

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

**MARCO POLO SEATRADE B.V., et al.,¹
Debtors.**

Chapter 11

Case No. 11-13634 (JMP)

Jointly Administered

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO
OBTAIN POSTPETITION FINANCING, (II) GRANTING
ADEQUATE PROTECTION, AND (III) GRANTING RELATED RELIEF**

Upon the supplemental motion (the “**Motion**”),² dated September 14, 2011, of the above captioned debtors and debtors in possession for an order, pursuant to sections 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “**Bankruptcy Code**”) and rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), seeking among other things:

- a. authorization for Marco Polo Seatrade B.V. (the “**Borrower**”) to borrow up to \$2,400,000 in principal amount (the “**Interim DIP Facility**”), on an interim basis, and up to a total of \$4,800,000 in principal amount (together with the Interim DIP Facility, the “**DIP Facility**”), on a final basis, of postpetition financing, guaranteed by Seaarland Shipping Management B.V., Magellano Marine C.V. and Cargoship Maritime B.V. (collectively, the “**Guarantors**”), on the terms and conditions set forth in the DIP Agreement as attached hereto;
- b. authorization for the Debtors to execute and deliver any necessary documents, to perform such other and further acts as may be necessary or

¹ The Debtors in these chapter 11 cases (the “**Cases**”), along with the last four digits of each Debtor’s identification number, include: Marco Polo Seatrade B.V. (5584); Seaarland Shipping Management B.V. (0110); Magellano Marine C.V. (2910); and Cargoship Maritime B.V. (4361). The Debtors’ service address is: Bracewell & Giuliani, LLP, 1251 Avenue of the Americas, 49th Floor, New York, NY 10020, Attn: Robert G. Burns.

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.



appropriate in connection therewith, and to grant the liens and security interests to The Royal Bank of Scotland plc (the “**DIP Lender**”) as provided for in the DIP Agreement;

- c. authorization pursuant to sections 364(c)(1), 364(c)(2), 364(c)(3), and 364(d)(1) of the Bankruptcy Code to grant certain priming liens and superpriority claims to the DIP Lender to secure the Debtors’ obligations under the DIP Agreement;
- d. authorization for the DIP Lender to require repayment of the DIP Facility in full upon an event triggering the Stated Maturity Date in accordance with the DIP Agreement, subject to the provisions of this Interim Order; and
- e. the scheduling of a final hearing (the “**Final Hearing**”) to consider entry of a final order (the “**Final Order**”);

and an interim hearing on the Motion having been held by this Court on September 15, 2011 (the “**Interim Hearing**” and together with the Final Hearing, the “**Hearings**”); and an order granting the interim relief requested in the Motion having been entered by this Court on September 15, 2011 (the “**Interim Order**”); and the Final Hearing having been held by this Court on October 21, 2011; and the Court having considered the Motion, the DIP Agreement, the papers in support thereof, the objections and responses thereto (collectively, the “**Objections**”), and the arguments of counsel and the evidence adduced at the Hearings; and the appearance of all interested parties having been noted on the record of the Hearings; and upon the record of the Hearings, and good and sufficient cause appearing therefor,

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Petition. On July 29, 2011, (the “**Petition Date**”), each Debtor filed a voluntary petition (each a “**Petition**” and collectively, the “**Petitions**”) under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. Jurisdiction and Venue. The Court has jurisdiction of this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The Motion is a “core” proceeding as defined in 28 U.S.C. §§ 157(b)(2)(A), (D) and (M). Venue of the Cases and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. Under the circumstances, the Notice given by the Debtors of the Motion, the Hearings and the relief granted under this Final Order constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c) and Local Rule 4001-2.

D. Findings Regarding the DIP Facility

1. The findings and conclusions set forth in this Final Order constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any findings of fact set forth in this Final Order constitute conclusions of law, they are adopted as such. To the extent any conclusions of law set forth in this Final Order constitute findings of fact, they are adopted as such.

2. All findings of fact and conclusions of law as announced on the record by the Court at the Hearings are hereby adopted and incorporated in this Final Order.

3. Good cause has been shown for the entry of this Final Order.

4. The Debtors may not have sufficient available sources of working capital to operate their businesses in the ordinary course without the financing requested under the Motion. The Debtors’ ability to maintain business relationships with their vendors, suppliers, charter parties, customers, crew and crew agents, to pay their employees, and to otherwise fund their operations is essential to the Debtors’ continued viability as the Debtors seek to maximize the

value of the assets of the Estates (as defined below) for the benefit of all creditors of the Debtors. The ability of the Debtors to obtain sufficient working capital and liquidity through the proposed DIP Facility on the terms, and subject to the conditions, set forth in this Final Order and the DIP Agreement (attached hereto as **Exhibit A**) is vital to the preservation and maintenance of the Debtors' assets. Accordingly, the Debtors have an immediate need to enter into the DIP Agreement in order to, among other things, fund voyages, permit the orderly continuation of the operation of their businesses, minimize disruption of their business operations, and preserve and maximize the value of the Debtors' bankruptcy estates (as defined under Section 541 of the Bankruptcy Code, the "*Estates*").

5. The Debtors are unable to procure financing in the form of unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code, as an administrative expense under section 364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of postpetition liens and administrative expense priority pursuant to sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code, without the grant of the DIP Liens and Superpriority Claims (each as defined below). Additionally, the Debtors have been unable to procure the necessary financing on terms more favorable than the DIP Facility offered by the DIP Lender.

6. The terms of the DIP Facility are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

7. The DIP Agreement has been negotiated and proposed at arm's length and in good faith by the Debtors and the DIP Lender and all of the Debtors' obligations and indebtedness arising under or in connection with the DIP Facility, including without limitation, (a) all loans made to the Debtors pursuant to the DIP Agreement and (b) the guaranty and all other obligations of the Debtors under the DIP Agreement, the Interim Order and this Final

Order owing to the DIP Lender shall be deemed to have been extended by the DIP Lender in “good faith” as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections set forth therein, and shall be entitled to the full protections of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

8. The Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Rule 4001-2. The Debtors assert that absent granting the relief set forth in this Final Order, the Estates will be immediately and irreparably harmed. Consummation of the DIP Facility in accordance with this Final Order and the DIP Agreement is, therefore, in the best interests of the Estates.

9. As a result of the DIP Facility, the value of the Prepetition Collateral (including the Cash Collateral) will be enhanced, protected and preserved for the benefit of the Prepetition Lenders. Based on the enhanced value of the Prepetition Collateral together with the Adequate Protection (defined below) to be granted to the Prepetition Lenders pursuant to this Final Order, sufficient adequate protection is being provided to the extent required under sections 361, 363 and 364 of the Bankruptcy Code and additional adequate protection is not required.

E. Debtors’ Stipulations. In connection with the DIP Agreement and the entry of this Final Order, each of the Debtors hereby acknowledges, represents, stipulates and agrees that:

1. On August 14, 2007, each of the Debtors and RBS entered into a loan agreement (as amended, the “**RBS Loan Agreement**”). The Debtors and RBS are also parties to (a) that certain ISDA Master Agreement, dated September 22, 2005 (including all supplements and amendments, the “**Swap Agreement**”), (b) the Tripartite Assignment relating to m.t. “Beth” dated November 24, 2008, the Tripartite Assignment relating to m.t. “Louise” dated November 24,

2008, and the Tripartite Assignment relating to m.t. “Meg” dated November 24, 2008 (collectively, as amended, the “*Tripartite Assignments*”), and (c) the First Preferred Liberian Mortgage m.v. “Beth” dated February 5, 2008; the First Preferred Liberian Mortgage m.v. “Louise” dated February 5, 2008; and the First Preferred Liberian Mortgage m.v. “Meg” dated February 5, 2008 (collectively, as amended, the “*Mortgages*”). The Debtors’ obligations under the RBS Loan Agreement are secured by the Mortgages on three vessels owned by the Debtors: (1) M/T Beth, (2) M/T Louise, and (3) M/T Meg (the “*RBS Vessels*”) and by, among other things the revenues generated by the RBS Vessels and the cash intake accounts maintained for each of the respective ships pursuant to the Tripartite Assignments. The Debtors’ obligations under the Swap Agreement are secured by the same collateral that secures the Debtors’ obligations under the RBS Loan Agreement. As of the Petition Date, the aggregate amount of the Debtors’ outstanding obligations to RBS under the RBS Loan Agreement and Swap Agreement was approximately \$122,000,000. Each of the Debtors acknowledges and agrees, and waives any objection and will not oppose any argument made with respect to the fact, that it is obligated, indebted and liable, jointly and severally, to RBS as described in this paragraph, that such indebtedness constitutes the legal, valid and binding obligations of the Debtors, that the liens, security interests, guaranties, grants and other assurances provided to RBS in connection with the RBS Loan Agreement and the Swap Agreement constitute valid, perfected, non-avoidable and enforceable liens, security interests, guaranties, grants and other assurances, that the Debtors do not have any claim, counterclaim, recoupment, setoff or defense of any kind or nature that would in any way affect, in whole or in part, the validity, enforceability, perfection, priority, and non-avoidability of the Debtors’ obligations under the RBS Loan Agreement and Swap Agreement and related documents or any of RBS’s liens, claims or security interests with respect thereto, or which would in any way reduce or affect the obligations of the Debtors to pay

any of RBS's claims (including with respect to interest, fees, expenses, charges and other obligations as provided in the RBS Loan Agreement, the Swap Agreement, the Mortgages, the Tripartite Agreements, or any related documents), and that the Adequate Protection Condition, as defined in the Final Cash Collateral Order with respect to RBS, is satisfied in all respects.

Based upon the foregoing, and after due consideration and good cause appearing therefor, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that

SECTION 1. Authorization and Conditions to DIP Facility

1.1 Motion Granted. The Motion is granted to the extent provided in this Final Order. The DIP Agreement and the incurrence by the Debtors of the obligations thereunder are approved on a final basis. This Final Order shall hereinafter be referred to as the "*Final Order*."

1.2 Authorization to Borrow and Use Loan Proceeds.

1.2.1 The Borrower is authorized to borrow under the DIP Agreement up to an aggregate principal amount of \$4,800,000 (inclusive of the amounts authorized pursuant to the Interim Order) to the extent (and only to the extent) (A) for expenditures other than those necessary to fund a "spot" voyage, including, without limitation, expense of case administration (i) after first, applying Cash Collateral of Credit Agricole and, second, cash from the Unrestricted Accounts (as defined in the DIP Motion) subject to the Minimum Unrestricted Cash Balance (as defined below), the Debtors do not have sufficient capital to make payments under the Budget with respect to items budgeted to be paid from Credit Agricole Cash Collateral ("*Credit Agricole Budget Items*"), (ii) the Debtors exceed the permitted variance of 15% from the Budget with respect to Credit Agricole Budget Items for the Maintenance Cost line item, but only after the payment of such expenses, on a pro forma basis, would cause the amounts in the Unrestricted Accounts to be less than the Minimum Unrestricted Cash Balance, provided that the

Borrower has given prior written notice to the DIP Lender as early as practicable, (iii) the Debtors exceed the permitted variance of 15% from the Budget with respect to Credit Agricole Budget Items other than for the Maintenance Cost line item, but only after the payment of such expenses, on a pro forma basis, would cause the amounts in the Unrestricted Accounts to be less than the Minimum Unrestricted Cash Balance, and provided that the Borrower has obtained the prior written consent of the DIP Lender, which consent may be given or withheld in its sole discretion (items (i) through (iii), each a "**Credit Agricole Non-Spot Voyage Expense**"), (iv) after first, applying Cash Collateral of RBS and, second, cash from the Unrestricted Accounts subject to the Minimum Unrestricted Cash Balance, the Debtors do not have sufficient capital to make payments under the Budget with respect to items budgeted to be paid from RBS Cash Collateral ("**RBS Budget Items**"), (v) the Debtors exceed the permitted variance of 15% from the Budget with respect to RBS Budget Items for the Maintenance Cost line item, but only after the payment of such expenses, on a pro forma basis, would cause the amounts in the Unrestricted Accounts to be less than the Minimum Unrestricted Cash Balance, provided that the Borrower has given prior written notice to the DIP Lender as early as practicable, or (vi) the Debtors exceed the permitted variance of 15% from the Budget with respect to RBS Budget Items other than for the Maintenance Cost line item, but only after the payment of such expenses, on a pro forma basis, would cause the amounts in the Unrestricted Accounts to be less than the Minimum Unrestricted Cash Balance, and provided that the Borrower has obtained the prior written consent of the DIP Lender, which consent may be given or withheld in its sole discretion (items (iv) through (vi), each a "**RBS Non-Spot Voyage Expense**"), and (B) for expenditures necessary to fund a "spot" voyage if, (i) after applying Cash Collateral of Credit Agricole for a "spot" voyage involving the Credit Agricole Ships (as defined in the DIP Motion), the Debtors do not have sufficient capital to make payments under the Budget or as otherwise necessary to fund any

voyage ("***Credit Agricole Spot Voyage Expenses***") or (ii) after applying Cash Collateral of RBS for a "spot" voyage involving the RBS Ships (as defined in the DIP Motion), the Debtors do not have sufficient capital to make payments under the Budget or as otherwise necessary to fund any voyage ("***RBS Spot Voyage Expenses***"). All such draws shall be used solely for Budget items, except as provided in (B) of the previous sentence, and as may otherwise be consented to by the DIP Lender in its sole discretion. The irrevocable guarantee by the Guarantors of the payment and performance of the Borrower's obligations under the DIP Agreement is approved on a final basis. The Debtors' obligations under the DIP Agreement, the Interim Order and this Final Order are joint and several.

1.2.2 Provided that the Stated Maturity Date has not occurred, after any termination of the Final Cash Collateral Order, the Borrower shall be entitled to draw on the DIP Facility in accordance with the Budget (i) to pay necessary expenses then due to operate, insure and maintain the vessels and (ii) to pay other administrative expenses, including allowed professional fees and expenses of the Debtors (the "***Cash Collateral Post-Termination Loans***").

1.2.3 No proceeds of the DIP Facility may be used for the payment of the fees and expenses of any person incurred in challenging, or in relation to the challenge of, any of the DIP Lender's, or (in its capacity as Prepetition Lender) RBS's, liens or claims, or the initiation or prosecution of any claim or action against the DIP Lender or RBS (or any of the DIP Lender's or RBS's officers, directors, employees, members, shareholders, or affiliates), including any claim under chapter 5 of the Bankruptcy Code; provided, however, that up to \$35,000 of Unencumbered DIP Collateral may be used in accordance with the Budget by the Committee to investigate the extent, validity, enforceability, priority and perfection of RBS's prepetition claims and liens (allowance and payment of related Committee professional fees and expenses remain subject to and governed by otherwise applicable bankruptcy law).

1.3 Financing Agreements.

1.3.1 Authorization. The Debtors are hereby authorized and directed to enter into, execute, deliver, perform, and comply with all of the terms, conditions and covenants in the DIP Agreement and any related instruments and documents that the DIP Lender determines to be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Agreement, including without limitation the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to the DIP Agreement, in each case in such form as the Debtors and the DIP Lender may agree, and no further approval of this Court shall be required for amendments, waivers, consents or other modifications to the DIP Agreement that (i) do not (a) shorten the maturity of the DIP Facility, (b) add collateral, increase the priority of DIP Lender or RBS claims, or increase the commitments or the rate of interest payable on the DIP Facility, or (c) change any triggering event for the Stated Maturity Date, add any remedies or covenants, amend the covenants therein, or reduce notice or cure periods, in any such case to be materially more restrictive to the Debtors and (ii) do not materially adversely impact the Estates or creditors' rights; provided, however, that a copy of any amendment, waiver, consent or other modification to the DIP Agreement shall be filed by the Debtors with the Court and served by the Debtors on (i) the U.S. Trustee, (ii) the statutory committee of unsecured creditors appointed in the Cases (the "***Committee***") and (iii) counsel to the Agents and shall not be effective until three (3) business days after such service is completed.

1.3.2 Approval. The DIP Agreement and the obligations thereunder (including, without limitation, the guarantee obligations) are approved and constitute the valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with the terms of the Interim Order, this Final Order and the DIP Agreement. No obligation, payment,

transfer or grant of security under the DIP Agreement, the Interim Order or this Final Order shall be stayed, voidable, avoidable, or recoverable under the DIP Agreement or under any applicable nonbankruptcy law (including without limitation, under sections 502(d) and 548 of the Bankruptcy Code or under any applicable state uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

1.4 Payments and Application of Payments. The Debtors are authorized and directed to make all payments and transfers of Estate property to the DIP Lender as provided, permitted and/or required under the DIP Agreement, which payments and transfers shall not be avoidable or recoverable from the DIP Lender under sections 547, 548, 550, 553 or any other section of the Bankruptcy Code, or any other claim, charge, assessment or other liability, whether by application of the Bankruptcy Code, other law or otherwise.

1.5 Borrowing Requests.

1.5.1 Each borrowing under the DIP Agreement shall be made on notice, given by the Borrower to the DIP Lender not later than two (2) business days prior to the date of the proposed borrowing. Each such notice of a borrowing (a "*Notice of Borrowing*") shall be given by telecopier or electronic communication, in substantially the form of Exhibit B, and signed by an authorized signatory of the Borrower, specifying therein, among other things, the requested (i) date of such borrowing and (ii) aggregate amount of such borrowing. The DIP Lender shall make such borrowing available in immediately available funds to the Borrower's account set forth in the Notice of Borrowing no later than two (2) business days from the delivery of the Notice of Borrowing.

1.5.2 Borrowings may be made at any time prior to the earliest to occur of (i) the occurrence and continuation of a default or an event of default under the DIP Agreement and (ii) the Stated Maturity Date.

1.5.3 Each Notice of Borrowing shall be irrevocable and binding on the Borrower.

1.6 Chief Restructuring Officer. The identity and terms and conditions of the employment (including compensation) by the Debtors of any chief restructuring officer, or similar officer or professional, shall be acceptable to the DIP Lender.

SECTION 2. DIP Liens; Superpriority Administrative Claim Status.

2.1 DIP Liens.

2.1.1 To secure the prompt and complete payment and performance of the obligations of the Debtors under the DIP Agreement, the Interim Order and this Final Order owing to the DIP Lender (collectively, the “**DIP Obligations**”), effective and perfected upon the date of this Final Order and without the necessity of execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or similar documents, or the possession or control by the DIP Lender of any property, the following security interests and liens (collectively the “**DIP Liens**”) are hereby granted on the following property (collectively, the “**DIP Collateral**”), subject only to the Carve-Out:

A. Any draw upon the DIP Facility for (i) Credit Agricole Non-Spot Voyage Expenses, Credit Agricole Spot Voyage Expenses and any other expense related to the Credit Agricole Ships permitted by the DIP Agreement, including the loans thereunder and any interest owed by any Obligor to the DIP Lender with respect thereto (collectively, the “**Credit Agricole DIP Loans**”) and (ii) 50% of the Cash Collateral Post-Termination Loans (and any interest owed by any Obligor to the DIP Lender with respect thereto), shall be secured by the following:

- a. **First Priority Liens on Unencumbered Property.** Pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected first priority security interest and lien on all now owned or hereafter acquired unencumbered assets and property of the Obligors including, without limitation or duplication, (i) cash and cash equivalents, (ii) each of the Obligor's ships, inventory, accounts receivable, property, plant, equipment, rights under leases and other contracts, patents, copyrights, trademarks, trade names and other intellectual property and capital stock of subsidiaries or affiliates (other than the capital stock of Futmarine B.V.), (iii) all causes of action (other than claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code or the proceeds thereof ("**Avoidance Actions**")), and (iv) the proceeds thereof (collectively, the "**Unencumbered DIP Collateral**").
- b. **Priming Liens on Credit Agricole Collateral.** Pursuant to section 364(d) of the Bankruptcy Code, a perfected first priority priming security interest and lien on the Credit Agricole Cash Collateral, provided that in the event that the Credit Agricole Cash Collateral is insufficient to satisfy all Credit Agricole DIP Loans in full upon the Stated Maturity Date, the Credit Agricole DIP Loans shall also be deemed secured by a perfected first priority priming security interest and lien (the "**Credit Agricole Springing DIP Lien**") on all other collateral securing the Debtors' obligations under the Credit Agricole Credit Agreement (collectively with the Credit Agricole Cash Collateral, the "**Credit Agricole Collateral**"), including but not limited to, the Credit Agricole Ships and the Credit Agricole Pledged Accounts (as defined in the DIP Motion), and the proceeds of each of the foregoing.

The priming security interests and liens are senior in all respects to the interests in such property of Credit Agricole or any other creditor other than those holding valid, perfected and not avoidable maritime liens under applicable law for "necessaries" (but excluding any such liens asserted by the Prepetition Lenders). The primed liens shall be primed by and made subject and subordinate to the perfected first priority senior priming liens granted to the DIP Lender, which senior priming liens in favor of the DIP Lender shall also prime any liens granted to provide adequate protection in respect of any of the primed liens.

- c. **Junior Priority Liens.** Pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected junior security interest and lien on all assets and causes of action (and the proceeds thereof) of the Obligors (other than Avoidance Actions) subject to valid, perfected and unavoidable liens, including but not limited to the RBS Collateral and, prior to the Credit Agricole Springing DIP Lien becoming effective, the Credit Agricole Collateral (other than the Credit Agricole Cash Collateral).

B. Any draw upon the DIP Facility for (i) RBS Non-Spot Voyage Expenses, RBS Spot Voyage Expenses and any other expense related to the RBS Ships permitted by the DIP Agreement, including the loans thereunder and any interest owed by any Obligor to

the DIP Lender with respect thereto (collectively, the "**RBS DIP Loans**") and (ii) 50% of the Cash Collateral Post-Termination Loans (and any interest owed by any Obligor to the DIP Lender with respect thereto), shall be secured by the following:

- a. **First Priority Liens on Unencumbered Property.** Pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected first priority security interest and lien on all Unencumbered DIP Collateral.
- b. **Priming Liens on RBS Collateral.** Pursuant to section 364(d) of the Bankruptcy Code, a perfected first priority priming security interest and lien on the RBS Cash Collateral, provided that in the event that the RBS Cash Collateral is insufficient to satisfy all RBS DIP Loans in full upon the Stated Maturity Date, the RBS DIP Loans shall also be deemed secured by a perfected first priority priming security interest and lien (the "**RBS Springing DIP Lien**") on all other collateral securing the Debtors' obligations under the RBS Loan Agreement (collectively with the RBS Cash Collateral, the "**RBS Collateral**"), including but not limited to, the RBS Ships and the RBS Pledged Accounts (as defined in the DIP Motion), and the proceeds of each of the foregoing.

The priming security interests and liens are senior in all respects to the interests in such property of RBS or any other creditor other than those holding valid, perfected and not avoidable maritime liens under applicable law for "necessaries" (but excluding any such liens asserted by the Prepetition Lenders). The primed liens shall be primed by and made subject and subordinate to the perfected first priority senior priming liens granted to the DIP Lender, which senior priming liens in favor of the DIP Lender shall also prime any liens granted to provide adequate protection in respect of any of the primed liens.

- c. **Junior Priority Liens.** Pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected junior security interest and lien on all assets and causes of action (and the proceeds thereof) of the Obligors (other than Avoidance Actions) subject to valid, perfected and unavoidable liens, including but not limited to the Credit Agricole Collateral and, prior to the RBS Springing DIP Lien becoming effective, the RBS Collateral (other than the RBS Cash Collateral).

C. **Liens Senior to Certain Other Liens.** The DIP Liens and the Adequate Protection Liens shall not be (i) subject or subordinated to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their Estates under section 551 of the Bankruptcy Code or (B) any liens arising after the Petition Date or (ii) subordinated to or made *pari passu* with any lien or security interest under sections 363 or 364 of the Bankruptcy Code or otherwise.

D. **No Priming.** The liens and claims granted to the DIP Lender under the Interim Order and this Final Order shall at all times be senior in priority and not be subject to,

any equal or senior lien or claim, including without limitation, any lien granted under section 363 or 364 of the Bankruptcy Code. The liens and claims granted to RBS under the Final RBS Cash Collateral Order shall at all times be senior in priority and not be subject to, any equal or senior lien or claim (other than the liens and claims granted to the DIP Lender hereunder), including without limitation, any lien or claim granted under section 363 or 364 of the Bankruptcy Code. The DIP Lender is entitled to all the rights and benefits of section 552(b) of the Bankruptcy Code and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Lender or to RBS, as Prepetition Lender. Except as otherwise expressly set forth in this Final Order with respect to the Carve-Out, neither the RBS Collateral nor the DIP Collateral shall be charged pursuant to section 506(c) of the Bankruptcy Code or otherwise.

E. Motia Compagnia di Navigazione Sp.A -- Palermo. For the avoidance of doubt, the Debtors’ equity interests in Motia Compagnia di Navigazione Sp.A – Palermo that are the subject of a prepetition pledge to Efibanca S.p.A. – Roma (the “**Pledge**”) are, solely to the extent such Pledge is valid, enforceable, and not avoidable, subject to the DIP Lender’s Junior Priority Liens under section 364(c)(3) of the Bankruptcy Code, not to the DIP Lender’s Priming Liens under section 364(d) of the Bankruptcy Code; provided that nothing contained herein shall waive the right of any party to challenge the validity and/or enforceability of such Pledge under applicable bankruptcy and non-bankruptcy law.

2.1.2 Lien Perfection. This Final Order shall be sufficient and conclusive evidence of the priority, perfection and validity of the DIP Liens and security interests granted herein, effective as of the Petition Date, without any further act and without regard to any other federal, state or local requirements or law requiring notice, filing, registration, recording or possession of the DIP Collateral, or other act to validate or perfect such security interest or lien (a “**Perfection Act**”). Notwithstanding the foregoing, if the DIP Lender shall, in its sole discretion, elect for any reason to file, record or otherwise effectuate any Perfection Act, the DIP Lender is authorized to perform such act, and the Debtors are authorized and directed to perform such act to the extent necessary or required by the DIP Lender, which act or acts shall be deemed to have been accomplished as of the date and time of entry of this Final Order notwithstanding the date and time actually accomplished, and in such event, the subject filing or recording office is authorized to accept, file or record any document in regard to such act in accordance with applicable law. The DIP Lender may choose to file, record or present a

certified copy of this Final Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file or record such certified copy of this Final Order in accordance with applicable law. Should the DIP Lender so choose and attempt to file, record or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive or alter the validity, enforceability, attachment, or perfection of the postpetition liens and security interests granted herein by virtue of the entry of this Final Order.

2.1.3 Nullifying Prepetition Restrictions to DIP Facility. Upon entry of this Final Order, notwithstanding anything to the contrary contained in any prepetition agreement, contract, lease, document, note or instrument to which any Debtor is a party or under which any Debtor is obligated, except as otherwise permitted under the DIP Agreement, any provision that restricts, limits or impairs in any way any Debtor from granting the DIP Lender security interests in or liens upon any of the Debtors' assets or properties (including, among other things, any anti-lien granting or anti-assignment clauses in any leases or other contractual arrangements to which any Debtor is a party) under the DIP Agreement or this Final Order, or otherwise entering into and complying with all of the terms, conditions and provisions hereof shall not (i) be effective and/or enforceable against any such Debtor(s) or the DIP Lender or (ii) adversely affect the validity, priority or enforceability of the liens, security interests, claims, rights, priorities and/or protections granted to the DIP Lender pursuant to this Final Order or the DIP Agreement.

2.2 Superpriority Administrative Expense. For all DIP Obligations now existing or hereafter arising pursuant to the Interim Order, this Final Order, the DIP Agreement or otherwise, the DIP Lender is granted an allowed superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all

other obligations, liabilities and indebtedness of the Debtors (including without limitation, the adequate protection claims granted to the Prepetition Lenders), whether now in existence or hereafter incurred by the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, inter alia sections 105, 326, 328, 330, 331, 364(c)(1), 503(b), 507(a), 507(b), 546(c), 726 or 1114 of the Bankruptcy Code (the “**Superpriority Claim**”), whether or not such expenses or claims may become secured by a judgment or other lien or other non-consensual lien, levy or attachment; subject only to the Carve-Out to the extent expressly set forth in this Final Order.

2.2.1 Carve-Out. The term “Carve-Out” means the following items of expenses and fees that are accrued during the period covered by the Interim Order or this Final Order, as applicable, and the amended budget filed with the Court on September 14, 2011 (as the same may be further amended with the consent of the DIP Lender, the “**Budget**”), but solely to the extent that the Debtors do not have sufficient unencumbered funds to pay administrative expenses in full and there exists any deficiency in payment of the following items of expenses and fees after application of the collateral of the Prepetition Lenders in satisfaction of the “carve-out” obligations set forth in the Final Cash Collateral Order (it being expressly understood that the Carve-Out herein is not additive to the carve-out set forth in the Final Cash Collateral Order or the Interim Order): (a) the unpaid fees of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (b) the aggregate accrued and unpaid fees and expenses payable under Bankruptcy Code sections 330 and 331 to professionals retained pursuant to an order of the Court by the Debtors and the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the “**Committee**”) not to exceed the amounts permitted therefor in the Budget and incurred prior to the business day immediately following an Event of Default and delivery of a notice of such default by the DIP Lender (the “**Carve-Out Notice**”); (c) the fees and expenses

of a trustee appointed upon conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code not to exceed \$2,500; (d) all allowed fees incurred subsequent to such business day by professionals retained by the Debtors appointed in the Chapter 11 Cases not to exceed \$250,000 in the aggregate; and (e) all allowed fees incurred subsequent to such business day by professionals retained by the Committee not to exceed \$50,000 in the aggregate (for the avoidance of doubt, the Committee carve-out identified in this subparagraph 2.2.1(e), which is consistent with Interim Order subparagraph 2.2.1(e), replaces and supersedes such Committee carve-out in subparagraph 10(d) of the Final Cash Collateral Order). The obligations under this paragraph 2.2.1 shall be satisfied from the Prepetition Lenders' cash collateral pro rata in proportion to the debt outstanding to Credit Agricole and RBS as of the Petition Date. The Carve-Out obligations shall first be satisfied from Cash Collateral of the Prepetition Lenders, in full, and shall only be satisfied from DIP Collateral if Cash Collateral is insufficient to satisfy such obligations in full. No portion of the Carve-Out under the DIP Facility or the Final Cash Collateral Order, no DIP Facility loan proceeds, no DIP Collateral, and no cash collateral of the DIP Lender or RBS may be used (i) to object to or contest in any action or proceeding, in any manner, or raise any defense to, the validity, perfection, priority, enforceability, or amount of any liens, claims, or security interests of the DIP Lender or RBS, (ii) to assert any claims or causes of action against the DIP Lender, RBS, or any of their agents, advisors, or counsel, including but not limited to, avoidance power claims, (iii) to seek to amend or modify any of the rights, liens, security interests, or claims granted to the DIP Lender under the DIP Agreement, Interim Order or Final Order, or RBS under the RBS Loan Agreement, the Swap Agreement, the Mortgages, the Tripartite Assignments, or any related documents, (iv) in connection with a request for authorization to obtain Debtor in Possession financing or other financial accommodations pursuant to sections 364(c) or 364(d) of the Bankruptcy Code, other than from the DIP Lender,

without the prior written consent of the DIP Lender, or (v) any other act which has or could have the effect of materially and adversely modifying or compromising the rights and remedies of the DIP Lender under the DIP Agreement, Interim Order or Final Order, or RBS under the RBS Loan Agreement, the Swap Agreement, the Mortgages, the Tripartite Assignments or any related documents, or which is contrary, in a manner that is material and adverse to the DIP Lender, to any term or condition set forth in or acknowledged by the DIP Agreement or this Final Order and which results in the occurrence of the Stated Maturity Date under the DIP Agreement or this Final Order; provided, however, that up to \$35,000 of Unencumbered DIP Collateral may be used in accordance with the Budget to pay the Committee's fees and expenses (the allowance and payment of which remain subject to otherwise applicable bankruptcy law) in investigating the extent, validity, priority, perfection and enforceability of RBS' prepetition liens and claims. For the avoidance of doubt, nothing in this Final Order shall impair the right of any party to object to the reasonableness of any of the foregoing fees or expenses to be paid by the Debtors' Estates.

2.2.2 Payment of Carve-Out Expenses.

a) Prior to the occurrence of the Stated Maturity Date, the Debtors shall be permitted to pay allowed professional fees in accordance with the Budget and such amounts paid prior to delivery of the Carve-Out Notice shall not reduce the professional fee Carve-Out.

b) Any payment or reimbursement made directly by the DIP Lender at any time, or by or on behalf of the Debtors on or after the occurrence of the Stated Maturity Date, in respect of any allowed professional fees or any other Carve-Out expenses shall permanently reduce the professional fee Carve-Out on a dollar-for-dollar basis. The DIP Lender's obligation to fund or otherwise pay the professional fee Carve-Out and the other Carve-

Out expenses shall be added to and made a part of the DIP Obligations, secured by the DIP Collateral, and entitle the DIP Lender to all of the rights, claims, liens, priorities and protections under the Interim Order, this Final Order, the DIP Agreement, the Bankruptcy Code or applicable law. Payment of any Carve-Out expenses, whether by or on behalf of the DIP Lender, shall not and shall not be deemed to reduce the DIP Obligations, and shall not and shall not be deemed to subordinate any of the DIP Lender's liens and security interests in the DIP Collateral or its Superpriority Claim to any junior pre- or postpetition lien, interest or claim in favor of any other party. Except as otherwise provided herein with respect to the professional fee Carve-Out and the other Carve-Out expenses, the DIP Lender shall not, under any circumstance, be responsible for the direct payment or reimbursement of any fees or disbursements of any professionals incurred in connection with the Cases under any chapter of the Bankruptcy Code, and nothing in this Section 2 of this Final Order shall be construed to obligate the DIP Lender in any way, to pay compensation to or to reimburse expenses of any professional, or to ensure that the Debtors have sufficient funds to pay such compensation or reimbursement.

2.3 Section 507(b) Priority. To the extent the DIP Lender's liens on and security interests in the DIP Collateral or any other form of adequate protection of the DIP Lender's interests is insufficient to pay indefeasibly in full all DIP Obligations, the DIP Lender shall also have the priority in payment afforded by section 507(b) of the Bankruptcy Code to the extent of any such deficiency, which shall be senior in all respects to the adequate protection claims granted to the Prepetition Lenders.

2.4 Adequate Protection. To the extent of the diminution in value of the Prepetition Lenders' respective interests in the totality of their respective Prepetition Collateral, from and after the Petition Date, resulting from the use, sale or lease by the Debtors of the Prepetition Collateral, the subordination of the Prepetition Lenders' liens in the Prepetition

Collateral to the Carve-Out, and the imposition or enforcement of the automatic stay of section 362(a) (collectively, the “*Diminution in Value*”):

2.4.1 Adequate Protection Liens

a) Credit Agricole: The Credit Agricole Lenders are hereby granted replacement security interests and liens (the “*Credit Agricole Adequate Protection Liens*”) in and upon the Credit Agricole Collateral; provided that with respect to Cash Collateral of the Credit Agricole Lenders, the Credit Agricole Adequate Protection Liens shall only be granted to the extent the Credit Agricole Lenders would have been entitled to a security interest or right of setoff in such Cash Collateral under the Credit Agricole Credit Agreement (including any related security documents) or applicable law. The Credit Agricole Adequate Protection Liens shall be subject and subordinate only to (i) the DIP Liens, as set forth in paragraph 2.1.1 of the Interim Order and this Final Order and (ii) the Carve-Out ((i) and (ii) together, the “*Senior Adequate Protection Liens*”).

b) RBS: The RBS Lenders are hereby granted additional and replacement security interests and liens (the “*RBS Adequate Protection Liens*” and together with the Credit Agricole Adequate Protection Liens, the “*Adequate Protection Liens*”) in and upon the RBS Collateral; provided that with respect to Cash Collateral of the RBS Lenders, such RBS Adequate Protection Liens shall only be granted to the extent the RBS Lenders would have been entitled to a security interest or right of setoff in such Cash Collateral under the RBS Loan Agreement (including any related loan or security documents) or applicable law. The RBS Adequate Protection Liens shall be subject and subordinate only to the Senior Adequate Protection Liens.

2.4.2 507(b) Claims

a) Credit Agricole: To the extent the Credit Agricole Adequate Protection Liens are insufficient to adequately protect against the Diminution in Value of the Credit Agricole Collateral, the Credit Agricole Lenders shall also have, subject to the terms and conditions of this Section 2.4.2, priority in payment afforded by section 507(b) of the Bankruptcy Code in an amount equal to the amount by which such diminution exceeds the value of the Credit Agricole Adequate Protection Liens (the “**Credit Agricole Priority Claim**”). Notwithstanding anything to the contrary contained herein or otherwise, the Credit Agricole Priority Claim shall be junior and subordinate in all respects to (i) the prior payment in full of all DIP Obligations owing to the DIP Lender, (ii) the Superpriority Claim granted in favor of the DIP Lender pursuant to the Interim Order and this Final Order and (iii) the Carve-Out (such obligations, the “**Senior Priority Claims**”).

b) RBS: To the extent the RBS Adequate Protection Liens are insufficient to adequately protect against the Diminution in Value of the RBS Collateral, the RBS Lenders shall also have, subject to the terms and conditions of this Section 2.4.2, priority in payment afforded by section 507(b) of the Bankruptcy Code in an amount equal to the amount by which such diminution exceeds the value of the RBS Adequate Protection Liens (the “**RBS Priority Claim**” and together with the Credit Agricole Priority Claim, the “**Priority Claims**”). Notwithstanding anything to the contrary contained herein or otherwise, the RBS Priority Claim shall be junior and subordinate in all respects to the Senior Priority Claims.

2.4.3 Adequate Protection Limitations

a) The Adequate Protection Liens and Priority Claims shall be valid only to the extent that the Prepetition Lenders’ prepetition claims and liens exist, are valid, prior to all others, and not subject to defense, offset, avoidance or subordination.

2.4.4 RBS Prepetition Liens and Claims

a) Notwithstanding anything herein to the contrary, the extent, validity, priority, perfection and enforceability of the Debtors' prepetition obligations to RBS, and all acknowledgements, admissions and confirmations of the Debtors with respect thereto, are subject to the rights of the Committee, as representative of the Debtors' Estates to file a complaint pursuant to Bankruptcy Rule 7001 seeking to challenge the extent, validity, priority, perfection, and enforceability of the prepetition liens and claims of RBS under the RBS Loan Agreement, the Swap Agreement, the Mortgages, the Tripartite Assignments, and the related prepetition agreements evidencing and securing the prepetition RBS loans and credit arrangements (which agreements are collectively referred to as the "***Bible***") (the claims and causes of action challenging RBS prepetition liens and claims referenced above are referred to hereafter as the "***Challenges***"); provided, however, that any such Challenges must be asserted by complaint filed in this Court or in the United States District Court for the Southern District of New York no later than sixty (60) days after October 3, 2011 (the "***Investigation Period***"), except that (i) the Committee may file a motion through and including the last day of the Investigation Period to extend the Investigation Period for a sixty (60) day period, which relief may only be sought a single time by the Committee, or (ii) the DIP Lender, RBS and the Committee may agree in writing to an extension of the Investigation Period, which agreement shall be effective hereunder without the requirement of a further order of this Court. If a motion for standing to assert such Challenges is sought by the Committee and granted by an order of this Court that is unstayed, then the Committee shall have ten (10) days from the entry of such order to file its Challenges by complaint and the Investigation Period shall be deemed extended hereby as needed to enable such filing. If no Challenges are asserted within such time period, then any and all claims and defenses against RBS (including its officers, directors, employees, members,

shareholders, and affiliates) shall be, without further notice to or order of the Court, deemed to have been forever relinquished, released and waived as to such Committee and the Debtors' Estates and any other person or entity, and if such Challenges are timely asserted by complaint on or before such date, any and all claims and defenses against RBS (including its officers, directors, employees, members, shareholders, or affiliates) shall be deemed, immediately and without further action, to have been forever relinquished, released and waived as to such Committee and the Debtors' Estates and any other person or entity, **except** with respect to claims and defenses that are expressly asserted in the complaint. Those Challenges that are timely asserted by the Committee by the filing of a complaint, are preserved until such time as the Challenges are settled by an agreement between the Committee and RBS, which has been finally approved by the Court or until such time as the Challenges have been finally adjudicated by this Court or the United States District Court for the Southern District of New York. The Committee may not use the Carve-Out under the DIP Facility or the Final Cash Collateral Order, DIP Facility loan proceeds, DIP Collateral, or cash collateral of the DIP Lender or RBS to prepare or prosecute a Challenge, but may use up to an amount equal to \$35,000 of Unencumbered DIP Collateral in accordance with the Budget to investigate Challenges and to inform the Committee members of the results of such investigation (related Committee professional fees and expenses shall remain subject to applicable bankruptcy law governing allowance and payment of such fees and expenses).

b) The Debtors have agreed that they will neither oppose nor support any motion filed the Committee for standing to assert Challenges and, without limitation, that the Committee need not seek any further confirmation as to its intentions in respect of the Challenges as a predicate to the filing of such motion.

SECTION 3. Termination and Remedies

3.1.1 Termination. The DIP Facility and the DIP Lender's commitment shall terminate on the earliest to occur of (a) April 15, 2012, and (b) the occurrence of one of the following (the "*Stated Maturity Date*"):

- (i) (a) The breach of any "Covenant" in the DIP Agreement (subject to a cure period of two business days following the delivery of email notice for the weekly or monthly reports and one business day for the daily vessel updates), (b) a violation of the "Limitations on Use of DIP Facility" provisions of the DIP Agreement, (c) the failure to satisfy any milestone set forth in Section 4 of this Final Order (subject to a cure period of three business days following the delivery of email notice) other than the delivery of a term sheet for an Acceptable Plan (as defined below), (d) the failure to pay any amount when due under the DIP Agreement, the Interim Order, or this Final Order, (e) any violation of the "Standby Nature; Use of Proceeds" provisions of the DIP Agreement (provided that violations other than willful or knowing violations shall be subject to a cure period of two business days following the delivery of email notice), (f) the breach of any obligation to RBS under paragraph 6 of the Final RBS Cash Collateral Order, (g) the filing of a complaint or other pleading specifically challenging the liens, claims or security interests granted to the DIP Lender pursuant to the Interim Order or this Final Order (provided that, for the avoidance of doubt, except to the extent that it specifically challenges the liens, claims or security interests granted to the DIP Lender pursuant to the Interim Order or this Final Order, neither the filing by the Committee of a motion for standing to assert Challenges nor the entry of an order granting such a motion shall constitute a Maturity Triggering Event and/or termination event hereunder), (h) the filing of a request to charge the collateral of the DIP Lender or RBS pursuant to section 506(c) of the Bankruptcy Code or otherwise, or (i) the grant of any liens, claims or security interests that are senior to, on a parity with, those of the DIP Lender or RBS as Prepetition Lender, or the filing of, acquiescence in, or support of, any request therefor;
- (ii) the effective date of any plan of reorganization with respect to any of the Debtors,
- (iii) the date of conversion of any of the Debtors' chapter 11 cases to a case under Chapter 7 of the Bankruptcy Code,
- (iv) the date of the dismissal of any of the Debtors' chapter 11 cases,
- (v) the date of any termination of the exclusivity period for any Debtor, and
- (vi) the date of any appointment of a Chapter 11 trustee or other disinterested person with expanded powers pursuant to Bankruptcy Code § 1104(c) in any Case ((i) through (vi), a "*Maturity Triggering Event*").

3.1.2 Remedies Upon Stated Maturity Date.

a) Upon the dismissal of any of the Debtors' chapter 11 cases, the DIP Lender's commitment under the DIP Facility shall terminate automatically, whereupon all amounts outstanding thereunder and under the DIP Agreement (including, without limitation, accrued and unpaid interest) shall become immediately due and payable in full in cash.

b) Following the occurrence and during the continuation of any other Maturity Triggering Event, the DIP Lender may, on three (3) business days' prior written notice (the "***Remedies Notice Period***") to the Debtors, the Committee by counsel, the Office of the United States Trustee, Credit Agricole, and 2002 notice parties that is electronically filed with this Court, terminate its commitment under the DIP Facility, whereupon (i) all amounts thereunder and under the DIP Agreement (including without limitation accrued and unpaid interest) shall become immediately due and payable in full in cash, and (ii) the automatic stay imposed by section 362(a) of the Bankruptcy Code shall be automatically vacated with respect to the DIP Lender and the DIP Lender shall be entitled to exercise any or all of its rights and remedies. If any party in interest objects to such proposed termination and exercise of remedies, such objector's remedy is limited to requesting a hearing before the Bankruptcy Court, which shall be held during the Remedies Notice Period, on one (1) business day's written notice to the DIP Lender for the sole purpose of determining whether a Maturity Triggering Event has occurred and not been cured. Upon the filing of such an objection, the DIP Lender shall not exercise any remedies under the DIP Agreement until the Bankruptcy Court has entered an order with respect to such Maturity Triggering Event. Upon the expiration of the Remedies Notice Period, unless the Bankruptcy court has determined that a Maturity Triggering Event has not occurred or has not been cured, (i) the DIP Lender's commitment with respect to the DIP Facility shall immediately and automatically terminate, (ii) each of the following shall immediately

become due and payable, in each case without presentment, demand, protest or other requirements of any kind: (A) the unpaid principal and any accrued interest outstanding on the DIP Facility and (B) all other outstanding obligations under the DIP Agreement, the Interim Order and this Final Order, and (iii) the DIP Lender may enforce any and all DIP Liens, and may exercise any and all other remedies.

c) Upon the expiration of the Remedies Notice Period, unless otherwise ordered by the Bankruptcy Court, the DIP Lender shall at any time be entitled to exercise any of its rights and remedies under the DIP Agreement, the Interim Order, this Final Order or under applicable law to effect payment or satisfaction of the Debtors' outstanding obligations or to receive any outstanding amounts or remittances due hereunder or under the DIP Agreement, including without limitation, foreclosing upon and selling all or a portion of the DIP Collateral, and the DIP Lender shall have the right, without any further action or approval of the Bankruptcy Court to exercise such rights and remedies as to all or such part of the DIP Collateral as the DIP Lender shall elect in its sole discretion. No holder of a lien primed by this Final Order or granted by the Debtors as adequate protection shall be entitled to object on the basis of the existence of any such lien to the exercise by the DIP Lender of its rights and remedies to effect satisfaction of the obligations under the DIP Agreement, the Interim Order or this Final Order or to receive any amounts or remittances due hereunder or thereunder. The DIP Lender shall be entitled to apply the payments or proceeds of the DIP Collateral in accordance with the provisions of this Final Order. For the avoidance of doubt, (i) unless the conditions for the effectiveness of the Credit Agricole Springing DIP Liens and/or the RBS Springing DIP Liens, as applicable, have occurred, the DIP Lender's remedies with respect to the RBS Collateral and Credit Agricole Collateral shall be limited to the Credit Agricole Cash Collateral and/or RBS Cash Collateral, as applicable and (ii) if no amounts are owing to the DIP Lender under the DIP

Agreement upon the expiration of the Remedies Notice Period, the DIP Lender's remedies shall be limited to the termination of its commitment under the DIP Agreement and to making a request for any other relief with the Bankruptcy Court.

d) The failure or delay by (i) the DIP Lender to seek relief or otherwise exercise its rights and remedies under the DIP Agreement, the Interim Order or this Final Order shall not constitute a waiver of any of its rights, and any exercise of such rights and remedies against the Debtors or any DIP Collateral shall not be construed to limit any further exercise of such rights and remedies.

3.2 Right to Credit Bid. The DIP Lender shall have the right to credit bid the DIP Obligations in connection with a sale of any DIP Collateral whether under a plan of reorganization or section 363 of the Bankruptcy Code.

SECTION 4. Milestones

4.1 The Debtors shall use their reasonable best efforts to provide to the DIP Lender, on or before November 15, 2011, a term sheet for a proposed plan of reorganization, provided that the failure to deliver such term sheet on or before November 15, 2011, shall not constitute a Maturity Triggering Event.

4.2 On or before December 15, 2011, the Obligor shall file with the Bankruptcy Court a proposed chapter 11 plan in form and substance reasonably satisfactory to the DIP Lender (the “*Acceptable Plan*”) and a proposed disclosure statement reasonably satisfactory to the DIP Lender relating to the Acceptable Plan (the “*Disclosure Statement*”).

4.3 On or before March 2, 2012, subject to the calendar of the Bankruptcy Court, an order of the Bankruptcy Court in form and substance reasonably satisfactory to the DIP Lender shall have been entered approving the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code.

4.4 On or before March 30, 2012, subject to the calendar of the Bankruptcy Court, an order of the Bankruptcy Court in form and substance reasonably satisfactory to the DIP Lender shall have been entered confirming the Acceptable Plan pursuant to section 1129 of the Bankruptcy Code.

4.5 The Acceptable Plan shall have been substantially consummated on or before April 15, 2012.

SECTION 5. Exculpation; Limitation of Liability

5.1 Exculpation. Nothing in the Interim Order, this Final Order, the DIP Agreement, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts. The DIP Lender shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, or (iii) any Diminution in the Value thereof, and (b) all risk of loss of the DIP Collateral shall be borne by the Debtors.

5.2 Limitation of Liability. In determining to make any loan under the DIP Agreement, or in exercising any rights or remedies as and when permitted pursuant to the Interim Order, this Final Order or the DIP Agreement, the DIP Lender shall not (a) be deemed to be in “control” of the operations of the Debtors, (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or Estates, and (c) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 or any similar federal or state statute).

SECTION 6. Other Rights and Obligations.

6.1 Binding Obligation.

6.1.1 The DIP Agreement and the provisions of this Final Order constitute valid and binding obligation of the Debtors, enforceable against the Debtors in accordance with the terms of this Final Order and the DIP Agreement. No obligation, payment, transfer or grant of security under the DIP Agreement or this Final Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable nonbankruptcy law (including without limitation, under sections 502(d), 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

6.1.2 The DIP Agreement and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in the cases, including without limitation, the DIP Lender, all prepetition secured lenders, including the Prepetition Lenders, the Committee, the Debtors, any trustee appointed in any of the Debtors' chapter 11 cases (or in the event of a conversion, any of their chapter 7 cases), and their respective successors and assigns and shall inure to the benefit of the DIP Lender, the Debtors and their respective successors and assigns; provided, however, that the DIP Lender shall have no obligation to extend any financing to any chapter 7 or chapter 11 trustee or similar responsible person appointed for the Estates of the Debtors.

6.1.3 Survival. Until all obligations to the DIP Lender under the DIP Agreement, the Interim Order, and this Final Order have been repaid in full in accordance with the terms thereof and hereof, the Debtors' obligations to the DIP Lender under the DIP Agreement and the liens and claims granted to the DIP Lender under the DIP Agreement, shall

survive, and shall not be modified, impaired or discharged by, the entry of any order confirming any plan of reorganization in any case, converting any case to a case under chapter 7, dismissing any of the cases or by any other act or omission

6.2 Marshalling. In no event shall the DIP Lender be subject to the equitable doctrine of “marshalling” or any similar doctrine with respect to the DIP Collateral.

6.3 Dismissal. If an order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that the Superpriority Claims and the DIP Liens shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all obligations of the Debtors under the Interim Order, the Final Order, and the DIP Agreement shall have been indefeasibly paid in full in cash.

6.4 Certain Notices and Reports. The Debtors shall provide the Committee by counsel with all notices, papers, and reports that they give or receive in connection with the DIP Facility at the same time that such notices, papers and reports are given or received, except and as limited by confidentiality obligations, applicable law, and attorney-client and other similar privileges.

6.4.1 Pleadings. The Debtors shall provide drafts of all pleadings, notices, and other documents to the DIP Lender no later than three business days prior to the date of filing with the Bankruptcy Court.

6.5 Order Governs. In the event of any inconsistency between the provisions of this Final Order or the DIP Agreement, the provisions of this Final Order shall govern.

6.6 Retention of Jurisdiction: Unless and until the Debtors’ cases are dismissed, the Bankruptcy Court shall retain jurisdiction to enforce the provisions of this Final Order, and this paragraph shall survive the confirmation and consummation of any chapter 11

plan for any one or more of the Debtors, notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

6.7 Objections Overruled. All objections to the entry of this Final Order are, to the extent not withdrawn or resolved, hereby overruled.

6.8 Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Final Order.

Dated: New York, New York
November 3, 2011

s/ James M. Peck
Honorable James M. Peck
United States Bankruptcy Judge

CREDIT AGREEMENT

Standby Senior Secured Debtor in Possession Credit Facility

This debtor in possession credit agreement (this "***DIP Agreement***"), dated as of September 15, 2011, sets forth the terms and conditions pursuant to which The Royal Bank of Scotland plc (the "***DIP Lender***") agrees to provide DIP financing (the "***DIP Facility***") for Marco Polo Seatrade B.V. ("***MPS***" or the "***Borrower***") the record owner of the 6 vessels (collectively, the "***Vessels***"), and the debtor subsidiaries Seaarland Shipping Management B.V. ("***Seaarland***"), Magellano Marine C.V. ("***Magellano***") and Cargoship Maritime B.V. ("***Cargoship***" and, together with Seaarland and Magellano, the "***Guarantors***"; together with the Borrower, the "***Debtors***"), in connection with the currently pending jointly-administered cases of the Debtors (each a "***Case***" and collectively, the "***Cases***") under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***") in the United States Bankruptcy Court for the Southern District of New York (the "***Bankruptcy Court***").

On August 26, 2011, the Debtors filed a Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Adequate Protection, (III) Scheduling a Final Hearing and (IV) Granting Related Relief. [Dkt. No. 86] (the "***DIP Motion***").

This DIP Agreement and the DIP Lender's obligations hereunder are subject to the approval of the Bankruptcy Court and the conditions to be set forth in the interim and final orders entered by the Bankruptcy Court approving the DIP Facility, each of which orders shall be in form and substance satisfactory to the DIP Lender in its sole discretion (the "***DIP Orders***").

**Prepetition
Facilities**

Credit Agricole: the "***Credit Agricole Credit Agreement***" as secured by the "***Credit Agricole Collateral***" (each as defined in the DIP Motion)

The Royal Bank of Scotland plc ("***RBS***"): the "***RBS Credit Agreement***" and the "***RBS Collateral***" (each as defined in the DIP Motion)

Together, the "***Prepetition Facilities***" and the "***Prepetition Lenders***" (in each case to the extent valid, enforceable and not avoidable or subject to setoff or counterclaim)

Borrower

Marco Polo Seatrade B.V. (the "***Borrower***")

Guarantors

Seaarland Shipping Management B.V., Magellano Marine C.V. and Cargoship Maritime B.V. (the "***Guarantors***" and, together with the Borrower, the "***Obligors***")

Lender

The Royal Bank of Scotland plc (the "***DIP Lender***").

DIP Commitment The total commitment under the DIP Facility shall be \$4.8 million.

Maturity The DIP Facility and the DIP Lender's commitment shall terminate on the earliest to occur of (a) the date on which the Court declines to enter the Final DIP Order, (b) April 15, 2012, and (c) the occurrence of one of the following (the "*Stated Maturity Date*");

(i) (a) The breach of any Covenant (subject to a cure period of two business days following the delivery of email notice for the weekly or monthly reports and one business day for the daily vessel updates), (b) A violation of the Limitations on Use of DIP Facility, (c) the failure to satisfy any Milestone (subject to a cure period of three business days following the delivery of email notice), (d) the failure to pay any amount when due under the DIP Agreement or any of the DIP Orders, (e) any violation of the Standby Nature; Use of Proceeds (provided that violations other than willful or knowing violations shall be subject to a cure period of two business days following the delivery of email notice), (f) the breach of any obligation to RBS under paragraph 6 of the Final RBS Cash Collateral Order, (g) the filing of a challenge to the liens, claims or security interests granted to the DIP Lender pursuant to the DIP Orders, (h) the filing of a request to charge the collateral of the DIP Lender or RBS pursuant to section 506(c) of the Bankruptcy Code or otherwise, or (i) the grant of any liens, claims or security interests that are senior to, on a parity with, those of the DIP Lender or RBS as Prepetition Lender, or the filing of, acquiescence in, or support of, any request therefor;

(ii) the effective date of any plan of reorganization with respect to any Obligor,

(iii) the date of conversion of any Case to a case under Chapter 7 of the Bankruptcy Code,

(iv) the date of the dismissal of any Case,

(v) the date of any termination of the exclusivity period for any Obligor, and

(vi) the date of any appointment of a Chapter 11 trustee or other disinterested person with expanded powers pursuant to Bankruptcy Code § 1104(c) in any Case ((i) through (vi), a "*Maturity Triggering Event*").

Standby Nature; Pursuant to the Debtors' Motion for (I) Interim and Final Orders

Use of Proceeds

(A) Authorizing the Use of Cash Collateral and (B) Granting Adequate Protection (II) a Final Protective Order with Respect to Certain Unencumbered Accounts; and (III) Scheduling a Final Hearing (the "*Cash Collateral Motion*") the Debtors obtained permission from the Bankruptcy Court to use the Cash Collateral of the Prepetition Lenders ("*Cash Collateral*") and intend to do so in accordance with the approved budget attached thereto as Exhibit A (as amended from time to time with the approval of the DIP Lender, the "*Budget*"). The Debtors plan to use Cash Collateral under and to the extent permitted in the Bankruptcy Court's final orders governing the use of the Cash Collateral of RBS (the "*Final RBS Cash Collateral Order*") and Cash Collateral of Credit Agricole (the "*Final Credit Agricole Cash Collateral Order*", and together with the Final RBS Cash Collateral Order, the "*Final Cash Collateral Order*").

During the term of the Final Cash Collateral Order, the Borrower shall be entitled to draw on the DIP Facility to the extent (and only to the extent) (A) for expenditures other than those necessary to fund a "spot" voyage, including, without limitation expenses of case administration, (i) after first, applying Cash Collateral of Credit Agricole and, second, cash from the Unrestricted Accounts (as defined in the DIP Motion) subject to the Minimum Unrestricted Cash Balance (as defined below), the Debtors do not have sufficient capital to make payments under the Budget with respect to items budgeted to be paid from Credit Agricole Cash Collateral ("*Credit Agricole Budget Items*"), (ii) the Debtors exceed the permitted variance of 15% from the Budget with respect to Credit Agricole Budget Items for the Maintenance Cost line item, but only the after payment of such expenses, on a pro forma basis, would cause the amounts in the Unrestricted Accounts to be less than the Minimum Unrestricted Cash Balance, provided that the Borrower has given prior written notice to the DIP Lender as early as practicable, (iii) the Debtors exceed the permitted variance of 15% from the Budget with respect to Credit Agricole Budget Items other than for the Maintenance Cost line item, but only the after payment of such expenses, on a pro forma basis, would cause the amounts in the Unrestricted Accounts to be less than the Minimum Unrestricted Cash Balance, and provided that the Borrower has obtained the prior written consent of the DIP Lender, which consent may be given or withheld in its sole discretion (items (i) through (iii), each a "*Credit Agricole Non-Spot Voyage Expense*"), (iv) after first, applying Cash Collateral of RBS and, second, cash from the Unrestricted Accounts subject to the Minimum Unrestricted Cash Balance, the Debtors do not have sufficient capital to make payments under the Budget with respect to items budgeted to be paid from RBS Cash Collateral ("*RBS Budget Items*"), (v) the Debtors exceed the permitted variance of 15% from the Budget with respect to RBS Budget Items for the Maintenance Cost line item, but only the after payment of such expenses, on a pro forma basis,

would cause the amounts in the Unrestricted Accounts to be less than the Minimum Unrestricted Cash Balance, provided that the Borrower has given prior written notice to the DIP Lender as early as practicable, or (vi) the Debtors exceed the permitted variance of 15% from the Budget with respect to RBS Budget Items other than for the Maintenance Cost line item, but only the after payment of such expenses, on a pro forma basis, would cause the amounts in the Unrestricted Accounts to be less than the Minimum Unrestricted Cash Balance, and provided that the Borrower has obtained the prior written consent of the DIP Lender, which consent may be given or withheld in its sole discretion (items (iv) through (vi), each a "*RBS Non-Spot Voyage Expense*"), and (B) for expenditures necessary to fund a "spot" voyage if, (i) after applying Cash Collateral of Credit Agricole for a "spot" voyage involving the Credit Agricole Ships (as defined in the DIP Motion), the Debtors do not have sufficient capital to make payments under the Budget or as otherwise necessary to fund any voyage ("*Credit Agricole Spot Voyage Expenses*") or (ii) after applying Cash Collateral of RBS for a "spot" voyage involving the RBS Ships (as defined in the DIP Motion), the Debtors do not have sufficient capital to make payments under the Budget or as otherwise necessary to fund any voyage ("*RBS Spot Voyage Expenses*"). All such draws shall be used solely for Budget items, except as provided in (B) of the previous sentence, and as may otherwise be consented to by the DIP Lender in its sole discretion.

The "Minimum Unrestricted Cash Balance" shall be \$300,000 of cash in the Unrestricted Accounts.

Provided that the Stated Maturity Date has not occurred, after any termination of the Final Cash Collateral Order, the Borrower shall be entitled to draw on the DIP Facility (i) to pay necessary expenses then due to operate, insure and maintain the vessels and (ii) to pay other administrative expenses, including allowed professional fees and expenses of the Debtors (the "*Cash Collateral Post-Termination Loans*").

Interest Rates

Borrower to pay 4.25% interest per annum, which shall accrue and be payable on the Stated Maturity Date.

Conditions

(i) No trustee, or other disinterested person with expanded powers pursuant to Bankruptcy Code § 1104(c), shall have been appointed or designated with respect to any Debtor or their respective business, properties or assets and no motion shall be pending seeking any such relief.

(ii) Entry of (a) the Interim DIP Order with respect to the Interim DIP Facility (which shall be up to the amount of \$2,400,000) and (b) the Final DIP Order with respect to the Final DIP Facility (which shall be up to the

amount of \$4,800,000 inclusive of the Interim DIP Facility). The Interim DIP Order and the Final DIP Order shall include, among other things, the finding that the DIP Lender has acted in good faith and provide the protections set forth in section 364(e) of title 11, United States Code, and shall provide the Debtors' confirmation of the validity, priority, extent and amount of RBS's prepetition liens and claims and that the Adequate Protection Condition (as defined in the Final RBS Cash Collateral Order) is satisfied (the right of the Committee to investigate and challenge such liens and claims and the satisfaction of the Adequate Protection Condition on behalf of the Debtors' estates shall be specifically preserved and governed by the Interim DIP Order and the Final DIP Order). The hearing to consider entry of the Final DIP Order shall be scheduled for October 3, 2011, subject to adjournment.

Fees

Borrower to pay a commitment fee of 0.25% per annum on the undrawn portion of the total commitment under the DIP Facility on the Stated Maturity Date.

Liens and Priorities

DIP Liens. The obligations of the Borrower and the Obligors under the DIP Facility shall be secured by the following liens and security interests (the "*DIP Liens*").

Any draw upon the DIP Facility for (i) Credit Agricole Non-Spot Voyage Expenses, Credit Agricole Spot Voyage Expenses and any other expense related to the Credit Agricole Ships permitted by this DIP Agreement, including the loans thereunder and any interest owed by any Obligor to the DIP Lender with respect thereto (collectively, the "*Credit Agricole DIP Loans*") and (ii) 50% of the Cash Collateral Post-Termination Loans (and any interest owed by any Obligor to the DIP Lender with respect thereto), shall be secured by the following:

- a. **First Priority Liens on Unencumbered Property.** Pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected first priority security interest and lien on all now owned or hereafter acquired unencumbered assets and property of the Obligors including, without limitation or duplication, (i) cash and cash equivalents, (ii) each of the Obligor's ships, inventory, accounts receivable, property, plant, equipment, rights under leases and other contracts, patents, copyrights, trademarks, trade names and other intellectual property and capital stock of subsidiaries or affiliates (other than the capital stock of Futmarine B.V.), (iii) all causes of action (other than claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code or the proceeds thereof ("*Avoidance Actions*")), and (iv) the proceeds thereof (collectively, the "*Unencumbered DIP Collateral*").
- b. **Priming Liens on Credit Agricole Collateral.** Pursuant to section

364(d) of the Bankruptcy Code, a perfected first priority priming security interest and lien on the Credit Agricole Cash Collateral, provided that in the event that the Credit Agricole Cash Collateral is insufficient to satisfy all Credit Agricole DIP Loans in full upon the Stated Maturity Date, the Credit Agricole DIP Loans shall also be deemed secured by a perfected first priority priming security interest and lien (the "*Credit Agricole Springing DIP Lien*") on all other collateral securing the Debtors' obligations under the Credit Agricole Credit Agreement (collectively with the Credit Agricole Cash Collateral, the "*Credit Agricole Collateral*"), including but not limited to, the Credit Agricole Ships and the Credit Agricole Pledged Accounts (as defined in the DIP Motion), and the proceeds of each of the foregoing.

The priming security interests and liens are senior in all respects to the interests in such property of Credit Agricole or any other creditor other than those holding valid, perfected and not avoidable maritime liens under applicable law for "necessaries" (but excluding any such liens asserted by the Prepetition Lenders). The primed liens shall be primed by and made subject and subordinate to the perfected first priority senior priming liens granted to the DIP Lender, which senior priming liens in favor of the DIP Lender shall also prime any liens granted to provide adequate protection in respect of any of the primed liens.

c. **Junior Priority Liens.** Pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected junior security interest and lien on all assets and causes of action (and the proceeds thereof) of the Obligors (other than Avoidance Actions) subject to valid, perfected and unavoidable liens, including but not limited to the RBS Collateral and, prior to the Credit Agricole Springing DIP Lien becoming effective, the Credit Agricole Collateral (other than the Credit Agricole Cash Collateral).

Any draw upon the DIP Facility for (i) RBS Non-Spot Voyage Expenses, RBS Spot Voyage Expenses and any other expense related to the RBS Ships permitted by this Agreement, including the loans thereunder and any interest owed by any Obligor to the DIP Lender with respect thereto (collectively, the "*RBS DIP Loans*") and (ii) 50% of the Cash Collateral Post-Termination Loans (and any interest owed by any Obligor to the DIP Lender with respect thereto), shall be secured by the following:

a. **First Priority Liens on Unencumbered Property.** Pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected first priority security interest and lien on all Unencumbered DIP Collateral.

b. **Priming Liens on RBS Collateral.** Pursuant to section 364(d) of

the Bankruptcy Code, a perfected first priority priming security interest and lien on the RBS Cash Collateral, provided that in the event that the RBS Cash Collateral is insufficient to satisfy all RBS DIP Loans in full upon the Stated Maturity Date, the RBS DIP Loans shall also be deemed secured by a perfected first priority priming security interest and lien (the "*RBS Springing DIP Lien*") on all other collateral securing the Debtors' obligations under the RBS Credit Agreement (collectively with the RBS Cash Collateral, the "*RBS Collateral*"), including but not limited to, the RBS Ships and the RBS Pledged Accounts (as defined in the DIP Motion), and the proceeds of each of the foregoing.

The priming security interests and liens are senior in all respects to the interests in such property of RBS or any other creditor other than those holding valid, perfected and not avoidable maritime liens under applicable law for "necessaries" (but excluding any such liens asserted by the Prepetition Lenders). The primed liens shall be primed by and made subject and subordinate to the perfected first priority senior priming liens granted to the DIP Lender, which senior priming liens in favor of the DIP Lender shall also prime any liens granted to provide adequate protection in respect of any of the primed liens.

c. **Junior Priority Liens.** Pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected junior security interest and lien on all assets and causes of action (and the proceeds thereof) of the Obligors (other than Avoidance Actions) subject to valid, perfected and unavoidable liens, including but not limited to the Credit Agricole Collateral and, prior to the RBS Springing DIP Lien becoming effective, the RBS Collateral (other than the RBS Cash Collateral).

DIP Facility Administrative Priorities. Pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code, the DIP Facility will be entitled to superpriority administrative expense claim status in the chapter 11 cases for each Obligor, senior in all respects to the adequate protection claims granted to the Prepetition Lenders

Adequate Protection. As defined and provided for in the Interim DIP Order and approved on a final basis in the Final DIP Order.

No Priming. The liens and claims granted to the DIP Lender hereunder and under the Interim DIP Order and Final DIP Order shall at all times be senior in priority and not be subject to, any equal or senior lien or claim, including without limitation, any lien granted under section 363 or 364 of the Bankruptcy Code. The liens and claims granted to RBS under the Final RBS Cash Collateral Order shall at all times be senior in priority and not be subject to, any equal or senior lien or claim (other than the

liens and claims granted to the DIP Lender hereunder), including without limitation, any lien or claim granted under section 363 or 364 of the Bankruptcy Code.

Survival. Until all obligations to the DIP Lender under the DIP Agreement have been repaid in full in accordance with the terms hereof, the Debtors' obligations to the DIP Lender under the DIP Agreement and the liens and claims granted to the DIP Lender under the DIP Agreement, shall survive, and shall not be modified, impaired or discharged by, the entry of any order confirming any plan of reorganization in any case, converting any case to a case under chapter 7, dismissing any of the cases or by any other act or omission.

Carve-Out

The term "*Carve-Out*" means the following items of expenses and fees that are accrued during the period covered by the applicable DIP Order and the Budget but solely to the extent that there exists any deficiency in payment of the following items of expenses and fees after application of the collateral of the Prepetition Lenders in satisfaction of the "carve-out" obligations set forth in the Final Cash Collateral Order (it being expressly understood that the Carve-Out herein is not additive to the carve-out set forth in the Final Cash Collateral Order): (a) the unpaid fees of the Clerk of the Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (b) the aggregate accrued and unpaid fees and expenses payable under Bankruptcy Code sections 330 and 331 to professionals retained pursuant to an order of the Court by the Debtors and the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the "*Committee*") not to exceed the amounts permitted therefor in the Budget and incurred prior to the business day immediately following an Event of Default and delivery of a notice of such default by the DIP Lender (the "*Carve-Out Notice*"); (c) the fees and expenses of a trustee appointed upon conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code not to exceed \$2,500; (d) all allowed fees incurred subsequent to such business day by professionals retained by the Debtors appointed in the Chapter 11 Cases not to exceed \$250,000 in the aggregate; and (e) all allowed fees incurred subsequent to such business day by professionals retained by the Committee not to exceed \$50,000 in the aggregate.

No portion of the Carve-Out under the DIP Facility or the Final Cash Collateral Order, no DIP Facility loan proceeds, no DIP Collateral, and no cash collateral of the DIP Lender or RBS may be used (i) to object to or contest in any action or proceeding, in any manner, or raise any defense to, the validity, perfection, priority, enforceability, or amount of any liens, claims, or security interests of the DIP Lender or RBS, (ii) to assert any claims or causes of action against the DIP Lender, RBS, or any of their agents, advisors, or counsel, including but not limited to, avoidance power claims, or (iii) to seek to amend or modify any of the

rights, liens, security interests, or claims granted to the DIP Lender or RBS.

Covenants

Affirmative Covenants

The Obligors shall provide the DIP Lender within 3 days following the end of each week, a weekly report containing the following information: (a) all receipts and disbursements of the Debtors, (b) a reconciliation of actual receipts and disbursements with those set forth in the Budget on a line-by-line basis showing any variance to the proposed corresponding line item of the Budget, and (c) line-by-line debtor and creditor schedules setting out amounts owed to (creditors) and by (debtors) all vessel transacting parties with detail of the days past due for each debtor and creditor against the agreed payment terms for each vessel transacting party.

The Obligors shall provide the DIP Lender within 15 days following the end of each calendar month, a monthly report containing, with respect to such calendar month: (a) a consolidated profit and loss statement for the period and (b) a consolidated balance sheet for the period.

By daily email, the Debtors shall report to the DIP Lender the location of each vessel that is the subject of the DIP Lender's liens and security interests and the port to which it is headed (the "*Vessel Reports*").

The Debtors and Obligors shall provide the Committee's counsel with all reports and notices provided to the DIP Lender hereunder; provided that the Vessel Reports shall be for attorneys' eyes only.

Negative Covenants

The Obligors covenant not to make draws on the DIP Facility for any other purpose than as described under "Standby Nature; Use of Proceeds" above.

The Obligors covenant that they will not incur or pay any non-operating expenses or any other expenses outside of the ordinary course of their business without the prior approval of the Bankruptcy Court upon reasonable prior notice to the DIP Lender.

No Obligor will enter into a contract or other relationship in respect of any vessels owned or to be owned by an Obligor with:

- (i) a Sanctioned Party or with a party in a Sanctioned Country;
- (ii) any person if that Obligor is aware that the purpose of such contract is for the vessel owned or to be owned by the relevant Obligor to be employed by or in connection with or for the benefit

of, a Sanctioned Party or a party in a Sanctioned Country.

No Obligor will encourage or promote the use of a vessel owned or to be owned by an Obligor, if that Obligor is aware that such use is, by or in connection with or for the benefit of a Sanctioned Party or a party in a Sanctioned Country.

"Sanctioned Country" means the Islamic Republic of Iran, the Republic of the Sudan, the Democratic People's Republic of Korea, the Republic of Cuba, the Syrian Arab Republic and the Union of Burma.

"Sanctioned Party" is a party named in:

- (a) the Specially Designated Nationals List (SDN) issued by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury;
- (b) HM Treasury's Consolidated List of Targets of Financial Sanctions Targets;
- (c) HM's list of Investment Ban Targets;
- (d) the Consolidated List of Persons, Groups and Entities subject to EU Financial Sanctions issued by the EU; or
- (e) any updates, supplements or amendments to, and/or any successor or replacement list of, any of the lists referred to in the foregoing clauses (a) – (d).

Financial Covenants

None.

Representations
and Warranties

None.

Limitations on Use
of DIP Facility

No proceeds of the DIP Facility may be used for the payment of the fees and expenses of any person incurred in challenging, or in relation to the challenge of, any of the DIP Lender's, or (in its capacity as Prepetition Lender) RBS's, liens or claims, or the initiation or prosecution of any claim or action against the DIP Lender or RBS (or any of the DIP Lender's or RBS's officers, directors, employees, members, shareholders, or affiliates), including any claim under chapter 5 of the Bankruptcy Code.

Use of Unrestricted
Cash

Except as otherwise set forth in Standby Nature; Use of Proceeds above, nothing contained in this DIP Agreement is intended to or shall otherwise modify or restrict the Debtors' rights to use Unrestricted Cash pursuant to

section 13 of the Final Credit Agricole Cash Collateral Order or section 14 of the Final RBS Cash Collateral Order.

**Credit Agricole
Reimbursement**

Nothing contained in this DIP Agreement shall restrict or otherwise prohibit the Debtors from performing their obligation under section 16 of the Final Credit Agricole Cash Collateral Order to reimburse Credit Agricole in the amount of \$200,000 for funding the expenses associated with the spot voyage of the Laura from La Skhirra to Bizerte between August 28, 2011 and September 10, 2011.

Events of Default

The events triggering the Stated Maturity Date as described above.

Remedies

Upon the dismissal of any Case, the DIP Lender's commitment under the DIP Facility shall terminate automatically, whereupon all amounts thereunder and under the DIP Agreement (including, without limitation, accrued and unpaid interest) shall become immediately due and payable in full in cash.

Following the occurrence and during the continuation of any other Maturity Triggering Event, the DIP Lender may, on three (3) business days' prior written notice to the Debtors, the Committee, the Office of the United States Trustee, Credit Agricole, and 2002 notice parties that is electronically filed with this Court, terminate its commitment under the DIP Facility, whereupon all amounts thereunder and under the DIP Agreement (including without limitation accrued and unpaid interest) shall become immediately due and payable in full in cash. If any party in interest objects to such proposed termination, such objector's remedy is limited to requesting a hearing before the Bankruptcy Court on one (1) business day's written notice to the DIP Lender for the sole purpose of determining whether a Maturity Triggering Event has occurred and not been cured. Upon the filing of such an objection, the DIP Lender shall not exercise any remedies under the DIP Agreement until the Bankruptcy Court has entered an order with respect to such Maturity Triggering Event.

Milestones

The Debtors shall use their reasonable best efforts to provide to the DIP Lender, on or before November 15, 2011, a term sheet for a proposed plan of reorganization, provided that the failure to deliver such term sheet on or before November 15, 2011, despite the Debtors' best efforts to do so, shall not constitute a Maturity Triggering Event.

On or before December 15, 2011, the Obligors shall file with the Bankruptcy Court a proposed chapter 11 plan in form and substance satisfactory to the DIP Lender (the "*Acceptable Plan*") and a proposed disclosure statement satisfactory to the DIP Lender relating to the Acceptable Plan (the "*Disclosure Statement*").

On or before March 2, 2012, subject to the calendar of the Bankruptcy Court, an order of the Bankruptcy Court in form and substance satisfactory to the DIP Lender shall have been entered approving the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code.

On or before March 30, 2012, subject to the calendar of the Bankruptcy Court, an order of the Bankruptcy Court in form and substance satisfactory to the DIP Lender shall have been entered confirming the Acceptable Plan pursuant to section 1129 of the Bankruptcy Code.

The Acceptable Plan shall have been substantially consummated on or before April 15, 2012.

Repayment

Obligations in respect of any borrowings under the DIP Facility that are used to fund the direct costs of any spot voyage shall be due and payable within three (3) days of receipt by any Obligor of the gross proceeds from such voyage. For the avoidance of doubt, such gross proceeds and the Obligors' rights thereto shall be subject to the liens and claims granted to the DIP Lender under this DIP Agreement and the DIP Orders. All other obligations under the DIP Agreement shall be payable on the Stated Maturity Date in full in cash (except as otherwise agreed to by the DIP Lender).

Joint Liability

The obligations of each of the Obligors under the DIP Facility are joint and several.

Governing Law

New York

Executed as of the date above written.

BORROWER

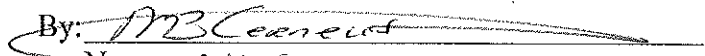
MARCO POLO SEATRADE B.V.



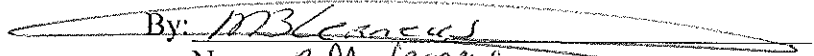
By: B.M. Cernus
Name: B.M. Cernus
Title: Attorney in Fact

GUARANTOR

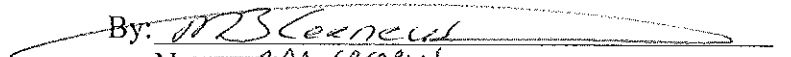
SEARLAND SHIPPING MANAGEMENT B.V.

By: 
Name: B.M. Cernus
Title: Attorney in Fact

MAGELLANO MARINE C.V.

By: 
Name: B.M. Cernus
Title: Attorney in Fact

CARGOSHIP MARITIME B.V.

By: 
Name: B.M. Cernus
Title: Attorney in Fact

DIP LENDER

THE ROYAL BANK OF SCOTLAND plc

By: 

Name:

SCOTT FORDHAM

Title:

DIRECTOR

HOUSTON3850416.5

Exhibit B

NOTICE OF BORROWING

_____, 2011

The Royal Bank of Scotland plc
[5-10 Great Tower St.
London, England EC2M 4RB]
Attention:
Email:
Phone:

Ladies and Gentlemen:

The undersigned, Marco Polo Seatrade B.V. (the "Borrower"), is party to the Standby Senior Secured Debtor in Possession Credit Facility dated as of September 15, 2011 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "DIP Agreement") among the Borrower, the guarantors party thereto and the Royal Bank of Scotland plc, as lender (the "DIP Lender"). The Borrower is a debtor and debtor in possession in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), case number 11-13634 (JMP). The Bankruptcy Court authorized and approved the DIP Agreement pursuant to the Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Adequate Protection and (III) Granting Related Relief (the "Final DIP Order") (Docket No. [____]). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Agreement.

The undersigned gives you irrevocable notice pursuant to Section 1.5 of the Final DIP Order that the undersigned hereby requests a borrowing and in connection with that request sets forth below the information relating to such Borrowing (the "Proposed Borrowing"):

- (a) The business day of the Proposed Borrowing is [_____ , _____] (the "Proposed Borrowing Date").
- (b) The aggregate amount of the Proposed Borrowing is \$ [_____].
- (c) The Borrower's account to which funds are to be disbursed is located at [Name of Bank] and the account number is [_____].

The Borrower hereby certifies that the following statements are true and correct as of the Proposed Borrowing Date:

- (i) The Proposed Borrowing is for a permitted [Credit Agricole Non-Spot Voyage Expense] [**OR**] [RBS Non-Spot Voyage Expense] [**OR**] [Credit Agricole Spot

Voyage Expense] ***[OR]*** [RBS Spot Voyage Expense] ***[OR]*** [The Borrower is requesting a Cash Collateral Post-Termination Loan]. ***[BORROWER TO DELETE THE OPTIONS NOT APPLICABLE TO THE PROPOSED BORROWING.]***

- (ii) No default or event of default has occurred and is continuing under the DIP Agreement on the Proposed Borrowing Date or would result from the Proposed Borrowing or from the application of proceeds thereof.
- (iii) All of the conditions set forth in the DIP Agreement have been satisfied as of the Proposed Borrowing Date.
- (iv) The Proposed Borrowing would not cause the aggregate amount of borrowings made under the DIP Facility to exceed the DIP Lender's total commitment under the DIP Facility.
- (v) The Proposed Borrowing otherwise complies with the terms and conditions of the DIP Agreement.

Very truly yours,

MARCO POLO SEATRADE B.V.

By: _____
Name: _____
Title: _____