] \\ & \text{Total} = \end{aligned}$$

**Item 3. Payment and Delivery Instructions**

<sup>2</sup> \$343,138,050.11 assuming no additional Impaired Excel General Unsecured Claims are allowed.

<sup>3</sup> \$343,138,050.11 assuming no additional Impaired Excel General Unsecured Claims are allowed.



Payment of the Purchase Price calculated pursuant to Item 2c above shall be made by wire transfer of immediately available funds in accordance with the instructions set forth below.

Name of Account:	DONLIN RECANO AND CO INC E/F EXCEL MARITIME CARRIERS LTD
Bank Account No.:	7763056015
Bank Name:	TD Bank
Bank Address:	317 Madison Avenue, New York, NY 10017
Routing Number:	026013673
Reference:	[Name of Subscriber]

Please email, mail or deliver your completed Syndicate Credit Deficiency Claim Subscription Form (with accompanying IRS Forms W-9 or appropriate IRS Form W-8, as applicable) and Rule 1145 Subscription Agreements to:

Donlin, Recano & Company, Inc.  
Attn: Excel Maritime Carriers LTD Subscription Agent  
419 Park Avenue South, Suite 1206  
New York, NY 10016  
Tel: (212) 771 1128  
Email: ExcelRightsOffering@donlinrecano.com

Please provide bank account information for the return of any excess funds or the full amount of your funds to the extent that the class of Impaired Excel General Unsecured Claims votes to accept the Plan:

Name of Account:	[•]
Bank Account No.:	[•]
Bank Name:	[•]
Bank Location:	[•]
Routing Number:	[•]
Special Instructions:	

**PLEASE NOTE: NO SUBSCRIPTION WILL BE VALID UNLESS THIS SYNDICATE CREDIT DEFICIENCY CLAIM SUBSCRIPTION FORM (WITH ACCOMPANYING IRS FORM W-9 OR APPROPRIATE IRS FORM W-8, AS APPLICABLE) AND THE SIGNED SUBSCRIPTION AGREEMENT IS VALIDLY SUBMITTED TO THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE AND PAYMENT OF YOUR PURCHASE PRICE IS RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE.**

**ADDITIONAL INSTRUCTIONS IF YOU ARE RETURNING FORMS VIA EMAIL**

**YOUR PROPERLY EXECUTED SYNDICATE CREDIT DEFICIENCY CLAIMS SUBSCRIPTION FORM (WITH ACCOMPANYING IRS FORM W-9 OR APPROPRIATE IRS FORM W-8, AS APPLICABLE) AND SUBSCRIPTION AGREEMENTS CAN BE E-MAILED TO THE SUBSCRIPTION AGENT AT [ExcelRightsOffering@donlinrecano.com](mailto:ExcelRightsOffering@donlinrecano.com) BY THE SUBSCRIPTION EXPIRATION DEADLINE PROVIDED THAT YOUR ORIGINAL SYNDICATE CREDIT DEFICIENCY CLAIMS SUBSCRIPTION FORM WITH ORIGINAL MEDALLION STAMP AND SIGNATURE IS MAILED OR DELIVERED TO THE SUBSCRIPTION AGENT PROMPTLY THEREAFTER.**

**Item 4. Certification.**

I certify that (i) as of the date hereof, the undersigned was the beneficial holder of the [*describe claim*] set forth in Item 1 above at the Record Date and will continue to be the beneficial owner thereof through the Subscription Expiration Deadline, (ii) I have received a copy of the Plan, the Rule 1145 Subscription Agreement, the Rule 1145 Rights Offering Procedures and the Rule 1145 Rights Offering Instructions and (iii) I understand that the exercise of my rights under the Rule 1145 Rights Offering is subject to all the terms and conditions set forth in the Plan, the Rule 1145 Subscription Agreement and Rule 1145 Rights Offering Procedures.

**I acknowledge that, by executing the Rule 1145 Subscription Agreement and this Syndicate Credit Deficiency Claims Subscription Form, the undersigned Eligible Holder has elected to subscribe for the amount of the Rule 1145 Shares designated under Item 2 above and will be bound to pay for the Rule 1145 Shares it has subscribed for and that it may be liable to the Debtors to the extent of any nonpayment. If payment is not received prior to the Subscription Expiration Deadline, you shall be deemed to have forever and irrevocably relinquished and waived your right to participate in the Rule 1145 Rights Offering.**

**I further acknowledge that I am aware that if the class of Impaired Excel General Unsecured Claims votes to accept the Plan, on the Effective Date, I will be deemed to have forever and irrevocably relinquished and waived my right to participate in the Rule 1145 Rights Offering and this Syndicate Credit Deficiency Claims Subscription Form shall be considered null and void.**

Date:

Name of Beneficial  
Eligible Holder:

U.S. Federal Tax  
EIN/SSN (optional)

If Non-U.S. person, check   
here and attach  
appropriate IRS Form W-  
8

If U.S. person, check here   
and attach IRS Form W-9

Signature:

Name of Signatory:

Title:

Address:

Telephone Number:

Fax:

Email:

**Please indicate on the lines provided below the Eligible Holder's name and address as you would like it to be reflected on the Company's records for the Rule 1145 Shares:**

**Registration Name/  
Name of Controlled  
Affiliate or Related**

**Fund in Whose Name  
Rule 1145 Shares Should  
be Issued:**  
*(Please provide full legal  
name)*

**Address:**

**4(a)(2) Subscription Agreement**

**EXCEL MARITIME CARRIERS LTD.**

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**4(a)(2) SUBSCRIPTION AGREEMENT**

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**Copy # \_\_\_\_\_**

NOTICES

THIS 4(a)(2) SUBSCRIPTION AGREEMENT HAS BEEN PREPARED ON A CONFIDENTIAL BASIS SOLELY FOR THE BENEFIT OF SELECTED ELIGIBLE HOLDERS IN CONNECTION WITH THE PRIVATE PLACEMENT OF SECURITIES OF EXCEL MARITIME CARRIERS LTD. (THE "COMPANY") PURSUANT TO THE AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF THE COMPANY AND ITS SUBSIDIARIES THAT COMMENCED JOINTLY ADMINISTERED CASES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE (AS SUCH TERM IS HEREINAFTER DEFINED) (THE "PLAN"). ANY REPRODUCTION OR DISTRIBUTION OF THIS 4(a)(2) SUBSCRIPTION AGREEMENT, OR RETRANSMITTAL OF ITS CONTENTS, IN WHOLE OR IN PART, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMPANY IS PROHIBITED.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED, APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY. NONE OF THE FOREGOING AUTHORITIES HAVE PASSED UPON, OR ENDORSED THE MERITS OF, THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THE COMPANY'S AMENDED DISCLOSURE STATEMENT WITH RESPECT TO THE DEBTORS AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION DATED NOVEMBER 26, 2013 (THE "DISCLOSURE STATEMENT") PREVIOUSLY DISTRIBUTED. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE SECURITIES REFERRED TO HEREIN HAVE NOT BEEN REGISTERED WITH THE SEC UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATE. THE SECURITIES WILL BE OFFERED AND SOLD PURSUANT TO THE EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY SECTION 4(a)(2) OF THE SECURITIES ACT AND/OR REGULATION D PROMULGATED THEREUNDER AND IN COMPLIANCE WITH ANY APPLICABLE STATE OR NON-U.S. SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THIS 4(a)(2) SUBSCRIPTION AGREEMENT IS NOT AN OFFER TO SELL TO OR A SOLICITATION OF AN OFFER TO BUY FROM, NOR WILL ANY SECURITIES BE OFFERED OR SOLD TO, ANY PERSON IN ANY JURISDICTION IN WHICH SUCH OFFER, SOLICITATION, PURCHASE OR SALE WOULD BE UNLAWFUL UNDER THE SECURITIES LAWS OF SUCH JURISDICTION.

THE SECURITIES OFFERED HEREBY MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR PLEDGED, IN WHOLE OR IN PART, EXCEPT BOTH (A) AS PERMITTED UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE OR OTHER SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THERE IS NO OBLIGATION ON THE PART OF THE COMPANY OR ANY OTHER

PERSON TO REGISTER THE SECURITIES OFFERED HEREBY OTHER THAN IN THE CASE OF CERTAIN AFFILIATES UNDER THE SECURITIES ACT OR ANY OTHER SECURITIES LAWS.

THE COMPANY MAKES NO REPRESENTATION TO ANY OFFEREE OR PURCHASER OF THE SECURITIES REGARDING THE LEGALITY OF AN INVESTMENT THEREIN BY SUCH OFFEREE OR PURCHASER UNDER APPLICABLE LEGAL INVESTMENT OR SIMILAR LAWS.

PROSPECTIVE INVESTORS SHOULD NOT CONSTRUE THE CONTENTS OF THIS 4(a)(2) SUBSCRIPTION AGREEMENT, THE DISCLOSURE STATEMENT OR ANY PRIOR OR SUBSEQUENT COMMUNICATIONS FROM THE COMPANY OR ANY OF ITS AGENTS, OFFICERS OR REPRESENTATIVES, AS LEGAL OR TAX ADVICE. EACH OFFEREE SHOULD CONSULT HIS OWN ADVISORS AS TO LEGAL, TAX AND RELATED MATTERS CONCERNING AN INVESTMENT IN THE COMPANY.

AS A PURCHASER OF THE SECURITIES IN A PRIVATE PLACEMENT NOT REGISTERED UNDER THE SECURITIES ACT, EACH INVESTOR SHOULD PROCEED ON THE ASSUMPTION THAT THE ECONOMIC RISK OF THE INVESTMENT MUST BE BORNE FOR AN INDEFINITE PERIOD, SINCE THE SECURITIES MAY NOT BE RESOLD UNLESS THEY ARE SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACT OR AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

THIS INVESTMENT INVOLVES A HIGH DEGREE OF RISK. IT IS SPECULATIVE AND SUITABLE ONLY FOR PERSONS WHO HAVE SUBSTANTIAL FINANCIAL RESOURCES AND HAVE NO NEED FOR LIQUIDITY IN THIS INVESTMENT. FURTHER, THIS INVESTMENT SHOULD ONLY BE MADE BY THOSE WHO UNDERSTAND OR HAVE BEEN ADVISED WITH RESPECT TO THE TAX CONSEQUENCES OF AND RISK FACTORS ASSOCIATED WITH THE INVESTMENT, INCLUDING, BUT NOT LIMITED TO, THE RISKS ARISING FROM THE ABSENCE OF CURRENT OR HISTORICAL FINANCIAL INFORMATION REGARDING THE COMPANY, AND WHO ARE ABLE TO BEAR THE SUBSTANTIAL ECONOMIC RISK OF THE INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THEREFORE, INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO RETAIN OWNERSHIP OF THE SECURITIES AND TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

4(a)(2) ELIGIBLE HOLDERS SHALL ONLY BE ENTITLED TO PARTICIPATE IN THE 4(a)(2) RIGHTS OFFERING TO THE EXTENT THAT ANY TRANCHE A OFFERED SHARES HAVE NOT BEEN SUBSCRIBED FOR BY ELIGIBLE HOLDERS IN THE RULE 1145 RIGHTS OFFERING PRIOR TO THE SUBSCRIPTION EXPIRATION DEADLINE. IN THE EVENT THAT THE TRANCHE A OFFERED SHARES HAVE BEEN FULLY SUBSCRIBED FOR IN THE RULE 1145 RIGHTS OFFERING, ANY 4(a)(2) SUBSCRIPTION AGREEMENT RETURNED BY A 4(a)(2) ELIGIBLE HOLDER WILL BE DEEMED NULL AND VOID AND ANY FUNDS PAID BY SUCH HOLDER WILL BE RETURNED IN ACCORDANCE WITH THE PROVISIONS OF THIS 4(a)(2) SUBSCRIPTION AGREEMENT.

NOTICE TO FLORIDA INVESTORS

THE SECURITIES REFERRED TO HEREIN WILL BE SOLD TO, AND ACQUIRED BY, THE HOLDER IN A TRANSACTION EXEMPT UNDER SECTION 517.061(11) OF THE FLORIDA SECURITIES ACT. THE SECURITIES HAVE NOT BEEN REGISTERED UNDER SAID ACT WITH THE FLORIDA DIVISION OF SECURITIES AND INVESTOR PROTECTION. IN ADDITION, THE FLORIDA SECURITIES ACT PROVIDES THAT WHERE SALES ARE MADE TO 5 OR MORE FLORIDA INVESTORS, ALL FLORIDA INVESTORS SHALL HAVE THE PRIVILEGE OF VOIDING THE PURCHASE WITHIN THREE DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY SUCH PURCHASER TO THE COMPANY, AN AGENT OF THE COMPANY OR AN ESCROW AGENT, OR WITHIN THREE DAYS AFTER THE AVAILABILITY OF THAT PRIVILEGE IS COMMUNICATED TO SUCH PURCHASER, WHICHEVER OCCURS LATER. TO ACCOMPLISH THIS, IT IS SUFFICIENT FOR A FLORIDA PURCHASER TO SEND A LETTER OR TELEGRAM TO THE ISSUER WITHIN SUCH THREE DAY PERIOD, STATING THAT THE PURCHASER IS VOIDING AND RESCINDING THE PURCHASE. IF A PURCHASER SENDS A LETTER, IT IS PRUDENT TO DO SO BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO INSURE THAT THE LETTER IS RECEIVED AND TO EVIDENCE THE TIME OF MAILING. HOWEVER, THIS RIGHT IS NOT AVAILABLE TO ANY PURCHASER WHO IS A BANK, TRUST COMPANY, SAVINGS INSTITUTION, INSURANCE COMPANY, SECURITIES DEALER, INVESTMENT COMPANY (AS DEFINED IN THE INVESTMENT COMPANY ACT OF 1940 AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER), PENSION OR PROFIT-SHARING TRUST OR QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT).

NOTICE TO NEW HAMPSHIRE INVESTORS

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, 1955, AS AMENDED ("RSA") WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE THAT ANY DOCUMENT FILED UNDER RSA 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.

#### 4(a)(2) SUBSCRIPTION AGREEMENT

4(a)(2) Subscription Agreement (this "4(a)(2) Subscription Agreement"), by and between Excel Maritime Carriers Ltd., a company incorporated under the laws of Liberia (including any successor as contemplated by the Plan (as defined below), the "Company"), and the undersigned (the "Subscriber"), shall be deemed executed as of the date the Company executes a counterpart to this 4(a)(2) Subscription Agreement previously executed by the Subscriber.

WHEREAS, on July 1, 2013, the Company and certain of its affiliates (collectively, the "Debtors") commenced cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, supplemented or otherwise modified from time to time, the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, the Debtors submitted an Amended Disclosure Statement with respect to the Debtors' Amended Joint Chapter 11 Plan of Reorganization, dated as of November 26, 2013 (the "Disclosure Statement"), to certain holders of claims against the Debtors in connection with the solicitation of acceptances of the Amended Joint Chapter 11 Plan of Reorganization of Excel Maritime Carriers Ltd. and Certain of its Affiliates, dated as of November 26, 2013 (the "Plan");

WHEREAS, capitalized terms used but not defined in this 4(a)(2) Subscription Agreement have the meaning given to them in the Plan;

WHEREAS, pursuant to the Plan, each Eligible Holder who validly and timely completes and returns an Accredited Investor Questionnaire to the Subscription Agent (a "4(a)(2) Eligible Holder") will be granted 4(a)(2) Subscription Rights (as defined below) entitling such 4(a)(2) Eligible Holder to purchase shares of New Common Stock in an aggregate amount equal to the number of Tranche A Shares that have not been subscribed for by Eligible Holders prior to the Subscription Expiration Deadline, subject to pro rata reduction as described in the Plan and this 4(a)(2) Subscription Agreement to the extent the aggregate number of shares subscribed for by 4(a)(2) Eligible Holders exceeds the number of shares offered (the "4(a)(2) Offered Shares") (the "4(a)(2) Rights Offering");

WHEREAS, in the event that the Tranche A Offered Shares have been fully subscribed for in the Rule 1145 Rights Offering, any 4(a)(2) Subscription Agreement returned by a 4(a)(2) Eligible Holder will be deemed null and void and any funds paid by such holder will be returned in accordance with the provisions of this 4(a)(2) Subscription Agreement;

WHEREAS, each Subscriber that holds a Syndicate Credit Deficiency Claim shall be entitled to exercise 4(a)(2) Subscription Rights in the 4(a)(2) Rights Offering, provided, however that such 4(a)(2) Subscription Rights shall be deemed forever and irrevocably relinquished and waived on the Effective Date if the class of Impaired Excel General Unsecured Claims votes to accept the Plan. In the event that the class of Impaired Excel General Unsecured Claims votes to accept the Plan, any 4(a)(2) Subscription Agreement and any 4(a)(2) Other Claim Subscription Form returned by a holder of a Syndicate Credit Deficiency Claim to the Subscription Agent will



be deemed null and void and any funds paid by such holder will be returned in accordance with the provisions of this 4(a)(2) Subscription Agreement.

WHEREAS, any Subscriber that does not hold a Syndicate Credit Deficiency Claim has certified that it is a 4(a)(2) Eligible Holder and held on the Record Date (i) the aggregate principal amount of the Company's 1.875% Convertible Senior Notes due 2027 (the "Convertible Notes") set forth in Item 1 of such 4(a)(2) Eligible Holder's 4(a)(2) Beneficial Holder Convertible Note Subscription Form and/or (ii) any (A) claim arising under certain swap agreements entered into by the Company and Eurobank EFG Private Bank Luxembourg S.A. and Marfin Popular Bank Public Co. Ltd., Greek Branch, respectively; (B) claim for damages alleged by Robertson Maritime Investors, LLC; and/or (C) claim arising under a settlement with certain bareboat charter parties, dated December 5, 2012 (such claims described in (A) through (C), collectively, the "Other Impaired Excel General Unsecured Claims") which are valued at the aggregate amount set forth on Item 1 of such 4(a)(2) Eligible Holder's 4(a)(2) Other Claim Subscription Form;

WHEREAS, any Subscriber that holds a Syndicate Credit Deficiency Claim has certified that it is a 4(a)(2) Eligible Holder and held on the Record Date an unsecured claim arising under that certain senior secured credit facility, dated as of April 14, 2008, as amended, modified or supplemented from time to time; and

WHEREAS, the Subscriber wishes to subscribe to purchase 4(a)(2) Offered Shares as set forth herein on the terms and subject to the conditions of the 4(a)(2) Rights Offering and in accordance with the Plan.

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Subscriber and the Company hereby represent and agree as follows:

1. SUBSCRIPTION.

(a) The Subscriber hereby agrees to subscribe for that number of 4(a)(2) Offered Shares set forth in Item 2b of such 4(a)(2) Eligible Holder's 4(a)(2) Beneficial Holder Convertible Note Subscription Form or 4(a)(2) Other Claim Subscription Form, as applicable (the "4(a)(2) Shares"). Once all subscriptions have been received, any 4(a)(2) Shares subscribed for shall be, if necessary, subject to reduction pro rata in proportion to the aggregate subscription by each subscribing 4(a)(2) Eligible Holder in relation to all subscriptions for 4(a)(2) Offered Shares. The Subscriber will pay to the Subscription Agent the Purchase Price for such 4(a)(2) Shares set forth in Item 2c of such 4(a)(2) Eligible Holder's 4(a)(2) Beneficial Holder Convertible Note Subscription Form or 4(a)(2) Other Claim Subscription Form, as applicable, at the time it returns this 4(a)(2) Subscription Agreement to the Subscription Agent, but in no event later than the Subscription Expiration Deadline by wire transfer of immediately available funds in accordance with the instructions included on Item 3 of such 4(a)(2) Eligible Holder's 4(a)(2) Beneficial Holder Convertible Note Subscription Form or 4(a)(2) Other Claim Subscription Form, as applicable. In the event that the class of Impaired Excel General Unsecured Claims

votes to accept the Plan, any 4(a)(2) Subscription Agreement and any 4(a)(2) Other Claim Subscription Form returned by a holder of a Syndicate Credit Deficiency Claim to the Subscription Agent will be deemed null and void and any funds paid by such holder will be returned, without interest, as soon as reasonably practicable, but in any event within six (6) Business Days after acceptance or rejection of the Plan is filed with the Bankruptcy Court.

(b) In the event that funds received by the Subscription Agent in payment for the Subscriber's 4(a)(2) Shares in accordance with the instructions provided with this 4(a)(2) Subscription Agreement are less than the Purchase Price (as set forth in Item 2c of such 4(a)(2) Eligible Holder's 4(a)(2) Beneficial Holder Convertible Note Subscription Form or 4(a)(2) Other Claim Subscription Form, as applicable), the number of 4(a)(2) Shares deemed to be purchased by the Subscriber pursuant to this 4(a)(2) Subscription Agreement will be the lesser of (i) the number of 4(a)(2) Shares set forth set forth in Item 2b of such 4(a)(2) Eligible Holder's 4(a)(2) Beneficial Holder Convertible Note Subscription Form or 4(a)(2) Other Claim Subscription Form, as applicable, and (ii) a number determined by dividing the amount of such funds received in accordance with the instructions included with this 4(a)(2) Subscription Agreement by the Purchase Price.

(c) In the event that the Subscription Agent receives more funds from the Subscriber than the aggregate Purchase Price for the Subscriber's 4(a)(2) Shares, including after giving effect to any pro rata reduction described in Section 1(a) then such funds, to the extent of such overpayment, will be returned, without interest, to the Subscriber as soon as reasonably practicable, but in any event within six (6) Business Days after the Subscription Expiration Deadline.

(d) Subject to the conditions specified in Section 5, the closing of the issuance of 4(a)(2) Shares contemplated by this 4(a)(2) Subscription Agreement (the "Closing") will take place at the offices of Skadden, Arps, Slate, Meagher & Flom LLP on the Effective Date. The date on which the Closing occurs is the "Closing Date."

(e) In the event the Closing does not take place on or before February 14, 2014, a Subscriber may request any funds sent to the Subscription Agent in payment for such Subscriber's 4(a)(2) Shares in accordance with the instructions provided with this 4(a)(2) Subscription Agreement be promptly returned to the Subscriber. Upon receipt of such request, the Subscription Agent shall promptly, but in any event within six (6) Business Days, return such funds to the Subscriber.

## 2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to the Subscriber as of the date hereof as follows:

(a) The Company is and, as of the Effective Date, will be, duly organized and validly existing under the laws of Liberia.

(b) Subject to the entry of the Bankruptcy Court's confirmation order relating to the Plan and occurrence of the Closing, (i) the Company will have the requisite corporate

power and authority to execute and deliver this 4(a)(2) Subscription Agreement, (ii) this 4(a)(2) Subscription Agreement and the consummation by the Company of the transactions contemplated hereby will have been duly authorized by all requisite corporate action and (iii) this 4(a)(2) Subscription Agreement will have been duly and validly executed and delivered by the Company and will constitute the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(c) The 4(a)(2) Shares, when issued in accordance with the provisions hereof, will be validly issued by the Company, and will represent fully paid and nonassessable shares of the Company.

(d) Except for the representations and warranties contained in this Section 2, none of the Company and any other Person on behalf of the Company makes any other express or implied representation or warranty with respect to the Company or any other information provided to the Subscriber. Neither the Company nor any other Person will have or be subject to any liability or indemnification obligation to the Subscriber or any other Person resulting from the distribution to the Subscriber, or use by the Subscriber of, any such information, including the Disclosure Statement and any other information, documents, projections, forecasts or other material made available to the Subscriber, unless any such information is included in a representation or warranty contained in this Section 2.

### 3. REPRESENTATIONS AND WARRANTIES OF THE SUBSCRIBER.

The Subscriber represents and warrants to the Company as of the date hereof as follows:

(a) The Subscriber is an 4(a)(2) Eligible Holder and held on the Record Date (i) the aggregate principal amount of Convertible Notes set forth on Item 1 of such Eligible Holder's 4(a)(2) Beneficial Holder Convertible Note Subscription Form and/or (ii) Other Impaired Excel General Unsecured Claims which are valued at the aggregate amount set forth on Item 1 of such Eligible Holder's 4(a)(2) Other Claim Subscription Form, and/or (iii) a Syndicate Credit Deficiency Claim valued at the aggregate amount set forth on Item 1 of such Subscriber's 4(a)(2) Other Claim Subscription Form.

(b) The Subscriber has the requisite corporate or other applicable power and authority to execute and deliver this 4(a)(2) Subscription Agreement and the 4(a)(2) Beneficial Holder Convertible Note Subscription Form or 4(a)(2) Other Claim Subscription Form, as applicable, and to perform its obligations hereunder and thereunder. This 4(a)(2) Subscription Agreement and the consummation by Subscriber of the transactions contemplated hereby have been duly authorized by all requisite action. This 4(a)(2) Subscription Agreement has been duly and validly executed and delivered by Subscriber and constitutes the valid and binding obligation of Subscriber, enforceable against Subscriber in accordance with its terms. Except to the extent Subscriber is an individual, Subscriber is a duly organized entity validly existing under the laws of the jurisdiction of its incorporation or formation.

(c) Except as provided under applicable state securities laws and subject to the conditions contained in Section 6, this subscription is and shall be irrevocable, except that the

Subscriber shall have no obligation hereunder if this 4(a)(2) Subscription Agreement is for any reason rejected or this offering is for any reason cancelled.

(d) The Subscriber understands that the 4(a)(2) Shares have not been registered under the Securities Act nor qualified under any state securities laws and that the 4(a)(2) Shares are being offered and sold pursuant to an exemption from such registration and qualification requirements based in part upon the Subscriber's representations contained herein.

(e) The Subscriber has read and understands this 4(a)(2) Subscription Agreement, the Plan, the Disclosure Statement and the 4(a)(2) Beneficial Holder Convertible Note Subscription Form or 4(a)(2) Other Claim Subscription Form, as applicable, and understands the terms and conditions herein and therein and the risks associated with the Company and its business as described in the Disclosure Statement. The Subscriber has, to the extent deemed necessary by the Subscriber, discussed with legal counsel the representations, warranties and agreements that the Subscriber is making herein.

(f) The Subscriber has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the investment contemplated by this 4(a)(2) Subscription Agreement, and it is able to bear the economic risk of an investment in the Company. The Subscriber has sufficient financial resources available to support the loss of all or a portion of its investment in the Company, and has no need for liquidity in its investment in the Company.

(g) The Subscriber recognizes that except as described in the Plan with respect to affiliates of the Company there is no obligation on the part of the Company or any other Person to register the 4(a)(2) Shares under the Securities Act or any other securities laws. The Subscriber understands that it must bear the economic risk of this investment indefinitely unless its 4(a)(2) Shares are registered pursuant to the Securities Act or an exemption from such registration is available, and unless the disposition of such 4(a)(2) Shares is qualified under applicable state securities laws or an exemption from such qualification is available. The Subscriber further understands that there is no assurance that any exemption from the Securities Act will be available, or, if available, that such exemption will allow the Subscriber to Transfer all or part of its 4(a)(2) Shares, in the amounts or at the times the Subscriber might propose.

(h) The Subscriber is acquiring the 4(a)(2) Shares solely for its own account for investment and neither with a view toward, nor any present intention of, Transferring the 4(a)(2) Shares. No other Person has any right with respect to or interest in the 4(a)(2) Shares to be purchased by the Subscriber, nor has the Subscriber agreed to give any Person any such interest or right in the future.

(i) No finder's fee or other similar fee is payable to any third party in connection with the Subscriber's investment in the Company. Should such a fee be payable to any third party, such fee is payable in its entirety by the Subscriber and not by the Company or any of its affiliates.

(j) The Subscriber is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under Section 4(a)(2) of the Securities Act and that the Accredited Investor Questionnaire previously completed by the Subscriber sets forth a true, correct and complete statement of the Subscriber's accredited investor status.

(k) No third-party consents or approvals are required to be obtained, made or given in order to permit the Subscriber to execute and deliver this 4(a)(2) Subscription Agreement and to perform its obligations hereunder.

(l) Neither the execution and delivery of this 4(a)(2) Subscription Agreement by the Subscriber nor the consummation of any of the transactions contemplated hereby will violate or conflict with, or result in a breach of, or constitute a default under (whether upon notice or the passage of time or both) any (i) contract to which the Subscriber is a party or (ii) applicable laws, regulations, orders, judgments and decrees to which the Subscriber is subject.

(m) Other than as set forth in this 4(a)(2) Subscription Agreement, the Plan, the Disclosure Statement, the 4(a)(2) Beneficial Holder Convertible Note Subscription Form or 4(a)(2) Other Claim Subscription Form, as applicable, the Subscriber is not relying upon any other information, representation or warranty by the Company. The Subscriber has consulted, to the extent deemed appropriate by the Subscriber, with the Subscriber's own advisors as to the financial, tax, legal and related matters concerning an investment in the 4(a)(2) Shares and on that basis believes that an investment in the 4(a)(2) Shares is suitable and appropriate for the Subscriber.

(n) The foregoing representations and warranties will be true on the date hereof and as of the Closing Date and will survive delivery of this 4(a)(2) Subscription Agreement. If any of such representations and warranties is not true prior to acceptance of this 4(a)(2) Subscription Agreement by the Company or prior to the Closing Date, the Subscriber will give written notice of such fact to the Company, specifying which representations and warranties are not true and the reasons therefor.

#### 4. SUBSCRIBER ACKNOWLEDGMENTS.

The Subscriber further acknowledges the following as of the date hereof and as of the Closing Date:

(a) The 4(a)(2) Shares purchased pursuant hereto will be initially issued in the name of the Subscriber, a controlled Affiliate of the Subscriber or a Related Fund, as indicated on such Subscriber's 4(a)(2) Beneficial Holder Convertible Note Subscription Form or 4(a)(2) Other Claim Subscription Form, as applicable.

(b) This 4(a)(2) Subscription Agreement contains its irrevocable firm commitment, subject only to the terms and conditions of this 4(a)(2) Subscription Agreement and the 4(a)(2) Rights Offering, to purchase the 4(a)(2) Shares, subject to *pro rata* adjustment as provided for in this 4(a)(2) Subscription Agreement and in the 4(a)(2) Rights Offering Procedures.

(c) Except to the extent provided in this 4(a)(2) Subscription Agreement, the Plan or the Disclosure Statement, the Company makes no representation or warranty in connection with the purchase of the 4(a)(2) Shares.

(d) No federal or state agency has made or will make any finding or determination as to the adequacy or accuracy of any information provided to the Subscriber in connection with its consideration of its investment in the 4(a)(2) Shares or as to the fairness of this private placement for investment, nor any recommendation or endorsement of the 4(a)(2) Shares.

(e) The Company will be relying on representations, warranties and agreements made by the Subscriber to the Company, and the covenants agreed to by the Subscriber, herein. The Subscriber agrees to provide, if requested, any additional information that may reasonably be required to determine its eligibility to purchase the 4(a)(2) Shares. If there is any change in any of the information provided by the Subscriber, or if any of the Subscriber's representations and warranties becomes inaccurate in any respect, the Subscriber will furnish such revised or corrected information to the Company as soon as reasonably practicable, but in any event prior to the Expiration Date.

(f) The Subscriber understands and acknowledges that all calculations shall be made in good faith by the Company with the consent of each of the Consenting Parties (as defined in the Plan) and in accordance with any Claim amounts included in the Plan, and any disputes regarding such calculations shall be subject to a final and binding determination by the Bankruptcy Court.

(g) The Disclosure Statement contains projections. The projections are subjective in many respects and are based on expectations, estimates, opinions and beliefs of the Company's management with respect to its financial condition, business and industry performance, general economic, market and financial conditions and other matters, all of which are difficult to predict and many of which are beyond the Company's control. Accordingly, there can be no assurance that the estimates and assumptions made in preparing the projections will prove accurate or that the forecasts will be realized. In addition, the projections do not and cannot take into account such factors as general economic conditions, unforeseen changes and developments in available technologies and products, the entry into the Company's market of significant additional competitors, natural disasters, the terms and conditions of future financings of the Company, and other risks inherent to the business of the Company. While management believes that the projections reflect the possible future results of the Company's operations, such results cannot be guaranteed. The Subscriber acknowledges that it is prepared for the substantial economic risks involved in the purchase of the 4(a)(2) Shares, including the total loss of its investment. The Company will not be under any duty to update the projections included in the Disclosure Statement prior to or after the Closing Date.

(h) The Subscriber understands that the 4(a)(2) Shares and any certificates therefor will bear a restrictive legend in substantially the following form, in addition to any legend imposed or required by the Company's organizational documents or other applicable securities laws:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREUNDER.

The Subscriber may present the certificate evidencing the 4(a)(2) Shares bearing such legend to the Company's transfer agent for the 4(a)(2) Shares for exchange for one or more new certificates not bearing such legend or for Transfer to a new holder without such legend at such times as (i) such 4(a)(2) Shares are sold pursuant to an effective registration statement under the Securities Act or (ii) such holder has delivered to the Company an opinion of counsel reasonably satisfactory to the Company to the effect that the 4(a)(2) Shares are no longer subject to the restrictions pursuant to an exemption under the Securities Act and such 4(a)(2) Shares may be sold without registration under the Securities Act, in which event the certificate issued to the transferee will not bear such legend.

5. COVENANT OF THE COMPANY

(a) Plan Supplement. Except to the extent otherwise agreed by the Consenting Parties, the Company shall file all documents included within the Plan Supplement (as defined in the Plan) with the Bankruptcy Court at least five (5) Business Days prior to the Subscription Expiration Deadline (except for the Holdco LLC Agreement, which shall be filed by January 7, 2014).

6. CONDITIONS TO CLOSING.

(a) Conditions to Each Party's Obligations. The respective obligations of the Subscriber and the Company to consummate the transactions contemplated by this 4(a)(2) Subscription Agreement are subject to the occurrence of the Effective Date.

(b) Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this 4(a)(2) Subscription Agreement with the Subscriber are subject to the satisfaction or waiver, at or prior to the Closing, of the following conditions:

(i) All representations and warranties of the Subscriber in Section 3 of this 4(a)(2) Subscription Agreement must be true, correct and complete in all respects on the Closing Date;

(ii) All acknowledgments of the Subscriber in Section 4 of this 4(a)(2) Subscription Agreement must be true, correct and complete in all respects on the Closing Date;

(iii) The Plan shall have been confirmed by the Bankruptcy Court; and

(iv) Compliance by the Subscriber with the 4(a)(2) Rights Offering Procedures governing the 4(a)(2) Rights Offering, including payment by the Subscriber of the Purchase Price.

(c) Conditions to Obligations of the Subscriber. The obligations of the Subscriber to consummate the transactions contemplated by this 4(a)(2) Subscription Agreement are subject to the satisfaction or waiver, at or prior to the Closing, of the following conditions:

(i) All representations and warranties of the Company in Section 2 of this 4(a)(2) Subscription Agreement must be true and correct in all material respects on the Closing Date;

(ii) Compliance by the Company with the 4(a)(2) Rights Offering Procedures governing the 4(a)(2) Rights Offering;

(iii) Compliance by the Company with the covenant set forth in Section 5(a) of this 4(a)(2) Subscription Agreement; and

(iv) The Plan and the Plan Supplement (including all exhibits thereto) shall be effective at Closing with no material changes from the forms on file with the Bankruptcy Court by the deadline set forth in Section 5(a) above.

#### 7. TERMINATION.

This 4(a)(2) Subscription Agreement will terminate upon the earlier of (i) termination or rejection of the Plan by all classes entitled to vote, (ii) receipt by the Company of written notice of termination from the Subscriber, provided such notice is received by the Subscription Expiration Deadline, and (iii) April 1, 2014. In the event this 4(a)(2) Subscription Agreement is terminated, any payments received pursuant to Section 1(a) of this 4(a)(2) Subscription Agreement will be returned to the Subscriber as soon as reasonably practicable, but in any event, within six (6) Business Days.

#### 8. INTERPRETATION OF THIS AGREEMENT.

(a) Terms Defined. As used in this 4(a)(2) Subscription Agreement, the following terms have the respective meanings set forth below:

"Accredited Investor": Shall mean an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under Section 4(a)(2) of the Securities Act.

"Affiliate": With respect to any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (including with its correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person (whether



through ownership of securities or partnership or other ownership interests, by agreement, contract, obligation, promise, undertaking or understanding, whether written or oral, or otherwise).

"4(a)(2) Beneficial Holder Convertible Note Subscription Form": The subscription form to be completed by 4(a)(2) Eligible Holders included as Schedule 1B hereto.

"4(a)(2) Other Claim Subscription Form": The subscription form to be completed by: (i) beneficial holders of Other Impaired Excel General Unsecured Claims, and (ii) beneficial holders of Syndicate Credit Deficiency Claims included as Schedule 1D hereto.

"4(a)(2) Rights Offering Instructions": The instructions included as Schedule 1A hereto.

"4(a)(2) Shares": Has the meaning set forth in Section 1 of the Rights Offering Procedures included as Exhibit A hereto.

"4(a)(2) Subscription Agreement": This agreement.

"4(a)(2) Subscription Rights": The non-Transferable, non-certificated subscription rights to purchase 4(a)(2) Offered Shares in connection with the 4(a)(2) Rights Offering on the terms and subject to the conditions set forth in the Plan, the 4(a)(2) Rights Offering Procedures and this 4(a)(2) Subscription Agreement.

"Business Day": Any day that is not a Saturday, Sunday, legal holiday or other day on which commercial banks in New York, New York are authorized or required by applicable law to close.

"Debtors": The Company, Excel Maritime Carriers LLC, Amanda Enterprises Ltd., Barland Holdings Inc., Candy Enterprises Inc., Castalia Services Ltd., Centel Shipping Company Ltd., Coal Gypsy Shipco LLC, Coal Hunter Shipco LLC, Coal Pride Shipco LLC, Fianna Navigation S.A., Fountain Services Ltd., Grain Express Shipco LLC, Grain Harvester Shipco LLC, Harvey Development Corp., Ingram Ltd., Iron Anne Shipco LLC, Iron Beauty Shipco LLC, Iron Bill Shipco LLC, Iron Bradyn Shipco LLC, Iron Brooke Shipco LLC, Iron Fuzeyya Shipco LLC, Iron Kalypso Shipco LLC, Iron Knight Shipco LLC, Iron Lindrew Shipco LLC, Iron Manolis Shipco LLC, Iron Miner Shipco LLC, Iron Vassilis Shipco LLC, Kirmar Shipco LLC, Liegh Jane Navigation S.A., Lowlands Beilun Shipco LLC, Marias Trading Inc., Ore Hansa Shipco LLC, Pascha Shipco LLC, Point Holdings Ltd., Sandra Shipco LLC, Santa Barbara Shipco LLC, Snapper Marine Ltd., Tanaka Services Ltd., Teagan Shipholding S.A., Thurman International Ltd., Whitelaw Enterprises Co., and Yasmine International Inc.

"Effective Date": The date the Plan becomes effective.

"Eligible Holder": Any holder of an Impaired Excel General Unsecured Claim as of the Record Date.

"Impaired Excel General Unsecured Claims": A claim arising by virtue of an Eligible Holder holding Convertible Notes, Other Impaired Excel General Unsecured Claim or Syndicate Credit Deficiency Claim as of the Record Date.

"Master 4(a)(2) Convertible Note Subscription Form": The subscription form to be completed be completed by the Nominee of any beneficial holders of Convertible Notes included as Schedule 1C hereto.

"New Common Stock": The shares of common stock of the reorganized Company, par value \$0.01 per share.

"Nominee": Broker, bank, commercial bank, transfer agent, trust company, dealer, or other agent or nominee, as applicable.

"Other Impaired Excel General Unsecured Claims": Any (A) unsecured deficiency claim arising under the Company's senior secured syndicate credit facility dated April 14, 2008; (B) claim arising under certain swap agreements entered into by the Company and Eurobank EFG Private Bank Luxembourg S.A. and Marfin Popular Bank Public Co. Ltd., Greek Branch, respectively; (C) claim for damages alleged by Robertson Maritime Investors, LLC; and/or (D) claim arising under a settlement with certain bareboat charter parties, dated December 5, 2012.

"Person": An individual, partnership, limited liability company, joint-stock company, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

"Purchase Price": means \$16.25 per share.

"Record Date": December 9, 2013.

"Related Fund": With respect to the Subscriber, any fund, account or investment vehicle that is controlled or managed by (a) the Subscriber, (b) a controlled Affiliate of the Subscriber or (c) the same investment manager or advisor as the Subscriber or an Affiliate of such investment manager or advisor.

"Subscription Agent": Donlin Recano & Company, Inc., or any other entity designated as such by the Company, in its capacity as a subscription agent and escrow agent in connection with the 4(a)(2) Rights Offering.

"Subscription Commencement Date": The date on which 4(a)(2) Subscription Agreements are first sent to 4(a)(2) Eligible Holders.

"Subscription Expiration Deadline": 5:00 p.m. New York City Time on January 17, 2014, the date by which properly completed 4(a)(2) Subscription Agreements

and the Purchase Price will be required to be delivered to the Subscription Agent as provided in the 4(a)(2) Subscription Agreements.

"Subscription Period": The period beginning on the Subscription Commencement Date and ending on the Subscription Expiration Deadline.

"Syndicate Credit Deficiency Claims": means the unsecured Claim arising under the Syndicate Credit Facility or the Loan Documents. For the avoidance of doubt, the Consenting Parties reserve all rights with respect to the amount, if any, and treatment of a Syndicate Credit Facility Deficiency Claim, if any, held by the Secured Lenders for all other purposes including, but not limited to, voting on and receiving distributions, in each case with respect to any plan of reorganization that is not consistent with the plan of reorganization described in the Plan Term Sheet.

"Tranche A Offered Shares": 307,692 shares of New Common Stock to be offered to Eligible Holders in the Rule 144 Rights Offering at the Purchase Price.

"Tranche A Subscription Rights": Has the meaning set forth in the Plan.

"Transfer": Any resale, sale, assignment, pledge, hypothecation, distribution or other disposition or encumbrance.

(b) Directly or Indirectly. Where any provision in this 4(a)(2) Subscription Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision will be applicable whether such action is taken directly or indirectly by such Person.

(c) Governing Law; Jurisdiction. THIS 4(a)(2) SUBSCRIPTION AGREEMENT, AND ALL CLAIMS ARISING OUT OF OR RELATING THERETO, WILL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK. THE SUBSCRIBER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF, AND VENUE IN, THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW YORK AND WAIVES ANY OBJECTION BASED ON *FORUM NON CONVENIENS*.

(d) Section Headings. The headings of the sections and subsections of this 4(a)(2) Subscription Agreement are inserted for convenience only and should not be deemed to constitute a part thereof.

(e) Construction. This 4(a)(2) Subscription Agreement has been freely and fairly negotiated between the parties. If an ambiguity or question of intent or interpretation arises, this 4(a)(2) Subscription Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party because of the authorship of any provision of this 4(a)(2) Subscription Agreement. The words "include", "includes", and "including" will be deemed to be followed by "without limitation." Pronouns in masculine, feminine and neuter genders will be construed to include any other gender, and words

in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words "this 4(a)(2) Subscription Agreement", "herein", "hereof", "hereby", "hereunder" and words of similar import refer to this 4(a)(2) Subscription Agreement as a whole and not to any particular subdivision unless expressly so limited.

9. MISCELLANEOUS.

(a) Notices.

(i) The Subscriber acknowledges that a completed and signed copy of this 4(a)(2) Subscription Agreement, the 4(a)(2) Beneficial Holder Convertible Note Subscription Form or Master 4(a)(2) Convertible Note Subscription Form, as applicable, and/or 4(a)(2) Other Claim Subscription Form, as applicable, together with payment of the Purchase Price, must be received by the Subscription Agent in accordance with the instructions included herewith prior to the Subscription Expiration Deadline for the subscription contemplated hereby to be valid.

(ii) Except as otherwise provided in this 4(a)(2) Subscription Agreement, following execution of this 4(a)(2) Subscription Agreement, all demands, notices, requests, consents and other communications under this 4(a)(2) Subscription Agreement must be in writing, sent contemporaneously to all of the notice parties set forth below and deemed given when delivered, if delivered by hand or upon confirmation of transmission, if delivered by facsimile, or if no response to the effect that an email cannot be delivered to the sender is received within two (2) hours, if delivered by email, during standard business hours (from 8:00 A.M. to 6:00 P.M. at the place of receipt) at the addresses and facsimile numbers set forth below:

(A) if to the Subscriber, at his or her address or facsimile number shown on the 4(a)(2) Beneficial Holder Convertible Note Subscription Form and/or 4(a)(2) Other Claim Subscription Form, as applicable, or at such other address or facsimile number as the Subscriber may have furnished the Company and the Subscription Agent in writing; and

(B) if to the Company, at (or at such other address or facsimile number as it may have furnished in writing to the Subscriber):

Excel Maritime Carriers Ltd.  
17<sup>th</sup> Km National Road Athens –  
Lamia & Finikos Street  
145 64 Nea Kifisia  
Athens, Greece  
Attn: Pavlos Kanellopoulos

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036  
Attn: Jay Goffman and Mark McDermott  
Facsimile: 212-735-2000  
jay.goffman@skadden.com; mark.mcdermott@skadden.com

(b) Expenses and Taxes. The Company will pay, and hold the Subscriber harmless from any and all liabilities (including interest and penalties) with respect to, or resulting from any delay or failure in paying, stamp and other taxes (other than income taxes), if any, which may be payable or determined to be payable on the execution and delivery of this 4(a)(2) Subscription Agreement or acquisition of the securities pursuant to this 4(a)(2) Subscription Agreement.

(c) Reproduction of Documents. This 4(a)(2) Subscription Agreement and all documents relating hereto may not be reproduced or distributed by the Subscriber without the prior written consent of the Company.

(d) Assignment; Successors. This 4(a)(2) Subscription Agreement is not assignable by the Subscriber without the prior written consent of the Company. This 4(a)(2) Subscription Agreement and the rights, powers and duties set forth herein will inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties.

(e) Entire Agreement; Amendment and Waiver. This 4(a)(2) Subscription Agreement constitutes the entire understanding of the parties hereto and supersedes all prior understandings among such parties with respect to the matters covered herein. This 4(a)(2) Subscription Agreement may be amended, and the observance of any term of this 4(a)(2) Subscription Agreement may be waived, with (and only with) the written consent of the Company and the Subscriber.

(f) Severability. If any provision of this 4(a)(2) Subscription Agreement or the application of such provision to any Person or circumstance is held to be invalid by any court of competent jurisdiction, the remainder of this 4(a)(2) Subscription Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid will not be affected thereby.

(g) Counterparts. This 4(a)(2) Subscription Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement.

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Please indicate your acceptance and approval of the foregoing in the space provided below.

EXCEL MARITIME CARRIERS LTD.

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

Title:

ACCEPTED AND APPROVED

as of the \_\_\_\_ day of \_\_\_\_\_, 2013

SUBSCRIBER: \_\_\_\_\_  
(Please provide full legal name)

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Postal Code: \_\_\_\_\_

Country: \_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

Email Address: \_\_\_\_\_

If U.S. person, check here and attach IRS Form W-9:  U.S. person

If Non-U.S. person, check here and attach appropriate IRS Form W-8:  Non-U.S. person

**Exhibit A**

**4(a)(2) RIGHTS OFFERING PROCEDURES**

**Each 4(a)(2) Offered Share is being distributed and issued by the Debtors without registration under the Securities Act of 1933, as amended (the "Securities Act").**

**None of the 4(a)(2) Subscription Rights distributed in connection with these 4(a)(2) Rights Offering Procedures have been or will be registered under the Securities Act, nor any State or local law requiring registration for offer and sale of a security, and no 4(a)(2) Subscription Rights may be sold or independently Transferred.**

**None of the 4(a)(2) Offered Shares have been or will be registered under the Securities Act, nor any state or local law requiring registration for offer or sale of a security.**

**The 4(a)(2) Rights Offering is being conducted in good faith and in compliance with the Bankruptcy Code. In accordance with section 1125(e) of the Bankruptcy Code, a debtor or any of its agents that participate, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, in the offer, issuance, sale, or purchase of a security, offered or sold under the plan of the debtor, of an affiliate participating in a joint plan with the debtor, or of a newly organized debtor under the plan, is not liable, on account of such participation, for violation of any applicable law, rule, or regulation governing the offer, issuance, sale or purchase of securities.**

**Terms used and not defined herein or in the 4(a)(2) Subscription Agreement shall have the meaning assigned to them in the Plan (as defined below).**

To 4(a)(2) Eligible Holders<sup>1</sup> and Nominees of 4(a)(2) Eligible Holders:

On November 26, 2013, the Debtors (as defined below) filed the Amended Joint Chapter 11 Plan of Reorganization of the Debtors with the United States Bankruptcy Court for the Southern District of New York (as such plan of reorganization may be amended or modified from time to time in accordance with its terms, the "Plan"), and the Disclosure Statement with respect to the Plan (as such disclosure statement may be amended from time to time in accordance with its terms, the "Disclosure Statement"). Pursuant to the Plan, each holder of an Impaired Excel General Unsecured Claim as of the Record Date that is an Accredited Investor, has the right to participate in the 4(a)(2) Rights Offering of the 4(a)(2) Offered Shares.

Pursuant to the Plan, each Eligible Holder that has timely and validly completed and returned the Accredited Investor Questionnaire will receive 4(a)(2) Subscription Rights to subscribe for the 4(a)(2) Offered Shares, provided that it timely and properly executes and delivers its Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable) and/or 4(a)(2) Other Claim Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), as applicable, to the Subscription Agent or its Nominee, as applicable, in advance of the Subscription Expiration Deadline. Each Nominee will receive a Master 4(a)(2) Convertible Note Subscription Form which it shall use to summarize the 4(a)(2) Subscription Rights, exercised by each 4(a)(2) Eligible Holder that returns a 4(a)(2) Beneficial Holder Convertible Note Subscription Form to such Nominee. Please note that all 4(a)(2) Beneficial Holder Convertible Note Subscription Forms (with accompanying IRS Form W-9 or appropriate W-8, as applicable) must be returned to the applicable Nominee early enough to be processed and for such Nominee to prepare and deliver the Master 4(a)(2) Convertible Note Subscription Form and a copy of all 4(a)(2) Beneficial Holder Convertible Note Subscription Forms (with accompanying IRS Forms) to the Subscription Agent prior to the Subscription Expiration Deadline.

No 4(a)(2) Eligible Holder shall be entitled to participate in the 4(a)(2) Rights Offering unless the purchase price for the 4(a)(2) Offered Shares it subscribes for is received by the Subscription Agent in advance of the Subscription Expiration Deadline. Any

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<sup>1</sup> "Eligible Holder" means any holder of an Impaired Excel General Unsecured Claim as of the Record Date.

4(a)(2) Eligible Holder submitting payment via its Nominee must tender such payment to its Nominee in sufficient time to allow the Nominee to forward such payment to the Subscription Agent in advance of the Subscription Expiration Deadline.

**Holders of Syndicate Credit Deficiency Claims shall be entitled to participate in the 4(a)(2) Rights Offering, provided that if the class of Impaired Excel General Unsecured Claims votes to accept the Plan, the 4(a)(2) Subscription Rights of any holders of Syndicate Credit Deficiency Claims shall be deemed forever and irrevocably relinquished and waived on the Effective Date. If the class of Impaired Excel General Unsecured Claims does not vote to accept the Plan, the *pro rata* share for each Eligible Holder will be determined by multiplying (a) the total number of 4(a)(2) Offered Shares by (b) the quotient obtained by dividing (i) the amount of Impaired Excel General Unsecured Claims held by that 4(a)(2) Eligible Holder by (ii) the total amount of Impaired Excel General Unsecured Claims rounded to the nearest whole share.**

In order to facilitate participation in the 4(a)(2) Rights Offering, each Impaired Excel General Unsecured Claim will be determined to be Allowed or disallowed by no later than January 16, 2014, for purposes of participating in the 4(a)(2) Rights Offering. In the event that the holder of an Impaired Excel General Unsecured Claim that is disputed wishes to participate in the 4(a)(2) Rights Offering, such holder must file a motion pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure seeking allowance of such claim and obtain a ruling on such motion by no later than January 16, 2014. Unless such a motion is timely filed and ruled upon, holders of disputed Impaired Excel General Unsecured Claims will be deemed to be disallowed for purposes of participating in the 4(a)(2) Rights Offering.

Eligible Holders will receive materials regarding the 4(a)(2) Rights Offering based on the current amount of Allowed Impaired Excel General Unsecured Claims. If any disputed Impaired Excel General Unsecured Claims become Allowed by no later than January 16, 2014, the total amount of Allowed Impaired Excel General Unsecured Claims will increase. In that event, the amount of Offered Shares that Eligible Holders will be entitled to purchase pursuant to the Rule 1145 Rights Offering will decrease. To the extent the Rule 1145 Offered Shares corresponding to such additional Allowed Impaired Excel General Unsecured Claims are not subscribed for, the number of 4(a)(2) Offered Shares will include such number of shares. In that case, any Eligible Holder who has fully subscribed for all 4(a)(2) Offered Shares that may be allocable to such Eligible Holder in the 4(a)(2) Rights Offering will have the one business day to subscribe for, and pay the applicable Purchase Price with respect to, such additional number of 4(a)(2) Offered Shares as may be available as a result thereof.

**In order to participate in the 4(a)(2) Rights Offering, you must complete all the steps outlined below. If all of the steps outlined below are not completed by the Subscription Expiration Deadline, you shall be deemed to have forever and irrevocably relinquished and waived your right to participate in the 4(a)(2) Rights Offering.**



## 1. Rights Offering

4(a)(2) Eligible Holders have the right, but not the obligation, to participate in the 4(a)(2) Rights Offering.

Subject to the terms and conditions set forth in the Plan, these 4(a)(2) Rights Offering Procedures and the 4(a)(2) Subscription Agreements:

Each 4(a)(2) Eligible Holder is entitled to subscribe for the 4(a)(2) Offered Shares at the Purchase Price. The number of 4(a)(2) Offered Shares actually subscribed for and purchased by a 4(a)(2) Eligible Holder shall be referred to as such 4(a)(2) Eligible Holder's "*4(a)(2) Shares*."

Notwithstanding the foregoing, holders of Syndicate Credit Deficiency Claims shall be entitled to participate in the 4(a)(2) Rights Offering, provided that if the class of Impaired Excel General Unsecured Claims votes to accept the Plan the 4(a)(2) Subscription Rights of any holders of Syndicate Credit Deficiency Claims shall be deemed forever and irrevocably relinquished and waived on the Effective Date. In the event that the class of Impaired Excel General Unsecured Claims votes to accept the Plan, any 4(a)(2) Subscription Agreement and any 4(a)(2) Other Claims Subscription Form returned by a holder of a Syndicate Credit Deficiency Claim to the Subscription Agent will be deemed null and void and any funds paid by such holder will be returned in accordance with the provisions of the 4(a)(2) Subscription Agreement.

Notwithstanding the foregoing, 4(a)(2) Eligible Holders shall only be entitled to participate in the 4(a)(2) Rights Offering to the extent that any Tranche A Offered Shares have not been subscribed for by Eligible Holders in the Rule 1145 Rights Offering prior to the Subscription Expiration Deadline. In the event that the Tranche A Offered Shares have been fully subscribed for in the Rule 1145 Rights Offering, any 4(a)(2) Subscription Agreement returned by a 4(a)(2) Eligible Holder will be deemed null and void and any funds paid by such holder will be returned in accordance with the provisions of the 4(a)(2) Subscription Agreement.

**SUBJECT TO THE TERMS AND CONDITIONS OF THE 4(a)(2) SUBSCRIPTION AGREEMENT, ALL SUBSCRIPTIONS SET FORTH IN THE 4(a)(2) SUBSCRIPTION AGREEMENTS ARE IRREVOCABLE.**

## 2. Subscription Period

The 4(a)(2) Rights Offering will commence on the Subscription Commencement Date and will expire on the Subscription Expiration Deadline. Each 4(a)(2) Eligible Holder intending to purchase Common Stock in the 4(a)(2) Rights Offering must affirmatively elect to exercise its 4(a)(2) Subscription Rights in the manner set forth in the 4(a)(2) Rights Offering Instructions included with the 4(a)(2) Subscription Agreements (consistent herewith, including as described in Section 5 hereof) on or prior to the Subscription Expiration Deadline.

Any exercise of 4(a)(2) Subscription Rights after the Subscription Expiration Deadline will not be allowed and any purported exercise received by the Subscription Agent after the Subscription Expiration Deadline, regardless of when the documents or payment relating to such exercise were sent, will not be honored.

## 3. Delivery of 4(a)(2) Subscription Agreements

Each 4(a)(2) Eligible Holder may exercise all or any portion of such 4(a)(2) Eligible Holder's Subscription Rights, but subject to the terms and conditions of the 4(a)(2) Subscription Agreement, the exercise of any 4(a)(2) Subscription Rights will be irrevocable. In order to facilitate the exercise of the 4(a)(2) Subscription Rights, beginning on the Subscription Commencement Date, the Subscription Agent will send a 4(a)(2) Subscription Agreement to each 4(a)(2) Eligible Holder or its Nominee, as applicable, together with appropriate instructions for the proper completion, due execution and timely delivery of the 4(a)(2) Subscription Agreement and the payment of the Purchase Price for its 4(a)(2) Shares.

## 4. Exercise of Subscription Rights

In order to validly exercise 4(a)(2) Subscription Rights, each 4(a)(2) Eligible Holder must:

(a) return a duly executed 4(a)(2) Subscription Agreement to the Subscription Agent or its Nominee, as applicable, so that such 4(a)(2) Subscription Agreement is actually received by the Subscription Agent on or before the Subscription Expiration Deadline;

(b) return a duly completed and executed 4(a)(2) Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable) or 4(a)(2) Other Claim Subscription Form (with accompanying IRS

Form W-9 or appropriate W-8, as applicable), as applicable, to the Subscription Agent or its Nominee, as applicable, so that such form and the Master 4(a)(2) Convertible Note Subscription Form, as applicable, are actually received by the Subscription Agent on or before the Subscription Expiration Deadline; and

(c) at the same time it returns its 4(a)(2) Subscription Agreement and 4(a)(2) Beneficial Holder Convertible Note Subscription Form or 4(a)(2) Other Claim Subscription Form, as applicable, to the Subscription Agent or its Nominee, as applicable, but in no event later than the Subscription Expiration Deadline, pay, or arrange for the payment by its Nominee of, the Purchase Price to the Subscription Agent by wire transfer **ONLY** of immediately available funds in accordance with the instructions included in Item 3 of the 4(a)(2) Beneficial Holder Convertible Note Subscription Form or 4(a)(2) Other Claim Subscription Form, as applicable.

**Holders of Convertible Notes** – With respect to (a), (b) and (c) above you must duly complete, execute and return your 4(a)(2) Beneficial Holder Convertible Note Subscription Form in accordance with the instructions herein **directly to your Nominee** in sufficient time to allow your Nominee to process your instructions and deliver to the Subscription Agent your completed 4(a)(2) Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), 4(a)(2) Subscription Agreement and payment on or before the Subscription Expiration Deadline.

In the event that funds received by the Subscription Agent in payment for such 4(a)(2) Eligible Holder's 4(a)(2) Shares are less than the Purchase Price, the number of such 4(a)(2) Eligible Holder's 4(a)(2) Shares deemed to be purchased by the 4(a)(2) Eligible Holder will be the lesser of (i) the number of such 4(a)(2) Eligible Holder's 4(a)(2) Shares requested by such 4(a)(2) Eligible Holder and (ii) a number determined by dividing the amount of such funds received by the Purchase Price.

The payments of cash made in accordance with the 4(a)(2) Rights Offering will be deposited and held by the Subscription Agent in a segregated escrow account until administered in connection with the settlement of the 4(a)(2) Rights Offering on the Effective Date. The Subscription Agent may not use such funds for any other purpose prior to such Effective Date and may not encumber or permit such funds to be encumbered with any lien or similar encumbrance. Such funds held by the Subscription Agent shall not be deemed part of the Debtors' bankruptcy estate.

#### **5. Transfer Restriction; Revocation**

The 4(a)(2) Subscription Rights are not Transferable. Any Transfer or attempted Transfer of the 4(a)(2) Subscription Rights will be null and void, and no purported transferee will be treated as the holder of any 4(a)(2) Subscription Rights. Once a 4(a)(2) Eligible Holder has properly exercised its 4(a)(2) Subscription Rights, subject to the terms and conditions of the 4(a)(2) Subscription Agreement, such exercise will not be permitted to be revoked.

#### **6. Return of Payment**

If the 4(a)(2) Rights Offering is not consummated, any cash paid to the Subscription Agent will be returned, without interest, to the applicable 4(a)(2) Eligible Holder as soon as reasonably practicable, but in any event within four (4) Business Days, after the earlier of (a) the Subscription Expiration Deadline and (b) the date on which the 4(a)(2) Rights Offering is terminated.

In the event that the Subscription Agent receives more funds from a 4(a)(2) Eligible Holder than the aggregate Purchase Price for such 4(a)(2) Eligible Holder's 4(a)(2) Shares, giving effect to any applicable *pro rata* reduction of such 4(a)(2) Eligible Holder's subscription or over-subscription then such funds, to the extent of such overpayment, will be returned, without interest, to the applicable 4(a)(2) Eligible Holder as soon as reasonably practicable, but in any event within six (6) Business Days after such determination is made.

In the event that the class of Impaired Excel General Unsecured Claims votes to accept the Plan, any funds paid by a holder of a Syndicate Credit Deficiency Claim in connection with its exercise of 4(a)(2) Subscription Rights, will be returned, without interest, as soon as reasonably practicable, but in any event within six (6) Business Days after acceptance or rejection of the Plan is filed with the Bankruptcy Court.

In the event that the Tranche A Offered Shares have been fully subscribed for in the Rule 1145 Rights Offering, any funds paid by a holder of a 4(a)(2) Eligible Holder in connection with its exercise of 4(a)(2) Subscription Rights, will be returned, without interest, as soon as reasonably practicable, but in any event within six (6) Business Days after acceptance or rejection of the Plan is filed with the Bankruptcy Court.

#### **7. Settlement of the 4(a)(2) Rights Offering and Distribution of the 4(a)(2) Offered Shares**

On the Effective Date, and immediately after the issuance of the 4(a)(2) Shares under the Plan, all 4(a)(2) Eligible Holders shall transfer any 4(a)(2) Shares they have subscribed for in the 4(a)(2) Rights Offering to Holdco automatically pursuant to the terms of the Plan and without further action required. Subject to the terms in the Plan, such 4(a)(2) Eligible Holders shall receive Holdco Units in the same percentages as they held 4(a)(2) Shares in Reorganized Excel on the Effective Date after the exercise of their 4(a)(2) Subscription Rights. On the Effective Date (or as soon as reasonably practicable thereafter), the Company's will distribute the physical stock certificates representing the Holdco Units of Eligible Holder that properly exercised its rights in the 4(a)(2) Rights Offering in accordance with the delivery instructions set forth in such 4(a)(2) Eligible Holder's 4(a)(2) Subscription Agreement.

**8. Fractional 4(a)(2) Shares**

No fractional shares will be issued in the 4(a)(2) Rights Offering. All share allocations (including each 4(a)(2) Eligible Holder's 4(a)(2) Shares) will be calculated to one decimal place and rounded down to the closest whole share.

**9. Validity of Exercise of 4(a)(2) Subscription Rights**

All questions concerning the timeliness, viability, form and eligibility of any exercise of 4(a)(2) Subscription Rights will be determined in good faith by the Company, with the consent of each of the Consenting Parties and if necessary, subject to a final and binding determination by the Bankruptcy Court. The Company may waive any defect or irregularity, or permit a defect or irregularity to be corrected within such time as they may determine in good faith, or reject the purported exercise of any 4(a)(2) Subscription Rights. 4(a)(2) Subscription Agreements will be deemed not to have been received or accepted until all irregularities have been waived or cured within such time as the Company determines in good faith. In addition, the Company may permit any such defect or irregularity to be cured within such time as it may determine in good faith to be appropriate.

*Before exercising any 4(a)(2) Subscription Rights, 4(a)(2) Eligible Holders should read the Disclosure Statement and Plan for information relating to the Debtors and risk factors to be considered.*

**10. Modification of Procedures**

The Company reserves the right to modify or adopt additional procedures consistent with the provisions of the 4(a)(2) Rights Offering Procedures to effectuate the 4(a)(2) Rights Offering and to issue the 4(a)(2) Shares with the consent of each of the Consenting Parties, provided, however, that the Company shall provide prompt written notice to each 4(a)(2) Eligible Holder of any material modification to these 4(a)(2) Rights Offering Procedures made after the commencement of the 4(a)(2) Rights Offering. In so doing, the Company may execute and enter into agreements and take further action that the Company determines in good faith are necessary and appropriate to effect and implement the 4(a)(2) Rights Offering and the issuance of the 4(a)(2) Shares. Nothing in this paragraph shall be construed so as to permit the Company to modify the terms of the 4(a)(2) Subscription Agreement without the consent of the Subscriber.

**11. Inquiries And Transmittal of Documents; Subscription Agent**

The 4(a)(2) Rights Offering Instructions included with the 4(a)(2) Subscription Agreement should be carefully read and strictly followed.

Questions relating to the 4(a)(2) Rights Offering should be directed to the Subscription Agent at the following phone number:  
(212) 771-1128

The risk of non-delivery of all documents and payments to the Subscription Agent and any Nominee is on the 4(a)(2) Eligible Holder electing to exercise its 4(a)(2) Subscription Rights and not the Company or the Subscription Agent.

Schedule 1A.

**RIGHTS OFFERING INSTRUCTIONS**

Terms used and not defined herein or in the 4(a)(2) Subscription Agreement shall have the meaning assigned to them in the Plan (as defined below).

To elect to participate in the 4(a)(2) Rights Offering, you must follow the instructions set out below:

1. **Insert** the amount of your claim or Convertible Note holding, as applicable, that you held as of the Record Date in Item 1 of your 4(a)(2) Beneficial Holder Convertible Note Subscription Form (if your Nominee holds your Convertible Notes on your behalf and you do not know the amount, please contact your Nominee immediately) and/or Beneficial Holder Other Claim Subscription Form, as applicable.
2. **Complete** Item 2b of your 4(a)(2) Beneficial Holder Convertible Note Subscription Form and/or 4(a)(2) Other Claim Subscription Form, as applicable, indicating the number of 4(a)(2) Offered Shares you wish to purchase. Such amount must be in whole shares.
3. **Complete** the calculation in Item 2c of your 4(a)(2) Beneficial Holder Convertible Note Subscription Form and/or 4(a)(2) Other Claim Subscription Form, as applicable, which calculates the Purchase Price for the amount of 4(a)(2) Offered Shares that you wish to purchase.
4. **Read and complete** the certification in Item 4 of your 4(a)(2) Beneficial Holder Convertible Note Subscription Form and/or 4(a)(2) Other Claim Subscription Form, as applicable.
5. **Read and countersign** the 4(a)(2) Subscription Agreement. Such execution shall indicate your acceptance and approval of the terms and conditions set forth therein.
6. **Read, complete and sign** an IRS Form W-9 if you are a U.S. person. If you are a non-U.S. person, read, complete and sign an appropriate IRS Form W-8. These forms may be obtained from the IRS at its website: [www.irs.gov](http://www.irs.gov).
7. **Return** your signed 4(a)(2) Subscription Agreement and 4(a)(2) Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable) and/ or 4(a)(2) Other Claim Subscription Form, as applicable (with accompanying IRS Form W-9 or appropriate W-8, as applicable), to the Subscription Agent, as applicable, in advance of the Subscription Expiration Deadline. Please note that all 4(a)(2) Beneficial Holder Convertible Note Subscription Forms must be returned to your Nominee early enough to be processed and for your Nominee to prepare and deliver the Master 4(a)(2) Convertible Note Subscription Form to the Subscription Agent prior to the Subscription Expiration Deadline.
8. **Arrange for full payment** of the aggregate Purchase Price, calculated in accordance with Item 2c of your Beneficial Holder Convertible Note Subscription Form and/or Beneficial Holder Other Impaired Excel General Unsecured Claims Subscription Form, to the Subscription Agent by wire transfer of immediately available funds in accordance with the instructions set forth below. Such payment must be received prior to the Subscription Expiration Deadline.

For 4(a)(2) Eligible Holders that do not hold Convertible Notes via a Nominee, payment shall be made to:

Name of Account:	DONLIN RECANO AND CO INC E/F EXCEL MARITIME CARRIERS LTD
Bank Account No.:	7763056015
Bank Name:	TD Bank
Bank Address:	317 Madison Avenue, New York, NY 10017
Routing Number:	026013673
Reference:	[Name of Nominee/Subscriber]

For 4(a)(2) Eligible Holders that hold Convertible Notes via a Nominee, payment should be made in accordance with the instructions provided by your Nominee. 4(a)(2) Eligible Holders that hold Convertible Notes via a Nominee, must transmit payment to their

Nominee for such Nominee to process such payment and deliver it to the 4(a)(2) Subscription Agent prior to the Subscription Expiration Deadline.

**The Subscription Expiration Deadline is 5:00 p.m. New York City Time on January 17, 2014.**

**Please note that any 4(a)(2) Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), 4(a)(2) Subscription Agreement and payment of the Purchase Price must be received by the broker, bank, commercial bank, transfer agent, trust company, dealer, or other agent or nominee (as applicable, the "Nominee"), in accordance with your Nominee's procedures and instructions, in sufficient time to allow such Nominee to deliver the Master 4(a)(2) Convertible Note Subscription Form to the Subscription Agent by the Subscription Expiration Date or the subscription represented by your 4(a)(2) Beneficial Holder Convertible Note Subscription Form will not be counted and will be deemed forever relinquished and waived.**

**Please note that any 4(a)(2) Other Claim Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), 4(a)(2) Subscription Agreement and payment of the Purchase Price must be received by the Subscription Agent by the Subscription Expiration Date or the subscription represented by your 4(a)(2) Other Claim Subscription Form will not be counted and will be deemed forever relinquished and waived.**

**In the event that the Tranche A Offered Shares have been fully subscribed for in the Rule 1145 Rights Offering, any 4(a)(2) Subscription Agreement returned by a 4(a)(2) Eligible Holder will be deemed null and void and any funds paid by such holder will be returned in accordance with the provisions of the 4(a)(2) Subscription Agreement.**

Schedule 1B.

**EXCEL MARITIME CARRIERS LTD.  
4(a)(2) BENEFICIAL HOLDER CONVERTIBLE NOTE SUBSCRIPTION FORM  
FOR RIGHTS OFFERING  
IN CONNECTION WITH DEBTORS'  
AMENDED DISCLOSURE STATEMENT DATED NOVEMBER 26, 2013**

**SUBSCRIPTION EXPIRATION DEADLINE**

**The Subscription Expiration Deadline is 5:00 p.m. New York City Time on January 17, 2014.**

**Please note that your 4(a)(2) Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable), 4(a)(2) Subscription Agreement and payment of the Purchase Price must be received by your Nominee in sufficient time to allow such Nominee to deliver the Master 4(a)(2) Convertible Note Subscription Form to the Subscription Agent by the Subscription Expiration Date or the subscription represented by your 4(a)(2) Beneficial Holder Convertible Note Subscription Form will not be counted and will be deemed forever relinquished and waived.**

**Please consult the Plan, the 4(a)(2) Subscription Agreement and the 4(a)(2) Rights Offering Procedures for additional information with respect to this 4(a)(2) Beneficial Holder Convertible Note Subscription Form.**

**PLEASE NOTE THAT IF THE TRANCHE A OFFERED SHARES HAVE BEEN FULLY SUBSCRIBED FOR IN THE RULE 1145 RIGHTS OFFERING, ANY 4(a)(2) SUBSCRIPTION AGREEMENT RETURNED BY A 4(a)(2) ELIGIBLE HOLDER WILL BE DEEMED NULL AND VOID AND ANY FUNDS PAID BY SUCH HOLDER WILL BE RETURNED IN ACCORDANCE WITH THE PROVISIONS OF THE 4(a)(2) SUBSCRIPTION AGREEMENT.**

**Item 1. Amount of Convertible Notes.**

I certify that I am a beneficial holder of Convertible Notes in the following amount as of the Record Date (insert amount on the line below) or that I am the authorized signatory of that beneficial holder.

*[Insert amount of Convertible Notes, including accrued and unpaid interest through July 1, 2013, held at the Record Date]*

**Item 2. Rights.**

**2a. [Intentionally Omitted]**

**2b. Exercise Amount.** By filling in the following blank, you are indicating that the undersigned 4(a)(2) Eligible Holder is interested in purchasing the number of 4(a)(2) Shares specified below, on the terms and subject to the conditions set forth in the 4(a)(2) Subscription Agreement and 4(a)(2) Rights Offering Procedures.

**Number of 4(a)(2) Offered Shares**

(Note: Total must be in whole shares).

**2c. Calculation of Purchase Price.** The Purchase Price for the amount of the 4(a)(2) Shares you are interested in purchasing, as set forth in Item 2b above, equals:

[Total 4(a)(2) Offered Shares Amount from Item 2b above] x [\$16.25

**2d. Accredited Investor Certification.**

The undersigned certifies that:

- it is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under Section 4(a)(2) of the Securities Act; and
- the Accredited Investor Questionnaire previously provided to the Subscription Agent by the undersigned remains true and correct in all respects.

**Item 3. Payment and Delivery Instructions**

Payment of the Purchase Price calculated pursuant to Item 2c above shall be made by wire transfer ONLY of immediately available funds in accordance with the procedures of your Nominee.

Please mail or deliver your completed 4(a)(2) Beneficial Holder Convertible Note Subscription Form (with accompanying IRS Form W-9 or appropriate W-8, as applicable) and your properly executed 4(a)(2) Subscription Agreement and deliver payment of the Purchase Price to your Nominee **in sufficient time** to allow such Nominee to deliver the Master 4(a)(2) Convertible Note Subscription Form (and associated documentation) and all funds to the Subscription Agent by the Subscription Expiration Date.

Please provide your Nominee with bank account information for the return of any excess funds:

Name of Account:	[•]
Bank Account No.:	[•]
Bank Name:	[•]
Bank Address:	[•]
Routing Number:	[•]
Special Instructions:	[•]

**PLEASE NOTE: NO SUBSCRIPTION WILL BE VALID UNLESS THIS 4(a)(2) BENEFICIAL HOLDER CONVERTIBLE NOTE SUBSCRIPTION FORM AND THE SIGNED SUBSCRIPTION AGREEMENT IS VALIDLY SUBMITTED TO YOUR NOMINEE IN SUFFICIENT TIME TO ALLOW YOUR NOMINEE TO DELIVER THE MASTER 4(a)(2) CONVERTIBLE NOTE SUBSCRIPTION FORM TO THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE AND PAYMENT OF YOUR PURCHASE PRICE IS RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE.**

**Item 4. Certification.**

I certify that (i) as of the date hereof, the undersigned was the beneficial holder of the Convertible Notes set forth in Item 1 above at the Record Date and will continue to be the beneficial owner thereof through the Subscription Expiration Deadline, (ii) I have received a copy of the Plan, the 4(a)(2) Subscription Agreement, the 4(a)(2) Rights Offering Procedures and the 4(a)(2) Rights Offering Instructions and (iii) I understand that the exercise of my rights under the 4(a)(2) Rights Offering is subject to all the terms and conditions set forth in the Plan, the 4(a)(2) Subscription Agreement and 4(a)(2) Rights Offering Procedures.

By electing to subscribe for the amount of 4(a)(2) Shares designated under Item 2 above, I am hereby instructing my Nominee to arrange for (i) the completion and delivery of its Master 4(a)(2) Convertible Note Subscription Form to the Subscription Agent and (ii) payment of the Purchase Price on or before the Subscription Agreement Deadline.

**I acknowledge that, by executing the 4(a)(2) Subscription Agreement and this 4(a)(2) Beneficial Holder Convertible Note Subscription Form, the undersigned 4(a)(2) Eligible Holder has elected to subscribe for the amount of the 4(a)(2) Shares**

**designated under Item 2 above and will be bound to pay for the 4(a)(2) Shares it has subscribed for and that it may be liable to the Debtors to the extent of any nonpayment.**

**I further acknowledge that in the event that the Tranche A Offered Shares have been fully subscribed for in the Rule 1145 Rights Offering, any 4(a)(2) Subscription Agreement returned by a 4(a)(2) Eligible Holder will be deemed null and void and any funds paid by such holder will be returned in accordance with the provisions of the 4(a)(2) Subscription Agreement.**

Date:

Name of Beneficial

Eligible Holder:

Name of Nominee:

U.S. Federal Tax

EIN/SSN (optional)

If Non-U.S. person, check   
here and attach  
appropriate IRS Form W-  
8

If U.S. person, check here   
and attach IRS Form W-9

Signature:

Name of Signatory:

Title:

Address:

Telephone Number:

Fax:

Email:

**Please indicate on the lines provided below the 4(a)(2) Eligible Holder's name and address as you would like it to be reflected on the Company's records for the 4(a)(2) Shares:**

**Registration Name/  
Name of Controlled  
Affiliate or Related  
Fund in Whose Name  
4(a)(2) Shares Should be  
Issued:**

**Address:**



**PLEASE RETURN THIS 4(a)(2) BENEFICIAL HOLDER CONVERTIBLE NOTE SUBSCRIPTION FORM (WITH ACCOMPANYING IRS FORM W-9 OR APPROPRIATE IRS FORM W-8, AS APPLICABLE), THE 4(a)(2) SUBSCRIPTION AGREEMENT AND PAYMENT OF THE PURCHASE PRICE ONLY TO YOUR NOMINEE. DO NOT RETURN THIS FORM DIRECTLY TO THE SUBSCRIPTION AGENT.**

Schedule 1C.

**EXCEL MARITIME CARRIERS LTD.  
MASTER 4(a)(2) CONVERTIBLE NOTE SUBSCRIPTION FORM  
FOR RIGHTS OFFERING  
IN CONNECTION WITH DEBTORS'  
AMENDED DISCLOSURE STATEMENT DATED NOVEMBER 26, 2013**

For use by brokers, banks, commercial banks, transfer agents, trust companies, dealers, or other agents or nominees for beneficial holders of Excel Maritime Carriers Ltd.'s 1.875% unsecured senior convertible notes issued pursuant to that certain indenture dated October 10, 2007 [CUSIP No. 300668AA8] (the "Convertible Notes").

**YOUR MASTER 4(a)(2) CONVERTIBLE NOTE SUBSCRIPTION FORM, COPIES OF THE BENEFICIAL HOLDER CONVERTIBLE NOTE SUBSCRIPTION FORMS (WITH ACCOMPANYING TAX FORMS) AND SUBSCRIPTION AGREEMENTS AND PAYMENTS OF THE SUBSCRIPTION PAYMENT AMOUNT MUST BE RECEIVED BY THE SUBSCRIPTION AGENT, BY 5:00 P.M. (NEW YORK CITY TIME) ON JANUARY 17, 2014, (THE "SUBSCRIPTION EXPIRATION DEADLINE") OR THE SUBSCRIPTIONS REPRESENTED BY THIS MASTER 4(a)(2) CONVERTIBLE NOTE SUBSCRIPTION FORM WILL NOT BE COUNTED AND WILL BE DEEMED FOREVER RELINQUISHED AND WAIVED.**

**PLEASE LEAVE SUFFICIENT TIME FOR YOUR MASTER 4(a)(2) CONVERTIBLE NOTE SUBSCRIPTION FORM TO REACH THE SUBSCRIPTION AGENT AND BE PROCESSED.**

**PLEASE CONSULT THE PLAN, THE 4(a)(2) SUBSCRIPTION AGREEMENT AND THE 4(a)(2) RIGHTS OFFERING PROCEDURES FOR ADDITIONAL INFORMATION WITH RESPECT TO THIS MASTER 4(a)(2) CONVERTIBLE NOTE SUBSCRIPTION FORM. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE SUBSCRIPTION AGENT AT (212) 771-1128.**

**Item 1. Certification of Authority to Subscribe.**

The undersigned certifies that it (please check the applicable box):

- Is a broker, bank or other nominee for the beneficial holders of the Convertible Notes listed in Item 2 below, and is the registered holder of such shares, or
- Is acting under a power of attorney and/or agency (a copy of which will be provided upon request) granted by the broker, bank, or other nominee that is the registered holder of the Convertible Notes listed in Item 2 below.

**Item 2. Convertible Note Beneficial Holder Information.**

The undersigned certifies that the information provided below (including any information provided on additional sheets attached hereto) is a true and accurate schedule of the beneficial holders of the Convertible Notes, as identified by their respective account numbers, that have delivered duly completed 4(a)(2) Beneficial Holder Convertible Note Subscription Forms to the undersigned, which forms are attached hereto.

**(Please complete the information requested below. Attach additional sheets if necessary)**

<b>Your Customer Account Number for Each Beneficial Holder</b>	<b>Number of Convertible Notes (Item 1)<sup>1</sup></b>	<b>Exercise Amount (Item 2b)</b>

<sup>1</sup> Item numbers reference the applicable section of the 4(a)(2) Beneficial Holder Convertible Note Subscription Form

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**Item 3. Payment and Delivery Instructions**

All cash payments with respect to the exercise of 4(a)(2) Subscription Rights that are being transmitted by this Master 4(a)(2) Convertible Note Subscription Form shall be made by wire transfer of immediately available funds in accordance with the instructions set forth below.

Name of Account:	DONLIN RECANO AND CO INC E/F EXCEL MARITIME CARRIERS LTD
Bank Account No.:	7763056015
Bank Name:	TD Bank
Bank Address:	317 Madison Avenue, New York, NY 10017
Routing Number:	026013673
Reference:	[Name of Nominee]

Please email, mail or deliver your completed subscription form (together with any duly completed and received 4(a)(2) Beneficial Holder Convertible Note Subscription Forms (with accompanying IRS Forms W-9 or appropriate W-8, as applicable) and 4(a)(2) Subscription Agreements) to:

Donlin, Recano & Company, Inc.  
Attn: Excel Maritime Carriers LTD Subscription Agent  
419 Park Avenue South, Suite 1206  
New York, NY 10016  
Tel: (212) 771 1128  
Email: ExcelRightsOffering@donlinrecano.com

Please provide bank account information for the return of any excess funds:

Name of Account:	[•]
Bank Account No.:	[•]
Bank Name:	[•]
Bank Location:	[•]
Routing Number:	[•]
Special Instructions:	

**PLEASE NOTE: NO SUBSCRIPTION WILL BE VALID UNLESS THIS MASTER 4(a)(2) CONVERTIBLE NOTE SUBSCRIPTION FORM, TOGETHER WITH THE APPLICABLE DULY COMPLETED AND EXECUTED 4(a)(2) BENEFICIAL HOLDER CONVERTIBLE NOTE SUBSCRIPTION FORMS (WITH ACCOMPANYING IRS FORM W-9 OR APPROPRIATE IRS FORM W-8, AS APPLICABLE) AND EXECUTED 4(a)(2) SUBSCRIPTION AGREEMENTS, ARE VALIDLY SUBMITTED ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE AND PAYMENT OF THE PURCHASE PRICE IS RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE, 5:00 P.M. NEW YORK CITY TIME ON JANUARY 17, 2014.**

**ADDITIONAL INSTRUCTIONS IF YOU ARE RETURNING FORMS VIA EMAIL**

**PROPERLY EXECUTED MASTER 4(a)(2) CONVERTIBLE NOTE SUBSCRIPTION FORMS ALONG WITH RESPECTIVE 4(a)(2) BENEFICIAL HOLDER CONVERTIBLE NOTE SUBSCRIPTION FORMS (WITH ACCOMPANYING TAX FORMS) AND (4)(a)(2) SUBSCRIPTION AGREEMENTS CAN BE E-MAILED TO THE SUBSCRIPTION AGENT AT [ExcelRightsOffering@donlinrecano.com](mailto:ExcelRightsOffering@donlinrecano.com) BY THE SUBSCRIPTION EXPIRATION DEADLINE PROVIDED THAT THE ORIGINAL MASTER 4(a)(2) SUBSCRIPTION FORM(S) WITH ORIGINAL MEDALLION STAMP AND SIGNATURE IS MAILED OR DELIVERED TO THE SUBSCRIPTION AGENT PROMPTLY THEREAFTER.**

**Item 4. Additional Certification.**

The undersigned certifies that for each beneficial holder whose exercise of rights are being transmitted by this Master 4(a)(2) Convertible Note Subscription Form (i) it is the authorized signatory of such beneficial holder of the amount of Convertible Notes listed under Item 1. of the 4(a)(2) Beneficial Holder Convertible Note Subscription Form, (ii) the beneficial holder is entitled to participate in the 4(a)(2) Rights Offering, (iii) the beneficial holder has been provided with a copy of the Plan, the 4(a)(2) Subscription Agreement, the 4(a)(2) Rights Offering Procedures and the 4(a)(2) Rights Offering Instructions and other applicable materials and (iv) true and correct copies of the 4(a)(2) Beneficial Holder Convertible Note Subscription Form have been received from each beneficial holder.

Date:

Name of Nominee:

DTC Participant Number:

U.S. Federal Tax  
EIN/SSN (optional)

Signature:

Name:

Title:

Address:

Telephone Number:

Fax:

Email:

Schedule 1D.

**EXCEL MARITIME CARRIERS LTD.  
4(a)(2) OTHER CLAIM SUBSCRIPTION FORM  
FOR RIGHTS OFFERING  
IN CONNECTION WITH DEBTORS'  
AMENDED DISCLOSURE STATEMENT DATED NOVEMBER 26, 2013**

**SUBSCRIPTION EXPIRATION DEADLINE**

**The Subscription Expiration Deadline is 5:00 p.m. New York City Time on January 17, 2014.**

**Please leave sufficient time for your 4(a)(2) Other Claim Subscription Form (with accompanying IRS Form W-9 or appropriate IRS Form W-8, as applicable) to reach the Subscription Agent and be processed.**

**Please consult the Plan, the 4(a)(2) Subscription Agreement and the 4(a)(2) Rights Offering Procedures for additional information with respect to this 4(a)(2) Other Claim Subscription Form.**

**PLEASE NOTE THAT IF THE CLASS OF IMPAIRED GENERAL UNSECURED CLAIMS VOTES TO ACCEPT THE PLAN, ON THE EFFECTIVE DATE, YOU WILL BE DEEMED TO HAVE FOREVER AND IRREVOCABLY RELINQUISHED AND WAIVED YOUR RIGHT TO PARTICIPATE IN THE 4(a)(2) RIGHTS OFFERING AND THIS 4(a)(2) OTHER CLAIM SUBSCRIPTION FORM SHALL BE CONSIDERED NULL AND VOID.**

**PLEASE NOTE THAT IF THE TRANCHE A OFFERED SHARES HAVE BEEN FULLY SUBSCRIBED FOR IN THE RULE 1145 RIGHTS OFFERING, ANY 4(a)(2) SUBSCRIPTION AGREEMENT RETURNED BY A 4(a)(2) ELIGIBLE HOLDER WILL BE DEEMED NULL AND VOID AND ANY FUNDS PAID BY SUCH HOLDER WILL BE RETURNED IN ACCORDANCE WITH THE PROVISIONS OF THE 4(a)(2) SUBSCRIPTION AGREEMENT.**

**Item 1. Amount of Claim.**

I certify that I am a beneficial holder of [*describe claim*] in the following amount (insert amount on the line below) or that I am the authorized signatory of that beneficial holder:

[*Amount of claim*]

**Item 2. Rights.**

**2a. [Intentionally Omitted]**

**2b. Exercise Amount.** By filling in the following blank, you are indicating that the undersigned 4(a)(2) Eligible Holder is interested in purchasing the number of 4(a)(2) Shares specified below, on the terms and subject to the conditions set forth in the 4(a)(2) Subscription Agreement and 4(a)(2) Rights Offering Procedures.

**Number of 4(a)(2) Offered Shares**

(Note: Total must be in whole shares).

**2c. Calculation of Purchase Price.** The Purchase Price for the amount of the 4(a)(2) Shares you are interested in purchasing, as set forth in Item 2b above, equals:

[Total 4(a)(2) Offered Shares Amount from Item 2b above] x [\$16.25

**2d. Accredited Investor Certification.**

The undersigned certifies that:

- it is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under Section 4(a)(2) of the Securities Act; and
- the Accredited Investor Questionnaire previously provided to the Subscription Agent by the undersigned remains true and correct in all respects.

**Item 3. Payment and Delivery Instructions**

Payment of the Purchase Price calculated pursuant to Item 2c above shall be made by wire transfer of immediately available funds in accordance with the instructions set forth below.

Name of Account:	DONLIN RECANO AND CO INC E/F EXCEL MARITIME CARRIERS LTD
Bank Account No.:	7763056015
Bank Name:	TD Bank
Bank Address:	317 Madison Avenue, New York, NY 10017
Routing Number:	026013673
Reference:	[Name of Subscriber]

Please email, mail or deliver your completed 4(a)(2) Other Claim Subscription Form (with accompanying IRS Forms W-9 or appropriate IRS Form W-8, as applicable) and 4(a)(2) Subscription Agreements to:

Donlin, Recano & Company, Inc.  
Attn: Excel Maritime Carriers LTD Subscription Agent  
419 Park Avenue South, Suite 1206  
New York, NY 10016  
Tel: (212) 771 1128  
Email: ExcelRightsOffering@donlinrecano.com

Please provide bank account information for the return of any excess funds or the full amount of your funds to the extent that the class of Impaired Excel General Unsecured Claims votes to accept the Plan or the Tranche A Offered Shares have been fully subscribed for in the Rule 1145 Rights Offering:

Name of Account:	[•]
Bank Account No.:	[•]
Bank Name:	[•]
Bank Location:	[•]
Routing Number:	[•]
Special Instructions:	

**PLEASE NOTE: NO SUBSCRIPTION WILL BE VALID UNLESS THIS 4(a)(2) OTHER CLAIM SUBSCRIPTION FORM (WITH ACCOMPANYING IRS FORM W-9 OR APPROPRIATE IRS FORM W-8, AS APPLICABLE) AND THE SIGNED 4(a)(2) SUBSCRIPTION AGREEMENT IS VALIDLY SUBMITTED TO THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE AND PAYMENT OF YOUR PURCHASE PRICE IS RECEIVED BY THE SUBSCRIPTION AGENT ON OR BEFORE THE SUBSCRIPTION EXPIRATION DEADLINE.**

**ADDITIONAL INSTRUCTIONS IF YOU ARE RETURNING FORMS VIA EMAIL**

**YOUR PROPERLY EXECUTED 4(a)(2) OTHER CLAIM SUBSCRIPTION FORM (WITH ACCOMPANYING IRS FORM W-9 OR APPROPRIATE IRS FORM W-8, AS APPLICABLE) AND 4(a)(2) SUBSCRIPTION AGREEMENTS CAN BE E-MAILED TO THE SUBSCRIPTION AGENT AT [ExcelRightsOffering@donlinrecano.com](mailto:ExcelRightsOffering@donlinrecano.com) BY THE SUBSCRIPTION EXPIRATION DEADLINE PROVIDED THAT YOUR ORIGINAL 4(a)(2) OTHER CLAIM SUBSCRIPTION FORM WITH ORIGINAL MEDALLION STAMP AND SIGNATURE IS MAILED OR DELIVERED TO THE SUBSCRIPTION AGENT PROMPTLY THEREAFTER.**

**Item 4. Certification.**

I certify that (i) as of the date hereof, the undersigned was the beneficial holder of the [*describe claim*] set forth in Item 1 above at the Record Date and will continue to be the beneficial owner thereof through the Subscription Expiration Deadline, (ii) I have received a copy of the Plan, the 4(a)(2) Subscription Agreement, the 4(a)(2) Rights Offering Procedures and the 4(a)(2) Rights Offering Instructions and (iii) I understand that the exercise of my rights under the 4(a)(2) Rights Offering is subject to all the terms and conditions set forth in the Plan, the 4(a)(2) Subscription Agreement and 4(a)(2) Rights Offering Procedures.

**I acknowledge that, by executing the 4(a)(2) Subscription Agreement and this 4(a)(2) Other Claim Subscription Form, the undersigned 4(a)(2) Eligible Holder has elected to subscribe for the amount of the 4(a)(2) Shares designated under Item 2 above and will be bound to pay for the 4(a)(2) Shares it has subscribed for and that it may be liable to the Debtors to the extent of any nonpayment. If payment is not received prior to the Subscription Expiration Deadline, you shall be deemed to have forever and irrevocably relinquished and waived your right to participate in the 4(a)(2) Rights Offering.**

- I further acknowledge that I am a holder of Syndicate Credit Deficiency Claims and am aware that if the class of Impaired Excel General Unsecured Claims votes to accept the Plan, on the Effective Date, I will be deemed to have forever and irrevocably relinquished and waived my right to participate in the 4(a)(2) Rights Offering and this Syndicate Credit Deficiency Claims Subscription Form shall be considered null and void.**

**I further acknowledge that in the event that the Tranche A Offered Shares have been fully subscribed for in the Rule 1145 Rights Offering, any 4(a)(2) Subscription Agreement returned by a 4(a)(2) Eligible Holder will be deemed null and void and any funds paid by such holder will be returned in accordance with the provisions of this 4(a)(2) Subscription Agreement.**

Date:

Name of Beneficial  
Eligible Holder:

U.S. Federal Tax  
EIN/SSN (optional)

If Non-U.S. person, check   
here and attach  
appropriate IRS Form W-  
8

If U.S. person, check here   
and attach IRS Form W-9

Signature:

Name of Signatory:

Title:

Address:

Telephone Number:

Fax:

Email:

**Please indicate on the lines provided below the 4(a)(2) Eligible Holder's name and address as you would like it to be reflected on the Company's records for the 4(a)(2) Shares:**

**Registration Name/  
Name of Controlled  
Affiliate or Related  
Fund in Whose Name  
4(a)(2) Shares Should be  
Issued:**  
*(Please provide full legal  
name)*

**Address:**



EXHIBIT B

Plan Term Sheet

## **Excel Maritime Carriers Ltd.**

### **Term Sheet for Restructuring Settlement Proposal**

*This term sheet (the "Term Sheet") summarizes the terms of a proposal for the restructuring of Excel Maritime Carriers Ltd. and certain of its debtor affiliates (collectively, the "Debtors"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Joint Pre-Negotiated Chapter 11 Plan of Reorganization of Excel Maritime Carriers Ltd., et al.*

*The Term Sheet is subject to, among other things, definitive documentation and is for discussion purposes only. The Term Sheet is provided in confidence and may be distributed only with the express written consent of the Debtors. The Term Sheet is provided in the nature of a settlement proposal in furtherance of settlement discussions and is intended to be entitled to the protections of Rule 408 of the Federal Rules of Evidence and any other applicable statutes or doctrines protecting the use or disclosure of confidential information and information exchanged in the context of settlement discussions, including United States federal securities laws regarding a person possessing material, non-public information. Nothing in the Term Sheet shall be deemed to be the solicitation of an acceptance or rejection of a plan of reorganization within the meaning of Bankruptcy Code section 1125. Further, nothing in the Term Sheet shall be an admission of fact or liability or deemed binding on the Debtors and the foregoing remains subject to review and final approval by the Debtors.*

#### **New Common Stock in Reorganized Excel**

8.0% of the New Common Stock in Reorganized Excel shall be distributed to holders of Allowed Impaired Excel General Unsecured Claims ("Holders"), 83.3% of the New Common Stock to be distributed to the lenders under the Debtors' Syndicate Credit Facility (the "Syndicate Lenders") (not including the distributions such Syndicate Lenders are entitled to as a result of their Deficiency Claims (defined below) which shall constitute Allowed Impaired Excel General Unsecured Claims) and 8.7% of the New Common Stock of Reorganized Excel shall be distributed to Ivory on account of its \$30 million investment ("Ivory's Investment Right") (such distributions collectively, the "Primary Equity").

To the extent described below, the Primary Equity shall be subject to dilution and Ivory's Investment Right shall be subject to reduction on account of the Holders' Co-Investment Right (defined below).

**Holder's Co-Investment Right:**

Holder's shall have the right on the Effective Date to purchase up to 2.9% of the New Common Stock of Reorganized Excel, at a purchase price of \$10.0 million based on a total post-money equity value of \$330 million (with Reorganized Excel having \$300 million of funded indebtedness on the Effective Date).

The Holder's co-investment right shall be achieved by the Holder's contributing up to \$10.0 million in cash ("Holder's Co-Investment Right").

The first \$5.0 million of the Holder's Co-Investment Right (the "Initial Co-Investment Right") shall dilute the Primary Equity. The Holder's shall have full soak-up/over-subscription rights with respect to any unsubscribed portion of the Initial Co-Investment Right. To the extent the Holder's do not fully exercise such over-subscription rights, Ivory shall have the right to subscribe for the unsubscribed portion of the Initial Co-Investment Right.

The second \$5.0 million of the Holder's Co-Investment Right (the "Secondary Co-Investment Right") shall reduce Ivory's Investment Right on a dollar-for-dollar basis. Ivory shall have full soak-up/over-subscription rights with respect to any unsubscribed portion of the Secondary Co-Investment Right.

The Holder's Co-Investment Right will be at the same equity value as Ivory's investment. A calculation of the Holder's Co-Investment Right and the resulting equity distributions after the exercise of the entire Holder's Co-Investment Right is set forth on Exhibit A.

Each Holder's maximum aggregate Co-Investment Right, inclusive of any soak-up/over-subscription right, shall be limited to 75% of such Holder's pro rata portion of the Holder's claims against the unsecured assets of Excel Maritime Carriers Ltd.

**Board of Directors and  
Chief Executive Officer:**

On the Effective Date, all shares of Reorganized Excel shall be transferred to a newly formed holdco entity that will be a Marshall Islands limited liability company (“Holdco”). The Holders, the Syndicate Lenders and Ivory shall receive interests in Holdco in the same percentages as they hold in Reorganized Excel on the Effective Date after the exercise, if at all, of the Holders’ Co-Investment Right.

From the Effective Date until the date that is two years after the Effective Date, the board of directors of Holdco (the “Board”) shall consist of seven members, and shall be constituted as follows: (a) Oaktree shall have the right to designate three members of the Board; (b) Angelo Gordon shall have the right to designate two members of the Board, one of which designees shall be subject to the consent of Oaktree (such consent not to be unreasonably withheld); and (c) the current board of directors of the Debtors shall have the right to designate two members of the Board.

Mr. Gabriel Panayotides shall serve as Chief Executive Officer of Reorganized Excel.

**Issuance of Equity to Syndicate  
Lenders and Holders Under  
Section 1145 of the Bankruptcy  
Code:**

The parties shall use commercially reasonable efforts to seek Bankruptcy Court approval to have the Primary Equity issued to the Syndicate Lenders and the Holders and the equity issued pursuant to the Holders’ Co-Investment Right issued pursuant to Section 1145 of the Bankruptcy Code.

**Issuance of Equity to Ivory Under  
Section 4(2) of the Securities Act:**

The Primary Equity issued to Ivory and the equity, if any, issued to Ivory pursuant to the oversubscription rights described above shall be exempt from registration under the Securities Act of 1933 (as amended) by virtue of Section 4(2) thereof or Regulation D promulgated thereunder.

**Contractual Transferability &  
Registration Rights:**

The New Common Stock to be issued under the amended plan of reorganization and subsequent membership interests issued in Holdco, including pursuant to the Holders’ Co-Investment Right (including in the hands of subsequent transferees), shall be freely transferable without being subject to any ROFO, ROFR, board approval or any other restriction, except for restrictions (i) imposed by applicable securities laws and (ii) on transfers that would cause Reorganized Excel or

Holdco to become subject to the reporting obligations under the Securities Exchange Act of 1934. Holdco's governing documents shall provide holders of Holdco membership interests that are affiliates of Holdco with customary demand registration rights to sell their membership interests, piggy-back registration rights and marketing cooperation covenants; *provided* that such demand registration right cannot be exercised until the date that is eighteen (18) months after the Effective Date.

**Available Information:**

Reorganized Excel shall make available on its website (including to prospective transferees) (i) unaudited quarterly and audited annual financial statements, on a timely basis, and (ii) to the extent not covered by (i), such information as is provided to the lenders under the Amended and Restated Senior Secured Credit Facility; provided that Reorganized Excel's obligation to provide the information described in (i) above shall commence after the first full quarter after Reorganized Excel emerges from chapter 11.

**Minority Protections:**

Holdco's governing documents shall contain minority protections with respect to pre-emptive rights, restrictions on affiliate transactions that are not on arms' length terms and certain amendments to the provisions of Holdco's governing documents as described below.

Holdco's governing documents shall also provide for the holders of at least 60% of the membership interests in Holdco (the "Majority Interest Holders") to be entitled to drag-along rights in connection with a sale of Holdco to a party unaffiliated with the selling holder(s) (a "Drag-Along Sale"), which drag-along rights shall include, without limitation, an agreement by the holders of membership interests in Holdco to grant a voting proxy to the Majority Interest Holders in connection with such Drag-Along Sale, subject to definitive documentation, including any governance and/or shareholder arrangements among the senior lenders, which will not have any adverse impact on the minority rights set forth herein. If (i) such Drag-Along Sale is proposed within the first 12 months after the Effective Date and (ii) more than 50% of the fair market value of the consideration to be received by the holders of membership interests in Holdco in such Drag-Along Sale

consists of equity securities that are not publicly traded, then the issuer of such equity securities shall adopt corporate governance provisions substantially similar to those contained in this Term Sheet (including the provisions relating to Contractual Transferability and Available Information). In the event that holders desire to sell at least 50% of the outstanding Holdco membership interests in one or a series of related transactions, the other holders of Holdco membership interests shall have tag-along rights in connection with such sale.

The provisions of Holdco's governing documents set forth above (including, without limitation, the provisions relating to Contractual Transferability and Available Information) shall not be modified, amended or waived within the first year following the Effective Date, and thereafter shall not be modified, amended or waived without the prior written consent of both (A) holders of a majority of the equity securities in Holdco, excluding for the purposes of such calculation equity securities held by members who are affiliates of Holdco (which shall, for the avoidance of doubt, include on the Effective Date Oaktree and its affiliates and Ivory and its affiliates) and (B) Ivory, if (i) Ivory or its affiliates still own any equity securities of Holdco and (ii) such modification, amendment or waiver has a disproportionately adverse effect on Ivory or its affiliates as compared with the effect on non-affiliate holders of equity securities in Holdco.

**Treatment of Deficiency Claims held by Syndicate Lenders:**

The deficiency Claims held by the Syndicate Lenders in the aggregate amount of \$179.8 million assuming an adequate protection payment in the amount of \$6,176,868.76 is made on or before January 2, 2014, arising under the Debtors' Syndicate Credit Facility (the "Deficiency Claims") shall be allowed solely for voting purposes in such amount in connection with the plan of reorganization described in this Term Sheet and such claims shall be, subject to the next sentence, included within the class of Impaired Excel General Unsecured Claims (for the avoidance of doubt, subject to the next sentence, the Syndicate Lenders and their affiliates, on account of and to the extent of the Deficiency Claims, shall have all of the rights belonging to the Holders including, without limitation, all rights to distributions

and the Holders' Co-Investment Right, but excluding, to the extent such rights exist herein, the pre-Effective Date right to consents and approvals over documents or other terms belonging to the 'Holders' set forth herein). All parties reserve all rights with respect to the amount, if any, and treatment of a deficiency Claims, if any, held by the Syndicate Lenders for all other purposes including, but not limited to, voting on and receiving distributions, in each case with respect to any plan of reorganization that is not consistent with the plan of reorganization described in this Term Sheet. If the class of Impaired Excel General Unsecured Claims votes to accept the amended plan of reorganization with the terms described in this Term Sheet, then on the Effective Date, the holders of Deficiency Claims shall be deemed automatically and without the need for any action to have waived their entitlement to any distributions (including of Primary Equity) or Holders' Co-Investment Right on account of such Deficiency Claims, and the other Holders' pro rata participation in the Co-Investment Right shall be increased accordingly. Each Syndicate Lender that is a party hereto will support a disclosure statement and plan of reorganization (including by voting to accept the plan of reorganization) that are consistent in all material respects with this agreed upon Term Sheet.

**Official Committee of Unsecured Creditors:**

The Official Committee of Unsecured Creditors (the "Creditors' Committee") and each of the current members of the Creditors' Committee as of the date of this Term Sheet, and their affiliates, in their capacity as Holders and their assignees (the "Committee Holders"), will support a disclosure statement and plan of reorganization (including by the Committee Holders voting to accept the plan of reorganization) that are consistent in all material respects with this agreed upon Term Sheet, to the extent that such members have discretionary investment authority over relevant accounts (and such members will use commercially reasonable efforts to obtain such support from any accounts over which such members do not have discretionary investment authority).

**Settlement of Adversary Case No. 13-08338:**

In consideration for Ivory's contribution to Reorganized Excel of \$30 million in cash subject to dilution on account of the Holders' Secondary Co-Investment Right,

the amended plan of reorganization consistent in all material respects with this agreed upon Term Sheet shall constitute a good faith, full and final compromise and settlement of Adversary Case No. 13-08338 and any and all claims against Ivory in connection therewith.

**Release/Waiver/Settlement of any Challenge Right:**

Upon the effective date of a plan of reorganization on terms that are consistent in all material respects with this agreed upon term sheet, any remaining right the Creditors' Committee may have under the *Final Order Under 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 507 and 552 and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 (I) Authorizing the Debtors to Use Cash Collateral and (II) Granting Adequate Protection* (the "Final Cash Collateral Order") [Docket No. 133] to challenge the extent, perfection or priority of the Syndicate Lenders' claims and liens, as well as any other challenge of the claims or liens of the Syndicate Lenders or any adversary proceeding against or recovery from the Syndicate Lenders, including, but not limited to, any right to challenge the Syndicate Lenders' asserted liens in the Accounts, the Settlement Funds or the Settlement Funds Accounts as those terms are defined in *Stipulation and Agreed Order By and Among the Official Committee of Unsecured Creditors of Excel Maritime Carriers Ltd., et al., the Agent under the Senior Credit Agreement and the Steering Committee of Lenders Under the Senior Credit Agreement to Extend the Deadline for the Official Committee of Unsecured Creditors to Challenge Prepetition Liens Under the Final Cash Collateral Order* [Docket No. 374] shall be released and extinguished. The Creditors' Committee's deadline to initiate any challenge with respect to the Accounts, the Settlement Funds or the Settlement Fund Accounts shall be tolled until the earlier of (a) the effective date of a plan of reorganization on terms that are consistent in all material respects with this agreed upon term sheet and (b) December 31, 2013; provided, however, that such date may be further extended by the written agreement of the Creditors' Committee, Syndicate Lenders and the Agent. Such tolling or extension shall be memorialized in a stipulation to be filed with the Bankruptcy Court not later than November 22, 2013.

**Treatment of Claims of Insiders**

Any Claims asserted by insiders or affiliates of the



**and Affiliates:** Debtors shall not be treated as Impaired Excel General Unsecured Claims. Holders of any such Claims shall not be permitted to receive any portion of the distribution made to Holders of Allowed Impaired Excel General Unsecured Claims.

**Unimpaired Claims:** Any Claims that are Unimpaired under the Debtors' current plan of reorganization shall remain Unimpaired.

**Expenses of Indenture Trustee and Certain Syndicate Lenders:** No later than the Effective Date, the reasonable and documented outstanding fees and expenses of (i) Christiana Trust as indenture trustee, including those of Moses & Singer LLP as counsel shall be paid in full by the Debtors as an administrative expense claim up to \$450,000, (ii) Bracewell & Giuliani LLP as counsel to Ivory shall be paid in full by the Debtors as an administrative expense claim up to \$500,000 less the \$250,000 pre-petition retainer previously paid to Bracewell & Giuliani LLP, and (iii) (A) Wilmington Trust (London) Ltd. as administrative agent under the Syndicate Credit Facility and Blackstone Group LP, Freshfields Bruckhaus Deringer US LLP, and Holland & Knight LLP as advisors to the Secured Lenders, (B) Oaktree and certain of its affiliates in their capacity as a secured lender, including those of Paul, Weiss, Rifkind, Wharton & Garrison LLP as counsel, including those incurred both prior to and subsequent to the commencement of the Debtors' chapter 11 cases, and (C) Angelo Gordon and certain of its affiliates in their capacity as a secured lender primarily related to the negotiation and documentation of corporate governance up to \$400,000, including those of Wachtell, Lipton, Rosen & Katz, in each case of this clause (iii), shall be paid in full by the Debtors as part of distributions to the Syndicate Lenders for the secured portion of their claims arising from the Debtors' Syndicate Credit Facility.

**Definitive Documents:** Definitive documents relating to the foregoing, including but not limited to any plan or amended plan of reorganization, any disclosure statement or amended disclosure statement, the order confirming such plan, the order approving such disclosure statement, the plan supplement and any and all attachments thereto, the co-investment documents, the governing documents of Reorganized and Holdco, and the Amended and Restated Senior Secured Credit Facility (including the

covenants to be included therein), shall each be acceptable to the Debtors, the Syndicate Lenders holding sixty-six and two-thirds in amount of the Claims held by the Syndicate Lenders (the "Requisite Syndicate Lenders"), the Creditors' Committee and Ivory.

**Affirmation of Holdings by  
Syndicate Lenders**

The undersigned Syndicate Lenders (the "Consenting Syndicate Lenders") hereby affirm that they hold directly or through a participation and have authority to vote 82.9% of the outstanding Claims arising under the Debtors' Syndicate Credit Facility.

**Affirmation of Holdings by  
Creditors' Committee**

The undersigned Committee Holders (the "Consenting Committee Holders") hereby affirm that as of the date hereof, they hold an aggregate of not less than \$67,110,000 of the outstanding Allowed Impaired Excel General Unsecured Claims of which Committee Holders have discretionary investment authority over the relevant accounts ("Discretionary Authority Claims"), and have authority to vote and will vote the Discretionary Authority Claims to accept the plan of reorganization that is consistent in all material respects with this agreed upon Term Sheet.

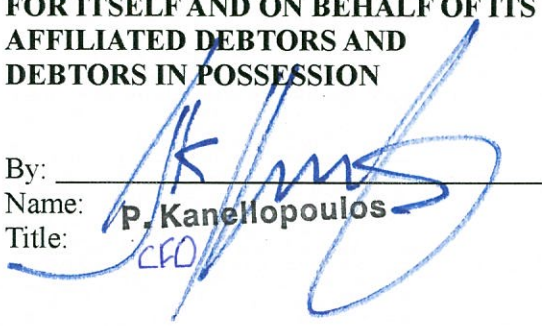
**Obligations Binding on  
Transferees:**

The terms and conditions set forth in this Term Sheet shall be binding on any and all transferees and/or successors in interest of any of the Consenting Syndicate Lenders and Consenting Committee Holders including, without limitation, the obligation to support a disclosure statement and plan of reorganization (including by voting to accept the plan of reorganization) that are consistent in all material respects with this agreed upon Term Sheet and, if applicable, to waive Deficiency Claims.

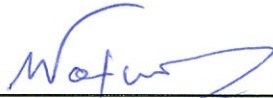
**THE FOREGOING IS HEREBY  
AGREED TO AND ACCEPTED  
AS OF NOVEMBER 22, 2013:**

**EXCEL MARITIME CARRIERS LTD.,  
FOR ITSELF AND ON BEHALF OF ITS  
AFFILIATED DEBTORS AND  
DEBTORS IN POSSESSION**

By: \_\_\_\_\_  
Name: **P. Kanellopoulos**  
Title: **CFO**



**IVORY SHIPPING INC.**

By:   
Name: M. NOMINOS  
Title: DIRECTOR

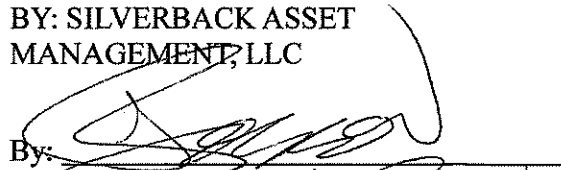
**THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF EXCEL  
MARITIME CARRIERS LTD., ET AL.**

By: Nicholas M. Brown  
Name: Nicholas M. Brown  
Title: Committee Chairman

**ZAZOVE ASSOCIATES, LLC,  
INVESTMENT ADVISOR WITH  
DISCRETIONARY AUTHORITY**

By:   
Name: Steven M. Kleiman  
Title: Chief Operating Officer

**SILVERBACK ARBITRAGE MASTER  
FUND LTD.  
BY: SILVERBACK ASSET  
MANAGEMENT, LLC**

By:   
Name: Elliot Rosen  
Title: CEO





**CHRISTIANA TRUST, AS INDENTURE  
TRUSTEE**

By: 


Name: *PATRICK J. HEALY*


Title: *Vice President*

**WILMINGTON TRUST (LONDON),  
LTD., AS ADMINISTRATIVE AGENT**

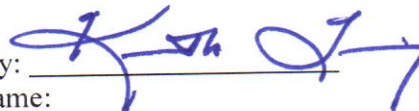
By:   
Name: \_\_\_\_\_  
Title: **Paul Barton**  
**Director**


**OAKTREE CAPITAL MANAGEMENT,  
L.P., SOLELY IN ITS CAPACITY AS  
AGENT ON BEHALF OF CERTAIN  
LENDERS FOR WHICH IT ACTS  
INDIRECTLY AS DIRECTOR**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OAKTREE FUND GPI, L.P. SOLELY IN  
ITS CAPACITY AS AGENT ON BEHALF  
OF CERTAIN LENDERS FOR WHICH IT  
ACTS INDIRECTLY AS MANAGER**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SILVER OAK CAPITAL, L.L.C.**


By: 

Name:

Title:

Michael L. Gordon  
Authorized Signatory

**BANK OF AMERICA, N.A.**

By:   
Name: Jonathan M Barnes  
Title: Vice President

**Exhibit A**

Exhibit A to Term Sheet  
(\$Millions)

**Description**

Primary Equity	8.0%	<u>Prior to dilution from co-investment right.</u>
Co-Investment Right	\$10.0	( \$5.0 million from Ivory's \$30 million investment, reducing Ivory's investment to \$25.0 million)

**Implied Post Money Equity**

TEV	\$595.0
Less: Debt	(300.0)
Add: New Money - Ivory	25.0
Add: New Money - UCC	<u>10.0</u>
Implied Post-Money Equity	\$330.0

**Pro Forma Equity Ownership**

	<u>% Ownership</u>	<u>Equity Value (\$)</u>
Syndicate Lenders	82.0%	\$270.7
Holdings - Primary	7.9%	26.0
Ivory	7.1%	23.6
Co-Investment	<u>2.9%</u>	<u>9.7</u>
Total	100.0%	\$330.0