

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
FORM 20-F**

(Mark One)

- REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) or (g) OF THE SECURITIES EXCHANGE ACT OF 1934  
OR
- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2013  
OR
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
OR
- SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
Date of event requiring this shell company report  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number 1-32591

**SEASPAN CORPORATION**

(Exact Name of Registrant as Specified in Its Charter)

Republic of The Marshall Islands  
(Jurisdiction of Incorporation or Organization)

Unit 2, 7th Floor, Bupa Centre  
141 Connaught Road West  
Hong Kong  
China

(Address of Principal Executive Offices)

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Telephone: +852 (2540) 1686  
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(Name, Telephone, E-mail and/or Facsimile Number and Address of Company Contact Person)

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

Title of Each Class	Name of Each Exchange on which Registered
Class A Common Shares, par value of \$0.01 per share	New York Stock Exchange
Series C Preferred Shares, par value of \$0.01 per share	New York Stock Exchange
Series D Preferred Shares, par value of \$0.01 per share	New York Stock Exchange
Series E Preferred Shares, par value of \$0.01 per share	New York Stock Exchange

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

None

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act:

None

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

69,208,888 Class A Common Shares, par value of \$0.01 per share  
200,000 Series A Preferred Shares, par value of \$0.01 per share  
13,665,531 Series C Preferred Shares, par value of \$0.01 per share  
5,105,000 Series D Preferred Shares, par value of \$0.01 per share  
nil Series E Preferred Shares, par value of \$0.01 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes  No

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP  International Financial Reporting Standards as Issued by the International Accounting Standards Board  Other

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

Item 17  Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

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## PART I

Our disclosure and analysis in this Annual Report concerning our operations, cash flows, and financial position, including, in particular, the likelihood of our success in developing and expanding our business, include forward-looking statements (as such term is defined in Section 21E of the Securities Exchange Act of 1934, as amended). Statements that are predictive in nature, that depend upon or refer to future events or conditions, or that include words such as “expects,” “anticipates,” “intends,” “plans,” “believes,” “estimates,” “projects,” “forecasts,” “will,” “may,” “potential,” “should” and similar expressions are forward-looking statements. Although these statements are based upon assumptions we believe to be reasonable based upon available information, including projections of revenues, operating margins, earnings, cash flow, working capital and capital expenditures, they are subject to risks and uncertainties that are described more fully in this Annual Report in the section titled “Risk Factors.” When used in this Annual Report, the term “ROFR Vessels” refers to the five 10000 TEU vessels we ordered in September 2013, and the one 10000 TEU vessel we ordered in December 2013 to be chartered to Mitsui O.S.K. Lines, Ltd under long-term time charters. The ROFR Vessels are scheduled for delivery in 2015 and 2016 and remain subject to allocation under our right of first refusal agreement with Greater China Intermodal Investments LLC, or GCI, which is our investment partnership established with an affiliate of global asset manager The Carlyle Group, or Carlyle, and others. For purposes of this Annual Report and unless otherwise set forth herein, we have assumed that, following allocation under the right of first refusal, we will own three of the vessels and GCI will own the remaining three vessels. The ultimate allocation of the vessels between us and GCI may differ from our assumption.

These forward-looking statements represent our estimates and assumptions only as of the date of this Annual Report and are not intended to give any assurance as to future results. As a result, you are cautioned not to rely on any forward-looking statements. Forward-looking statements appear in a number of places in this Annual Report. These statements include, among others:

- future operating or financial results;
- future growth prospects;
- our business strategy and other plans and objectives for future operations;
- our expectations relating to dividend payments and our ability to make such payments;
- future dividends, including the amount and timing of payment, for the four quarters of 2014;
- potential acquisitions, vessel financing arrangements and other investments, and our expected benefits from such transactions, including any acquisition opportunities, vessel financing arrangements and related benefits relating to our venture with GCI;
- the effects of the acquisition of Seaspan Management Services Limited, or our Manager, on our operations and results;
- the effects of grants of stock appreciation rights to our chief executive officer and certain members of management on our general and administrative expenses;
- the amount of any payments to the former owners of our Manager related to fleet growth;
- operating expenses, availability of crew, number of off-hire days, dry-docking requirements and insurance costs;
- general market conditions and shipping market trends, including charter rates and factors affecting supply and demand;
- our financial condition and liquidity, including our ability to borrow funds under our credit facilities, to refinance our existing facilities and to obtain additional financing in the future to fund capital expenditures, acquisitions and other general corporate activities;
- estimated future capital expenditures needed to preserve our capital base;

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- our expectations about the availability of vessels to purchase, the time that it may take to construct new vessels, the delivery dates of new vessels, the commencement of service of new vessels under long-term time charter contracts or the useful lives of our vessels;
- our continued ability to enter into primarily long-term, fixed-rate time charters with our existing customers or new customers;
- the allocation between us and GCI of the ROFR Vessels;
- the repurchase plan for our Series C preferred shares;
- our ability to leverage to our advantage our relationships and reputation in the containership industry;
- our expectations as to any impairment of our vessels;
- the future valuation of goodwill;
- changes in governmental rules and regulations or actions taken by regulatory authorities, and the effect of governmental regulations on our business;
- the financial condition of our shipbuilders, customers, lenders, refund guarantors and other counterparties and their ability to perform their obligations under their agreements with us;
- the economic downturn and crisis in the global financial markets and potential negative effects of any recurrence of such disruptions on our customers' ability to charter our vessels and pay for our services;
- taxation of our company and of distributions to our shareholders;
- our exemption from tax on our U.S. source international transportation income;
- potential liability from future litigation; and
- other factors discussed in the section titled "Risk Factors".

Forward-looking statements in this Annual Report are estimates and assumptions reflecting the judgment of senior management and involve known and unknown risks and uncertainties. These forward-looking statements are based upon a number of assumptions and estimates that are inherently subject to significant uncertainties and contingencies, many of which are beyond our control. Actual results may differ materially from those expressed or implied by such forward-looking statements. Accordingly, these forward-looking statements should be considered in light of various important factors, including, but not limited to, those set forth in "Item 3D. Risk Factors".

We do not intend to revise any forward-looking statements in order to reflect any change in our expectations or events or circumstances that may subsequently arise. We expressly disclaim any obligation to update or revise any of these forward-looking statements, whether because of future events, new information, a change in our views or expectations, or otherwise. You should carefully review and consider the various disclosures included in this Annual Report and in our other filings made with the Securities and Exchange Commission that attempt to advise interested parties of the risks and factors that may affect our business, prospects and results of operations.

Unless we otherwise specify, when used in this Annual Report, the terms "Seaspan", the "Company", "we," "our" and "us" refer to Seaspan Corporation and its subsidiaries. References to our Manager are to Seaspan Management Services Limited and its wholly owned subsidiaries (including Seaspan Ship Management Ltd., or SSML), which provide all of our technical, administrative and strategic services. In January 2012, we acquired our Manager.

References to shipbuilders are as follows:

<u>Shipbuilder</u>	<u>Reference</u>
CSBC Corporation, Taiwan	CSBC
Hyundai Heavy Industries Co., Ltd.	HHI
Jiangsu New Yangzi Shipbuilding Co., Ltd.	New Jiangsu
Jiangsu Yangzi Xinfu Shipbuilding Co., Ltd.	Jiangsu Xinfu

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References to customers are as follows:

<u>Customer</u>	<u>Reference</u>
China Shipping Container Lines (Asia) Co., Ltd. <sup>(1)</sup>	CSCL Asia
Compañía Sud Americana De Vapores S.A.	CSAV
COSCO Container Lines Co., Ltd. <sup>(2)</sup>	COSCON
Hanjin Shipping Co., Ltd.	Hanjin
Hapag-Lloyd AG	Hapag-Lloyd
Hapag-Lloyd USA, LLC	HL USA
Kawasaki Kisen Kaisha Ltd.	K-Line
Mediterranean Shipping Company S.A.	MSC
Mitsui O.S.K. Lines, Ltd	MOL
Yang Ming Marine Transport Corp.	Yang Ming Marine

<sup>(1)</sup> A subsidiary of China Shipping Container Lines Co., Ltd., or CSCL

<sup>(2)</sup> A subsidiary of China COSCO Holdings Company Limited

We use the term “twenty foot equivalent unit,” or “TEU,” the international standard measure of containers, in describing the capacity of our containerships, which are also referred to as our vessels. We identify the classes of our vessels by the approximate average TEU capacity of the vessels in each class. However, the actual TEU capacity of a vessel may differ from the approximate average TEU capacity of the vessels in such vessel’s class.

### **Item 1. Identity of Directors, Senior Management and Advisors**

Not applicable.

### **Item 2. Offer Statistics and Expected Timetable**

Not applicable.

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**Item 3. Key Information**

**A. Selected Financial Data**

Our consolidated financial statements are prepared in accordance with United States generally accepted accounting principles, or U.S. GAAP.

	Year Ended December 31,				
	2013	2012	2011	2010	2009
<b>Statements of operations data (in thousands of USD):</b>					
Revenue	\$ 677,090	\$ 660,794	\$ 565,610	\$ 407,211	\$ 285,594
Operating expenses:					
Ship operating	150,105	138,655	135,696	108,098	80,162
Depreciation and amortization	172,459	165,541	140,354	101,026	70,554
General and administrative	34,783	24,617	16,818	9,612	7,968
Operating lease	4,388	3,145	—	—	—
(Gain) loss on vessels	—	(9,773)	16,237	—	—
Operating earnings	315,355	338,609	256,505	188,475	126,910
Other expenses (income):					
Interest expense	60,496	71,996	50,849	28,801	21,194
Interest income	(2,045)	(1,190)	(854)	(60)	(311)
Undrawn credit facility fee	2,725	1,516	4,282	4,515	4,641
Amortization of deferred charges	9,477	8,574	3,421	1,933	1,484
Refinancing expenses and costs	4,038	—	—	—	—
Change in fair value of financial instruments <sup>(1)</sup>	(60,504)	135,998	281,027	241,033	(46,450)
Equity loss on investment	670	259	1,180	—	—
Other expenses	1,470	151	—	—	1,100
Net earnings (loss)	<u>\$ 299,028</u>	<u>\$ 121,305</u>	<u>\$ (83,400)</u>	<u>\$ (87,747)</u>	<u>\$ 145,252</u>
<b>Common shares outstanding (at year end):</b>	69,208,088	63,042,217	69,620,060	68,601,240	67,734,811
<b>Per share data (in USD):</b>					
Basic earnings (loss) per Class A common share	\$ 3.36	\$ 0.84	\$ (2.04)	\$ (1.70)	\$ 1.94
Diluted earnings (loss) per Class A common share	\$ 2.93	\$ 0.81	\$ (2.04)	\$ (1.70)	\$ 1.75
Dividends paid per Class A common share	\$ 1.188	\$ 0.938	\$ 0.688	\$ 0.450	\$ 0.775

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	Year Ended December 31,				
	2013	2012	2011	2010	2009
<b>Statements of cash flows data (in thousands of USD):</b>					
Cash flows provided by (used in):					
Operating activities	\$ 328,644	\$ 311,183	\$ 239,864	\$ 153,587	\$ 94,576
Investing activities <sup>(2)</sup>	(296,133)	(229,564)	(625,253)	(782,448)	(409,520)
Financing activities	62,491	(181,364)	832,293	529,680	312,059
<b>Selected balance sheet data (at year end, in thousands of USD):</b>					
Cash and cash equivalents <sup>(2)</sup>	\$ 476,380	\$ 381,378	\$ 481,123	\$ 34,219	\$ 133,400
Current assets <sup>(2)</sup>	600,113	463,930	519,998	46,764	146,053
Vessels <sup>(3)</sup>	4,992,271	4,863,273	4,697,249	4,210,872	3,485,350
Deferred charges	53,971	43,816	45,917	37,607	21,667
Gross investment in lease	58,953	79,821	95,798	—	—
Goodwill	75,321	75,321	—	—	—
Other assets <sup>(2)</sup>	106,944	83,661	88,754	81,985	11,377
Fair value of financial instruments, asset	60,188	41,031	—	—	—
Total assets	5,947,761	5,650,853	5,447,716	4,377,228	3,664,447
Current liabilities (excluding current portion of long-term debt and other long-term liabilities)	93,317	75,108	70,657	39,090	30,692
Current portion of long-term debt	388,159	66,656	81,482	—	—
Current portion of other long-term liabilities	38,930	38,542	37,649	19,096	—
Long-term deferred revenue	4,143	7,903	12,503	—	—
Long-term debt	2,853,459	3,024,288	2,914,247	2,396,771	1,883,146
Other long-term liabilities	572,673	613,049	583,263	524,716	410,598
Fair value of financial instruments, liability	425,375	606,740	564,490	407,819	280,445
Share capital	882	804	838	691	679
Total shareholders' equity	1,571,705	1,218,567	1,183,425	989,736	1,059,566
<b>Other data:</b>					
Number of vessels in operation at year end	71	69	65	55	42
TEU capacity at year end	414,300	405,100	352,700	265,300	187,456
Fleet utilization <sup>(4)</sup>	98.0%	98.9%	99.3%	98.7%	99.7%

- (1) All of our interest rate swap agreements and swaption agreements are marked to market and the changes in the fair value of these instruments are recorded in earnings.
- (2) The balance sheet and cash flow data for 2012 has been recast to separately present balances of and movement in restricted cash, included in other assets, from cash and cash equivalents. This reclassification, which is immaterial, had no impact on the consolidated statement of operations data.
- (3) Vessel amounts include the net book value of vessels in operation and deposits on vessels under construction.
- (4) Fleet utilization is based on number of operating days divided by the number of ownership days during the year.

**B. Capitalization and Indebtedness**

Not applicable.

**C. Reasons for the Offer and Use of Proceeds**

Not applicable.

**D. Risk Factors**

Some of the following risks relate principally to the industry in which we operate and to our business in general. Other risks relate principally to the securities market and to ownership of our shares. The occurrence of any of the events described in this section could significantly and negatively affect our business, financial condition, operating results and ability to pay dividends on our shares or redeem our preferred shares, or the trading price of our shares.

**Risks Inherent in Our Business**

*Our ability to obtain additional debt financing for future acquisitions of vessels may depend upon the performance of our then existing charters and the creditworthiness of our customers.*

The actual or perceived credit quality of our customers, and any defaults by them, may materially affect our ability to obtain funds we may require to purchase vessels in the future or for general corporate purposes, or may significantly increase our costs of obtaining such funds. Our inability to obtain additional financing at attractive rates, if at all, could harm our business, results of operations, financial condition and ability to pay dividends.

*We will be required to make substantial capital expenditures to complete the acquisition of our newbuilding containerships and any additional vessels we acquire in the future, which may result in increased financial leverage, dilution of our equity holders' interests or decreased ability to pay dividends on our shares or redeem our preferred shares.*

As of February 28, 2014, we have contracted to purchase an additional 16 newbuilding containerships with scheduled delivery dates through May 2016. As of February 28, 2014, the total purchase price of the 16 containerships remaining to be paid was estimated to be approximately \$1.3 billion. Our obligation to purchase the 16 containerships is not conditional upon our ability to obtain financing for such purchases. We intend to significantly expand the size of our fleet beyond our existing contracted vessel program. The acquisition of additional newbuilding or existing containerships or businesses will require significant additional capital expenditures.

To fund existing and future capital expenditures, we intend to use cash from operations, incur borrowings, raise capital through the sale of additional securities, enter into other sale-leaseback or financing arrangements, or use a combination of these methods. Use of cash from operations may reduce cash available to pay dividends to our shareholders or to redeem our preferred shares. Incurring additional debt may significantly increase our interest expense and financial leverage, and issuing additional equity securities may result in significant shareholder dilution, which, subject to the relative priority of our equity securities, could negatively affect our ability to pay dividends. Our ability to obtain or access bank financing or to access the capital markets for future debt or equity financings may be limited by our financial condition at the time of any such financing or offering and covenants in our credit facilities, as well as by adverse market conditions. To the extent that we enter into newbuilding or other vessel acquisition contracts prior to entering into charters for such vessels, our ability to obtain new financing for such vessels may be limited and we may be required to fund all or a portion of the cost of such acquisitions with our existing capital resources. Our failure to obtain funds for our capital expenditures at attractive rates, if at all, could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

*Over the long term, we will be required to make substantial capital expenditures to preserve the operating capacity of our fleet, which could negatively affect our ability to pay dividends on our shares or redeem our preferred shares.*

We must make substantial capital expenditures over the long-term to preserve the operating capacity of our fleet. If we do not retain funds in our business in amounts necessary to preserve the operating capacity of our fleet, over the long-term our fleet and related charter revenues may diminish and we will not be able to continue



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to refinance our indebtedness or maintain our payment of dividends. At some time in the future, as our fleet ages, we will likely need to retain additional funds, on an annual basis, to provide reasonable assurance of maintaining the operating capacity of our fleet over the long-term. There are several factors that will not be determinable for a number of years, but which our board of directors will consider in future decisions about the amount of funds to be retained in our business to preserve our capital base. To the extent we use or retain available funds to make capital expenditures to preserve the operating capacity of our fleet, there will be less funds available to pay dividends on our shares or redeem our preferred shares.

***We may experience greater operating cost volatility as a result of the acquisition of our Manager.***

In January 2012, we acquired our Manager. The acquisition of our Manager has increased our control over access to the services our Manager provides on a long-term basis. We previously paid fees to our Manager for technical services on a fixed basis, which fees were adjusted every three years. Technical services include managing crewing and day-to-day vessel operations, arranging general vessel maintenance, ensuring regulatory compliance and classification society compliance, purchasing stores, supplies, spares and lubricating oil, and attending to all other technical matters necessary to run our fleet. Prior to our acquisition of our Manager, we paid our Manager fixed fees for vessel construction supervision services. As a result of the acquisition of our Manager, our operating costs vary more directly with the actual cost, set by the market, of providing these services for our fleet. Our ship operating expenses have been increasing due primarily to higher crewing compensation costs and additional expenses as vessels age. Increased costs for technical services, including crewing, or construction supervision services, could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

***Restrictive covenants in our credit and lease facilities and in our preferred shares impose financial and other restrictions on us, which may limit, among other things, our ability to borrow funds under such facilities and our ability to pay dividends on our shares or redeem our preferred shares.***

To borrow funds under our credit facilities, we must, among other things, meet specified financial covenants. For example, under certain of our existing credit facilities, we are prohibited from incurring total borrowings in an amount greater than 65% of our total assets and we must also ensure that certain interest coverage, and interest and principal coverage ratios are met. Total borrowings and total assets are terms defined in our credit facilities and differ from those used in preparing our consolidated financial statements, which are prepared in accordance with U.S. GAAP. To the extent we are not able to satisfy the requirements in our credit facilities, we may not be able to borrow additional funds under the facilities, and if we are not in compliance with specified financial ratios or other requirements, we may be in breach of the facilities, which could require us to repay outstanding amounts. We may also be required to prepay amounts borrowed under our credit facilities if we, or in certain circumstances, our customers, experience a change of control.

Our credit and lease facilities impose operating and financial restrictions on us and require us to comply with certain financial covenants. These restrictions and covenants limit our ability to, among other things:

- pay dividends if an event of default has occurred and is continuing under one of our credit facilities or if the payment of the dividend would result in an event of default;
- incur additional indebtedness under the credit facilities or otherwise, including through the issuance of guarantees;
- create liens on our assets;
- sell our vessels without replacing such vessels or prepaying a portion of our loan; or
- merge or consolidate with, or transfer all or substantially all our assets to, another person.

Accordingly, we may need to seek consent from our lenders or lessors in order to engage in some corporate actions. The interests of our lenders or lessors may be different from ours, and we may be unable to obtain our

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lenders' or lessors' consent when and if needed. In addition, we are subject to covenants for our preferred shares. If we do not comply with the restrictions and covenants in our credit or lease facilities or in our preferred shares, our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares will be harmed.

***We may not be able to timely repay or be able to refinance indebtedness incurred under our credit and lease facilities.***

We intend to finance a substantial portion of our fleet expansion with secured indebtedness drawn under our existing and future credit and lease facilities. We have significant repayment obligations under our credit and lease facilities, both prior to and at maturity. Please read "Item 5. Operating and Financial Review and Prospects—A. General—Management's Discussion and Analysis of Financial Condition and Results of Operations—2013 Developments—2013 Loan Facility Transactions."

If we are not able to refinance outstanding indebtedness at an interest rate or on terms acceptable to us, or at all, we will have to dedicate a significant portion of our cash flow from operations to repay such indebtedness, which could reduce our ability to pay dividends on our shares, redeem our preferred shares, or may require us to delay certain business activities or capital expenditures. If we are not able to satisfy these obligations (whether or not refinanced) under our credit or lease facilities with cash flow from operations, we may have to seek to restructure our indebtedness, undertake alternative financing plans (such as additional debt or equity capital) or sell assets, which may not be available on terms attractive to us or at all. If we are unable to meet our debt obligations, or if we otherwise default under our credit facilities, our lenders could declare all outstanding indebtedness to be immediately due and payable and foreclose on the vessels securing such indebtedness. The market value of our vessels, which fluctuates with market conditions, will also affect our ability to obtain financing or refinancing, as our vessels serve as collateral for loans. Lower vessel values at the time of any financing or refinancing may reduce the amounts of funds we may borrow.

***Our substantial debt levels and vessel lease obligations may limit our flexibility in obtaining additional financing and in pursuing other business opportunities.***

As of December 31, 2013, we had approximately \$3.2 billion outstanding under our credit facilities and capital lease obligations of approximately \$611.6 million, including approximately \$1.0 billion under our \$1.0 billion credit facility, or the Facility, which we refinanced in January 2014. Please read "Item 5. Operating and Financial Review and Prospects—A. General—Management's Discussion and Analysis of Financial Condition and Results of Operations—2013 Developments—2013 Loan Facility Transactions". The amounts outstanding under our credit facilities and our lease obligations will further increase following the completion of our acquisition of the 16 newbuilding containerships that we have contracted to purchase as of February 28, 2014. For the 16 newbuilding containerships that we have contracted to purchase, we have entered into additional credit facilities for six of the vessels and plan to enter into additional credit facilities or lease obligations to finance the remaining 10 vessels. Our level of debt and vessel lease obligations could have important consequences to us, including the following:

- our ability to obtain additional financing, if necessary, for working capital, capital expenditures, acquisitions or other purposes may be impaired or such financing may not be available on favorable terms;
- we may need to use a substantial portion of our cash from operations to make principal and interest payments on our debt or make our lease payments, reducing the funds that would otherwise be available for operations, future business opportunities and dividends to our shareholders;
- our debt level could make us more vulnerable to competitive pressures or a downturn in our business or the economy generally than our competitors with less debt; and
- our debt level may limit our flexibility in responding to changing business and economic conditions.

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Our ability to service our debt and vessel lease obligations will depend upon, among other things, our financial and operating performance, which will be affected by prevailing economic conditions and financial, business, regulatory and other factors, some of which are beyond our control. If our results of operations are not sufficient to service our current or future indebtedness and vessel lease obligations, we will be forced to take actions such as reducing dividends, reducing or delaying our business activities, acquisitions, investments or capital expenditures, selling assets, restructuring or refinancing our debt, or seeking additional equity capital or bankruptcy protection. We may not be able to effect any of these remedies on satisfactory terms, or at all.

***Future disruptions in global financial markets and economic conditions or changes in lending practices may harm our ability to obtain financing on acceptable terms, which could hinder or prevent us from meeting our capital needs.***

Global financial markets and economic conditions were disrupted and volatile following the events of 2007 and 2008. During this time, the debt and equity capital markets became exceedingly distressed, and it was difficult generally to obtain financing and the cost of any available financing increased significantly. While markets have stabilized since this time, if global financial markets and economic conditions significantly deteriorate in the future, we may be unable to obtain adequate funding under our credit facilities because our lenders may be unwilling or unable to meet their funding obligations or we may not be able to obtain funds at the interest rate agreed in our credit facilities due to market disruption events or increased costs. Such deterioration may also cause lenders to be unwilling to provide us with new financing to the extent needed to fund our ongoing operations and growth. In addition, in recent years, the number of lenders for shipping companies has decreased and ship-funding lenders have generally lowered their loan-to-value ratios and shortened loan terms and accelerated repayment schedules. These factors may hinder our ability to access financing.

If financing or refinancing is not available when needed, or is available only on unfavorable terms, we may be unable to meet our obligations as they come due or we may be unable to implement our growth strategy, complete acquisitions or otherwise take advantage of business opportunities or respond to competitive pressures, any of which could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

***The business and activity levels of many of our customers, shipbuilders and third parties with which we do business and their respective abilities to fulfill their obligations under agreements with us, including payments for the charter of our vessels, may be hindered by any deterioration in the credit markets.***

Our current vessels are, and we anticipate that those that we acquire in the future will be, primarily chartered to customers under long-term time charters. Payments to us under those charters currently, and are expected to continue to, account for nearly all of our revenue. Many of our customers finance their activities through cash flow from operations, the incurrence of debt or the issuance of equity. During the recent financial and economic crises, there occurred a significant decline in the credit markets and the availability of credit and other forms of financing. Additionally, the equity value of many of our customers substantially declined during that period. The combination of a reduction of cash flow resulting from declines in world trade, a reduction in borrowing bases under reserve-based credit facilities and the limited or lack of availability of debt or equity financing potentially reduced the ability of our customers to make charter payments to us. Any recurrence of the significant financial and economic disruption of the last few years could result in similar effects on our customers or other third parties with which we do business, which in turn could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

Similarly, the shipbuilders with whom we have contracted to construct newbuilding vessels may be affected by future instability of the financial markets and other market conditions, including with respect to the fluctuating price of commodities and currency exchange rates. In addition, the refund guarantors under our shipbuilding contracts (which are banks, financial institutions and other credit agencies that guarantee, under certain circumstances, the repayment of installment payments we make to the shipbuilders), may also be

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negatively affected by adverse financial market conditions in the same manner as our lenders and, as a result, be unable or unwilling to meet their obligations to us due to their own financial condition. If our shipbuilders or refund guarantors are unable or unwilling to meet their obligations to us, this will harm our fleet expansion and may harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

***We will be paying all costs for the newbuilding vessels that we have contracted to purchase and have incurred borrowings to fund, in part, installment payments under the relevant shipbuilding contracts. If any of these vessels are not delivered as contemplated, we may be required to refund all or a portion of the amounts we borrowed.***

The construction period currently required for a newbuilding containership similar to those we have ordered is approximately one year. For each of the newbuilding vessels that we have agreed to purchase, we are required to make certain payment installments prior to a final installment payment, which final installment payment generally is approximately 60-70% of the total vessel purchase price. We have entered into long-term credit facilities to partially fund the construction of our newbuilding vessels and plan to enter into additional credit facilities or lease obligations to fund the remaining vessels that we have contracted to purchase. We are required to make these payments to the shipbuilder and to pay the debt service cost under the credit facilities in advance of receiving any revenue under the time charters for the vessels, which commence following delivery of the vessels.

If a shipbuilder is unable to deliver a vessel or if we or one of our customers rejects a vessel, we may be required to repay a portion of the outstanding balance of the relevant credit facility. Such an outcome could harm our business, results of operations, financial condition and ability to pay dividends on our shares, or redeem our preferred shares.

***We derive our revenue from a limited number of customers, and the loss of any of such customers would harm our revenue and cash flow.***

The following table shows, as at December 31, 2013, the number of vessels in our operating fleet that were chartered to our ten customers and the percentage of our total revenue attributable to the charters with such customers for the year ended December 31, 2013:

Customer	Number of Vessels in our Operating Fleet Chartered to Such Customer	Percentage of Total Revenue for the Year Ended December 31, 2013
COSCON	18	44.6%
CSCL Asia	18	19.9%
K-Line	7	11.2%
Other	28	24.3%
Total	71	100.0%

The majority of our vessels are chartered under long-term time charters, and customer payments are our primary source of operating cash flow. The loss of any of these charters or any material decrease in payments thereunder could materially harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

Under some circumstances, we could lose a time charter or payments under the charter if:

- the customer fails to make charter payments because of its financial inability, disagreements with us, defaults on a payment or otherwise;
- at the time of delivery, the vessel subject to the time charter differs in its specifications from those agreed upon under the shipbuilding contract; or
- the customer exercises certain limited rights to terminate the charter, including (a) if the ship fails to meet certain guaranteed speed and fuel consumption requirements and we are unable to rectify the

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situation or otherwise reach a mutually acceptable settlement and (b) under some charters, if we undertake a change of control to which the customer does not consent or if the vessel is unavailable for operation for certain reasons for a specified period of time, or if delivery of a newbuilding is delayed for a prolonged period.

Any recurrence of the significant financial and economic disruption of the last few years could result in our customers being unable to make charter payments to us in the future or seeking to amend the terms of our charters. Any such event could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

### ***Our growth depends upon continued growth in demand for containerships.***

Our growth will generally depend on continued growth and renewal in world and regional demand for containership chartering. The ocean-going shipping container industry is both cyclical and volatile in terms of charter hire rates and profitability. Short-term containership charter rates have fluctuated significantly during the last five years, and are expected to continue to fluctuate in the future. Fluctuations in containership charter rates result from changes in the supply and demand for vessel capacity which are driven by global fleet capacity and utilization and changes in the supply and demand for the major products internationally transported by containerships. The factors affecting the supply and demand for containerships, and the nature, timing and degree of changes in industry conditions are unpredictable.

Factors that influence demand for containership capacity include, among others:

- supply and demand for products suitable for shipping in containers;
- changes in global production of products transported by containerships;
- seaborne and other transportation patterns, including the distances over which container cargoes are transported and changes in such patterns and distances;
- the globalization of manufacturing;
- global and regional economic and political conditions;
- developments in international trade;
- environmental and other regulatory developments;
- currency exchange rates; and
- weather.

Factors that influence the supply of containership capacity include, among others:

- the number of newbuilding orders and deliveries;
- the extent of newbuilding vessel deferrals;
- the scrapping rate of containerships;
- newbuilding prices and containership owner access to capital to finance the construction of newbuildings;
- charter rates and the price of steel and other raw materials;
- changes in environmental and other regulations that may limit the useful life of containerships;
- the number of containerships that are slow-steaming or extra slow-steaming to conserve fuel;
- the number of containerships that are idle;
- port congestion and canal closures; and
- demand for fleet renewal.

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Our ability to recharter our containerships upon the expiration or termination of their current time charters and the charter rates payable under any renewal or replacement charters will depend upon, among other things, the then current state of the containership market. As of February 28, 2014, one of our vessels is currently off-charter. If charter rates are low when our existing time charters expire, we may be required to recharter our vessels at reduced rates or even possibly a rate whereby we incur a loss, which would harm our results of operations. Alternatively, we may determine to leave such vessels off-charter. The same issues will exist if we acquire additional vessels and seek to charter them under long-term time charter arrangements as part of our growth strategy.

***The majority of our vessels are chartered to Chinese customers and certain of our shipbuilders are based in China. The legal system in China is not fully developed and has inherent uncertainties that could limit the legal protections available to us, and the geopolitical risks associated with chartering vessels to Chinese customers and constructing vessels in China could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.***

As of December 31, 2013, a total of 18 of the 87 vessels in our current and contracted fleet were chartered to CSCL Asia, and 18 vessels are chartered to COSCON. CSCL Asia and COSCON are subsidiaries of Chinese companies. Our vessels that are chartered to Chinese customers and our eight newbuilding vessels that are being constructed in China are subject to various risks as a result of uncertainties in Chinese law, including (a) the risk of loss of revenues, property or equipment as a result of expropriation, nationalization, changes in laws, exchange controls, war, insurrection, civil unrest, strikes or other political risks and (b) being subject to foreign laws and legal systems and the exclusive jurisdiction of Chinese courts and tribunals.

The Chinese legal system is based on written statutes and their legal interpretation by the standing Committee of the National People's Congress. Prior court decisions may be cited for reference but have limited precedential value. Since 1979, the Chinese government has been developing a comprehensive system of laws and regulations dealing with economic matters such as foreign investment, corporate organization and governance, commerce, taxation and trade. However, because these laws and regulations are relatively new, and because of the limited volume of published cases and their non-binding nature, interpretation and enforcement of these laws and regulations involve uncertainties.

If we are required to commence legal proceedings against a lender, a customer or a charter guarantor based in China with respect to the provisions of a credit facility, a time charter or a time charter guarantee, we may have difficulties in enforcing any judgment obtained in such proceedings in China. Similarly, our shipbuilders based in China provide warranties against certain defects for the vessels that they will construct for us and we have refund guarantees from a Chinese financial institution for installment payments that we will make to the shipbuilders. Although the shipbuilding contracts and refund guarantees are governed by English law, if we are required to commence legal proceedings against these shipbuilders or against the refund guarantor, we may have difficulties enforcing in China any judgment obtained in such proceeding.

***A decrease in the level of China's export of goods or an increase in trade protectionism will harm our customers' business and, in turn, harm our business, results of operations and ability to pay dividends on our shares or redeem our preferred shares.***

Most of our customers' containership business revenue is derived from the shipment of goods from the Asia Pacific region, primarily China, to various overseas export markets, including the United States and Europe. Any reduction in or hindrance to the output of China-based exporters could negatively affect the growth rate of China's exports and our customers' business. For instance, the government of China has implemented economic policies aimed at increasing domestic consumption of Chinese-made goods. This may reduce the supply of goods available for export and may, in turn, result in a decrease in shipping demand.

Our international operations expose us to the risk that increased trade protectionism will harm our business. If global economic challenges exist, governments may turn to trade barriers to protect their domestic industries

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against foreign imports, thereby depressing shipping demand. Specifically, increasing trade protectionism in the markets that our customers serve has caused and may continue to cause an increase in (a) the cost of goods exported from China, (b) the length of time required to deliver goods from China and (c) the risks associated with exporting goods from China. Such increases may also affect the quantity of goods to be shipped, shipping time schedules, voyage costs and other associated costs.

Any increased trade barriers or restrictions on trade, especially trade with China and Asia, would harm our customers' business, results of operations and financial condition and could thereby affect their ability to make timely charter hire payments to us and to renew and increase the number of their time charters with us. This could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

***Adverse economic conditions globally, and especially in the Asia Pacific region, the European Union or the United States, could harm our business, financial condition, results of operations and ability to pay dividends on our shares or redeem our preferred shares.***

The global economy recently experienced disruption and volatility following adverse changes in global capital markets. The deterioration in the global economy caused, and any renewed deterioration may cause, a decrease in worldwide demand for certain goods and shipping. Economic instability could harm our business, financial condition, results of operations and ability to pay dividends on our shares or redeem our preferred shares.

In particular, because a significant number of the port calls made by our vessels involves the loading or discharging of containerships in ports in the Asia Pacific region, economic turmoil in that region may exacerbate the effect of any economic slowdown on us. China has been one of the world's fastest growing economies in terms of gross domestic product, which has increased the demand for shipping. However, China's high rate of real GDP growth is forecasted to decline during 2014. Additionally, the European Union and certain of its member states are facing significant economic and political challenges. Our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares will likely be harmed by any significant economic downturn in the Asia Pacific region, including China, or in the European Union or the United States.

***Our growth and our ability to recharter our vessels depends on our ability to expand relationships with existing customers and develop relationships with new customers, for which we will face substantial competition.***

We intend to acquire additional containerships as market conditions allow in conjunction with entering primarily into additional long-term, fixed-rate time charters for such ships, and to recharter our existing vessels following the expiration of their current long-term time charters to the extent we retain those vessels in our fleet. As of February 28, 2014, one of our vessels is currently off-charter. The process of obtaining new long-term time charters is highly competitive and generally involves an intensive screening process and competitive bids, and often extends for several months. Containership charters are awarded based upon a variety of factors relating to the vessel operator, including, among others:

- shipping industry relationships and reputation for customer service and safety;
- container shipping experience and quality of ship operations, including cost effectiveness;
- quality and experience of seafaring crew;
- the ability to finance containerships at competitive rates and the shipowner's financial stability generally;
- relationships with shipyards and the ability to get suitable berths;
- construction management experience, including the ability to obtain on-time delivery of new ships according to customer specifications;

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- willingness to accept operational risks pursuant to the charter, such as allowing termination of the charter for force majeure events; and
- competitiveness of the bid in terms of overall price.

Competition for providing new containerships for chartering purposes comes from a number of experienced shipping companies, including direct competition from other independent charter owners and indirect competition from state-sponsored and other major entities with their own fleets. Some of our competitors have significantly greater financial resources than we do and can operate larger fleets and may be able to offer better charter rates. An increasing number of marine transportation companies have entered the containership sector, including many with strong reputations and extensive resources and experience in the marine transportation industry. This increased competition may cause greater price competition for time charters. As a result of these factors, we may be unable to expand our relationships with existing customers or to develop relationships with new customers on a profitable basis, if at all, which would harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

***If a more active short-term or spot containership market develops, we may have more difficulty entering into long-term, fixed-rate time charters and our existing customers may begin to pressure us to reduce our charter rates.***

One of our principal strategies is to enter into long-term, fixed-rate time charters. As more vessels become available for the spot or short-term market, we may have difficulty entering into additional long-term, fixed-rate time charters for our vessels due to the increased supply of vessels and possibly lower rates in the spot market. As a result, our cash flow may be subject to instability in the long term. A more active short-term or spot market may require us to enter into charters based on changing market prices, as opposed to contracts based on a fixed rate, which could result in a decrease in our cash flow in periods when the market price for containerships is depressed or insufficient funds are available to cover our financing costs for related vessels. In addition, the development of an active short-term or spot containership market could affect rates under our existing time charters as our current customers may begin to pressure us to reduce our rates.

***We may be unable to make or realize expected benefits from acquisitions or investments, and implementing our growth strategy through acquisitions of existing businesses or vessels or investments in other containership businesses may harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.***

Our growth strategy includes selectively acquiring new containerships, existing containerships, containership-related assets and containership businesses as market conditions allow. We may also invest in other containership businesses. Factors that may limit the number of acquisition or investment opportunities in the containership industry include the ability to access capital to fund such transactions, the overall economic environment and the status of global trade and the ability to secure long-term, fixed-rate charters.

Any acquisition of or investment in a vessel or business, including our January 2012 acquisition of our Manager, may not be profitable to us at or after the time we acquire or make it and may not generate cash flow sufficient to justify our investment. In addition, our acquisition growth strategy exposes us to risks that may harm our business, financial condition and results of operations, including risks that we may:

- fail to realize anticipated benefits, such as new customer relationships, cost savings or cash flow enhancements;
- be unable to hire, train or retain qualified shore and seafaring personnel to manage and operate our growing business and fleet;
- decrease our liquidity by using a significant portion of our available cash or borrowing capacity to finance acquisitions or investments;
- incur or assume unanticipated liabilities, losses or costs associated with the business or vessels acquired;



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- have difficulties achieving internal controls effectiveness and integrating an acquired business into our internal controls framework;
- incur other significant charges, such as impairment of goodwill or other intangible assets, asset devaluation or restructuring charges; or
- not be able to service our debt obligations or pay dividends on our shares or redeem our preferred shares.

### ***Our ability to grow may be reduced by the introduction of new accounting rules for leasing.***

International and U.S. accounting standard-setting organizations have proposed the elimination of operating leases. The proposals are not yet finalized. If the proposals are enacted, they would have the effect of bringing most off-balance sheet leases onto a lessee's balance sheet as liabilities. This proposed change could affect our customers and potential customers and may cause them to breach certain financial covenants. This may make them less likely to enter into time charters for our containerships, which could reduce our growth opportunities.

### ***Under the time charters for some of our vessels, if a vessel is off-hire for an extended period, the customer has a right to terminate the charter agreement for that vessel.***

Under most of our time charter agreements, if a vessel is not available for service, or off-hire, for an extended period, the customer has a right to terminate the charter agreement for that vessel. If a time charter is terminated early, we may be unable to re-deploy the related vessel on terms as favorable to us, if at all. In the worst case, we may not receive any revenue from that vessel, but be required to continue to pay financing costs for the vessel and expenses necessary to maintain the vessel in proper operating condition. Please read "Item 4. Information on the Company—B. Business Overview—Time Charters and Bareboat Charters."

### ***Under the time charters for some of our vessels, the customer has the right to purchase the vessel.***

Our commercial arrangements allow Yang Ming Marine to reduce the number of newbuilding containerships to be delivered to us and chartered to Yang Ming Marine by up to three vessels. These commercial arrangements expire in August 2014. If Yang Ming Marine were to exercise all of these rights, we would not receive delivery of the three vessels or the approximately \$0.5 billion of aggregate contracted time charter revenue attributable to them. Yang Ming Marine also has the right to purchase these vessels and an additional two vessels (for a total of five vessels) from us upon expiration of the time charters, at a price that provides an agreed upon minimum rate of return to us.

### ***Risks inherent in the operation of ocean-going vessels could harm our business and reputation.***

The operation of ocean-going vessels carries inherent risks. These risks include the possibility of:

- marine disaster;
- environmental accidents;
- grounding, fire, explosions and collisions;
- cargo and property losses or damage;
- business interruptions caused by mechanical failure, human error, war, terrorism, political action in various countries, labor strikes or adverse weather conditions; and
- piracy.

Such occurrences could result in death or injury to persons, loss of property or environmental damage, delays in the delivery of cargo, loss of revenue from or termination of charter contracts, governmental fines, penalties or restrictions on conducting business, higher insurance rates, and damage to our reputation and customer relationships generally. The involvement of our vessels in an environmental disaster could harm our

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reputation as a safe and reliable vessel owner and operator. Any of these circumstances or events could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

***Acts of piracy on ocean-going vessels have increased in frequency, which could harm our business.***

Piracy is an inherent risk in the operation of ocean-going vessels and has historically affected vessels trading in certain regions of the world, including, among other areas, the South China Sea and the Gulf of Aden off the coast of Somalia. We may not be adequately insured to cover losses from these incidents, which could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares. In addition, crew costs, including for employing onboard security guards, could increase in such circumstances. Any of these events, or the loss of use of a vessel due to piracy, may harm our customers, impairing their ability to make payments to us under our charters, which would harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

***Terrorist attacks and international hostilities could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.***

Terrorist attacks such as the attacks on the United States on September 11, 2001, and the continuing response of the United States to these attacks, as well as the threat of future terrorist attacks, continue to cause uncertainty in the world financial markets. Conflicts in Afghanistan, the Middle East and other regions and periodic tensions between North and South Korea (where many shipbuilders are located) may lead to additional acts of terrorism, regional conflict and other armed conflict around the world, which may contribute to further economic instability in the global financial markets or in regions where our customers do business or, in the case of countries in which our shipbuilders are located, affect our access to new vessels. These uncertainties or events could harm our business, results of operations and financial condition, including our ability to obtain additional financing on terms acceptable to us or at all, and our ability to pay dividends on our shares or redeem our preferred shares. In addition, terrorist attacks targeted at sea vessels in the future may negatively affect our operations and financial condition and directly affect our containerships or customers.

***Our insurance may be insufficient to cover losses that may occur to our property or result from the inherent operational risks of the shipping industry.***

We maintain insurance for our fleet against risks commonly insured against by vessel owners and operators. Our insurance includes hull and machinery insurance, war risks insurance and protection and indemnity insurance (which includes environmental damage and pollution insurance). We may not be adequately insured against all risks and our insurers may not pay a particular claim. Even if our insurance coverage is adequate to cover any vessel loss, we may not be able to timely obtain a replacement vessel. Our credit facilities and lease agreements restrict our use of any proceeds we may receive from claims under our insurance policies. In addition, in the future we may not be able to obtain adequate insurance coverage at reasonable rates for our fleet. We may also be subject to supplementary or additional calls, or premiums, in amounts based not only on our own claim records but also the claim records of all other members of the protection and indemnity associations, as an industry group, through which we receive indemnity insurance coverage for statutory, contractual and tort liability, due to the sharing and reinsurance arrangements stated in the insurance rules. Our insurance policies also contain deductibles, limitations and exclusions which, although we believe they are standard in the shipping industry, may directly or indirectly increase our costs.

In addition, we do not carry loss-of-hire insurance, which covers the loss of revenue during extended vessel off-hire periods, such as those that occur during an unscheduled dry-docking due to damage to the vessel from accidents. Accordingly, any loss of a vessel or extended vessel off-hire, due to an accident or otherwise, could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

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### ***Increased inspection procedures, tighter import and export controls and new security regulations could cause disruption of our business.***

International containership traffic is subject to security and customs inspection and related procedures in countries of origin, destination and trans-shipment points. These inspections can result in cargo seizure, delays in the loading, offloading, trans-shipment or delivery of containers and the levying of customs duties, fines or other penalties against exporters or importers and, in some cases, customers.

Since the events of September 11, 2001, U.S. and Canadian authorities have increased container inspection rates. Government investment in non-intrusive container scanning technology has grown and there is interest in electronic monitoring technology. It is unclear what changes, if any, to the existing inspection procedures will ultimately be proposed or implemented, or how any such changes will affect the industry. Such changes may impose additional financial and legal obligations on carriers and may render the shipment of certain types of goods by container uneconomical or impractical. Additional costs that may arise from current or future inspection procedures may not be fully recoverable from customers through higher rates or security surcharges. Any of these effects could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

### ***An over-supply of containership capacity may lead to reductions in charter hire rates and profitability.***

As of February 1, 2014, newbuilding containerships with an aggregate capacity of 4.0 million TEUs, representing approximately 23% of the total worldwide containership fleet capacity as of that date, were under construction. The size of the orderbook will result in the increase in the size of the world containership fleet over the next few years. An over-supply of containership capacity, combined with stability or any decline in the demand for containerships, may result in a reduction of charter hire rates. If such a reduction occurs when we seek to charter newbuilding vessels, our growth opportunities may be diminished. If such a reduction occurs upon the expiration or termination of our containerships' current time charters, we may only be able to recharter our containerships for unprofitable rates, if at all.

### ***Depending on the outcome of an ongoing European Union investigation of container liner companies related to potential antitrust violations, our growth, results of operations and our ability to charter our vessels may be reduced.***

The European Commission is conducting investigations of certain major container liner companies, including some of our existing customers, related to potential violations of European Union competition (antitrust) rules. Although we have no basis for assessing the outcome of these investigations, it is possible that additional financial and legal obligations may be imposed on one or more of these liner companies. Such obligations may make these customers or similarly situated potential customers less likely to enter into or renew time charters for our containerships, which could reduce our growth opportunities and harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares. In addition, any significant financial penalties arising from these or similar investigations could reduce the ability of our customers to make charter payments to us, which likewise could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

### ***Over time, containership values may fluctuate substantially, which could adversely affect our results of operations or our ability to raise capital.***

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

- prevailing economic conditions in the market in which the containership trades;
- a substantial or extended decline in world trade;

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- increases in the supply of containership capacity; and
- the cost of retrofitting or modifying existing ships, as a result of technological advances in vessel design or equipment, changes in applicable environmental or other regulations or standards, or otherwise.

If a charter terminates, we may be unable to re-deploy the vessel at attractive rates and, rather than continue to incur costs to maintain and finance the vessel, may seek to dispose of it. Our inability to dispose of the containership at a reasonable price, or at all, could result in a loss on its sale and harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

In addition, if we determine at any time that a containership's value has been impaired, we may need to recognize a significant impairment charge that will reduce our earnings and net assets. We review our containership assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable, which occurs when the assets' carrying value is greater than the undiscounted future cash flows the asset is expected to generate over its remaining useful life. In our experience, certain assumptions relating to our estimates of future cash flows are more predictable by their nature, including estimated revenue under existing contract terms and remaining vessel life. Certain assumptions relating to our estimates of future cash flows require more discretion and are inherently less predictable, such as future charter rates beyond the firm period of existing contracts and vessel residual values, due to factors such as the volatility in vessel charter rates and vessel values. We believe that the assumptions used to estimate future cash flows of our vessels are reasonable at the time they are made. We can make no assurances, however, as to whether our estimates of future cash flows, particularly future vessel charter rates or vessel values, will be accurate. Vessels that are currently not considered impaired may become impaired over time if the future estimated undiscounted cash flows decline at a rate that is faster than the depreciation of our vessels.

A reduction in our net assets could result in a breach of certain financial covenants contained in our credit and lease facilities and our preferred shares, which could limit our ability to borrow additional funds under our credit and lease facilities, require us to repay outstanding amounts, or increase the dividend rate of our preferred shares. Further, declining containership values could affect our ability to raise cash by limiting our ability to refinance vessels or use unencumbered vessels as collateral for new loans. This could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

### ***We are subject to regulation and liability under environmental laws that could require significant expenditures and affect our operations.***

Our business and the operation of our containerships are materially affected by environmental regulation in the form of international conventions, national, state and local laws and regulations in force in the jurisdictions in which our containerships operate, as well as in the countries of their registration, including those governing the management and disposal of hazardous substances and wastes, the cleanup of oil spills and other contamination, air emissions, water discharges, ballast water management and vessel recycling. Because such conventions, laws and regulations are often revised, we cannot predict the ultimate cost or effect of complying with such requirements or the effect thereof on the resale price or useful life of our containerships. Additional conventions, laws and regulations may be adopted that could limit our ability to do business or increase the cost of our doing business, which may harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

Environmental requirements can also affect the resale value or useful lives of our vessels, require a reduction in cargo capacity, ship modifications or operational changes or restrictions, lead to decreased availability of insurance coverage for environmental matters or result in substantial penalties, fines or other sanctions, including the denial of access to certain jurisdictional waters or ports or detention in certain ports. Under local, national and foreign laws, as well as international treaties and conventions, we could incur material liabilities, including cleanup obligations and natural resource damages, if there is a release of petroleum or other

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hazardous materials from our vessels or otherwise in connection with our operations. We could also become subject to personal injury or property damage claims relating to the release of hazardous materials associated with our operations.

In addition, in complying with existing environmental laws and regulations and those that may be adopted, we may incur significant costs in meeting new maintenance and inspection requirements and new restrictions on air emissions from our containerships, in developing contingency arrangements for potential spills and in obtaining insurance coverage. Government regulation of vessels, particularly in the areas of safety, security and environmental requirements, can be expected to become stricter in the future and require us to incur significant capital expenditures on our vessels to keep them in compliance, or even to scrap or sell certain vessels altogether. Substantial violations of applicable requirements or a catastrophic release of bunker fuel from one of our containerships could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

***Compliance with safety and other vessel requirements imposed by classification societies may be costly and harm our business.***

The hull and machinery of every commercial vessel must be classed by a classification society authorized by its country of registry. The classification society certifies that a vessel is safe and seaworthy in accordance with the applicable rules and regulations of the country of registry of the vessel and the Safety of Life at Sea Convention. In addition, a vessel generally must undergo annual, intermediate and special surveys to maintain classification society certification. If any vessel does not maintain its class or fails any annual, intermediate or special survey, the vessel will be unable to trade between ports and will be unemployable and we could be in violation of certain covenants in our credit facilities and our lease agreements. This could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

***Delays in deliveries of our newbuilding containerships could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.***

We are currently under contract to purchase 16 newbuilding containerships, which are scheduled to be delivered at various times through May 2016. The delivery of these containerships, or any other containerships we may order, could be delayed, which would delay our receipt of revenue under the time charters for the containerships and, if the delay is prolonged, could permit our customers to terminate the newbuilding containership time charter. Any of such events could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

The delivery of the containerships could be delayed because of:

- work stoppages, other labor disturbances or other events that disrupt any of the shipyards' operations;
- quality or engineering problems;
- changes in governmental regulations or maritime self-regulatory organization standards;
- bankruptcy or other financial crisis of any of the shipyards;
- a backlog of orders at any of the shipyards;
- hostilities, or political or economic disturbances in Korea, Taiwan or China, where the containerships are being built;
- weather interference or catastrophic event, such as a major earthquake, fire or tsunami;
- our requests for changes to the original containership specifications;
- shortages of or delays in the receipt of necessary construction materials, such as steel;
- our inability to obtain requisite permits or approvals;

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- a dispute with any of the shipyards;
- the failure of our banks to provide debt financing; or
- a disruption to the financial markets.

In addition, each of the shipbuilding contracts for our newbuilding containerships contains “force majeure” provisions whereby the occurrence of certain events could delay delivery or possibly result in termination of the contract. If delivery of a containership is materially delayed or if a shipbuilding contract is terminated, it could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

***Due to our lack of diversification, adverse developments in our containership transportation business could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.***

Our Articles of Incorporation currently limit our business to the chartering or rechartering of containerships to others and other related activities, unless otherwise approved by our board of directors.

Nearly all of our cash flow is generated from our charters that operate in the containership transportation business. Due to our lack of diversification, an adverse development in the containership industry may more significantly harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares than if we maintained more diverse assets or lines of business.

***Because each existing and newbuilding vessel in our contracted fleet is or will be built in accordance with standard designs and uniform in all material respects to other vessels in its TEU class, any material design defect likely will affect all vessels in such class.***

Each existing and newbuilding vessel in our fleet is built, or will be built, in accordance with standard designs and uniform in all material respects to other vessels in its class. As a result, any latent design defect discovered in one of our vessels will likely affect all of our other vessels in that class. Any disruptions in the operation of our vessels resulting from these defects could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

***There are greater than normal construction, delivery and operational risks with respect to our New Panamax 10000, 13100, and Neo-Panamax 14000 TEU newbuilding vessels.***

Our eight 13100 TEU newbuilding vessels that have been delivered are some of the first vessels of this type to be built. In addition, we have contracted to purchase eight new Panamax 10000 TEU vessels and eight neo-Panamax 14000 TEU vessels and may order additional vessels of these types in the future. The 10000 TEU and 14000 TEU vessels will be the first vessels constructed using this new design and the first vessels constructed of these sizes at some of these shipyards. As such, there may exist greater than normal construction, delivery and operational risks associated with these vessels. Deliveries of these vessels could be delayed and problems with operation of these vessels could be encountered, either of which could adversely affect our reputation, the receipt of revenue under time charters for or the operating cost of these vessels, and their future resale value.

***Increased technological innovation in competing vessels could reduce our charter hire rates and the value of our vessels.***

The charter hire rates and the value and operational life of a vessel are determined by a number of factors, including the vessel’s efficiency, operational flexibility and physical life. Efficiency includes speed, fuel economy and the ability to be loaded and unloaded quickly. Flexibility includes the ability to enter harbors, utilize related docking facilities and pass through canals and straits. Physical life is related to the original design

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and construction, maintenance and the impact of the stress of operations. If new containerships are built that are more efficient or flexible or have longer physical lives than our vessels, competition from these more technologically advanced containerships could adversely affect the amount of charter hire payments we receive for our vessels once their initial charters end and the resale value of our vessels. As a result, our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares could be harmed.

### ***Maritime claimants could arrest our vessels, which could interrupt our cash flow.***

Crew members, suppliers of goods and services to a vessel, shippers of cargo and other parties may be entitled to a maritime lien against the applicable vessel for unsatisfied debts, claims or damages. In many jurisdictions, a maritime lienholder may enforce its lien by arresting a vessel through foreclosure proceedings. In addition, in some jurisdictions, such as South Africa, under the “sister ship” theory of liability, a claimant may arrest both the vessel that is subject to the claimant’s maritime lien and any “associated” vessel, which is any vessel owned or controlled by the same owner. Claimants could try to assert “sister ship” liability against one vessel in our fleet for claims relating to another of our ships. The arrest or attachment of one or more of our vessels could interrupt our business and cash flow and require us to pay significant amounts to have the arrest lifted, which could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

### ***Governments could requisition our containerships during a period of war or emergency, resulting in loss of earnings.***

The government of a ship’s registry could requisition for title or seize our containerships. Requisition for title occurs when a government takes control of a ship and becomes the owner. Also, a government could requisition our containerships for hire. Requisition for hire occurs when a government takes control of a ship and effectively becomes the charterer at dictated charter rates. Generally, requisitions occur during a period of war or emergency. Government requisition of one or more of our containerships could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

### ***Exposure to currency exchange rate fluctuations may result in fluctuations in our results of operations and financial condition and ability to pay dividends on our shares or redeem our preferred shares.***

All of our charter revenues are earned in U.S. dollars. Although a significant portion of our operating and general and administrative costs are incurred in U.S. dollars, we have some exposure to currencies other than U.S. dollars, including Canadian dollars, Indian Rupees, Euros and other foreign currencies. Although we monitor exchange rate fluctuations on a continuous basis, and seek to reduce our exposure in certain circumstances by denominating charter-hire revenue, ship building contracts, purchase contracts and debt obligations in U.S. dollars when practical to do so, we do not currently fully hedge movements in currency exchange rates. As a result, currency fluctuations may have a negative effect on our results of operations and financial condition and ability to pay dividends on our shares or redeem our preferred shares.

### ***Damage to our reputation or industry relationships could harm our business.***

Our operational success and our ability to grow depend significantly upon our satisfactory performance of technical services (including vessel maintenance, crewing, purchasing, shipyard supervision, insurance, assistance with regulatory compliance and financial services). Our business will be harmed if we fail to perform these services satisfactorily. Our ability to compete for and to enter into new charters and expand our relationships with our customers depends upon our reputation and relationships in the shipping industry. If we suffer material damage to our reputation or relationships, it may harm our ability to, among other things:

- renew existing charters upon their expiration;
- obtain new charters;

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- successfully interact with shipyards;
- dispose of vessels on commercially acceptable terms;
- obtain financing on commercially acceptable terms;
- maintain satisfactory relationships with our customers and suppliers; or
- grow our business.

If our ability to do any of the things described above is impaired, it could harm our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares.

***As we expand our business or provide services to third parties, we may need to improve our operating and financial systems, expand our commercial and technical management staff, and recruit suitable employees and crew for our vessels.***

Since our IPO in 2005, we have increased the size of our contracted fleet from 23 to 87 vessels. We have also agreed to provide technical management services to third and related parties, including GCI and affiliates of Dennis R. Washington for vessels they may acquire. Our current operating and financial systems may not be adequate if we further expand the size of our fleet or if we provide services to third parties and attempts to improve those systems may be ineffective. In addition, we will need to recruit suitable additional administrative and management personnel to manage any growth. We may not be able to continue to hire suitable employees in such circumstances. If a shortage of experienced labor exists or if we encounter business or financial difficulties, we may not be able to adequately staff our vessels. If we expand our fleet, or as we provide services to third parties and we are unable to grow our financial and operating systems or to recruit suitable employees, our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares may be harmed.

***Our chief executive officer does not devote all of his time to our business.***

Our chief executive officer, Gerry Wang, is involved in other business activities that may result in his spending less time than is appropriate or necessary in order to manage our business successfully. Pursuant to his employment agreement with us, Mr. Wang is permitted to provide services to Tiger Management Limited, an entity owned and controlled by one of our directors, Graham Porter, or the Tiger Member, and GCI and certain of their respective affiliates, in addition to the services that he provides to us. In addition, Mr. Wang is the chairman of the board of managers of GCI. Please read “Item 7. Major Shareholders and Related Party Transactions—B. Related Party Transactions—Certain Relationships and Transactions.”

***Our business depends upon certain employees, who may not necessarily continue to work for us.***

Our future success depends to a significant extent upon our chief executive officer and co-chairman of our board of directors, Gerry Wang, and certain members of our senior management. Mr. Wang has substantial experience and relationships in the containership industry and has been instrumental in developing our relationships with our customers. Mr. Wang and other members of our senior management are crucial to the development of our business strategy and to the growth and development of our business. If they, and Mr. Wang in particular, were no longer to be affiliated with us, we may fail to recruit other employees with equivalent talent, experience and relationships, and our business, results of operations, financial condition and ability to pay dividends may be significantly harmed as a result. Although Mr. Wang has an employment agreement with us through the termination of our right of first refusal with GCI (which is scheduled to expire on March 31, 2015, unless earlier terminated), Mr. Wang could terminate his employment at any time. As such, it is possible that Mr. Wang will no longer provide services to us and that our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares may be harmed by the loss of such services.



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***We may not achieve expected benefits from our participation in GCI.***

In March 2011, we agreed to participate in GCI, which invests in containership assets, primarily newbuilding vessels strategic to the People's Republic of China, Taiwan, Hong Kong and Macau, or Greater China. We believe that the combined scale of our business and GCI, together with current excess capacity at shipyards, allows us to realize volume discounts for newbuilding orders and to negotiate fuel-efficient design improvements from shipyards that are attractive to our customers. To the extent excess shipyard capacity decreases, we may be unable to achieve these benefits. In addition, we may be unable to obtain more attractive vessel financing through GCI than otherwise available to us on our own.

***GCI intends to compete in our markets, and its entry into the containership market may harm our business, results of operations, financial position and ability to pay dividends on our shares or redeem our preferred shares.***

Carlyle, which controls GCI, is a leading global alternative asset manager. GCI intends to invest equity capital in containership and other maritime assets, primarily newbuilding vessels strategic to Greater China, which is similar to our growth strategy of investing in primarily newbuilding vessels strategic to Greater China. The involvement of Carlyle in GCI and the amount of funds that GCI may invest in containerships could result in GCI becoming the owner of a significant fleet of containerships, which could compete with us for growth opportunities, subject to certain rights of first refusal in our favor that may continue up to March 31, 2015, subject to earlier termination. Please read "Item 7. Major Shareholders and Related Party Transactions—B. Related Party Transactions—Our Investment in Carlyle Containership-Focused Investment Vehicle—Rights of First Refusal and First Offer." Our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares could be harmed to the extent GCI successfully competes against us for containership opportunities.

***We have reduced the fiduciary duties of Gerry Wang and Graham Porter in relation to certain growth opportunities that become subject to our right of first refusal with GCI, which may limit our rights in such growth opportunities to our rights under the right of first refusal.***

Pursuant to agreements between us and each of our chief executive officer and co-chairman of our board of directors, Gerry Wang, and one of our directors, Graham Porter, we have reduced the fiduciary duties of Mr. Wang and Mr. Porter in relation to certain containership vessel and business opportunities to the extent such opportunities are subject to our right of first refusal with GCI and (a) the conflicts committee of our board of directors decides to reject such opportunity or we fail to exercise our right of first refusal to pursue such opportunity, (b) we exercise such right but fail to pursue such opportunity or (c) we do not have the right under our right of first refusal to pursue such opportunity. Our rights to such opportunities may be limited to our rights under our right of first refusal with GCI, which would be more restrictive than the rights based on fiduciary duties we otherwise would have relating to such opportunities.

***In order to timely exercise our right of first refusal from GCI, we may be required to enter into containership construction contracts without financing arrangements or charter contracts then being in place, which may result in financing on less favorable terms or employment of the vessels other than on long-term, fixed-rate charters, if at all.***

Under our right of first refusal with GCI relating to containership acquisition opportunities, we generally must exercise our right of first refusal within 12 business days of receiving a notice from GCI of the acquisition opportunity. At the time we must exercise our right of first refusal, there may be no financing arrangement or charter commitment relating to the newbuilding or existing containership to be acquired. If we elect to acquire the vessel without a financing arrangement or charter commitment then in place, we may be unable subsequently to obtain financing or charter the vessel on a long-term, fixed-rate basis, on terms that will result in positive cash flow to us from operation of the vessel, or at all. Accordingly, our business, results of operations, financial condition and ability to pay dividends on our shares or redeem our preferred shares may be harmed.

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***Certain of our officers and directors or their affiliates have separate interests in or related to GCI, which may result in conflicts of interest between their interests and those of us and our shareholders relative to GCI.***

One of our directors, Graham Porter, through his interest in the Tiger Member, is an indirect investor in Greater China Industrial Investments LLC, or GC Industrial, the member with the largest capital commitment in GCI. Blue Water Commerce, LLC, or Blue Water, an affiliate of Dennis R. Washington, or the Washington Member, has an indirect interest in the Tiger Member. As a result, Mr. Porter and the Washington Member will have an indirect interest in incentive distributions received by GC Industrial from GCI. These incentive distributions will range between 20% and 30% after a cumulative compounded rate of return of 12% has been generated on all member capital contributions. Our chief executive officer, Gery Wang, is the chairman of the board of managers of GCI. Messrs. Wang and Porter are members of GCI's transaction committee, which will be primarily responsible for approving the purchase, newbuild contracting, chartering, financing and technical management of new and existing investments for GCI. Kyle R. Washington, co-chairman of our board of directors, is a non-voting member of GCI's transaction committee. In addition, affiliates of Messrs. Wang and Porter provide certain transactional and financing services to GCI, for which they receive compensation.

As a result of these interests relating to GCI, the interests of Messrs. Wang, Porter and Kyle R. Washington may conflict with those of us or our shareholders relative to GCI.

***Anti-takeover provisions in our organizational documents could make it difficult for our shareholders to replace or remove our current board of directors or have the effect of discouraging, delaying or preventing a merger or acquisition, which could adversely affect the market price of our securities.***

Several provisions of our Articles of Incorporation and our bylaws could make it difficult for our shareholders to change the composition of our board of directors in any one year, preventing them from changing the composition of management. In addition, the same provisions may discourage, delay or prevent a merger or acquisition that shareholders may consider favorable.

These provisions include:

- authorizing our board of directors to issue "blank check" preferred shares without shareholder approval;
- providing for a classified board of directors with staggered, three-year terms;
- prohibiting cumulative voting in the election of directors;
- authorizing the removal of directors only for cause and only upon the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote for those directors;
- prohibiting shareholder action by written consent unless the written consent is signed by all shareholders entitled to vote on the action;
- limiting the persons who may call special meetings of shareholders;
- establishing advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted on by shareholders at shareholder meetings; and
- restricting business combinations with interested shareholders.

We have also adopted a shareholder rights plan pursuant to which our board of directors may cause the substantial dilution of the holdings of any person that attempts to acquire us without the board's prior approval.

These anti-takeover provisions, including the provisions of our shareholder rights plan, could substantially impede a potential change in control and, as a result, may adversely affect the market price of our securities.

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***Substantial future sales of our common shares in the public market could cause the price of our common shares to fall.***

The market price of our common stock could decline due to sales of a large number of shares in the market, including sales of shares by our large shareholders, or the perception that these sales could occur. These sales could also make it more difficult or impossible for us to sell equity securities in the future at a time and price that we deem appropriate to raise funds through future offerings of common stock. In connection with our initial public offering, our issuance of Series A preferred shares, our entry into employment or services agreements with our chief executive officer, Gerry Wang, and an affiliate of one of our directors, Graham Porter, and the acquisition of our Manager, we have granted registration rights to the holders of certain of our securities, including common shares or securities convertible into common shares. These shareholders have the right, subject to certain conditions, to require us to file registration statements covering the sale by them of such common shares. Following their sale under an applicable registration statement, any such common shares will become freely tradable. By exercising their registration rights and selling a large number of common shares, these shareholders could cause the price of our common shares to decline.

***We are incorporated in the Republic of the Marshall Islands, which does not have a well-developed body of corporate law.***

Our corporate affairs are governed by our Articles of Incorporation and bylaws and by the Marshall Islands Business Corporations Act, or BCA. The provisions of the BCA resemble provisions of the corporation laws of some states in the United States. However, there have been few judicial cases in the Republic of the Marshall Islands interpreting the BCA. The rights and fiduciary responsibilities of directors under the laws of the Republic of the Marshall Islands are not as clearly established as the rights and fiduciary responsibilities of directors under statutes or judicial precedent in existence in certain United States jurisdictions. Shareholder rights may differ as well. While the BCA does specifically incorporate non-statutory law, or judicial case law, of the State of Delaware and other states with substantially similar legislative provisions, our public shareholders may have more difficulty in protecting their interests in the face of actions by management, directors or controlling shareholders than would shareholders of a corporation incorporated in a United States jurisdiction.

***Because we are organized under the laws of the Marshall Islands, it may be difficult to serve us with legal process or enforce judgments against us, our directors or our management.***

We are organized under the laws of the Marshall Islands, and all of our assets are located outside of the United States. Our principal executive offices are located in Hong Kong and a majority of our directors and officers are residents outside of the United States. As a result, it may be difficult or impossible for you to bring an action against us or against our directors or our management in the United States if you believe that your rights have been infringed under securities laws or otherwise. Even if you are successful in bringing an action of this kind, the laws of the Marshall Islands and of other jurisdictions may prevent or restrict you from enforcing a judgment against our assets or our directors and officers.

***Our ability to pay dividends on our shares and redeem our preferred shares is limited by the requirements of Marshall Islands law.***

Marshall Islands law provides that we may pay dividends on our shares and redeem our preferred shares only to the extent that assets are legally available for such purposes. Legally available assets generally are limited to our surplus, which essentially represents our retained earnings and the excess of consideration received by us for the sale of shares above the par value of the shares. In addition, under Marshall Islands law we may not pay dividends on our shares or redeem our preferred shares if we are insolvent or would be rendered insolvent by the payment of such a dividend or the making of such redemption.

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***We may not have sufficient cash from our operations to enable us to pay dividends on our shares or redeem our preferred shares following the payment of expenses.***

We will pay quarterly dividends on our shares from funds legally available for such purpose when, as and if declared by our board of directors. We may not have sufficient cash available each quarter to pay dividends. In addition, we may have insufficient cash available to redeem our preferred shares. The amount of dividends we can pay or the amount we can use to redeem the preferred shares depends upon the amount of cash we generate from and use in our operations, which may fluctuate significantly based on, among other things:

- the rates we obtain from our charters or rechartering and the ability of our customers to perform their obligations under their time charters;
- the level of our operating costs;
- the number of unscheduled off-hire days for our fleet and the timing of, and number of days required for, dry-docking of our containerships;
- delays in the delivery of new vessels and the beginning of payments under charters relating to those ships;
- prevailing global and regional economic and political conditions;
- the effect of governmental regulations and maritime self-regulatory organization standards on the conduct of our business;
- changes in the basis of taxation of our activities in various jurisdictions;
- our ability to service and refinance our current and future indebtedness;
- our ability to raise additional debt and equity to satisfy our capital needs; and
- our ability to draw on our existing credit facilities and the ability of our lenders and lessors to perform their obligations under their agreements with us.

In addition, the conversion on January 30, 2014 of our Series A preferred shares into 23,177,175 Class A common shares will result in additional dividends on these shares.

***The amount of cash we have available to pay dividends on our shares or to redeem our preferred shares will not depend solely on our profitability.***

The actual amount of cash we will have available to pay dividends on our shares or to redeem our preferred shares also depends on many factors, including, among others:

- changes in our operating cash flow, capital expenditure requirements, working capital requirements and other cash needs;
- restrictions under our existing or future credit and lease facilities or any future debt securities, including existing restrictions under our credit and lease facilities on our ability to declare or pay dividends if an event of default has occurred and is continuing or if the payment of the dividend would result in an event of default;
- the amount of any reserves established by our board of directors; and
- restrictions under Marshall Islands law, which generally prohibits the payment of dividends other than from surplus (i.e. retained earnings and the excess of consideration received for the sale of shares above the par value of the shares) or while a company is insolvent or would be rendered insolvent by the payment of such a dividend.

The amount of cash we generate from our operations may differ materially from our net income or loss for the period, which is affected by non-cash items, and our board of directors in its discretion may elect not to declare any dividends. As a result of these and the other factors mentioned above, we may pay dividends during periods when we record losses and may not pay dividends during periods when we record net income.

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**Tax Risks**

In addition to the following risk factors, you should read “Item 4. Information on the Company—B. Business Overview—Taxation of the Company,” and “Item 10. Additional Information—E. Taxation,” for a more complete discussion of the expected material U.S. federal and non-U.S. income tax considerations relating to us and the ownership and disposition of our shares.

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

A non-U.S. entity treated as a corporation for U.S. federal income tax purposes will be treated as a “passive foreign investment company,” or a PFIC, for such purposes in any taxable year for which either (a) at least 75% of its gross income consists of “passive income” or (b) at least 50% of the average value of the corporation’s assets is attributable to assets that produce, or are held for the production of, “passive income.” For purposes of these tests, “passive income” includes dividends, interest, gains from the sale or exchange of investment property, rents and royalties (other than rents and royalties that are received from unrelated parties in connection with the active conduct of a trade or business) but does not include income derived from the performance of services.

There are legal uncertainties involved in determining whether the income derived from our time chartering activities constitutes rental income or income derived from the performance of services, including the decision in *Tidewater Inc. v. United States*, 565 F.3d 299 (5th Cir. 2009), which held that income derived from certain time chartering activities should be treated as rental income rather than services income for purposes of a foreign sales corporation provision of the Internal Revenue Code of 1986, as amended, or the Code. However, the Internal Revenue Service, or IRS, stated in an Action on Decision (AOD 2010-001) that it disagrees with, and will not acquiesce to, the way that the rental versus services framework was applied to the facts in the *Tidewater* decision, and in its discussion stated that the time charters at issue in *Tidewater* would be treated as producing services income for PFIC purposes. The IRS’s statement with respect to *Tidewater* cannot be relied upon or otherwise cited as precedent by taxpayers. Consequently, in the absence of any binding legal authority specifically relating to the statutory provisions governing PFICs, there can be no assurance that the IRS or a court would not follow the *Tidewater* decision in interpreting the PFIC provisions of the Code. Nevertheless, based on the current composition of our assets and operations (and those of our subsidiaries), we intend to take the position that we are not now and have never been a PFIC. No assurance can be given, however, that this position would be sustained by a court if contested by the IRS, or that we would not constitute a PFIC for any future taxable year if there were to be changes in our assets, income or operations.

If the IRS were to find that we are or have been a PFIC for any taxable year, our U.S. shareholders could face adverse tax consequences. For a more comprehensive discussion regarding our status as a PFIC and the tax consequences to U.S. shareholders if we are treated as a PFIC, please read “Item 10. Additional Information—E. Taxation—Material U.S. Federal Income Tax Considerations—U.S. Federal Income Taxation of U.S. Holders—Consequences of Possible PFIC Classification.”

***We, or any of our subsidiaries, may become subject to income tax in jurisdictions in which we are organized or operate, including the United States, Canada and Hong Kong, which would reduce our earnings and potentially cause certain shareholders to be subject to tax in such jurisdictions.***

We intend that our affairs and the business of each of our subsidiaries will be conducted and operated in a manner that minimizes income taxes imposed upon us and our subsidiaries. However, there is a risk that we will be subject to income tax in one or more jurisdictions, including the United States, Canada and Hong Kong, if under the laws of any such jurisdiction, we or such subsidiary is considered to be carrying on a trade or business there or earn income that is considered to be sourced there and we do not or such subsidiary does not qualify for an exemption. Please read “Item 4. Information on the Company—B. Business Overview—Taxation of the Company.” In addition, while we do not believe that we are, nor do we expect to be, resident in Canada, in the

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event that we were treated as a resident of Canada, shareholders who are non-residents of Canada may be or become subject to tax in Canada. Please read “Item 4. Information on the Company—B. Business Overview—Taxation of the Company—Canadian Taxation” and “Item 10. Additional Information—E. Taxation—Canadian Federal Income Tax Considerations.”

**Item 4. Information on the Company**

**A. History and Development of the Company**

Seaspan Corporation was incorporated in the Republic of the Marshall Islands in May 2005 to acquire all of the containership business of Seaspan Container Lines Limited. In August 2005, we completed our initial public offering. From an initial operating fleet of 10 vessels, as of February 28, 2014, we have grown to an operating fleet of 71 containerships (including eight vessels under long-term leases) and we have entered into contracts for the purchase an additional 16 newbuilding containerships, which have scheduled delivery dates through May 2016. All 16 of these newbuilding containerships will commence operation under long-term, fixed-rate charters upon delivery. In January 2012, we acquired our Manager, which provides us with all of our technical, administrative and strategic services.

We maintain our principal executive offices at Unit 2, 7th Floor, Bupa Centre, 141 Connaught Road West, Hong Kong, China. Our telephone number is (852) 2540-1686.

**B. Business Overview**

**General**

We are a leading independent charter owner and manager of containerships, which we charter primarily pursuant to long-term, fixed-rate time charters with major container liner companies. As of February 28, 2014 we operated a fleet of 71 containerships (including eight vessels under long-term leases) and have entered into contracts for the purchase of an additional 16 newbuilding containerships which have scheduled delivery dates through May 2016. All 16 of these newbuilding containerships will commence operation under long-term, fixed-rate charters upon delivery. The average age of the 71 vessels in our operating fleet was approximately seven years as of February 28, 2014. As of February 28, 2014, one of the 71 containerships in our fleet was off-charter.

We primarily deploy our vessels on long-term, fixed-rate time charters to take advantage of the stable cash flow and high utilization rates that are typically associated with long-term time charters. As of February 28, 2014, the charters on the 71 vessels in our operating fleet had an average remaining term of approximately five years, excluding the effect of charterers’ options to extend certain time charters.

Customers for our operating fleet as at February 28, 2014 were as follows:

<u>Customers for Current Fleet</u>	
	COSCON
	CSAV
	CSCL Asia
	HL USA
	Hapag-Lloyd
	K-Line
	MSC
	MOL
<u>Customers for Additional 16 Vessel Deliveries</u>	
	Hanjin
	MOL
	Yang Ming Marine

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Our primary objective is to continue to grow our business through accretive vessel acquisitions as market conditions allow. Please read “Our Fleet” for more information about our vessels and time charter contracts. Most of our customers’ containership business revenues are derived from the shipment of goods from the Asia Pacific region, primarily China, to various overseas export markets in the United States and in Europe.

In January 2012, we acquired our Manager, which provides us with all of our technical, administrative and strategic services. Our Manager also manages a limited number of vessels for third parties.

## Our Fleet

### Our Current Fleet

The following table summarizes key facts regarding our 71 operating vessels as of February 28, 2014:

VESSEL NAME	VESSEL CLASS (TEU)	YEAR BUILT	CHARTER START DATE	CHARTERER	LENGTH OF CHARTER	DAILY CHARTER RATE (in thousands)
COSCO Glory	13100	2011	6/10/11	COSCON	12 years	\$55.0
COSCO Pride <sup>(1)</sup>	13100	2011	6/29/11	COSCON	12 years	55.0
COSCO Development	13100	2011	8/10/11	COSCON	12 years	55.0
COSCO Harmony	13100	2011	8/19/11	COSCON	12 years	55.0
COSCO Excellence	13100	2012	3/8/12	COSCON	12 years	55.0
COSCO Faith <sup>(1)</sup>	13100	2012	3/14/12	COSCON	12 years	55.0
COSCO Hope	13100	2012	4/19/12	COSCON	12 years	55.0
COSCO Fortune	13100	2012	4/29/12	COSCON	12 years	55.0
CSCL Zeebrugge	9600	2007	3/15/07	CSCL Asia	12 years	34.5 <sup>(2)</sup>
CSCL Long Beach	9600	2007	7/6/07	CSCL Asia	12 years	34.5 <sup>(2)</sup>
CSCL Oceania	8500	2004	12/4/04	CSCL Asia	12 years + one 3-year option	29.8 <sup>(3)</sup>
CSCL Africa	8500	2005	1/24/05	CSCL Asia	12 years + one 3-year option	29.8 <sup>(3)</sup>
COSCO Japan	8500	2010	3/9/10	COSCON	12 years + three 1-year options	42.9 <sup>(4)</sup>
COSCO Korea	8500	2010	4/5/10	COSCON	12 years + three 1-year options	42.9 <sup>(4)</sup>
COSCO Philippines	8500	2010	4/24/10	COSCON	12 years + three 1-year options	42.9 <sup>(4)</sup>
COSCO Malaysia	8500	2010	5/19/10	COSCON	12 years + three 1-year options	42.9 <sup>(4)</sup>
COSCO Indonesia	8500	2010	7/5/10	COSCON	12 years + three 1-year options	42.9 <sup>(4)</sup>
COSCO Thailand	8500	2010	10/20/10	COSCON	12 years + three 1-year options	42.9 <sup>(4)</sup>
COSCO Prince Rupert	8500	2011	3/21/11	COSCON	12 years + three 1-year options	42.9 <sup>(4)</sup>
COSCO Vietnam	8500	2011	4/21/11	COSCON	12 years + three 1-year options	42.9 <sup>(4)</sup>
MOL Emerald	5100	2009	4/30/09	MOL	12 years	28.9
MOL Eminence	5100	2009	8/31/09	MOL	12 years	28.9
MOL Emissary	5100	2009	11/20/09	MOL	12 years	28.9
MOL Empire	5100	2010	1/8/10	MOL	12 years	28.9
MSC Veronique	4800	1989	11/25/11	MSC	5 years	14.5 <sup>(5)</sup>
MSC Manu	4800	1988	11/15/11	MSC	5 years	14.5 <sup>(5)</sup>
MSC Leanne	4800	1989	10/19/11	MSC	5 years	14.5 <sup>(5)</sup>
MSC Carole	4800	1989	10/12/11	MSC	5 years	14.5 <sup>(5)</sup>
MOL Excellence	4600	2003	6/13/13	MOL	2 years + one 1-year option	Market rate <sup>(6)</sup>
MOL Efficiency	4600	2003	7/4/13	MOL	2 years + one 1-year option	Market rate <sup>(6)</sup>
Brotonne Bridge <sup>(1)</sup>	4500	2010	10/25/10	K-Line	12 years + two 3-year options	34.3 <sup>(7)</sup>
Brevik Bridge <sup>(1)</sup>	4500	2011	1/25/11	K-Line	12 years + two 3-year options	34.3 <sup>(7)</sup>
Bilbao Bridge <sup>(1)</sup>	4500	2011	1/28/11	K-Line	12 years + two 3-year options	34.3 <sup>(7)</sup>
Berlin Bridge <sup>(1)</sup>	4500	2011	5/9/11	K-Line	12 years + two 3-year options	34.3 <sup>(7)</sup>
Budapest Bridge <sup>(1)</sup>	4500	2011	8/1/11	K-Line	12 years + two 3-year options	34.3 <sup>(7)</sup>
Seaspan Hamburg	4250	2001	11/3/13	Hapag-Lloyd	Up to 30 months + one 8 to 12 month option	Market rate <sup>(6)</sup>
Seaspan Chiwan	4250	2001	12/29/13	Hapag-Lloyd	Up to 30 months + one 8 to 12 month option	Market rate <sup>(6)</sup>
Seaspan Ningbo	4250	2002	9/7/13	Hapag-Lloyd	Up to 30 months + one 8 to 12 month option	Market rate <sup>(6)</sup>
Seaspan Dalian	4250	2002	7/17/13	Hapag-Lloyd	Up to 30 months + one 6 to 12 month option	Market rate <sup>(6)</sup>

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<b>VESSEL NAME</b>	<b>VESSEL CLASS (TEU)</b>	<b>YEAR BUILT</b>	<b>CHARTER START DATE</b>	<b>CHARTERER</b>	<b>LENGTH OF CHARTER</b>	<b>DAILY CHARTER RATE (in thousands)</b>
Seaspan Felixstowe	4250	2002	7/24/13	Hapag-Lloyd	Up to 30 months + one 6 to 12 month option	Market rate <sup>(6)</sup>
CSCL Vancouver	4250	2005	2/16/05	CSCL Asia	12 years	17.0
CSCL Sydney	4250	2005	4/19/05	CSCL Asia	12 years	17.0
CSCL New York	4250	2005	5/26/05	CSCL Asia	12 years	17.0
CSCL Melbourne	4250	2005	8/17/05	CSCL Asia	12 years	17.0
CSCL Brisbane	4250	2005	9/15/05	CSCL Asia	12 years	17.0
New Delhi Express	4250	2005	10/19/05	HL USA	3 years + seven 1-year extensions + two 1-year options <sup>(8)</sup>	18.0 <sup>(9)</sup>
Dubai Express	4250	2006	1/3/06	HL USA	3 years + seven 1-year extensions + two 1-year options <sup>(8)</sup>	18.0 <sup>(9)</sup>
Jakarta Express	4250	2006	2/21/06	HL USA	3 years + seven 1-year extensions + two 1-year options <sup>(8)</sup>	18.0 <sup>(9)</sup>
Saigon Express	4250	2006	4/6/06	HL USA	3 years + seven 1-year extensions + two 1-year options <sup>(8)</sup>	18.0 <sup>(9)</sup>
Lahore Express	4250	2006	7/11/06	HL USA	3 years + seven 1-year extensions + two 1-year options <sup>(8)</sup>	18.0 <sup>(9)</sup>
Rio Grande Express	4250	2006	10/20/06	HL USA	3 years + seven 1-year extensions + two 1-year options <sup>(8)</sup>	18.0 <sup>(9)</sup>
Santos Express	4250	2006	11/13/06	HL USA	3 years + seven 1-year extensions + two 1-year options <sup>(8)</sup>	18.0 <sup>(9)</sup>
Rio de Janeiro Express	4250	2007	3/28/07	HL USA	3 years + seven 1-year extensions + two 1-year options <sup>(8)</sup>	18.0 <sup>(9)</sup>
Manila Express	4250	2007	5/23/07	HL USA	3 years + seven 1-year extensions + two 1-year options <sup>(8)</sup>	18.0 <sup>(9)</sup>
CSAV Loncomilla	4250	2009	4/28/09	CSAV	6 years	25.9
CSAV Lumaco	4250	2009	5/14/09	CSAV	6 years	25.9
CSAV Lingue	4250	2010	5/17/10	CSAV	6 years	25.9
CSAV Lebu	4250	2010	6/7/10	CSAV	6 years	25.9
Madinah <sup>(1)</sup> <sup>(10)</sup>	4250	2009	—	—	—	—
COSCO Fuzhou	3500	2007	3/27/07	COSCON	12 years	19.0
COSCO Yingkou	3500	2007	7/5/07	COSCON	12 years	19.0
CSCL Panama	2500	2008	5/14/08	CSCL Asia	12 years	16.8 <sup>(11)</sup>
CSCL São Paulo	2500	2008	8/11/08	CSCL Asia	12 years	16.8 <sup>(11)</sup>
CSCL Montevideo	2500	2008	9/6/08	CSCL Asia	12 years	16.8 <sup>(11)</sup>
CSCL Lima	2500	2008	10/15/08	CSCL Asia	12 years	16.8 <sup>(11)</sup>
CSCL Santiago	2500	2008	11/8/08	CSCL Asia	12 years	16.8 <sup>(11)</sup>
CSCL San Jose	2500	2008	12/1/08	CSCL Asia	12 years	16.8 <sup>(11)</sup>
CSCL Callao	2500	2009	4/10/09	CSCL Asia	12 years	16.8 <sup>(11)</sup>
CSCL Manzanillo	2500	2009	9/21/09	CSCL Asia	12 years	16.8 <sup>(11)</sup>
Guayaquil Bridge	2500	2010	3/8/10	K-Line	10 years	17.9
Calicanto Bridge	2500	2010	5/30/10	K-Line	10 years	17.9

- <sup>(1)</sup> This vessel is leased pursuant to a lease agreement, which we used to finance the acquisition of the vessel.
- <sup>(2)</sup> CSCL Asia has a charter of 12 years with a charter rate of \$34,000 per day for the first six years, increasing to \$34,500 per day for the second six years.
- <sup>(3)</sup> CSCL Asia has an initial charter of 12 years with a charter rate of \$29,500 per day for the first six years, \$29,800 per day for the second six years, and \$30,000 per day during the three-year option.
- <sup>(4)</sup> COSCON has an initial charter of 12 years with a charter rate of \$42,900 per day for the initial term and \$43,400 per day for the three one-year options.
- <sup>(5)</sup> MSC has a bareboat charter of five years with a charter rate of \$10,000 per day for the first two years, increasing to \$14,500 per day after two years. MSC has agreed to purchase the vessels for \$5.0 million each at the end of the five-year bareboat charter terms. In addition, we pay a 1.25% commission to a broker on all bareboat charter payments for these charters.
- <sup>(6)</sup> Given that the term of the charter is less than three years (excluding any charterers' option to extend the term), the vessel is being chartered at current market rates.



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- (7) K-Line has an initial charter of 12 years with a charter rate of \$34,250 per day for the first six years, increasing to \$34,500 per day for the second six years, \$37,500 per day for the first three-year option period and \$42,500 per day for the second three-year option period.
- (8) For these charters, the initial term was three years, which automatically extends for up to an additional seven years in successive one-year extensions unless HL USA elects to terminate the charters with two years' prior written notice. HL USA would have been required to pay a fee of approximately \$8.0 million to terminate a charter at the end of the initial term. The termination fee declines by \$1.0 million per year per vessel in years four through nine. The initial terms of the charters for these vessels have expired, and these charters have been automatically extended pursuant to their terms.
- (9) HL USA had an initial charter of three years that automatically extends for up to an additional seven years in successive one-year extensions unless HL USA elects to terminate the charters with two years' prior written notice, with a charter rate of \$18,000 per day for the first one-year option remaining, increasing to \$18,500 per day for the second one-year option remaining.
- (10) This vessel was re-delivered to us in February 2014 and is currently off-charter.
- (11) CSCL Asia has a charter of 12 years with a charter rate of \$16,750 per day for the first six years, increasing to \$16,900 per day for the second six years.

### New Vessel Contracts

Our primary objective is to continue to grow our business through accretive vessel acquisitions as market conditions allow.

As of February 28, 2014, we have contracted to purchase 16 additional newbuilding containerships which have scheduled delivery dates through May 2016. These vessels consist of the following, excluding our ROFR Vessels:

Vessel	Vessel Class (TEU)	Length of Time Charter <sup>(1)</sup>	Charterer	Scheduled Delivery Date	Shipbuilder
Hull No. 983	10000	10 years + one 2-year option	Hanjin	2014	New Jiangsu
Hull No. 985	10000	10 years + one 2-year option	Hanjin	2014	Jiangsu Xinfu
Hull No. 993	10000	10 years + one 2-year option	Hanjin	2014	New Jiangsu
Hull No. 1006	10000	8 years + one 2-year option	MOL	2014	New Jiangsu and Jiangsu Xinfu
Hull No. 1008	10000	8 years + one 2-year option	MOL	2014	New Jiangsu and Jiangsu Xinfu
Hull No. 2638	14000	10 years + one 2-year option	Yang Ming Marine	2015	HHI
Hull No. 2640	14000	10 years + one 2-year option	Yang Ming Marine	2015	HHI
Hull No. 2642	14000	10 years + one 2-year option	Yang Ming Marine	2015	HHI
Hull No. 2643	14000	10 years + one 2-year option	Yang Ming Marine	2015	HHI
Hull No. 2645	14000	10 years + one 2-year option	Yang Ming Marine	2015	HHI
Hull No. 2647	14000	10 years + one 2-year option	Yang Ming Marine	2015	HHI
Hull No. 1037	14000	Minimum 6 years to maximum of 10 years + one 2-year option	Yang Ming Marine	2016	CSBC
Hull No. 1039	14000	Minimum 6 years to maximum of 10 years + one 2-year option	Yang Ming Marine	2016	CSBC

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(1) Each charter is scheduled to begin upon delivery of the vessel to the charterer.

The following chart indicates the estimated number of owned, leased and managed vessels in our fleet based on scheduled delivery dates as of February 28, 2014, including the ROFR Vessels:

	Scheduled for the year ended December 31,		
	2014	2015	2016
Owned and leased vessels, beginning of year	71	76	85
Deliveries	5	9	2
Total, end of year	76	85	87
Managed vessels, beginning of year	2	6	15
Deliveries	4	9	3
Total, end of year	6	15	18
<b>Total Fleet</b>	<b>82</b>	<b>100</b>	<b>105</b>
<b>Approximate Total Capacity (TEU)</b>	<b>513,500</b>	<b>733,500</b>	<b>803,500</b>

### Our Charters

We charter our vessels primarily under long-term, fixed-rate time charters. We charter four of our vessels under bareboat charters. The following table presents the number of vessels chartered by each of our customers as of February 28, 2014.

Charterer	Number of vessels in our current operating fleet	Number of vessels scheduled to be delivered	Total vessels upon all deliveries
COSCON	18	—	18
CSCL Asia	17	—	17
HL USA	9	—	9
K-Line	7	—	7
MOL	6	5	11
Hapag Lloyd	5	—	5
CSAV	4	—	4
Yang Ming Marine	—	8	8
Hanjin	—	3	3
Off-charter	1	—	1
<b>Total time charters</b>	<b>67</b>	<b>16</b>	<b>83</b>
MSC (bareboat charters)	4	—	4
<b>Total fleet</b>	<b>71</b>	<b>16</b>	<b>87</b>

### Time Charters and Bareboat Charters

A time charter is a contract for the use of a vessel for a fixed period of time at a specified daily rate. Under a time charter, the vessel owner provides crewing and other services related to the vessel's operation, the cost of which is included in the daily rate; the charterer is responsible for substantially all of the vessel voyage expenses, such as fuel (bunkers) cost, port expenses, agents' fees, canal dues, extra war risk insurance and commissions.

Our four 4800 TEU vessels are chartered by MSC under bareboat charters. A bareboat charter is a contract for the use of a vessel for a fixed period of time at a specified amount. Under a bareboat charter, the charterer is responsible for providing crewing and other services related to the vessel's operation, as well as vessel voyage expenses.

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The initial term for a time or bareboat charter commences on the vessel's delivery to the charterer. Under all of our time charters, the charterer may also extend the term for periods in which the vessel is off-hire. The current charter periods and any applicable extension options are included above under "—Our Fleet." Under our bareboat charters with MSC, MSC has agreed to purchase each vessel for \$5.0 million at the end of the five-year bareboat charter terms.

With respect to the vessels on charter to HL USA, CP Ships Limited has provided a guarantee of the obligations and liabilities of HL USA under each time charter and Hapag-Lloyd AG has provided a guarantee of the obligations and liabilities of CP Ships Limited under the original guarantee. For the vessels on charter to CSCL Asia, CSCL Hong Kong and CSCL have each provided a guarantee of the obligations and liabilities of CSCL Asia under each time charter.

### ***Hire Rate***

"Hire rate" refers to the basic payment from the charterer for the use of the vessel. Under all of our time charters, hire rate is payable, in advance, in U.S. dollars, as specified in the charter. The hire rate is a fixed daily amount that may increase, or decrease, in some cases, at varying intervals during the term of the charter and any extension to the term. Payments generally are made in advance on a monthly or semi-monthly basis. The charter hire rate may be reduced in certain instances as a result of added cost to the charterer due to vessel performance deficiencies in speed or fuel consumption. We have had no instances of such hire rate reductions.

### ***Operations and Expenses***

Our Manager, which we acquired in January 2012, operates our vessels and is responsible for vessel operating expenses, which include technical management, crewing, repairs and maintenance, insurance, stores, lube oils, communication expenses and capital expenses, including normally scheduled dry-docking of the vessels. The charterer generally pays the voyage expenses, which include all expenses relating to particular voyages, such as fuel (bunkers) cost, port expenses, agents' fees, canal dues, extra war risk insurance and commissions.

### ***Off-hire***

When a vessel is "off-hire," or not available for service, the charterer generally is not required to pay the hire rate, and we are responsible for all costs, including the cost of fuel bunkers, unless the charterer is responsible for the circumstances giving rise to the vessel's lack of availability. A vessel generally will be deemed to be off-hire when there is an event preventing the full working of the vessel due to, among other things:

- operational deficiencies not due to actions of the charterers or their agents;
- dry-docking for repairs, maintenance or inspection;
- equipment or machinery breakdowns, abnormal speed and construction conditions;
- delays due to accidents for which the vessel owner, operator or manager is responsible, and related repairs;
- crewing strikes, labor boycotts caused by the vessel owner, operator or manager, certain vessel detentions or similar problems; or
- a failure to maintain the vessel in compliance with its specifications and contractual standards or to provide the required crew.

Under most of our time charters, if a vessel is off-hire for a specified number of consecutive days or for a specified aggregate number of days during a 12-month period, the charterer has the right to cancel the time charter with respect to that vessel. Under some charters, if a vessel is off-hire for specified reasons for a

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prolonged period, we are obligated to charter a substitute vessel and to pay any difference in hire cost of the charter for the duration of the substitution. The periods of off-hire that trigger such termination rights exclude, in addition to any other specific exclusions in the charter, off-hire for routine dry-dockings or non-compliance with regulatory obligations. Our charter contracts generally provide for hire adjustments for vessel performance deficiencies such as those in speed or fuel consumption, with prolonged performance deficiencies giving the charterer a termination right under some charters.

### ***Ship Management and Maintenance***

Under each of our time charters, we are responsible for the operation and management of each vessel, including maintaining the vessel, periodic dry-docking, cleaning and painting and performing work required by regulations. We also provide limited ship management services to Dennis R. Washington's personal vessel owning companies and ship management and construction supervision services to GCI.

We focus on risk reduction, operational reliability and safety. We believe we achieve high standards of technical ship management by, among other methods:

- developing a minimum competency standard for seagoing staff;
- standardizing equipment used throughout the fleet, thus promoting efficiency and economies of scale;
- implementing a voluntary vessel condition and maintenance monitoring program (our Manager was the first in the world to achieve accreditation by vessel classification society Det Norske Veritas on its hull planned maintenance system);
- recruiting officers and ratings through an affiliate based in India that has a record of employee loyalty and high retention rates among its employees;
- implementing an incentive system to reward staff for the safe operation of vessels; and
- initiating and developing a cadet training program.

Our staff has skills in all aspects of ship management and experience in overseeing new vessel construction, vessel conversions and general marine engineering, and previously worked in various companies in the international ship management industry, including China Merchants Group, Neptune Orient Lines, Teekay Corporation, Safmarine Container Lines and Columbia Ship Management. A number of senior officers also have sea-going experience, having served aboard vessels at a senior rank. In all training programs, we place an emphasis on safety and regularly train our crew members and other employees to meet our high standards. Shore-based personnel and crew members are trained to be prepared to respond to emergencies related to life, property or the environment.

### ***Termination; Change of Control***

We are generally entitled to withdraw a vessel from service to a charterer if the charterer defaults in its payment obligations, without prejudice to other claims for hire against the charterers. Some of our charterers also have the right to terminate the time charters in circumstances other than extended periods of off-hire as noted above. Under some of our time charters, the customer has the right to prior notice of or consent to any material change in our ownership or voting control.

### ***Sale and Purchase of Vessels***

Under some of our time charters, the customer has the right to prior notice of or consent to any proposed sale of the applicable vessel, which consent cannot be unreasonably withheld. A limited number of charters provide the charterer with a right of first refusal for the proposed vessel sale, which would require us to offer the vessel to the charterer prior to selling it to another entity. Sub-charters do not affect our ability to sell our time

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chartered vessels. Our commercial arrangements allow Yang Ming Marine to reduce the number of newbuilding containerships to be delivered to us and chartered to Yang Ming Marine by up to three vessels. These commercial arrangements expire in August 2014. If Yang Ming Marine were to exercise all of these rights, we would not receive delivery of the three vessels or related future charter hire. Yang Ming Marine also has the right to purchase these vessels and an additional two vessels (for a total of five vessels) from us upon expiration of the time charters, at a price that provides an agreed upon minimum rate of return to us.

### ***Hull and Machinery, Loss of Hire and War Risks Insurance***

We maintain marine hull and machinery and war risks insurance, which covers the risk of actual or constructive total loss and partial loss, for all of our vessels. Each of our vessels is covered up to at least fair market value with certain deductibles per vessel per claim. We achieve this overall loss coverage by maintaining nominal increased value coverage for each of our vessels, under which coverage in the event of total loss of a vessel, we will be entitled to recover amounts not recoverable under the hull and machinery policy due to under-insurance. We have not obtained, and do not intend to obtain, loss-of-hire insurance covering the loss of revenue during extended off-hire periods. We believe that this type of coverage is not economical and is of limited value to us. However, we evaluate the need for such coverage on an ongoing basis, taking into account insurance market conditions and the employment of our vessels. The charterer generally pays extra war risk insurance and commissions when the vessel is ordered by the charterer to enter a notified war exclusion trading area.

### ***Protection and Indemnity Insurance***

Protection and indemnity insurance is provided by mutual protection and indemnity associations, or P&I associations, which insure our third-party and crew liabilities in connection with our shipping activities. Coverage includes third-party liability, crew liability and other related expenses resulting from the abandonment, injury or death of crew, passengers and other third parties, the loss or damage to cargo, claims arising from collisions with other vessels, damage to other third-party property, pollution arising from oil or other substances and salvage, towing and other related costs, including wreck removal. Protection and indemnity insurance is a form of mutual indemnity insurance, extended by P&I associations. Subject to the limit for pollution discussed below, our coverage is nearly unlimited, but subject to the rules of the particular protection and indemnity insurer.

Our protection and indemnity insurance coverage for pollution is up to \$1.0 billion per vessel per incident. The 13 P&I associations that comprise the International Group insure approximately 90% of the world's commercial blue-water tonnage and have entered into a pooling agreement to reinsure each association's liabilities. As a member of a mutual P&I association, which is a member or affiliate of the International Group, we are subject to calls payable to the associations based on the International Group's claim records as well as the claim records of all other members of the individual associations.

### **Competition**

We operate in markets that are highly competitive and based primarily on supply and demand. We compete for charters based upon price, customer relationships, operating and technical expertise, professional reputation and size, age and condition of the vessel.

Competition for providing new containerships for chartering purposes comes from a number of experienced shipping companies, including direct competition from other independent charter owners and indirect competition from state-sponsored and other major entities with their own fleets. Some of our competitors have significantly greater financial resources than we do and can operate larger fleets and may be able to offer better charter rates. An increasing number of marine transportation companies have entered the containership sector, including many with strong reputations and extensive resources and experience. This increased competition may cause greater price competition for time charters.

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### **Seasonality**

Our vessels primarily operate under long-term charters and are generally not subject to the effect of seasonal variations in demand, except where such charters have expired and we are seeking to re-charter a vessel on a short-term basis at then current market rates.

### **Inspection by Classification Societies**

Every seagoing vessel must be “classed” by a classification society. The classification society certifies that the vessel is “in class,” signifying that the vessel has been built and maintained in accordance with the rules of the classification society and complies with applicable rules and regulations of the vessel’s country of registry and the international conventions of which that country is a member. In addition, where surveys are required by international conventions and corresponding laws and ordinances of a flag state, the classification society will undertake the surveys on application or by official order, acting on behalf of the authorities concerned.

Each vessel is inspected by a surveyor of the classification society in three surveys of varying frequency and thoroughness: every year for annual surveys, every two to three years for intermediate surveys, and every five years for special surveys. If any defects are found, the classification surveyor will issue a “condition of class” or a “requirement” for appropriate repairs that have to be made by the shipowner within the time limit prescribed. Vessels may be required, as part of the annual and intermediate survey process, to be dry-docked for inspection of the underwater portions of the vessel and for necessary repair stemming from the inspection. Special surveys always require dry-docking. The classification society also undertakes on request other surveys and inspections that are required by regulations and requirements of the flag state. These surveys are subject to agreements made in each individual case or to the regulations of the country concerned.

### **Environmental and Other Regulations**

Government regulation significantly affects our business and the operation of our vessels. We are subject to international conventions and codes, and national, state, provincial and local laws and regulations in the jurisdictions in which our vessels operate or are registered, including, among others, those governing the generation, management and disposal of hazardous substances and wastes, the cleanup of oil spills and other contamination, air emissions and water discharges.

A variety of government, quasi-government and private entities require us to obtain permits, licenses or certificates for the operation of our vessels. Failure to maintain necessary permits or approvals could require us to incur substantial costs or temporarily suspend the operation of one or more of our vessels in one or more ports.

Increasing environmental concerns have created a demand for vessels that conform to the strictest environmental standards. We are required to maintain operating standards for all of our vessels that emphasize operational safety, quality maintenance, continuous training of our officers and crews and compliance with United States, Canadian and international regulations and with flag state administrations.

The following is an overview of certain material governmental regulations that affect our business and the operation of our vessels. It is not a comprehensive summary of all government regulations to which we are subject.

#### *International Maritime Organization (or IMO)*

The IMO is the United Nations’ agency for maritime safety. The IMO has negotiated international conventions that impose liability for pollution in international waters and a signatory’s territorial waters. For example, the IMO’s International Convention for the Prevention of Pollution from Ships, or MARPOL, imposes environmental standards on the shipping industry relating to, among other things, pollution prevention and procedures, technical standards, oil spills management, transportation of marine pollutants and air emissions.

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Annex VI of MARPOL, which regulates air pollution from vessels, sets limits on sulfur oxide, nitrogen oxide and particulate matter emissions from vessel exhausts and prohibits deliberate emissions of ozone depleting substances, such as chlorofluorocarbons. We believe all of our vessels currently are Annex VI compliant. Annex VI also includes a global cap on the sulfur content of fuel oil with a lower cap on the sulfur content applicable inside Emission Control Areas, or ECAs. Already established ECAs include the Baltic Sea, the North Sea, including the English Channel, the North American area and the U.S. Caribbean Sea area. Additional geographical areas may be designated as ECAs in the future. Annex VI calls for incremental reductions in sulfur in fuel between 2012 and 2020 (or 2015 in the case of ECAs), and the use of advanced technology engines designed to reduce emissions of nitrogen oxide, with a “Tier II” emission limit applicable to engines installed on or after January 1, 2011 and a more stringent “Tier III” emission limit applicable to engines installed on or after 2016 operating in nitrogen oxide ECAs. The “Tier III” emission limit may be delayed until 2021, and a decision is currently expected to be made by the IMO in the spring of 2014. These amendments or other changes could require modifications to our vessels to achieve compliance, and the cost of compliance may be significant to our operations. With regard to greenhouse gas emissions, there have been discussions in the IMO for the adoption of a market-based mechanism for the reduction of carbon emissions from vessels, such as an emissions trading system or an international greenhouse gas contribution fund, with contributions being based on bunker fuel purchases. The IMO adopted technical and operational measures for the reduction of greenhouse gas emissions that became effective on January 1, 2013. These include the “Energy Efficiency Design Index,” which is mandatory for newbuilding vessels, and the “Ship Energy Efficiency Management Plan,” which is mandatory for all vessels.

The IMO’s International Convention on Civil Liability for Bunker Oil Pollution Damage, or the Bunker Convention, imposes, subject to limited exceptions, strict liability on vessel owners for pollution damage in jurisdictional waters of ratifying states, which does not include the United States, caused by discharges of “bunker oil.” The Bunker Convention also requires owners of registered vessels over a certain size to maintain insurance for pollution damage in an amount generally equal to the limits of liability under the applicable national or international limitation regime. We believe our vessels comply with the Bunker Convention.

The IMO’s International Convention for the Control and Management of Ships’ Ballast Water and Sediments, or the BWM Convention, would require the installation of ballast water treatment systems on certain newbuilding vessels for which the keel is laid after January 1, 2012 and for existing vessels prior to their first renewal survey after January 1, 2014 or January 1, 2016 (depending on their year of build and their ballast water capacity). The BWM Convention will become effective, on a retroactive basis, 12 months after it has been adopted by a specified threshold of member states representing at least 35% of the world’s shipping tonnage. If the BWM Convention is adopted, we may be required to incur significant costs to install these ballast water treatment plants on all our vessels before the applicable due dates.

The IMO also regulates vessel safety. The International Safety Management Code, or the ISM Code, requires vessel owners and bareboat charterers to develop and maintain an extensive “Safety Management System” that includes the adoption of a safety and environmental protection policy setting forth instructions and procedures for safe operation and describing procedures for dealing with emergencies. A Safety Management Certificate is issued under the provisions of the International Convention for the Safety of Life at Sea, or SOLAS, to each vessel with a Safety Management System verified to be in compliance with the ISM Code. The failure of a vessel owner or bareboat charterer to comply with the ISM Code may subject such party to increased liability, may decrease available insurance coverage for the affected vessels and may result in a denial of access to, or detention in, certain ports. All of the vessels in our fleet are ISM Code-certified.

Increasingly, various regions are adopting additional, unilateral requirements on the operation of vessels in their territorial waters. These regulations, such as those described below, apply to our vessels when they operate in the relevant regions’ waters and can add to operational and maintenance costs, as well as increase the potential liability that applies to violations of the applicable requirements.

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***United States***

*The United States Oil Pollution Act of 1990 and CERCLA*

The United States Oil Pollution Act of 1990, or OPA, establishes an extensive regulatory and liability regime for the protection and cleanup of the environment from oil spills. The Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, governs spills or releases of hazardous substances other than petroleum or petroleum products. Under OPA and CERCLA, vessel owners, operators and bareboat charterers are jointly and, subject to limited exceptions, strictly liable for all containment and clean-up costs and other damages arising from discharges or threatened discharges of oil or hazardous substances, as applicable, from their vessels. OPA and CERCLA define these damages broadly to include certain direct and indirect damages and losses, including but not limited to assessment of damages, remediation, damages to natural resources such as fish and wildlife habitat, and agency oversight costs.

Under OPA and CERCLA, the liability of responsible parties is limited to a specified amount, which is periodically updated. Under both OPA and CERCLA, liability is unlimited if the incident is caused by gross negligence, willful misconduct or a violation of certain regulations.

We maintain pollution liability coverage insurance in the amount of \$1 billion per incident for each of our vessels. If the damages from a catastrophic spill were to exceed our insurance coverage it could harm our business, financial condition and results of operation. Vessel owners and operators must establish and maintain with the U.S. Coast Guard evidence of financial responsibility sufficient to meet their potential aggregate liabilities under OPA and CERCLA. Evidence of financial responsibility may be demonstrated by showing proof of insurance, surety bonds, self-insurance or guarantees. We have obtained the necessary U.S. Coast Guard regulation and financial assurance certificates for each of our vessels currently in service and trading to the United States. Owners or operators of certain vessels operating in U.S. waters also must prepare and submit to the U.S. Coast Guard a response plan for each vessel, which plan, among other things, must address a “worst case” scenario environmental discharge and describe crew training and drills to address any discharge. Each of our vessels has the necessary response plans in place.

OPA and CERCLA do not prohibit individual states from imposing their own liability regimes with regard to oil pollution or hazardous substance incidents occurring within their boundaries, and some states have enacted legislation providing for unlimited liability for spills. In some cases, states that have enacted such legislation have not yet issued implementing regulations defining vessel owners’ responsibilities under these laws. We intend to comply with all applicable state regulations in the ports where our vessels call.

*Clean Water Act*

The Clean Water Act, or CWA, establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, it is unlawful to discharge any pollutant from a point source into navigable waters without a permit. The U.S. Environmental Protection Agency, or the EPA, requires certain vessels to comply with a Vessel General Permit, or VGP, before the vessel can legally operate and discharge wastewaters, including ballast water, in U.S. waters. We have submitted appropriate filings to obtain coverage under the VGP.

The current “2013 VGP” became effective on December 19, 2013 and expires on December 19, 2018. In addition to the ballast water best management practices required under the prior VGP, the 2013 VGP contains numerical technology-based ballast water effluent limitations that will apply to certain commercial vessels with ballast water tanks. For certain existing vessels, EPA has adopted a staggered implementation schedule to require vessels to meet the ballast water effluent limitations by the first dry-docking after January 1, 2014 or January 1, 2016, depending on the vessel size. Vessels that are constructed after December 1, 2013 are subject to the ballast water numerical effluent limitations immediately upon the effective date of the 2013 VGP. The CWA authorizes civil and criminal penalties for discharging pollutants without a permit, failure to meet any requirement of a



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permit, and also allows for citizen suits against violators. The CWA does not prohibit individual states from imposing more stringent conditions, which many states have done. We comply with the existing, and intend to comply with the new VGP, and we do not currently believe that the costs associated with obtaining such permits and complying with their obligations will have a material impact on our operations or financial results.

In addition, the Act to Prevent Pollution from Ships, or APPS, implements various provisions of MARPOL and applies to larger foreign-flag ships when operating in U.S. waters. The regulatory mechanisms established in APPS to implement MARPOL are separate and distinct from the CWA and other federal environmental laws. Civil and criminal penalties may be assessed under APPS for non-compliance.

### *Additional Ballast Water Regulations*

The United States National Invasive Species Act, or NISA, and the U.S. Coast Guard's regulations enacted under NISA, impose mandatory ballast water management practices for all vessels equipped with ballast water tanks entering U.S. waters, including a limit on the concentration of living organisms in ballast water discharged in such waters. Newbuilding vessels constructed after December 1, 2013 are required to have a ballast water treatment system installed, and existing vessels are required to have a ballast water treatment system installed on the first scheduled dry-dock after January 1, 2016. The U.S. Coast Guard regulations also require vessels to maintain a ballast water management plan that is specific for that vessel and assigns responsibility to the master or appropriate official to understand and execute the ballast water management strategy for that vessel. Individual U.S. states have also enacted laws to address invasive species through ballast water and hull cleaning management and permitting requirements. For the vessels that will be subject to the requirements, under CWA or otherwise, the estimated cost to fit a ballast water treatment system ranges from approximately \$0.5 million to \$0.7 million for a Panamax size vessel and below, and from approximately \$0.7 million and \$0.9 million for a post-Panamax size.

### *Clean Air Act*

The Clean Air Act, or the CAA, and its implementing regulations subjects our vessels to vapor control and recovery requirements when cleaning fuel tanks and conducting other operations in regulated port areas and to air emissions standards for our engines while operating in U.S. waters. The EPA has adopted standards that apply to certain engines installed on U.S. vessels and to marine diesel fuels produced and distributed in the United States. These standards, which are being implemented in two stages (effective in 2011 and 2016, respectively) are consistent with Annex VI of MARPOL and establish significant reductions for vessel emissions of particulate matter, sulfur oxides and nitrogen oxides.

The CAA also requires states to draft State Implementation Plans, or SIPs, designed to attain national health-based air quality standards in primarily major metropolitan and industrial areas. Several SIPs regulate emissions from degassing operations by requiring the installation of vapor control equipment on vessels. California has enacted regulations which apply to ocean-going vessels' engines when operating within 24 miles of the California coast and require operators to use low sulfur fuels. California also approved regulations to reduce emissions from diesel auxiliary engines on certain ocean-going vessels while in California ports, including container ship fleets that make 25 or more annual visits to California ports. These federal and state requirements may increase our capital expenditures and operating costs while in applicable ports. As with other U.S. environmental laws, failure to comply with the Clean Air Act may subject us to enforcement action, including payment of civil or criminal penalties and citizen suits.

### *Canada*

Canada has established a complex regulatory enforcement system under the jurisdiction of various ministries and departments for preventing and responding to a marine pollution incident. The principal statutes of this system prescribe measures to prevent pollution, mandate remediation of marine pollution, and create civil, administrative and quasi-criminal liabilities for those responsible for a marine pollution incident.

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### *Canada Shipping Act, 2001*

The Canada Shipping Act, 2001, or CSA 2001, is Canada's primary legislation governing marine transport, pollution and safety. CSA 2001 applies to all vessels operating in Canadian waters and in the Exclusive Economic Zone of Canada. CSA 2001 requires ship-owners to have in place an arrangement with an approved pollution response organization. Vessels must carry a declaration, which identifies the vessel's insurer and confirms that an arrangement with a response organization is in place. CSA 2001 also makes it a strict liability offense to discharge from a vessel a pollutant, including, among other things, oil. Vessels must have a shipboard oil pollution plan and implement the same in respect of an oil pollution incident. CSA 2001 provides the authorities with broad discretionary powers to enforce its requirements, and violations of CSA 2001 requirements can result in significant administrative and quasi-criminal penalties. CSA 2001 authorizes the detention of a vessel where there are reasonable grounds for believing that the vessel caused marine pollution or that an offense has been committed. Canada's Department of Transport has also enacted regulations on ballast water management under CSA 2001. These regulations require the use of management practices, including mid-ocean ballast water exchange. Each of our vessels is currently CSA 2001 compliant.

### *Canadian Environmental Protection Act, 1999*

The Canadian Environmental Protection Act, or CEPA, regulates water pollution, including disposal at sea and the management of hazardous waste. CEPA prohibits the disposal or incineration of substances at sea except with a permit issued under CEPA, the importation or exportation of a substance for disposal at sea without a permit, and the loading on a ship of a substance for disposal at sea without a permit. Contravention of CEPA can result in administrative and quasi-criminal penalties, which may be increased if damage to the environment results and the person acted intentionally or recklessly. A vessel also may be seized or detained for contravention of CEPA's prohibitions. Costs and expenses of measures taken to remedy a condition or mitigate damage resulting from an offense are also recoverable. CEPA establishes liability to the Canadian government authorities that incur costs related to restoration of the environment, or to the prevention or remedying of environmental damage, or an environmental emergency. Limited defenses are provided but generally do not cover violations arising from ordinary vessel operations.

### *Marine Liability Act*

The Marine Liability Act, or MLA, is the principal legislation dealing with liability of ship-owners and operators in relation to passengers, cargo, pollution and property damage. The MLA implements various international maritime conventions and creates strict liability for a vessel owner for damages from oil pollution from a ship, as well as for the costs and expenses incurred for clean-up and preventive measures. Both governments and private parties can pursue vessel owners for damages sustained or incurred as a result of such an incident. Although the act does provide some limited defenses, they are generally not available for spills or pollution incidents arising out of the routine operation of a vessel. The act limits the overall liability of a vessel owner to amounts that are determined by the tonnage of the containership. The MLA also provides for the creation of a maritime lien over foreign vessels for unpaid invoices to ship suppliers operating in Canada.

### *Wildlife Protection*

The Migratory Birds Convention Act, or MBCA, implements Canada's obligations under a bilateral treaty between the United States and Great Britain (on behalf of Canada) designed to protect migrating birds that cross North American land and water areas. The MBCA prohibits the deposit of any substance that is harmful to migratory birds in any waters or area frequented by migratory birds. A foreign vessel involved in a violation may be detained within Canada's Exclusive Economic Zone with the consent of the attorney general. The Fisheries Act prohibits the destruction of fish habitat or the deposit of a deleterious substance in waters frequented by fish. The owner of a deleterious substance, the person having control of the substance and the person causing the spill must report the spill and must take all reasonable measures to prevent or remedy adverse effects resulting from a

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spill. The Species at Risk Act protects endangered aquatic species and migratory birds and their designated critical habitat. Violations of these Acts can be committed by a person or a vessel and may result in significant administrative and quasi-criminal penalties.

### *British Columbia's Environmental Management Act*

British Columbia's Environmental Management Act, or EMA, governs spills or releases of waste into the environment within the province in a manner or quantity that causes pollution. EMA imposes absolute, retroactive, joint and separate liability for remediation of a contaminated site. Provincial government authorities have powers to order remediation of contamination and any person, including, among others, the government, who incurs costs remediating contamination caused by others has a civil cause of action for cost recovery against the polluters. Significant administrative and quasi-criminal penalties can also be imposed under EMA if a person causes damage to the aquatic, ambient or terrestrial environment.

### *China*

Pursuant to new regulations that became effective January 1, 2012, prior to our vessels entering any ports in the People's Republic of China, or the PRC, we are required to enter into pollution clean-up agreements with pollution response companies approved by the PRC. Through a local agency arrangement, we have contracted with approved companies. These pollution clean-up agreements are not required if the vessel is only passing through PRC waters.

### *European Union Requirements*

In waters of the European Union, or the EU, our vessels are subject to regulation EU-level directives implemented by the various nations through laws and regulations of these requirements. These laws and regulations prescribe measures, among others, to prevent pollution, protect the environment and support maritime safety. For instance, the EU has adopted directives that require member states to refuse access to their ports to certain sub-standard vessels, according to various factors, such as the vessel's condition, flag, and number of previous detentions. Member states must, among other things, inspect minimum percentages of vessels using their ports annually (based on an inspection "share" of the relevant member state of the total number of inspections to be carried out within the EU and the Paris Memorandum of Understanding on Port State Control region), inspect all vessels which are due for a mandatory inspection (based, among other things, on their type, age, risk profile and the time of their last inspection) and carry out more frequent inspections of vessels with a high risk profile. If deficiencies are found that are clearly hazardous to safety, health or the environment, the state is required to detain the vessel or stop loading or unloading until the deficiencies are addressed. Member states are also required to implement their own separate systems of proportionate penalties for breaches of these standards.

Our vessels are also subject to inspection by appropriate classification societies. Classification societies typically establish and maintain standards for the construction and classification of vessels, supervise that construction is according to these standards, and carry out regular surveys of ships in service to ensure compliance with the standards. The EU has adopted directives that provide member states with greater authority and control over classification societies, including the ability to seek to suspend or revoke the authority of classification societies that are negligent in their duties. The EU requires member states to monitor these organizations' compliance with EU inspection requirements and to suspend any organization whose safety and pollution prevention performance becomes unsatisfactory.

The EU's directive on the sulfur content of fuels restricts the maximum sulfur content of marine fuels used in vessels operating in EU member states' territorial seas, exclusive economic zones and pollution control zones. The directive provides for more stringent rules on maximum sulfur content of marine fuels applicable in specific Sulfur Emission Control Areas, or SECAs, such as the Baltic Sea and the North Sea, including the English

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Channel. Further sea areas may be designated as SECAs in the future by the IMO in accordance with Annex VI of MARPOL. Under this directive, we may be required to make expenditures to comply with the sulfur fuel content limits in the marine fuel our vessels use in order to avoid delays or other obstructions to their operations, as well as any enforcement measures which may be imposed by the relevant member states for non-compliance with the provisions of the directive. We also may need to make other expenditures (such as expenditures related to washing or filtering exhaust gases) to comply with relevant sulfur oxide emissions levels. Recently, a new directive of the European Parliament and the European Council entered into force, which amends the existing one to bring the above requirements in line with Annex VI of MARPOL. It also makes certain of these requirements more stringent. These and other related requirements may require additional capital expenditures and increase our operating costs.

Another EU directive requires member states to cooperate to detect pollution discharges and impose criminal sanctions for certain pollution discharges committed intentionally, recklessly or by serious negligence and to initiate proceedings against ships at their next port of call following the discharge. Penalties may include fines and civil and criminal penalties.

The EU also authorizes member states to adopt the IMO's Bunker Convention, discussed above, that imposes strict liability on shipowners for pollution damage caused by spills of oil carried as fuel in vessels' bunkers and requires vessels of a certain size to maintain financial security to cover any liability for such damage. Most EU member states have ratified the Bunker Convention.

The EU is currently considering other proposals to further regulate vessel operations. The EU has adopted an Integrated Maritime Policy for the purposes of achieving a more coherent approach to maritime issues. The EU Commission's proposals included, in part, the development of environmentally sound end-of-life ship dismantling requirements, promotion of the use of shore-side electricity by ships at berth in EU ports to reduce air emissions, and consideration of options for EU legislation to reduce greenhouse gas emissions from maritime transport. The EU, any individual country or other authority may adopt additional legislation or regulations applicable to us and our operations.

### ***Other Greenhouse Gas Legislation***

In February 2005, the Kyoto Protocol to the United Nations Framework Convention on Climate Change, or the Kyoto Protocol, became effective. Pursuant to the Kyoto Protocol, adopting countries are required to implement national programs to reduce emissions of greenhouse gases. More than 27 nations, including the United States, have entered into the Copenhagen Accord, which is non-binding but is intended to pave the way for a comprehensive, international treaty on climate change. The IMO, EU, Canada, the United States and other individual countries, states and provinces are evaluating various measures to reduce greenhouse gas emissions from international shipping, which may include some combination of market-based instruments, a carbon tax or other mandatory reduction measures. The introduction of a system of monitoring, reporting and verification of greenhouse gas shipping emissions, or MRV System, is also being considered by the EU. The proposed MRV System may be the precursor to a market-based mechanism to be adopted in the future. Any passage of climate control legislation or other regulatory initiatives by the IMO, EU, Canada, the United States or other individual jurisdictions where we operate, that restrict emissions of greenhouse gases from vessels, could require us to make significant capital expenditures and may materially increase our operating costs.

### ***Other Regions***

We may be subject to environmental and other regulations that have been or may become adopted in other regions of the world that may impose obligations on our vessels and may increase our costs to own and operate them. Compliance with these requirements may require significant expenditures on our part and may materially increase our operating costs.

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### ***Vessel Security Regulations***

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

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

The United States Coast Guard regulations, intended to align with international maritime security standards, exempt non-U.S. vessels from MTSA vessel security measures if such vessels have on board a valid International Ship Security Certificate, or ISSC, that attests to the vessel's compliance with SOLAS security requirements and the ISPS Code. Our existing vessels have implemented the various security measures addressed by the MTSA, SOLAS and the ISPS Code.

### **Taxation of the Company**

#### ***United States Taxation***

The following is a discussion of the expected material U.S. federal income tax considerations applicable to us. This discussion is based upon the provisions of the Code, applicable U.S. Treasury Regulations promulgated thereunder, legislative history, judicial authority and administrative interpretations, as of the date of this Annual Report, all of which are subject to change, possibly with retroactive effect or are subject to different interpretations. Changes in these authorities may cause the U.S. federal income tax considerations to vary substantially from those described below.

The following discussion is for general information purposes only and does not purport to be a comprehensive description of all of the U.S. federal income tax considerations applicable to us. No ruling has been requested from the IRS regarding any matter affecting us. The statements made herein may not be sustained by a court if contested by the IRS.

#### ***Taxation of Operating Income***

We expect that substantially all of our gross income will be attributable to the transportation of cargo. For this purpose, gross income attributable to transportation, or Transportation Income, includes income from the use (or hiring or leasing for use) of a vessel to transport cargo and the performance of services directly related to the use of any vessel to transport cargo and, thus, includes time charter and bareboat charter income.

Fifty percent (50%) of Transportation Income attributable to transportation that either begins or ends, but that does not both begin and end, in the United States, or U.S. Source International Transportation Income, is considered to be derived from sources within the United States. Transportation Income attributable to transportation that both begins and ends in the United States, or U.S. Source Domestic Transportation Income, is considered to be 100% derived from sources within the United States. Transportation Income attributable to transportation exclusively between non-U.S. destinations is considered to be 100% derived from sources outside the United States. Transportation Income derived from sources outside the United States generally is not subject to U.S. federal income tax.

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We believe that we have not earned any U.S. Source Domestic Transportation Income, and we expect that we will not earn any such income in future years. However, certain of our activities give rise to U.S. Source International Transportation Income, and future expansion of our operations could result in an increase in the amount of our U.S. Source International Transportation Income. Unless the exemption from tax under Section 883 of the Code, or the Section 883 Exemption, applies, our U.S. Source International Transportation Income generally will be subject to U.S. federal income taxation under either the net basis tax and the branch profits tax or the 4% gross basis tax, all of which are discussed below.

### *The Section 883 Exemption*

In general, the Section 883 Exemption provides that if a non-U.S. corporation satisfies the requirements of Section 883 of the Code and the Treasury Regulations thereunder, or the Section 883 Regulations, it will not be subject to the net basis and branch profits taxes or the 4% gross basis tax described below on its U.S. Source International Transportation Income. The Section 883 Exemption does not apply to U.S. Source Domestic Transportation Income.

A non-U.S. corporation will qualify for the Section 883 Exemption if, among other things, it (i) is organized in a jurisdiction outside the United States that grants an exemption from tax to U.S. corporations on international transportation income, or an Equivalent Exemption, (ii) satisfies one of three ownership tests, or Ownership Test, described in the Section 883 Regulations and (iii) meets certain substantiation, reporting and other requirements.

We are organized under the laws of the Republic of the Marshall Islands. The U.S. Treasury Department has recognized the Republic of the Marshall Islands as a jurisdiction that grants an Equivalent Exemption. We also believe that we will be able to satisfy all substantiation, reporting and other requirements necessary to qualify for the Section 883 Exemption. Consequently, our U.S. Source International Transportation Income will be exempt from U.S. federal income taxation provided we satisfy the Ownership Test and provided we file a U.S. federal income tax return to claim the Section 883 Exemption. We believe that we currently should satisfy the Ownership Test because our Class A common shares, our Series C preferred shares, our Series D preferred shares, and our Series E preferred shares are primarily and regularly traded on an established securities market in the United States (and are not treated as closely held) within the meaning of the Section 883 Regulations. We can give no assurance, however, that changes in the trading, ownership or value of our Class A common shares, our Series C preferred shares, our Series D preferred shares or our Series E preferred shares will permit us to continue to qualify for the Section 883 Exemption.

### *The Net Basis Tax and Branch Profits Tax*

If the Section 883 Exemption does not apply, our U.S. Source International Transportation Income may be treated as effectively connected with the conduct of a trade or business in the United States, or Effectively Connected Income, if we have a fixed place of business in the United States and substantially all of our U.S. Source International Transportation Income is attributable to regularly scheduled transportation or, in the case of bareboat charter income, is attributable to a fixed place of business in the United States.

We believe that we do not have a fixed place of business in the United States. As a result, we believe that none of our U.S. Source International Transportation Income would be treated as Effectively Connected Income. While we do not expect to acquire a fixed place of business in the United States, there is no assurance that we will not have, or will not be treated as having, a fixed place of business in the United States in the future, which may, depending on the nature of our future operations, result in our U.S. Source International Transportation Income being treated as Effectively Connected Income.

Any income we earn that is treated as Effectively Connected Income would be subject to U.S. federal corporate income tax (the highest statutory rate currently is 35%) and a 30% branch profits tax imposed under Section 884 of the Code. In addition, a 30% branch interest tax could be imposed on certain interest paid, or deemed paid, by us.

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If we were to sell a vessel that has produced Effectively Connected Income, we generally would be subject to the net basis and branch profits taxes with respect to the gain recognized up to the amount of certain prior deductions for depreciation that reduced Effectively Connected Income. Otherwise, we would not be subject to U.S. federal income tax with respect to gain realized on the sale of a vessel, provided the sale is not considered to occur in the United States under U.S. federal income tax principles.

### *The 4% Gross Basis Tax*

If the Section 883 Exemption does not apply and we are not subject to the net basis and branch profits taxes described above, we generally will be subject to a 4% U.S. federal income tax on our U.S. Source International Transportation Income without the benefit of deductions.

### *Canadian Taxation*

Under the Income Tax Act (Canada), or the Canada Tax Act, a corporation that is resident in Canada is subject to tax in Canada on its worldwide income.

Our place of residence, under Canadian law, would generally be determined on the basis of where our central management and control are, in fact, exercised. It is not our current intention that our central management and control be exercised in Canada but, even if it were, there is a specific statutory exemption under the Canada Tax Act that provides that a corporation incorporated, or otherwise formed, under the laws of a country other than Canada will not be resident in Canada in a taxation year if its principal business is the operation of ships that are used primarily in transporting passengers or goods in international traffic, all or substantially all of its gross revenue for the year consists of gross revenue from the operation of ships in transporting passengers or goods in that international traffic, and it was not granted articles of continuance in Canada before the end of the year (the International Shipping Residence Exception).

Based on our operations, we do not believe that we are, nor do we expect to be, resident in Canada for purposes of the Canada Tax Act, and we intend that our affairs will be conducted and operated in a manner such that we do not become a resident of Canada under the Canada Tax Act. However, if we were or become resident in Canada, we would be or become subject under the Canada Tax Act to Canadian income tax on our worldwide income and our non-Canadian resident shareholders would be or become subject to Canadian withholding tax on dividends paid in respect of our shares.

Generally, a corporation that is not resident in Canada will be taxable in Canada on income it earns from carrying on a business in Canada and on gains from the disposition of property used in a business carried on in Canada. However, there are specific statutory exemptions under the Canada Tax Act that provide that income earned in Canada by a non-resident corporation from the operation of a ship in international traffic, and gains realized from the disposition of ships used principally in international traffic, are not included in a non-resident corporation's income for Canadian tax purposes where the corporation's country of residence grants substantially similar relief to a Canadian resident. A Canadian resident corporation that carries on an international shipping business, as described in the previous sentence, in the Republic of the Marshall Islands is exempt from income tax under the current laws of the Republic of the Marshall Islands.

We expect that we will qualify for these statutory exemptions under the Canada Tax Act. Based on our operations, we do not believe that we are, nor do we expect to be, carrying on a business in Canada for purposes of the Canada Tax Act other than a business that would provide us with these statutory exemptions from Canadian income tax. However, these statutory exemptions are contingent upon reciprocal treatment being provided under the laws of the Republic of the Marshall Islands. If in the future as a non-resident of Canada, we are carrying on a business in Canada that is not exempt from Canadian income tax, or these statutory exemptions are not accessible due to changes in the laws of the Republic of the Marshall Islands or otherwise, we would be subject to Canadian income tax on our non-exempt income earned in Canada which could reduce our earnings available for distribution to shareholders.

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Draft legislation was introduced by the Canadian Minister of Finance on July 12, 2013 (the Draft Proposals) that would, if such Draft Proposals become law in the form currently proposed, amend the Canada Tax Act to, generally, (a) limit the foregoing International Shipping Residence Exception to corporations whose principle business is, and who generate substantially all of their gross revenue from, “international shipping,” (b) limit the foregoing International Shipping Income Exclusion to income earned from “international shipping” and (c) define “international shipping” as excluding leasing a ship by a lessor to a lessee that has complete possession, control and command of the ship, unless the lessor or a corporation, trust or partnership affiliated with the lessor has an eligible interest in the lessee. The Draft Proposals are proposed to apply to taxation years of corporations which begin after July 12, 2013.

Based on our operations, we do not believe that the Draft Proposals would, if enacted into law in the form currently proposed, result in us becoming resident in Canada for purposes of the Canada Tax Act, nor result in our business income becoming subject to Canadian income tax.

Certain subsidiaries are residents of Canada for purposes of the Canada Tax Act. These subsidiaries are subject to Canadian tax on their worldwide income, and we will be subject to Canadian withholding tax on dividends we will receive from those subsidiaries. Based on the nature and extent of the operations of these subsidiaries, we do not expect the amount of Canadian income and withholding tax to be significant in relation to our earnings.

### **C. Organizational Structure**

Please read Exhibit 8.1 to this Annual Report for a list of our significant subsidiaries as of February 28, 2014.

### **D. Property, Plant and Equipment**

For information on our fleet and new vessel contracts, please read “Item 4. Information on the Company—B. Business Overview—Our Fleet.” Other than our vessels, we do not have any material property.

### **Item 4A. Unresolved Staff Comments**

None.

### **Item 5. Operating and Financial Review and Prospects**

#### **A. General**

#### **Management’s Discussion and Analysis of Financial Condition and Results of Operations**

*The following discussion should be read in conjunction with our consolidated financial statements and notes included elsewhere in this report.*

#### **Overview**

We are Seaspan Corporation, a Marshall Islands corporation that was incorporated on May 3, 2005. We are a leading independent charter owner and manager of containerships, which we charter primarily pursuant to long-term, fixed-rate time charters with major container liner companies. We primarily deploy our vessels on long-term, fixed-rate time charters to take advantage of the stable cash flow and high utilization rates that are typically associated with long-term time charters. As of February 28, 2014 we operated a fleet of 71 vessels (including eight vessels under long-term leases) and we have entered into contracts for the purchase of an additional 16 newbuilding containerships, which have scheduled delivery dates through May 2016. All 16 of the newbuilding containerships will commence operation under long-term, fixed-rate charters upon delivery. As of February 28,



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2014, one of the 71 containerships in our fleet was off-charter. The average age of the 71 vessels in our fleet was approximately seven years as of February 28, 2014.

Customers for our operating fleet as at February 28, 2014 were COSCON, CSAV, CSCL Asia, HL USA, Hapag-Lloyd, K-Line, MSC and MOL. The customers for the additional 16 newbuilding containerships are Hanjin, MOL and Yang Ming Marine. Our primary objective is to continue to grow our business through accretive vessel acquisitions as market conditions allow. Please read “Item 4. Information on the Company—B. Business Overview—Our Fleet” for more information.

### **2013 Developments**

#### *Vessel Deliveries*

During the year ended December 31, 2013, we accepted delivery of two second hand vessels, bringing our operating fleet to a total of 71 vessels. The vessel deliveries are summarized below:

<u>Vessel</u>	<u>Vessel Class (TEU)</u>	<u>Length of Time Charter</u>	<u>Charterer</u>	<u>Delivery Date</u>
MOL Excellence	4600	2 years plus one 1-year option	MOL	June 13, 2013
MOL Efficiency	4600	2 years plus one 1-year option	MOL	July 4, 2013

#### *Vessel Re-Deliveries*

During the year ended December 31, 2013, six 4250 TEU vessels were re-delivered to us and as of December 31, 2013, all six vessels were on short-term charters at current market rates. In February 2014, one of the six vessels was re-delivered to us and is currently off-charter. We are currently seeking to charter this vessel.

#### *Newbuilding Contracts and Time Charters*

In January 2013, we entered into contracts for the construction of five 14000 TEU newbuilding containerships with HHI. The vessels are scheduled for delivery in 2015, and will be constructed using our fuel efficient SAVER design. Concurrently, we signed long-term, fixed-rate time charters for these vessels with Yang Ming Marine. After the initial long-term charter periods, Yang Ming Marine may extend the charter for each vessel for up to two additional years. Pursuant to our right of first refusal agreement with GCI, we retained three of the 14000 TEU newbuilding containerships and GCI acquired the remaining two vessels.

In January 2013, we entered into contracts for the construction of four 10000 TEU newbuilding containerships with New Jiangsu and Jiangsu Xinfu. The vessels are scheduled for delivery in 2014 and will be constructed using our fuel efficient SAVER design. Concurrently, we signed long-term, fixed-rate time charters for these vessels with MOL. After the initial long-term charter periods, MOL may extend the charter for each vessel for up to an additional two years. In connection with this transaction, we also purchased from MOL four existing 2003-built 4600 TEU vessels and have signed two year short-term fixed-rate time charters for these vessels with MOL. As of December 31, 2013, three of these vessels were delivered and the remaining vessel was delivered in early 2014. Pursuant to our right of first refusal agreement with GCI, we retained two of the 10000 TEU newbuilding containerships and two of the existing vessels and GCI acquired the remaining two 10000 TEU newbuilding containerships and two existing vessels.

On July 19, 2013, we entered into contracts with HHI for the construction of five 14000 TEU newbuilding containerships for an aggregate purchase price of approximately \$550 million. These vessels are scheduled for delivery in 2015 and each vessel has a 10-year, fixed rate time charter with Yang Ming Marine. After the initial 10-year charter periods, Yang Ming Marine may extend the charter for each vessel for up to an additional two years.

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On August 22, 2013, we entered into contracts with CSBC for the construction of five 14000 TEU newbuilding containerships for an aggregate purchase price of approximately \$550 million. These vessels are scheduled for delivery in 2016 and have a minimum time charter term of six years with Yang Ming Marine.

Under the right of first refusal with GCI and Blue Water we retained three of the five 14000 TEU newbuilding containerships to be built by HHI and two of the five 14000 TEU newbuilding containerships to be built by CSBC. We expect to manage all ten of the newbuilding containerships.

Our commercial arrangements allow Yang Ming Marine to reduce the number of newbuilding containerships to be delivered to us and chartered to Yang Ming Marine by up to three vessels. These commercial arrangements will expire in August 2014.

On September 28, 2013, we ordered five 10000 TEU vessels and on December 27, 2013, we ordered an additional 10000 TEU vessel, all of which are to be built by New Jiangsu and Jiangsu Xinfu using our fuel efficient SAVER design and scheduled for delivery in 2015 and 2016.

In February 2014, we signed long-term, fixed-rate time charter contracts with MOL for these vessels. These vessels remain subject to allocation under our right of first refusal agreement with GCI and Blue Water.

### *2013 Loan Facility Transactions*

In January 2013, we entered into a LIBOR-based term loan facility with a Chinese bank for loan facilities in the amount of up to \$340.0 million to be used towards refinancing of existing vessels.

On April 25, 2013, we entered into a term loan facility with an Asian bank in the amount of up to \$174.0 million to be used to fund the construction of two of our 14000 TEU newbuilding containerships to be chartered to Yang Ming Marine.

On June 20, 2013, we entered into a term loan facility with a U.S. bank and an Australian bank in an amount of up to \$30.0 million to be used to fund the purchase price of two 4600 TEU containerships on charter to MOL.

On July 25, 2013, we entered into a term loan facility with a European bank in an amount of up to \$83.0 million to fund the construction of one of our 14000 TEU newbuilding containerships to be chartered to Yang Ming Marine.

On December 23, 2013, we entered into an agreement to extend and refinance our \$1.0 billion credit facility, or the Facility. Under the terms of the amended Facility, which became effective on January 31, 2014, the maturity date was extended from May 2015 to May 2019, and the outstanding amount of the Facility was reduced to \$433.8 million and now bears interest at market rates. In January 2014, we funded this reduction in principal by drawing \$340.0 million under existing credit facilities, one of which is secured by certain vessels that were pledged as collateral under the Facility, and approximately \$260.0 million of cash on hand.

On December 30, 2013, we entered into our first five-year non-amortizing, fixed-rate, unsecured loan agreement in an amount of up to \$125.0 million with a privately held global financial services firm.

### *Series C Preferred Shares Repurchase and Repurchase Plan*

In September 2013, we repurchased 320,000 of our 9.5% Series C preferred shares at \$26.50 per share for a total of approximately \$8.6 million, including expenses.

Our board of directors also authorized the repurchase of up to \$25.0 million of our 9.5% Series C preferred shares. The share repurchase authorization expires in July 2014 and repurchase activity will depend on factors

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such as working capital requirements, debt repayment obligations, the price of a Series C preferred share and economic and market conditions. Under this plan, 14,469 Series C preferred shares have been repurchased as of December 31, 2013.

### *Public Equity Offerings*

On November 8, 2013, we issued 2,000,000 of our 7.95% Series D preferred shares in a public offering at a price of \$25.00 per share for total net proceeds of approximately \$47.9 million.

On November 25, 2013, we issued 3,500,000 of our Class A common shares in a public offering at a price of \$22.00 per share for total net proceeds of approximately \$73.2 million.

### **2014 Recent Developments**

#### *Conversion of Series A Preferred Shares and Resignation and Appointment of Directors*

On January 30, 2014, our 200,000 outstanding Series A preferred shares automatically converted into a total of 23,177,175 Class A common shares pursuant to the rights and restrictions attached to our Series A preferred shares. Please read “Item 7. Major Shareholders and Related Party Transactions.” At January 31, 2014 there were 92,755,818 Class A common shares issued and outstanding. The conversion of our Series A preferred shares increased our common share market capitalization by approximately \$500.0 million, for an aggregate Class A common share market capitalization of over \$2.0 billion at January 31, 2014.

Prior to conversion, the holders of our Series A preferred shares had the right to appoint up to two directors to our board of directors. The Series A preferred shareholders appointed George H. Juetten to the board of directors and he has served as a director since July 2009 and as chair of the audit committee since September 2009. Upon conversion of the Series A preferred shares and termination of the right of the Series A preferred shareholders to appoint Mr. Juetten to our board of directors, (a) David Lyall resigned as a Class I director, (b) the board of directors was expanded to nine members, (c) Mr. Lyall became a Class III director to fill the vacancy arising from the expansion of the board of directors and will serve as a director until the 2014 annual meeting of shareholders and (d) Mr. Juetten became a Class I director to fill the vacancy arising from Mr. Lyall’s resignation as a Class I director and will serve as a director until the 2015 annual meeting of shareholders. Please read “Item 6. Directors, Senior Management and Employees” for certain biographical information about Mr. Juetten and Mr. Lyall.

#### *Results of Special Meeting of Shareholders*

We held a special meeting of shareholders on January 28, 2014 to vote on separate proposals to amend our articles of incorporation to (a) increase the number of our authorized shares of preferred stock from 65,000,000 to 150,000,000, with a corresponding increase in the number of authorized shares of capital stock from 290,000,100 to 375,000,100 and (b) declassify the board of directors and provide for the annual election of all directors. The proposal to increase the number of our authorized shares of preferred stock and capital stock was approved by shareholders at the meeting; the proposal to declassify the board of directors was not approved by shareholders.

#### *Issuance of Series E Preferred Shares*

On February 13, 2014, we issued in a public offering 5,400,000 Series E preferred shares at a price of \$25.00 per share for total net proceeds of approximately \$130.7 million. Dividends are payable on the Series E preferred shares at a rate of 8.25% per annum of the stated liquidation preference of \$25.00 per share. We intend to use the net proceeds for general corporate purposes.

***Market Conditions***

The containership charter market remained fairly stable during 2013, with time charter rates for benchmark 4000 TEU containerships in the range of approximately \$7,750 to \$9,200 per day throughout the year. Charter rates for these vessels remain below long-term historical averages due to a combination of factors, including continued low rates of growth in global container trade, which was below 4.0% in 2013, and the delivery of larger vessels that are causing a cascading effect as vessel classes previously serving long-haul trades are displaced. As an example, while the number of container vessels in the global fleet increased by only 15 vessels during 2013, the total global capacity of container vessels increased by 5.7%, or over 900,000 TEU. The increase in the average size of containership vessels in the global fleet is driven by a desire for liners to reduce their fleet operating cost.

The current desire for large, cost-efficient containership vessels is evidenced by the fact that over 80% of the current containership orderbook is for vessels greater than 7500 TEU. Economies of scale in containership building mean that the cost per TEU in building large containerships is less than for vessels with smaller TEU capacity. The total newbuild price for a theoretical 6600 TEU containership, which peaked at \$108.0 million in the period June to September 2008, fell to \$58.0 million by the end of 2012, and then increased to approximately \$65.0 million as of the end of 2013.

[Table of Contents](#)**B. Results of Operations****Year Ended December 31, 2013 Compared with Year Ended December 31, 2012**

The following discussion of our financial condition and results of operations is for the years ended December 31, 2013 and 2012. The consolidated financial statements have been prepared in accordance with U.S. GAAP and, except where otherwise specifically indicated, all amounts are expressed in U.S. dollars.

The following table presents our operating results for the years ended December 31, 2013 and 2012.

Year Ended December 31,	2013	2012
<b>Statement of operations data (in thousands of USD):</b>		
Revenue	\$ 677,090	\$ 660,794
Operating expenses:		
Ship operating	150,105	138,655
Depreciation and amortization	172,459	165,541
General and administrative	34,783	24,617
Operating lease	4,388	3,145
Gain on vessel	—	(9,773)
Operating earnings	315,355	338,609
Other expenses (income):		
Interest expense	60,496	71,996
Interest income	(2,045)	(1,190)
Undrawn credit facility fee	2,725	1,516
Amortization of deferred charges	9,477	8,574
Refinancing expenses and costs	4,038	—
Change in fair value of financial instruments	(60,504)	135,998
Equity loss on investment	670	259
Other expenses	1,470	151
Net earnings	<u>\$ 299,028</u>	<u>\$ 121,305</u>
<b>Common shares outstanding at year end:</b>	<b>69,208,088</b>	<b>63,042,217</b>
<b>Per share data (in USD):</b>		
Basic earnings per Class A common share	\$ 3.36	\$ 0.84
Diluted earnings per Class A common share	\$ 2.93	\$ 0.81
Dividends paid per class A common share	\$ 1.188	\$ 0.938
<b>Statement of cash flows data (in thousands of USD):</b>		
Cash flows provided by (used in):		
Operating activities	\$ 328,644	\$ 311,183
Investing activities <sup>(1)</sup>	(296,133)	(229,564)
Financing activities	62,491	(181,364)
Net increase (decrease) in cash and cash equivalents	<u>\$ 95,002</u>	<u>\$ (99,745)</u>

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Year Ended December 31,	2013	2012
<b>Selected balance sheet data (in thousands of USD):</b>		
Cash and cash equivalents <sup>(1)</sup>	\$ 476,380	\$ 381,378
Vessels	4,992,271	4,863,273
Other assets <sup>(1)</sup>	479,110	406,202
<b>Total assets</b>	<b>\$5,947,761</b>	<b>\$5,650,853</b>
Current liabilities <sup>(2)</sup>	520,406	180,306
Deferred revenue	4,143	7,903
Long-term debt <sup>(2)</sup>	2,853,459	3,024,288
Other long-term liabilities	572,673	613,049
Fair value of financial instruments	425,375	606,740
Shareholders' equity	1,571,705	1,218,567
<b>Total liabilities and shareholders' equity</b>	<b>\$5,947,761</b>	<b>\$5,650,853</b>
<b>Other data:</b>		
Number of vessels in operation at period end	71	69
Average age of fleet in years at period end	6.7	5.6
TEU capacity at period end	414,300	405,100
Average remaining initial term on outstanding charters	5.5	6.4
Fleet utilization	98.0%	98.9%

- (1) The balance sheet and cash flow data for 2012 has been recast to separately present balances of and movement in restricted cash, included in other assets, from cash and cash equivalents. This reclassification, which is immaterial, had no impact on the consolidated statement of operations data.
- (2) Current liabilities includes \$388.2 million and \$66.7 million of current portion of long-term debt as at December 31, 2013 and 2012, respectively. As at December 31, 2013, our operating borrowings were \$3.5 billion (\$3.0 billion at December 31, 2012).

At the beginning of 2013, we had 69 vessels in operation. We accepted delivery of two secondhand vessels during the year ended December 31, 2013, bringing our fleet to a total of 71 vessels as of December 31, 2013. During the year ended December 31, 2012, we accepted delivery of four vessels. Revenue is determined primarily by the number of operating days, and ship operating expense is determined primarily by the number of ownership days.

	Year Ended December 31,		Increase	
	2013	2012	Days	%
Operating days	23,632	23,152	480	2.1%
Ownership days	24,109	23,399	710	3.0%

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**Financial Summary**

	Year Ended December 31,		Change	
	2013	2012	\$	%
Revenue	\$ 677,090	\$ 660,794	\$ 16,296	2.5%
Ship operating expense	150,105	138,655	11,450	8.3%
Depreciation and amortization expense	172,459	165,541	6,918	4.2%
General and administrative expenses	34,783	24,617	10,166	41.3%
Operating lease expense	4,388	3,145	1,243	39.5%
Gain on vessel	—	(9,773)	9,773	100.0%
Interest expense	60,496	71,996	(11,500)	(16.0%)
Amortization of deferred charges	9,477	8,574	903	10.5%
Refinancing expenses and costs	4,038	—	4,038	100.0%
Change in fair value of financial instruments	(60,504)	135,998	(196,502)	(144.5%)
Equity loss on investment	670	259	411	158.7%

**Revenue**

Revenue increased by 2.5% for the year ended December 31, 2013 over the same period for 2012. This increase is due primarily to the impact of a full period's contribution of four 13100 TEU newbuilding vessels delivered in 2012, revenue from two 4600 TEU secondhand vessels delivered in 2013, revenue from the management of third party vessels, and a decrease in scheduled off-hire. These increases were partially offset by lower charter rates for six 4250 TEU vessels which were on short-term charters during the year ended December 31, 2013, an increase in unscheduled off-hire, which included 386 off-charter days for six 4250 TEU vessels, and one less day in 2013 due to 2012 being a leap year.

The increase in operating days and the related financial impact for the year ended December 31, 2013 relative to 2012, is attributable to the following:

	Operating Days Impact	\$ Impact (in millions of USD)
2013 vessel deliveries	383	\$ 7.6
Full year contribution for 2012 vessel deliveries	368	20.6
Change in daily charterhire rate and re-charters	—	(9.1)
One less day due to the 2012 leap year	(61)	(1.7)
Scheduled off-hire	32	1.1
Unscheduled off-hire	(262)	(5.4)
Vessel management revenue	—	3.2
Other	20	—
<b>Total</b>	<b>480</b>	<b>\$ 16.3</b>

Vessel utilization was 98.0% for the year ended December 31, 2013, compared to 98.9% for the prior year. The decrease in vessel utilization for the year ended December 31, 2013, compared to the same period in 2012, was primarily due to a 262 day increase in unscheduled off-hire which was related primarily to more off-charter days for six of our 4250 TEU vessels. During the year ended December 31, 2013, we completed five dry-dockings, which resulted in 48 days of scheduled off-hire compared to the completion of six dry-dockings during 2012, which resulted in 80 days of scheduled off-hire.

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During the year ended December 31, 2013 we completed five dry-dockings, which resulted in 48 days of scheduled off-hire for the following vessels:

<u>Vessel</u>	<u>Completed</u>
CSCL Montevideo	Q2
CSCL Panama	Q2
CSCL Lima	Q3
CSCL San Jose	Q3
CSCL Santiago	Q3

During the year ended December 31, 2012, we completed six dry-dockings, which resulted in a total of 80 days of scheduled off-hire for the following vessels:

<u>Vessel</u>	<u>Completed</u>
Rio de Janeiro Express	Q1
CSCL Zeebrugge	Q1
COSCO Fuzhou	Q1
COSCO Yingkou	Q1
CSCL Long Beach	Q2
Seaspan Ningbo	Q3
Seaspan Dalian <sup>(1)</sup>	Q3
Seaspan Felixstowe <sup>(1)</sup>	Q3

(1) Dry-docking for these vessels were completed while the vessels were off-charter.

Our cumulative vessel utilization since our initial public offering in August 2005 through December 31, 2013 was approximately 99.0% or 99.3% if the impact of off-charter days is excluded.

### ***Ship Operating Expense***

Ship operating expense increased by 8.3% to \$150.1 million for the year ended December 31, 2013, compared to 2012. The increase in ship operating expense for the year ended December 31, 2013, compared to the same period of 2012 is due primarily to an increase in ownership and managed days of 4.9%, related to the addition of four 13100 TEU vessels during the first half of 2012, two 4600 TEU vessels in 2013 and the management of 4600 TEU vessels for MOL. The larger TEU vessels are more expensive to operate and the increased cost of lubes, insurance and other operating costs associated with these vessels further contributed to higher ship operating expenses. There was also an increase in crew wages and spare parts expense, primarily due to higher spare parts purchases in 2013 compared with 2012 and increased expense due to an expanding and older fleet. We expect ship operating expense to increase as our fleet ages and as the average size of vessels increases.

### ***Depreciation and Amortization Expense***

The increase in depreciation and amortization for the year ended December 31, 2013, compared to the same period in 2012, was due to the increase in the size of the fleet. Four vessels were delivered in 2012 and a full period of depreciation was taken for these vessels for the year ended December 31, 2013. There were also two vessel deliveries in 2013.

### ***General and Administrative Expenses***

General and administrative expenses increased by 41.3% to \$34.8 million for the year ended December 31, 2013, compared to the same period in 2012. The increase of \$10.2 million for the year ended December 31, 2013, compared to the same period in 2012, was due primarily to an increase of \$10.9 million in share-based compensation expense related to non-cash stock appreciation rights, or "SARs", granted to our Chief Executive



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Officer in December 2012 and to certain members of management in March 2013. The increase was partially offset by lower costs associated with the acquisition and integration of our Manager compared to the same period in 2012. We expect to incur non-cash compensation expenses of \$4.1 million and \$0.3 million in 2014 and 2015, respectively, relating to these SARs awards.

### ***Operating Lease Expense***

On June 27, 2012, we sold the Madinah to a U.S. bank and since that date we have been leasing the vessel back over a nine-year term. Prior to June 27, 2012, we owned the vessel and financed it with a term loan of \$53.0 million, which was repaid using the proceeds from the sale to the bank. During the year ended December 31, 2013, we incurred operating lease expenses relating to this arrangement of \$4.4 million. During 2012, in addition to operating lease expense of \$3.1 million, we incurred interest expense of \$0.7 million on the \$53.0 million loan prior to June 27, 2012.

### ***Gain on Vessels***

The \$53.0 million term loan credit facility related to the Madinah matured on June 27, 2012. On June 27, 2012, we sold the Madinah to a U.S. bank for \$52.1 million, the amount outstanding under the term loan, which resulted in a non-cash gain on vessel of \$9.8 million during 2012. The proceeds from this sale were used to fully repay the term loan.

### ***Interest Expense***

As at December 31, 2013, we had total borrowings of \$3.9 billion, which consisted of long-term debt of \$3.2 billion and other long-term liabilities of \$611.6 million. As at December 31, 2013, our operating borrowings were \$3.5 billion. Interest expense is comprised primarily of interest incurred on long-term debt and other long-term liabilities relating to operating vessels at the variable rate calculated by reference to LIBOR plus the applicable margin. Interest expense also includes a non-cash reclassification of amounts from accumulated other comprehensive loss related to previously designated hedging relationships. Interest incurred on long-term debt and other long-term liabilities for our vessels under construction is capitalized to the cost of the respective vessels under construction.

The decrease in interest expense for the year ended December 31, 2013 of \$11.5 million compared to the same period of 2012 was primarily due to lower operating borrowings as well as a reduction in average LIBOR. The remaining decreases were due to an increase in interest capitalized, a lower reclassification of accumulated other comprehensive loss into earnings, and a repayment of the \$53.0 million term loan in 2012 using the proceeds from the sale of the Madinah. The average LIBOR charged on our long-term debt for the year ended December 31, 2013 was 0.2% compared 0.4% for the comparable period in 2012. Although we have entered into fixed interest rate swaps for much of our variable rate debt, the difference between the variable interest rate and the swapped fixed-rate on operating debt is recorded in our change in fair value of financial instruments.

### ***Amortization of Deferred Charges***

In 2013, amortization of deferred charges relating to our financing fees increased to \$9.5 million, from \$8.6 million in 2012, primarily due to amortization on financing fees of new facilities entered in 2013. Financing fees on credit facilities and leases are deferred and amortized using the effective interest rate method over the term of the facility based on amounts available under the facility or over the term of the underlying obligation. To the extent that the amortization of the deferred financing fees related to our operating credit facilities, the amortization is expensed while the amortization of the deferred financing fees relating to our construction facilities is capitalized to the related vessels under construction.

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***Refinancing Expenses and Costs***

During the year ended December 31, 2013, we incurred refinancing expenses and costs of \$4.0 million, compared to nil in the same period of 2012. These costs were related to refinancing our \$1.0 billion credit facility. Please read “Item 5. Operating and Financial Review and Prospects—A. General—Management’s Discussion and Analysis of Financial Condition and Results of Operations—2013 Developments—2013 Loan Facility Transactions.”

***Change in Fair Value of Financial Instruments***

The change in fair value of financial instruments resulted in a gain of \$60.5 million for the year ended December 31, 2013, compared to a loss of \$136.0 million for the same period in 2012. The change in fair value for the year ended December 31, 2013, compared to the same period in 2012, was primarily due to increases in the forward LIBOR curve, the effect of the passage of time and less discounting of expected future settlements. The fair value of interest rate swap and swaption agreements is subject to change based on our company-specific credit risk and that of the counterparty included in the discount factor and the interest rate implied by the current swap curve, including its relative steepness. In determining the fair value, these factors are based on current information available to us. These factors are expected to change through the life of the instruments, causing the fair value to fluctuate significantly due to the large notional amounts and long-term nature of our derivative instruments. As these factors may change, the fair value of the instruments is an estimate and may deviate significantly from the actual cash settlements realized over the term of the instruments. Our valuation techniques have not changed and they remain consistent with those followed by other valuation practitioners.

The fair value of our interest rate swaps is most significantly impacted by changes in the yield curve. Based on the current notional amount and tenor of our interest rate swap portfolio, a one percent parallel shift in the overall yield curve is expected to result in a change in the fair value of our interest rate swaps of approximately \$116.0 million. Actual changes in the yield curve are not expected to occur equally at all points and changes to the curve may be isolated to periods of time. This steepening or flattening of the yield curve may result in greater or lesser changes to the fair value of our financial instruments in a particular period than would occur had the entire yield curve changed equally at all points.

The fair value of our interest rate swaps is also impacted by changes in our company-specific credit risk included in the discount factor. We discount our derivative instruments with reference to the publicly-traded bond yields for our comparator group in the shipping industry and composite Bloomberg industry yield curves. Based on the current notional amount and tenor of our swap portfolio, a one percent change in the discount factor is expected to result in a change in the fair value of our interest rate swaps of approximately \$9.0 million.

All of our interest rate swap agreements and our swaption agreements were marked to market with all changes in the fair value of these instruments recorded in “Change in fair value of financial instruments” in the Statement of Operations.

Please read “Item 11. Quantitative and Qualitative Disclosures About Market Risk” for further discussion.

***Equity Loss on Investment***

We have a 10.3% investment in GCI, which invests equity capital in containership assets strategic to Greater China. We agreed to make a minority investment in GCI of up to \$100.0 million during the investment period, which is anticipated to be until March 2015. The equity loss on investment of \$0.7 million for the year ended December 31, 2013 represents our share of losses in GCI. Our equity loss in 2012 was \$0.3 million.

**Year Ended December 31, 2012 Compared with Year Ended December 31, 2011**

The following discussion of our financial condition and results of operations is for the years ended December 31, 2012 and 2011. The consolidated financial statements have been prepared in accordance with U.S. GAAP and, except where otherwise specifically indicated, all amounts are expressed in U.S. dollars.

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The following table presents our operating results for the years ended December 31, 2012 and 2011.

Year Ended December 31,	2012	2011
<b>Statement of operations data (in thousands of USD):</b>		
Revenue	\$ 660,794	\$ 565,610
Operating expenses:		
Ship operating	138,655	135,696
Depreciation and amortization	165,541	140,354
General and administrative	24,617	16,818
Operating lease	3,145	—
(Gain) loss on vessels	(9,773)	16,237
Operating earnings	338,609	256,505
Other expenses (income):		
Interest expense	71,996	50,849
Interest income	(1,190)	(854)
Undrawn credit facility fee	1,516	4,282
Amortization of deferred charges	8,574	3,421
Change in fair value of financial instruments	135,998	281,027
Equity loss on investment	259	1,180
Other expenses	151	—
Net earnings (loss)	\$ 121,305	\$ (83,400)
<b>Common shares outstanding at year end:</b>	<b>63,042,217</b>	<b>69,620,060</b>
<b>Per share data (in USD):</b>		
Basic earnings (loss) per Class A common share	\$ 0.84	\$ (2.04)
Diluted earnings (loss) per Class A common share	\$ 0.81	\$ (2.04)
Dividends paid per class A common share	\$ 0.938	\$ 0.688
Basic and diluted earnings (loss) per Class C common share	\$ N/A	\$ —
Dividends paid per Class C common share	\$ N/A	\$ —
<b>Statement of cash flows data (in thousands of USD):</b>		
Cash flows provided by (used in):		
Operating activities	\$ 311,183	\$ 239,864
Investing activities <sup>(1)</sup>	(229,564)	(625,253)
Financing activities	(181,364)	832,293
Net increase (decrease) in cash and cash equivalents	\$ (99,745)	\$ 446,904
<b>Selected balance sheet data (in thousands of USD):</b>		
Cash and cash equivalents <sup>(1)</sup>	\$ 381,378	\$ 481,123
Vessels	4,863,273	4,697,249
Other assets <sup>(1)</sup>	406,202	269,344
Total assets	\$ 5,650,853	\$ 5,447,716
Current liabilities <sup>(2)</sup>	180,306	189,788
Fair value of financial instruments	606,740	564,490
Deferred revenue	7,903	12,503
Long-term debt <sup>(2)</sup>	3,024,288	2,914,247
Other long-term liabilities <sup>(2)</sup>	613,049	583,263
Shareholders' equity	1,218,567	1,183,425
Total liabilities and shareholders' equity	\$ 5,650,853	\$ 5,447,716
<b>Other data:</b>		
Number of vessels in operation at period end	69	65
Average age of fleet in years at period end	5.6	4.9
TEU capacity at period end	405,100	352,700
Average remaining initial term on outstanding charters	6.4	7.1
Fleet utilization	98.9%	99.3%

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- (1) The balance sheet and cash flow data for 2012 has been recast to separately present balances of and movement in restricted cash, included in other assets, from cash and cash equivalents. This reclassification, which is immaterial, had no impact on the consolidated statement of operations data.
- (2) Long-term debt related to operating vessels was \$3.0 billion as at December 31, 2012 (\$2.7 billion at December 31, 2011).

We began 2012 with 65 vessels in operation and, during the year ended December 31, 2012, accepted delivery of four vessels, bringing our fleet to a total of 69 vessels in operation as at December 31, 2012. During the year ended December 31, 2011, we accepted delivery of 10 vessels. Revenue is determined primarily by the number of operating days, and ship operating expense is determined primarily by the number of ownership days.

	Year Ended December 31,		Increase	
	2012	2011	Days	%
Operating days	23,152	21,948	1,204	5.5%
Ownership days	23,399	22,106	1,293	5.8%

### Financial Summary

	Year Ended December 31,		Change	
	2012	2011	\$	%
Revenue	\$ 660,794	\$ 565,610	\$ 95,184	16.8%
Ship operating expense	138,655	135,696	2,959	2.2%
Depreciation and amortization expense	165,541	140,354	25,187	17.9%
General and administrative expenses	24,617	16,818	7,799	46.4%
Operating lease expense	3,145	—	3,145	100.0%
(Gain) loss on vessels	(9,773)	16,237	(26,010)	(160.2%)
Interest expense	71,996	50,849	21,147	41.6%
Change in fair value of financial instruments	135,998	281,027	(145,029)	(51.6%)
Equity loss on investment	259	1,180	(921)	(78.1%)

### Revenue

The increase in revenue for the year ended December 31, 2011 was due to an increase in operating days. The increase in revenue for the year ended December 31, 2012 was primarily due to an increase in operating days. The increase in operating days and the financial impact thereof for the year ended December 31, 2012 relative to the corresponding period in 2011, is attributable to the following:

	Operating Days Impact	\$ Impact (in millions)
2012 vessel deliveries	1,092	\$ 60.9
Full year contribution for 2011 vessel deliveries	1,380	66.1
Changes due to bareboat charters <sup>(1)</sup>	(1,221)	(24.2)
Change in daily charterhire rate and re-charters	—	(6.4)
Change in charterhire days	41	1.3
Scheduled off-hire	54	0.7
Unscheduled off-hire	(142)	(3.2)
<b>Total</b>	<b>1,204</b>	<b>\$ 95.2</b>

- (1) Commencing in the fourth quarter of 2011, we bareboat chartered four 4800 TEU vessels to MSC. These transactions were accounted for as sales-type leases with the vessels being deemed disposed of and a gross

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investment in lease recorded, which is being amortized to income through revenue. Prior to the commencement of the bareboat charters, these vessels were on time charter to A.P. Møller-Mærsk. In the comparable periods in the prior year, the hire payments from the time chartering of these vessels to A.P. Møller-Mærsk A/S was included in revenue.

Vessel utilization was 98.9% for the year ended December 31, 2012, compared to 99.3% for the prior year. The decrease in vessel utilization for the year ended December 31, 2012 was primarily due to a 142 day increase in unscheduled off-hire. The unscheduled off-hire includes 118 days for the Seaspan Dalian, Seaspan Felixstowe, and Seaspan Ningbo. While the Seaspan Dalian and the Seaspan Felixstowe were off-charter, their scheduled dry-dockings were completed. There were also 22 days of unscheduled off-hire related to mechanical issues experienced onboard the COSCO Indonesia. During the year ended December 31, 2012 we completed six dry-dockings, which resulted in 80 days of scheduled off-hire for the following vessels:

<u>Vessel</u>	<u>Commenced</u>
Rio de Janeiro Express	Q1
CSCL Zeebrugge	Q1
COSCO Fuzhou	Q1
COSCO Yingkou	Q1
CSCL Long Beach	Q2
Seaspan Ningbo	Q3
Seaspan Dalian <sup>(1)</sup>	Q3
Seaspan Felixstowe <sup>(1)</sup>	Q3

- (1) Dry-docking for these vessels were completed while the vessels were off-charter, as described above.

During the year ended December 31, 2011, we completed nine dry-dockings, which resulted in a total of 134 days of scheduled off-hire for the following vessels:

<u>Vessel</u>	<u>Commenced</u>
CSCL Sao Paulo <sup>(1)</sup>	Q1
Jakarta Express	Q1
Saigon Express	Q1
Rio Grande Express	Q1
Lahore Express	Q2
Santos Express	Q2
Victor	Q2
CSCL Chiwan	Q3
Manila Express	Q4

- (1) CSCL Sao Paulo's next dry-docking was originally scheduled for 2013. However, we combined the scheduled dry-docking for this vessel with repairs initiated in December 2010 to achieve savings and defer the next scheduled dry-docking to 2016.

Our cumulative vessel utilization since our initial public offering in August 2005 through December 31, 2012 was 99.1%.

### ***Ship Operating Expense***

Prior to our acquisition of the Manager, ship operating expense was comprised of fixed, daily, per vessel fees paid to the Manager for technical services. The amount of this technical services fee was established every three years. As a result of the acquisition, our consolidated ship operating expense now represents the direct operating costs of the vessels.

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Our ship operating expenses, presented on a basis comparable to 2011, are as follows:

(In millions of USD, except per day amounts)	Year Ended December 31,		Change
	2012	2011	%
Ship operating expense, as reported	\$ 138.7	\$ 135.7	2.2%
Add: General and administrative component of technical services fee <sup>(1)</sup>	10.7	—	100.0%
Adjusted ship operating expense	\$ 149.4	\$ 135.7	10.1%
Ownership days	23,399	22,106	5.8%
Adjusted ship operating expense per day	\$ 6,386	\$ 6,138	4.0%

- (1) Prior to the acquisition of the Manager, the entire technical services fee was classified as ship operating expense. After the acquisition of the Manager, the Manager's general and administrative expenses that previously would have been included in the technical services fee and reported as ship operating expense are now presented as general and administrative expenses.

Total ship operating expense, as reported, for the year ended December 31, 2012 of \$138.7 million consists of \$9.3 million of technical services fees paid to the Manager during the pre-acquisition period from January 1 to January 26, 2012, and \$129.4 million of direct costs incurred during the post-acquisition period from January 27 to December 31, 2012.

Adjusted ship operating expense for the year ended December 31, 2012 increased by 10.1% compared to the prior year. Of the 10.1% increase, 5.8% was due to an increase in ownership days. The remaining increase was due primarily to an increase in ship operating expenses related to the addition of four 13100 TEU vessels during 2012. Larger TEU vessels are more expensive to operate therefore the increased cost of lubes, insurance and other operating costs associated with these vessels contributed to a higher ship operating expense per day.

### ***Depreciation and Amortization Expense***

The increase in depreciation and amortization expense for the year ended December 31, 2012 was due primarily to the increase in the size of our fleet. Four vessels delivered in 2012 and a full year of depreciation was taken for the 10 vessels delivered in 2011. This increase was partially offset by a reduction in depreciation as four vessels were sold to MSC in 2011 and the Madinah was sold in 2012.

### ***General and Administrative Expenses***

For the year ended December 31, 2012, general and administrative expenses increased by \$7.8 million to \$24.6 million from \$16.8 million for the same period of 2011. The increase was primarily attributable to a reclassification of \$10.7 million in general and administrative expenses that would have been included in ship operating expense prior to the January 2012 acquisition of our Manager. Prior to the acquisition of our Manager, we were charged a portion of the Manager's general and administrative expenses and the remainder of the Manager's general and administrative expenses was included in the technical services fee and classified as ship operating expense. After the acquisition, based on the non-operating nature of the expenses, all of the Manager's general and administrative expenses have been reclassified from ship operating expense to general and administrative expenses.

For the year ended December 31, 2012, stock compensation expense and integration costs increased compared to 2011 but were offset by a decrease in professional fees that were incurred in 2011 related to the acquisition of our Manager. In 2012, we granted SARs to our chief executive officer, Gerry Wang, which are described in "Item 7. Major Shareholders and Related Party Transactions—B. Related Party Transactions—Employment Agreement and Other Related Agreements with Gerry Wang."

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### ***Operating Lease Expense***

On June 27, 2012, we sold the Madinah to a U.S. bank and are leasing the vessel back for approximately nine years. Prior to June 27, 2012, we owned the vessel and financed it with a term loan of \$53.0 million which we entered into during November 2011. The \$53.0 million term loan was repaid using the proceeds from the sale to the U.S. bank. During the year ended December 31, 2012, we incurred operating lease expense of \$3.1 million for the six months of 2012 that we leased the Madinah. In 2011, we incurred interest expense of \$0.4 million on the \$53.0 million term loan instead of operating lease expense.

### ***Gain / Loss on Vessels***

The Madinah \$53.0 million term loan credit facility matured on June 27, 2012. On June 27, 2012, we sold the Madinah to the U.S. bank for \$52.1 million, the amount outstanding under the term loan which resulted in a non-cash gain on vessel of \$9.8 million. The proceeds of this sale were used to fully repay the term loan. The loss of \$16.2 million in 2011 resulted from the lease and sale of four vessels to MSC. The transactions were considered sales-type leases and were accounted for as a disposition of the vessels upon commencement of each lease.

### ***Interest Expense***

As at December 31, 2012, our long-term debt balance was \$3.1 billion and our other long-term liabilities were \$651.6 million. As at December 31, 2012, our operating debt balance was \$3.0 billion. Interest expense was comprised primarily of interest incurred on long-term debt and other long-term liabilities at the variable rate calculated by reference to LIBOR plus the applicable margin incurred on debt for operating vessels and a reclassification of amounts from accumulated other comprehensive income related to previously designated hedging relationships. Interest incurred on long-term debt and other long-term liabilities for our vessels under construction is capitalized to the cost of the respective vessels under construction.

The increase in interest expense for the year ended December 31, 2012, was primarily due to higher average operating debt and other long-term liabilities attributed to the delivery of four 13100 TEU newbuilding vessels in 2012. The average LIBOR for both the years ended December 31, 2012 and 2011 was 0.4%. Although we have entered into fixed interest rate swaps for much of our variable rate debt, the difference between the variable interest rate and the swapped fixed rate on operating debt is recorded in our change in fair value of financial instruments caption as required by financial reporting standards.

### ***Undrawn Credit Facility Fee***

During the year ended December 31, 2012, the decrease in undrawn credit facility fees compared to 2011 was due to lower average undrawn balances on our credit facilities due to increased debt draws for construction and final delivery of vessels. We incurred commitment fees ranging between 0.2% and 1.0% on our credit facilities, which are expensed as incurred.

### ***Amortization of Deferred Charges***

Amortization of deferred charges relating to our financing fees increased by 150.6%, or \$5.2 million, to \$8.6 million for the year ended December 31, 2012, from \$3.4 million for the year ended December 31, 2011 primarily due to the delivery of four 13100 TEU newbuilding vessels in 2012 and the impact of the 10 vessel deliveries in 2011. Financing fees on credit facilities and leases are deferred and amortized using the effective interest rate method over the term of the facility based on amounts available under the facility or over the term of the underlying obligation. To the extent that the amortization of the deferred financing fees related to our operating credit facilities, the amortization is expensed while the amortization of the deferred financing fees relating to our construction facilities is capitalized to the related vessels under construction.

### ***Change in Fair Value of Financial Instruments***

The change in fair value of financial instruments resulted in a loss of \$136.0 million for the year ended December 31, 2012, compared to a loss of \$281.0 million for the prior year. The change in fair value for the year ended December 31, 2012 was primarily due to decreases in the forward LIBOR curve and overall market changes in credit risk since December 31, 2011. The loss in 2011 was greater than the loss in 2012 primarily because the decreases in the forward LIBOR curve during 2011 were significantly larger, for tenors greater than one year, than the decreases in the forward LIBOR curve during 2012. The fair value of interest rate swap and swaption agreements is subject to change based on our company-specific credit risk included in the discount factor and the interest rate implied by the current swap curve, including its relative steepness. In determining the fair value, these factors are based on the current information available to us. These factors are expected to change through the life of the instruments, causing the fair value to fluctuate significantly due to the large notional amounts and long-term nature of our derivative instruments. As these factors may change, the fair value of the instruments is an estimate and may deviate significantly from the actual cash settlements realized over the term of the instruments. Our valuation techniques have not changed and remain consistent with those followed by other valuation practitioners.

The fair value of our interest rate swaps is most significantly impacted by changes in the yield curve. Based on the current notional amount and tenure of our interest rate swap portfolio, a one percent parallel shift in the overall yield curve is expected to result in a change in the fair value of our interest rate swaps of approximately \$137.0 million. Actual changes in the yield curve are not expected to occur equally at all points and changes to the curve may be isolated to periods of time. This steepening or flattening of the yield curve may result in greater or lesser changes to the fair value of our financial instruments in a particular period than would occur had the entire yield curve changed equally at all points.

The fair value of our interest rate swaps is also impacted by changes in our company-specific credit risk included in the discount factor. We discount our derivative instruments with reference to the publicly-traded bond yields for our comparator group in the shipping industry and composite Bloomberg industry yield curves. Based on the current notional amount and tenure of our swap portfolio, a one percent change in the discount factor is expected to result in a change in the fair value of our interest rate swaps of approximately \$18.0 million.

All of our interest rate swap agreements and our swaption agreements were marked to market with all changes in the fair value of these instruments recorded in "Change in fair value of financial instruments" in the Statement of Operations.

Please read "Item 11. Quantitative and Qualitative Disclosures About Market Risk" for further discussion.

### ***Equity Loss on Investment***

We had a 10.5% investment in GCI, which invests equity capital in containership assets strategic to Greater China. We agreed to make a minority investment in GCI of up to \$100.0 million during the investment period, which is anticipated to be until March 2015. During 2011, we made a capital contribution of \$2.0 million related to the purchase of four vessels, working capital obligations, organizational expenses and financial advisory fees. We account for our investment in GCI using the equity method. The equity loss on investment of \$0.3 million for the year ended December 31, 2012 represents our share of losses in GCI. Our equity loss in 2011 was \$1.2 million due primarily to the organizational costs incurred to establish GCI.

## **C. Liquidity and Capital Resources**

### **Liquidity and Cash Needs**

As at December 31, 2013, our cash and cash equivalents and short-term investments totaled \$488.1 million. Our primary short-term liquidity needs are to fund our operating expenses, debt repayments, lease payments and payment of our quarterly dividends. Our medium-term liquidity needs primarily relate to the purchase of the



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containerships we have contracted to purchase, debt repayment, lease payments, and open market repurchases of common and preferred shares. Our long-term liquidity needs primarily relate to potential future vessel acquisitions, debt repayments and lease payments, any open market repurchases of securities, and the future potential redemption of our Series C, Series D, and Series E preferred shares. The Series C preferred shares carry an annual dividend rate of 9.5% per \$25 of liquidation preference per share, which is subject to increase if, among other things, we do not redeem the shares in whole by January 30, 2017. The Series C preferred shares are redeemable by us at any time on or after January 30, 2016. The Series D preferred shares carry an annual dividend rate of 7.95% per \$25 of liquidation preference per share and the Series D preferred shares are redeemable by us at any time on or after January 30, 2018. The Series E preferred shares carry an annual dividend rate of 8.25% per \$25 of liquidation preference per share and are redeemable by us at any time on or after February 13, 2019.

We anticipate that our primary sources of funds for our short and medium-term liquidity needs will be our committed credit facilities, new credit facilities, new lease obligations, additional equity offerings as well as our cash from operations, while our long-term sources of funds will be from cash from operations and debt or equity financings. As of February 28, 2014, the estimated remaining installments on the 16 vessels we had contracted to purchase was approximately \$1.3 billion, which we will fund primarily from our existing and future credit facilities, future lease facilities, cash from operations and proceeds from our preferred share offerings. Future debt or equity issuances may be considered for growth.

Our dividend policy impacts our future liquidity needs. Since our initial public offering, our board of directors adopted a dividend policy to pay a regular quarterly dividend on our Class A common shares while reinvesting a portion of our operating cash flow in our business. Retained cash may be used to, among other things, fund vessel or fleet acquisitions, other capital expenditures, debt repayments, lease payments, and open market repurchases of securities, as determined by our board of directors. This dividend policy reflects our judgment that by retaining a portion of our cash in our business over the long-term, we will be able to provide better value to our shareholders by enhancing our longer term dividend paying capacity. In February 2011, our board of directors adopted a progressive dividend policy aimed at increasing our dividends on our Class A common shares in a manner that preserves our long-term financial strength and ability to expand our fleet. We expect this policy to increase dividends paid to holders of our Class A common shares. For more information, please read “Item 8. Financial Information—A. Financial Statements and Other Financial Information—Dividend Policy.”

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**Financing Facilities**

The following table summarizes our credit facilities and lease obligations as of December 31, 2013. In addition, our credit facilities and lease obligations are described in Notes 10 and 11, respectively, to our audited consolidated financial statements included in this report.

	<u>Amount Outstanding<sup>(1)</sup> (millions)</u>	<u>Amount Committed (millions)</u>	<u>Amount Available (millions)</u>
<i>Credit Facilities</i>			
Revolving credit facilities <sup>(2)(3)(4)</sup>	\$ 2,268.8	\$2,463.3	\$ 119.5
Term loan credit facilities <sup>(5)</sup>	<u>972.8</u>	<u>1,739.5</u>	<u>426.7</u>
<b>Total Credit Facilities<sup>(4)</sup></b>	<b><u>3,241.6</u></b>	<b><u>4,202.8</u></b>	<b><u>546.2</u></b>
<i>Lease Facilities</i>			
Leases for five 4500 TEU vessels (limited recourse to Seaspan Corporation) <sup>(5)</sup>	383.3	383.3	—
COSCO Faith – 13100 TEU vessel (non-recourse to Seaspan Corporation)	98.4	98.4	—
COSCO Pride – 13100 TEU vessel (non-recourse to Seaspan Corporation)	<u>129.9</u>	<u>129.9</u>	<u>—</u>
<b>Total Lease Facilities</b>	<b><u>611.6</u></b>	<b><u>611.6</u></b>	<b><u>—</u></b>
<b>Total Credit and Lease Facilities<sup>(6)</sup></b>	<b><u>\$ 3,853.2</u></b>	<b><u>\$4,814.4</u></b>	<b><u>\$ 546.2</u></b>

- (1) Includes amounts owed by wholly owned subsidiaries of Seaspan Corporation which are non-recourse to Seaspan Corporation.
- (2) For one of our revolving credit facilities, we have removed one of the two vessels under this facility and are therefore only able to borrow up to the greater of \$75.0 million and 65% of the vessel delivered costs. The amount available does not include this \$75.0 million.
- (3) Includes a \$14.7 million line of credit which was undrawn as at December 31, 2013.
- (4) Excludes the effect of an agreement entered into on December 23, 2013 to extend and refinance the Facility. Under the terms of the amended Facility, which became effective on January 31, 2014, the maturity date was extended from May 2015 to May 2019, the outstanding amount of the Facility was reduced to \$433.8 million and now bears interest at market rates. In January 2014, we funded this reduction in principal by drawing \$340 million under existing credit facilities, one of which is secured by certain vessels that were pledged as collateral under the Facility, and approximately \$260 million of cash on hand.
- (5) For one of our term loan credit facilities, we will not be able to draw on the committed amount of \$340.0 million until the related seven vessels are registered as collateral for the loan. The amount available does not include this \$340.0 million. In January 2014, we drew the \$340.0 million, as described above.
- (6) As at December 31, 2013, our operating borrowings were \$3.5 billion (December 31, 2012—\$3.0 billion). The remaining amount of our borrowings related to the construction of newbuilding vessels.

***Our Credit Facilities***

We primarily use our credit facilities to finance the construction and acquisition of vessels. Our credit facilities are, or will be upon vessel delivery, secured by first-priority mortgages granted on 69 of our vessels, together with other related security, such as assignments of shipbuilding contracts and refund guarantees for the vessels, assignments of time charters and earnings for the vessels, assignments of insurances for the vessels and assignments of management agreements for the vessels.

As of December 31, 2013, our revolving credit facilities and term loans provided for borrowings of up to approximately \$4.2 billion, of which approximately \$3.2 billion was outstanding and \$546.2 million was

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available to be drawn by us. Interest payments on the revolving credit facilities are based on LIBOR plus margins, which ranged between 0.5% and 0.9% as of December 31, 2013. We may prepay certain loans under our revolving credit facilities without penalty, other than breakage costs and opportunity costs in certain circumstances. We are required to prepay a portion of the outstanding loans under certain circumstances, such as the sale or loss of a vessel where we do not substitute another appropriate vessel. Amounts prepaid in accordance with these provisions may be borrowed, subject to certain conditions.

Interest payments on our term loans, excluding six term loans totaling \$149.0 million, are based on either LIBOR plus margins, which ranged between 0.4% and 4.8% as of December 31, 2013 or, for a portion of one of our term loans, the commercial interest reference rate of KEXIM plus margins, which was 0.7% as of December 31, 2013. We may prepay all term loans without penalty, other than breakage costs in certain circumstances and in one case a prepayment fee under certain circumstances. We are required to prepay a portion of the outstanding loans under certain circumstances, including the sale or loss of a vessel if we do not substitute another appropriate vessel. Amounts prepaid in accordance with these provisions may not be borrowed.

### ***Our Lease Facilities***

We use our lease facilities to finance the construction and acquisition of vessels. Our lease facilities are provided by bank financial leasing owners who own our eight leased vessels, including one operating lease. These banks are also granted other related security, such as assignments of time charters and earnings for the vessels, assignments of insurances for the vessels and assignments of management agreements for the vessels. We do not include our operating lease as part of our lease facilities.

As at December 31, 2013, we had lease obligations of approximately \$611.6 million. Under our lease agreements, subject to payment of a termination fee in certain circumstances, we may voluntarily terminate a lease agreement. We are also required to prepay rental amounts, broken funding costs and other costs to the lessor in certain circumstances.

One of our subsidiaries is a party, as lessee, to lease agreements for a lease facility used to finance the acquisition of five 4500 TEU vessels. The lessor has retained title to the vessels and remains our subsidiary's counterparty but has transferred its entire leasing business to its parent company. All of those vessels have been delivered and have commenced operations under 12-year fixed-rate time charters with K-Line. Our subsidiary is a party to each of the time charters with K-Line, and we have guaranteed the performance of its obligations to K-Line. Our subsidiary's obligations under this facility are secured by a general assignment of earnings (including under the time charters for the vessels), insurances and requisition hire for each vessel, and a corporate guarantee issued by us that is limited to a fixed amount of the obligations. In connection with this guarantee, we have placed \$60.0 million of restricted cash in a deposit account over which the lessor has a first priority interest.

### ***Certain Terms under our Credit and Lease Facilities***

We are subject to customary conditions before we may borrow under our credit and lease facilities, including, among others, that no event of default is outstanding and that there has been no material adverse change in our ability to make all required payments under the facilities.

Our credit and lease facilities also contain various covenants limiting our ability to, among other things:

- allow liens to be placed on the collateral securing the facility;
- enter into mergers with other entities;
- conduct material transactions with affiliates; or
- change the flag, class or management of the vessels securing the facility.

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Our credit and lease facilities also contain certain financial covenants, including, among others, that require Seaspan Corporation to maintain minimum tangible net worth, interest coverage ratios, interest and principal coverage ratios, and debt to assets ratios, as defined. We were in compliance with these covenants as at December 31, 2013.

### Cash Flows

The following table summarizes our sources and uses of cash for the periods presented:

<u>Year ended December 31,</u> <u>(In thousands of USD)</u>	<u>2013</u>	<u>2012</u>	<u>2011</u>
Net cash flow from operating activities	\$ 328,644	\$ 311,183	\$ 239,864
Net cash flow used in investing activities <sup>(1)</sup>	(296,133)	(229,564)	(625,253)
Net cash flow from (used) in financing activities	62,491	(181,364)	832,293

- (1) The cash flow data for 2012 has been recast to separately present balances of and movement in restricted cash, included in other assets, from cash and cash equivalents. This reclassification, which is immaterial, had no impact on the consolidated statement of operations data.

### Operating Cash Flows

Net cash flows from operating activities were \$328.6 million for the year ended December 31, 2013, an increase of \$17.5 million over the same period of 2012. The increase in net cash flows from operating activities for the year ended December 31, 2013, compared to the year ended 2012, was primarily due to an increase in net earnings, excluding non-cash items, of \$6.6 million, and an increase in cash related to working capital of \$10.9 million. The increase in net earnings, excluding non-cash items, was primarily due to an increase in revenue and a decrease in interest expense, partially offset by an increase in ship operating and other expenses. The increases in revenue and ship operating expenses were due primarily to the impact of a full period of contribution of four 13100 TEU vessels delivered in 2012, two second hand 4600 TEU vessels delivered in 2013 and the management of additional third party vessels. The decrease in interest expense was due to lower operating debt and other long-term liabilities as well as a reduction in average LIBOR. The increase in cash related to working capital resulted primarily from timing differences which are in the normal course of our operations.

Net cash flows from operating activities increased to \$311.2 million for the year ended December 31, 2012, from \$239.9 million for the year ended December 31, 2011. The increase of \$71.3 million was primarily due to an increase in net earnings, excluding non-cash items, of \$60.8 million, and an increase in cash related to working capital of \$10.5 million. The increase in net earnings, excluding non-cash items, was due to an increase in revenue, partially offset by an increase in ship operating, general and administrative, and interest expenses. The increase in revenue and ship operating expenses resulted from the delivery of four additional vessels in 2012. The increase in general administrative expenses was due to a reclassification relating to the acquisition of the Manager in 2012, and an increase in stock compensation expense. The increase in interest expense, net of amounts capitalized, was primarily due to the increase in our debt balances from our increased number of operating vessels. This increase in cash related to working capital of \$10.5 million was primarily caused by a reduction in the gross investment in lease due to an increase in the amounts received from four bareboat charters, in addition to increases in working capital related to cash outflows for payments made for other assets in 2011 that were not repeated in 2012. These changes were partially offset by a decrease in the change in the deferred revenue balances between 2012 and 2011. In 2012, the deferred revenue balance decreased due to the timing of receipt of time charter payments as compared to 2011. In 2011 the deferred revenue balance increased significantly due to timing of payments and an increase in the number of vessels under time charter. At the time of our acquisition of our Manager in January 2012, our Manager had certain outstanding working capital amounts, which are now eliminated on consolidation. The acquisition of the Manager's working capital balances are included as part of our investing activities, as they relate to the acquisition of a business. The impact of the acquired company on our operating cash flows in 2012 was limited to changes in these working capital balances since the acquisition date.

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### ***Financing Cash Flows***

Net cash flows from financing activities were \$62.5 million for the year ended December 31, 2013, an increase in cash from financing activities of \$243.9 million, compared to the same period of 2012. The increase in cash from financing activities for the year ended December 31, 2013, compared to the prior year, was primarily due to an increase in proceeds from share issuances and net draws on credit facilities as well as lower share repurchases, partially offset by higher debt repayments and financing fees. In the year ended December 31, 2013, we received \$73.2 million from the issuance of Class A common shares and \$47.9 million from the issuance of Series D preferred shares, compared to \$74.7 million from the issuance of Series D preferred shares in the prior year. In the year ended December 31, 2013, we used \$9.0 million to repurchase Series C preferred shares compared to the use of \$172.8 million to repurchase Class A common shares in 2012. In addition, during the year ended December 31, 2013, net draws on our credit facilities increased due primarily to the full drawdown of our \$125.0 million facility entered into in December 2013, which was partially offset by an increase in debt repayments of \$22.8 million and an increase in financing fees associated with our new loan facilities of \$19.5 million, compared to the prior year.

Net cash flows used in financing activities was \$181.4 million for the year ended December 31, 2012, compared to cash provided from financing activities of \$832.3 million for the year ended December 31, 2011. The decrease in cash provided of approximately \$1.0 billion was primarily due to lower net proceeds from the issuance of Series D Preferred Shares in 2012, compared to the issuance of Series C Preferred Shares in 2011, as well as a reduction of net draws in our credit facilities during 2012. We raised \$74.7 million from the issuance of our Series D Preferred Shares in 2012 which was lower than the \$344.5 million raised from the issuance of our Series C Preferred shares in 2011. We drew \$487.9 million less on our credit facilities as we had fewer vessel deliveries in 2012 compared to 2011 and consequently required less financing. This was partially offset by additional repayments on credit facilities of \$42.0 million over 2011. We also used cash of \$172.8 million to repurchase 11.3 million of our Class A common shares related to our 2012 tender offer. We had a full year of dividend payments related to our Series C preferred dividends and also increased the dividend on our Class A common shares, resulting in additional cash used of \$27.5 million in 2012.

### ***Investing Cash Flows***

Net cash flows used in investing activities were \$296.1 million for the year ended December 31, 2013, which represents an increase in cash used of \$66.6 million compared to the same period of 2012. The increase in cash used in investing activities for the year ended December 31, 2013, compared to the prior year, was primarily due to an increase in amounts recoverable from GCI for vessel installments paid by us on behalf of GCI, an increase in vessel expenditures primarily related to first installments on our newbuilding containerships and the purchase of two second hand vessels, as well as a reduction of cash related to the acquisition of our Manager. In the year ended December 31, 2013, we paid first installments on 13 of our newbuilds while in the prior year we completed delivery installments on three of our vessels. We acquired \$23.9 million of cash as part of the acquisition of our Manager in 2012, but there was no comparable amount in 2013. These increases in cash used were partially offset by the proceeds from maturity of short term investments.

Cash used in investing activities decreased to \$229.6 million for the year ended December 31, 2012, from \$625.3 million for the year ended December 31, 2011. The decrease of \$395.7 million was primarily due to a reduction in expenditures on vessels from fewer deliveries during the year.

### **Ongoing Capital Expenditures and Dividends**

The average age of the vessels in our operating fleet is approximately seven years. Capital expenditures primarily relate to our regularly scheduled dry-dockings. In 2013 and 2012, we completed five and eight dry-dockings, respectively. All of the vessels dry-docked during the year underwent their first five-year dry-docking. In 2014 we expect seven vessels and one vessel to undergo their five and 10-year dry-dockings, respectively.

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We must make substantial capital expenditures over the long-term to preserve our capital base, which is comprised of our net assets, to continue to refinance our indebtedness and to maintain our dividends. We will likely need to retain additional funds at some time in the future to provide reasonable assurance of maintaining our capital base over the long-term. We believe it is not possible to determine now, with any reasonable degree of certainty, how much of our operating cash flow we should retain in our business and when it should be retained to preserve our capital base. Factors that will impact our decisions regarding the amount of funds to be retained in our business to preserve our capital base, including the following:

- the remaining lives of our vessels;
- the returns that we generate on our retained cash flow, which will depend on the economic terms of any future acquisitions and charters, which are currently unknown;
- future market charter rates for our vessels, particularly when they come off charter, which are currently unknown;
- future operating and interest costs, particularly after the acquisition of our Manager in January 2012, now that our operating costs are subject to market fluctuation;
- future operating and financing costs are unknown and we use forward currency contracts and interest rate swaps to manage certain currency and interest rate risks;
- our future refinancing requirements and alternatives and conditions in the relevant financing and capital markets at that time;
- capital expenditures to comply with environmental regulations; and
- unanticipated future events and other contingencies. Please read “Item 3. Key Information—D. Risk Factors.”

Our board of directors will periodically consider these factors in determining our need to retain funds rather than pay them out as dividends. Unless we are successful in making acquisitions with outside sources of financing that add a material amount to our cash available for retention in our business or unless our board of directors concludes that we will likely be able to re-charter our fleet upon expiration of existing charters at rates higher than the rates in our current charters, our board of directors will likely determine at some future date to reduce, or possibly eliminate, our dividend for reasonable assurance that we are retaining the funds necessary to preserve our capital base.

The following dividends were paid or accrued:

	Year ended December 31,	
	2013	2012
	(in thousands of USD, except per share amounts)	
<b>Dividends on Class A common shares</b>		
Declared, per share	\$ 1.1875	\$ 0.9375
Paid in cash	44,379	51,772
Reinvested in common shares through DRIP	31,961	7,168
	<u>\$ 76,340</u>	<u>\$ 58,940</u>
<b>Dividends on preferred shares</b>		
Series A, accrued <sup>(1)</sup>	<u>\$ 38,390</u>	<u>\$ 34,195</u>
Series C, paid in cash	<u>\$ 33,058</u>	<u>\$ 33,250</u>
Series D, paid in cash	<u>\$ 5,435</u>	<u>\$ —</u>

(1) On January 30, 2014, our Series A preferred shares converted into a total of 23,177,175 Class A common shares

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Our board of directors has adopted a progressive dividend policy aimed at increasing our dividends on our Class A common shares in a manner that preserves our long-term financial strength and ability to expand our fleet. We expect this policy to increase dividends paid to holders of our Class A common shares. For more information, please read “Item 8. Financial Information—A. Financial Statements and Other Financial Information—Dividend Policy.”

Dividends on our Series C preferred shares accrue at a rate of 9.5%. This rate is subject to adjustment pursuant to our articles of incorporation.

Dividends on our Series D preferred shares accrue at a rate of 7.95%. This rate is subject to adjustment pursuant to our articles of incorporation.

Dividends on our Series E preferred shares accrue at a rate of 8.25%. This rate is subject to adjustment pursuant to our articles of incorporation.

### **D. Critical Accounting Policies and Estimates**

We prepare our consolidated financial statements in accordance with U.S. GAAP, which requires us to make estimates in the application of our accounting policies based on our best assumptions, judgments and opinions. Our estimates affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosures. We base our estimates on historical experience and anticipated results and trends and on various other assumptions that we believe are reasonable under the circumstances. However, because future events and their effects cannot be determined with certainty, actual results could differ from our assumptions and estimates, and such differences could be material. Accounting estimates and assumptions discussed in this section are those that we consider to be the most critical to an understanding of our financial statements because they inherently involve significant judgments and uncertainties.

Senior management has discussed with our audit committee the development, selection and disclosure of accounting estimates used in the preparation of our consolidated financial statements.

### **Amortization of Dry-Docking Activities**

We defer costs incurred for dry-docking activities until the next scheduled dry-docking. Dry-docking of our vessels is performed every five years and includes major overhaul activities that are comprehensive and all encompassing. We have adopted the deferral method of accounting for dry-dock activities whereby costs incurred are deferred and amortized on a straight-line basis over the period until the next scheduled dry-dock activity.

The major components of routine dry-docking costs include: (1) yard costs, which may include riggers, pilot/tugs, yard fees, hull painting service, deck repairs (such as steel work, anchors, chains, valves, tanks, and hatches) and engine components (such as shafts, thrusters, propeller, rudder, main engine and auxiliary machinery); (2) non-yard costs which include the paint, technician service costs and parts ordered specifically for dry-dock; and (3) other costs associated with communications, pilots, tugs, survey fees, port fees and classification fees.

Repairs and maintenance normally performed on an operational vessel either at port or at sea are limited to repairs to specific damages caused by a particular incident or normal wear and tear, or minor maintenance to minimize the wear and tear to the vessel. Above the water line repairs, minor deck maintenance and equipment repairs may be performed to the extent the operations and safety of the crew and vessel are not compromised. All repairs and maintenance costs are expensed as incurred.

### **Vessel Lives**

The carrying value of each of our vessels represents its original cost at the time of delivery or purchase, including acquisition costs directly attributable to the vessel and expenditures made to prepare the vessel for its

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initial voyage, less accumulated depreciation. We depreciate our vessels using the straight-line method over their estimated useful lives. Secondhand vessels are depreciated from the date of their acquisition through their remaining estimated useful life. We review the estimate of our vessels' useful lives on an ongoing basis to ensure they reflect current technology, service potential, and vessel structure. We estimate the useful life of the vessels will be 30 years from the date of initial completion. Should certain factors or circumstances cause us to revise our estimate of vessel service lives in the future, depreciation expense could be materially lower or higher. Such factors include, but are not limited to, the extent of cash flows generated from future charter arrangements, changes in international shipping requirements, and other factors, many of which are outside of our control.

### **Impairment of Long-lived Assets**

We review our long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable, which occurs when the assets' carrying value is greater than the undiscounted future cash flows the asset is expected to generate over its remaining useful life. Examples of such events or changes in circumstances related to our long-lived assets include, among others: a significant adverse change in the extent or manner in which the asset is being used or in its physical condition; a significant adverse change in legal factors or in the business climate that could affect the asset's value, including an adverse action or assessment by a foreign government that impacts the use of the asset; or a current-period operating or cash flow loss combined with a history of operating or cash flow losses, or a projection or forecast that demonstrates continuing losses associated with the asset's use. If there has been a general decline in the market value of vessels, we analyze our vessels for impairment to the extent that the decline in market value is expected to impact the future cash flows of the vessel. In cases where the vessel being analyzed is under a long-term time charter contract, a decline in the current market value of the vessel may not impact the recoverability of its carrying value.

If the estimated undiscounted future cash flows of an asset, excluding interest charges, expected to be generated by the use of the asset over its useful life exceeds the asset's carrying value, no impairment is recognized even though the fair value of the asset may be lower than its carrying value. If the estimated undiscounted future cash flows are less than its carrying amount, an impairment charge is recorded for the amount by which the net book value of the asset exceeds its fair value. Fair value is calculated as the net present value of estimated future cash flows, which, in certain circumstances, will approximate the estimated market value of the vessel.

#### *Estimates*

Our estimates of future cash flows involve assumptions about future charter rates, vessel utilization, operating expenses, dry-docking expenditures, vessel residual values and the remaining estimated useful lives of our vessels.

Revenue assumptions are based on contracted time charter rates up to the end of the life of the current contract of each vessel, as well as an estimated time charter rate for the remaining life of the vessel after the completion of its current contract. The estimated time charter rates for non-contracted revenue days are based on 10-year average time charter rates incorporating historical time charter rate data from an independent third-party maritime research service provider, as well as recent market charter rates relevant to future periods.

Our estimates of vessel utilization, including estimated off-hire time for dry-docking, off-hire time between time charters and equipment or machinery breakdown, are based on historical experience.

Our estimates of operating expenses are based on historical and budgeted operating and dry-docking costs and our expectations of future inflation and operating requirements. Expenses, including dry-dock expenses, are impacted by the economic conditions of our industry, including, among other things, crewing costs, insurance and bunker costs, and availability of shipyards for dry-docking.



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Vessel residual values are a product of a vessel's lightweight tonnage and an estimated scrap rate which takes into consideration historical average scrap prices based on information from third-party maritime research services. Although we believe that the assumptions used to determine the scrap rate are reasonable and appropriate, such assumptions are highly subjective because of the cyclical nature of future demand for scrap steel.

The remaining lives of our vessels used in our estimates of future cash flows are consistent with those used in our calculations of depreciation.

In our experience, certain assumptions relating to our estimates of future cash flows are more predictable by their nature, including estimated revenue under existing contract terms and remaining vessel life. Certain assumptions relating to our estimates of future cash flows require more judgment and are inherently less predictable, such as future charter rates beyond the firm period of existing contracts, ongoing operating costs and vessel residual values, due to factors such as the volatility in vessel charter rates and vessel values. We believe the assumptions used to estimate future cash flows of our vessels are reasonable at the time they are made. We can make no assurances however, as to whether our estimates of future cash flows, particularly future vessel charter rates or vessel values, will be accurate.

### *Impairment Analysis*

Based on current market conditions, we intend to continue to hold and operate our vessels. Based on our analysis, we believe the estimated undiscounted future net cash flows for each vessel were in excess of each vessel's carrying value, and accordingly, no impairment was recorded for vessels held for use as of December 31, 2013 and 2012.

The following table presents information with respect to the carrying amount of the vessels owned by us and indicates whether their estimated charter-free market values are below their carrying values as of December 31, 2013. The charter-free market value of each of our vessels does not necessarily represent its fair value or the amount that could be obtained if the vessel was sold. The charter-free valuations assume that our vessels are in good and seaworthy condition without need for repair, and, if inspected, they would be certified in class without notations of any kind. In addition, because vessel values can be highly volatile, these estimates may not be indicative of either the current or future prices that we could achieve if we were to sell any of the vessels. We would not record an impairment for any of the vessels for which the charter-free market value is below its carrying value unless and until we either decide to sell the vessel for a loss, or determine that the vessel's carrying amount is not recoverable. We believe that the projected undiscounted cash flows exceed the carrying values for those vessels that have carrying values in excess of the charter-free market values as of December 31, 2013 and, accordingly, have not recorded an impairment charge.

<u>Vessel Name</u>	<u>Vessel Class (TEU)</u>	<u>Year Built</u>	<u>Year Purchased</u>	<u>Vessel Carrying Value at December 31, 2013<sup>(1)</sup> (in millions)</u>	<u>Vessel Carrying Value at December 31, 2012 (in millions)</u>
COSCO Glory	13100	2011	2011	\$ 159.5	\$ 164.8
COSCO Pride	13100	2011	2011	160.6	165.9
COSCO Development	13100	2011	2011	161.3	166.7
COSCO Harmony	13100	2011	2011	161.3	166.6
COSCO Excellence	13100	2012	2012	165.3	170.7
COSCO Faith	13100	2012	2012	165.5	170.9
COSCO Hope	13100	2012	2012	164.9	170.2
COSCO Fortune	13100	2012	2012	165.3	170.9
CSCL Zeebrugge	9600	2007	2007	92.0	95.5
CSCL Long Beach	9600	2007	2007	93.1	96.5
CSCL Oceania	8500	2004	2004	54.5	56.6
CSCL Africa	8500	2005	2005	54.9	57.1

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Vessel Name	Vessel Class (TEU)	Year Built	Year Purchased	Vessel Carrying Value at December 31, 2013 <sup>(1)</sup> (in millions)	Vessel Carrying Value at December 31, 2012 (in millions)
COSCO Japan	8500	2010	2010	112.3	116.1
COSCO Korea	8500	2010	2010	112.5	116.4
COSCO Philippines	8500	2010	2010	112.7	116.6
COSCO Malaysia	8500	2010	2010	113.1	116.8
COSCO Indonesia	8500	2010	2010	113.6	117.4
COSCO Thailand	8500	2010	2010	115.8	119.6
COSCO Prince Rupert	8500	2011	2011	118.3	122.3
COSCO Vietnam	8500	2011	2011	118.6	122.6
MOL Emerald	5100	2009	2009	69.8	72.3
MOL Eminence	5100	2009	2009	70.6	73.1
MOL Emissary	5100	2009	2009	71.0	73.5
MOL Empire	5100	2010	2010	71.5	74.0
MOL Excellence	4600	2003	2013	23.9	-
MOL Efficiency	4600	2003	2013	24.0	-
Brotonne Bridge	4500	2010	2010	85.8	88.8
Brevik Bridge	4500	2011	2011	87.2	90.3
Bilbao Bridge	4500	2011	2011	86.7	89.7
Berlin Bridge	4500	2011	2011	89.4	92.5
Budapest Bridge	4500	2011	2011	91.1	94.2
Seaspan Hamburg	4250	2001	2001	26.1	27.5
Seaspan Chiwan	4250	2001	2001	27.1	28.2
Seaspan Ningbo	4250	2002	2002	29.0	30.2
Seaspan Dalian	4250	2002	2002	29.7	30.8
Seaspan Felixstowe	4250	2002	2002	30.0	31.3
CSCL Vancouver	4250	2005	2005	30.1	31.3
CSCL Sydney	4250	2005	2005	30.5	31.7
CSCL New York	4250	2005	2005	30.6	31.9
CSCL Melbourne	4250	2005	2005	39.3	40.9
CSCL Brisbane	4250	2005	2005	39.4	41.0
New Delhi Express	4250	2005	2005	42.6	44.3
Dubai Express	4250	2006	2006	43.0	44.7
Jakarta Express	4250	2006	2006	43.2	45.0
Saigon Express	4250	2006	2006	43.4	45.1
Lahore Express	4250	2006	2006	43.9	45.6
Rio Grande Express	4250	2006	2006	44.4	46.1
Santos Express	4250	2006	2006	44.5	46.2
Rio de Janeiro Express	4250	2007	2007	45.3	46.9
Manila Express	4250	2007	2007	45.4	47.1
CSAV Loncomilla	4250	2009	2009	55.1	56.9
CSAV Lumaco	4250	2009	2009	54.9	56.9
CSAV Lingue	4250	2010	2010	57.2	59.2
CSAV Lebu	4250	2010	2010	57.3	59.3
COSCO Fuzhou <sup>(2)</sup>	3500	2007	2007	40.0	41.5
COSCO Yingkou <sup>(2)</sup>	3500	2007	2007	40.8	42.3
CSCL Panama <sup>(2)</sup>	2500	2008	2008	36.2	37.6
CSCL São Paulo <sup>(2)</sup>	2500	2008	2008	36.5	37.9
CSCL Montevideo <sup>(2)</sup>	2500	2008	2008	36.7	38.0
CSCL Lima <sup>(2)</sup>	2500	2008	2008	36.7	38.0
CSCL Santiago <sup>(2)</sup>	2500	2008	2008	36.7	38.0

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Vessel Name	Vessel Class (TEU)	Year Built	Year Purchased	Vessel Carrying Value at December 31, 2013 <sup>(1)</sup> (in millions)	Vessel Carrying Value at December 31, 2012 (in millions)
CSCL San Jose <sup>(2)</sup>	2500	2008	2008	36.8	38.2
CSCL Callao <sup>(2)</sup>	2500	2009	2009	37.2	38.6
CSCL Manzanillo <sup>(2)</sup>	2500	2009	2009	37.8	39.1
Guayaquil Bridge <sup>(2)</sup>	2500	2010	2010	38.6	39.9
Calicanto Bridge <sup>(2)</sup>	2500	2010	2010	38.8	40.2
Total				4,670.9	4,786.0

- (1) At December 31, 2013, except for the CSCL Africa and the CSCL Oceania, the charter-free market value is lower than the vessel's carrying value. The aggregate carrying value of those vessels whose charter-free market value is lower than its carrying value is \$4.6 billion. The estimated aggregate charter-free market value of these vessels is \$2.6 billion. Although the charter-free market values are lower than the carrying values of those vessels, we expect the difference would be less using charter-attached values since the majority of those vessels are on long-term time charters. Based on our assumptions discussed above, the projected undiscounted future cash flows for each of those vessels exceeds the carrying values of the vessel at December 31, 2013.
- (2) As of December 31, 2013, we believe that all of our vessels will recover their carrying value through the end of their useful lives, based on their estimated undiscounted future cash flows calculated in accordance with our impairment assessment. However, certain vessels that are 3500 TEU or smaller are considered to be at a higher risk for future impairment as the excess of their estimated undiscounted future cash flows over their carrying value is lower than the remainder of the fleet. The aggregate carrying value of these vessels is \$452.8 million and their estimated aggregate charter-free market value is \$236.1 million.

### Goodwill

We allocate the cost of acquired companies to the identifiable tangible and intangible assets and liabilities acquired, with the remaining amount being classified as goodwill. Our future operating performance may be affected by the potential impairment charges related to goodwill. Accordingly, the allocation of the purchase price to goodwill may significantly affect our future operating results. Goodwill is not amortized, but reviewed for impairment annually, or more frequently if impairment indicators arise. The process of evaluating the potential impairment of goodwill is highly subjective and requires significant judgment at many points during the analysis.

The allocation of the purchase price of acquired companies requires management to make significant estimates and assumptions, including estimates of future cash flows expected to be generated by the acquired assets and the appropriate discount rate to value these cash flows. In addition, the process of evaluating the potential impairment of goodwill is highly subjective and requires significant judgment at many points during the analysis. The fair value of our reporting units is estimated based on discounted expected future cash flows using a weighted-average cost of capital rate. The estimates and assumptions regarding expected cash flows and the appropriate discount rates require considerable judgment and are based upon existing contracts, historical experience, financial forecasts and industry trends and conditions.

Our goodwill of \$75.3 million that resulted from our January 2012 acquisition of our Manager was tested for impairment at November 30, 2013. Based on the results of this test, the discounted cash flows substantially exceeded the carrying value of the reporting unit, which is considered to be our business as a whole. Key assumptions that impact the fair value of the reporting unit include our ability to utilize the vessels in the fleet and the charter rates the vessels earn when employed. Other key assumptions include the operating life of our vessels and our cost of capital.

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### **Derivative Instruments**

Our hedging policies permit the use of various derivative financial instruments to manage interest rate risk. Interest rate swap and swaption agreements have been entered into to reduce our exposure to market risks from changing interest rates. We recognize the interest rate swap and swaption agreements on the balance sheet at their fair values.

The fair values of the interest rate swap and swaption agreements have been calculated by discounting the future cash flows of both the fixed rate and variable rate interest rate payments. The interest rate payments and discount rates were derived from a yield curve created by nationally recognized financial institutions adjusted for the associated credit risk related to the credit risk of the counterparties or our non-performance risk. The inputs used to determine the fair values of these agreements are readily observable. Accordingly, we have classified the fair value of the interest rate swap and swaption agreements within Level 2 of the fair value hierarchy as defined by U.S. GAAP.

We previously designated certain of our interest rate swaps as accounting hedges and applied hedge accounting to those instruments. While hedge accounting was applied, the effective portion of the unrealized gains or losses on those designated interest rate swaps was recorded in other comprehensive income.

By September 30, 2008, we had de-designated all of our interest rate swaps as accounting hedges. Subsequent to their de-designation dates, changes in their fair value are recorded in earnings.

We evaluate whether any of the previously hedged interest payments are remote of occurring. We have concluded that the previously hedged interest payments are not remote of occurring. Therefore, unrealized gains or losses in accumulated other comprehensive income associated with the previously designated interest rate swaps are recognized in earnings when and where the interest payments are recognized. If such interest payments were to be identified as being remote of occurring, the accumulated other comprehensive income balance pertaining to these amounts would be reversed through earnings immediately.

### **Recent Accounting Pronouncements**

None.

### **Glossary**

We use a variety of operational terms and concepts in this Annual Report. These include the following:

*Annual Survey.* The inspection of a vessel pursuant to international conventions, by a classification society surveyor, on behalf of the flag state, that takes place every year.

*Ballast.* A voyage during which the ship is not laden with cargo.

*Bareboat Charter.* A charter of a vessel under which the shipowner is usually paid a fixed amount for a certain period of time during which the charterer is responsible for the vessel operating expenses, including crewing, and voyage expenses of the vessel and for the management of the vessel. A bareboat charter is also known as a “demise charter” or a “time charter by demise.”

*Bunkers.* Heavy fuel and diesel oil used to power a vessel’s engines.

*Charter.* The hire of a vessel for a specified period of time or a particular voyage to carry a cargo from a loading port to a discharging port. The contract for a charter is commonly called a charterparty.

*Charterer.* The party that charters a vessel.

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*Charterhire.* A sum of money paid to the shipowner by a charterer for the use of a ship. Charterhire paid under a voyage charter is also known as “freight.”

*Classification society.* An independent organization that certifies that a vessel has been built and maintained according to the organization’s rules for that type of vessel and complies with the applicable rules and regulations of the flag state and the international conventions of which that country is a member. A vessel that receives its certification is referred to as being “in-class.”

*Dry-docking.* The removal of a vessel from the water for inspection and, if needed, repair of those parts of a vessel that are below the water line. During dry-dockings, which are required to be carried out periodically, certain mandatory classification society inspections are carried out and relevant certifications are issued. Dry-dockings for containerships are generally required once every five years, one of which must be a “special survey.”

*Flag State.* The country of a vessel’s registry.

*Gross ton.* A unit of measurement for the total enclosed space within a ship equal to 100 cubic feet or 2.831 cubic meters.

*Hire rate.* The payment to the shipowner from the charterer for the use of the vessel.

*Hull.* Shell or body of a vessel.

*IMO.* International Maritime Organization, a United Nations agency that issues international standards for shipping.

*Intermediate survey.* The inspection of a vessel by a classification society surveyor that takes place 24 to 36 months after each “special survey.”

*Newbuilding.* A new ship under construction or just completed.

*Off-charter.* The period in which a vessel is not in service under a time charter and, accordingly, we do not receive hire.

*Off-hire.* The period in which a vessel is not available for service under a time charter and, accordingly, the charterer generally is not required to pay the hire rate. Off-hire periods can include days spent on repairs, dry-docking and surveys, whether or not scheduled.

*Protection and indemnity insurance.* Insurance obtained through a mutual association formed by shipowners to provide liability indemnification protection from various liabilities to which they are exposed in the course of their business, and which spreads the liability costs of each member by requiring contribution by all members in the event of a loss.

*Scrapping.* The sale of a ship as scrap metal.

*Ship operating expense.* The costs of operating a vessel, primarily consisting of crew wages and associated costs, insurance premiums, management fee, lubricants and spare parts, and repair and maintenance costs. Ship operating expenses exclude fuel cost, port expenses, agents’ fees, canal dues and extra war risk insurance, as well as commissions, which are included in “voyage expenses”.

*Special survey.* The inspection of a vessel by a classification society surveyor that takes place every five years, as part of the recertification of the vessel by a classification society.

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*Spot market.* The market for immediate chartering of a vessel, usually for single voyages.

*TEU.* Twenty-foot equivalent unit, the international standard measure for containers and containership capacity.

*Time charter.* A charter under which the shipowner hires out a vessel for a specified period of time. The shipowner is responsible for providing the crew and paying vessel operating expenses, while the charterer is responsible for paying the voyage expenses and additional voyage insurance. The shipowner is paid the hire rate, which accrues on a daily basis.

*Voyage expenses.* Expenses incurred due to a ship's traveling from a loading port to a discharging port, such as fuel (bunkers) cost, port expenses, agents' fees, canal dues, extra war risk insurance and commissions.

*Vessel operating expenses.* The costs of operating a vessel, primarily consisting of crew wages and associated costs, insurance premiums, management fees, lubricants and spare parts, and repair and maintenance costs.

### E. Research and Development

Not applicable.

### F. Off-Balance Sheet Arrangements

As at December 31, 2013, we do not have any off-balance sheet arrangements.

### G. Contractual Obligations

As of December 31, 2013, our long-term undiscounted contractual obligations, including amounts payable under our credit facilities, consist of the following:

	Payments Due by Period (in thousands of USD)				
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Long-term debt obligations <sup>(1)</sup>	\$2,963,241	\$375,387	\$ 354,977	\$430,239	\$ 1,802,638
Purchase obligations for additional vessels	1,604,326	476,420	1,127,906	—	—
Lease obligations <sup>(2)</sup>	697,499	60,079	419,408	47,118	170,894
Operating lease	51,602	6,856	13,752	13,586	17,408
Total	<u>\$ 5,316,668</u>	<u>\$918,742</u>	<u>\$ 1,916,043</u>	<u>\$490,943</u>	<u>\$ 1,990,940</u>

- (1) Represents principal payments on amounts drawn on our credit facilities that bear interest at variable rates of LIBOR plus margins ranging from 0.35% to 4.75% per annum, for which we have entered into interest rate swap agreements to fix the LIBOR at rates ranging from 5.0275% to 5.87% per annum. For the purpose of this table, principal repayments are determined based on contractual repayments in commitment reduction schedules for each related facility. Excludes expected interest payments of \$45.1 million (less than 1 year), \$81.6 million (1-3 years), \$66.7 million (3-5 years) and \$73.7 million (more than 5 years). Expected interest payments are based on LIBOR plus margins at December 31, 2013. The expected interest payments do not reflect the effect of related interest rate swaps that we have used as an economic hedge of certain of our floating-rate debt.
- (2) We, through wholly owned subsidiaries, have agreed to enter into leaseback transactions for certain of our vessels where the lease term commenced upon the delivery dates of the vessels.

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**Item 6. Directors, Senior Management and Employees**

**A. Directors, Senior Management and Key Employees**

Our directors, senior management and key employees as of February 28, 2014, and their ages as of December 31, 2013 are listed below:

<u>NAME</u>	<u>AGE</u>	<u>POSITION</u>
Kyle R. Washington	43	Co-Chairman of the board of directors and Co-Founder
Gerry Wang	51	Chief Executive Officer, Co-Chairman of the board of directors and Co-Founder
Peter Curtis	55	Chief Operating Officer
Sai W. Chu	47	Chief Financial Officer
Mark Chu	46	General Counsel and Director, Corporate Finance
Rob Grool	56	President, Fleet Management of Seaspan Ship Management Limited (SSML)
John C. Hsu	50	Director
George H. Juetten	66	Director
Harald H. Ludwig	59	Director
David Lyall	57	Director
Nicholas Pitts-Tucker	62	Director
Graham Porter	43	Director and Co-Founder
Peter S. Shaerf	59	Deputy Chair of the board of directors

**Kyle R. Washington.** Kyle R. Washington was appointed as chairman of the board in May 2005 and in February 2011 became co-chairman with Gerry Wang. From 2005 to 2011 he served as chairman of our Manager and certain of our Manager's operating subsidiaries. From 1998 to 2006, Mr. Washington was a director and executive chairman of the Seaspan ULC (formerly Washington Marine Group), a marine transportation company that is involved in shipdocking, barging and shipyard enterprises. From 2007 to 2010, Mr. Washington was a general partner in CopperLion Capital, a private equity fund. In 2009, Mr. Washington returned as a director and executive chairman of Seaspan ULC and was appointed as a director of Envirocon, Inc., Modern Machinery Co., Inc., Montana Rail Link, Inc., Montana Resources, Inc. and Southern Railway of British Columbia, Ltd., all of which are within the Washington Companies. Mr. Washington was an ambassador to the 2010 Winter Olympics in Vancouver and is an active supporter of many charitable organizations. He is a graduate of the University of Montana with a degree in business administration.

**Gerry Wang.** Gerry Wang was appointed as our chief executive officer and elected as a director in May 2005, and as co-chairman of our board of directors in February 2011. Mr. Wang joined the Offshore Division of Seaspan Marine Corporation in early 1990. Mr. Wang was elected as a director of our Manager in August 2005 and also serves as a director and officer of certain of our Manager's operating subsidiaries. In 2011, he was elected as lead director of MagIndustries Corp. and as the chairman of the board of managers of GCI. From 1986 to 1989, Mr. Wang was the business manager for China Merchants Group in Hong Kong. He graduated from Shanghai Maritime University with a Bachelor's degree in Navigation, and he earned a Master's degree in International Economics under the sponsorship program of the United Nations Economic and Social Council Asia Pacific. He also obtained his Master of Science in Business Administration degree from the University of British Columbia in Vancouver, B.C., Canada.

**Peter Curtis.** Peter Curtis was appointed as our chief operating officer in February 2012. He is responsible for ship building programs, overall operations and commercial management of the vessels managed by our Manager, including our vessels. From 2001 to 2012, Mr. Curtis was vice president of SSML. From 1981 to 1989, Mr. Curtis served in the South African Navy, where he attained the rank of Lt. Commander in charge of the submarine maintenance facility and design office. From 1989 to 1991, he was an associate with a firm of engineering consultants in Cape Town, working on offshore and naval architectural projects, such as offshore oil

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and gas as well as other marine projects. From 1991 to 1999, Mr. Curtis was with Safmarine Container Lines, where he was responsible for the operations of a mixed fleet of containerships, handy-size and cape-size bulkcarriers and also oversaw a number of new building programs. Prior to joining SSML in 2001, Mr. Curtis was based in Cyprus for two years with Columbia Ship Management as technical director. He obtained a B.Sc. Mechanical Engineering degree at Natal University in Durban, South Africa. Mr. Curtis also obtained his Master's degree in Naval Architecture from University College in London, England and his B.Sc. in business from Stellenbosch University in South Africa.

**Sai W. Chu.** Sai W. Chu was appointed as our chief financial officer in June 2007. Mr. Chu was appointed chief financial officer of Seaspan Container Lines Limited, or SCLL, in May 2005 and has served as a director or executive officer of certain of our Manager's operating subsidiaries since May 2005, after joining SSML as corporate controller in September 2004 and the Washington Marine Group as corporate controller in April 2004. From 1995 to 1998, he was the assistant corporate controller with Imperial Parking Limited, an integrated parking management company with operations in Asia and North America. From 1998 to 1999, Mr. Chu was manager, financial reporting, of BC Gas Inc. (now Terasen Inc.), a natural gas and oil transmission and distribution utility. From 2000 to April 2004, he was controller of Datawest Solutions Inc., a technology provider of banking and payment solutions. All of Mr. Chu's previous employers subsequent to 1995 and prior to joining us were companies listed on the Toronto Stock Exchange. Mr. Chu qualified as a chartered accountant in 1992 having articulated with KPMG LLP's Vancouver office and also qualified as a certified management accountant in 1990.

**Mark Chu.** Mark Chu was appointed as our general counsel and director, corporate finance in March 2012 and secretary in July 2013. From 2009 to 2012, Mr. Chu was a partner in the law firm Farris, Vaughan, Wills & Murphy LLP. From 2004 to 2009 he was a tax partner at KPMG LLP. His practice encompassed all areas of Canadian taxation, including mergers and acquisitions, financings, initial public offerings, corporate reorganizations and dispute resolution. Mr. Chu is both a chartered accountant, admitted as a member of the Institute of Chartered Accountants of British Columbia and the Canadian Institute of Chartered Accountants in 1993, and a barrister and solicitor, called to the British Columbia bar in 1997. Mr. Chu obtained his business and law degrees from the University of British Columbia.

**Rob Grool.** Rob Grool was appointed president, fleet management of SSML in February 2012. Mr. Grool started his career with ship owners Vroon in Breskens, Holland, and built, operated and chartered livestock carriers for Saudi Livestock Transport & Trading in Saudi Arabia between 1982 and 1987. He was subsequently appointed fleet manager at Van Nievelt Goudriaan & Co in Rotterdam. In 1991, Mr. Grool joined third-party ship manager and managing owners Hanseatic Shipping Co. (part of the Schulte Group) in Cyprus as the technical director, and was later appointed a joint managing director. In 2002, he joined the Wallem Group Ltd. in Hong Kong, where he was group managing director until December 2011, overseeing a fleet of approximately 350 ships, including tankers, bulkers, containerships, car carriers and reefer ships. Mr. Grool obtained a Master's degree in marine engineering and maritime economy from Delft University of Technology in Holland.

**John Hsu.** John Hsu was appointed director in April 2008 and is co-chair of the compensation and governance committee. Mr. Hsu's family has been in the business of owning and operating bulkers, tankers, and specialized ships for generations through entities such as Sincere Navigation Corp. (Taiwan-listed), and Oak Maritime, Inc., of which he is currently a director. Since 1993, Mr. Hsu has been responsible for managing the Hsu family's investment portfolio, consisting of publicly listed securities, hedge funds, and private equity investments with their family office, OSS Capital. Also, he is currently director of Deltec Capital, which manages direct investments in Asian private equity. From 2008 to 2012, he was chairman of a Taiwanese private company, TSSI Inc. (a surveillance integrated circuit solutions provider). From 2003 to 2010, Mr. Hsu was partner of Ajia Partners, one of Asia's largest privately-owned alternative investment firms. From 1998 to 2002, he was chief investment officer of Matrix Global Investments, a hedge fund in US-listed technology companies. Mr. Hsu received his Bachelor of Arts degree from Colgate University and his Masters of Business Administration degree from Columbia University, and is fluent in Japanese and Mandarin.



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**George H. Juetten.** George H. Juetten was elected by our Series A preferred shareholders as a director on July 25, 2009 and has served as chair of our audit committee since September 19, 2009. On January 30, 2014, the date of conversion of all of the Series A preferred shares into our common shares and termination of the right of the Series A preferred shareholders to appoint Mr. Juetten to our board, the board of directors appointed Mr. Juetten as a Class I director to serve until the 2015 annual meeting of shareholders. Prior to Mr. Juetten serving on our board of directors, he was executive vice president and chief financial officer of Washington Group International (URS Corporation) from 2001 to 2008. Washington Group International was an integrated engineering, construction and management services company that was listed on the New York Stock Exchange (or NYSE). Prior to that, Mr. Juetten was with Dresser Industries, Inc. (Halliburton Company), a NYSE company that provided technology, products and services for developing energy and natural resources. He served as vice president controller from 1993 to 1996 and as executive vice president and chief financial officer from 1996 to 1999. Mr. Juetten was with Price Waterhouse from 1969 to 1993 and became an audit partner in 1980, serving in several jurisdictions including a three-year tour of duty in The Hague. He is a trustee of St. Alphonsus Regional Medical Centre and a director of the Boise State University Foundation. Mr. Juetten received a Bachelor of Science degree in Accounting from the Marquette University, Milwaukee, Wisconsin and is a member of the American Institute of Certified Public Accountants.

**Harald H. Ludwig.** Harald Ludwig has served as a director since August 2012 and is a member of the Conflicts Committee. Mr. Ludwig has over 30 years of extensive business and investment experience, including as president of Macluan Capital Corporation (a diversified private equity investment company), as a director and former co-chairman of Lions Gate Entertainment Corp., and as a director of West Fraser Timber Co. Ltd. Mr. Ludwig is also a founding partner or private equity investor in a number of North American and international private equity firms, hedge funds, mezzanine lenders, growth capital providers, distressed investment firms and real estate investment vehicles. He is a member of the Advisory Board of Tennenbaum Capital Partners, LLC and a governor of the British Columbia Children's Hospital Foundation. Mr. Ludwig graduated from Simon Fraser University and holds an L.L.B. from Osgoode Hall Law School.

**David Lyall.** David Lyall has served as a director since May 2012. On January 30, 2014, the date of the conversion of the Series A preferred shares, Mr. Lyall resigned as a Class I director, became a Class III director and will serve as a director until the 2014 annual meeting of shareholders. Mr. Lyall has more than 30 years of experience in the financial services industry and is currently a member of the board of directors and head of institutional sales at Haywood Securities Inc. Mr. Lyall began his career in 1979 as an investment advisor in Vancouver, British Columbia. From 1983 to 1998, he was vice-president and director in the institutional sales department at First Marathon Securities in Vancouver and was part of a team that developed First Marathon's institutional sales department for Canada and the United States. In 1998, Mr. Lyall joined Haywood Securities Inc., a 100% employee-owned investment dealer with more than 300 employees in its Canadian offices in Vancouver, Calgary and Toronto, Canada, as well as in London, England. Haywood Securities Inc. is a member of the Toronto Stock Exchange, the TSX Venture Exchange, the Montreal Exchange, the Canadian National Stock Exchange, the Canadian Investor Protection Fund, and the Investment Industry Regulatory Organization of Canada. Haywood Securities has over \$5 billion in assets under administration. Mr. Lyall graduated with a Bachelor of Arts degree from the University of British Columbia.

**Nicholas Pitts-Tucker.** Nicholas Pitts-Tucker was appointed as a director in April 2010 and is co-chair of the compensation and governance committee. Mr. Pitts-Tucker joined Sumitomo Mitsui Banking Corporation in 1997, following 14 years at Deutsche Morgan Grenfell and over 10 years at Grindlays Bank Limited in Asia. At Sumitomo Mitsui Banking Corporation, Mr. Pitts-Tucker served for 13 years with particular emphasis on project shipping and aviation finance in Asia, Europe and the Middle East. He also served on the board as an executive director of SMBC Europe and of Sumitomo Mitsui Banking Corporation in Japan, or SMBC Japan. He retired from SMBC Europe and SMBC Japan in April 2010, and also retired as a non-executive director and as a member of the audit committee of SMBC Europe in April 2011. In December 2010, Mr. Pitts-Tucker was appointed as a director of Black Rock Frontier Investment Trust PLC, which is listed on the London Stock Exchange, and is a member of the audit committee. In 2010, Mr. Pitts-Tucker was appointed to the Executive

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Council of the Royal Society for Asian Affairs, which was founded in 1901 to promote greater knowledge and understanding of Central Asia and countries from the Middle East to Japan. In August 2013, Mr. Pitts-Tucker was appointed as Governor of the University of Northampton, a leading university in the United Kingdom for Social Enterprise. Mr. Pitts-Tucker has a Master of Arts degree from Christchurch, Oxford University and a Master of Business Administration from Cranfield University.

**Graham Porter.** Graham Porter was elected as a director in April 2010. Mr. Porter has also served as a director of our Manager and certain of its operating subsidiaries since August 2005, and served as an executive officer of such entities prior to our acquisition of our Manager in January 2012. In 2000, Mr. Porter was part of the senior management and equity team to form Seaspan Container Lines Ltd., established to own and operate deep-sea container vessels. Mr. Porter is chairman of Tiger Group, an investment firm based in Hong Kong which, through its affiliated companies, holds shares in us and in other shipping ventures. He graduated with a degree in business, major in transportation and logistics and minor in accounting, from the University of British Columbia in Vancouver, British Columbia.

**Peter S. Shaerf.** Peter S. Shaerf was elected as a director in August 2005 and is chair of the conflicts committee and during 2010 was chair of the compensation committee. Mr. Shaerf resigned as chair of the compensation committee upon his appointment as deputy chair of our board of directors in February 2011. Since 2002, Mr. Shaerf has been a managing director and partner at AMA Capital Partners, an investment bank and private equity firm specializing in the maritime industry. From 1998 until April 2002, Mr. Shaerf was a managing director of Poseidon Capital Corp., an independent maritime consulting and investment company that works extensively in the investment community. From 1980 to 2002, he was a partner of The Commonwealth Group, a brokerage and consulting company that specialized in the dry cargo and container markets. From 1977 to 1980, he was a director of Common Brothers U.S.A. Ltd., a shipbroking subsidiary of a British shipowner of dry cargo and tanker tonnage. He has served as a director of four publicly listed shipping companies. Mr. Shaerf is a director of Interlink Maritime Corp., a Bermuda based owner of handysize bulkcarriers. He is the past Chairman of New York Maritime Inc. (NYMAR), a leading global trade association that promotes New York as a maritime center. Mr. Shaerf is a member of the American Bureau of Shipping and a member of the finance subcommittee of the U.S. government sponsored Marine National Advisory Council. Mr. Shaerf holds a B.A. degree in international business law from the London Metropolitan University.

### **B. Compensation**

#### **Compensation of Directors and Officers**

Our non-employee directors receive cash and, as described below under “—Equity Incentive Plan,” equity-based compensation.

In 2013, each non-employee member of our board of directors received an annual cash retainer of \$60,000. Mr. Washington also received \$40,000 for his service during 2013 as co-chairman of our board of directors and Peter Shaerf received \$30,000 for his service during 2013 as deputy chairman of our board of directors. In addition, the chair of the audit committee received an annual payment of \$20,000 and each member of the audit committee, including the chair, received an annual payment of \$10,000 for the regular quarterly committee meetings. Each audit committee member received a payment of \$1,500 for each additional committee meeting attended during the calendar year. The co-chairs of the compensation and governance committee each received an annual payment of \$10,000 and each member of the compensation and governance committees, including the co-chairs, also received an annual payment of \$10,000 for the regular quarterly committee meetings. Each compensation and governance committee member received a payment of \$1,500 for each additional committee meetings attended during the calendar year. The chair of the conflicts committee received an annual payment of \$20,000 and each member of the conflicts committee, including the chair, received an annual payment of \$10,000 for the regular quarterly committee meetings. Each conflicts committee member received a payment of \$1,500 for each additional committee meetings attended during the calendar year. All annual cash retainers and

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payments are payable in equal quarterly installments. Non-employee directors who attend committee meetings (other than the regularly scheduled quarterly meetings) at the invitation of the chair of the committee but who are not members of any such committee received a payment of \$1,500 per meeting.

For 2013, our non-employee directors also received an annual retainer of \$100,000 paid in restricted shares of our Class A common stock, as described below under “—Equity Incentive Plan.”

Officers who also serve as directors do not receive compensation for their services as directors. Each director is reimbursed for out-of-pocket expenses incurred while attending any meeting of the board of directors or any committee.

During the years ended December 31, 2013 and 2012, we paid to our directors and management (14 persons in 2013 and in 2012) aggregate cash compensation of approximately \$4.6 million and \$5.0 million, respectively. We do not have a retirement plan for members of our management team or our directors.

Prior to March 2011, Mr. Wang served as our chief executive officer and the chief executive officer of SSML pursuant to an employment agreement with SSML. In March 2011, in connection with our investment in GCI, Mr. Wang’s agreement with SSML was amended and restated and we entered an employment agreement and a transaction services agreement with Mr. Wang. In December 2012, Mr. Wang’s agreement with SSML was terminated and we entered into an amended and restated employment agreement and transaction services agreement with Mr. Wang. Mr. Wang’s amended and restated employment agreement provides that he will receive an annual target performance bonus. For more information about Mr. Wang’s employment agreement, including information about the award of SARs we granted to Mr. Wang in connection with the amended and restated employment agreement, please read “Item 7. Major Shareholders and Related Party Transactions—B. Related Party Transactions—Employment Agreement and Other Related Agreements with Gerry Wang”.

### **Equity Incentive Plan**

In December 2005, our board of directors adopted the Seaspan Corporation Stock Incentive Plan, or the Plan, under which our officers, employees and directors may be granted options, restricted shares, phantom share units, and other stock based awards as may be determined by our board of directors. A total of 2,000,000 common shares are reserved for issuance under the Plan, which is administered by our board of directors. The Plan will expire in December 2015. On January 1, 2013, each of our non-employee directors was awarded 6,110 restricted shares, which vested on January 1, 2014 (except for one director who did not stand for re-election during the year and was awarded restricted shares on a pro-rata basis). In 2013, we also granted an aggregate of 95,000 phantom share units to our executive officers, other than our chief executive officer, under the Plan. These grants are subject to a three-year annual vesting period which began on January 1, 2014.

In 2013, the Company granted 1,664,457 SARs to certain members of management (the “Participants”) which vest and become exercisable in three tranches when and if the fair market value of the common shares equals or exceeds the applicable base price for the applicable tranche for any 20 consecutive trading days on or before the expiration date of such tranche. The Participants may exercise each vested tranche of SARs and receive common shares with a value equal to the difference between the applicable base price and the fair market value of the common shares on the exercise date. The common shares received on the exercise of SARs are subject to a retention requirement where the Participant is required to retain ownership of 50% of the net after tax number of shares until the later of March 22, 2018 or 120 days after the exercise date. Please see note 14 to our consolidated financial statements included elsewhere herein for additional information about outstanding SARs and phantom share units.

The report of the compensation committee of our board of directors for the fiscal year ended December 31, 2013 will be included as part of our proxy statement, which will be filed with the U.S. Securities and Exchange Commission, or SEC, as a Report on Form 6-K.

## C. Board Practices

### General

As of February 28, 2014, our board of directors consists of nine members. The board of directors is divided into the following three classes, with members of each class elected to hold office for a term of three years in accordance with the classification indicated below and until his successor is elected and qualified:

- our Class I directors are Kyle R. Washington, George H. Juetten and Nicholas Pitts-Tucker and their term expires in 2015;
- our Class II directors are Gerry Wang, Harald H. Ludwig and Graham Porter and their term expires in 2016; and
- our Class III directors are Peter S. Shaerf, John C. Hsu and David Lyall and their term expires in 2014.

Membership in each of the three classes gives effect to the board changes described in “Item 5. Operating and Financial Review and Prospects—A. General—Management’s Discussion and Analysis of Financial Condition and Results of Operations—2014 Recent Developments— Conversion of Series A Preferred Shares and Resignation and Appointment of Directors.”

Our board of directors has determined that each of the current members of the board of directors, other than Kyle R. Washington, Gerry Wang and Graham Porter, has no material relationship with us, either directly or as a partner, shareholder or officer of an organization that has a relationship with us, and is, therefore, independent from management.

### Committees

The board of directors has the following three committees: audit committee, compensation and governance committee and conflicts committee. The membership of these committees and the function of each of the committees are described below. Each of our committees operates under a written charter adopted by our board of directors. All of the committee charters are available under “Corporate Governance” in the Investor Relations section of our website at [www.seaspancorp.com](http://www.seaspancorp.com).

During 2013, the board of directors held 12 meetings, the audit committee held four meetings, the compensation and governance committee held seven meetings and the conflicts committee held eight meetings.

Our audit committee is composed entirely of directors who currently satisfy applicable NYSE and SEC audit committee independence standards. Our audit committee members are George H. Juetten (chair), John C. Hsu and Nicholas Pitts-Tucker. All members of the committee are financially literate, and the board of directors has determined that Mr. Juetten qualifies as a financial expert. The audit committee assists the board of directors in fulfilling its responsibilities for general oversight of: the integrity of our consolidated financial statements; our compliance with legal and regulatory requirements; the independent auditors’ qualifications and independence; and the performance of our internal audit function and independent auditors.

Our compensation and governance committee is composed entirely of directors who satisfy applicable NYSE independence standards. Our compensation and governance committee members are John C. Hsu (co-chair), Nicholas Pitts-Tucker (co-chair), George H. Juetten and Peter S. Shaerf. The compensation and governance committee: (a) reviews, evaluates and approves our agreements, plans, policies and programs to compensate our officers and directors; (b) produces a report on executive compensation which is included in our proxy statement; (c) otherwise discharges the board of directors’ responsibilities relating to the compensation of our officers and directors; (d) assists the board of directors with corporate governance practices, evaluating director independence and periodic performance evaluations of the members of the board of directors and each committee; and (e) performs such other functions as the board of directors may assign to the committee from time to time.

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Our conflicts committee is composed entirely of directors who satisfy applicable NYSE independence standards. Our conflicts committee members are Peter S. Shaerf (chair), Harald Ludwig, David Lyall and Nicholas Pitts-Tucker. The conflicts committee reviews and approves transactions between us and our directors, our officers and other related parties for potential conflicts of interest on an ongoing basis.

**Exemptions from NYSE Corporate Governance Rules**

As a foreign private issuer, we are exempt from certain corporate governance rules that apply to U.S. domestic companies under NYSE listing standards. The significant way in which our corporate governance practices differ from those followed by U.S. domestic companies is that in lieu of obtaining shareholder approval prior to the adoption of equity compensation plans, the board of directors approves such adoption.

Unlike domestic companies listed on the NYSE, foreign private issuers are not required to have a majority of independent directors and the standard for independence applicable to foreign private issuers may differ from the standard that is applicable to domestic issuers. Our board of directors has determined that six of our nine directors (being John C. Hsu, George H. Juetten, Harald H. Ludwig, David Lyall, Nicholas Pitts-Tucker and Peter S. Shaerf) satisfy the NYSE's independence standards for domestic companies.

U.S. domestic companies are required to have a compensation committee and a nominating and corporate governance committee, each comprised entirely of independent directors. Although as a foreign private issuer these rules do not apply to us, we have a compensation and governance committee that consists of four directors, all of whom satisfy NYSE standards for independence.

**D. Employees**

As of December 31, 2013, approximately 2,800 seagoing staff serve on the vessels that we manage and approximately 250 staff serve on shore. Prior to the acquisition of our Manager in January 2012, our Manager and certain of its subsidiaries provided us with all of our employees, other than our chief executive officer.

**E. Share Ownership**

The following table sets forth certain information regarding the beneficial ownership of our common shares by:

- each of our current directors;
- each of our current executive officers, senior management and key employees; and
- all our current directors and all current executive officers, senior management and key employees as a group.

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The information presented in the table is based on information filed with the SEC and on information provided to us prior to February 28, 2014.

<u>Name of Beneficial Owner</u>	<u>Common Shares</u>	<u>Percentage of Common Shares<sup>(1)</sup></u>
Graham Porter <sup>(2)</sup>	7,681,501	8.3%
Kyle R. Washington <sup>(3)</sup>	5,781,013	6.2%
Gerry Wang <sup>(4)</sup>	2,030,276	2.2%
Sai W. Chu	119,561	*
Peter S. Shaerf	81,107	*
George H. Juetten	61,795	*
Peter Curtis	48,302	*
John C. Hsu	43,102	*
Nicholas Pitts-Tucker <sup>(5)</sup>	25,679	*
David Lyall	16,653	*
Harald H. Ludwig	14,904	*
Mark Chu	13,438	*
Rob Grool	9,379	*
All directors, executive officers, senior management and key employees as a group (13 persons)	15,926,710	17.2%

- (1) Percentages are based on the 92,755,818 common shares that were issued and outstanding on January 30, 2014.
- (2) The number of common shares shown for Mr. Porter includes common shares beneficially owned by Tiger Container Shipping Co. Ltd., or Tiger, as well as by certain members of his immediate family. Tiger is an investment holding company that is indirectly wholly-owned by Mr. Porter. This information is based on prior SEC filings and information provided to us by Mr. Porter on or about February 14, 2014.
- (3) The number of common and shares shown for Kyle R. Washington includes shares beneficially or directly owned by Kyle R. Washington, as well as by The Kyle R. Washington 1999 Trust II, and Kyle Roy Washington 2005 Irrevocable Trust u/a/d July 15, 2005. This information is based on prior SEC filings and information provided to us by Kyle R. Washington on or about February 7, 2014.
- (4) The number of common shares shown for Mr. Wang includes shares beneficially or directly owned by Gerry Wang and by Gerry Wang Family Enterprises Ltd., a Hong Kong company. This information was provided to us by Mr. Wang on or about February 14, 2014.
- (5) The number of common shares shown for Mr. Pitts-Tucker includes shares beneficially or directly owned by Nicholas Pitts-Tucker, as well as by certain members of his immediate family. This information was provided to us by Mr. Pitts-Tucker on or about February 3, 2014.
- \* Less than 1%.

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**Item 7. Major Shareholders and Related Party Transactions**

**A. Major Shareholders**

The following table sets forth certain information regarding the beneficial ownership of our common by each person known by us to be a beneficial owner of more than 5% of the common shares. The information provided in the table is based on information filed with the SEC and on information provided to us prior on or about February 28, 2014.

<u>Name of Beneficial Owner</u>	<u>Common Shares</u>	<u>Percentage of Common Shares<sup>(1)</sup></u>
Dennis R. Washington <sup>(2)</sup>	34,862,025	37.6%
Graham Porter <sup>(3)</sup>	7,681,501	8.3%
Copper Lion, Inc. <sup>(4)</sup>	11,264,518	12.1%

- (1) Percentages are based on the 92,755,818 common shares that were issued and outstanding on January 30, 2014.
- (2) The number of common shares shown for Dennis R. Washington includes those shares beneficially owned by Deep Water Holdings, LLC, or Deep Water, and The Roy Dennis Washington Revocable Living Trust created under Agreement dated November 16, 1987. This information is based on prior SEC filings and information provided to us by Mr. Washington on or about February 7, 2014.
- (3) The number of common shares shown for Mr. Porter includes common shares beneficially owned by Tiger Container Shipping Co. Ltd., or Tiger, as well as by certain members of his immediate family. Tiger is an investment holding company that is indirectly wholly-owned by Mr. Porter. This information is based on prior SEC filings and information provided to us by Mr. Porter on or about February 14, 2014.
- (4) The number of common shares shown for Copper Lion, Inc. includes those shares beneficially owned by The Kevin Lee Washington 1999 Trust II, the Kyle Roy Washington 2005 Irrevocable Trust u/a/d July 15, 2005 and the Kyle Roy Washington 1999 Trust II. This information is based on prior SEC filings and information provided to us by Copper Lion, Inc. on or about February 7, 2014.

The major shareholders of our common shares have the same voting rights as other shareholders of our common shares.

As of February 28, 2014, a total of 89,135,880 of our Class A common shares were held by 54 holders of record in the United States.

We are not aware of any arrangements, the operation of which may at a subsequent date result in a change of control.

**B. Related Party Transactions**

From time to time we have entered into agreements and have consummated transactions with certain related parties. These related party agreements include agreements relating to the provision of services by our directors and executive officers, the sale and purchase of our common and preferred equity securities, the management of the vessels in our fleet by our Manager and our acquisition of our Manager in January 2012, and our investment in GCI. We may enter into related party transactions from time to time in the future. Our board of directors has a conflicts committee, comprised entirely of independent members of our board of directors, which must approve all proposed material related party transactions.

**Certain Relationships and Transactions**

Gerry Wang, our chief executive officer, co-founder and co-chairman of our board of directors, also provides services to GCI, GC Industrial (which is owned by affiliates of The Carlyle Group and the Tiger

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Member), and the Tiger Member. Until we acquired it in January 2012, Mr. Wang had an ownership interest in our Manager, together with affiliated entities of Graham Porter, Kyle R. Washington and his brother Kevin L. Washington. Please read “—Management Agreements” and “—Acquisition of Seaspan Management Services Limited.” In addition, Mr. Wang serves as chairman of the board of managers of GCI and is a voting member of the Transaction Committee of GCI. Please read “—Our Investment in Carlyle Containership-Focused Investment Vehicle.” Prior to March 2011, Mr. Wang was an employee of SSML, our indirect subsidiary, and his compensation (other than any awards under our long-term incentive plan) was set and paid by such subsidiary. In March 2011, Mr. Wang entered into an amended and restated employment agreement with SSML and a new employment agreement with us, which became effective January 1, 2011. In December 2012, we amended and restated Mr. Wang’s employment agreement with us and his employment agreement with SSML terminated. Please read “—Employment Agreement and Other Related Agreements with Gerry Wang.”

Kyle R. Washington, co-founder and co-chairman of our board of directors, is the son of Dennis R. Washington, who controls entities that together represent our largest shareholder. Affiliated entities of Kyle R. Washington and of his brother Kevin L. Washington had ownership interests in our Manager prior to our acquisition of it in January 2012. The Washington Member has an interest in GCI and an indirect economic interest in certain incentive distributions received by GC Industrial from GCI, and GCI has granted the Washington Member a right of first refusal on containership investment opportunities, which applies to a smaller percentage of vessels and is subordinate to our right of first refusal. Please read “—Our Investment in Carlyle Containership-Focused Investment Vehicle—Rights of First Refusal and First Offer.” Mr. Washington serves on the board of GCI as the representative of the Washington Member and is a non-voting member of the Transaction Committee of GCI.

Graham Porter is one of our directors. In March 2011, we entered into an agreement with Mr. Porter, Seaspan Advisory Services Limited and SSML that terminated a restrictive covenant agreement dated August 8, 2005, including the remainder of Mr. Porter’s post-employment two-year non-competition restriction. An affiliated entity of Mr. Porter had ownership interests in our Manager until our acquisition of our Manager in January 2012, and an affiliated entity of Mr. Porter is a co-owner of the Tiger Member, which provides certain commercial management services with respect to the vessel investments made by GCI. Please read “—Our Investment in Carlyle Containership-Focused Investment Vehicle—Services Agreements.” Mr. Porter has an indirect economic interest in certain incentive distributions received by GC Industrial from GCI. Please read “—Our Investment in Carlyle Containership-Focused Investment Vehicle—Distributions.” Mr. Porter also serves on the board of managers of the Vehicle and is a voting member of the Transaction Committee of GCI. In addition, Mr. Porter and his affiliates control Tiger Group Investments, or Tiger Group, and Tiger Ventures Limited, which have provided certain financial services to us. Please read “—Arrangements and Fees with Tiger Group Entities.”

### **Acquisition of Seaspan Management Services Limited**

In January 2012, we acquired our Manager, and we acquired and cancelled all of the issued and outstanding shares of our Class C common stock, which were owned by a subsidiary of our Manager. Prior to the acquisition, our Manager was owned 50.05% by trusts established for sons of Dennis R. Washington, including Kyle R. Washington, our co-chairman, and 49.95% by Thetis, an entity indirectly owned by Graham Porter, one of our directors, and Gerry Wang, our co-chairman, co-founder and chief executive officer.

The purchase price for the acquisition included a base purchase price of \$54.0 million and adjustments for settlement of intercompany balances, plus additional payments, each a Fleet Growth Payment, as described below, for each newbuilding or existing containership ordered or acquired or leased (for a period of at least five years) after December 12, 2011 and prior to August 15, 2014 by us, GCI or the Washington Member, or by affiliates of any such parties, and which containerships are to be managed by our Manager or one of our controlled affiliates after the acquisition. For accounting purposes, under U.S. GAAP, the purchase price is required to be valued at the acquisition date. Therefore, the closing share price on the day prior to acquisition of \$15.85 per share was used to value the Class A common shares at \$66.9 million.



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The base purchase price was paid and any Fleet Growth Payments are paid, in shares of our Class A common stock, in each case valued on a per share basis equal to \$12.794, being the volume-weighted average trading price of the Class A common stock for the 90 trading days immediately preceding the closing date of the acquisition, or the Per Share Value. For each qualifying containership ordered, acquired or leased, the related Fleet Growth Payment includes the issuance of 39,081 shares (equal to the quotient of \$0.5 million divided by the Per Share Value). Fleet Growth Payments are paid quarterly, based on newbuilding orders or existing vessel acquisitions that occur during a quarter. During the year ended December 31, 2013, 820,700 Class A common shares were issued as Fleet Growth Payments.

Shares of Class A common stock issued to the owners of our Manager in payment for the base purchase price are subject to graduated four-year lock-up agreements. Shares issued in connection with Fleet Growth Payments are not subject to lock-up agreements. Under the lock-up agreements, the owners and certain of their affiliates are restricted from transferring 100% of these shares for one year, 75% of such shares for two years, 50% of such shares for three years, and 25% of such shares for four years from our acquisition of our Manager. The owners of our Manager are permitted to transfer all shares from the acquisition among themselves and to Deep Water, which is our largest shareholder and is controlled by Dennis R. Washington.

The conflicts committee of our board of directors, which committee is composed of independent directors, with the assistance of financial and legal advisors, reviewed and approved the acquisition of our Manager on the terms described above.

### **Management Agreements**

Substantially all of the management services for our vessels are provided by our Manager and its subsidiaries. The Manager was owned, prior to our acquisition of it in January 2012, by affiliates of Kyle R. Washington, Gerry Wang and Graham Porter. Prior to the acquisition, we incurred the following aggregate costs under our management agreements with our Manager and its subsidiaries:

In thousands of USD	Year Ended December 31,	
	2012 <sup>(1)</sup>	2011
Technical services	\$9,700	\$135,381
Administrative and strategic services	5	72
Reimbursed expenses	305	4,074
Newbuilding construction supervision (under fixed fee arrangements of \$250,000 to \$350,000 per vessel)	100	2,056

(1) Relates to the 26 days prior to acquisition on January 27, 2012.

### **Omnibus Agreement**

In connection with our initial public offering, we entered into an omnibus agreement with our Manager, certain of our Manager's subsidiaries, Norsk Pacific Steamship Company Limited, a company within the Washington Marine Group, or Norsk, and Seaspan Marine Corporation, a company that owns substantially all of the Washington Companies' marine transportation shipyards and ship management entities. The omnibus agreement included non-competition provisions that applied to our Manager and its subsidiaries, Norsk and Seaspan Marine Corporation, and certain rights of first offer on containerships for us and the other contracting parties. We amended this agreement in March 2011 in connection with our investment in GCI. In January 2012, in connection with the acquisition of our Manager, we amended and restated the omnibus agreement to provide that the non-competition and other provisions of the original omnibus agreement, as amended, do not apply to our Manager or any of its controlled affiliates. Under the amended and restated omnibus agreement, the non-competition and other provisions apply only to Seaspan Marine Corporation, Norsk and their controlled affiliates.

## **Our Investment in Carlyle Containership-Focused Investment Vehicle**

### ***Purpose, Members and Exclusivity***

Formed in March 2011, GCI invests primarily in newbuilding and existing maritime containership assets that are primarily strategic to Greater China. The members of GCI are (i) Seaspan Investment I Ltd., a subsidiary of us, or the Seaspan Member, (ii) the Washington Member, (iii) the Tiger Member and (iv) GC Industrial. As of February 28, 2014, GCI had ordered 16 newbuilding vessels, which are scheduled for delivery during 2014 through 2016, all of which are subject to long-term time charter contracts with Hanjin, MOL and Yang Ming.

Until the earliest of (i) March 14, 2016, (ii) dissolution of GCI and (iii) consummation of a sale of GCI, GC Industrial and its subsidiaries shall only invest in containerships through GCI.

### ***Capital Commitments***

GC Industrial, the Seaspan Member and the Washington Member have agreed to make aggregate capital commitments of up to \$900.0 million in GCI. GC Industrial has committed up to \$775.0 million (\$750.0 million of which is a commitment from the Carlyle affiliate members of GC Industrial and \$25.0 million of which is a commitment from the Tiger Member), the Washington Member has committed up to \$25.0 million and the Seaspan Member has committed up to \$100.0 million. The Tiger Member will contribute services to GCI, and 50% of the fees for such services will be paid to the Tiger Member in the form of an equity interest in GCI.

GC Industrial's capital commitment will be reduced to the extent it separately invests in non-containership assets, in which case the capital commitments of other members would be proportionately reduced.

As at December 31, 2013, the Seaspan Member has made capital contributions of \$6.4 million to GCI.

### ***Distributions***

GCI's available cash is distributed as and when determined by GCI's board of managers. Distributions will be made first proportionately to the members to return their respective capital contributions and then proportionately to the members until a cumulative compounded rate of return of 12% has been generated on all member capital contributions. Further distributions will be divided between the members, pro rata in accordance with their respective percentage interests, and GC Industrial, which is entitled to incentive distributions ranging from 20% to 30% depending on the amount of the distributions.

Mr. Porter holds an economic interest in the Tiger Member, which is a member of GC Industrial. Accordingly, he has an indirect economic interest in any incentive distributions received by GC Industrial from GCI. The Washington Member has an indirect interest in the Tiger Member, and accordingly has an indirect economic interest in any incentive distributions received by GC Industrial from GCI.

### ***Governance***

GCI is governed by a board of managers initially consisting of up to nine members. GC Industrial has the right to designate five members, the Tiger Member has the right to designate two members, who are Gerry Wang and Graham Porter, and the Washington Member and the Seaspan Member each have the right to designate one member. Our chief executive officer and co-chairman of our board of directors, Mr. Wang, and our director, Mr. Porter, each provide services to GCI and GC Industrial and pursue investment opportunities for GCI and GC Industrial.

GCI has a Transaction Committee, which is primarily responsible for approving the purchase, newbuild contracting, chartering, financing and technical management of new and existing investments. The voting members of the Transaction Committee are Mr. Wang, Mr. Porter and two GC Industrial designees. Our co-chairman and the

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Washington Member designee on GCI's board of managers, Kyle R. Washington, is a non-voting member of the Transaction Committee. The Seaspam Member does not have a designee on the Transaction Committee, although Mr. Washington provides to us certain Transaction Committee materials, subject to a confidentiality agreement.

### ***Services Agreements***

We, the Tiger Member and Carlyle have each agreed to provide certain services to GC Intermodal Operating Company, a subsidiary of GCI. Pursuant to a management agreement, we will provide technical and commercial management services with respect to the vessel investments made by GCI for a daily fee of \$750 per vessel once a vessel begins operation, as well as construction supervision fees ranging from \$550,000 to \$650,000 per newbuilding vessel, depending on the size of the vessel. The Tiger Member provides GCI with financial and strategic advisory services pursuant to a management agreement. The Tiger Member generally is entitled to (1) charter fees equal to 1.0% of the monthly gross charter revenue from GCI vessels, (2) transaction fees equal to 0.80% of the purchase or sales price of vessel or newbuilding contracts, payable upon delivery of the vessel and (3) financing fees equal to 0.40% of the aggregate amount of debt or lease financing provided by non-Greater China banks or financial institutions and 0.80% for debt or financing provided by Greater China banks or financial institutions. Carlyle is entitled to transaction, financing and management fees pursuant to a consulting agreement.

### ***Drag-Along Rights***

GC Industrial has customary "drag-along" rights, which will permit it to require other GCI members to join in on sales by GCI Industrial to a third party of a majority of GCI interests. In this case, each member will be required to transfer a percentage of its interest based on the members' respective interests in GCI, on terms no less favorable than those offered to GC Industrial. The aggregate purchase price payable in connection with such sale will be allocated among the selling members as if the proceeds were distributed as described above in "—Distributions."

### ***Rights of First Refusal and First Offer***

#### ***Right of First Refusal***

We believe that all of GCI's containership investment opportunities, or Container Investment Opportunities identified by Gerry Wang, our chief executive officer and the chairman of the board of managers of GCI, will be subject to the right of first refusal agreement with GCI. We may exercise this right until March 31, 2015, unless it is terminated earlier as the result of certain triggering events, including if we exercise this right for more than 50% of the aggregate vessels subject to the right prior to specified dates. The Washington Member also has a right of first refusal on Container Investment Opportunities. This right applies to a smaller percentage of vessels and is subordinate to our right of first refusal. Container Investment Opportunities that are not acquired by us or the Washington Member may be acquired by GCI. In addition, we have rights of first offer relating to certain containerships that GCI and the Washington Member may propose to sell or dispose of. Please read "—Rights of First Offer." These rights of first refusal and first offer provide potential opportunities for us to increase the size of our fleet through selective vessel acquisitions.

Prior to August 15, 2014, we may exercise our right of first refusal with respect to 100% of the vessels comprising Container Investment Opportunities, and on or after August 15, 2014 with respect to a number of vessels (not to exceed 100% of the vessels comprising such Container Investment Opportunity) equal to the sum of:

- 50% of the vessels comprising a Container Investment Opportunity plus
- a number of vessels equal to:
  - (a) the total number of vessels with respect to which we previously exercised our right of first refusal, but which vessels were not purchased by us due to the refusal or failure of the other party or parties to

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the negotiated vessel contracts to execute the contracts (or in cases where such contracts are in the form of a letter of intent that contemplates definitive agreements, the other party's refusal or failure to execute definitive agreements that have the same material terms as the letter of intent and the right of first refusal notice), minus

(b) the excess of:

- (i) the total number of vessels with respect to which we previously exercised our right of first refusal on or after August 15, 2014 and subsequently purchased, over
- (ii) 50% of the aggregate number of all vessels comprising all previous Container Investment Opportunities on or after August 15, 2014.

We have a similar right of first refusal with respect to the acquisition of companies that own containerships which comprise more than 50% of such company's assets.

Our right of first refusal will terminate upon the earliest to occur of:

- March 31, 2015;
- the date on which GCI is dissolved or liquidated;
- GCI's election to terminate, given in writing to us and the Washington Member at any time after any of August 15, 2011, 2012, 2013 or 2014, if we have exercised our right of first refusal with respect to greater than 50% of the vessels comprising all Container Investment Opportunities prior to such date (or if we have provided notice to GCI of such event, GCI must notify us whether it elects to terminate the right of first refusal within 90 days after receipt of our notice), subject to certain exceptions;
- consummation of an initial public offering of any equity securities of GCI or any of its subsidiaries; provided that with respect to an initial public offering of a subsidiary, the right of first refusal will remain in effect with respect to GCI and its subsidiaries, but terminate with respect to the subsidiary that consummated the initial public offering and its subsidiaries; and
- generally, upon consummation of a sale to a third party of more than 50% of the outstanding interests of GCI or of assets representing at least 75% of the consolidated net asset value of GCI and its subsidiaries.

### *Rights of First Offer*

We have certain rights of first offer if GCI intends to sell or otherwise dispose of one or more containerships (other than in connection with an initial public offering or a sale of GCI). If GCI rejects our offer, it may only sell the vessels to a third party, generally within 180 days of its notice to us, and only for consideration greater than that offered by us. This right of first offer terminates upon the termination of our right of first refusal described above.

Our right of first offer on Washington Member vessels is generally similar to our right of first offer GCI vessels, and applies to certain transfers or sales of any containerships acquired by the Washington Member pursuant to its right of first refusal from GCI. The Washington Member right of first offer terminates after 10 years.

### **Employment Agreement and Other Related Agreements with Gerry Wang**

Mr. Wang serves as our chief executive officer and has previously served as the chief executive officer of SSML. We entered into amended and restated employment and transaction services agreements with Mr. Wang in December 2012, which agreements supersede our previous employment and transaction services agreements with him. Mr. Wang's employment agreement with SSML was also terminated.

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The term of Mr. Wang's employment with us continues until the termination of our right of first refusal with GCI, which is scheduled to expire on March 31, 2015, unless earlier terminated. The amended transaction services agreement becomes effective following any termination of Mr. Wang's employment with us and also expires upon termination of our right of first refusal with GCI.

Mr. Wang's amended employment agreement with us provides that he receives an annual base salary of \$1.25 million, an annual housing allowance of \$0.25 million and an annual target performance bonus of \$1.2 million, with the bonus payable 50% in cash and 50% in our common shares. In addition, Mr. Wang receives transaction fees equal to 1.25% of the aggregate consideration under any binding agreement that we enter into to construct, sell or acquire a vessel whether or not the transaction was proposed by Mr. Wang. The transaction fees are paid to Mr. Wang either in cash or, at our discretion, a combination of cash and up to 50% in our common shares. During the years ended December 31, 2013, 2012 and 2011, Mr. Wang received transaction fees of approximately \$3.5 million, \$0.1 million and \$0.4 million, respectively.

In connection with the amended employment agreement, we granted to Mr. Wang an award of SARs, which vest and become exercisable in three tranches when and if the fair market value of the common shares equals or exceeds the applicable base price for such tranche for any 20 consecutive trading days on or before the expiration date for such tranche. Mr. Wang may exercise each vested tranche of SARs and receive common shares with a value equal to the spread between the applicable base price and the fair market value of the common shares on the exercise date.

	<u>Number of SARs</u>	<u>Base Price</u>	<u>Expiration Date</u>
Tranche 1	1,846,154	US\$21.50	December 7, 2015
Tranche 2	1,898,734	US\$24.00	December 7, 2016
Tranche 3	1,929,260	US\$26.50	December 7, 2017
Total:	<u>5,674,148</u>		

The SARs are being expensed by tranche over each tranche's derived service period. The tranche 1 SARs vested in 2013. We believe we will recognize the compensation expense relating to the remaining SARs prior to expiration of the term of Mr. Wang's employment.

Mr. Wang has agreed to retain ownership of 50% of the net after-tax number of common shares received upon exercise of the SARs until the later of March 31, 2015 and 120 days after the exercise date with respect to such common shares. If Mr. Wang's employment is terminated by us with cause or Mr. Wang terminates his employment without good reason, all unvested SARs will be forfeited and all vested SARs will remain exercisable until the applicable expiration date. Upon termination of Mr. Wang's employment for any other reason, all unvested SARs will remain outstanding and be eligible for future vesting and exercise, and all vested SARs will remain exercisable until their applicable expiration date. Vesting of the SARs would accelerate in the event of a merger, tender offer or similar change of control transaction in which the amount to be paid to holders of common shares in connection with such transaction exceeds the base price for the applicable tranches of SARs.

Mr. Wang devotes the amount of his time to us that is reasonably necessary to perform his duties, with the understanding that he also provides services to GCI, GC Industrial and the Tiger Member. Pursuant to the employment agreement, we have reduced Mr. Wang's fiduciary duties in relation to certain containership vessel and business opportunities to the extent such opportunities are subject to our right of first refusal with GCI and (a) the conflicts committee of our board of directors has decided to reject such opportunity or we have failed to exercise our right of first refusal to pursue such opportunity, (b) we have exercised such right but failed to pursue such opportunity or (c) we do not have the right under our right of first refusal to pursue such opportunity.

Either party may terminate Mr. Wang's employment agreement at any time, with or without cause. If during the period of Mr. Wang's employment, the right of first refusal granted to us by GCI is terminated, Mr. Wang has

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agreed to resign from our board of directors at our request. Under the agreement that Mr. Wang entered into in March 2011 with us, the restrictive covenant agreement, dated August 8, 2005, among SSML, us and Mr. Wang, was terminated, including a post-employment two-year non-competition restriction.

Upon any termination of Mr. Wang's employment agreement with us before termination of our right of first refusal with GCI, he will continue to provide certain strategic services pursuant to the transaction services agreement. These continued services include identifying and negotiating transactions involving the construction, acquisition or disposition of vessels. In exchange for these services, Mr. Wang will receive fees equal to 1.25% of the aggregate consideration payable to us under any agreement that we enter into to build, acquire or sell a vessel, whether or not the transaction was proposed by Mr. Wang. The transaction fees will be payable in a combination of cash and our common shares. Mr. Wang may engage in business activities unrelated to us and, subject to our omnibus agreement (which contains exceptions for the provision of services to GCI and GC Industrial, among other entities), he may also compete with us. Please read "—Omnibus Agreement." The transaction services agreement will expire upon the termination of the right of first refusal granted to us by GCI, which is scheduled to expire on March 31, 2015, unless earlier terminated.

A total of 1,397,190 of our common shares owned by Mr. Wang and certain of his family members and affiliates are subject to a four-year lock-up agreement entered into in March 2011 in connection with our investment in GCI. Under this lock-up agreement, Mr. Wang and such other parties have agreed to restrict the transfer of 50% of their then existing shares for three years, and 25% of such shares for a fourth year, in each case commencing March 14, 2011. Please read "—Acquisition of Seaspam Management Services Limited" for a description of the lock-up agreement entered into by Mr. Wang in connection with the acquisition of our Manager. In addition, Mr. Wang has agreed to retain ownership of 50% of the net after-tax number of common shares received upon exercise of the SARs until the later of March 31, 2015 and 120 days after the exercise date with respect to such common shares, as described above.

We have agreed to register with the SEC the shares Mr. Wang earns under his employment agreement and the transaction services agreement with the SEC. Please read "—Registration Rights Agreements."

### **Employment Agreements with Senior Management**

Our senior managers, other than Mr. Wang, including Peter Curtis, Sai W. Chu, Mark Chu and Rob Grool, have employment arrangements with SSML.

### **Arrangements and Fees with Tiger Group Entities**

In connection with certain financial transactions involving us, Tiger Group and Tiger Ventures Limited have received fees for consulting services and certain other services rendered in connection with the arrangement, structuring and negotiation of the transactions. Tiger Group and Tiger Ventures Limited are controlled by Graham Porter, one of our directors. Pursuant to a financial services agreement we entered into with Tiger Venture Limited in March 2011, Tiger Ventures Limited is entitled to financing fees equal to 0.40% of the aggregate amount of debt or lease financing provided by non-Greater China banks or financial institutions and 0.80% for debt or financing provided by Greater China banks or financial institutions, in each case, to be paid regardless of whether Tiger Ventures Limited assisted in arranging such financing.

During the years ended December 31, 2013, 2012 and 2011, we paid aggregate consulting and arrangement fees of \$6.6 million, \$1.8 million and \$1.9 million, respectively, to Tiger Group and Tiger Ventures Limited.

### **Graham Porter Agreement**

In March 2011, in connection with our investment in GCI, we entered into an agreement with our director Graham Porter pursuant to which we have reduced Mr. Porter's fiduciary duties in relation to certain containership vessel and business opportunities to the extent such opportunities are subject to our right of first

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refusal with GCI and (a) the conflicts committee of our board of directors has decided to reject such opportunity or we have failed to exercise our right of first refusal to pursue such opportunity, (b) we have exercised such right but failed to pursue such opportunity or (c) we do not have the right under our right of first refusal to pursue such opportunity. Please read “—Agreements Related to Our Investment in Carlyle Containership-Focused Investment Vehicle—Rights of First Refusal and Offer Agreements.”

### **Registration Rights Agreements**

In connection with our initial public offering, we agreed to register for resale on a shelf registration statement under the Securities Act of 1933, as amended, or the Securities Act, and applicable state securities laws, any subordinated shares proposed to be sold by the holders of the subordinated shares (or the underlying common shares upon their conversion) upon expiration of a certain holding period if an exemption from the registration requirements is not otherwise available or advisable. These holders also have certain piggyback registration rights allowing them to participate in offerings by us to the extent that their participation does not interfere or impede with our offering. We are obligated to pay substantially all expenses incidental to the registration, excluding underwriting discounts and commissions.

In connection with the Series A Preferred Share Offering, we entered into a registration rights agreement, pursuant to which, in certain circumstances, we will be obligated to file a registration statement covering the potential sale by a holder of the Class A common shares that are issuable upon the conversion of the Series A preferred shares unless the sum of the Class A common shares held by such holder as a result of the conversion can be sold in a single transaction under Rule 144 of the Securities Act. These holders also have certain piggyback registration rights allowing them to participate in offerings by us to the extent that their participation does not interfere with or impede such offering. Under this agreement, we are obligated to pay substantially all expenses incidental to the registration, excluding underwriting discounts or commissions.

In March 2011, in connection with our investment in GCI, we also entered a transaction services agreement with Gerry Wang and a financial services agreement with Tiger Ventures Limited, pursuant to which we entered into registration rights agreements with each of Mr. Wang and Tiger Ventures Limited. Under these registration rights agreements, in certain circumstances, we will be obligated to file a registration statement covering the potential sale by Mr. Wang or Tiger Ventures Limited of the common shares earned pursuant to the transaction services agreement or financial services agreement, as applicable. Mr. Wang and Tiger Ventures Limited also have certain piggyback registration rights allowing them to participate in offerings by us to the extent that their participation does not interfere with or impede such offering. Under these agreements, we are obligated to pay all expenses incidental to the registration, excluding underwriting discounts or commissions.

In January 2012, in connection with the acquisition of our Manager, we entered into a registration rights agreement pursuant to which we are obligated to register for resale under the Securities Act, as amended, all shares of our common stock issued to the former owners of the Manager in connection with the acquisition, including any shares issued as Fleet Growth Payments.

### **Series A Preferred Share Offering**

In January 2009, we issued a total of 200,000 of our Series A preferred shares to certain investors, including entities affiliated with Dennis R. Washington, his son Kyle R. Washington, the co-chairman of our board of directors, and Graham Porter, one of our directors. The initial liquidation preference of the Series A preferred shares was \$1,000 per share, subject to adjustment. No dividend was payable in respect of the Series A preferred shares until March 31, 2014. Instead, the liquidation preference of the Series A preferred shares increased at a rate of 12% per annum until January 31, 2014, compounded quarterly. The Series A preferred shares entitled to the holders to certain voting and other rights.

On January 30, 2014, as a result of the average closing price of our Class A common shares for the preceding 30 trading days exceeding \$15.00 per share, our 200,000 outstanding Series A preferred shares automatically converted into a total of 23,177,175 of our Class A common shares pursuant to our articles of incorporation.

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**Change of Control Plan**

We established a change of control severance plan, or the Change of Control Plan, for certain employees of our indirect subsidiary, SSML, effective as of January 1, 2009. The purpose of the Change of Control Plan is to allow SSML to recruit qualified employees and limit the loss or distraction of such qualified employees that may result from the possibility of a change of control.

Under the terms of the Change of Control Plan, certain employees of SSML, or the Participants, are entitled to receive from us a severance benefit if their employment is terminated due to a qualifying termination. A qualifying termination means a termination by either SSML (if the Participant is terminated for reasons other than cause, death or disability) or by the Participant (if the Participant resigns for good reason, which includes a reduction in base salary or a material diminution in responsibilities, among other things) within a certain period of time following a change of control. A change of control includes:

- the sale or other disposition of all or substantially all of our assets in certain circumstances;
- a transaction where certain persons become the beneficial owner of more than a majority of our common shares;
- a change in our directors after which a majority of our board are not continuing directors (as defined in the Change of Control Plan); or
- the consolidation or merger of us with or into any person in certain circumstances.

A change of control does not include certain transactions or events involving Dennis R. Washington, Kyle R. Washington, Kevin L. Washington, Gerry Wang or Graham Porter or any of their respective affiliates.

The time period during which a Participant will be entitled to any benefits under the Change of Control Plan following a change of control and the severance benefit to which he or she will be entitled on a qualifying termination depends on the tier in which the Participant is placed in the Change of Control Plan. The Change of Control Plan is composed of three tiers of Participants and the chief executive officer of SSML may add or remove Participants from the Change of Control Plan at any time with our prior written consent.

Tier 1 Participants are entitled to severance benefits on a qualifying termination for a two-year period following a change of control and they will receive from us 30 months of their current base salary and bonuses. Tier 2 and Tier 3 Participants are entitled to severance benefits on a qualifying termination for a one-year period following a change of control and will receive from us 18 months and 9 months, respectively, of their current base salary and bonus. All Participants will also become fully vested in all outstanding incentive awards in addition to receiving their severance benefits. Participants will also receive certain other benefits, including but not limited to health, dental and life insurance benefits for a three-month period subject to the permission of the benefits carrier.

We will require any entity who is our successor to assume and agree to perform our obligations under the Change of Control Plan. The Participants will only be entitled to benefits under the Change of Control Plan upon providing us and SSML with a release and waiver.

**Item 8. Financial Information**

**A. Financial Statements and Other Financial Information**

Please see Item 18 below.

**Legal Proceedings**

We have not been involved in any legal proceedings that may have, or have had a significant effect on our business, financial position, results of operations or liquidity, and we are not aware of any proceedings that are pending or threatened that may have a material effect on our business, financial position, results of operations or



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liquidity. From time to time, we may be subject to legal proceedings and claims in the ordinary course of business, principally personal injury and property casualty claims. We expect that these claims would be covered by insurance, subject to customary deductibles. Those claims, even if lacking merit, could result in the expenditure of significant financial and managerial resources.

**Dividend Policy**

From our initial public offering in 2005 to 2008, our quarterly dividend on Class A and B common shares was \$0.475 per share. From 2009 to the first quarter of 2010, our quarterly dividend on Class A common shares was \$0.10 per share, from the second quarter of 2010 to the fourth quarter of 2010, our quarterly dividend was \$0.125 per share, from the first quarter of 2011 to the fourth quarter of 2011, our quarterly dividend was \$0.188 per share, from the first quarter of 2012 to the fourth quarter of 2012, our dividend was \$0.25 per share, and from the first quarter of 2013 to the fourth quarter of 2013, our dividend was \$0.3125 per share. In February 2014, our board of directors approved an increase in the quarterly common share dividend to \$0.345 per share, which dividend will be subsequently declared for the quarter ending March 31, 2014.

Since our initial public offering, our board of directors adopted a dividend policy to pay a regular quarterly dividend on our common shares while reinvesting a portion of our operating cash flow in our business. Retained cash flow may be used, among other things, to fund vessel or fleet acquisitions, create reserves for vessel replacement costs, other capital expenditures and debt repayments, as determined by our board of directors. This dividend policy reflects our judgment that by retaining a portion of our cash flow in our business, we will be able to provide better value to our shareholders by enhancing our longer term dividend paying capacity. It is our goal to increase our dividend through accretive acquisitions of additional vessels. There can be no assurance, however, that we will be successful in meeting our goal.

Our board of directors has adopted a progressive dividend policy aimed at increasing our dividends on our Class A common shares in a manner that preserves our long-term financial strength and our ability to expand our fleet. We expect this policy to increase dividends paid to holders of our Class A common shares, while continuing to permit us to pursue our growth strategy. It is our goal to increase our dividend through accretive acquisitions of additional vessels; however, there can be no assurance that we will be successful in meeting our goal.

There are a number of factors that could affect the dividends on our Class A common shares in the future. Many of these factors could also affect our ability to pay dividends on our preferred shares. As a result of these factors, you may not receive dividends based on current amounts or at all. These factors include, among others, the following:

- we may not have enough cash to pay dividends due to changes in our operating cash flow, capital expenditure requirements, working capital requirements and other cash needs;
- our ability to pay dividends is dependent upon the charter rates on new vessels and those obtained upon the expiration of our existing charters;
- while the dividend policy adopted by our board of directors contemplates the distribution of a substantial portion of our cash available to pay dividends on our Class A common shares, our board of directors could modify or revoke this policy at any time;
- even if our dividend policy is not modified or revoked, the actual amount of dividends distributed under the policy and the decision to make any distribution will remain at all times entirely at the discretion of our board of directors;
- the amount of dividends that we may distribute is limited by restrictions under our senior secured credit facilities and future indebtedness could contain covenants that are even more restrictive. In addition, our credit facilities require us to comply with various financial covenants, and our credit facilities prohibit the payment of dividends if an event of default has occurred and is continuing under our credit facilities or if the payment of the dividend would result in an event of default;

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- the amount of dividends that we may distribute is subject to restrictions under Marshall Islands law; and
- our common shareholders have no contractual or other legal right to dividends, and we are not otherwise required to pay dividends.

In February 2014 our board of directors approved a 10.4 % increase in the quarterly common share dividend to \$0.345 per share, commencing with the quarter ending March 31, 2014. For the 2014 fiscal year, we expect to pay an annual dividend of \$1.38 in the following manner:

<u>Record Date</u>	<u>Payment Date</u>	<u>Amount Per Share</u>
April 21, 2014	April 30, 2014	\$0.345
July 21, 2014	July 30, 2014	\$0.345
October 20, 2014	October 30, 2014	\$0.345
January 20, 2015	January 30, 2015	\$0.345

All dividends are subject to declaration by our board of directors. Our board of directors may review and amend our dividend policy from time to time in light of our plans for future growth and other factors. We cannot provide assurance that we will pay, or be able to pay, regular quarterly dividends in the amounts and manner stated above.

Please read “Item 3. Key Information—D. Risk Factors—Risks Inherent In Our Business” for a more detailed description of various factors that could reduce or eliminate our ability to pay dividends.

### **B. Significant Changes**

None.

### **Item 9. The Offer and Listing**

Our common shares are traded on the NYSE under the symbol “SSW.” The following table sets forth the high and low prices for the common shares on the NYSE for the periods indicated.

	<u>High</u>	<u>Low</u>
January 1, 2009 to December 31, 2009	\$13.07	\$ 5.12
January 1, 2010 to December 31, 2010	15.05	9.22
January 1, 2011 to December 31, 2011	21.33	10.21
January 1, 2012 to December 31, 2012	19.98	13.50
January 1, 2013 to December 31, 2013	25.10	16.46
First quarter 2012	19.98	13.50
Second quarter 2012	17.99	14.20
Third quarter 2012	18.00	14.50
Fourth quarter 2012	17.20	14.73
First quarter 2013	20.95	16.46
Second quarter 2013	23.52	19.75
Third quarter 2013	24.66	19.90
Fourth quarter 2013	25.10	19.45
September 2013	24.66	21.52
October 2013	25.10	19.45
November 2013	24.48	20.75
December 2013	23.20	21.06
January 2014	23.69	21.32
February 2014	23.35	21.46
March 1 through March 5, 2014	22.25	21.65

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Our Series C preferred shares are traded on the NYSE under the symbol “SSW PR C”. The following table sets forth the high and low prices for the Series C preferred shares on the NYSE since the date of listing for the periods indicated.

	<u>High</u>	<u>Low</u>
February 2, 2011 to December 31, 2011	\$29.33	\$25.03
January 1, 2012 to December 31, 2012	29.02	26.50
January 1, 2013 to December 31, 2013	28.40	25.50
First quarter 2012	28.17	26.80
Second quarter 2012	28.09	26.50
Third quarter 2012	28.22	26.60
Fourth quarter 2012	29.02	26.95
First quarter 2013	28.08	26.51
Second quarter 2013	28.40	25.50
Third quarter 2013	27.71	25.75
Fourth quarter 2013	27.61	26.07
September 2013	27.28	26.42
October 2013	27.61	26.67
November 2013	26.94	26.40
December 2013	26.95	26.07
January 2014	26.94	26.27
February 2014	26.95	26.10
March 1 through March 5, 2014	27.39	26.91

Our Series D preferred shares are traded on the NYSE under the symbol “SSW PR D”. The following table sets forth the high and low prices for the Series D preferred shares on the NYSE since the date of listing for the periods indicated.

	<u>High</u>	<u>Low</u>
December 21, 2012 to December 31, 2012	\$25.35	\$24.61
January 1, 2013 to December 31, 2013	27.50	24.55
First quarter 2013	25.94	25.20
Second quarter 2013	27.50	25.00
Third quarter 2013	26.80	24.73
Fourth quarter 2013	26.23	24.55
September 2013	25.41	25.02
October 2013	26.23	25.04
November 2013	25.37	24.55
December 2013	25.10	24.80
January 2014	25.96	25.00
February 2014	25.35	24.71
March 1 through March 5, 2014	25.09	24.95

Our Series E preferred shares are traded on the NYSE under the symbol “SSW PR E”. The following table sets forth the high and low prices for the Series E preferred shares on the NYSE since the date of listing for the periods indicated.

	<u>High</u>	<u>Low</u>
February 14 through February 28, 2014	\$25.17	\$24.90
March 1 through March 5, 2014	25.16	24.98

### **Item 10. Additional Information**

#### **A. Share Capital**

Not applicable.

## **B. Memorandum and Articles of Association**

Our Articles of Incorporation have previously been filed as Exhibit 3.1 to Amendment No. 2 to Form F-1 (File No. 333-126762), filed with the SEC on August 4, 2005 and are hereby incorporated by reference into this Annual Report. Our Bylaws are filed as Exhibit 1.2 to this Annual Report. In connection with our Series A preferred share offering, Series B preferred share offering, Series C preferred share offering, Series D preferred share offering, Series E preferred share offering, and the authorization of Series R preferred shares with respect to our shareholders rights plan, we filed Statements of Designation with respect to each such series of preferred shares with the Registrar of Corporations of the Republic of the Marshall Islands. Under the BCA, the Statements of Designation are deemed amendments to our Articles of Incorporation. The Series A Statement of Designation was previously filed as Exhibit 3.1 to our Report on Form 6-K filed on February 2, 2009 and is hereby incorporated by reference into this Annual Report. The Series B Statement of Designation was previously filed as Exhibit 3.1 to our Report on Form 6-K filed on June 4, 2010 and is hereby incorporated by reference into this Annual Report. The Series C Statement of Designation was previously filed as Exhibit 3.3 to our Report on Form 8-A12B filed on January 28, 2011 and is hereby incorporated by reference into this Annual Report. The Series D Statement of Designation was previously filed as Exhibit 3.3 to our Report on Form 8-A12B filed on December 13, 2012 and is hereby incorporated by reference into this Annual Report. The Series E Statement of Designation was previously filed as Exhibit 3.4 to Form 8-A12B filed on February 13, 2014 and is hereby incorporated by reference into this Annual Report. The Series R Statement of Designation is part of Exhibit 4.1 to our Report on Form 8-A12B filed with the SEC on April 19, 2011.

The necessary actions required to change the rights of shareholders, and the conditions governing the manner in which annual general meetings and special meetings of shareholders, are convoked are described in our Bylaws.

We have in place a shareholder rights agreement that may have the effect of delaying, deferring or preventing a change in control of Seaspan. We entered into the original shareholder rights agreement in August 2005. In April 2011, we amended and restated the shareholder rights agreement. The amended and restated shareholder rights agreement, including the Series R preferred share Statement of Designation, has been filed as Exhibit 4.1 to our Report on Form 8-A12B filed with the SEC on April 19, 2011. In connection with acquisition of our Manager in January 2012, we further amended the shareholder rights agreement. Amendment No. 1 to the amended and restated shareholder rights agreement has been filed as Exhibit 4.6 to our Report on Form 6-K filed with the SEC on January 30, 2012. Amendment No. 2 to the amended and restated shareholder rights agreement has been filed on Form 8-A12B filed with the SEC on December 27, 2012. The amended and restated shareholder rights agreement, as amended, is hereby incorporated by reference into this Annual Report.

Pursuant to the shareholder rights agreement, our board of directors declared a dividend for each outstanding Class A common share of one common share purchase right, or a Right, to purchase following a Distribution Date (as defined in the shareholder rights agreement) for \$25.00, or the Exercise Price, subject to certain exceptions and adjustments, a fraction (1/1000th) of one Series R preferred share, which fraction has similar economic terms as one Class A common share. If (i) a person or a group of persons beneficially owns 20% or more of our common shares or (ii) Dennis R. Washington (our largest shareholder), Kyle R. Washington (our Co-Chairman), Kevin L. Washington, and certain members of their families and their affiliates, in the aggregate, beneficially own 70% or more of our Class A common shares (excluding certain shares issued under our dividend reinvestment plan as described below), then each Right will entitle the holder (other than such 20% or more or 70% or more shareholders) to purchase a number of our Class A common shares with a fair market value equal to twice the product of the Exercise Price multiplied by the number of 1/1000th of a Series R preferred share for which such Right could have been exercised. If after such 20% or more or 70% or more ownership threshold has been met, we merge into another company, or we sell more than 50% of our assets or earning power, then each holder of a Right, other than such 20% or 70% or more shareholders, will be entitled to purchase at the Exercise Price, a number of common shares of the surviving entity which has a then current market value of twice the Exercise Price. The Rights will expire on August 8, 2015, unless we extend the expiration date or unless the Rights are earlier redeemed or exchanged by us. The Rights dividend was paid on August 12, 2005 to the shareholders of record on that date and attaches to all subsequently issued Class A common shares.

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For the Washington family and affiliates, Class A common shares acquired following January 1, 2013 pursuant to their participation in our dividend reinvestment plan with respect to any cash dividends paid on the Class A common shares through and for the quarter ending March 31, 2015 are excluded from the percentage ownership calculation described above. The Washington family has agreed to fully participate in the dividend reinvestment plan until March 15, 2015.

There are no limitations on the rights to own securities, including the rights of non-resident or foreign shareholders to hold or exercise voting rights on the securities imposed by the laws of the Republic of the Marshall Islands or by our Articles of Incorporation or Bylaws.

### **C. Material Contracts**

The following is a summary of each material contract, other than material contracts entered into in the ordinary course of business, to which we are a party, for the two years immediately preceding the date of this Annual Report:

(a) Amended and Restated Management Agreement dated as of the 8<sup>th</sup> day of August, 2005 as amended and restated as of the 4<sup>th</sup> day of May, 2007 among Seaspan Corporation, Seaspan Management Services Limited, Seaspan Advisory Services Limited, Seaspan Ship Management Ltd. and Seaspan Crew Management Ltd., previously filed as Exhibit 99.1 to the Company's Form 6-K/A, filed with the SEC on October 10, 2007, as amended as of August 5, 2008.

(b) Credit Facility Agreement providing for a Senior Secured Reducing Revolving Credit Facility of up to \$365,000,000 dated May 19, 2006, among Seaspan Corporation, DnB Nor Bank ASA, as Sole Bookrunner, Administrative Agent and Security Agent, Credit Suisse and Fortis Capital Corp., as Mandated Lead Arrangers and Landesbank Hessen-Thüringen as documentation agent, previously filed as Exhibit 1 to the Company's Form 6-K, filed with the SEC on June 12, 2006.

(c) Amendment No. 1 to Credit Facility Agreement providing for a Senior Secured Reducing Revolving Credit Facility of up to \$365,000,000, dated June 29, 2007, among Seaspan Corporation, DnB Nor Bank, ASA, as Sole Bookrunner, Administrative Agent and Security Agent, Credit Suisse and Fortis Capital Corp., as Mandated Lead Arrangers and Landesbank Hessen-Thüringen as documentation agent, previously filed as Exhibit 99.4 to the Company's Form 6-K/A, filed with the SEC on October 10, 2007.

(d) Amendment No. 2 to Credit Facility Agreement providing for a Senior Secured Reducing Revolving Credit Facility of up to \$365,000,000 dated August 7, 2007, among Seaspan Corporation, DnB Nor Bank ASA, as Sole Bookrunner, Administrative Agent and Security Agent, Credit Suisse and Fortis Capital Corp., as Mandated Lead Arrangers and Landesbank Hessen-Thüringen as documentation agent, previously filed as Exhibit 4.17 to the Company's Annual Report on Form 20-F, filed with the SEC on March 24, 2008.

(e) U.S. \$218,400,000 Credit Facility Agreement dated October 16, 2006, among Seaspan Corporation, Sumitomo Mitsui Banking Corporation, Sumitomo Mitsui Banking Corporation Europe Limited, as Security Trustee and Sumitomo Mitsui Banking Corporation, Brussels Branch as Facility Agent, previously filed as Exhibit 1 to the Company's Form 6-K, filed with the SEC on October 23, 2006.

(f) U.S. \$920,000,000 Reducing, Revolving Credit Facility dated August 8, 2007, among DnB Nor Bank ASA, Credit Suisse, The Export-Import Bank of China, Industrial and Commercial Bank of China Limited and Sumitomo Mitsui Banking Corporation, Brussels Branch, previously filed as Exhibit 99.1 to the Company's Form 6-K, filed with the SEC on August 9, 2007.

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(g) U.S. \$150,000,000 Reducing Revolving Credit Facility Agreement dated December 28, 2007, for Seaspan Finance II Co. Ltd., Seaspan Finance III Co. Ltd. as borrowers with Seaspan Corporation, as guarantor, arranged by Industrial and Commercial Bank of China Limited and with Industrial and Commercial Bank of China Limited as facility agent, previously filed as Exhibit 4.20 to the Company's Annual Report on Form 20-F, filed with the SEC on March 24, 2008 as amended on July 20, 2009.

(h) U.S. \$291,200,000 Credit Facility Agreement for Seaspan Corporation as Borrower, arranged by Fortis Bank S.A./N.V., New York Branch and The Export-Import Bank of Korea with Fortis Bank S.A./N.V., New York Branch as Facility Agent and Security Trustee and Fortis Bank S.A./N.V., New York Branch as Swap Agent dated March 17, 2008, previously filed as Exhibit 4.21 to the Company's Annual Report on Form 20-F, filed with the SEC on March 24, 2008.

(i) U.S. \$235,300,000 Credit Facility Agreement dated March 31, 2008 for Seaspan Corporation as borrower, Sumitomo Mitsui Banking Corporation as mandated lead arranger, Sumitomo Banking Corporation, Brussels Branch as original lender, Sumitomo Mitsui Banking Corporation Europe Limited as security trustee, Sumitomo Mitsui Banking Corporation, Brussels Branch as facility agent and Sumitomo Mitsui Banking Corporation, Brussels Branch as agent for the finance parties under the KEIC policies, previously filed as Exhibit 99.1 to Form 6-K, filed with the SEC on April 4, 2008.

(j) Lease Agreement between Peony Leasing Limited and Seaspan Finance I Co. Ltd. dated December 27, 2007 in respect of one 4520 TEU container carrier to be built at Samsung Heavy Industries Co., Ltd. with Hull No. 1851, previously filed as Exhibit 4.22 to the Company's Annual Report on Form 20-F, filed with the SEC on March 24, 2008.

(k) Lease Agreement between Peony Leasing Limited and Seaspan Finance I Co. Ltd. dated December 27, 2007 in respect of one 4520 TEU container carrier to be built at Samsung Heavy Industries Co., Ltd. with Hull No. 1852, previously filed as Exhibit 4.23 to the Company's Annual Report on Form 20-F, filed with the SEC on March 24, 2008.

(l) Lease Agreement between Peony Leasing Limited and Seaspan Finance I Co. Ltd. dated December 27, 2007 in respect of one 4520 TEU container carrier to be built at Samsung Heavy Industries Co., Ltd. with Hull No. 1853, previously filed as Exhibit 4.24 to the Company's Annual Report on Form 20-F, filed with the SEC on March 24, 2008.

(m) Lease Agreement between Peony Leasing Limited and Seaspan Finance I Co. Ltd. dated December 27, 2007 in respect of one 4520 TEU container carrier to be built at Samsung Heavy Industries Co., Ltd. with Hull No. 1854, previously filed as Exhibit 4.25 to the Company's Annual Report on Form 20-F, filed with the SEC on March 24, 2008.

(n) Lease Agreement between Peony Leasing Limited and Seaspan Finance I Co. Ltd. dated December 27, 2007 in respect of one 4520 TEU container carrier to be built at Samsung Heavy Industries Co., Ltd. with Hull No. 1855, previously filed as Exhibit 4.26 to the Company's Annual Report on Form 20-F, filed with the SEC on March 24, 2008.

(o) Amendment Agreement relating to Five Lease Agreements in respect of 4520 TEU Container Carriers to be Built at Samsung Heavy Industries Co., Ltd. with Hull Nos. 1851, 1852, 1853, 1854 and 1855, dated February 4, 2007, among Peony Leasing Limited and Seaspan Finance I Co. Ltd., previously filed as Exhibit 4.27 to the Company's Annual Report on Form 20-F, filed with the SEC on March 24, 2008.

(p) Amended and Restated Shareholders Rights Agreement dated April 19, 2011, by and between Seaspan Corporation and American Stock Transfer & Trust Company, LLC as Rights Agent, previously filed as Exhibit 4.1 to Form 8-A, filed with the SEC on April 19, 2011, as amended by Amendment No. 1 to Amended and Restated Shareholders Rights Agreement dated January 27, 2012, by and between Seaspan Corporation and American Stock Transfer & Trust Company, LLC as Rights Agent, previously filed as Exhibit 4.6 to Form 6-K, filed with the SEC on January 30, 2012, and Amendment No. 2 to Amended and Restated Shareholders Rights Agreement dated December 27, 2012, by and between Seaspan Corporation and American Stock Transfer & Trust Company, LLC as Rights Agent, previously filed as Exhibit 4.3 to Form 8-A12B, filed with the SEC on December 27, 2012.

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- (q) Registration Rights Agreement dated August 8, 2005, by and among Seaspan Corporation and certain investors named therein, previously filed as Exhibit 10.1 to the Company's Amendment No. 2 to Form F-1, filed with the SEC on August 4, 2005.
- (r) Registration Rights Agreement dated January 30, 2009, by and among Seaspan Corporation and certain investors named therein, previously filed as Exhibit 10.3 to Form 6-K, filed with the SEC on February 2, 2009.
- (s) Form of Registration Rights Agreement, previously filed as Exhibit 4.10 to Form 6-K, filed with the SEC on March 14, 2011.
- (t) Registration Rights Agreement dated January 27, 2012, by and among Seaspan Corporation and certain shareholders named therein, previously filed as Exhibit 4.5 to Form 6-K, filed with the SEC on January 30, 2012.
- (u) Change of Control Severance Plan for Employees of Seaspan Ship Management Ltd., effective as of January 1, 2009, previously filed as Exhibit 4.34 to the Company's Form 20-F, filed with the SEC on March 31, 2009.
- (v) Amended and Restated Limited Liability Company Agreement of Greater China Intermodal Investments LLC, dated March 14, 2011, previously filed as Exhibit 4.1 to Form 6-K, filed with the SEC on March 14, 2011.
- (w) Right of First Refusal Agreement among Seaspan Corporation, Greater China Intermodal Investments LLC and Blue Water Commerce, LLC, dated March 14, 2011, previously filed as Exhibit 4.2 to Form 6-K, filed with the SEC on March 14, 2011.
- (x) Right of First Offer Agreement between Seaspan Corporation and Blue Water Commerce, LLC, dated March 14, 2011, previously filed as Exhibit 4.3 to Form 6-K, filed with the SEC on March 14, 2011.
- (y) Executive Employment Agreement between Seaspan Corporation and Gerry Wang, dated March 14, 2011, previously filed as Exhibit 4.4 to Form 6-K, filed with the SEC on March 14, 2011.
- (z) Amended and Restated Executive Employment Agreement between Seaspan Ship Management Ltd. and Gerry Wang, dated March 14, 2011, previously filed as Exhibit 4.5 to Form 6-K, filed with the SEC on March 14, 2011.
- (aa) Amended and Restated Employment Agreement between Seaspan Corporation and Gerry Wang, dated December 7, 2012, filed as Exhibit 4.42 herewith.
- (bb) Transaction Services Agreement between Seaspan Corporation and Gerry Wang, dated March 14, 2011, previously filed as Exhibit 4.6 to Form 6-K, filed with the SEC on March 14, 2011.
- (cc) Amended and Restated Transaction Services Agreement between Seaspan Corporation and Gerry Wang, dated December 7, 2012, filed as Exhibit 4.43 herewith.
- (dd) Lock Up Agreement between Seaspan Corporation and Gerry Wang, dated December 7, 2012, filed as Exhibit 4.44 herewith.
- (ee) Stock Appreciation Rights and Grant Notice between Seaspan Corporation and Gerry Wang, dated December 7, 2012, filed as Exhibit 4.45 herewith.
- (ff) Letter Agreement Terminating SMSL Employment Agreement between Seaspan Corporation, Seaspan Ship Management Ltd. and Gerry Wang, dated December 7, 2012, filed as Exhibit 4.46 herewith.
- (gg) Financial Services Agreement between Seaspan Corporation and Tiger Ventures Limited, dated March 14, 2011, previously filed as Exhibit 4.7 to Form 6-K, filed with the SEC on March 14, 2011.
- (hh) Graham Porter Letter Agreement, dated March 14, 2011, previously filed as Exhibit 4.9 to Form 6-K, filed with the SEC on March 14, 2011.

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(ii) Share Purchase Agreement, dated as of January 27, 2012, among Seaspan Corporation, Seaspan Management Services Limited, The Kevin Lee Washington Trust II, the Kyle Roy Washington 2005 Irrevocable Trust under agreement dated July 15, 2005 and Thetis Holdings Ltd., previously filed as Exhibit 4.1 to Form 6-K, filed with the SEC on January 30, 2012.

(jj) Escrow Agreement, dated as of January 27, 2012, among Canadian Stock Transfer Company Inc., as Escrow Agent, Seaspan Corporation, The Kevin Lee Washington Trust II, the Kyle Roy Washington 2005 Irrevocable Trust under agreement dated July 15, 2005 and Thetis Holdings Ltd., previously filed as Exhibit 4.2 to Form 6-K, filed with the SEC on January 30, 2012.

(kk) Form of Lockup Agreement, previously filed as Exhibit 4.3 to Form 6-K, filed with the SEC on January 30, 2012.

(ll) Amended and Restated Omnibus Agreement, dated as of January 27, 2012, among Seaspan Corporation, Seaspan Management Services Limited, Seaspan Ship Management Ltd., Seaspan Advisory Services Limited, Norsk Pacific Steamship Company Limited and Seaspan Marine Corporation, previously filed as Exhibit 4.4 to Form 6-K, filed with the SEC on January 30, 2012.

(mm) Amending Agreement, dated as of January 27, 2012, between Seaspan Ship Management Ltd. and Gerry Wang, previously filed as Exhibit 4.7 to Form 6-K, filed with the SEC on January 30, 2012.

(nn) Credit Facility Agreement between Seaspan Corporation and Arranged by Citigroup Global Markets Limited and BNP Paribas, with Citigroup Global Markets Limited, Credit Suisse AG, DNB Banks ASA, New York Branch (formerly known as DnB Nor ASA), BNP Paribas, Landesbank Hessen-Thüringen Girozentrale, New York branch as Mandated Lead Arrangers with BNP Paribas as Facility Agent, dated as of August 8, 2005, as amended from time to time and as amended and restated on May 11, 2007 and December 23, 2013, filed herewith.

### **D. Exchange Controls**

We are not aware of any governmental laws, decrees or regulations in the Republic of The Marshall Islands that restrict the export or import of capital, including foreign exchange controls, or that affect the remittance of dividends, interest or other payments to non-resident holders of our securities.

We are not aware of any limitations on the right of non-resident or foreign owners to hold or vote our securities imposed by the laws of the Republic of the Marshall Islands or our Articles of Incorporation and Bylaws.

### **E. Taxation**

#### **Material U.S. Federal Income Tax Considerations**

The following is a discussion of certain material U.S. federal income tax considerations that may be relevant to our shareholders. This discussion is based upon the provisions of the Code, legislative history, applicable U.S. Treasury Regulations promulgated thereunder, judicial authority and administrative interpretations, as of the date of this Annual Report, all of which are subject to change, possibly with retroactive effect, or are subject to different interpretations. Changes in these authorities may cause the U.S. federal income tax considerations to vary substantially from those described below.

This discussion applies only to beneficial owners of our shares that own the shares as “capital assets” (generally, for investment purposes) and does not comment on all aspects of U.S. federal income taxation that may be important to certain shareholders in light of their particular circumstances, such as shareholders subject to special tax rules (*e.g.*, financial institutions, regulated investment companies, real estate investment trusts, insurance companies, traders in securities that have elected the mark-to-market method of accounting for their securities, persons liable for alternative minimum tax, broker-dealers, tax-exempt organizations, or former citizens or long-term residents of the United States) or shareholders that hold our shares as part of a straddle,



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hedge, conversion, constructive sale or other integrated transaction for U.S. federal income tax purposes, all of whom may be subject to U.S. federal income tax rules that differ significantly from those summarized below. If a partnership or other entity or arrangement treated as a partnership for U.S. federal income tax purposes holds our shares, the tax treatment of its partners generally will depend upon the status of the partner and the activities of the partnership. Partners in partnerships holding our shares should consult their own tax advisors to determine the appropriate tax treatment of the partnership's ownership of our shares.

No ruling has been requested from the IRS regarding any matter affecting us or our shareholders. Accordingly, statements made herein may not be sustained by a court if contested by the IRS.

This discussion does not address any U.S. estate, gift or alternative minimum tax considerations or tax considerations arising under the laws of any state, local or non-U.S. jurisdiction. Shareholders are urged to consult their own tax advisors regarding the U.S. federal, state, local, non-U.S. and other tax consequences of owning and disposing of our shares.

### ***U.S. Federal Income Taxation of U.S. Holders***

As used herein, the term "U.S. Holder" means a beneficial owner of our shares that is for U.S. federal income tax purposes: (a) a U.S. citizen or U.S. resident alien (a U.S. Individual Holder); (b) a corporation, or other entity taxable as a corporation that was created or organized under the laws of the United States, any state thereof, or the District of Columbia; (c) an estate whose income is subject to U.S. federal income taxation regardless of its source; or (d) a trust that either is subject to the supervision of a court within the United States and has one or more U.S. persons with authority to control all of its substantial decisions or has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

### ***Distributions***

Subject to the discussion of passive foreign investment companies, or PFICs, below, any distributions made by us to a U.S. Holder generally will constitute dividends, which may be taxable as ordinary income or "qualified dividend income" as described in more detail in the paragraph below, to the extent of our current and accumulated earnings and profits allocated to the U.S. Holder's shares, as determined under U.S. federal income tax principles. Distributions in excess of our current and accumulated earnings and profits allocated to the U.S. Holder's shares will be treated first as a nontaxable return of capital to the extent of the U.S. Holder's tax basis in our shares and thereafter as capital gain, which will be either long-term or short-term capital gain depending upon whether the U.S. Holder has held the shares for more than one year. U.S. Holders that are corporations generally will not be entitled to claim a dividends received deduction with respect to any distributions they receive from us. For purposes of computing allowable foreign tax credits for U.S. federal income tax purposes, dividends received with respect to our shares will be treated as foreign source income and generally will be treated as "passive category income," or in the case of certain types of U.S. Holders, "general category income."

Under current law, subject to holding-period requirements and certain other limitations, dividends received with respect to our publicly traded shares by a U.S. Holder who is an individual, trust or estate (a Non-Corporate U.S. Holder, generally will be treated as qualified dividend income that is taxable to such Non-Corporate U.S. Holder at preferential capital gain tax rates (provided we are not classified as a PFIC for the taxable year during which the dividend is paid or the immediately preceding taxable year).

Special rules may apply to any "extraordinary dividend" paid by us. Generally, an extraordinary dividend is a dividend with respect to a share of stock that is equal to or in excess of 10% of a common shareholder's, or 5% of a preferred shareholder's, adjusted tax basis (or fair market value upon the shareholder's election) in such share. In addition, extraordinary dividends include dividends received within a one year period that, in the aggregate, equal or exceed 20% of a shareholder's adjusted tax basis (or fair market value). If we pay an extraordinary dividend on our shares that is treated as qualified dividend income, then any loss recognized by a Non-Corporate U.S. Holder from the sale or exchange of such shares will be treated as long-term capital loss to the extent of the amount of such dividend.

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### *Sale, Exchange or Other Disposition of Our Shares*

Subject to the discussion of PFICs, below, a U.S. Holder generally will recognize capital gain or loss upon a sale, exchange or other disposition of our shares in an amount equal to the difference between the amount realized by the U.S. Holder from such sale, exchange or other disposition and the U.S. Holder's tax basis in such shares.

Subject to the discussion of extraordinary dividends above, gain or loss recognized upon a sale, exchange or other disposition of our shares generally will be (a) treated as long-term capital gain or loss if the U.S. Holder's holding period is greater than one year at the time of the sale, exchange or other disposition, or short-term capital gain or loss otherwise, and (b) treated as U.S. source income or loss, as applicable, for foreign tax credit purposes. Non-Corporate U.S. Holders may be eligible for preferential rates of U.S. federal income tax in respect of long-term capital gains. A U.S. Holder's ability to deduct capital losses is subject to certain limitations.

### *Consequences of Possible CFC Classification*

If CFC Shareholders (generally, U.S. Holders who each own, directly, indirectly or constructively, 10% or more of the total combined voting power of all classes of our outstanding shares entitled to vote) own directly, indirectly or constructively more than 50% of either the total combined voting power of all classes of our outstanding shares entitled to vote or the total value of all of our outstanding shares, we generally would be treated as a controlled foreign corporation, or a CFC.

CFC Shareholders are treated as receiving current distributions of their respective share of certain income of the CFC without regard to any actual distributions. In addition, CFC Shareholders are subject to certain burdensome U.S. federal income tax and administrative requirements but generally are not also subject to the requirements generally applicable to shareholders of a PFIC (as discussed below). In addition, a person who is or has been a CFC Shareholder may recognize ordinary income on the disposition of shares of the CFC. U.S. persons who may obtain a substantial interest in us should consider the potential implications of being treated as a CFC Shareholder.

The U.S. federal income tax consequences to U.S. Holders who are not CFC Shareholders would not change in the event we become a CFC in the future.

### *PFIC Status and Significant Tax Consequences*

Special and adverse U.S. federal income tax rules apply to a U.S. Holder that holds stock in a non-U.S. entity treated as a corporation and classified as a PFIC for U.S. federal income tax purposes. In general, we will be treated as a PFIC for any taxable year in which either (a) at least 75% of our gross income (including the gross income of certain of our subsidiaries) consists of passive income and (b) at least 50% of the average value of our assets (including the assets of certain of our subsidiaries) is attributable to assets that produce passive income, or are held for the production of passive income. For purpose of these tests, passive income includes dividends, interest, gains from the sale or exchange of investment property and rents and royalties (other than rents and royalties that are received from unrelated parties in connection with the active conduct of a trade or business) but does not include income derived from the performance of services. There are legal uncertainties involved in determining whether the income derived from our time chartering activities constitutes rental income or income derived from the performance of services, including legal uncertainties arising from the decision in *Tidewater Inc. v. United States*, 565 F.3d 299 (5th Cir. 2009), which held that income derived from certain time chartering activities should be treated as rental income rather than services income for purposes of a foreign sales corporation provision of the Code. However, the IRS stated in an Action on Decision (AOD 2010-01) that it disagrees with, and will not acquiesce to, the way that the rental versus services framework was applied to the facts in the *Tidewater* decision, and in its discussion stated that the time charters at issue in *Tidewater* would be treated as producing services income for PFIC purposes. The IRS's statement with respect to *Tidewater* cannot be relied upon or otherwise cited as precedent by taxpayers. Consequently, in the absence of any binding legal

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authority specifically relating to the statutory provisions governing PFICs, there can be no assurance that the IRS or a court would not follow the *Tidewater* decision in interpreting the PFIC provisions of the Code. Nevertheless, based on the current composition of our assets and operations (and that of our subsidiaries), we intend to take the position that we are not now and have never been a PFIC. Further, although we intend to conduct our affairs in a manner to avoid being classified as a PFIC with respect to any taxable year, there can be no assurance that the nature of our operations, and therefore the composition of our income and assets, will remain the same in the future. Moreover, the market value of our stock may be treated as reflecting the value of our assets at any given time. Therefore, a decline in the market value of our stock (which is not within our control) may impact the determination of whether we are a PFIC. Because our status as a PFIC for any taxable year will not be determinable until after the end of the taxable year, there can be no assurance that we will not be considered a PFIC for any future taxable year.

As discussed more fully below, if we were to be treated as a PFIC for any taxable year, a U.S. Holder generally would be subject to one of three different U.S. income tax regimes, depending on whether the U.S. Holder makes certain elections.

### *Taxation of U.S. Holders Making a Timely QEF Election*

If we were classified as a PFIC for a taxable year, a U.S. Holder making a timely election to treat us as a “Qualified Electing Fund” for U.S. tax purposes, or a QEF Election would be required to report its pro rata share of our ordinary earnings and our net capital gain, if any, for our taxable year that ends with or within the U.S. Holder’s taxable year regardless of whether the U.S. Holder received distributions from us in that year. Such income inclusions would not be eligible for the preferential tax rates applicable to qualified dividend income. The U.S. Holder’s adjusted tax basis in our shares would be increased to reflect taxed but undistributed earnings and profits, and distributions of earnings and profits that had previously been taxed would not be taxed again when distributed but would result in a corresponding reduction in the U.S. Holder’s adjusted tax basis in our shares. The U.S. Holder generally would recognize capital gain or loss on the sale, exchange or other disposition of our shares. A U.S. Holder would not, however, be entitled to a deduction for its pro-rata share of any losses that we incurred with respect to any year.

A U.S. Holder would make a QEF Election with respect to any year that we are a PFIC by filing IRS Form 8621 with its U.S. federal income tax return and complying with all other applicable filing requirements. However, a U.S. Holder’s QEF Election will not be effective unless we annually provide the U.S. Holder with certain information concerning our income and gain, calculated in accordance with the Code, to be included with the U.S. Holder’s U.S. federal income tax return. We have not provided our U.S. Holders with such information in prior taxable years and do not intend to provide such information in the current taxable year. Accordingly, you will not be able to make an effective QEF Election at this time. If, contrary to our expectations, we determine that we are or expect to be a PFIC for any taxable year, we will provide U.S. Holders with the information necessary to make an effective QEF Election with respect to our shares.

### *Taxation of U.S. Holders Making a “Mark-to-Market” Election*

Alternatively, if we were to be treated as a PFIC for any taxable year and, as we believe, our shares are treated as “marketable stock,” then a U.S. Holder would be allowed to make a “mark-to-market” election with respect to our shares, provided the U.S. Holder completes and files IRS Form 8621 in accordance with the relevant instructions. If that election is made, the U.S. Holder generally would include as ordinary income in each taxable year the excess, if any, of the fair market value of our shares at the end of the taxable year over the U.S. Holder’s adjusted tax basis in our shares. The U.S. Holder also would be permitted an ordinary loss in respect of the excess, if any, of the U.S. Holder’s adjusted tax basis in our shares over the fair market value thereof at the end of the taxable year (but only to the extent of the net amount previously included in income as a result of the mark-to-market election). The U.S. Holder’s tax basis in our shares would be adjusted to reflect any such income or loss recognized. Gain realized on the sale, exchange or other disposition of our shares would be

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treated as ordinary income, and any loss realized on the sale, exchange or other disposition of our shares would be treated as ordinary loss to the extent that such loss does not exceed the net mark-to-market gains previously included in income by the U.S. Holder. Because the mark-to-market election only applies to marketable stock, however, it would not apply to a U.S. Holder's indirect interest in any of our subsidiaries that were also determined to be PFICs.

### *Taxation of U.S. Holders Not Making a Timely QEF Election or Mark-to-Market Election*

Finally, if we were to be treated as a PFIC for any taxable year and if a U.S. Holder did not make either a QEF Election or a mark-to-market election for that year, the U.S. Holder would be subject to special rules resulting in increased tax liability with respect to (a) any excess distribution (*i.e.*, the portion of any distributions received by the U.S. Holder on our shares in a taxable year in excess of 125% of the average annual distributions received by the U.S. Holder in the three preceding taxable years, or, if shorter, the U.S. Holder's holding period for our shares), and (b) any gain realized on the sale, exchange or other disposition of our shares. Under these special rules:

- the excess distribution or gain would be allocated ratably over the U.S. Holder's aggregate holding period for our shares;
- the amount allocated to the current taxable year and any taxable year prior to the year we were first treated as a PFIC with respect to the U.S. Holder would be taxed as ordinary income in the current taxable year;
- the amount allocated to each other taxable year would be subject to tax at the highest rate of tax in effect for the applicable class of taxpayers for that year, and
- an interest charge for the deemed deferral benefit would be imposed with respect to the resulting tax attributable to each such other taxable year.

Additionally, for each during which a U.S. Holder owns shares, we are a PFIC and the total value of all PFIC stock that such U.S. Holder directly or indirectly owns exceeds certain thresholds, such U.S. Holder will be required to file IRS Form 8621 with its annual U.S. federal income tax return to report its ownership of our shares. In addition, if a U.S. Individual Holder dies while owning our shares, such shareholder's successor generally would not receive a step-up in tax basis with respect to such shares.

U.S. Holders are urged to consult their own tax advisors regarding the PFIC rules, including the PFIC annual reporting requirements, as well as applicability, availability and advisability of, and procedure for, making QEF Elections, mark-to-market elections and other available elections with respect to us, and the U.S. federal income tax consequences of making such elections.

### *U.S. Return Disclosure Requirements for U.S. Individual Holders*

U.S. Individual Holders that hold certain specified foreign financial assets, including stock in a foreign corporation that is not held in an account maintained by a financial institution, with an aggregate value in excess of \$50,000 on the last day of a taxable year, or \$75,000 at any time during that taxable year, may be required to report such assets on IRS Form 8938 with their tax return for that taxable year. This reporting requirement does not apply to U.S. Individual Holders who report their ownership of our shares under the PFIC annual reporting rules described above. Penalties apply for failure to properly complete and file Form 8938. Investors are encouraged to consult with their own tax advisors regarding the possible application of this disclosure requirement to their investment in our shares.

### *U.S. Federal Income Taxation of Non-U.S. Holders*

A beneficial owner of our shares (other than a partnership or an entity or arrangement treated as a partnership for U.S. federal income tax purposes) that is not a U.S. Holder is referred to herein as a non-U.S. Holder.

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### *Distributions*

In general, a non-U.S. Holder is not subject to U.S. federal income tax on distributions received from us with respect to our shares unless the distributions are effectively connected with the non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, are attributable to a permanent establishment that the non-U.S. Holder maintains in the United States). If a non-U.S. Holder is engaged in a U.S. trade or business and the distribution is deemed to be effectively connected to that trade or business, the non-U.S. Holder generally will be subject to U.S. federal income tax on that distribution in the same manner as if it were a U.S. Holder.

### *Sale, Exchange or Other Disposition of Our Shares*

In general, a non-U.S. Holder is not subject to U.S. federal income tax on any gain resulting from the disposition of our shares unless (a) such gain is effectively connected with the non-U.S. Holder's conduct of a trade or business in the United States (and, if required by an applicable income tax treaty, is attributable to a permanent establishment that the non-U.S. Holder maintains in the United States) or (b) the non-U.S. Holder is an individual who is present in the United States for 183 days or more during the taxable year in which those shares are disposed of (and certain other requirements are met). If a non-U.S. Holder is engaged in a U.S. trade or business and the disposition of shares is deemed to be effectively connected to that trade or business, the non-U.S. Holder generally will be subject to U.S. federal income tax on the resulting gain in the same manner as if it were a U.S. Holder.

### *Medicare Tax on Unearned Income*

Certain Non-Corporate U.S. Holders are subject to a 3.8% tax on certain investment income, including dividends and gain from the sale or other disposition of our shares. It is unclear whether this tax applies to non-U.S. Holders that are estates or trusts and that have one or more U.S. beneficiaries. U.S. Holders and non-U.S. Holders that are estates or trusts with one or more U.S. beneficiaries should consult their tax advisors regarding the effect, if any, of this tax on their ownership and disposition of our shares.

### *Information Reporting and Backup Withholding*

In general, payments of distributions or the proceeds of a disposition of our shares to a Non-Corporate U.S. Holder will be subject to information reporting requirements. These payments to a Non-Corporate U.S. Holder also may be subject to backup withholding if the U.S. Holder:

- fails to timely provide an accurate taxpayer identification number;
- is notified by the IRS that it has failed to report all interest or distributions required to be shown on its U.S. federal income tax returns; or
- in certain circumstances, fails to comply with applicable certification requirements.

Non-U.S. Holders may be required to establish their exemption from information reporting and backup withholding on payments made to them within the United States by certifying their status on an IRS Form W-8BEN, W-8ECI or W-8IMY, as applicable.

Backup withholding is not an additional tax. Rather, a holder generally may obtain a credit for any amount withheld against its liability for U.S. federal income tax (and obtain a refund of any amounts withheld in excess of such liability) by accurately completing and timely filing a U.S. federal income tax return with the IRS.

### **Marshall Islands Tax Considerations**

Because we do not, and we do not expect that we will, conduct business or operations in the Republic of the Marshall Islands, and because all documentation related to this offering will be executed outside of the Republic of the Marshall Islands, under current Marshall Islands law you will not be subject to Marshall Islands taxation or

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withholding on distributions, including upon a return of capital, we make to you as a shareholder. In addition, you will not be subject to Marshall Islands stamp, capital gains or other taxes on the purchase, ownership or disposition of shares, and you will not be required by the Republic of the Marshall Islands to file a tax return relating to the shares.

Each prospective shareholder is urged to consult its tax counsel or other advisor with regard to the legal and tax consequences, under the laws of pertinent jurisdictions, including the Marshall Islands, of its investment in us. Further, it is the responsibility of each shareholder to file all state, local and non-U.S., as well as U.S. federal tax returns that may be required of it.

**Canadian Federal Income Tax Considerations**

The following discussion is a summary of the material Canadian federal income tax consequences under the Income Tax Act (Canada) (the Canada Tax Act), as of the date of this Annual Report, that we believe are relevant to holders of shares who are, at all relevant times, for the purposes of the Canada Tax Act and the Canada-United States Tax Convention 1980 (the Canada-U.S. Treaty), resident only in the United States who are “qualifying persons” for purposes of the Canada-U.S. Treaty and who deal at arm’s length with us (U.S. Resident Holders). Holders that are United States limited liability companies should consult their own tax advisors.

Subject to the assumptions below, under the Canada Tax Act no taxes on income (including taxable capital gains and withholding tax on dividends) are payable by U.S. Resident Holders in respect of the acquisition, holding, disposition or redemption of our shares. This opinion is based upon the assumptions that we are not a resident of Canada and such U.S. Resident Holders do not have, and have not had, for the purposes of the Canada-U.S. Treaty, a permanent establishment in Canada to which such shares pertain and, in addition, do not use or hold and are not deemed or considered to use or hold such shares in the course of carrying on a business in Canada. We will not be resident in Canada in a particular taxation year if our principal business in that year is the operation of ships that are used primarily in transporting passengers or goods in international traffic, all or substantially all of our gross revenue for that year consists of gross revenue from the operation of ships in transporting passengers or goods in that international traffic, and we were not granted articles of continuance in Canada before the end of that year. Please read “Item 4. Information on the Company—B. Business Overview—Taxation of the Company—Canadian Taxation” for a further discussion, separate from this opinion, of the tax consequences of us becoming a resident of Canada.

Each prospective shareholder is urged to consult its tax counsel or other advisor with regard to the legal and tax consequences, under the laws of pertinent jurisdictions, including Canada, of its investment in us. Further, it is the responsibility of each shareholder to file all state, local and non-U.S., as well as U.S. federal tax returns that may be required of it.

**F. Dividends and Paying Agents**

Not applicable.

**G. Statements by Experts**

Not applicable.

**H. Documents on Display**

Documents concerning us that are referred to herein may be inspected at the offices of Seaspan Ship Management Ltd. at 2600-200 Granville Street, Vancouver, British Columbia. Those documents electronically filed with the SEC may be obtained from the SEC’s website at [www.sec.gov](http://www.sec.gov) or from the SEC public reference room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Further information on the operation of the public reference rooms may be obtained by calling the SEC at 1-800-SEC-0330. Copies of documents can be requested from the SEC public reference rooms for a copying fee.

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**Item 11. Quantitative and Qualitative Disclosures About Market Risk**

We are exposed to market risk from changes in interest rates and foreign currency fluctuations. We use interest rate swaps to manage interest rate price risks and we have entered into foreign currency forward contracts to manage foreign currency fluctuations. We do not use these financial instruments for trading or speculative purposes.

**Interest Rate Risk**

As of December 31, 2013, our floating-rate borrowings totaled \$3.2 billion, of which we had entered into interest rate swap and swaption agreements to fix the rates on a notional principal of \$2.4 billion. These interest rate swaps and swaptions have a fair value of \$60.2 million in our favor and \$425.1 million the counterparties' favor.

The tables below provide information about our financial instruments at December 31, 2013 that are sensitive to changes in interest rates. See notes 10 and 11 to our consolidated financial statements included elsewhere herein, which provides additional information with respect to our existing credit and lease facilities. The information in this table is based upon our credit and lease facilities.

	Principal Payment Dates					
	2014	2015	2016	2017	2018	Thereafter
	(in thousands of USD)					
<b>Credit Facilities:</b>						
Bearing interest at variable interest rates <sup>(1)</sup>	375,387	171,816	183,160	243,151	187,088	1,802,638
<b>Lease Facilities:</b>						
Bearing interest at variable interest rates	12,147	14,534	15,419	16,408	17,484	152,264

- (1) Represents principal payments on our credit facilities that bear interest at variable rates for which we have entered into interest rate swap agreements to fix the LIBOR base rate. For the purpose of this table, principal repayments are determined based on contractual repayments in the commitment reduction schedules for each related facility.

As of December 31, 2013, we have the following interest rate swaps outstanding:

Fixed per annum rate swapped for LIBOR	Notional Amount as of December 31, 2013 (in thousands of USD)	Maximum Notional Amount <sup>(1)</sup> (in thousands of USD)	Effective Date	Ending Date
5.6400%	\$ 714,500	\$ 714,500	August 31, 2007	August 31, 2017 <sup>(2)</sup>
5.1750%	569,649	569,649	July 16, 2012	July 15, 2016 <sup>(3)</sup>
5.4200%	438,462	438,462	September 6, 2007	May 31, 2024
5.6000%	188,000	188,000	June 23, 2010	December 23, 2021 <sup>(2)</sup>
5.0275%	111,000	111,000	May 31, 2007	September 30, 2015
5.5950%	106,800	106,800	August 28, 2009	August 28, 2020
5.2600%	106,800	106,800	July 3, 2006	February 26, 2021 <sup>(2)(3)</sup>
5.2000%	86,400	86,400	December 18, 2006	October 2, 2015
5.4975%	57,400	57,400	July 31, 2012	July 31, 2019
5.1700%	24,000	24,000	April 30, 2007	May 29, 2020
5.8700%	—	620,390	August 31, 2017	November 28, 2025

- (1) Over the term of the interest rate swaps, the notional amounts increase and decrease. These amounts represent the peak notional amount over the remaining term of the swap.
- (2) Prospectively de-designated as an accounting hedge in 2008.
- (3) On January 30, 2014, this swap was terminated and we entered into a new swap with an effective date of January 30, 2014 and a pay fixed rate of 5.945%. The outstanding notional amount on the effective date was \$281,970,000 and is subject to amortization. The swap's end date is May 31, 2019.

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- (4) We have entered into a swaption agreement with a bank (“Swaption Counterparty A”) whereby Swaption Counterparty A has the option to require us to enter into an interest rate swap to pay LIBOR and receive a fixed rate of 5.26%. This is a European option and is open for a two hour period on February 26, 2014 after which it expires. The notional amount of the underlying swap is \$106.8 million with an effective date of February 28, 2014 and an expiration of February 26, 2021. If Swaption Counterparty A exercises the swaption, the underlying swap effectively offsets our 5.26% pay fixed LIBOR swap from February 28, 2014 to February 26, 2021. This option was not exercised by Swaption Counterparty A.

In addition, we have entered into swaption agreements with a bank (“Swaption Counterparty B”) whereby Swaption Counterparty B has the option to require us to enter into interest rate swaps to pay LIBOR and receive a fixed rate of 1.183% and to pay 0.5% and receive LIBOR, respectively. The notional amounts of the underlying swaps are each \$200.0 million with an effective date of March 2, 2017 and an expiration of March 2, 2027.

Counterparties to these financial instruments may expose us to credit-related losses in the event of non-performance. As at December 31, 2013, these financial instruments are in the counterparties’ favor. We have considered and reflected the risk of non-performance by us and our counterparties in the fair value of our financial instruments as of December 31, 2013. As part of our consideration of non-performance risk, we perform evaluations of our counterparties for credit risk through ongoing monitoring of their financial health and risk profiles to identify funding risk or changes in their credit ratings.

Counterparties to these agreements are major financial institutions, and we consider the risk of loss due to non-performance to be minimal. We do not require collateral from these institutions. We do not hold and will not issue interest rate swaps for trading purposes.

**Item 12. Description of Securities Other than Equity Securities**

Not applicable.



**PART II**

**Item 13. Defaults, Dividend Arrearages and Delinquencies**

None.

**Item 14. Material Modifications to the Rights of Security Holders and Use of Proceeds**

At December 31, 2013, we have 5.1 million 7.95% Series D preferred shares outstanding. The Series D preferred shares are not convertible into Class A common shares and are not redeemable by the holder. While the Series D preferred shares are issued and outstanding, the holders thereof have certain rights and preferences that materially affect the rights of the Class A common shares. The powers, preferences and relative participating, optional or special rights and qualifications, limitations or restrictions are fully set forth in a Statement of Designation, which was filed with the SEC as Exhibit 3.3 to our Report on Form 8-A12B filed on December 13, 2012.

In connection with acquisition of our Manager in January 2012, we amended our amended and restated shareholder rights agreement. Amendment No. 1 to the amended and restated shareholder rights agreement was filed as Exhibit 4.6 to our Form 6-K filed with the SEC on January 30, 2012. In December 2012, we entered into Amendment No. 2 to our amended and restated shareholder rights agreement, which was filed as Exhibit 4.3 to our Form 8-A12B filed with the SEC on December 27, 2012.

**Item 15. Controls and Procedures**

**Evaluation of Disclosure Controls and Procedures**

As required by Rules 13a-15 and 15d-15 under the Exchange Act, management has evaluated, with the participation of our chief executive officer and chief financial officer, the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. Disclosure controls and procedures refer to controls and other procedures designed to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in our reports that we file or submit under the Exchange Act is accumulated and communicated to management, including our chief executive officer and chief financial officer, as appropriate to allow timely decisions regarding our required disclosure. In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management was required to apply its judgment in evaluating and implementing possible controls and procedures.

Based on the foregoing, our chief executive officer and chief financial officer have concluded that, as of December 31, 2013, the end of the period covered by this report, our disclosure controls and procedures were effective.

**Management's Report on Internal Control Over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over financial reporting.

Internal control over financial reporting refers to a process designed by, or under the supervision of, our chief executive officer and chief financial officer and effected by our board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;

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- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and members of our board of directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on our financial statements.

Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper override. Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process, and it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

Management evaluated the effectiveness of our internal control over financial reporting as of December 31, 2013 using the framework set forth in the report of the Treadway Commission's Committee of Sponsoring Organizations.

Based on the foregoing, management has concluded that our internal control over financial reporting was effective as of December 31, 2013.

The effectiveness of our internal controls over financial reporting as of December 31, 2013 has been audited by KPMG LLP, the independent registered public accounting firm that audited our December 31, 2013 consolidated annual financial statements, as stated in their report which is included herein.

### **Changes in Internal Control over Financial Reporting**

Management has evaluated, with the participation of our chief executive officer and chief financial officer, whether any changes in our internal control over financial reporting that occurred during our last fiscal year have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

During 2013, there were no changes with regard to internal control over financial reporting that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

### **Item 16A. Audit Committee Financial Expert**

The board of directors has determined that George H. Juetten qualifies as an audit committee financial expert and is independent under applicable NYSE and SEC standards.

### **Item 16B. Code of Ethics**

We have adopted Standards for Business Conduct that includes a Code of Ethics for all employees and directors. This document is available under "Corporate Governance" in the Investor Relations section of our website ([www.seaspacorp.com](http://www.seaspacorp.com)). We also intend to disclose any waivers to or amendments of our Standards of Business Conduct or Code of Ethics for the benefit of our directors and executive officers on our website. We will provide a hard copy of our Code of Ethics free of charge upon written request of a shareholder. Please contact our chief financial officer Sai W. Chu for any such request at Unit 2, 7th Floor, Bupa Centre, 141 Connaught Road West, Hong Kong China, Fax: +852-2540-1689.

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**Item 16C. Principal Accountant Fees and Services**

Our principal accountant for 2013 was KPMG LLP, Chartered Accountants.

In 2013 and 2012, the fees paid to the accountants for services rendered were as follows:

	<u>2013</u>	<u>2012</u>
Audit Fees	\$ 864,110	\$731,600
Audit-Related Fees	26,500	5,000
Tax Fees	129,800	157,000
All Other Fees	75,000	—
	<u>\$1,095,410</u>	<u>\$893,600</u>

**Audit Fees**

Audit fees for 2013 include fees related to our annual audit, quarterly reviews, accounting consultations and fees related to the public offering of our common and preferred shares. Audit fees for 2012 include fees related to our annual audit, quarterly reviews, procedures related to the acquisition of our Manager, accounting consultations and fees related to the public offering of our Series D preferred shares.

**Audit-Related Fees**

Audit-related fees for 2013 and 2012 include Sarbanes-Oxley Act related consultation services related to the acquisition of our Manager.

**Tax Fees**

Tax fees for 2013 and 2012 are primarily for tax consultation services related to general tax consultation services and preparation of corporate income tax returns.

**All Other Fees**

All other fees for 2013 relate to consultation services related to assistance in documenting the current risks and processes related to enterprise and fraud risk management.

The audit committee has the authority to pre-approve permissible audit-related and non-audit services not prohibited by law to be performed by our independent auditors and associated fees. Engagements for proposed services either may be separately pre-approved by the audit committee or entered into pursuant to detailed pre-approval policies and procedures established by the audit committee, as long as the audit committee is informed on a timely basis of any engagement entered into on that basis. The audit committee separately pre-approved all engagements and fees paid to our principal accountant in 2013 and 2012.

**Item 16D. Exemptions from the Listing Standards for Audit Committees**

Not applicable.

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[Table of Contents](#)**Item 16E. Purchases of Equity Securities by the Issuer and Affiliated Purchasers**Class A Common Shares

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price paid Per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Program</u>	<u>Maximum Dollar Value of Shares That May Yet Be Purchased Under the Program</u>
January 19, 2012	11,300,000	15.0000	—	—
May 2012	22,100	14.8289	22,100	49,672,281
July 2012	94,401	14.8698	116,501	48,268,594
November 2012	31,600	14.9349	148,101	47,796,653

Series C Preferred Shares

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price paid Per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Program</u>	<u>Maximum Dollar Value of Shares That May Yet Be Purchased Under the Program</u>
September 5, 2013	320,000	26.7500	—	—
September 2013	4,810	27.3000	4,810	24,868,687
November 2013	2,782	26.9500	7,592	24,793,712
December 2013	6,877	26.7933	14,469	24,609,436

**Item 16F. Change in Registrants' Certifying Accountant**

Not applicable.

**Item 16G. Corporate Governance**

The following are the significant ways in which our corporate governance practices differ from those followed by domestic companies:

- In lieu of obtaining shareholder approval prior to the adoption of equity compensation plans, the board of directors approves such adoption.
- Unlike domestic companies listed on the NYSE, foreign private issuers are not required to have a majority of independent directors and the standard for independence applicable to foreign private issuers may differ from the standard that is applicable to domestic issuers. Our board of directors has determined that six of our nine directors (being John C. Hsu, George H. Juetten, David Lyall, Harald Ludwig, Nicholas Pitts-Tucker and Peter S. Shaerf) satisfy the NYSE's independence standards for domestic companies.
- U.S. domestic companies are required to have a compensation committee and a nominating and corporate governance committee, each comprised entirely of independent directors. Although as a foreign private issuer these rules do not apply to us, we have a compensation and governance committee that each consists of four directors, all of whom satisfy NYSE standards for independence.

**Item 16H. Mine Safety Disclosure**

Not applicable.

**PART III**

**Item 17. Financial Statements**

Not applicable.

**Item 18. Financial Statements**

The following financial statements, together with the report of KPMG LLP, Chartered Accountants thereon, are filed as part of this Annual Report:

**SEASPAN CORPORATION**

<a href="#">Report of Independent Registered Public Accounting Firm</a>	F-1
<a href="#">Report of Independent Registered Public Accounting Firm</a>	F-2
<a href="#">Consolidated Balance Sheets as of December 31, 2013 and 2012</a>	F-3
<a href="#">Consolidated Statements of Operations for the Years Ended December 31, 2013, 2012 and 2011</a>	F-4
<a href="#">Consolidated Statements of Comprehensive Income (Loss) for the Years Ended December 31, 2013, 2012 and 2011</a>	F-5
<a href="#">Consolidated Statements of Shareholders' Equity for the Years Ended December 31, 2013, 2012 and 2011</a>	F-6
<a href="#">Consolidated Statements of Cash Flows for the Years Ended December 31, 2013, 2012 and 2011</a>	F-9
<a href="#">Notes to the Consolidated Financial Statements</a>	F-10

All other schedules for which provision is made in the applicable accounting regulations of the SEC are not required, are inapplicable or have been disclosed in the Consolidated Notes to the Financial Statements and therefore have been omitted.

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**Item 19. Exhibits**

The following exhibits are filed as part of this Annual Report:

<u>Exhibit Number</u>	<u>Description</u>
1.1	Amended and Restated Articles of Incorporation of Seaspan Corporation (incorporated herein by reference to Exhibit 3.1 to the Company's Amendment No. 2 to Form F-1 (File No. 333-126762), filed with the SEC on August 4, 2005).
1.2	Articles of Amendment to the Amended and Restated Articles of Incorporation of Seaspan Corporation (incorporated herein by reference to Exhibit 3.2 to the Company's Form 8-A12B (File No. 1-32591), filed with the SEC on February 13, 2014).
1.3	Amended and Restated Bylaws of Seaspan Corporation (incorporated herein by reference to Exhibit 1.2 to the Company's Form 20-F (File No. 333-32591), filed with the SEC on March 23, 2012).
1.4	Statement of Designation of the 12% Cumulative Preferred Shares—Series A, dated January 22, 2009 (incorporated herein by reference to Exhibit 3.1 to the Company's Form 6-K (File No. 1-32591), filed with the SEC on February 2, 2009).
1.5	Statement of Designation of the Cumulative Preferred Shares—Series B, dated May 27, 2010 (incorporated herein by reference to Exhibit 3.1 to the Company's Form 6-K (File No. 1-32591), filed with the SEC on June 4, 2010).
1.6	Statement of Designation of the 9.5% Cumulative Redeemable Perpetual Preferred Shares—Series C, dated January 27, 2011 (incorporated herein by reference to Exhibit 3.3 to the Company's Form 8-A12B (File No. 1-32591), filed with the SEC on January 28, 2011).
1.7	Statement of Designation of the 7.95% Cumulative Redeemable Perpetual Preferred Shares—Series D, dated December 12, 2012 (incorporated herein by reference to Exhibit 3.3 to the Company's Form 8-A12B (File No. 1-32591), filed with the SEC on December 13, 2012).
1.8	Statement of Designation of the 8.25% Cumulative Redeemable Perpetual Preferred Shares—Series E, dated February 6, 2014 (incorporated herein by reference to Exhibit 3.4 to the Company's Form 8-A12B (File No. 1-32591), filed with the SEC on February 13, 2014).
1.9	Statement of Designation of the Series R Participating Preferred Stock, dated April 19, 2011 (incorporated herein by reference to Exhibit 4.1 to the Company's Form 8-A12B (File No. 1-32591), filed with the SEC on April 19, 2011).
2.4	Specimen of Share Certificate of Seaspan Corporation (incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form F-1 (File No. 333-126762), filed with the SEC on July 21, 2005).
2.5	Specimen of Share Certificate of Seaspan Corporation 12% Cumulative Preferred Shares—Series A (incorporated herein by reference to Exhibit 4.1 to the Company's Form 6-K (File No. 1-32591), filed with the SEC on February 2, 2009).
2.6	Specimen of Share Certificate of Seaspan Corporation Cumulative Preferred Shares—Series B (incorporated herein by reference to Exhibit 4.1 to the Company's Form 6-K (File No. 1-32591), filed with the SEC on June 4, 2010).
2.7	Specimen of Share Certificate of Seaspan Corporation 9.5% Cumulative Redeemable Perpetual Preferred Shares—Series C (incorporated herein by reference to Exhibit 4.1 to the Company's Form 8-A12B (File No. 1-32591), filed with the SEC on January 28, 2011).
2.8	Specimen of Share Certificate of Seaspan Corporation 7.95% Cumulative Redeemable Perpetual Preferred Shares—Series D (incorporated herein by reference to Exhibit 4.1 to the Company's Form 8-A12B (File No. 1-32591), filed with the SEC on December 13, 2012).

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<u>Exhibit Number</u>	<u>Description</u>
4.1	Registration Rights Agreement by and among Seaspan Corporation and the investors named therein dated August 8, 2005 (incorporated herein by reference to Exhibit 10.1 to the Company's Amendment No. 2 to Form F-1 (File No. 333-126762), filed with the SEC on August 4, 2005).
4.2	Registration Rights Agreement by and among Seaspan Corporation and the investors named therein dated January 30, 2009 (incorporated herein by reference to Exhibit 10.3 to the Company's Form 6-K (File No. 1-32591), filed with the SEC on February 2, 2009).
4.3	Seaspan Corporation Stock Incentive Plan (incorporated herein by reference to Exhibit 4.2 to the Company's Form 20-F (File No. 1-32591), filed with the SEC on March 17, 2006).
4.4	First Amendment to Seaspan Corporation Stock Incentive Plan, effective October 23, 2010 (incorporated herein by reference to Exhibit 4.7 to Form 20-F (File No. 1-32591), filed with the SEC on March 30, 2011).
4.5	Amended and Restated Management Agreement among Seaspan Corporation, Seaspan Management Services Limited, Seaspan Advisory Services Limited, Seaspan Ship Management Ltd. and Seaspan Crew Management Ltd. dated as of May 4, 2007 (incorporated herein by reference to Exhibit 99.1 to the Company's Form 6-K/A (File No. 1-32591), filed with the SEC on October 10, 2007).
4.6	Amendment to Amended and Restated Management Agreement among Seaspan Corporation, Seaspan Management Services Limited, Seaspan Advisory Services Limited, Seaspan Ship Management Ltd. and Seaspan Crew Management Ltd. dated as of August 5, 2008 (incorporated herein by reference to Exhibit 4.9 to Form 20-F (File No. 1-32591), filed with the SEC on March 30, 2011).
4.7	Form of Indemnification Agreement between Seaspan Corporation and each of Kyle Washington, Gerry Wang, Kevin M. Kennedy, David Korbin, Peter Shaerf, Peter Lorange, Milton K. Wong, Barry R. Pearl, Sai W. Chu, Christa L. Scowby, Ken Low and John Hsu (incorporated herein by reference to Exhibit 10.10 to the Company's Registration Statement on Form F-1 (File No. 333-126762), filed with the SEC on July 21, 2005).
4.8	Credit Facility Agreement providing for a Senior Secured Reducing Revolving Credit Facility of up to \$365,000,000, dated May 19, 2006, among Seaspan Corporation, DnB Nor Bank, ASA, as Sole Bookrunner, Administrative Agent and Security Agent, Credit Suisse and Fortis Capital Corp., as Mandated Lead Arrangers and Landesbank Hessen- Thüringen as documentation agent (incorporated herein by reference to the Company's Form 6-K (File No. 1-32591), filed with the SEC on June 12, 2006).
4.9	Amendment No. 1 to Credit Facility Agreement providing for a Senior Secured Reducing Revolving Credit Facility of up to \$365,000,000, dated June 29, 2007, among Seaspan Corporation, DnB Nor Bank, ASA, as Sole Bookrunner, Administrative Agent and Security Agent, Credit Suisse and Fortis Capital Corp., as Mandated Lead Arrangers and Landesbank Hessen- Thüringen as documentation agent (incorporated herein by reference to Exhibit 99.4 to the Company's Form 6-K/A (File No. 1-32591), filed with the SEC on October 10, 2007).
4.10	Amendment No. 2 to Credit Facility Agreement providing for a Senior Secured Reducing Revolving Credit Facility of up to \$365,000,000 dated August 7, 2007 among Seaspan Corporation, DnB Nor Bank, ASA, as Sole Bookrunner, Administrative Agent and Security Agent, Credit Suisse and Fortis Capital Corp., as Mandated Lead Arrangers and Landesbank Hessen- Thüringen as documentation agent (incorporated herein by reference to Exhibit 4.17 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 24, 2008).

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<u>Exhibit Number</u>	<u>Description</u>
4.11	U.S. \$218,400,000 Credit Facility Agreement, dated October 16, 2006, among Seaspan Corporation, Sumitomo Mitsui Banking Corporation, Sumitomo Mitsui Banking Corporation Europe Limited, as Security Trustee and Sumitomo Mitsui Banking Corporation, Brussels Branch as Facility Agent (incorporated herein by reference to the Company's Form 6-K (File No. 1-32591), filed with the SEC on October 23, 2006).
4.12	U.S. \$920,000,000 Reducing, Revolving Credit Facility, dated August 8, 2007, among DnB Nor Bank ASA, Credit Suisse, The Export-Import Bank of China, Industrial and Commercial Bank of China Limited and Sumitomo Mitsui Banking Corporation, Brussels Branch (incorporated herein by reference to Exhibit 99.1 to the Company's Form 6-K (File No. 1-32591), filed with the SEC on August 9, 2007).
4.13	U.S. \$150,000,000 Reducing Revolving Credit Facility Agreement dated December 28, 2007, for Seaspan Finance II Co. Ltd. and Seaspan Finance III Co. Ltd. as borrowers with Seaspan Corporation, as guarantor, arranged by Industrial and Commercial Bank of China Limited with Industrial and Commercial Bank of China Limited as facility Agent (incorporated herein by reference to Exhibit 4.20 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 24, 2008).
4.14	U.S. \$291,200,000 Credit Facility Agreement for Seaspan Corporation as Borrower, arranged by Fortis Bank S.A./N.V., New York Branch and The Export-Import Bank of Korea with Fortis Bank S.A./N.V., New York Branch as Facility Agent and Security Trustee and Fortis Bank S.A./N.V., New York Branch as Swap Agent dated March 17, 2008 (incorporated herein by reference to Exhibit 4.21 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 24, 2008).
4.15	U.S. \$235,300,000 Credit Facility Agreement dated March 31, 2008 for Seaspan Corporation as borrower, Sumitomo Mitsui Banking Corporation as mandated lead arranger, Sumitomo Banking Corporation, Brussels Branch as original lender, Sumitomo Mitsui Banking Corporation Europe Limited as security trustee, Sumitomo Mitsui Banking Corporation, Brussels Branch as facility agent and Sumitomo Mitsui Banking Corporation, Brussels Branch as agent for the finance parties under the KEIC policies (incorporated herein by reference to the Company's Form 6-K (File No. 1-32591), filed with the SEC on April 4, 2008).
4.16	Lease Agreement in respect of one 4520 TEU Container Carrier to be Built at Samsung Heavy Industries Co., Ltd. with Hull No. 1851 dated December 27, 2007, among Peony Leasing Limited and Seaspan Finance I Co. Ltd. (incorporated herein by reference to Exhibit 4.22 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 24, 2008).
4.17	Lease Agreement in respect of one 4520 TEU Container Carrier to be Built at Samsung Heavy Industries Co., Ltd. with Hull No. 1852 dated December 27, 2007, among Peony Leasing Limited and Seaspan Finance I Co. Ltd. (incorporated herein by reference to Exhibit 4.23 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 24, 2008).
4.18	Lease Agreement in respect of one 4520 TEU Container Carrier to be Built at Samsung Heavy Industries Co., Ltd. with Hull No. 1853 dated December 27, 2007, among Peony Leasing Limited and Seaspan Finance I Co. Ltd. (incorporated herein by reference to Exhibit 4.24 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 24, 2008).
4.19	Lease Agreement in respect of one 4520 TEU Container Carrier to be Built at Samsung Heavy Industries Co., Ltd. with Hull No. 1854 dated December 27, 2007, among Peony Leasing Limited and Seaspan Finance I Co. Ltd. (incorporated herein by reference to Exhibit 4.25 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 24, 2008).



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<u>Exhibit Number</u>	<u>Description</u>
4.20	Lease Agreement in respect of one 4520 TEU Container Carrier to be Built at Samsung Heavy Industries Co., Ltd. with Hull No. 1855 dated December 27, 2007, among Peony Leasing Limited and Seaspan Finance I Co. Ltd. (incorporated herein by reference to Exhibit 4.26 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 24, 2008).
4.21	Amendment Agreement relating to Five Lease Agreements in respect of 4520 TEU Container Carriers to be Built at Samsung Heavy Industries Co., Ltd. with Hull Nos. 1851, 1852, 1853, 1854 and 1855, dated February 4, 2008, among Peony Leasing Limited and Seaspan Finance I Co. Ltd. (incorporated herein by reference to Exhibit 4.27 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 24, 2008).
4.22	Form of Securities Indenture (incorporated herein by reference to Exhibit 4.2 to the Company's Registration Statement on Form F-3 (File No. 333-137051), filed with the SEC on September 1, 2006).
4.23	Seaspan Corporation Change of Control Severance Plan for Employees of Seaspan Ship Management Ltd., effective as of January 1, 2009 (incorporated herein by reference to Exhibit 4.34 to the Company's Form 20-F (File No. 1-32591), filed with the SEC on March 31, 2009).
4.24	Amended and Restated Limited Liability Company Agreement of Greater China Intermodal Investments LLC, dated March 14, 2011 (incorporated herein by reference to Exhibit 4.1 to Form 6-K (File No. 1-32591), filed with the SEC on March 14, 2011).
4.25	Right of First Refusal Agreement among Seaspan Corporation, Greater China Intermodal Investments LLC and Blue Water Commerce, LLC, dated March 14, 2011 (incorporated herein by reference to Exhibit 4.2 to Form 6-K (File No. 1-32591), filed with the SEC on March 14, 2011).
4.26	Right of First Offer Agreement between Seaspan Corporation and Blue Water Commerce, LLC, dated March 14, 2011, previously filed as Exhibit 4.3 to Form 6-K (incorporated herein by reference to Exhibit 4.3 to Form 6-K (File No. 1-32591), filed with the SEC on March 14, 2011).
4.27	Executive Employment Agreement between Seaspan Corporation and Gerry Wang, dated March 14, 2011 (incorporated herein by reference to Exhibit 4.4 to Form 6-K (File No. 1-32591), filed with the SEC on March 14, 2011).
4.28	Amended and Restated Executive Employment Agreement between Seaspan Ship Management Ltd. and Gerry Wang, dated March 14, 2011 (incorporated herein by reference to Exhibit 4.5 to Form 6-K (File No. 1-32591), filed with the SEC on March 14, 2011).
4.29	Transaction Services Agreement between Seaspan Corporation and Gerry Wang, dated March 14, 2011 (incorporated herein by reference to Exhibit 4.6 to Form 6-K (File No. 1-32591), filed with the SEC on March 14, 2011).
4.30	Financial Services Agreement between Seaspan Corporation and Tiger Ventures Limited, dated March 14, 2011 (incorporated herein by reference to Exhibit 4.7 to Form 6-K (File No. 1-32591), filed with the SEC on March 14, 2011).
4.31	Graham Porter Letter Agreement, dated March 14, 2011 (incorporated herein by reference to Exhibit 4.9 to Form 6-K (File No. 1-32591), filed with the SEC on March 14, 2011).
4.32	Form of Registration Rights Agreement (incorporated herein by reference to Exhibit 4.10 to Form 6-K (File No. 1-32591), filed with the SEC on March 14, 2011).
4.33	Amended and Restated Shareholders Rights Agreement dated April 19, 2011, by and between Seaspan Corporation and American Stock Transfer & Trust Company, LLC as Rights Agent, previously filed as Exhibit 4.1 to Form 8-A (File No. 1-32591), filed with the SEC on April 19, 2011.

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<u>Exhibit Number</u>	<u>Description</u>
4.34	Share Purchase Agreement, dated as of January 27, 2012, among Seaspan Corporation, Seaspan Management Services Limited, The Kevin Lee Washington Trust II, the Kyle Roy Washington 2005 Irrevocable Trust under agreement dated July 15, 2005 and Thetis Holdings Ltd. (incorporated herein by reference to Exhibit 4.1 to Form 6-K (File No. 1-32591), filed with the SEC on January 30, 2012).
4.35	Escrow Agreement, dated as of January 27, 2012, among Canadian Stock Transfer Company Inc., as Escrow Agent, Seaspan Corporation, The Kevin Lee Washington Trust II, the Kyle Roy Washington 2005 Irrevocable Trust under agreement dated July 15, 2005 and Thetis Holdings Ltd. (incorporated herein by reference to Exhibit 4.2 to Form 6-K (File No. 1-32591), filed with the SEC on January 30, 2012).
4.36	Form of Lockup Agreement (incorporated herein by reference to Exhibit 4.3 to Form 6-K (File No. 1-32591), filed with the SEC on January 30, 2012).
4.37	Amended and Restated Omnibus Agreement, dated as of January 27, 2012, among Seaspan Corporation, Seaspan Management Services Limited, Seaspan Ship Management Ltd., Seaspan Advisory Services Limited, Norsk Pacific Steamship Company Limited and Seaspan Marine Corporation (incorporated herein by reference to Exhibit 4.4 to Form 6-K (File No. 1-32591), filed with the SEC on January 30, 2012).
4.38	Registration Rights Agreement dated January 27, 2012, by and among Seaspan Corporation and certain shareholders named therein (incorporated herein by reference to Exhibit 4.5 to Form 6-K (File No. 1-32591), filed with the SEC on January 30, 2012).
4.39	Amendment No. 1 to Amended and Restated Shareholders Rights Agreement dated January 27, 2012, by and between Seaspan Corporation and American Stock Transfer & Trust Company, LLC as Rights Agent (incorporated herein by reference to Exhibit 4.6 to Form 6-K (File No. 1-32591), filed with the SEC on January 30, 2012).
4.40	Amending Agreement, dated as of January 27, 2012, between Seaspan Ship Management Ltd. and Gerry Wang (incorporated herein by reference to Exhibit 4.7 to Form 6-K (File No. 1-32591), filed with the SEC on January 30, 2012).
4.41	Amendment No. 2 to Amended and Restated Shareholders Rights Agreement dated December 27, 2012, by and between Seaspan Corporation and American Stock Transfer & Trust Company, LLC as Rights Agent (incorporated herein by reference to Exhibit 4.3 to Form 8-A12B (File No. 1-32591), filed with the SEC on December 27, 2012).
4.42	Amended and Restated Executive Employment Agreement between Seaspan Corporation and Gerry Wang, dated December 7, 2012 (incorporated herein by reference to Exhibit 4.42 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 18, 2013).
4.43	Amended and Restated Transaction Services Agreement between Seaspan Corporation and Gerry Wang, dated December 7, 2012 (incorporated herein by reference to Exhibit 4.43 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 18, 2013).
4.44	Lock Up Agreement between Seaspan Corporation and Gerry Wang, dated December 7, 2012 (incorporated herein by reference to Exhibit 4.44 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 18, 2013).
4.45	Stock Appreciation Rights Grant Notice and Agreement between Seaspan Corporation and Gerry Wang, dated December 7, 2012 (incorporated herein by reference to Exhibit 4.45 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 18, 2013).

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<u>Exhibit Number</u>	<u>Description</u>
4.46	Letter Agreement Terminating SMSL Employment Agreement between Seaspan Corporation, Seaspan Ship Management Ltd. and Gerry Wang, dated December 7, 2012 (incorporated herein by reference to Exhibit 4.46 to the Company's Form 20-F (File No. 1-32591) filed with the SEC on March 18, 2013).
4.47*	Credit Facility Agreement between Seaspan Corporation and Arranged by Citigroup Global Markets Limited and BNP Paribas, with Citigroup Global Markets Limited, Credit Suisse AG, DNB Banks ASA, New York Branch (formerly known as DnB Nor ASA), BNP Paribas, Landesbank Hessen-Thüringen Girozentrale, New York branch as Mandated Lead Arrangers with BNP Paribas as Facility Agent, dated as of August 8, 2005, as amended from time to time and as amended and restated on May 11, 2007 and December 23, 2013.
8.1*	Subsidiaries of Seaspan Corporation.
12.1*	Rule 13a-14(a)/15d-14(a) Certification of Seaspan's Chief Executive Officer.
12.2*	Rule 13a-14(a)/15d-14(a) Certification of Seaspan's Chief Financial Officer.
13.1*	Seaspan Corporation Certification of Gerry Wang, Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
13.2*	Seaspan Corporation Certification of Sai W. Chu, Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
15.1*	Consent of KPMG LLP.

\* Filed herewith

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Shareholders and the Board of Directors of Seaspan Corporation

We have audited Seaspan Corporation's (the "Company") internal control over financial reporting as of December 31, 2013, based on the criteria established in Internal Control-Integrated Framework (1992) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the section entitled "Management's Annual Report on Internal Control over Financial Reporting" included in Management's Discussion and Analysis. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2013, based on the criteria established in Internal Control-Integrated Framework (1992) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of the Company as of December 31, 2013 and 2012, the related consolidated statements of operations, comprehensive income (loss), shareholders' equity and cash flows for each of the years in the three year period ended December 31, 2013, and our report dated March 11, 2014 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP  
Chartered Accountants

March 11, 2014  
Vancouver, Canada

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Shareholders and the Board of Directors of Seaspan Corporation

We have audited the accompanying consolidated balance sheets of Seaspan Corporation (the "Company") as of December 31, 2013 and 2012 and the related consolidated statements of operations, comprehensive income (loss), shareholders' equity and cash flows for each of the years in the three year period ended December 31, 2013. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2013 and 2012 and the results of its operations and its cash flows for each of the years in the three year period ended December 31, 2013 in conformity with US generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2013, based on the criteria established in Internal Control-Integrated Framework (1992) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 11, 2014 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP  
Chartered Accountants

March 11, 2014  
Vancouver, Canada

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## Consolidated Balance Sheets

(Expressed in thousands of United States dollars, except number of shares and par value amounts)

December 31, 2013 and 2012

	<u>2013</u>	<u>2012</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 476,380	\$ 381,378
Short-term investments	11,675	36,100
Accounts receivable (note 4)	68,217	9,573
Prepaid expenses	22,671	20,902
Gross investment in lease (note 5)	<u>21,170</u>	<u>15,977</u>
	600,113	463,930
Vessels (note 6)	4,992,271	4,863,273
Deferred charges (note 7)	53,971	43,816
Gross investment in lease (note 5)	58,953	79,821
Goodwill	75,321	75,321
Other assets (note 8)	106,944	83,661
Fair value of financial instruments (note 18(b))	60,188	41,031
	<u>\$5,947,761</u>	<u>\$5,650,853</u>
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accounts payable and accrued liabilities (note 15(a))	\$ 65,634	\$ 49,997
Current portion of deferred revenue (note 9)	27,683	25,111
Current portion of long-term debt (note 10)	388,159	66,656
Current portion of other long-term liabilities (note 11)	<u>38,930</u>	<u>38,542</u>
	520,406	180,306
Deferred revenue (note 9)	4,143	7,903
Long-term debt (note 10)	2,853,459	3,024,288
Other long-term liabilities (note 11)	572,673	613,049
Fair value of financial instruments (note 18(b))	425,375	606,740
<b>Shareholders' equity:</b>		
Share capital (note 12):		
Preferred shares; \$0.01 par value; 65,000,000 shares authorized; 18,970,531 shares issued and outstanding (2012—17,305,000)		
Class A common shares; \$0.01 par value; 200,000,000 shares authorized; 69,208,888 shares issued and outstanding (2012—63,042,217)	882	804
Treasury shares	(379)	(312)
Additional paid in capital	2,023,622	1,859,068
Deficit	(411,792)	(594,153)
Accumulated other comprehensive loss	<u>(40,628)</u>	<u>(46,840)</u>
	<u>1,571,705</u>	<u>1,218,567</u>
	<u>\$5,947,761</u>	<u>\$5,650,853</u>

Commitments and contingent obligations (note 16)

Subsequent events (note 19)

See accompanying notes to consolidated financial statements.

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**SEASPAN CORPORATION**

Consolidated Statements of Operations

(Expressed in thousands of United States dollars, except per share amounts)

Years ended December 31, 2013, 2012 and 2011

	<u>2013</u>	<u>2012</u>	<u>2011</u>
Revenue	\$677,090	\$660,794	\$565,610
Operating expenses:			
Ship operating (note 4)	150,105	138,655	135,696
Depreciation and amortization	172,459	165,541	140,354
General and administrative	34,783	24,617	16,818
Operating lease	4,388	3,145	—
(Gain) loss on vessels (notes 5 and 6)	<u>—</u>	<u>(9,773)</u>	<u>16,237</u>
	361,735	322,185	309,105
Operating earnings	315,355	338,609	256,505
Other expenses (income):			
Interest expense	60,496	71,996	50,849
Interest income	(2,045)	(1,190)	(854)
Undrawn credit facility fees	2,725	1,516	4,282
Amortization of deferred charges (note 7)	9,477	8,574	3,421
Refinancing expenses and costs (note 7)	4,038	—	—
Change in fair value of financial instruments (note 18(b))	(60,504)	135,998	281,027
Equity loss on investment (note 8(b))	670	259	1,180
Other expenses	<u>1,470</u>	<u>151</u>	<u>—</u>
	16,327	217,304	339,905
Net earnings (loss)	<u>\$299,028</u>	<u>\$121,305</u>	<u>\$ (83,400)</u>
Earnings (loss) per share (note 13):			
Class A common share, basic	\$ 3.36	\$ 0.84	\$ (2.04)
Class A common share, diluted	2.93	0.81	(2.04)

See accompanying notes to consolidated financial statements.

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**SEASPAN CORPORATION**

Consolidated Statements of Comprehensive Income (Loss)

(Expressed in thousands of United States dollars)

Years ended December 31, 2013, 2012 and 2011

	<u>2013</u>	<u>2012</u>	<u>2011</u>
Net earnings (loss)	\$299,028	\$121,305	\$(83,400)
Other comprehensive income:			
Amounts reclassified to net earnings (loss) during the period relating to cash flow hedging instruments	<u>6,212</u>	<u>9,146</u>	<u>12,175</u>
Comprehensive income (loss)	<u>\$305,240</u>	<u>\$130,451</u>	<u>\$(71,225)</u>

See accompanying notes to consolidated financial statements.



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**SEASPAN CORPORATION**

Consolidated Statements of Shareholders' Equity  
(Expressed in thousands of United States dollars, except number of shares)

Years ended December 31, 2013, 2012 and 2011

	Number of common shares		Number of preferred shares				Common shares	Preferred shares	Treasury shares	Additional paid-in capital	Deficit	Accumulated other comprehensive loss	Total shareholders' equity
	Class A	Class C	Series A	Series B	Series C	Series D							
Balance, December 31, 2010,	68,601,240	100	200,000	260,000	—	—	\$ 686	\$ 5	\$ —	\$ 1,526,822	\$(469,616)	\$ (68,161)	\$ 989,736
Net loss	—	—	—	—	—	—	—	—	—	—	(83,400)	—	(83,400)
Other comprehensive income	—	—	—	—	—	—	—	—	—	—	—	12,175	12,175
Series C preferred shares issued (note 12(b))	—	—	—	—	14,000,000	—	—	140	—	349,860	—	—	350,000
Premium on issuance of Series C preferred shares	—	—	—	—	—	—	—	—	—	4,289	—	—	4,289
Redemption of Series B preferred shares (note 12(b))	—	—	—	(260,000)	—	—	—	(3)	—	(27,470)	2,873	—	(24,600)
Fees and expenses in connection with preferred shares	—	—	—	—	—	—	—	—	—	(9,750)	—	—	(9,750)
Dividends on class A common shares	—	—	—	—	—	—	—	—	—	—	(47,414)	—	(47,414)
Dividends on Series B preferred shares	—	—	—	—	—	—	—	—	—	841	(1,813)	—	(972)
Dividends on Series C preferred shares	—	—	—	—	—	—	—	—	—	—	(22,206)	—	(22,206)
Amortization of Series C issuance costs	—	—	—	—	—	—	—	—	—	830	(830)	—	—
Shares issued through dividend reinvestment program (note 12(a))	975,620	—	—	—	—	—	10	—	—	13,029	—	—	13,039
Share-based compensation (note 14):													
Restricted class A common shares and phantom share units issued	43,200	—	—	—	—	—	—	—	—	2,528	—	—	2,528
Balance, December 31, 2011, carried forward	<u>69,620,060</u>	<u>100</u>	<u>200,000</u>	<u>—</u>	<u>14,000,000</u>	<u>—</u>	<u>\$ 696</u>	<u>\$ 142</u>	<u>\$ —</u>	<u>\$ 1,860,979</u>	<u>\$(622,406)</u>	<u>\$ (55,986)</u>	<u>\$ 1,183,425</u>

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**SEASPAN CORPORATION**

Consolidated Statements of Shareholders' Equity (Continued)  
(Expressed in thousands of United States dollars, except number of shares)

Years ended December 31, 2013, 2012 and 2011

	Number of common shares		Number of preferred shares				Common shares	Preferred shares	Treasury shares	Additional paid-in capital	Deficit	Accumulated other comprehensive loss	Total shareholders' equity
	Class A	Class C	Series A	Series B	Series C	Series D							
Balance, December 31, 2011, carried forward	69,620,060	100	200,000	—	14,000,000	—	\$ 696	\$ 142	\$ —	\$ 1,860,979	\$(622,406)	\$ (55,986)	\$ 1,183,425
Net earnings	—	—	—	—	—	—	—	—	—	—	121,305	—	121,305
Other comprehensive income	—	—	—	—	—	—	—	—	—	—	—	9,146	9,146
Shares issued and retired on acquisition (note 3)	4,220,728	(100)	—	—	—	—	42	—	—	83,233	—	—	83,275
Series D preferred shares issued (note 12(b))	—	—	—	—	—	3,105,000	—	31	—	77,594	—	—	77,625
Fees and expenses in connection with issuance of preferred shares	—	—	—	—	—	—	—	—	—	(2,929)	—	—	(2,929)
Dividends on class A common shares	—	—	—	—	—	—	—	—	—	—	(58,940)	—	(58,940)
Dividends on Series C preferred shares	—	—	—	—	—	—	—	—	—	—	(33,250)	—	(33,250)
Amortization of Series C issuance costs	—	—	—	—	—	—	—	—	—	862	(862)	—	—
Shares issued through dividend reinvestment program (note 12(a))	474,249	—	—	—	—	—	5	—	—	7,163	—	—	7,168
Share-based compensation expense (note 14):													
Restricted class A common shares, phantom share units and stock appreciation rights issued	194,714	—	—	—	—	—	3	—	—	4,025	—	—	4,028
Other share-based compensation	—	—	—	—	—	—	—	—	—	839	—	—	839
Shares repurchased, including related expenses (note 12(a))	(11,448,101)	—	—	—	—	—	(114)	—	—	(172,698)	—	—	(172,812)
Treasury shares	(19,433)	—	—	—	—	—	(1)	—	(312)	—	—	—	(313)
Balance, December 31, 2012, carried forward	<u>63,042,217</u>	<u>—</u>	<u>200,000</u>	<u>—</u>	<u>14,000,000</u>	<u>3,105,000</u>	<u>\$ 631</u>	<u>\$ 173</u>	<u>\$ (312)</u>	<u>\$ 1,859,068</u>	<u>\$(594,153)</u>	<u>\$ (46,840)</u>	<u>\$ 1,218,567</u>

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**SEASPAN CORPORATION**

Consolidated Statements of Shareholders' Equity (Continued)  
(Expressed in thousands of United States dollars, except number of shares)

Years ended December 31, 2013, 2012 and 2011

	Number of common shares		Number of preferred shares				Common shares	Preferred shares	Treasury shares	Additional paid-in capital	Deficit	Accumulated other comprehensive loss	Total shareholders' equity
	Class A	Class C	Series A	Series B	Series C	Series D							
Balance, December 31, 2012, carried forward	63,042,217	—	200,000	—	14,000,000	3,105,000	\$ 631	\$ 173	\$ (312)	\$1,859,068	\$(594,153)	\$ (46,840)	\$ 1,218,567
Net earnings	—	—	—	—	—	—	—	—	—	299,028	—	—	299,028
Other comprehensive income	—	—	—	—	—	—	—	—	—	—	—	6,212	6,212
Series D preferred shares issued (note 12(b))	—	—	—	—	—	2,000,000	—	20	—	49,980	—	—	50,000
Class A common shares issued (note 12(a))	3,500,000	—	—	—	—	—	35	—	—	76,965	—	—	77,000
Fees and expenses in connection with issuance of common and preferred shares	—	—	—	—	—	—	—	—	—	(5,959)	—	—	(5,959)
Dividends on class A common shares	—	—	—	—	—	—	—	—	—	—	(76,340)	—	(76,340)
Dividends on Series C and D preferred shares	—	—	—	—	—	—	—	—	—	—	(38,493)	—	(38,493)
Amortization of Series C issuance costs	—	—	—	—	—	—	—	—	—	1,174	(1,174)	—	—
Shares issued through dividend reinvestment program (note 12(a))	1,561,838	—	—	—	—	—	16	—	—	31,945	—	—	31,961
Share-based compensation expense (note 14):													
Restricted class A common shares, phantom share units and stock appreciation rights issued	79,088	—	—	—	—	—	—	—	—	14,004	—	—	14,004
Other share-based compensation	206,200	—	—	—	—	—	2	—	—	4,740	—	—	4,742
Fleet growth payments (note 3)	820,697	—	—	—	—	—	8	—	—	(8)	—	—	—
Preferred Shares repurchased, including related expenses	—	—	—	—	(334,469)	—	—	(3)	—	(8,287)	(660)	—	(8,950)
Treasury shares	(1,152)	—	—	—	—	—	—	—	(67)	—	—	—	(67)
Balance, December 31, 2013	<u>69,208,888</u>	<u>—</u>	<u>200,000</u>	<u>—</u>	<u>13,665,531</u>	<u>5,105,000</u>	<u>\$ 692</u>	<u>\$ 190</u>	<u>\$ (379)</u>	<u>\$2,023,622</u>	<u>\$(411,792)</u>	<u>\$ (40,628)</u>	<u>\$ 1,571,705</u>

See accompanying notes to consolidated financial statements.

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**SEASPAN CORPORATION**

Consolidated Statements of Cash Flows  
(Expressed in thousands of United States dollars)

Years ended December 31, 2013, 2012 and 2011

	<u>2013</u>	<u>2012</u>	<u>2011</u>
Cash from (used in):			
Operating activities:			
Net earnings (loss)	\$ 299,028	\$ 121,305	\$ (83,400)
Items not involving cash:			
Depreciation and amortization	172,459	165,541	140,354
Share-based compensation (note 14)	14,604	4,779	3,278
Amortization of deferred charges (note 7)	9,477	8,574	3,421
Amounts reclassified from other comprehensive loss to interest expense	5,330	8,310	11,670
Unrealized change in fair value of financial instruments	(187,522)	11,215	156,671
(Gain) loss on vessels	—	(9,773)	16,237
Equity loss on investment (note 8(b))	670	259	1,180
Refinancing expenses and costs (note 7)	2,017	—	—
Other	720	—	—
Changes in assets and liabilities:			
Accounts receivable	12,073	20,413	946
Prepaid expenses	(1,769)	6,226	(5,908)
Other assets and deferred charges	(2,716)	(5,846)	(11,860)
Accounts payable and accrued liabilities	6,071	(18,247)	13,225
Deferred revenue	(1,188)	(2,746)	6,328
Other long-term liabilities (note 11)	(610)	1,173	(12,278)
Cash from operating activities	<u>328,644</u>	<u>311,183</u>	<u>239,864</u>
Financing activities:			
Preferred shares issued, net of issuance costs (note 12(b))	47,862	74,700	344,539
Common shares issued, net of issuance costs (note 12(a))	73,179	—	—
Preferred shares redeemed, including costs (note 12(b))	—	—	(24,600)
Draws on credit facilities	164,000	113,672	601,577
Repayment of credit facilities	(67,406)	(44,569)	(2,619)
Other long-term liabilities (note 11)	(39,988)	(53,516)	(19,061)
Shares repurchased, including related expenses (note 12(b))	(8,950)	(172,812)	—
Financing fees (note 7)	(23,334)	(3,817)	(9,990)
Dividends on common shares	(44,379)	(51,772)	(34,375)
Dividends on preferred shares	(38,493)	(33,250)	(23,178)
Swaption premium payment	—	(10,000)	—
Cash from (used in) financing activities	<u>62,491</u>	<u>(181,364)</u>	<u>832,293</u>
Investing activities:			
Expenditures for vessels	(255,593)	(209,599)	(621,947)
Short term investments	24,425	(35,737)	—
Cash acquired on acquisition of Seaspans Management Services Ltd. (note 3)	—	23,911	—
Restricted cash	(1,755)	(7,100)	—
Other assets	(3,724)	(1,039)	(1,342)
Recoverable from affiliate (note 4)	(55,042)	—	—
Investment in affiliate (note 8(b))	(4,444)	—	(1,964)
Cash used in investing activities	<u>(296,133)</u>	<u>(229,564)</u>	<u>(625,253)</u>
Increase (decrease) in cash and cash equivalents	95,002	(99,745)	446,904
Cash and cash equivalents, beginning of year	<u>381,378</u>	<u>481,123</u>	<u>34,219</u>
Cash and cash equivalents, end of year	<u>\$ 476,380</u>	<u>\$ 381,378</u>	<u>\$ 481,123</u>

Supplementary information (note 15(b))

See accompanying notes to consolidated financial statements.

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**SEASPAN CORPORATION**

Notes to Consolidated Financial Statements

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

**1. General:**

Seaspan Corporation (the “Company”) was incorporated on May 3, 2005 in the Marshall Islands and owns and operates containerships pursuant to primarily long-term, fixed-rate time charters to major container liner companies.

**2. Summary of significant accounting policies:**

(a) Basis of presentation:

These financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) and the following accounting policies have been consistently applied in the preparation of the consolidated financial statements.

(b) Principles of consolidation:

The accompanying consolidated financial statements include the accounts of Seaspan Corporation and its wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated upon consolidation.

The Company also consolidates any variable interest entities (“VIEs”) of which it is the primary beneficiary. The primary beneficiary is the enterprise that has both the power to make decisions that most significantly affect the economic performance of the VIE and has the right to receive benefits or the obligation to absorb losses that in either case could potentially be significant to the VIE. The impact of the consolidation of these VIEs is described in note 11.

The Company accounts for its investment in companies in which it has significant influence by the equity method. The Company’s proportionate share of earnings (loss) is included in earnings and added to or deducted from the cost of the investment.

(c) Foreign currency translation:

The functional and reporting currency of the Company is the United States dollar. Transactions involving other currencies are converted into United States dollars using the exchange rates in effect at the time of the transactions. At the balance sheet date, monetary assets and liabilities that are denominated in currencies other than the United States dollar are translated into United States dollars using exchange rates at that date. Exchange gains and losses are included in net earnings (loss).

(d) Cash equivalents:

Cash equivalents include highly liquid securities with terms to maturity of three months or less when acquired.

(e) Vessels:

Except as described below, vessels are recorded at their cost, which consists of the purchase price, acquisition and delivery costs, less accumulated depreciation.

Vessels purchased from the predecessor upon completion of the Company’s initial public offering were initially recorded at the predecessor’s carrying value.

**SEASPAN CORPORATION**

Notes to Consolidated Financial Statements — (Continued)

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

Vessels under construction include deposits, installment payments, interest, financing costs, construction design, supervision costs, and other pre-delivery costs incurred during the construction period.

Depreciation is calculated on a straight-line basis over the estimated useful life of each vessel, which is 30 years from the date of completion. The Company calculates depreciation based on the estimated remaining useful life and the expected salvage value of the vessel.

Vessels that are held for use are evaluated for impairment when events or circumstances indicate that their carrying amounts may not be recoverable from future undiscounted cash flows. Such evaluations include the comparison of current and anticipated operating cash flows, assessment of future operations and other relevant factors. If the carrying amount of the vessel exceeds the estimated net undiscounted future cash flows expected to be generated over the vessel's remaining useful life, the carrying amount of the vessel is reduced to its estimated fair value.

(f) Dry-dock activities:

Classification rules require that vessels be dry-docked for inspection including planned major maintenance and overhaul activities for ongoing certification. The Company generally dry-docks its vessels once every five years. Dry-docking activities include the inspection, refurbishment and replacement of steel, engine components, electrical, pipes and valves, and other parts of the vessel. The Company has adopted the deferral method of accounting for dry-dock activities whereby costs incurred are deferred and amortized on a straight-line basis over the period until the next scheduled dry-dock activity.

(g) Goodwill and intangible assets:

Goodwill represents the excess of the purchase price of an acquired enterprise over the fair value assigned to assets acquired and liabilities assumed in a business combination. Goodwill and indefinite-lived intangible assets are not amortized, but reviewed for impairment annually or more frequently if impairment indicators arise. When goodwill is reviewed for impairment, the Company may elect to assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill.

Alternatively, the Company may bypass this step and use a fair value approach to identify potential goodwill impairment and, when necessary, measure the amount of impairment. The Company uses a discounted cash flow model to determine the fair value of reporting units, unless there is a readily determinable fair market value.

Intangible assets with finite lives are amortized over their useful lives. Intangible assets with finite lives are assessed for impairment when and if impairment indicators exist. An impairment loss is recognized if the carrying amount of an intangible asset is not recoverable and its carrying amount exceeds its fair value.

(h) Deferred financing fees:

Deferred financing fees represent the unamortized costs incurred on issuance of the Company's credit and lease facilities. Amortization of deferred financing fees on leases is provided on the effective interest rate method over the term of the underlying obligation. Amortization of deferred financing fees on credit facilities is provided on the effective interest rate method over the term of the facility based on amounts available under the facilities.

**SEASPAN CORPORATION**

Notes to Consolidated Financial Statements — (Continued)

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

(i) Revenue recognition:

Revenue from time charter is recognized each day the vessel is on-hire and when collection is reasonably assured. Cash received in excess of earned revenue is recorded as deferred revenue.

For capital leases that are sales-type leases, the difference between the gross investment in lease and the present value of its components, i.e. the minimum lease payments and the estimated residual value, is recorded as unearned lease interest income. The discount rate used in determining the present values is the interest rate implicit in the lease. The present value of the minimum lease payments, computed using the interest rate implicit in the lease, is recorded as the sales price, from which the carrying value of the vessel at the commencement of the lease is deducted in order to determine the profit or loss on sale. As is the case for direct financing leases, the unearned lease interest income is amortized to income over the period of the lease so as to produce a constant periodic rate of return on the net investment in lease.

Project revenue is recorded on the completed contract basis when the project is substantially complete and the collectability of any outstanding funds is reasonably assured. Funds received from customers prior to substantial completion of the contract are recognized as deferred revenue.

(j) Derivative financial instruments:

The Company's hedging policies permit the use of various derivative financial instruments to manage interest rate risk. The Company has entered into interest rate swaps and swaptions to reduce the Company's exposure to changing interest rates on its credit and lease facilities.

All of the Company's derivatives are measured at their fair value at the end of each period. For derivatives not designated as accounting hedges, changes in their fair value are recorded in earnings.

The Company had previously designated certain of its interest rate swaps as accounting hedges and applied hedge accounting to those instruments. While hedge accounting was applied, the effective portion of the unrealized gains or losses on those designated interest rate swaps was recorded in other comprehensive loss.

By September 30, 2008, the Company de-designated all of the interest rate swaps it had accounted for as hedges to that date. Subsequent to their de-designation dates, changes in their fair value are recorded in earnings.

The Company evaluates whether the occurrence of any of the previously hedged interest payments are considered to be remote. When the previously hedged interest payments are not considered remote of occurring, unrealized gains or losses in accumulated other comprehensive income associated with the previously designated interest rate swaps are recognized in earnings when and where the interest payments are recognized. If such interest payments are identified as being remote, the accumulated other comprehensive income balance pertaining to these amounts is reversed through earnings immediately.

**SEASPAN CORPORATION**

Notes to Consolidated Financial Statements — (Continued)

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

(k) Fair value measurement:

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (i.e., the “exit price”) in an orderly transaction between market participants at the measurement date. The hierarchy is broken down into three levels based on the observability of inputs as follows:

- Level 1—Valuations based on quoted prices in active markets for identical assets or liabilities that the Company has the ability to access. Valuation adjustments and block discounts are not applied to Level 1 instruments. Since valuations are based on quoted prices that are readily and regularly available in an active market, valuation of these products does not entail a significant degree of judgment.
- Level 2—Valuations based on one or more quoted prices in markets that are not active or for which all significant inputs are observable, either directly or indirectly.
- Level 3—Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

(l) Share-based compensation:

The Company has granted restricted shares, phantom share units and stock appreciation rights (“SARs”) to certain of its officers, members of management and directors as compensation. Compensation cost is measured at their grant date fair values. Under this method, restricted shares and phantom share units are measured based on the quoted market price of the Company’s Class A common shares at date of the grant, and SARs are measured at fair value using the Monte Carlo model. The fair value of each grant is recognized straight-line over the requisite service period.

(m) Earnings (loss) per share:

The Company had multiple classes of common shares with different participation rights and applied the two-class method to compute basic earnings per share (“EPS”) until the acquisition and cancellation of those shares in January, 2012.

The treasury stock method is used to compute the dilutive effect of the Company’s share-based compensation awards. Under this method, the incremental number of shares used in computing diluted EPS is the difference between the number of shares assumed issued and purchased using assumed proceeds.

The if-converted method is used to compute the dilutive effect of the Company’s Series A preferred shares. Under this method, dividends applicable to the Series A preferred shares are added back to earnings attributable to common shareholders, and the Series A preferred shares and paid-in kind dividends are assumed to have been converted at the share price applicable at the end of the period. The if-converted method is applied to the computation of diluted EPS only if the effect is dilutive. The dividends recorded in the financial statements that were applicable to the Series B preferred shares reduced the earnings available to common shareholders. The dividends applicable to the Series C and D preferred shares reduce the earnings available to common shareholders, even if not declared, since the dividends are cumulative.



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**SEASPAN CORPORATION**

Notes to Consolidated Financial Statements — (Continued)

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

(n) Use of estimates:

The preparation of consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the balance sheet dates and the reported amounts of revenue and expenses during the reporting fiscal periods. Areas where accounting judgments and estimates are significant to the Company include the assessment of the vessel useful lives, expected salvage values and the recoverability of the carrying value of vessels which are subject to future market events, carrying value of goodwill and the fair value of interest rate derivative financial instruments and share-based awards. Actual results could differ from those estimates.

(o) Comparative information:

Certain information has been reclassified to conform with the financial statement presentation adopted for the current year. The Company has recast the 2012 consolidated balance sheet and statement of cash flows for the year ended December 31, 2012 to separately present balances of and movements in restricted cash, included in other assets, from cash and cash equivalents. This reclassification, which is immaterial, had no impact on the comparative consolidated statements of operations, total assets or shareholders' equity.

**3. Acquisition of Seaspan Management Services Limited:**

On January 27, 2012, the Company acquired 100 percent of Seaspan Management Services Limited (the "Manager"), an affiliated privately owned company that has provided technical, administrative and strategic services to the Company. The Company's acquisition of the Manager has increased its control over access to the fixed-rate services that the Manager provides to the Company on a long-term basis, and reduced certain conflicts between the Company and its directors who have interests in the Manager.

The aggregate purchase price was \$106,518,000, including:

4,220,728 of the Company's Class A common shares	\$ 66,899
Contingent consideration	18,437
Settlement of intercompany balances	20,022
Stock based compensation	1,160
Aggregate purchase price	<u>\$106,518</u>

Under the Share Purchase Agreement, \$7,500,000 or 586,212 shares of Class A common shares were deposited in escrow for settlement of potential indemnifiable damages. The escrowed shares were released on January 30, 2013, the end of the escrow period.

The value of the Company's Class A common shares issued was determined based on the closing market price of those common shares on January 26, 2012.

The contingent consideration arrangement requires the Company to pay the former owners of the Manager additional consideration of 39,081 of the Company's Class A common shares for each of certain containerships ordered or acquired by the Company, Greater China Intermodal Investments LLC ("GCI") or Blue Water Commerce, LLC (collectively, the "Contingency Parties") after December 12, 2011 and prior to

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August 15, 2014 and which are to be managed by the Manager or the Company. The fair value of the contingent consideration is based on the estimated containership orders and acquisitions of each of the Contingency Parties prior to August 15, 2014. For the year ended December 31, 2013, total shares issued related to this contingent consideration arrangement were 820,701. At December 31, 2013, 273,564 contingent shares are issuable in January 2014.

For the year ended December 31, 2013, no acquisition-related costs (2012—\$1,184,000) have been included in general and administrative expense in the Company's consolidated statements of operations.

**4. Related party transactions:**

Prior to the acquisition of the Manager on January 27, 2012, the ultimate beneficial owners of the Manager directly and indirectly owned common shares, or common shares and preferred shares, of the Company.

The Company had management agreements with the Manager for the provision of certain technical, strategic and administrative services for fees:

- **Technical Services**—The Manager was responsible for providing ship operating services to the Company in exchange for a fixed fee per day per vessel as described below. The technical services fee did not include certain extraordinary items, as defined in the management agreements.
- **Administrative and Strategic Services**—The Manager provided administrative and strategic services to the Company for the management of the business for a fixed fee of \$72,000 per year. The Company also reimbursed all reasonable expenses incurred by the Manager in providing these services to the Company.

The Company incurred the following costs under the management agreements with the Manager which were incurred prior to the date of acquisition:

	<u>2013</u>	<u>2012<sup>(1)</sup></u>	<u>2011</u>
Technical and other services	\$—	\$9,700	\$135,381
Dry-dock activities included in technical services	—	421	5,855
Other services	—	410	6,202

(1) Relates to the 26 days prior to acquisition

The Company incurred the following costs with the Manager and other related parties thereto:

	<u>2013</u>	<u>2012</u>	<u>2011</u>
Consulting services	\$ —	\$ —	\$ 84
Arrangement fees	6,631	1,790	1,832
Technical service fees advance	—	—	2,947
Transaction fees	3,532	123	369
Reimbursed expenses	72	—	—

Arrangement fees and transaction fees are paid to related parties in connection with debt or lease financing and pursuant to new build contracts, purchase or sale contracts, respectively.

At December 31, 2013, the Company had \$56,152,000 (2012—nil) due from GCI of which \$54,068,000 is in connection with vessels GCI will acquire pursuant to a right of first refusal which bears interest at 4% per annum. The Company also had \$1,614,000 (2012—\$1,501,000) due from other related parties included in accounts receivable and \$611,000 (2012—nil) due to other related parties included in accounts payable.

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**5. Gross investment in lease:**

	<u>2013</u>	<u>2012</u>
Gross investment in lease	\$ 80,123	\$ 95,798
Current portion	(21,170)	(15,977)
	<u>\$ 58,953</u>	<u>\$ 79,821</u>

The Company entered into an agreement with MSC Mediterranean Shipping Company S.A. (“MSC”) to bareboat charter four 4800 TEU vessels for a five-year term, beginning from the vessel delivery dates that occurred in October and November 2011. At the end of each five-year lease term, MSC has agreed to purchase the vessels for \$5,000,000 each. Each transaction is considered a sales type lease and accounted for as a disposition of vessels upon delivery of each vessel.

In 2011, the Company recorded gross proceeds of \$112,808,000 as a gross investment in lease, \$18,551,000 as deferred revenue, \$822,000 as broker commissions and legal costs and removed the net book value of the vessels of \$109,672,000, resulting in a total loss on vessels of \$16,237,000. The gross investment in lease is offset by deferred interest on lease receivable.

**6. Vessels:**

<u>December 31, 2013</u>	<u>Cost</u>	<u>Accumulated depreciation</u>	<u>Net book value</u>
Vessels	\$5,391,713	\$ 720,814	\$4,670,899
Vessels under construction	321,372	—	321,372
Vessels	<u>\$5,713,085</u>	<u>\$ 720,814</u>	<u>\$4,992,271</u>
<u>December 31, 2012</u>	<u>Cost</u>	<u>Accumulated depreciation</u>	<u>Net book value</u>
Vessels	\$5,339,550	\$ 553,582	\$4,785,968
Vessels under construction	77,305	—	77,305
Vessels	<u>\$5,416,855</u>	<u>\$ 553,582</u>	<u>\$4,863,273</u>

Included in vessels under construction is capitalized interest costs of \$2,873,000 (2012—\$2,983,000; 2011—\$12,952,000) to vessels under construction.

On June 1, 2012, the \$53,000,000 term loan credit facility with a U.S. bank matured upon expiration of the UASC Madinah time charter. On June 27, 2012, the Company sold the UASC Madinah to that U.S. bank for \$52,104,000, the amount outstanding under the term loan resulting in a gain on vessel of \$9,773,000. The Company is leasing the vessel back for approximately nine years under an operating lease.

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**7. Deferred charges:**

	<u>Dry-docking</u>	<u>Financing fees</u>	<u>Total</u>
December 31, 2011	\$ 9,370	\$36,547	\$ 45,917
Cost incurred	6,520	4,713	11,233
Amortization expensed	(3,196)	(8,574)	(11,770)
Amortization capitalized	—	(1,564)	(1,564)
December 31, 2012	\$ 12,694	\$31,122	\$ 43,816
Cost incurred	3,500	25,131	28,631
Amortization expensed <sup>(a)</sup>	(3,947)	(9,477)	(13,424)
Refinancing expenses and costs <sup>(b)</sup>	—	(4,038)	(4,038)
Amortization capitalized	—	(1,014)	(1,014)
December 31, 2013	<u>\$ 12,247</u>	<u>\$41,724</u>	<u>\$ 53,971</u>

- (a) Amortization of dry-docking amounts is included in depreciation and amortization. Amortization of financing fees is included in amortization of deferred charges, unless it qualifies for capitalization.
- (b) In December 2013, the Company entered into an agreement to extend and refinance its \$1.0 billion revolving credit facility, or the Facility (note 10). In connection with the refinancing, the Company incurred refinancing expenses and costs of approximately \$4,038,000.

**8. Other assets:**

	<u>2013</u>	<u>2012</u>
Restricted cash <sup>(a)</sup>	\$ 73,855	\$72,100
Equity Investment in affiliate <sup>(b)</sup>	4,299	525
Intangible assets	2,695	2,993
Capital assets	471	505
Other	<u>25,624</u>	<u>7,538</u>
Other assets	<u>\$106,944</u>	<u>\$83,661</u>

- (a) Included in this amount is \$60,000,000 which has been placed in a deposit account over which the lessor (note 11) has a first priority interest.
- (b) On March 14, 2011, the Company entered into an agreement to participate in GCI, an investment vehicle established by an affiliate of The Carlyle Group. GCI will invest up to \$900,000,000 equity capital in containership assets strategic to the People's Republic of China, Taiwan, Hong Kong and Macau. The Company agreed to make a minority investment in GCI of up to \$100,000,000 during the investment period, which is anticipated to be up to five years. The Company accounts for its 10.3% investment in GCI using the equity method. The investment of \$4,299,000 is comprised of its capital contribution of \$6,408,000 less its cumulative equity loss on investment of \$2,109,000.

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**9. Deferred revenue:**

	<u>2013</u>	<u>2012</u>
Deferred revenue on time charters	\$ 21,099	\$ 19,861
Deferred interest on lease receivable (note 5)	7,903	12,503
Other deferred revenue	2,824	650
Deferred revenue	31,826	33,014
Current portion	<u>(27,683)</u>	<u>(25,111)</u>
Deferred revenue	<u>\$ 4,143</u>	<u>\$ 7,903</u>

**10. Long-term debt:**

	<u>2013</u>	<u>2012</u>
Long-term debt:		
Revolving credit facilities <sup>(a)</sup>	\$ 2,268,841	\$ 2,287,942
Term loan credit facilities <sup>(b)</sup>	<u>972,777</u>	<u>803,002</u>
Long-term debt	3,241,618	3,090,944
Current portion	<u>(388,159)</u>	<u>(66,656)</u>
Long-term debt	<u>\$ 2,853,459</u>	<u>\$ 3,024,288</u>

**(a) Revolving credit facilities:**

As of December 31, 2013, the Company had five long-term revolving credit facilities (“Revolvers”) available and a line of credit, which provided for aggregate borrowings of up to \$2,388,284,000 (2012—\$2,392,685,000), of which \$119,443,000 (2012—\$104,743,000) was undrawn. One of the term loan credit facilities (“Term Loans”) has a revolving loan component and this component has been included in the Revolvers.

In December 2013, the Company had an outstanding balance of approximately \$1.0 billion under a revolving credit facility that matures in May 2015. In December 2013, the Company entered into an agreement to extend and refinance the Facility. Effective January 31, 2014, the maturity date for the Facility was extended from May 2015 to May 2019, the outstanding amount of the Facility was reduced to \$433,800,000 term loan and the margin was increased. The reduction in the outstanding amount of the Facility was funded by drawing \$340,000,000 under existing credit facilities, one of which is secured by certain vessels that were pledged as collateral under the Facility, and approximately \$260,000,000 of cash on hand.

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The Revolvers mature between July 5, 2017 and December 31, 2023. Based on the Revolvers outstanding at December 31, 2013, and reflecting the reduction to the Facility and the revised repayment schedule under the amended Facility that will occur in January 2014, the minimum repayments for the balances outstanding are as follows:

2014	\$ 336,374
2015	129,920
2016	139,478
2017	181,794
2018	145,521
Thereafter	1,335,754
	<u>\$2,268,841</u>

Interest is calculated as one month or three month LIBOR plus a margin per annum, depending on the interest period selected by the Company. At December 31, 2013, the one month and three month LIBOR was 0.2% (2012—one month-0.2% and three month-0.3%) and the margins ranged between 0.5% and 0.9% (2012—0.5% and 0.9%). The weighted average rate of interest, including the margin, was 0.8% at December 31, 2013 (2012—0.9%).

The Company is subject to commitment fees ranging between 0.2%—0.3% calculated on the undrawn amounts under the various facilities.

The Revolver loan payments are made in quarterly or semi-annual payments commencing six or thirty-six months after delivery of the associated newbuilding containership. For one of our Revolvers, payments commence four months after the amendment date of the loan agreement.

As of December 31, 2013, the Company had twelve Term Loans available, which provided for aggregate borrowings of up to \$1,739,497,000 (2012—\$1,026,802,000), of which \$766,720,000 (2012—\$223,800,000) was undrawn. One of the Term Loans has a revolving loan component and this component has been included in the Revolvers.

During the year ended December 31, 2013, the Company entered into several LIBOR based term loans with various banks for a total of \$627,000,000 to be used toward the financing of existing vessels and the construction of newbuilding containerships. The loans bear interest at LIBOR plus a margin and are subject to commitment fees of between 0.4% and 1.1% per annum calculated on the undrawn amounts of the loans. At December 31, 2013, \$30,000,000 has been drawn under these facilities.

In addition, the Company entered into fixed rate, unsecured, term loans, or Unsecured Term Loans, for a total of \$134,000,000 to be used towards the construction of newbuilding containerships and for general corporate purposes. At December 31, 2013, these facilities were fully drawn.

The Term Loans mature between March 12, 2017 and February 27, 2025.

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Based on the Term Loans outstanding at December 31, 2013, the minimum repayments for the balances outstanding are as follows:

2014	\$ 51,785
2015	54,668
2016	56,455
2017	98,129
2018	179,340
Thereafter	<u>532,400</u>
	<u>\$972,777</u>

For certain of our Term Loans with a total principal outstanding of \$694,400,000 interest is calculated as one month, three month or six month LIBOR plus a margin per annum, depending on the interest period selected by the Company. At December 31, 2013, the one month, three month and six month LIBOR was 0.2%, 0.2% and 0.4%, respectively (2012—one month-0.2%, three month-0.3% and six month-0.7%) and the margins ranged between 0.4% and 4.8% (2012—0.4% and 4.8%).

For certain of our Term Loans with a total principal outstanding of \$129,377,000, interest is calculated based on the Export-Import Bank of Korea (KEXIM) plus 0.7% per annum.

For certain of our Term Loans with a total principal outstanding of \$149,000,000, the loans bear interest between 6% to 7% per annum.

The weighted average rate of interest, including the margin, was 2.7% at December 31, 2013 (2012—2.3%).

The Company is subject to commitment fees ranging between 0.2%—1.1% calculated on the undrawn amounts under the various facilities.

The Term Loan payments are made in quarterly or semi-annual payments commencing three, six or thirty-six months after delivery of the associated newbuilding containership or utilization date. For certain of our Term Loans with a total principal outstanding of \$149,000,000 payments are due on either the third anniversary of the delivery date of the underlying vessel or at maturity.

(c) General:

The security for each of the Company's credit facilities, except for the Facility and the Unsecured Term Loans, includes:

- A first priority mortgage on the collateral vessels funded by the related credit facility;
- An assignment of the Company's time charters and earnings related to the related collateral vessels;
- An assignment of the insurance on each of the vessels that are subject to a related mortgage;
- An assignment of the Company's related shipbuilding contracts; and
- A pledge of the related retention accounts.

The security for the Facility includes, among others:

- First priority mortgages on 23 of the Company's vessels; and

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- First-priority assignment of earnings related to the above noted vessels, including time charter revenues, and a first-priority assignment of any insurance proceeds.

The Company may prepay certain amounts outstanding without penalty, other than breakage costs in certain circumstances. Under each of our credit facilities, in certain circumstances a prepayment may be required as a result of certain events including the sale or loss of a vessel, a termination or expiration of a charter (and the inability to enter into a charter suitable to lenders within a period of time) or termination of a shipbuilding contract. The amount that must be prepaid may be calculated based on the loan to market value ratio or some other ratio that takes into account the market value of the relevant vessels. In these circumstances, valuations of our vessels are conducted on a “without charter” basis as required under the relevant credit facility agreement. Amounts prepaid in accordance with these provisions may be reborrowed, subject to certain conditions.

Each credit facility contains financial covenants requiring the Company maintain minimum liquidity, tangible net worth, interest coverage ratios, interest and principal coverage ratios, and debt to assets ratios, as defined. The Company is in compliance with these covenants at December 31, 2013.

**11. Other long-term liabilities:**

	<u>2013</u>	<u>2012</u>
Long term obligations under capital lease	\$611,603	\$651,591
Current portion	<u>(38,930)</u>	<u>(38,542)</u>
	<u>\$572,673</u>	<u>\$613,049</u>

(a) Long-term obligations under capital lease:

The Company, through certain of its wholly-owned subsidiaries, has entered into non-recourse or limited recourse sale-leaseback arrangements with financial institutions to fund the construction of certain vessels under existing shipbuilding contracts.

In these arrangements, the Company has agreed to transfer the vessels to the lessors and, commencing from the delivery of the vessels from the shipyard, lease the vessel back from the lessor over the applicable lease term. In the arrangements where the shipbuilding contracts are novated to the lessors, the lessors assume responsibility for the remaining payments under the shipbuilding contracts.

The leases are accounted for as capital leases. The vessel under construction is recorded as an asset and the lease obligation is recorded as a liability.

In certain of the arrangements, the lessors are companies whose only assets and operations are to hold the Company’s leases and vessels. The Company operates the vessels during the lease term and supervises the vessels’ construction before the lease term begins. As a result, the Company is the primary beneficiary of the lessors and consolidates the lessors for financial reporting purposes.

In certain of the arrangements, the liabilities of the lessor are loans from associated companies of the lessor and are non-recourse to the Company. The amounts funded to the lessors materially match the



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funding received by the Company's subsidiaries. As a result, the amounts due by the Company's subsidiaries to the lessors have been included in Other Long-term Liabilities as representing the lessor's loans due to associated companies of the lessor.

The terms of the leases are as follows:

(i) Leases for five 4500 TEU vessels:

Under this arrangement, the Company has five capital leases with a subsidiary of a financial institution. The leases are five-year terms that commenced on each vessel's delivery date, which occurred between October 2010 and August 2011. At the end of each lease term, the remaining balances of approximately \$64,000,000 will be due. The Company has placed \$60,000,000 in a cash deposit account over which the lessor has a first priority interest.

At the end of each lease term, the Company, who is the lessee, will be appointed to sell the vessels. The Company will receive 99.9% of the proceeds from the sale of each vessel and can choose to purchase the vessels.

(ii) COSCO Pride—13100 TEU vessel:

Under this arrangement, the lessor has provided financing of \$144,185,000. The term of the lease is 12 years beginning from the vessel's delivery date of June 29, 2011. Lease payments include an interest component based on three month LIBOR plus a 2.6% margin. At the end of the lease, the outstanding balance of up to \$48,000,000 will be due and title of the vessel will transfer to the Company.

(iii) COSCO Faith—13100 TEU vessel:

Under this arrangement, the lessor has provided financing of \$109,000,000. The term of the lease is 12 years beginning from the vessel's delivery date of March 14, 2012. Lease payments include an interest component based on three month LIBOR plus a 3.0% margin. At the end of the lease, the Company will have the option to purchase the vessel from the lessor for \$1.

As of December 31, 2013, the carrying value of the seven vessels funded under these facilities was \$768,652,000 (2012—\$794,847,000).

(b) Based on maximum amounts funded, payments due to the lessors would be as follows:

2014	\$ 60,079
2015	126,383
2016	293,025
2017	23,387
2018	23,731
Thereafter	<u>170,894</u>
	697,499
Less amounts representing interest	<u>(85,896)</u>
	<u>\$611,603</u>

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**12. Share capital:**

(a) Common shares:

The Company has 25,000,000 Class B common shares and 100 Class C common shares authorized. For each of these classes of common share, there are nil shares issued and outstanding at December 31, 2013 (2012—nil).

The Company has a dividend reinvestment program (“DRIP”) that allows interested shareholders to reinvest all or a portion of cash dividends received on the Company’s common shares. If new common shares are issued by the Company, the reinvestment price is equal to the average price of the Company’s common shares for the five days immediately prior to the reinvestment, less a discount. The discount rate is set by the Board of Directors and is currently 3%. If common shares are purchased in the open market, the reinvestment price is equal to the average price per share paid.

On January 19, 2012, the Company accepted the re-purchase of 11,300,000 Class A common shares at a price of \$15.00 per share, for an aggregate cost of \$170,609,000 including fees and expenses of \$1,110,000 relating to the tender offer.

On February 26, 2012, the Company adopted an open market share repurchase plan of up to \$50,000,000 of its Class A common shares. During year ended December 31, 2012, 148,101 Class A common shares were repurchased via the open market repurchase plan for \$2,203,000.

On November 25, 2013, the Company issued 3,500,000 Class A common shares at a price of \$22.00 per share for gross proceeds of approximately \$77,000,000.

(b) Preferred shares:

The Company had the following preferred shares outstanding:

Series	Shares		Liquidation preference	
	Authorized	Issued	December 31, 2013	December 31, 2012
	A	315,000	200,000	\$ 344,262
B	260,000	—	—	—
C	40,000,000	13,665,531	341,638	350,000
D	20,000,000	5,105,000	127,625	77,625
R	1,000,000	—	—	—

(i) Series A preferred shares:

The Series A preferred shares accrue a 12% non-cash cumulative dividend per annum until January 31, 2014, which may increase to 15% per annum thereafter as described below.

The Series A preferred shares automatically convert to class A common shares at a price of \$15.00 per share (the “Exercise Price”) at any time on or after January 31, 2014 if the trailing 30 day average trading price of the common shares is equal to or above the Exercise Price.

On January 30, 2014, the Company’s outstanding 200,000 Series A preferred shares automatically converted into a total of 23,177,175 Class A common shares.

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(ii) Series B preferred shares:

The Series B preferred shares were issued for cash and paid cumulative quarterly dividends in cash at a rate of 5% per annum from their issuance date of May 27, 2010 to June 30, 2012, 8% per annum from July 1, 2012 to June 30, 2013 and 10% per annum thereafter. On November 30, 2011, the outstanding Series B preferred shares were redeemed for \$24,600,000.

(iii) Series C preferred shares:

In 2011, the Company issued 14,000,000 Series C preferred shares for gross proceeds of \$350,000,000 which excludes accrued dividends to May 25, 2011. The Series C preferred shares were issued for cash and pay cumulative quarterly dividends at a rate of 9.5% per annum from their date of issuance. At any time on or after January 30, 2016, the Series C preferred shares may be redeemed, in whole or in part at a redemption price of \$25.00 per share plus unpaid dividends. If the Company fails to comply with certain covenants, default on any of its credit facilities, fails to pay dividends or if the Series C preferred shares are not redeemed at the option of the Company, in whole by January 30, 2017, the dividend rate payable on the Series C preferred shares increases quarterly, subject to an aggregate maximum rate per annum of 25% prior to January 30, 2016 and 30% thereafter, to a rate that is 1.25 times the dividend rate payable on the Series C preferred shares. The Series C preferred shares are not convertible into common shares and are not redeemable at the option of the holder. The initial dividend on the Series C preferred shares was paid on May 2, 2011.

In September 2013, the Company repurchased 320,000 of its 9.5% Series C Preferred Shares at \$26.50 per share for a total of approximately \$8,560,000. On September 11, 2013, the Company authorized the repurchase of up to \$25,000,000 of its 9.5% Series C preferred shares. The share repurchase authorization expires in July 2014 and repurchase activity will depend on factors such as working capital needs, repayment of debt, Series C preferred share price and economic and market conditions. Share repurchases may be effected from time to time through open market purchases, and the repurchase program may be suspended, delayed or discontinued at any time. During the year ended December 31, 2013, 14,469 Series C preferred shares were repurchased for a total of approximately \$390,000 via the open market repurchase plan.

(iv) Series R preferred shares:

On April 19, 2011, the Company authorized 1,000,000 shares of Series R participating preferred stock with a par value of \$0.01 per share. Each share of the Series R participating preferred stock entitles the holder to 1,000 votes on all matters submitted to a vote of the shareholders of the Company. The Series R participating preferred shares rank junior to all other series of the Company's preferred shares. As of December 31, 2013, there are no Series R participating preferred stock outstanding (2012—nil).

(v) Series D preferred shares:

On December 13, 2012, the Company issued 3,105,000 Series D preferred shares for gross proceeds of \$77,625,000. On November 8, 2013, the Company issued an additional 2,000,000 Series D preferred shares for gross proceeds of \$50,000,000. The Series D preferred shares were issued for cash and pay cumulative quarterly dividends at a rate of 7.95% per annum from their date of issuance. At any time on or after January 30, 2018, the Series D preferred shares may be redeemed by the Company, in whole or in part at a redemption price of \$25.00 per share plus unpaid dividends. The Series D preferred shares are not convertible into common shares and are not redeemable at the option of the holder.

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**13. Earnings per share:**

(a) Earnings per share computation:

The Company applies the if-converted method to determine the EPS impact for the convertible Series A preferred shares. The following is a reconciliation of the numerator and denominator used in the basic and diluted EPS computations.

<u>For the year ended December 31, 2013</u>	<u>Earnings (loss)</u> <u>(numerator)</u>	<u>Shares</u> <u>(denominator)</u>	<u>Per share</u> <u>amount</u>
Net earnings	\$ 299,028		
Less:			
Series A preferred share dividends	(38,390)		
Series C preferred share dividends	(34,035)		
Series D preferred share dividends	(6,744)		
Series C preferred share repurchases	(660)		
Basic EPS:			
Earnings attributable to common shareholders	\$ 219,199	65,273,000	\$ 3.36
Effect of dilutive securities:			
Share-based compensation	—	306,000	
Contingent consideration (note 3)	—	567,000	
Shares held in escrow (note 3)	—	47,000	
Convertible Series A preferred shares	38,390	21,641,000	
Diluted EPS:			
Earnings attributable to common shareholders plus assumed conversion	\$ 257,589	87,834,000	\$ 2.93
<u>For the year ended December 31, 2012</u>	<u>Earnings (loss)</u> <u>(numerator)</u>	<u>Shares</u> <u>(denominator)</u>	<u>Per share</u> <u>amount</u>
Net earnings	\$ 121,305		
Less:			
Series A preferred share dividends	(34,195)		
Series C preferred share dividends	(34,112)		
Series D preferred share dividends	(309)		
Basic EPS:			
Earnings attributable to common shareholders	\$ 52,689	62,923,240	\$ 0.84
Effect of dilutive securities:			
Share-based compensation	—	238,000	
Contingent consideration (note 3)	—	1,236,000	
Shares held in escrow (note 3)	—	545,000	
Diluted EPS <sup>(1)</sup> :			
Earnings attributable to common shareholders plus assumed conversion	\$ 52,689	64,942,240	\$ 0.81

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**SEASPAN CORPORATION**

Notes to Consolidated Financial Statements — (Continued)

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

<u>For the year ended December 31, 2011</u>	<u>Earnings (loss)</u> <u>(numerator)</u>	<u>Shares</u> <u>(denominator)</u>	<u>Per share</u> <u>amount</u>
Net loss	\$ (83,400)		
Less:			
Series A preferred share dividends	(30,295)		
Series B preferred share dividends	1,060		
Series C preferred share dividends	(28,497)		
Basic and diluted EPS <sup>(2)</sup> :			
Loss attributable to common shareholders	<u>\$ (141,132)</u>	<u>69,217,000</u>	<u>\$ (2.04)</u>

- (1) The convertible Series A preferred shares are not included in the computation of diluted EPS because their effects are anti-dilutive for the year.
- (2) The convertible Series A preferred shares, contingent consideration, shares held in escrow and share-based compensation are not included in the computation of diluted EPS because their effects are anti-dilutive for the year.

**14. Share-based compensation:**

In December 2005, the Company's Board of Directors adopted the Seaspans Corporation Stock Incentive Plan (the "Plan"), under which our officers, employees and directors may be granted options, restricted shares, phantom shares, and other stock-based awards as may be determined by the Company's Board of Directors. A total of 2,000,000 shares of common stock are reserved for issuance under the Plan, which is administered by the Company's Board of Directors. The Plan expires ten years from the date of its adoption. At December 31, 2013, there are 738,514 (December 31, 2012 — 884,319) remaining shares left for issuance under this Plan.

Class A common shares are issued on a one for one basis in exchange for the cancellation of vested restricted shares and phantom share units. The restricted shares generally vest over one year and the phantom share units generally vest over three years.

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**SEASPAN CORPORATION**

Notes to Consolidated Financial Statements — (Continued)

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

A summary of the Company's outstanding restricted shares, phantom share units and SARs as of December 31, 2013 is presented below:

	Restricted shares		Phantom share units		Stock appreciation rights	
	Number of shares	W.A. grant date FV	Number of shares	W.A. grant date FV	Number of SARs	W.A. grant date FV
December 31, 2010	45,904	\$ 10.06	332,000	\$ 11.26	—	\$ —
Granted	43,200	13.04	190,000	15.43	—	—
Vested	(45,904)	10.06	—	—	—	—
December 31, 2011	43,200	13.04	522,000	12.78	—	—
Granted	63,653	14.17	40,000	17.68	5,674,148	2.03
Vested	(43,200)	13.04	—	—	—	—
December 31, 2012	63,653	14.17	562,000	13.13	5,674,148	2.03
Granted	54,990	17.01	95,000	19.30	1,664,457	3.51
Vested	(65,578)	14.25	—	—	—	—
Exercised	—	—	—	—	(241,906)	3.65
Cancelled	(4,185)	17.01	—	—	(23,754)	3.51
December 31, 2013	<u>48,880</u>	<u>\$ 17.01</u>	<u>657,000</u>	<u>\$ 14.02</u>	<u>7,072,945</u>	<u>\$ 2.32</u>

As vested outstanding phantom share units are only exchanged for common shares upon written notice from the holder, the phantom share units that are exchanged for common shares may include units that vested in prior periods. At December 31, 2013, 460,000 (2012—340,000) of the outstanding phantom share units were vested and available for exchange by the holder.

During 2013, the Company recognized \$2,688,000 (2012—\$2,838,000; 2011—\$2,528,000) in compensation cost related to restricted share units and phantom share units.

During 2013, the total fair value of restricted shares vested was \$935,000 (2012—\$563,000; 2011—\$462,000) and the total fair value of shares cancelled was \$71,000 (2012—nil; 2011—nil).

On December 7, 2012, the Company granted 5,674,148 SARs to an executive of the Company which vest and become exercisable in three tranches when and if the fair market value of the common shares equals or exceeds the applicable base price for each tranche for any 20 consecutive trading days on or before the expiration date of each tranche. The executive may exercise each vested tranche of SARs and receive common shares with a value equal to the difference between the applicable base price and the fair market value of the common shares on the exercise date.

On March 27, 2013, the Company granted 1,664,457 SARs to certain members of management (the "Participants") which vest and become exercisable in three tranches when and if the fair market value of the common shares equals or exceeds the applicable base price for each tranche for any 20 consecutive trading days on or before the expiration date of each tranche. The Participants may exercise each vested tranche of SARs and receive common shares with a value equal to the difference between the applicable base price and the fair market value of the common shares on the exercise date. The common shares received on the exercise of SARs are subject to a retention requirement where the Participant is required to retain ownership of 50% of the net after tax number of shares until the later of March 22, 2018 or 120 days after the exercise date.

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**SEASPAN CORPORATION**

Notes to Consolidated Financial Statements — (Continued)

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

At December 31, 2013, there was \$6,472,000 (2012—\$12,519,000) of total unrecognized compensation costs relating to unvested share-based compensation awards and SARs, which are expected to be recognized over a weighted average period of 18 months.

The assumptions used in the Monte Carlo model to calculate the grant date fair value of the SARs were as follows:

	2013	2012
Average expected term	3.8 years	1.5 years
Expected volatility	39.73%	40.12%
Dividend yield	4.97%	5.74%
Average risk free rate	0.50%	0.47%

The following table provides information about the three tranches of SARs granted during the year:

	Base price	Expiration date	Number of SARs	
			2013	2012
Tranche 1	\$ 21.50	December 7, 2015	531,885	1,846,154
Tranche 2	24.00	December 7, 2016	556,946	1,898,734
Tranche 3	26.50	December 7, 2017	575,626	1,929,260
Total			<u>1,664,457</u>	<u>5,674,148</u>

During 2013, the first tranche of SARs vested earlier than the estimate derived from the Monte Carlo model used to value the units. As a result, \$2,550,000 (2012—nil; 2011—nil) in share-based compensation expense related to the first tranche of SARs was accelerated and recognized during the year ended December 31, 2013. The total share-based compensation expense related to SARs, including the accelerated expense of \$2,550,000 described above, for the year ended December 31, 2013 was \$11,316,000 (2012—\$440,000; 2011—nil).

In addition, the Company recognized \$1,543,000 (2012—\$246,000; 2011—nil) in transaction fees that were capitalized to vessels under construction and \$1,797,000 (2012—\$895,000; 2011—nil) in arrangement fees that were capitalized to deferred charges. These fees were paid in class A common shares. The Company also recognized \$600,000 (2012—\$750,000; 2011—\$750,000) in share-based compensation expenses related to other stock-based awards.

**15. Other information:**

- (a) Accounts payable and accrued liabilities:

The principal components of accounts payable and accrued liabilities are:

	2013	2012
Due to related parties (note 4)	\$ 611	\$ —
Accrued interest	22,273	20,656
Accounts payable and other accrued liabilities	42,750	29,341
	<u>\$65,634</u>	<u>\$49,997</u>

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**SEASPAN CORPORATION**

Notes to Consolidated Financial Statements — (Continued)

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

- (b) Supplementary information to the statement of cash flows consists of:

	<u>2013</u>	<u>2012</u>	<u>2011</u>
Interest paid on debt	\$59,999	\$64,123	\$ 33,947
Interest received	1,265	634	815
Undrawn credit facility fee paid	1,656	900	1,813
Non-cash transactions:			
Long-term debt for vessels under construction	54,080	71,400	—
Dividends on Series A preferred shares	38,390	34,195	30,295
Dividend reinvestment	31,961	7,168	13,039
Loan repayment for vessels under construction	6,560	—	—
Arrangement and transaction fees	5,082	957	—
Other long-term liabilities for vessels under construction	—	84,787	108,374
Acquisition of the Manager for shares, excluding cash received	—	82,607	—
Proceeds on sale of vessel	—	52,104	—

**16. Commitments and contingent obligations:**

- (a) As of December 31, 2013, the minimum future revenues to be received on committed time charter party agreements and interest income from sales-type capital leases are approximately:

2014	\$ 714,681
2015	755,982
2016	731,411
2017	670,645
2018	654,960
Thereafter	2,533,145
	<u>\$6,060,824</u>

The minimum future revenues are based on 100% utilization, relate to committed time charter party agreements currently in effect and assume no renewals or extensions.

- (b) As of December 31, 2013, based on the contractual delivery dates, the Company has outstanding commitments for installment payments for vessels under construction as follows:

2014	\$ 476,420
2015	959,159
2016	168,747
	<u>\$ 1,604,326</u>



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[Table of Contents](#)**SEASPAN CORPORATION**

Notes to Consolidated Financial Statements — (Continued)

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

- (c) As of December 31, 2013, the commitment under operating leases is as follows:

2014	\$ 6,856
2015	6,867
2016	6,885
2017	6,941
2018	6,645
Thereafter	17,408
	<u>\$51,602</u>

**17. Concentrations:**

The Company's revenue is derived from the following customers:

	2013	2012	2011
COSCON	\$301,842	\$281,469	\$168,395
CSCL Asia	134,434	151,658	161,218
K-Line	76,148	76,359	62,519
HL USA	59,115	58,980	57,406
MOL	52,997	42,011	42,165
Other	52,554	50,317	73,907
	<u>\$677,090</u>	<u>\$660,794</u>	<u>\$565,610</u>

**18. Financial instruments:**

- (a) Fair value:

The carrying values of cash and cash equivalents, short-term investments, restricted cash, accounts receivable and accounts payable and accrued liabilities approximate their fair values because of their short term to maturity. As of December 31, 2013, the fair value of the Company's long-term debt is \$2,897,650,000 (2012—\$2,641,016,000) and the carrying value is \$3,241,618,000 (2012—\$3,090,944,000). As of December 31, 2013, the fair value of the Company's other long-term liabilities is \$587,733,000 (2012—\$631,041,000) and the carrying value is \$611,603,000 (2012—\$651,591,000). The fair value of long-term debt and other long-term liabilities are estimated based on expected interest and principal repayments, discounted by forward rates plus a margin appropriate to the credit risk of the Company. Therefore, the Company has categorized the fair value of these derivative instruments as Level 3 in the fair value hierarchy.

The Company's interest rate derivative financial instruments are re-measured to fair value at the end of each reporting period. The fair values of the interest rate derivative financial instruments have been calculated by discounting the future cash flow of both the fixed rate and variable rate interest rate payments. The discount rate was derived from a yield curve created by nationally recognized financial institutions adjusted for the associated credit risk, related to the credit risk of the counterparties or our non-performance risk. The fair values of the interest rate derivative financial instruments are

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**SEASPAN CORPORATION**

Notes to Consolidated Financial Statements — (Continued)

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

determined based on inputs that are readily available in public markets or can be derived from information available in publicly quoted markets. Therefore, the Company has categorized the fair value of these derivative financial instruments as Level 2 in the fair value hierarchy.

(b) Interest rate derivative financial instruments:

The Company uses derivative financial instruments, consisting of interest rate swaps and interest rate swaptions, to manage its interest rate risk associated with its variable rate debt. Prior to 2008, the Company applied hedge accounting to certain of its interest rate swaps. In 2008, the Company voluntarily de-designated all such interest rate swaps as accounting hedges such that the Company no longer applies hedge accounting. The amounts in accumulated other comprehensive loss related to the interest rate swaps to which hedge accounting was previously applied are recognized in earnings when and where the related interest is recognized in earnings.

Counterparties to the derivative financial instruments are major financial institutions. As of December 31, 2013, the Company had the following outstanding interest rate derivatives:

Fixed per annum rate swapped for LIBOR	Notional amount as of December 31, 2013	Maximum notional amount <sup>(1)</sup>	Effective date	Ending date
5.6400%	\$ 714,500	\$ 714,500	August 31, 2007	August 31, 2017 <sup>(2)</sup>
5.1750%	569,649	569,649	July 16, 2012	July 15, 2016 <sup>(3)</sup>
5.4200%	438,462	438,462	September 6, 2007	May 31, 2024
5.6000%	188,000	188,000	June 23, 2010	December 23, 2021 <sup>(2)</sup>
5.0275%	111,000	111,000	May 31, 2007	September 30, 2015
5.5950%	106,800	106,800	August 28, 2009	August 28, 2020
5.2600%	106,800	106,800	July 3, 2006	February 26, 2021 <sup>(2)(4)</sup>
5.2000%	86,400	86,400	December 18, 2006	October 2, 2015
5.4975%	57,400	57,400	July 31, 2012	July 31, 2019
5.1700%	24,000	24,000	April 30, 2007	May 29, 2020
5.8700%	—	620,390	August 31, 2017	November 28, 2025

- (1) Over the term of the interest rate swaps, the notional amounts increase and decrease. These amounts represent the peak notional over the remaining term of the swap.
- (2) Prospectively de-designated as an accounting hedge in 2008.
- (3) On January 30, 2014, this swap was terminated and the Company entered into a new swap with an effective date of January 30, 2014 and a pay fixed rate of 5.945%. The outstanding notional amount on the effective date was \$281,970,000 and is subject to amortization. The swap's end date is May 31, 2019.
- (4) The Company has entered into a swaption agreement with a bank (Swaption Counterparty A) whereby Swaption Counterparty A has the option to require the Company to enter into an interest rate swap to pay LIBOR and receive a fixed rate of 5.26%. This is a European option and is open for a two hour period on February 26, 2014 after which it expires. The notional amount of the underlying swap is \$106,800,000 with an effective date of February 28, 2014 and an expiration of February 26, 2021. If Swaption Counterparty A exercises the swaption, the underlying swap effectively offsets the Company's 5.26% pay fixed LIBOR swap from February 28, 2014 to February 26, 2021. This option was not exercised by Swaption Counterparty A.

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Notes to Consolidated Financial Statements — (Continued)

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

In addition, the Company has entered into swaption agreements with a bank (Swaption Counterparty B) whereby Swaption Counterparty B has the option to require the Company to enter into interest rate swaps to pay LIBOR and receive a fixed rate of 1.183% and to pay 0.5% and receive LIBOR, respectively. The notional amounts of the underlying swaps are each \$200,000,000 with an effective date of March 2, 2017 and an expiration of March 2, 2027.

The swaption agreements with Swaption Counterparty B are subject to a master netting agreement but are each recorded at the gross amount on the balance sheet. At December 31, 2013, these swaptions had asset and liability values of \$60,181,000 and \$49,534,000, respectively (2012—asset of \$41,031,000 and liability of \$30,547,000).

The following provides information about the Company's interest rate derivatives:

Fair value of asset and liability derivatives:

	2013	2012
Fair value of financial instruments asset	\$ 60,188	\$ 41,031
Fair value of financial instruments liability	425,375	606,740

The following table provides information about losses included in net earnings and reclassified from accumulated other comprehensive loss ("AOCL") into earnings:

	2013	2012	2011
Gain/(Loss) on derivatives recognized in net earnings:			
Change in fair value of financial instruments	\$60,504	\$(135,998)	\$(281,027)
Loss recognized from AOCL to net earnings <sup>(1)</sup>			
Interest expense	\$ (5,330)	\$ (8,310)	\$ (11,670)
Depreciation and amortization	(882)	(836)	(505)

(1) The effective portion of changes in unrealized loss on interest rate swaps was recorded in accumulated other comprehensive income until September 30, 2008 when these contracts were de-designated as accounting hedges. The amounts in accumulated other comprehensive income will be recognized in earnings when and where the previously hedged interest is recognized in earnings.

The estimated amount of AOCL expected to be reclassified to net earnings within the next twelve months is approximately \$5,172,000.

(c) Foreign exchange derivative instruments:

The Company is exposed to market risk from foreign currency fluctuations. The Company has entered into foreign currency forward contracts to manage foreign currency fluctuations. At December 31, 2013, the notional amount of the foreign exchange forward contracts is \$12,200,000 (2012—\$7,000,000) and the fair value liability is \$286,000 (2012—\$12,000).

**SEASPAN CORPORATION**

Notes to Consolidated Financial Statements — (Continued)

(Tabular amounts in thousands of United States dollars, except per share amount and number of shares)

Years ended December 31, 2013, 2012 and 2011

**19. Subsequent events:**

- (a) On January 10, 2014, the Company declared a quarterly dividend of \$0.59375 and \$0.496875 per Series C and Series D preferred share, representing a total distribution of \$10,650,000. The dividends were paid on January 30, 2014 to all shareholders of record on January 29, 2014.
- (b) On January 28, 2014, the Company held a special meeting of shareholders and a proposal was passed to increase the number of the Company's authorized shares of preferred stock from 65,000,000 to 150,000,000 with a corresponding increase in the number of authorized shares of capital stock from 290,000,100 to 375,000,100.
- (c) On January 30, 2014, the Company's outstanding 200,000 Series A preferred shares automatically converted into a total of 23,177,175 Class A common shares.
- (d) On February 6, 2014, the Company declared a quarterly dividend of \$0.3125 per common share. The dividend was paid on February 26, 2014 to all shareholders of record on February 18, 2014. Of the \$28,993,000 distribution, \$14,319,000 was paid in cash and \$14,674,000 was re-invested through the DRIP.
- (e) On February 13, 2014, the Company issued 5,400,000 Series E Cumulative Redeemable Perpetual Preferred Shares at a price of \$25.00 per share for net proceeds of approximately \$131,000,000. These proceeds include approximately \$9,700,000 from the exercise of the underwriter's option to purchase additional Series E Preferred Shares. The Company will use the net proceeds from this offering for general corporate purposes.

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**SIGNATURE**

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this Annual Report on its behalf.

SEASPAN CORPORATION

By: /s/ Sai W. Chu

**Sai W. Chu**  
**Chief Financial Officer**  
**(Principal Financial and Accounting Officer)**

Dated: March 11, 2014

FINAL FORM

**AGREEMENT**

**8 AUGUST 2005 (AS AMENDED FROM TIME TO TIME AND AS AMENDED AND RESTATED  
ON 11 MAY 2007 AND ON 23 DECEMBER 2013)**

**US\$1,300,000,000  
CREDIT FACILITY**

**For**

**SEASPAN CORPORATION  
as Borrower**

**Arranged by**

**CITIGROUP GLOBAL MARKETS LIMITED and BNP PARIBAS.**

**with**

**CITIGROUP GLOBAL MARKETS LIMITED  
CREDIT SUISSE AG  
DNB BANK ASA, NEW YORK BRANCH (FORMERLY KNOWN AS DNB NOR ASA)  
BNP PARIBAS.  
LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE, NEW YORK BRANCH  
as Mandated Lead Arrangers**

**with**

**BNP PARIBAS  
as Facility Agent**

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**THIS AGREEMENT** is dated 8 August 2005 (as amended from time to time and as amended and restated on 11 May 2007 and on 23 December 2013)

**BETWEEN:**

- (1) **SEASPAN CORPORATION**, a corporation incorporated according to the laws of the Republic of the Marshall Islands with its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960 (the **Borrower**);
- (2) **CITIGROUP GLOBAL MARKETS LIMITED** and **BNP PARIBAS**, as joint arrangers (in this capacity the **Arrangers**);
- (3) **CITIGROUP GLOBAL MARKETS LIMITED, CREDIT SUISSE AG, DNB BANK ASA, NEW YORK BRANCH (FORMERLY KNOWN AS DNB NOR ASA)** and **BNP PARIBAS**, and **LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE, NEW YORK BRANCH** as mandated lead arrangers;
- (4) **THE FINANCIAL INSTITUTIONS** listed in Part 2 of Schedule 1 (Original Parties) as original lenders (the **Original Lenders**); and
- (5) **BNP PARIBAS** as facility agent (in this capacity the **Facility Agent**).

**IT IS AGREED** as follows:

**1. INTERPRETATION**

**1.1 Definitions**

In this Agreement:

**Account Bank** means BNP Paribas whose registered office is situated at 63/F, Two International Finance Centre, No.8 Finance Street, Central, Hong Kong or any other bank or financial institution with which, with the prior written consent of the Facility Agent (acting in accordance with the instructions of the Majority Lenders), the Retention Accounts are at any time held.

**Administrative Party** means the Arrangers or the Facility Agent.

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

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

**Amending and Restating Agreement** means the agreement dated 20 December 2013 amending and restating this Agreement.

**Amendment Date** means the date on which the amendments to this Agreement contemplated by the Amending and Restating Agreement come into effect.

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

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

**Applicable Time** means:

- (a) in respect of a Vessel other than a MSC Vessel, within ten (10) Business Days of the Delivery Date of that Vessel (irrespective of whether the Loan is made relating to that Vessel) and, in respect of a MSC Vessel, on the date that a MSC Vessel becomes (or has become) a Secured Vessel; or
- (b) in respect of any other Vessel, immediately following and on the date such Vessel becomes (or has become) a Secured Vessel.

**Approved Valuers** means Braemar Seascope Shipping Limited and H. Clarkson & Co. Ltd. or such other independent reputable shipbroker acceptable to the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrower.

**Asset Purchase Agreement** means the asset purchase agreement dated the date hereof among the Borrower, SCLL and the Original Owners.

**Availability Period** means the period from and including the Closing Date, to and including the Final Maturity Date.

**Balloon** means the amount of US\$240,000,000.

**Bareboat Charter** means, in respect of each MSC Vessel, a bareboat charterparty in the Barecon 2001 form (with additional clauses) entered into by the Borrower and MSC and dated 2 November 2011.

**Bareboat Charter and Earnings Assignment** means, in respect of each MSC Vessel, the assignment of the Bareboat Charter and the Earnings granted or to be granted by the Borrower in favour of the Facility Agent.

**Borrowing Base Advance Ratio** means a Loan to Value Ratio of no more than 70 per cent.

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

**Builder** means Samsung Heavy Industries Co. Ltd., a corporation organised and existing under the laws of the Republic of Korea with its registered office at Samsung Yoksam Building, 647-9, Yoksam-Dong, Kangnam-Ku, Seoul, Korea, or, from time to time, any builder of a Vessel.

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

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

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

**Charter Default** means a default by a Charterer that results in the Borrower having an obligation to prepay the Loan pursuant to Clause 16.25(b) (Termination of Time Charter).

**Charter Guarantees** means:

- (a) in relation to each of the CSCL Vessels, the guarantee provided or to be provided by CSCL and the guarantee provided or to be provided by CSCL Hong Kong, in each case in favour of the Borrower in respect of the obligations of CSCL Asia; and
- (b) in relation to each of the Hapag-Lloyd Vessels, the guarantee provided by CP Ships Limited (if any) in favour of the relevant Original Owner in respect of charterhire under the relevant Time Charter by Hapag-Lloyd, as and when novated by such Original Owner to the Borrower pursuant to a novation agreement, and the counter-guarantee provided by Hapag-Lloyd AG in respect of the obligations of CP Ships Limited under such guarantee.

or any substitute charter guarantee entered into from time to time in accordance with the provisions of Clause 16.25 (Termination of Time Charter). and **Charter Guarantee** means any of them.

**Charter Guarantor** means:

- (a) in the case of the Time Charters to CSCL Asia; CSCL and CSCL Hong Kong together; and
- (b) in the case of the Time Charters to Hapag Lloyd; the Hapag Lloyd Charter Guarantor

or any substitute charter guarantor from time to time in accordance with the provisions of Clause 16.25 (Termination of Time Charter).

**Charterers** means CSCL Asia, Hapag-Lloyd, MSC or any substitute charterer from time to time in accordance with the provisions of Clause 16.25 (Termination of Time Charter) and **Charterer** means any of them.

**Closing Date** means 12 August, 2005.

**Commitment** means:

- (a) for an Original Lender, the aggregate amount set opposite its name in Part 2 of Schedule 1 (Original Parties) under the headings **Commitments** and the amount of any other commitment to advance funds under this Agreement it acquires; and
- (b) for any other Lender, the amount of any commitment to advance funds under this Agreement it acquires, to the extent not cancelled, transferred or reduced under this Agreement.

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**Compliance Certificate** means the form of certificate attached at Schedule 7 (Compliance Certificate).

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

**CSCL** means China Shipping Container Lines Co., Ltd.

**CSCL Asia** means China Shipping Container Lines Co., (Asia) Ltd.

**CSCL Hong Kong** means China Shipping Container Lines (Hong Kong) Co., Ltd.

**CSCL Vessels** means the vessels chartered to CSCL Asia as set out in Part 1 of Schedule 1 (Original Parties).

**CSG** means China Shipping (Group) Company.

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

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

**Debt Service Retention Account** means the bank account to be opened by the Borrower with the Account Bank and designated “Seaspan Corporation – Debt Service Retention Account”.

**Debt Service Retention Account Amount** means at any relevant time the amount of the next scheduled Repayment Instalment plus interest due on the next Repayment Date minus the Expected Cash Flow forecasted by the Borrower to be available as of the next Repayment Date. For the avoidance of doubt, any negative figure arising from this calculation shall be deemed to be a figure of zero.

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**Debt Service Retention Account Charge** means the fixed charge or, as the case may be, pledge in respect of all monies standing to the credit from time to time of the Debt Service Retention Account granted or to be granted by the Borrower in favour of the Facility Agent on or before the Amendment Date, together with any and all notices and acknowledgements entered into in connection therewith.

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

**Default** means:

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

**Delivery Date** means, in respect of a Secured Vessel, the date of actual delivery of that Vessel to the Borrower.

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

**DPP** means the deed of proceeds and priorities to be entered into by, inter alios, the Borrower, the Facility Agent and the Swap Counterparties prior to any Swap Mortgage being granted to the Swap Counterparties in form and substance satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders).

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

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

**Environment** means:

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

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

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

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

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

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

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

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

**Excess Risks** means, in respect of a Secured Vessel:

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

**Existing Credit Facility** means any existing credit facility whatsoever provided to any Subsidiary of SCLL in respect of any one or more of the Vessels.

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**Expected Cash Flow** means the Earnings which the Borrower, acting reasonably, estimates that it shall actually receive under the Time Charters net of estimated operating, repair and maintenance costs and expenses for any relevant period.

**Facility** means the credit facility made available under this Agreement.

**Facility Office** means in respect of a Lender, the office through which that Lender will perform its obligations under this Agreement from time to time, which at the date of this Agreement, is the address shown for such Lender in Part 2 of Schedule 1 (Original Parties) or such other address as a Lender may notify to the Facility Agent from time to time, provided that a Lender shall not nominate more than two Facility Offices at any given time.

**FATCA** means:

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

**FATCA Application Date** means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Internal Revenue Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a “withholdable payment” described in section 1473(1)(A)(ii) of the Internal Revenue Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2017; or
- (c) in relation to a “passthru payment” described in section 1471(d)(7) of the Internal Revenue Code not falling within (a) or (b) above, 1 January 2017,
- (d) or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

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

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

**FATCA FFI** means a foreign financial institution as defined in section 1471(d)(4) of the Internal Revenue Code which, if any Finance Party is not a FATCA Exempt Party, could be required to make a FATCA Deduction.

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**FATCA Payment** means either:

- (a) the increase in a payment made by the Borrower to a Finance Party under Clause 10.9 (FATCA Deduction and gross-up by Borrower) or paragraph (b) of Clause 10.10 (FATCA Deduction by a Finance Party); or
- (b) a payment under paragraph (d) of Clause 10.10 (FATCA Deduction by a Finance Party). **Fee Letter** means any letter entered into by reference to this Agreement between one or more Administrative Parties and the Borrower setting out the amount of certain fees referred to in this Agreement.

**Final Maturity Date** means 31 May 2019.

**Finance Document** means:

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

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

**Financial Indebtedness** means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any acceptance credit;
- (c) any bond, note, debenture, loan stock or other similar instrument;
- (d) any redeemable preference share;
- (e) any agreement treated as a finance or capital lease in accordance with U.S. GAAP;
- (f) receivables sold or discounted (otherwise than on a non-recourse basis);
- (g) the acquisition cost of any asset to the extent payable after its acquisition or possession by the party liable where the deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset;
- (h) any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount);



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- (i) any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing;
  - (j) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; or
  - (k) any guarantee, indemnity or similar assurance against financial loss of any person.

**Hapag-Lloyd** means Hapag-Lloyd USA, LLC or any successor.

**Hapag-Lloyd Charter Guarantor** means CP Ships Limited and Hapag-Lloyd AG.

**Hapag-Lloyd Vessels** means the vessels chartered to Hapag-Lloyd as set out in Part 1 of Schedule 1 (Original Parties).

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

**Hedging Policy** means the hedging policy implemented and to be maintained by the Borrower as determined by the Borrower's board of directors and as agreed by the Facility Agent (acting on the instructions of the Majority Lenders) by its acknowledgement of the hedging policy letter addressed to the Facility Agent from the Borrower dated on or before the date of the Loan.

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

**Increased Cost** means:

- (a) an additional or increased cost;
- (b) a reduction in the rate of return under a Finance Document or on its overall capital; or
- (c) a reduction of an amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates but only to the extent attributable to that Finance Party having entered into any Finance Document or funding or performing its obligations under any Finance Document.

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

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

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

**IPO** means an initial public offering of the common shares of the Borrower.

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

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

**Lender** means:

- (a) an Original Lender; or
- (b) any person which becomes a party to this Agreement after the date of this Agreement pursuant to Clause 28.2 (Assignments and transfers by Lenders),

and **Lenders** means all of them.

**LIBOR** means for a Term of the Loan or overdue amount:

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

as of 11.00 a.m. on the second London Business Day before the start of the Term for the offering of deposits in the currency of the Loan or overdue amount for a period comparable to that Term. If any such rate is below zero, LIBOR will be deemed to be zero.

**Loan** means the loan drawn down under this Facility.

**Loan to Value Ratio** means, at any date of determination, the ratio of the aggregate principal amount of the Loan, less any Cash and Cash Equivalents secured to the Lenders pursuant to the Security Documents, to the aggregate of the latest Market Values of all of the Vessels, excluding the MSC Vessels, which are, at that time, Secured Vessels.

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

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

**Majority Lenders** means Lenders:

- (a) whose share in the outstanding Loan and whose undrawn Commitments then aggregate not less than 66 2/3% of the aggregate of all the outstanding Loan and the undrawn Commitments of all the Lenders;

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- (b) if the Loan is not then outstanding, whose undrawn Commitments then aggregate not less than 66 2/3% of the Total Commitments; or
  - (c) if the Loan is not then outstanding and the Total Commitments have been reduced to zero, whose Commitments aggregated not less than 66 2/3% of the Total Commitments immediately before the reduction.

**Management Agreement** means the management agreement dated 8 August 2005 between the Borrower and the Manager as the same may be amended from time to time in accordance with this Agreement.

**Management Agreement Assignment** means the assignment of the Management Agreement granted or to be granted in favour of the Facility Agent by the Borrower in the form of Appendix 4 together with any and all notices and acknowledgements entered into in connection therewith, one to be entered into between the Manager and the Borrower.

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

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

**Mandatory Cost** means the percentage rate per annum calculated by the Facility Agent based on rates provided to or by the Lenders as being necessary to compensate them for compliance with:

- (a) the requirements of the Bank of England or any other authority that replaces all or any of its functions;
- (b) the requirements of the European Central Bank; and
- (c) the requirements of the Swiss Financial Market Supervisory Authority (FINMA).

**Margin** means 300 bps per annum.

**Market Value** means, in respect of a Vessel, any market value of that Vessel subsequently calculated in accordance with Clause 18 (Valuation).

**Material Adverse Effect** means a material adverse effect on:

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

**Maximum Facility Amount** means, subject to Clause 5.1, four hundred thirty three million eight hundred thousand Dollars (US\$433,800,000).

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

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**Mortgage** means, in respect of a Secured Vessel (other than an MSC Vessel), the first priority Hong Kong ship mortgage and in respect of a MSC Vessel, the first preferred Panamanian mortgage, each given or to be given by the Borrower in favour of the Facility Agent in the form attached at Appendix 2.

**MSC** means MSC Mediterranean Shipping Company SA.

**MSC Vessels** means the Vessels chartered to MSC as set out in Part 1 of Schedule 1 (Original Parties).

**MSC Vessel Sale Date** means, in relation to an MSC Vessel, the date on which that MSC Vessel is sold to a third party.

**Net Sale Proceeds** means (a) in relation to the sale of a Secured Vessel, the amount in US\$ of the consideration actually and unconditionally received by the Borrower from a purchaser of a Secured Vessel in relation to such sale and (b) in relation to a proposed sale, any non-refundable deposit paid to or for the account of the Borrower by a person proposing to acquire a Secured Vessel under a contract or offer to purchase the Secured Vessel or other agreement to acquire the Secured Vessel, which contract or offer has been withdrawn, terminated or cancelled or has lapsed, after deducting:

- (a) any VAT or other turnover, added value, sales or similar tax for which the Borrower is required to account in respect of such sale and which cannot be recovered by the Borrower; and
- (b) the Borrower's costs, fees and out-of-pocket expenses (excluding recoverable VAT or other turnover, added value, sales or similar taxes) properly incurred in connection with such sale (including but not limited to brokers' commissions, legal fees, registration fees and stamp duties) or properly incurred in moving or dry-docking the Secured Vessel and in carrying out any repairs, works or modifications in each case which is required pursuant to any sale and purchase agreement in respect of the Secured Vessel which are not incurred as a result of a Default under this Agreement, in any case whether incurred directly or which are reimbursable to the Lenders or any other Finance Party by the Borrower.

**Net Total Loss Proceeds** means in relation to a Total Loss of a Secured Vessel, the amount in US\$ of the Total Loss Proceeds actually and unconditionally received by the Borrower after deducting the Borrower's costs, fees (including legal fees) and out-of-pocket expenses (excluding recoverable VAT or other turnover, added value, sales or similar taxes) properly incurred directly or indirectly in connection with the collection of such proceeds which are not incurred as a result of a Default under this Agreement, in any case whether incurred directly or which are reimbursable to the Lenders or any other Finance Party by the Borrower

**Obligatory Insurances** means in respect of each Secured Vessel:

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

**Original Balance Sheet** means the unaudited balance sheet of the Borrower prepared as at 31 December 2004.

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**Original Owners** means the companies listed in Part 1 of Schedule 1 (Original Parties) and **Original Owner** means any of them.

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

**Permitted Liens** means, in respect of a Secured Vessel:

- (a) Security Interests created by the Security Documents;
- (b) Security Interests created by the Swap Mortgage;
- (c) liens for unpaid crew's wages including wages of the master and stevedores employed by the Vessel, outstanding in the ordinary course of trading for not more than one calendar month after the due date for payment;
- (d) liens for salvage;
- (e) liens for classification or scheduled dry docking or for necessary repairs to that Vessel whose aggregate cost does not exceed US\$1,500,000 at any one time in respect of that Vessel;
- (f) liens for collision;
- (g) liens for master's disbursements incurred in the ordinary course of trading;
- (h) statutory and common law liens of carriers, warehousemen, mechanics, suppliers, materials men, repairers or other similar liens, including maritime liens, in each case arising in the ordinary course of business, outstanding for not more than one month whose aggregate value does not exceed US\$500,000; and
- (i) solely for the period from the date of this Agreement up to and including the date on which a Vessel becomes a Secured Vessel, Security Interests relating to such Vessel created pursuant to the terms of the relevant Existing Credit Facility in favour of the lenders under such facility,

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

**Pro Rata Share** means:

- (a) for the purpose of determining a Lender's share in a utilisation of the Facility, the proportion which its Commitment bears to the Total Commitments; and
- (b) for any other purpose on a particular date:
  - (i) the proportion which a Lender's share of the Loan (if any) bears to the Loan;
  - (ii) if the Loan is not then outstanding on that date, the proportion which its Commitment bears to the Total Commitments on that date; or
  - (iii) if the Total Commitments have been cancelled, the proportion which its Commitment bore to the Total Commitments immediately before being cancelled.

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**Quarter Day** means 31 March, 30 June, 30 September, 31 December in each year provided always that such date is a Business Day.

**Rate Fixing Day** means two (2) London Business Days before the first day of a Term, or unless market practice differs in the London interbank market for a currency, in which case the Rate Fixing Day for that currency will be determined by the Facility Agent in accordance with market practice in the London interbank market (and if quotations would normally be given by leading banks in the London interbank market on more than one day, the Rate Fixing Day will be the last of those days).

**Reference Banks** means BNP Paribas, and DNB Capital LLC and any other bank or financial institution appointed as such by the Facility Agent (acting on the instructions of the Majority Lenders) under this Agreement.

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

- (a) the Obligatory Insurances;
- (b) the Bareboat Charters;
- (c) the Time Charters;
- (d) the Management Agreement; and
- (e) the Charter Guarantees.

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

**Remaining Quarterly Periods** means, in respect of any relevant date by reference to which the Remaining Quarterly Periods are to be determined, each of the remaining quarterly periods commencing at the end of the quarterly period in which such relevant date occurs and ending on the Final Maturity Date.

**Removed Vessels** means any Vessel which (i) prior to the Amendment Date was treated as a Secured Vessel and as of the Amendment Date, is not treated as a Secured Vessel or (ii) in relation to an MSC Vessel only, such MSC Vessel as from the relevant MSC Vessel Sale Date.

**Repayment Date** means a date on which a Repayment Instalment is required to be made in accordance with Clause 5.2

**Repayment Instalment** has the meaning given to it in Clause 5.2.

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

**Required Insurance Amount** means, in respect of a Secured Vessel, at any date of determination, 125% of the proportion of the aggregate principal amount of the outstanding Loan which is equal to the proportion that the latest Market Value of that Vessel bears to the aggregate of the latest Market Values of all of the Secured Vessels.

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

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

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

**Retention Accounts** means the Retention Account and the Debt Service Retention Account.

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

**SAFE** means the State Administration of Foreign Exchange of the People’s Republic of China.

**SCLL** means Seaspan Container Lines Limited.

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

**Seaspan Group** means:

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

For the purposes of paragraph (c) **control** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract or otherwise and **controls** and **controlled** shall be construed in like manner.

**Second Debt Service Retention Account Charge** means the second priority fixed charge or, as the case may be, pledge in respect of all moneys standing to the credit from time to time of the Debt Service Retention Account granted or to be granted by the Borrower in favour of the Facility Agent on or before the Amendment Date, together with any and all notices and acknowledgments entered into in connection therewith.

**Second Retention Account Charge** means the second priority fixed charge or, as the case may be, pledge in respect of all moneys standing to the credit from time to time of the Retention Account granted or to be granted by the Borrower in favour of the Facility Agent on or about the Amendment Date, together with any and all notices and acknowledgments entered into in connection therewith.

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

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**Secured Vessel** means (subject to Clause 5.3) any Vessel which, at the relevant time, has been delivered to the Borrower and in relation to which the Borrower has executed the Security Agreements set out in Part B of Schedule 2 (Initial Condition Precedent Documents), provided that if at any time a Vessel is not insured in accordance with the terms of the relevant Mortgage, then for so long as such Vessel is not so insured, such Vessel shall, if the Facility Agent determines, cease to be a Secured Vessel.

**Secured Vessel Removal Proceeds** means an amount equal to the market value of the Secured Vessel which is removed, such market value to be calculated in accordance with Clause 18.1(a) of the Credit Agreement by reference to valuations which are not more than thirty (30) days old on the date of the removal of such Secured Vessel.

**Security Agreements** means:

- (a) the Mortgages;
- (b) the Deeds of Covenant;
- (c) the Swap Mortgages;
- (d) the Swap Deeds of Covenant;
- (e) the Insurances Assignments;
- (f) the Management Agreement Assignment;
- (g) the Time Charter, Charter Guarantee and Earnings Assignments;
- (h) the Bareboat Charter and Earnings Assignment;
- (i) the Retention Account Charge;
- (j) the Second Retention Account Charge;
- (k) the Debt Service Retention Account Charge;
- (l) the Second Debt Service Retention Account Charge;
- (m) the Manager's Undertaking;
- (n) the Swap Agreement Assignments; and
- (o) any other document designated as such in writing by the Borrower and the Facility Agent.

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

**Security Document** means:

- (a) each Security Agreement; and
- (b) any other document evidencing or creating security over any asset of the Borrower to secure any obligation of the Borrower to the Finance Parties or any of them under the Finance Documents, together with any and all notices and acknowledgements entered into and in connection therewith.



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

**Selection Notice** means a notice substantially in the form set out in Schedule 5 given in accordance with Clause 8.

**Shipbuilding Contract** means in respect of a Vessel, the agreement between the Builder and relevant Original Owner (or, if applicable, the Borrower) or as assigned to the Original Owner by Seaspam (Cyprus) Limited, and as amended, pursuant to which the Builder agreed to build and deliver that Vessel to the Borrower.

**Subsidiary** means:

- (a) a subsidiary within the meaning of section 736 of the Companies Act 1985; and
- (b) unless the context otherwise requires, a subsidiary undertaking within the meaning of section 258 of the Companies Act 1985.

**Supplementary Mandatory Prepayment Amount** means an amount equal to 2% of the amount of any valuation of a Secured Vessel determined pursuant to Clause 6.4 and Clause 6.5 as the context requires.

**Swap Agreement Assignment** means, in respect of each Swap Agreement, the assignment of that Swap Agreement to be granted by the Borrower in favour of the Facility Agent (for and on behalf of itself and the Finance Parties) in the form attached at Appendix 7, together with any and all notices and acknowledgements entered into in connection therewith.

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

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

**Swap Deed of Covenants** means, in respect of a Secured Vessel, the deed of covenants entered into or to be entered into by the Borrower and the Swap Counterparties (or any agent or security trustee on their behalf) collateral to the Swap Mortgage over that Vessel in the form of Appendix 6.

**Swap Mortgage** means:

- (a) in respect of a Secured Vessel (other than an MSC Vessel), the second priority Hong Kong ship mortgage to be given by the Borrower in favour of the Swap Counterparties (or any agent or security trustee on their behalf); and
- (b) in respect of an MSC Vessel, the second preferred Panamanian ship mortgage to be given by the Borrower in favour of the Swap Counterparties (or any agent or security trustee on their behalf).

in each case in the form attached at Appendix 5.

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

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

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

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

**Term** means each period determined under Clause 7 or Clause 8 of this Agreement by reference to which interest payable on the Loan or an overdue amount is calculated.

**Time Charter** means, in respect of a Vessel (other than an MSC Vessel), the time charterparty set out in Part 1 of Schedule 1 (Original Parties) or, in respect of any Vessel, such other time charterparty entered into from time to time in respect of such Vessel in accordance with this Agreement.

**Time Charter, Charter Guarantee and Earnings Assignment** means, in respect of a Secured Vessel (other than an MSC Vessel), the assignment of the Time Charter, any Charter Guarantee and the Earnings granted or to be granted by the Borrower in favour of the Facility Agent in the form attached at Appendix 8 (or in such other form as may be approved by the Facility Agent acting on the instructions of the Majority Lenders, it being agreed and acknowledged that such form shall be amended to delete references to a Charter Guarantee where a Charter Guarantee is not required as a part of the approval of a Time Charter by the Facility Agent in accordance with Clause 16.24(a), Clause 16.24(c), Clause 16.25(c) or Clause 16.25(d) ), together with any and all notices and acknowledgements entered into in connection therewith;

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

**Total Loss** means in relation to a Secured Vessel:

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

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**Total Loss Proceeds** means:

- (i) the proceeds of any policy or contract of insurance arising in respect of a Total Loss; or
- (ii) the proceeds comprising Requisition Compensation,

actually and unconditionally received by the Borrower following the Total Loss of a Secured Vessel.

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

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

**US** means the United States of America

**US Tax Obligor** means

the Borrower some or all of whose payments under the Finance Documents (other than a Swap Agreement) are from sources within the United States for US federal income tax purposes. **Utilisation Date** means each date on which the Facility or any part thereof is utilised.

**Vessels** means, subject to Clause 5.4, each of the CSCL Vessels, Hapag-Lloyd Vessels and the MSC Vessels and **Vessel** means any of them.

## 1.2 Construction

- (a) In this Agreement, unless the contrary intention appears, a reference to:
  - (i) an **amendment** includes a supplement, novation, restatement or re-enactment and **amended** will be construed accordingly;
  - (ii) **assets** includes present and future properties, revenues and rights of every description;
  - (iii) an **authorisation** includes an authorisation, consent, approval, resolution, licence, exemption, filing, registration or notarisation;
  - (iv) **disposal** means a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary, and **dispose** will be construed accordingly;
  - (v) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money;
  - (vi) a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality and their successors in title, permitted assigns and permitted transferees;
  - (vii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

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

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## **2. FACILITY AND PURPOSE**

### **2.1 Facility**

Subject to the terms of this Agreement, the Lenders make available to the Borrower a term loan facility in a maximum aggregate amount equal to the Maximum Facility Amount.

### **2.2 Purpose**

The Loan may be used only in or towards:

- (a) financing the cost of acquiring a Vessel or Vessels;
- (b) refinancing the whole or any part of the cost of any Vessel or Vessels which have been purchased by the Borrower and financed by debt or equity; or
- (c) general corporate purposes of the Borrower.

### **2.3 No obligation to monitor**

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

### **2.4 Nature of a Finance Party's rights and obligations**

Unless otherwise agreed by all the Finance Parties:

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

## **3. CONDITIONS PRECEDENT**

### **3.1 Conditions precedent documents**

- (a) The Loan shall not be drawn down until the Facility Agent has notified the Borrower and the Lenders that it is satisfied that immediately following the drawing of the Loan, the Loan to Value Ratio shall not exceed the Borrowing Base Advance Ratio. The Facility Agent must give this notification to the Borrower and the Lenders promptly upon being so satisfied.

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- (b) The Loan shall not be drawn down until the Facility Agent has received all of the documents and evidence set out in Part 1 of Schedule 2 (Initial Condition Precedent Documents) in form and substance satisfactory to the Facility Agent.
  - (c) A Vessel shall not be considered a Secured Vessel until the Facility Agent has notified the Borrower and the Lenders that it has received all of the documents and evidence set out in Part 2 of Schedule 2 (Initial Condition Precedent Documents) in form and substance satisfactory to the Facility Agent or that it expects to receive outstanding documents or evidence on or before the date that a Vessel is to become a Secured Vessel for the purpose of the Borrowing Base Advance Ratio. The Facility Agent must give this notification to the Borrower and the Lenders promptly upon being so satisfied.
  - (d) Immediately following the date upon which a Vessel becomes a Secured Vessel (and in any event no later than ten (10) Business Days of a Vessel becoming a Secured Vessel), the Borrower shall provide to the Facility Agent all documents and evidence set out in Schedule 3 (Conditions Subsequent to Loan) in form and substance satisfactory to the Facility Agent.
  - (e) The conditions specified in this Clause which have been satisfied prior to the Amendment Date following drawing down by the Borrower of the Loan in full in accordance with Clause 4.3(e) shall not be required to be satisfied again on or after the Amendment Date (unless otherwise specified in the Amending and Restating Agreement).

### **3.2 Further conditions precedent**

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

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

## **4. UTILISATION**

### **4.1 Giving of Requests**

- (a) The Borrower may borrow the Loan by giving to the Facility Agent a duly completed Request.
- (b) Unless the Facility Agent otherwise agrees, the latest time for receipt by the Facility Agent of a duly completed Request is 11.00 a.m. (Paris time) four (4) Business Days prior to the date of the proposed borrowing.
- (c) Each Request is irrevocable.

### **4.2 Completion of Requests**

A Request for the Loan will not be regarded as having been duly completed unless:

- (a) the Utilisation Date is a Business Day falling within the Availability Period;
- (b) the Utilisation Date does not fall before the Delivery Date of any Vessel that will be included in the calculation of the Loan to Value Ratio for the purposes of Clause 3.1(a);

- (c) the amount requested does not exceed, when aggregated with the amounts drawn down or to be drawn down under any other Requests the Maximum Facility Amount; and
- (d) the proposed Term complies with this Agreement.

#### 4.3 Advance of Loan

- (a) The Facility Agent must promptly and in any event one (1) Business Day before the Rate Fixing Day notify each Lender of the details of the requested Loan and the amount of its share in the Loan.
- (b) The amount of each Lender's share of the Loan will be its Pro Rata Share on the proposed Utilisation Date.
- (c) No Lender is obliged to participate in the Loan if, as a result, its share in the Loan would exceed its Commitment.
- (d) If the conditions set out in this Agreement have been met, each Lender must make its share in the Loan available by the Utilisation Date through its Facility Office.
- (e) For the avoidance of doubt, prior to the date on which the Borrower made the prepayment referred to in Clause 5.1 the Loan was outstanding in the amount of \$1,032,744,620.

### 5. REPAYMENT

#### 5.1 Prepayment on the Amendment Date

On or before the Amendment Date, the Borrower made a prepayment or prepayments, resulting in a Maximum Facility Amount of \$433,800,000. By agreement among the Lenders that prepayment has been applied as follows:

<u>Name of Lender</u>	<u>Outstanding Loan balance prior to Prepayment (US\$)</u>	<u>Amount of Prepayment or Prepayments (US\$)</u>	<u>Outstanding Loan balance due to Lender on the Amendment Date (US\$)</u>
BNP Paribas	87,386,083.24	11,783,787.70	75,602,295.54
Bank of Scotland plc	49,253,974.18	19,253,974.18	30,000,000.00
Citibank N.A.—London	71,497,704.46	—	71,497,704.46
Credit Suisse AG	121,546,097.58	52,146,097.58	69,400,000.00
DNB Capital LLC	87,386,083.23	12,386,083.23	75,000,000.00
HSH Nordbank AG, New York branch	71,497,704.46	21,497,704.46	50,000,000.00
Landesbank Hessen—Thüringen Girozentrale, New York Branch	95,330,272.62	51,030,272.62	44,300,000.00
Sumitomo Mitsui Banking Corporation, Brussels Branch	27,804,662.85	9,804,662.85	18,000,000.00

The Governor and Company of the Bank of Ireland	39,720,946.92	39,720,946.92	—
Belfius Bank SA/NV	39,720,946.92	39,720,946.92	—
Bremer Landesbank Kreditanstalt Oldenburg—Girozentrale	39,720,946.92	39,720,946.92	—
Crédit Agricole Corporate and Investment Bank	27,804,662.85	27,804,662.85	—
Credit Industriel et Commercial	39,720,946.92	39,720,946.92	—
KfW	63,553,515.08	63,553,515.08	—
Lloyds Bank plc	39,720,946.92	39,720,946.92	—
Santander Asset Finance plc (formerly Alliance & Leicester Commercial Finance plc)	27,804,662.85	27,804,662.85	—
Swedbank AB (publ)	39,720,946.92	39,720,946.92	—
Unicredit Bank AG	63,553,515.08	63,553,515.08	—
<b>Total:</b>	<b>1,032,744,620.00</b>	<b>598,944,620.00</b>	<b>433,800,000.00</b>

## 5.2 Repayment after the Amendment Date

- (a) The Borrower must repay the Facility by
- (i) 20 quarterly repayment instalments as follows (each a “**Repayment Instalment**”):
    - (A) the first five such instalments in the amount of US\$7,680,000; and
    - (B) the next 15 such instalments in the amount of US\$10,360,000; and
  - (ii) the Balloon;
- the first such Repayment Instalment shall be repaid on the date falling four months from the Amendment Date, the next 19 Repayment Instalments shall be repaid on the following 19 quarters thereafter and the Balloon shall be repaid on the Final Maturity Date (each such date a “**Repayment Date**”).
- (b) No amounts repaid under Clause 5.1 or this Clause 5.2 may be reborrowed.
- (c) The Loan shall in any event be repaid in full on the Final Maturity Date.



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### 5.3 Effect of Prepayments

Subject to the Borrower's payment of the prepayment amounts set out in Clause 5.1 together with any payments of interest, as applicable:

- (a) on the Amendment Date, the CSCL Sydney, CSCL New York, CSCL Melbourne, CSCL Brisbane, CSCL Oceania and CSCL Africa shall cease to be Vessels and Secured Vessels for all purposes under this Agreement and the other Finance Documents, and Clause 6.5 (Mandatory Prepayment – Removal of a Secured Vessel) and Clause 6.6 (Voluntary prepayment) shall be disappplied, to the extent that they would otherwise impose different requirements under this Agreement in respect of those Vessels' removal as Secured Vessels;
- (b) on a MSC Vessel Sale Date, that MSC Vessel shall cease to be a Vessel and Secured Vessel for all purposes under this Agreement and the other Finance Documents, and Clause 6.5 (Mandatory Prepayment – Removal of a Secured Vessel) and Clause 6.6 (Voluntary prepayment) shall be disappplied, to the extent that they would otherwise impose different requirements under this Agreement in respect of that Vessel's removal as a Secured Vessel and the Lenders shall release their security in respect of that particular MSC Vessel in accordance with Clause 20.7(d); and
- (c) those Lenders listed as the Prepaid Lenders in Schedule 1, Part 2 will be fully released from their further obligations as Lender under this Agreement from the Amendment Date, but such release shall not affect any obligations (or liabilities relating to such obligations) with respect to payments or other obligations due and payable or due to be performed before the Amendment Date and all such payments and obligations shall remain the responsibility of the Prepaid Lenders.

## 6. PREPAYMENT AND CANCELLATION

### 6.1 Mandatory prepayment – illegality

- (a) If it becomes, or to the knowledge of any Lender is to become, unlawful in any jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or a Finance Document or to fund or maintain its share in the Loan (the **Event of Illegality**), that Lender shall notify the Facility Agent and the Borrower.
- (b) After notification under paragraph (a) above, the Borrower and that Lender shall thereafter consult with each other and use reasonable commercial efforts for a period of thirty (30) days or in the event that the Event of Illegality takes effect before the expiration of thirty (30) days, for the maximum number of days available before the Event of Illegality takes effect with a view to restructuring the Facility in such a way as to avoid the effect of the Event of Illegality.
- (c) If agreement cannot be reached between the parties within the period specified in paragraph (b) above:
  - (i) the Borrower shall repay the share of that Lender in the Loan on the date specified in paragraph (d) below to the extent required to resolve the illegality; and
  - (ii) the Commitment of that Lender will be immediately cancelled.
- (d) The date for repayment of a Lender's share in the Loan will be:
  - (i) the last day of the current Term of the Loan; or
  - (ii) if earlier, the date specified by that Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by Applicable Law).

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**6.2 Mandatory prepayment – Change of Control of Borrower**

- (a) The Borrower must promptly notify the Facility Agent if it becomes aware of a Change of Control.
- (b) After notification under paragraph (a) above or if the Facility Agent otherwise becomes aware of the same, the Facility Agent may (acting on the instructions of the Majority Lenders), by notice to the Lenders and the Borrower delivered to the Borrower at any time within thirty (30) days of such notification:
  - (i) cancel the Facility; and
  - (ii) declare the outstanding Loan to be promptly, and in any event within thirty (30) days, due and payable.

Any such notice will take effect in accordance with its terms.

**6.3 Mandatory prepayment – Termination of Time Charter or Bareboat Charter**

- (a) Unless the Borrower complies with the provisions of Clause 16.25(c) (Termination of Time Charter) or the Facility Agent receives additional security satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders), upon the termination of a Time Charter in accordance with 16.25(b) (Termination of Time Charter) or the Bareboat Charter, the Borrower shall be obliged to prepay the outstanding Loan to the extent necessary to ensure that the Loan to Value Ratio is no greater than the Borrowing Base Advance Ratio.
- (b) Unless the Borrower complies with the provisions of Clause 16.25(d) (Termination of Time Charter) or the Facility Agent receives additional security satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders), upon the termination or the expiration of a majority of the Time Charters associated with any Charterer (as set out in Clause 16.25(d)), the Borrower shall be obliged to prepay the outstanding Loan to the extent necessary to ensure that the Loan to Value Ratio is no greater than the ratios set out in Clause 16.25(d)(i).
- (c) All prepayments under this Clause 6.3 will be applied pro rata against the Repayment Instalments and the Balloon then outstanding.
- (d) Clause 6.3 shall not apply to the termination of any time charter or bareboat charter for a MSC Vessel.

**6.4 Mandatory prepayment – Sale or Total Loss of a Secured Vessel**

- (a) The Borrower shall, immediately on receipt of the same, credit to the Retention Account the Net Sale Proceeds or Net Total Loss Proceeds received by the Borrower in respect of a Secured Vessel the subject of a sale, proposed sale or Total Loss, as the case may be.
- (b) Such proceeds shall remain in the Retention Account for a period of thirty (30) days (the **Waiting Period**) during which the Facility Agent shall be entitled to procure valuations of the Secured Vessels (including the value of the Secured Vessel that is

the subject of such sale, proposed sale or Total Loss) in accordance with Clause 18 (Valuation), such valuations to be at the cost of the Borrower other than where the most recent valuations are less than thirty (30) days old at the beginning of the Waiting Period, in which event the cost of any such valuations shall be for the account of the Lenders. At the end of the Waiting Period the Borrower shall prepay the Loan in an amount equal to the Relevant Amount.

- (c) All prepayments under this Clause 6.3(a) will be applied pro rata against the Repayment Instalments and the Balloon then outstanding.
- (d) For the purposes of this Clause 6.4:

**Relevant Amount** means in relation to any sale, proposed sale or Total Loss of a Secured Vessel, the aggregate of:

- (i) the lower of A or B, where:

**A** is an amount which is equal to the higher of (x) the amount of the Net Sale Proceeds or the Net Total Loss Proceeds (as the case may be) and (y) the amount that when applied to the Loan would result in the Loan to Value Ratio being the same as it was immediately prior to the date of the completion of the sale of the Secured Vessel, the date of withdrawal or cancellation of the relevant purchase agreement for the Secured Vessel, or the date of its Total Loss (as the case may be), and

**B** is an amount that when applied to the Loan would result in the Loan to Value Ratio being equal to the Borrowing Base Advance Ratio after the date of the completion of the sale of the Secured Vessel, the date of withdrawal or cancellation of the relevant purchase agreement for the Secured Vessel, or the date of its Total Loss (as the case may be); and

- (ii) where the Borrower is required to pay an amount equal to A above, the Supplementary Mandatory Prepayment Amount.

- (e) Clause 6.4 shall not apply to the sale or Total Loss of any MSC Vessel.

#### **6.5 Mandatory Prepayment – Removal of a Secured Vessel**

- (a) The Borrower may elect to remove a Vessel from inclusion as a Secured Vessel by:
  - (i) notifying the Facility Agent of the removal of the Secured Vessel; and
  - (ii) after any valuation has been obtained pursuant to Clause 6.5(b), prepaying the outstanding Loan in an amount equal to the Relevant Amount.

The Secured Vessel will be no longer considered a Secured Vessel upon the Facility Agent confirming that the prepayment required in paragraph (ii) above has occurred.

- (b) The Facility Agent shall be entitled to procure valuations of all Secured Vessels including the Secured Vessel the subject of the removal in accordance with Clause 18 (Valuation), such valuations to be at the cost of the Borrower other than where the most recent valuations are less than thirty (30) days old, in which event the cost of any such valuations shall be for the account of the Lenders.

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(c) All prepayments under this Clause 6.5 will be applied pro rata against the Repayment Instalments and the Balloon then outstanding.

(d) For the purpose of this Clause 6.5:

**Relevant Amount** means in relation to any removal of a Secured Vessel, the aggregate of:

(i) the lower of A or B, where:

**A** is an amount which is equal to the higher of (x) the amount of the Secured Vessel Removal Proceeds and (y) the amount that when applied to the Loan would result in the Loan to Value Ratio after the removal of the Secured Vessel being the same as it was immediately prior to its removal, and

**B** is an amount that when applied to the Loan would result in the Loan to Value Ratio being equal to the Borrowing Base Advance Ratio after the removal of the Secured Vessel; and

(ii) where the Borrower is required to pay an amount equal to A above, the Supplementary Mandatory Prepayment Amount.

#### **6.6 Voluntary prepayment**

(a) The Borrower may, by giving not less than five (5) days' prior written notice to the Facility Agent, prepay the Loan in whole or from time to time in part on the last day of any Term.

(b) A prepayment must be in a minimum amount of US\$2,000,000 and in integral multiples of US\$1,000,000 if in excess of US\$2,000,000.

(c) Any voluntary prepayment under this Clause 6.6 will be applied pro rata against the Repayment Instalments and the Balloon.

#### **6.7 No re-borrowing of the Loan**

No prepayment of the Loan may be re-borrowed.

#### **6.8 Miscellaneous provisions**

(a) Any notice of prepayment and/or cancellation under this Agreement is irrevocable and must specify the relevant date(s).

(b) All prepayments under this Agreement must be made with accrued interest on the amount prepaid. All prepayments shall also be subject to Break Costs in respect of any amounts prepaid to the Lenders in accordance with Clause 24.3 (Break Costs).

(c) No prepayment or cancellation is allowed except in accordance with the express terms of this Agreement.

#### **6.9 Right of replacement or repayment and cancellation in relation to a single Lender**

(a) If:

(i) any sum payable to any Lender by the Borrower is required to be increased under Clause 10.1 (*Tax gross-up*);

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- (ii) any Lender claims indemnification from the Borrower under Clause 10.2 (*Tax indemnity*) or Clause 11.1 (*Increased costs*); or
  - (iii) at any time on or after the date which is two months before the earliest FATCA Application Date for any payment by a Party to a Lender (or to the Facility Agent for the account of that Lender), that Lender is not, or has ceased to be, a FATCA Exempt Party and, as a consequence, a Party will be required to make a FATCA Deduction from a payment to that Lender (or to the Facility Agent for the account of that Lender) on or after that FATCA Application Date;

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification or FATCA Deduction continues, give the Facility Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Loan or give the Facility Agent notice of its intention to replace that Lender in accordance with paragraph (d) below.

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of the interest period for each Term which ends after the Borrower has given notice of cancellation under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in the Loan together with all interest and other amounts accrued under the Finance Documents.
- (d) The Borrower may, in the circumstances set out in paragraph (a) above, on 10 Business Days' prior notice to the Facility Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 28.2 all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 28.2 for a purchase price in cash or other cash payment payable at the time of the transfer equal to the outstanding principal amount of such Lender's participation in the Loan and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents.
- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
  - (i) the Borrower shall have no right to replace the Facility Agent;
  - (ii) neither the Facility Agent nor any Lender shall have any obligation to find a replacement Lender;
  - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (iv) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.

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- (f) A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Facility Agent and the Borrower when it is satisfied that it has complied with those checks.

## **7. INTEREST**

### **7.1 Calculation of interest**

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

### **7.2 Payment of interest**

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

### **7.3 Interest on overdue amounts**

- (a) If the Borrower fails to pay any amount payable by it under the Finance Documents, it must immediately on demand by the Facility Agent pay interest on the overdue amount from its due date up to the date of actual payment, both before, on and after judgment.
- (b) If the overdue amount is a principal amount of the Loan or is an amount accruing in respect of interest on the Loan and becomes due and payable prior to the last day of its current Term, then:
- (i) the first Term for that overdue amount will be the unexpired portion of that Term and the rate of interest on the overdue amount for that first Term will be two (2) per cent. per annum above the Interest Rate; and
  - (ii) thereafter, any subsequent Term for that overdue amount shall be selected by the Facility Agent (acting on the instructions of the Majority Lenders, acting reasonably) who may select successive Terms of any duration up to six (6) months, and the rate of interest on the overdue amount will be two (2) per cent. per annum above the Interest Rate.

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

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

#### **7.4 Notification of rates of interest**

The Facility Agent must promptly notify each Party of the determination of a rate of interest under this Agreement.

### **8. TERMS**

#### **8.1 Selection**

- (a) The Borrower may select the Term for the Loan in the Selection Notice. Subject to paragraphs (f) below, the Borrower may select each subsequent Term in respect of the Loan in a separate Selection Notice.
- (b) Each Selection Notice is irrevocable and must be delivered to the Facility Agent by the Borrower not later than 11 am (Paris time) on the Amendment Date, and not later than 11 am (Paris time) on the date falling 3 Business Days before the first day of each Term thereafter.
- (c) If the Borrower fails to select a Term in the first Selection Notice or fails to deliver a Selection Notice to the Facility Agent in accordance with paragraphs (a) and (b) above, the relevant Term will, subject to Clause 8.2 and paragraph (h) below, be three Months.
- (d) Subject to this Clause 8, the Borrower may select Term of one, two, three or six Months or any other period agreed between the Borrowers and the Facility Agent.
- (e) In respect of a Repayment Instalment, a Term for a part of the Loan equal to such Repayment Instalment shall end on the Repayment Date relating to it if such date is before the end of the Term then current. For the avoidance of doubt, the first Term following the Amendment Date shall end on the first Repayment Date following the Amendment Date.
- (f) The Loan shall have one Term only at any time.

#### **8.2 Changes to Term**

If after the Borrower has selected a Term longer than three months, any Lender notifies the Facility Agent at least two Business Days prior to the first day of the relevant Term that it is not satisfied that deposits in Dollars for a period equal to the Term will not be available to it in the relevant interbank market when the Term commences, the Facility Agent shall shorten the Term to three months.

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**8.3 No overrunning the Final Maturity Date**

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

**8.4 Other adjustments**

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

**9. MARKET DISRUPTION****9.1 Failure of the Reference Bank to supply a rate**

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

**9.2 Market disruption**

- (a) A market disruption event shall arise where:
  - (i) no, or only one, Reference Bank supplies a rate by 11.00 a.m. on the Rate Fixing Day; or
  - (ii) the Facility Agent receives by close of business on the Rate Fixing Day notification from any Lender or Lenders whose aggregate shares in the Loan exceed 35% of the Loan that the cost to them of obtaining matching deposits in the relevant interbank market is in excess of LIBOR for the relevant Term.
- (b) The Facility Agent must promptly notify the Borrower and the Lenders of a market disruption event.
- (c) After notification under paragraph (b) above, the rate of interest on the Loan for the relevant Term will be the aggregate of the applicable:
  - (i) Margin; and
  - (ii) the rate notified to the Facility Agent by those Lenders as soon as practicable, and in any event before interest is due to be paid in respect of that Term, to be that which expresses as a percentage rate per annum the cost to those Lenders of funding the Loan from whatever source each of them may reasonably select; and
  - (iii) the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.



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### **9.3 Alternative basis of interest or funding**

- (a) If a market disruption event occurs and the Facility Agent or the Borrower so require, the Borrower and the Facility Agent must enter into negotiations for a period of not more than thirty (30) days with a view to agreeing to an alternative basis for determining the rate of interest and/or funding for the Loan.
- (b) Any alternative basis agreed between the Borrower and the Facility Agent will be, with the prior written consent of all the Lenders, binding on all the Parties hereto.

## **10. TAXES**

### **10.1 Tax gross-up**

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

### **10.2 Tax Indemnity**

Without prejudice to the provisions of Clause 10.1 (Tax gross-up), if any Lender is required to make any payment on account of Tax solely as a result of its entry into any Finance Document (not being a Tax imposed on the net income of a Lender or its Facility Office by the jurisdiction in which it is incorporated, or the jurisdiction in which its Facility Office is located or on the capital of that Lender employed in such jurisdiction or jurisdictions) on any sum received or receivable under the Finance Documents (including, without limitation, any sum received or receivable under this Clause 10.2) or any liability in respect of any such payment is asserted, imposed, levied or assessed against a Lender, the Borrower shall (within three (3) Business Days of demand by the Facility Agent) indemnify that Lender against such payment or liability, together with any interest, penalties and expenses payable or incurred in connection therewith. This Clause 10.2 shall not apply to the extent that a payment or liability, together with any interest penalties and expenses payable or incurred in connection therewith is compensated for under paragraph (d) of Clause 10.9.

### **10.3 Tax Credit**

If a Lender or, as the case may be, the Facility Agent, determines (acting in its absolute discretion and in accordance with its internal policies), that it has received, realised, utilised and retained a Tax benefit by reason of any deduction or withholding in respect of which the Borrower has made an

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increased payment or paid a compensating sum under this Clause 10 that Lender or, as the case may be, the Facility Agent shall, provided it has received all amounts which are then due and payable by the Borrower under any of the provisions of this Agreement and the other Finance Documents, pay to the Borrower (to the extent that Lender or, as the case may be, the Facility Agent can do so without prejudicing the amount of that benefit and the right of that Lender, or as the case may be, the Facility Agent to obtain any other benefit, relief or allowance which may be available to it), such amount, if any, as that Lender, or as the case may be, the Facility Agent shall determine (acting in its absolute discretion and in accordance with its internal policies), will leave that Lender, or as the case may be, the Facility Agent in no better and no worse position than it would have been in if the deduction or withholding had not been required and so that it retains no benefit as a result of the receipt of such deduction.

#### **10.4 Notification of Claim**

A Lender making, or intending to make, a claim under Clause 10.2 (Tax Indemnity) shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Borrower.

#### **10.5 Conduct of Business by the Finance Parties**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

#### **10.6 Stamp taxes**

The Borrower must pay and indemnify each Finance Party against any stamp duty, registration or other similar Tax payable by a Finance Party in connection with the entry into, performance or enforcement of any Finance Document, except for any such Tax payable in connection with entering into a Transfer Certificate.

#### **10.7 Value added taxes**

Any amount (including costs and expenses) payable under a Finance Document by the Borrower is exclusive of any value added tax or any other Tax of a similar nature which might be chargeable in connection with that amount. If any such Tax is chargeable, the Borrower must pay to the relevant Finance Party (in addition to and at the same time as paying that amount) an amount equal to the amount of that Tax.

#### **10.8 FATCA information**

- (a) Subject to paragraph (c) below, each Party must, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and

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- (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA (including information required under the US Treasury Regulations or other official guidance including intergovernmental agreements) as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.
  - (b) If a Party confirms to another Party pursuant to 10.8(a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party must notify that other Party reasonably promptly.
  - (c) A Finance Party is not obliged to do anything which would or might in its reasonable opinion constitute a breach of:
    - (i) any law or regulation;
    - (ii) any fiduciary duty; or
    - (iii) any duty of confidentiality.
  - (d) If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party then such Party may be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party ,until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

#### **10.9 FATCA Deduction and gross-up by Borrower**

- (a) If the Borrower is required to make a FATCA Deduction, the Borrower must make that FATCA Deduction and any payment required in connection with that FATCA Deduction within the time allowed and in the minimum amount required by FATCA.
- (b) If a FATCA Deduction is required to be made by the Borrower, the amount of the payment due from the Borrower must be increased to an amount which (after making any FATCA Deduction) leaves an amount equal to the payment which would have been due if no FATCA Deduction had been required.
- (c) The Borrower must promptly upon becoming aware that the Borrower must make a FATCA Deduction (or that there is any change in the rate or the basis of a FATCA Deduction) notify the Facility Agent accordingly. Similarly, a Finance Party must notify the Facility Agent on becoming so aware in respect of a payment payable to that Finance Party. If the Facility Agent receives such notification from a Finance Party it must notify the Borrower.

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- (d) Within thirty days of making either a FATCA Deduction or any payment required in connection with that FATCA Deduction, the Borrower making that FATCA Deduction or payment must deliver to the Facility Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the FATCA Deduction has been made or (as applicable) any appropriate payment paid to the relevant governmental or taxation authority.

**10.10 FATCA Deduction by a Finance Party**

- (a) Each Finance Party may make any FATCA Deduction it is required by FATCA to make, and any payment required in connection with that FATCA Deduction, and no Finance Party must be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction. A Finance Party which becomes aware that it must make a FATCA Deduction in respect of a payment to another Party (or that there is any change in the rate or the basis of such FATCA Deduction) must notify that Party and the Facility Agent.
- (b) If the Facility Agent is required to make a FATCA Deduction in respect of a payment to a Finance Party which relates to a payment by the Borrower, the amount of the payment due from the Borrower will be increased to an amount which (after the Facility Agent has made such FATCA Deduction), leaves the Facility Agent with an amount equal to the payment which would have been made by the Facility Agent if no FATCA Deduction had been required.
- (c) The Facility Agent must promptly upon becoming aware that it must make a FATCA Deduction in respect of a payment to a Finance Party which relates to a payment by the Borrower (or that there is any change in the rate or the basis of such a FATCA Deduction) notify the Borrower and the relevant Finance Party.
- (d) The Borrower must pay to a Finance Party an amount equal to the loss, liability or cost which that Finance Party determines will be or has been (directly or indirectly) suffered by that Finance Party as a result of another Finance Party making a FATCA Deduction in respect of a payment due to it under a Finance Document. This paragraph will not apply to the extent a loss, liability or cost is compensated for by an increased payment under paragraph (b) above.
- (e) A Finance Party making, or intending to make, a claim under paragraph (d) above must promptly notify the Facility Agent of the FATCA Deduction which will give, or has given, rise to the claim, following which the Facility Agent must notify the Borrower.

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**10.11 Tax Credit and FATCA**

If the Borrower makes a FATCA Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that FATCA Payment forms part, to that FATCA Payment or to a FATCA Deduction in consequence of which that FATCA Payment was required; and
- (b) that Finance Party has obtained, utilised and retained that Tax Credit,

the Finance Party must pay an amount to the Borrower which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the FATCA Payment not been required to be made by the Borrower.

**11. INCREASED COSTS****11.1 Increased Costs**

Except as provided below in this Clause 11, the Borrower must pay to a Finance Party the amount of any Increased Cost incurred by that Finance Party or its Subsidiaries, or its Affiliates as a result of:

- (a) the introduction of, or any change in, or any change in the interpretation or application of, any law or regulation of general application to financial institutions in the jurisdiction of such Finance Party; or
- (b) compliance with any law or regulation,

made after the Amendment Date provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act of the United States and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or any other regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law contemplated by this Clause 11, regardless of the date enacted, adopted or issued.

**11.2 Exceptions**

The Borrower need not make any payment for an Increased Cost to the extent that the Increased Cost is:

- (a) compensated for under another Clause or would have been but for an exception to that Clause;
- (b) a Tax on the overall net income of the relevant Finance Party or any of its Subsidiaries;
- (c) attributable to the relevant Finance Party or any of its Affiliates or Subsidiaries wilfully failing to comply with any law or regulation;
- (d) compensated for by the payment of Mandatory Cost; or

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- (e) attributable to a FATCA Deduction required to be made by a Party pursuant to Clause 10.9 and 10.10.

### **11.3 Claims**

If a Finance Party intends to make a claim for an Increased Cost it must notify the Borrower promptly of the circumstances giving rise to, and the amount of, the claim.

### **11.4 Mitigation**

- (a) Each Finance Party must, in consultation with the Borrower, use its best endeavours to mitigate any circumstances which arise and which result or would result in any Increased Cost being payable to that Finance Party.
- (b) The Borrower must indemnify that Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of any step taken by it under paragraph (a) above.
- (c) A Finance Party is not obliged to take any step under this Subclause if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

### **11.5 Replacement of Lender**

Following a claim by a Lender for an Increased Cost, the Borrower shall, with the consent of the Facility Agent (acting on the instructions of the Majority Lenders), be entitled to oblige such Lender to transfer its Commitment to a Lender or new lender pursuant to the terms of Clause 28 (Changes to the Parties).

## **12. RETENTION ACCOUNTS**

### **12.1 Maintenance of Retention Accounts**

The Borrower shall maintain the Retention Accounts with the Account Bank until the Final Maturity Date, free of Security Interests and rights of set-off other than as created by or pursuant to the Security Documents.

### **12.2 Transfers to Retention Account**

- (a) The Borrower shall procure that upon receipt of any amounts representing proceeds of a sale of a Vessel or proceeds following a Total Loss of a Secured Vessel or proceeds following the termination of a Time Charter, such amounts are paid into the Retention Account.
- (b) Upon the occurrence of an Event of Default which is continuing, the Borrower shall procure that all Earnings in respect of the Secured Vessels are transferred into the Retention Account.

### **12.3 Application of Retention Account**

- (a) In the event that a mandatory prepayment obligation arises under Clause (a) (Unless the Borrower complies with the provisions of Clause 16.25(c) (Termination of Time Charter) or the Facility Agent receives additional security satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders), upon the termination of a Time Charter in accordance with 16.25(b) (Termination of Time Charter) or the Bareboat Charter, the Borrower shall be obliged to prepay the outstanding Loan to the extent necessary to ensure that the Loan to Value Ratio is no greater than the Borrowing Base Advance Ratio.

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- (b) Unless the Borrower complies with the provisions of Clause 16.25(d) (Termination of Time Charter) or the Facility Agent receives additional security satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders), upon the termination or the expiration of a majority of the Time Charters associated with any Charterer (as set out in Clause 16.25(d)), the Borrower shall be obliged to prepay the outstanding Loan to the extent necessary to ensure that the Loan to Value Ratio is no greater than the ratios set out in Clause 16.25(d)(i).
  - (c) All prepayments under this Clause 6.3 will be applied pro rata against the Repayment Instalments and the Balloon then outstanding.
  - (d) Clause 6.3 shall not apply to the termination of any time charter or bareboat charter for a MSC Vessel.
  - (e) Mandatory prepayment – Sale or Total Loss of a Secured Vessel) upon a sale or Total Loss of a Secured Vessel, the Borrower shall procure that there is transferred from the Retention Account (and irrevocably authorises the Facility Agent to instruct the Account Bank to transfer from the Retention Account) to the Facility Agent, in prepayment of the Loan, any amounts as may be required pursuant to Clause 6.3(a) to ensure that the Loan to Value Ratio is less than the Borrowing Base Advance Ratio. Unless an Event of Default shall have occurred and be continuing, the balance of the proceeds of a sale or Total Loss of the relevant Secured Vessel following such transfer from the Retention Account may be released to such other account as the Borrower shall designate.
  - (f) In the event that a charter termination event arises under Clause 16.25(b) (Termination of Time Charter), the Borrower shall procure that there is transferred from the Retention Account (and irrevocably authorises the Facility Agent to instruct the Account Bank to transfer from the Retention Account):
    - (i) if the Borrower locates a substitute charterer in accordance with Clause 16.25(c) or 16.25(d), to such other account as the Borrower may designate, the charter termination amount relating to the relevant Secured Vessel; or
    - (ii) if a mandatory prepayment obligation arises under Clause 6.3 to the Facility Agent in prepayment of the Loan an amount necessary to ensure that the Loan to Value Ratio is no greater than the Borrowing Base Advance Ratio.
  - (g) Following the occurrence of an Event of Default which is continuing, any moneys standing to the credit of the Retention Account shall be applied in accordance with Clause 13.7 (Payments).

#### **12.4 Debt Service Retention Account**

- (a) The Borrower shall procure that at all times the credit balance on the Debt Service Retention Account is at least equal to the Debt Service Retention Account Amount.
- (b) For the purposes of determining the Debt Service Retention Account Amount, the Borrower shall provide to the Facility Agent not less than 30 days prior to the date of the next Term its determination of the Expected Cash Flow for that Term, which the Borrower may update at any time prior to the date of that Repayment Instalment if the Borrower becomes aware of material facts or circumstances that in its view, acting reasonably, would increase or decrease the amount of the Expected Cash Flow by an amount exceeding US\$500,000.

**12.5 Additional payments to Debt Service Retention Account and minimum balance**

If for any reason the amount in the Debt Service Retention Account is less than the Debt Service Retention Account Amount, the Borrower shall, without demand, procure that there is credited to the Debt Service Retention Account, at least 10 Business Days before the next Repayment Date, an amount equal to the amount of the shortfall.

**12.6 Borrower's obligations not affected**

If for any reason the amount in the Debt Service Retention Account is less than Debt Service Retention Account Amount, the Borrower's obligations to pay that Repayment Instalment shall not be affected.

**12.7 Restriction on withdrawal**

During the term of the Facility, no sum may be withdrawn from the Retention Accounts (except in accordance with this Clause 12) without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders).

**13. PAYMENTS**

**13.1 Place**

(a) Unless a Finance Document specifies that payments under it are to be made in another manner, all payments by a Party (other than the Facility Agent) under the Finance Documents must be made to the Facility Agent as below or such other account in the United States of America as it may notify to that Party for this purpose by not less than five (5) Business Days' prior notice:

NAME OF CORRESPONDENT BANK AND LOCATION :	BNP PARIBAS – NEW YORK
SWIFT BIC :	BNPAUS3NXXX
ACCOUNT NAME :	BNP PARIBAS PARIS
BENEFICIARY'S SWIFT BIC :	BNPAFRPPCFI
ACCOUNT NUMBER :	00200 194093 001 36
ABA NUMBER :	026 007 689
REF:	BOCI/CFI 2/ DOSSIER SEASPAN

(b) Notwithstanding paragraph (a) above, any payment to be made under the Finance Documents by the Facility Agent to a Lender shall be made in accordance with that Lender's Standing Payment Instruction.



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### 13.2 Funds

Payments under the Finance Documents to the Facility Agent must be made for value on the due date at such times and in such funds as the Facility Agent may specify to the Party concerned as being customary at the time for the settlement of transactions in the relevant currency in the place for payment.

### 13.3 Distribution

- (a) Each payment received by the Facility Agent under the Finance Documents for another Party must, except as provided below, be made available by the Facility Agent to that Party by payment (as soon as practicable after receipt) to its account with such office or bank as it may notify to the Facility Agent for this purpose by not less than five (5) Business Days' prior notice.
- (b) The Facility Agent may apply any amount received by it from the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards the purchase of any amount of any currency to be so applied.
- (c) Where a sum is paid to the Facility Agent under this Agreement for another Party, the Facility Agent is not obliged to pay that sum to that Party until it has established that it has actually received it. However, the Facility Agent may assume that the sum has been paid to it, and, in reliance on that assumption, make available to that Party a corresponding amount. If it transpires that the sum has not been received by the Facility Agent, that Party must immediately on demand by the Facility Agent refund any corresponding amount made available to it together with interest on that amount from the date of payment to the date of receipt by the Facility Agent at a rate calculated by the Facility Agent to reflect its cost of funds.
- (d) For the purposes of this Clause 13 (Payments) **Standing Payment Instruction** means:
  - (i) in relation to a Lender which is a Lender on the date of this Agreement, payment instructions set below the name of that Lender in Schedule 11 (Standing Payment Instructions); or
  - (ii) in relation to a Lender which becomes a Lender after the date of this Agreement, payment instructions set out in the Transfer Certificate to which that Lender is a party, or such other payment instructions the Lender may notify to the Facility Agent by not less than five (5) Business Days' notice.

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#### 13.4 Currency

All amounts payable under the Finance Documents are payable in Dollars provided always that amounts payable in respect of costs and expenses are payable in the currency in which those costs and expenses are incurred.

#### 13.5 No set-off or counterclaim

All payments made by the Borrower under the Finance Documents must be made without set-off or counterclaim.

#### 13.6 Business Days

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

#### 13.7 Payments

- (a) Subject always to the provisions of the DPP, if any Administrative Party receives a payment insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, then, except to the extent otherwise provided in any Finance Document, all the proceeds of the enforcement of the security conferred by the Security Agreements shall be applied by the Administrative Party towards the obligations of the Borrower under the Finance Documents in the following order:
  - (i) **first**, in or towards payment or satisfaction *pro rata* of all costs, charges, sales taxes, expenses and liabilities incurred and payments made by the Finance Parties (other than the Swap Counterparties) or any receiver and all remuneration payable to the Finance Parties (other than the Swap Counterparties) or any receiver under or pursuant to the Security Documents including, without limitation, legal expenses, re-instatement costs and any costs incurred in recovering possession of the Security Assets;
  - (ii) **second**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Finance Parties (other than the Swap Counterparties) to the extent not recovered under paragraph (i) above under this Agreement and the Security Documents;
  - (iii) **third**, in or towards payment *pro rata* of any accrued but unpaid interest payable to the Finance Parties (other than the Swap Counterparties) under this Agreement and the Security Documents;
  - (iv) **fourth**, in or towards payment *pro rata* of any Break Costs of the Lenders due but unpaid and payable to the Finance Parties (other than the Swap Counterparties) under this Agreement and the Security Documents;

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- (v) **fifth**, in or towards payment *pro rata* of any principal in respect of this Agreement and the Security Documents (other than anything owing to the Swap Counterparties under the Swap Agreements) due but unpaid;
  - (vi) **sixth**, in or towards payment *pro rata* to the Finance Parties (other than the Swap Counterparties) of any other amounts which are due but unpaid by the Borrower to any of the Finance Parties (other than the Swap Counterparties) under the Finance Documents in such order as the Finance Parties (other than the Swap Counterparties) shall in their absolute discretion determine;
  - (vii) **seventh**, in or towards payment of any unpaid interest, fees, costs and expenses of the Swap Counterparties under the Swap Agreements and the Swap Mortgages;
  - (viii) **eighth**, in or towards payment of any Break Costs of the Swap Counterparties due but unpaid under the Swap Agreements;
  - (ix) **ninth**, in or towards payment to the Swap Counterparties of any other amounts which are or may become owing by the Borrower to any of the Swap Counterparties under the Swap Agreement;
  - (x) **tenth**, after all amounts payable or which may become payable under the Finance Documents have been paid in full and the Finance Documents have been discharged and the payments under subparagraph (x) have been made, in or towards payment of the surplus, if any, to the Borrower or other persons entitled thereto.
- (b) The Facility Agent must, if so directed by all the Lenders, vary the order set at subparagraphs 13.7(a)(ii) to 13.7(a)(vi) above.
  - (c) This Clause 13.7 will override any appropriation made by the Borrower.

### 13.8 Timing of payments

If a Finance Document does not provide for when a particular payment is due, that payment will be due within three (3) Business Days of demand by the relevant Finance Party.

## 14. REPRESENTATIONS

### 14.1 Representations

The representations set out in this Clause 14 are made, unless otherwise stated, by the Borrower to the Finance Parties.

### 14.2 Status

- (a) It is a corporation, duly incorporated and validly existing under the laws of the Republic of the Marshall Islands.
- (b) It and each of its Subsidiaries, if any, has the power to own its assets and carry on its business as it is being conducted.
- (c) No person or group other than the Seaspam Group owns or will beneficially own more than fifty (50) per cent. of the aggregate outstanding voting power of the equity interests of the Borrower.
- (d) It is not a FATCA FFI or a US Tax Obligor

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**14.3 Powers and authority**

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.

**14.4 Legal validity**

Subject to any general principles of law limiting its obligations and referred to in any legal opinion required under this Agreement, each Finance Document to which it is a party is its legally binding, valid and enforceable obligation.

**14.5 Non-conflict**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents to which it is a party do not conflict in any material respect with:

- (a) any law or regulation applicable to it;
- (b) its or any of its Subsidiaries' constitutional documents; or
- (c) any document which is binding upon it or any of its Subsidiaries or any of its or its Subsidiaries' assets.

**14.6 No Default**

- (a) No Default is outstanding or will result from the execution of, or the performance of any transaction contemplated by, any Finance Document.
- (b) No other event is outstanding which constitutes a default under any document which is binding on it or any of its Subsidiaries or any of its or its Subsidiaries' assets to an extent or in a manner which is reasonably likely to have a Material Adverse Effect.

**14.7 Authorisations**

Except for registration of (a) the Mortgages at the Hong Kong Shipping Register, and in respect of the relevant MSC Vessel, the Panamanian Ship Registry, (b) any Security Agreement creating a charge over Security Assets of the Borrower with the Hong Kong Registrar of Companies or (c) any relevant Security Agreement under the Companies Act 1985, all authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Finance Documents have been obtained or effected (as appropriate) and are in full force and effect.

**14.8 Financial statements**

The audited consolidated financial statements of the Borrower most recently delivered to the Facility Agent (or, until delivery of the first audited financial statements, the Original Balance Sheet) together with any other financial information supplied to the Facility Agent by the Borrower:

- (a) have been prepared in accordance with U.S. GAAP, consistently applied;
- (b) have been audited in accordance with U.S. GAAP; and
- (c) fairly represent its financial condition (consolidated, if applicable) as at the date to which they were drawn up, except, in each case, as disclosed to the contrary in those financial statements or other information.

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**14.9 No material adverse change**

There has been no material adverse change in the ability of the Borrower to make all the required payments under this Agreement or the validity or enforceability of this Agreement since the date of incorporation of the Borrower or following the receipt by the Facility Agent of an Annual Compliance Certificate, since the date of the then latest Annual Compliance Certificate.

**14.10 Litigation**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency (including, but not limited to, investigative proceedings) which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against the Borrower.

**14.11 Pari passu ranking**

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

**14.12 Taxes on payments**

All amounts payable by it to the Facility Agent under the Finance Documents and the Related Contracts may be made without any Tax Deduction.

**14.13 Stamp duties**

Except as notified in writing to and accepted by the Facility Agent, no stamp or registration duty or similar Tax or charge is payable in its jurisdiction of incorporation in respect of any Finance Document or Related Contract.

**14.14 Environment**

At and at all times after the Applicable Time, and except as may already have been disclosed by the Borrower in writing to the Facility Agent:

- (a) the Borrower and its Environmental Representatives have, without limitation, complied with the provisions of all applicable Environmental Laws in relation to each Secured Vessel;
- (b) the Borrower and its Environmental Representatives have obtained all requisite Environmental Approvals in relation to each Secured Vessel and are in compliance with such Environmental Approvals;
- (c) neither the Borrower nor any of its Environmental Representatives have received notice of any Environmental Claim in relation to a Secured Vessel which alleges that the Borrower is not in compliance with applicable Environmental Laws in relation to such Secured Vessel or Environmental Approvals in relation to such Secured Vessel;
- (d) there is no Environmental Claim in relation to any Secured Vessel pending or threatened which is such that a first class Borrower or operator of vessels such as the Vessels, making all due enquiries and complying in all respects with its obligations under the ISM Code, ought to have known about; and

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- (e) there has been no Release of Hazardous Materials by or in respect of any Secured Vessel about which a first class Borrower or operator of vessels such as the Vessels making all due enquiries and complying in all respects with its obligations under the ISM Code ought to have known about.

**14.15 Security Interests**

No Security Interest exists over its or any of its Subsidiary's assets which would cause a breach of Clause 16.5 (Security Interests).

**14.16 Security Assets**

The Borrower is solely and absolutely entitled to the Security Assets over which it has or will create any Security Interest pursuant to the Security Documents to which it is, or will be, a party and there is no agreement or arrangement, other than in the DPP, under which it is obliged to share any proceeds of or derived from such Security Assets with any third party.

**14.17 ISM Code compliance**

In respect of each Secured Vessel, on and at all times following the Applicable Time in respect of that Vessel, the Borrower is in full compliance with the ISM Code in respect of that Vessel.

**14.18 ISPS Code Compliance**

In respect of each Secured Vessel, on and at all times following the Applicable Time in respect of that Vessel, the Borrower is in full compliance with the ISPS Code in respect of that Vessel.

**14.19 No amendments to Related Contracts**

Other than as notified to and agreed by the Facility Agent in writing, there have been no amendments to any of the Related Contracts.

**14.20 Money Laundering**

Any borrowing by the Borrower and the performance of its obligations hereunder and under the other Finance Documents to which it is a party will be for its own account and will not involve any breach by it of any law or regulatory measure relating to money laundering as defined in Article 1 of the Directive (91/308/EEC) of the Council of the European Communities or any equivalent law or regulatory measure in any other jurisdiction or article 305 bis of the Swiss Penal Code.

**14.21 Insolvency**

- (a) The Borrower is neither unable, nor admits or has admitted its inability, to pay its debts or has suspended making payments on any of its debts.
- (b) The Borrower, by reason of actual or anticipated financial difficulties neither has commenced, nor intends to commence, negotiations with one or more of its creditors with a view to rescheduling any of its Financial Indebtedness.
- (c) The value of the assets of the Borrower is not less than its liabilities (taking into account contingent and prospective liabilities).
- (d) No moratorium has been, or may, in the reasonably foreseeable future be, declared in respect of any indebtedness of the Borrower.
- (e) No reorganisation or liquidation of the Borrower has occurred.

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**14.22 Immunity**

- (a) The execution by it of each Finance Document to which it is a party constitutes, and the exercise by it of its rights and performance of its obligations under each such Finance Document will constitute, private and commercial acts performed for private and commercial purposes.
- (b) It will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to any Finance Document.

**14.23 No adverse consequences**

- (a) It is not necessary under the laws of its jurisdiction of incorporation:
  - (i) in order to enable the Facility Agent to enforce its rights under any Finance Document; or
  - (ii) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document, that the Facility Agent should be licensed, qualified or otherwise entitled to carry on business in its jurisdiction of incorporation; and
- (b) The Facility Agent will not be deemed to be resident, domiciled or carrying on business in its jurisdiction of incorporation by reason only of the execution, performance and/or enforcement of any Finance Document.

**14.24 Jurisdiction/governing law**

- (a) Its:
  - (i) irrevocable submission under this Agreement to the jurisdiction of the courts of England;
  - (ii) agreement that this Agreement is governed by English law; and
  - (iii) agreement not to claim any immunity to which it or its assets may be entitled, are legal, valid and binding under the laws of its jurisdiction of incorporation.
- (b) Any judgment obtained in England will be recognised and be enforceable by the courts of its jurisdiction of incorporation, subject to any statutory or other conditions of such jurisdiction.

**14.25 Charters**

On the date a Vessel becomes a Secured Vessel, any Time Charter in respect of that Vessel shall be in full force and effect.

**14.26 Times for making representations**

- (a) The representations set out in this Clause 14 are made by the Borrower on the date of this Agreement.

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- (b) Unless a representation is expressed to be given at a specific date, each representation is deemed to be repeated by the Borrower on the Amendment Date, on the date of each Request, the date the Loan is made and annually on each anniversary of the first Utilisation Date when the Borrower shall provide to the Facility Agent an Annual Compliance Certificate.
  - (c) When a representation is repeated, it is applied to the circumstances existing at the time of repetition.

## 15. INFORMATION COVENANTS

### 15.1 Financial statements

- (a) The Borrower must supply to the Facility Agent in sufficient copies (which may take the form of an electronic copy) for all the Lenders:
  - (i) its audited consolidated financial statements for each of its financial years ending after the date hereof;
  - (ii) its interim unaudited financial statements for the first half-year of each of its financial years; and
  - (iii) if and to the extent the Borrower is required by any Applicable Law to produce quarterly financial statements, the quarterly financial statements for the Borrower as the case may be for the first and third quarters of each of its financial years ending after the date hereof.
- (b) The Borrower must supply to the Facility Agent copies of the annual and the semi-annual financial statements of each of CSCL, CSCL Hong Kong and CSCL Asia for the relevant financial period as soon as such statements become publicly available, and if such statements are not made publicly available, then within 120 days of the end of the relevant financial period of such company.
- (c) The Borrower must supply to the Facility Agent copies of the audited financial statements of each Charterer and Charter Guarantor (to the extent that the Borrower is entitled to or does receive the same and the Borrower shall use all reasonable endeavours to include an obligation to provide the same in the relevant Time Charter and Charter Guarantee (in each case which are entered into following the Amendment Date) or otherwise to obtain a copy) for each of the relevant party's financial years within five (5) Business Days of such financial statements becoming available to the Borrower.
- (d) All financial statements must be supplied promptly after they are available and:
  - (i) in the case of audited financial statements of the Borrower, within 180 days of the end of the relevant financial period;
  - (ii) in the case of interim semi-annual financial statements of the Borrower, within ninety (90) days of the end of the relevant financial period; and
  - (iii) in the case of interim quarterly financial statements of the Borrower, within sixty (60) days of the end of the relevant financial period.
- (e) The Facility Agent shall send to each Lender all of the financial statements received by it under this Clause 15.1 within fifteen (15) days of receipt of such financial statements.



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**15.2 Form of financial statements**

- (a) The Borrower must ensure that each set of its financial statements supplied under this Agreement fairly represents the financial condition (consolidated or otherwise) of the Borrower as at the date to which those financial statements were drawn up.
- (b) The Borrower must notify the Facility Agent of any change to the basis on which its audited financial statements are prepared.
- (c) If requested by the Facility Agent, the Borrower must supply or procure that the following are supplied to the Facility Agent:
  - (i) a full description of any change notified under paragraph (b) above; and
  - (ii) sufficient information to enable the Facility Agent to make a proper comparison between the financial position shown by the set of financial statements prepared on the changed basis and its most recent audited consolidated financial statements delivered to the Facility Agent under this Agreement.
- (d) If requested by the Facility Agent, the Borrower must enter into discussions for a period of not more than thirty (30) days with a view to agreeing to any amendments required to be made to this Agreement to place the Facility Agent in the same position as it would have been in if the change had not happened.
- (e) If no agreement is reached under paragraph (d) above on the required amendments to this Agreement, the Borrower must ensure that its auditors certify those amendments; the certificate of the auditors will be, in the absence of manifest error, binding on all the Parties.

**15.3 Compliance Certificate**

- (a) The Borrower must supply to the Facility Agent a Compliance Certificate in the form attached at Schedule 7 on a quarterly basis (the first such Compliance Certificate to be provided on the first Quarter Day following the date of the first drawdown under the Facility).
- (b) The Borrower must supply to the Facility Agent an Annual Compliance Certificate in the form attached at Schedule 8 with each set of its financial statements sent to the Facility Agent under this Agreement.
- (c) Each Compliance Certificate supplied by the Borrower shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 17 (Financial Covenants) and must be signed by its chief financial officer or chief executive officer.

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**15.4 Access to Books and Records**

Upon the request of the Facility Agent, the Borrower shall provide the Facility Agent and any of its representatives, professional advisors and contractors with access to, and permit inspection of, its books and records, in each case at reasonable times and upon reasonable notice.

**15.5 Information—miscellaneous**

The Borrower must supply to the Facility Agent in sufficient copies (which may take the form of an electronic copy) for all the Lenders:

- (a) copies of all documents despatched by it to its creditors generally or any class of them at the same time as they are despatched;
- (b) copies of all notices and minutes relating to any Extraordinary General Meeting of its shareholders at the same time as they are despatched;
- (c) promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it and which might, if adversely determined, have a Material Adverse Effect; and
- (d) promptly on request, such further information, in sufficient copies for all the Lenders, regarding the financial condition and operations of the Borrower as the Facility Agent may reasonably request.

**15.6 Notification of Default**

- (a) Unless the Facility Agent has already been so notified, the Borrower must notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly on request by the Facility Agent but not more often than once in each period of 12 months, unless the Facility Agent, acting reasonably, believes an Event of Default has occurred and is continuing (in which event the Facility Agent shall be entitled to make such requests as and when it considers it appropriate to do so), the Borrower must supply to the Facility Agent a certificate, signed by two of its authorised signatories on its behalf, certifying that no Default is outstanding or, if a Default is outstanding, specifying the Default and the steps, if any, being taken to remedy it.

**15.7 Year end**

The Borrower may not change its financial year end.

**15.8 Use of Websites**

The Borrower acknowledges and agrees that any information under this Agreement may be delivered to a Lender (through the Facility Agent) on to an electronic website if:

- (a) the Facility Agent and the Lender agree;
- (b) the Facility Agent appoints a website provider and designates an electronic website for this purpose;
- (c) the designated website is used for communication between the Facility Agent and the Lenders;

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- (d) the Facility Agent notifies the Lenders of the address and password for the website; the information can only be posted on the website by the Facility Agent; and
  - (e) the information posted is in a format agreed between the Borrower and the Facility Agent.

The cost of the website shall be borne by the Borrower, subject to such cost being agreed by the Borrower beforehand.

Any website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the designated website. The Borrower shall at its own cost comply with any such request within ten Business Days.

## **16. GENERAL COVENANTS**

### **16.1 General**

The Borrower agrees to be bound by the covenants set out in this Clause 16 relating to it.

### **16.2 Authorisations**

The Borrower must promptly obtain, maintain and comply, in all material respects, with the terms of any authorisation required under any Applicable Law to enable it to perform its obligations under, or for the validity or enforceability of, any Finance Document.

### **16.3 Compliance with laws**

The Borrower must comply and must procure that the Manager complies in all respects with all Applicable Laws to which it is subject where failure to do so is reasonably likely to have a Material Adverse Effect.

### **16.4 Pari passu ranking**

The Borrower must ensure that its payment obligations under the Finance Documents rank at least *pari passu* with all its other present and future unsecured and unsubordinated payment obligations, except for obligations mandatorily preferred by law applying to companies generally.

### **16.5 Security Interests**

The Borrower shall not, and the Borrower shall procure that the Manager does not, create or permit to subsist any Security Interest over the Obligatory Insurances or any other Security Assets or any Related Contract other than:

- (a) Permitted Liens; or
- (b) with the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders).

### **16.6 No other business assets or Financial Indebtedness**

The Borrower shall not engage in any business other than the direct or indirect ownership, operation and chartering of container vessels and any business incidental thereto, nor shall the Borrower incur any Financial Indebtedness to be secured in any way on the Vessels, or any of them, or any other Security Asset other than the Financial Indebtedness contemplated by this Agreement or the Swap Agreements. The Borrower may incur any other indebtedness or issue guarantees against financial loss of any person on an unsecured basis or secured on assets which are not Security Assets.

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**16.7 Payment of dividends**

The Borrower shall not pay any dividends or make any other distributions (whether by loan or otherwise) to shareholders unless, under Applicable Law and accounting principles in its jurisdiction of incorporation it is entitled to distribute as dividends or such other distribution and no Event of Default has occurred and is continuing.

**16.8 Change of business**

- (a) The Borrower must ensure that no change is made to the general nature of its business from that carried on at the date of this Agreement other than the direct or indirect ownership, operation and chartering of container vessels and any business incidental thereto.
- (b) The Borrower must maintain its place of business, and keep its corporate documents and records, at Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands MH96960, and the Borrower will not establish, or do anything as a result of which it would be deemed to have, a place of business in any country other than the Republic of the Marshall Islands, provided that the Borrower may establish a place of business in, and may keep its corporate documents and records at, Hong Kong and Vancouver or either of them if the Facility Agent (acting on the instructions of the Majority Lenders) is satisfied that such establishment in such location does not adversely affect the validity, enforceability or effectiveness of any Security Agreement and does not give rise to any requirement under any Applicable Law for a Tax Deduction.

**16.9 Mergers**

The Borrower shall not enter into any amalgamation, demerger, merger or reconstruction otherwise than under an intra-group re-organisation on a solvent basis or other transaction agreed by the Facility Agent (acting on the instructions of the Majority Lenders).

**16.10 Security**

The Borrower:

- (a) will procure, at the Applicable Time, that the relevant Mortgage is, and continues to be, registered as a first priority mortgage on the Hong Kong Shipping Register and in respect of the relevant MSC Vessel, on the Panamanian Ship Registry;
- (b) without prejudice to paragraph (a) will procure that the Mortgages and any other security conferred by it under any Security Document are registered as a first priority interest with the relevant authorities within the period prescribed by the Applicable Laws and is maintained and perfected with the relevant authorities;
- (c) will at its own cost, use best efforts to ensure that any Finance Document validly creates the obligations and Security Interests which it purports to create; and
- (d) without limiting the generality of paragraph (a) above, will at its own cost, promptly register, file, record or enrol any Finance Document with any court or authority, pay any stamp, registration or similar tax payable in respect of any Finance Document, give any notice or take any other step which, in the reasonable opinion of the Facility Agent, is or has become necessary or desirable for any Finance Document to be valid, enforceable or admissible in evidence or to ensure or protect the priority of any Security Interest which it creates.

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**16.11 Transactions with affiliated companies**

The Borrower may not enter into any material transaction with any Affiliate of it unless it is either (a) to comply with any obligations the Borrower may have under the Finance Documents or (b) on an arm's length basis or on terms reasonably consistent with and having a substantially similar commercial effect to an arm's length transaction.

**16.12 Registration of the Vessels**

The Borrower shall and procure that the Manager shall:

- (a) procure and maintain with effect from, the Applicable Time, the valid and effective provisional registration of the Secured Vessels under the flag of Hong Kong, and in respect of the relevant MSC Vessel, under the flag of Panama, and shall effect permanent registration of the Vessel within two months from the Applicable Time, or such other flag of equivalent reputation as is satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders, such approval not to be unreasonably withheld), and shall ensure nothing is done or omitted by which the registration of the Secured Vessels would or might be defeated or imperilled; and
- (b) not change the name or port of registration of the Secured Vessels without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders) (such consent not to be unreasonably withheld).

**16.13 Left deliberately blank****16.14 Classification and repair**

The Borrower will, and will procure that the Manager will from the Applicable Time:

- (a) ensure that the Secured Vessels are surveyed from time to time as required by the classification society in which the Vessel is for the time being entered and maintain and preserve the Vessel in good working order and repair, ordinary wear and tear excepted, and in any event in such condition as will entitle each to the classification that it has as of the Delivery Date with Lloyds Register of Shipping or Det Norske Veritas, (or to the equivalent classification in another internationally recognised classification society of like standing acceptable to the Facility Agent (acting on the instructions of the Majority Lenders)), free of all overdue requirements and recommendations of that classification society;
- (b) procure that all repairs to or replacement of any damaged, worn or lost parts or equipment shall be effected in such manner (both as regards workmanship and quality of materials) as not to diminish the value of the Secured Vessels;
- (c) not remove any material part of any of the Secured Vessels, or any item of equipment installed on any of the Secured Vessels unless the part or item so removed is forthwith replaced by a suitable part or item which is in the same condition as or better condition than the part or item removed, is free from any Security Interest (other than a Permitted Security Interest) or any right in favour of any person other than the Facility Agent and becomes on installation on that Secured Vessel the property of the Borrower and subject to the security constituted by the relevant Security Document(s) provided that the Borrower may install and remove equipment owned by a third party if the equipment can be removed without any risk of damage to a Secured Vessel;

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- (d) ensure that each Secured Vessel complies with all Applicable Laws from time to time applicable to vessels registered under the laws and flag of Hong Kong and, in respect of the relevant MSC Vessel, under the flag of Panama, or such other flag, under which that Secured Vessel may be registered from time to time in accordance with this Agreement; and
  - (e) not without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders) (such consent not to be unreasonably withheld), cause or permit to be made any substantial change in the structure, type or performance characteristics of any of the Secured Vessels and provide notification of such substantial changes in structure, type or performance characteristics of any of the Secured Vessels to the Facility Agent and, furthermore, provide confirmation to the Facility Agent that such substantial change in structure, type or performance characteristics of any of the Secured Vessels shall not result in a breach of any covenant under this Agreement.

#### **16.15 Lawful and Safe Operation**

The Borrower will, and will procure that the Manager will, at all times after the Applicable Time:

- (a) operate each Secured Vessel and cause each of the Secured Vessels to be operated in a manner consistent in all material respects with any and all laws, regulations, treaties and conventions (and all rules and regulations issued thereunder) from time to time applicable to that Vessel;
- (b) not cause or permit any of the Secured Vessels to trade with, or within the territorial waters of any country in which her safety could reasonably be expected to be imperilled by exposure to piracy, terrorism, arrest, requisition, confiscation, forfeiture, seizure, destruction or condemnation as prize;
- (c) not cause or permit any of the Secured Vessels to be employed in any manner which will or may give rise to any reasonable degree of likelihood that such Vessel would be liable to requisition, confiscation, forfeiture, seizure, destruction or condemnation as prize;
- (d) not cause or permit any of the Secured Vessels to be employed in any trade or business which is forbidden by international law or is illicit or in carrying illicit or prohibited goods;
- (e) in the event of hostilities in any part of the world (whether war be declared or not) not cause or permit any of the Secured Vessels to be employed in carrying any contraband goods and that she does not trade in any zone after it has been declared a war zone by any authority or by any of that Vessel's war risks Insurers unless that Vessel's Insurers shall have confirmed to the Borrower that such Vessel is held covered under the Obligatory Insurances for the voyage(s) in question; and
- (f) not charter any of the Secured Vessels or permit any of the Secured Vessels to serve under any contract of affreightment with any foreign country or national of any foreign country which would be contrary to Applicable Law or would render any Finance Document or the security conferred by the Security Documents unlawful.

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**16.16 Repair of the Vessels**

The Borrower will not and will procure that the Manager will not, at any time after the Applicable Time, put any of the Secured Vessels into the possession of any person for the purpose of work being done upon her beyond the amount of US\$5,000,000 (or equivalent), other than for classification or scheduled dry docking unless such person shall have given an undertaking to the Facility Agent not to exercise any lien on that Vessel or Obligatory Insurances for the cost of that work or otherwise.

**16.17 Arrests and Liabilities**

The Borrower will, and will procure that the Manager will, at all times after the Applicable Time:

- (a) pay and discharge all obligations and liabilities whatsoever which have given or may give rise to liens (other than liens arising in the ordinary course of operation of any of the Secured Vessels in each case for amounts the payment of which is not yet due or, if due and payable, is being disputed in good faith by appropriate proceeding (and for the payment of which adequate reserves have been provided or are and continue to be available)) on or claims enforceable against any of the Secured Vessels and take all reasonable steps to prevent a threatened arrest of any of the Secured Vessels;
- (b) notify the Facility Agent promptly in writing of the levy of either distress on any of the Secured Vessels or her arrest, detention, seizure, condemnation as prize, compulsory acquisition or requisition for title or use and (save in the case of compulsory acquisition or requisition for title or use) obtain her release within thirty (30) days;
- (c) pay and discharge when due all dues, taxes, assessments, governmental charges, fines and penalties lawfully imposed on or in respect of any of the Secured Vessels or the Borrower except those which are being disputed in good faith by appropriate proceedings (and for the payment of which adequate reserves have been provided or are and continue to be available) and provided that the continued existence of such dues, taxes, assessments, governmental charges, fines or penalties does not give rise to any reasonable degree of likelihood that any of the Secured Vessels would be liable to arrest, requisition, confiscation, forfeiture, seizure, destruction or condemnation as prize; and
- (d) pay and discharge all other obligations and liabilities whatsoever in respect of any of the Secured Vessels and the Obligatory Insurances except those which are being disputed in good faith by appropriate proceedings (and for the payment of which adequate reserves have been provided or are and continue to be available) and provided that the continued existence of those obligations and liabilities in respect of any of the Secured Vessels and the Obligatory Insurances does not give rise to any reasonable degree of likelihood that such Vessel would be liable to arrest, requisition, confiscation, forfeiture, seizure, destruction or condemnation as prize and provided always that each Secured Vessel remains properly managed and insured at all times in accordance with the terms of this Agreement.

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**16.18 Related Contracts**

The Borrower shall not take any action, enter into any document or agreement or omit to take any action or to enter into any document or agreement which would, or could reasonably be expected to, cause any Related Contract to cease to remain in full force and effect and shall use all reasonable endeavours to procure that each other party to any Related Contract does not take any action, enter into any document or agreement or omit to take any action or to enter into any document or agreement which would, or could reasonably be expected to, cause any Related Contract to cease to remain in full force and effect.

**16.19 Environment**

The Borrower shall, and shall procure that the Manager shall, at all times after the Applicable Time:

- (a) comply with all applicable Environmental Laws including, without limitation, requirements relating to the establishment of financial responsibility (and shall require that all Environmental Representatives of the Borrower comply with all applicable Environmental Laws and obtain and comply with all required Environmental Approvals, which Environmental Laws and Environmental Approvals relate to any of the Secured Vessels or her operation or her carriage of cargo); and
- (b) promptly upon the occurrence of any of the following events in relation to a Secured Vessel, provide to the Facility Agent a certificate of an officer of the Borrower or of the Borrower's agents specifying in detail the nature of the event concerned:
  - (i) the receipt by the Borrower or any Environmental Representative (where the Borrower has knowledge of the receipt) of any Environmental Claim; or
  - (ii) any Release of Hazardous Materials.

**16.20 Information regarding the Vessels**

The Borrower shall, and shall procure that the Manager shall, at all times after the Applicable Time:

- (a) promptly notify the Facility Agent of the occurrence of any accident, casualty or other event which has caused or resulted in or may cause or result in a Secured Vessel being or becoming a Total Loss;
- (b) promptly notify the Facility Agent of any requirement or recommendation made by any Insurer or classification society or by any competent authority which is not complied with in a timely manner;
- (c) annually provide the Facility Agent with a schedule setting outgoing and all intended dry dockings of any of the Secured Vessels, such schedule to form part of the Annual Compliance Certificate;
- (d) promptly notify the Facility Agent of any Environmental Claim being made in connection with any of the Secured Vessels or its operation;
- (e) promptly notify the Facility Agent of any claim for breach of the ISM Code being made in connection with any of the Secured Vessels or its operation;
- (f) promptly notify the Facility Agent of any claim for breach of the ISPS Code being made in connection with any of the Secured Vessels or its operation;



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- (g) give to the Facility Agent from time to time on request such information, in sufficient copies (which may take the form of electronic copies) for all the Lenders, as the Facility Agent may reasonably require regarding any of the Secured Vessels, her employment, position and engagements;
  - (h) provide the Facility Agent with copies of the classification certificate of the Vessels and of all periodic damage or survey reports on any of the Secured Vessels which the Facility Agent may reasonably request;
  - (i) promptly furnish the Facility Agent with full information of any casualty or other accident or damage to any of the Secured Vessels involving an amount in excess of US\$1,500,000 (or equivalent);
  - (j) give to the Facility Agent and its duly authorised representatives reasonable access to any of the Secured Vessels for the purpose of conducting on board inspections and/or surveys of such Secured Vessel and pay the reasonable expenses incurred by the Facility Agent in connection with the inspections and/or surveys provided that, unless a Default has occurred and is continuing, such inspections and/or surveys shall not take place at the expense of the Borrower and the Facility Agent shall co-operate with the Borrower in respect of the timing for and the place where such surveys take place in order to minimise disruption to the activities of such Secured Vessel; and
  - (k) if the Facility Agent reasonably believes an Event of Default may have occurred, furnish to the Facility Agent from time to time upon reasonable request certified copies of the ship's log in respect of any of the Secured Vessels.

**16.21 Provision of further information**

The Borrower shall, and shall procure that the Manager shall, as soon as practicable following receipt of a request by the Facility Agent, provide the Facility Agent, with sufficient copies for all the Lenders, with any additional or further financial or other information relating to any of the Secured Vessels, the Obligatory Insurances or to any other matter relevant to, or to any provision of, a Finance Document which the Facility Agent may reasonably request.

**16.22 Management**

The Borrower shall, and shall procure that the Manager shall, ensure that at all times after the Applicable Time:

- (a) the relevant Secured Vessel is managed by the Manager; and
- (b) no Manager shall terminate or materially vary the terms of its management or appoint an alternative manager, provided that the Borrower shall be entitled so to do with the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders).

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However, in the event that a Manager's appointment as manager of any one of the Secured Vessels ceases or is terminated in circumstances where it was not possible for the Borrower to obtain the prior written consent of the Facility Agent, the Borrower shall promptly and in any event within ten (10) days from the date of the termination of such Manager's appointment, provide to the Facility Agent details of a replacement manager, such manager to be satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders).

#### **16.23 Proceeds from sale or Total Loss of a Vessel**

- (a) The Borrower shall procure that the proceeds from a sale or Total Loss of the relevant Secured Vessel shall immediately upon receipt by the Borrower be paid into the Retention Account in accordance with Clause 12.2 for application by the Facility Agent in accordance with Clause 12.3, unless an Event of Default has occurred and is continuing, in which case the proceeds from a sale or Total Loss of such Vessel shall immediately upon receipt by the Borrower be paid to the Facility Agent for application in accordance with Clause 13.7 (Payments).
- (b) For and so long as the Borrower holds any such proceeds as referred to in paragraph (a) it shall do so on trust for the Facility Agent.
- (c) Clause 16.23 shall not apply to the sale or Total Loss of any MSC Vessel.

#### **16.24 Charters**

The Borrower shall be entitled to let its Vessels, in accordance with the terms of the Time Charters PROVIDED always that:

- (i) the Borrower shall remain liable under any time charter to perform all the obligations assumed by it under a Time Charter;
- (ii) the Facility Agent shall not be under any obligations or liability under any time charter or liable to make any payment under that Time Charter; and
- (iii) the Facility Agent shall not be obliged to enforce against any charterer any term of any Time Charter, or to make any enquiries as to the nature or sufficiency of any payment received by the Facility Agent.

#### **16.25 Termination of Time Charter**

- (a) At all times after the Applicable Time and until the Final Maturity Date, the Borrower shall advise the Facility Agent of any of the following events:
  - (i) any breach (other than a technical breach which is cured promptly) by the relevant Charterer or the Borrower of the terms of a Time Charter of which the Borrower becomes aware;
  - (ii) the termination of a Time Charter by either the Borrower or the relevant Charterer;
  - (iii) as soon as it becomes aware of such event, the occurrence of an event of cross default of the nature referred to in Clause 19.5 (Cross-default) in respect of a Charterer, PROVIDED always that such event shall not arise in respect of the Charterer where the aggregate amount of the relevant Financial Indebtedness of the Charterer is less than US\$50,000,000 or its equivalent; or

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- (iv) as soon as it becomes aware of such event, the occurrence of an insolvency event of the nature referred to in Clause 19.6 (Insolvency), 19.7 (Insolvency proceedings), 19.8 (Creditors' process) or 19.9 (Cessation of business) in respect of a Charterer, and upon the occurrence of any such event the Facility Agent shall be (acting on the instructions of the Majority Lenders) entitled to require that the Borrower exercises all of its rights under the relevant Time Charter including, where applicable, the termination of the Time Charter in respect of the relevant Vessel.
- (b) In the event of a termination of a Time Charter in accordance with Clause 16.25(a) or otherwise, in relation to which a charter termination fee is payable, such termination fee shall be payable into the Retention Account in accordance with Clause 12.2.
- (c) In the event of a termination of a Time Charter referred to in Clause 16.25(b) above or otherwise the Borrower shall, within ninety (90) days of such termination, enter into a substitute time charter with a charterer acceptable to the Lenders and with a term of at least the same remaining duration as the Time Charter which has terminated, such time charter to be in form and substance reasonably acceptable to the Facility Agent (acting on the instructions of the Majority Lenders) and the relevant charter termination fee shall be released to the Borrower in accordance with Clause 12.3(f)(i), failing which either:
- (i) the charter termination fee shall be applied by the Facility Agent in prepayment of the relevant Loan to the extent required to ensure that the Loan to Value Ratio is no greater than the Borrowing Base Advance Ratio, and if for any reason the amount of the charter termination fee shall be insufficient to make the prepayment described in this paragraph (i), the Borrower shall, without demand, provide the Facility Agent with an amount equal to the amount of the shortfall; or
- (ii) the Borrower shall provide or cause to be provided to the Facility Agent such additional security as is satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) so as to achieve the Loan to Value Ratio referred to in paragraph (i) above.
- (d) In the event of a termination or expiration for breach or any other reason or cause of at least 50.1% of the Time Charters in place at 11:59 pm GMT on the Amendment Date associated with any Charterer where either (i) such Charterer has at least three (3) Secured Vessels on charter or (ii) such Charterer has more than 50.1% of the Secured Vessels on charter at such time, the Borrower shall, within ninety (90) days of such termination or expiration, enter into suitable substitute time charters each with a charterer acceptable to the Lenders and, as a substitute for any Time Charter that has terminated, with a term of at least the same remaining duration as the Time Charter which has terminated, each such time charter to be in form and substance reasonably acceptable to the Facility Agent (acting on the instructions of all the Lenders), provided that, at the time of intended entry into such substitute, and as a condition to be satisfied before the Borrower does so, all amounts due and payable by the Borrower under the Facility have been paid and no due and payable amounts remaining outstanding, failing which the Borrower shall either:
- (i) prepay such amount of the outstanding Loans to the extent required to ensure that the Loan to Value Ratio is not more than (i) from the Amendment Date to May 31, 2017, 100%; (ii) from June 1, 2017 to May 31, 2018, 90% and (iii) from June 1, 2018 to May 31, 2019, 80%. ; or
- (ii) the Borrower shall provide or cause to be provided to the Facility Agent such additional security as is satisfactory to the Facility Agent (acting on the instructions of the Majority Lenders) so as to achieve the Loan to Value Ratio referred to in paragraph (i) above.

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- (e) Clause 16.25 shall not apply to the termination of any time charter for any MSC Vessel.

#### 16.26 Scope of Obligatory Insurances

The Borrower will, in respect of each Secured Vessel:

- (a) at all times after the Applicable Time for a Secured Vessel, keep that Vessel insured in the Required Insurance Amount, in Dollars in the name of the Borrower or (if the Facility Agent so requires) in the joint names of the Borrower and the Facility Agent without the Facility Agent being liable but having the right to pay premiums, through brokers approved by the Facility Agent (acting on the instructions of the Majority Lenders) against fire and usual marine risks (including hull and machinery and Excess Risks) with approved underwriters or insurance companies approved by the Facility Agent (acting on the instructions of the Majority Lenders) and by policies in form and content approved by the Facility Agent (acting on the instructions of the Majority Lenders);
- (b) at all times after the Applicable Time for a Secured Vessel, keep that Vessel insured in the Required Insurance Amount in the same manner as above against war risks (including risks of mines and all risks, whether or not regarded as war risks, London Blocking and Trapping Addendum and Lost Vessel Clause, excepted by the free of capture and seizure clauses in the standard form of Lloyds marine policy) either:
- (i) with underwriters or insurance companies approved by the Facility Agent (acting on the instructions of the Majority Lenders) and by policies in form and content approved by the Facility Agent (acting on the instructions of the Majority Lenders); or
  - (ii) by entering the relevant Vessel in an approved war risks association,
- (c) and for the avoidance of doubt, such war risks insurance will include protection and indemnity liability up to at least the Required Insurance Amount, excluding any liability in respect of death, injury or damage to crew;
- (d) at all times after the Applicable Time for a Secured Vessel, keep that Vessel entered in respect of her full value and tonnage in an approved protection and indemnity association against all risks as are normally covered by such protection and indemnity association (including pollution risks and the proportion not recoverable in case of collision under the running down clause inserted in the ordinary Lloyds policies), such cover for pollution risks to be for:
- (i) a minimum amount of US\$1,000,000,000 or such other amount of cover against pollution risks as shall at any time be comprised in the basic entry of each Vessel with either a protection and indemnity association which is an acceptable member of either the International Group of protection and indemnity associations (or any successor organisation designated by the Facility Agent for this purpose) or the International Group (or such successor organisation) itself; or
  - (ii) if the International Group or any such successor ceases to exist or ceases to provide or arrange any cover for pollution risks (or any supplemental cover for pollution risks over and above that afforded by the basic entry of each Vessel with its protection and indemnity association), such aggregate amount of cover against pollution risks as shall be available on the open market and by basic entry with a protection and indemnity association for ships of the same type, size, age and flag as each respective Vessel,

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- (e) provided that, if any Vessel has ceased trading or is in lay up and in either case has unloaded all cargo, the level of pollution risks cover afforded by ordinary protection and indemnity cover available through a member of the International Group or such successor organisation or, as the case may be, on the open market in such circumstances shall be sufficient for such purposes; and
  - (f) at all times after the Applicable Time for a Secured Vessel, whenever any Vessel is trading to Japanese territorial waters and when so required by the Facility Agent (acting on the instructions of the Majority Lenders), maintain in full force and effect social responsibility insurance in respect of the Vessel with underwriters or insurance companies approved by the Facility Agent (acting on the instructions of the Majority Lenders) and by policies in form and content approved by the Facility Agent (acting on the instructions of the Majority Lenders), provided always that a first class Borrower or operator of vessels such as the Vessels would maintain and effect such social responsibility insurance.

#### **16.27 Obligatory Insurances**

Without prejudice to its obligations under Clause 16.26 (Scope of Obligatory Insurances), the Borrower will:

- (a) not without the prior consent of the Facility Agent (acting on the instructions of the Majority Lenders) alter any Obligatory Insurance nor make, do, consent or agree to any act or omission which would or might render any Obligatory Insurance invalid, void, voidable or unenforceable or render any sum paid out under any Obligatory Insurance repayable in whole or in part;
- (b) not cause or permit any Secured Vessel to be operated in any way inconsistent with the provisions or warranties of, or implied in, or outside the cover provided by, any Obligatory Insurance or to be engaged in any voyage or to carry any cargo not permitted by any Obligatory Insurances without first covering the relevant Vessel in the relevant Required Insurance Amount and her freights for an amount approved by the Facility Agent (acting on the instructions of the Majority Lenders) in Dollars or another approved currency with the Insurers;
- (c) duly and punctually pay when due all premiums, calls, contributions or other sums of money from time to time payable in respect of any Obligatory Insurance;
- (d) renew all Obligatory Insurances at least fourteen (14) days before the relevant policies or contracts expire and procure that the approved brokers and/or war risks and protection and indemnity clubs and associations shall promptly confirm in writing to the Facility Agent as and when each renewal is effected;
- (e) forthwith upon the effecting of any Obligatory Insurance, give written notice of the insurance to the Facility Agent stating the full particulars (including the dates and amounts) of the insurance, and on request produce the receipts for each sum paid by it pursuant to paragraph (c) above;

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- (f) not settle, release, compromise or abandon any claim in respect of any Total Loss unless the Facility Agent (acting on the instructions of the Majority Lenders) is satisfied that such release, settlement, compromise or abandonment will not prejudice the interests of the Finance Parties under or in relation to any Finance Document;
  - (g) arrange for the execution and delivery of such guarantees as may from time to time be required by any protection and indemnity or war risks club or association;
  - (h) procure that the interest of the Facility Agent is noted on all policies of insurance;
  - (i) procure that a loss payee provision in the form scheduled to the Insurances Assignment and reflecting the provisions of Clause 16.28 (Application of Insurance Proceeds) is endorsed on all policies of insurance relating to the Secured Vessels;
  - (j) obtain from the relevant insurance brokers and P&I Club letters of undertaking in the forms scheduled to the Insurances Assignments; and
  - (k) in the event that the Borrower receives payment of any moneys under the Insurance Assignment, save as provided in the loss payable clauses scheduled to the Insurance Assignment, forthwith pay over the same to the Facility Agent and, until paid over, such moneys shall be held in trust for the Facility Agent by the Borrower.

#### **16.28 Application of Insurance Proceeds**

- (a) All sums receivable in respect of the Obligatory Insurances after the occurrence of an Event of Default shall be paid to the Facility Agent and the Facility Agent shall apply them in accordance with Clause 13.7 (Payments).
- (b) Subject to paragraph (a) above:
  - (i) each sum receivable in respect of a major casualty of a Secured Vessel (being any casualty in respect of which the claim or the aggregate of the claims exceeds US\$20,000,000 (or its equivalent)), other than in respect of protection and indemnity risk insurances, shall be paid to the Facility Agent; and
  - (ii) the insurance moneys received by the Facility Agent in respect of any such major casualty shall be paid:
    - (A) to the person to whom the relevant liability shall have been incurred; or
    - (B) upon the Borrower furnishing evidence satisfactory to the Facility Agent that all loss and damage resulting from the casualty has been properly made good and repaired, to the Borrower or, at the option of the Facility Agent, to the person by whom any repairs have been or are to be effected.
  - (iii) The receipt by any such person referred to in paragraph (A) and (B) of paragraph (ii) above shall be a full and sufficient discharge of the same to the Facility Agent.
- (c) Subject to paragraph (a) above, each sum receivable in respect of the Obligatory Insurances (insofar as the same are hull and machinery or war risks insurances) which does not exceed US\$20,000,000 or its equivalent shall be paid in full to the Borrower or to its order and shall be applied by it for the purpose of making good the loss and fully repairing all damage in respect of which the receivable shall have been collected.
- (d) Subject to paragraph (a) above, each sum receivable in respect of protection and indemnity risk Obligatory Insurances shall be paid direct to the person to whom the liability, to which that sum relates, was incurred, or to the Borrower in reimbursement to it of moneys expended in satisfaction of such liability.

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- (e) Notwithstanding any other provision in this Clause 16.28, all sums receivable in respect of Obligatory Insurances relating to a Total Loss shall be applied in accordance with Clause 13.7 (Payments).

**16.29 Power of Facility Agent to insure**

If the Borrower fails to effect and keep in force Obligatory Insurances in accordance with this Agreement, it shall be permissible, but not obligatory, for the Facility Agent to effect and keep in force insurance or insurances in the amounts required under this Agreement and entries in a protection and indemnity association or club and, if it deems necessary or expedient, to insure the war risks upon any Secured Vessel, and the Borrower will reimburse the Facility Agent for the costs of so doing.

**16.30 ISM Code**

The Borrower shall, and shall procure that the Manager shall:

- (a) at all times after the Applicable Time be responsible for compliance by itself and by each Secured Vessel with the ISM Code;
- (b) at all times after the Applicable Time ensure that:
  - (i) each Secured Vessel has a valid Safety Management Certificate (as defined in the ISM Code);
  - (ii) each Secured Vessel is subject to a safety management system (as defined in the ISM Code) which complies with the ISM Code; and
  - (iii) there is a valid Document of Compliance (as defined in the ISM Code), which is held on board the Secured Vessel,
- (c) and shall deliver to the Facility Agent, on or before the Applicable Time, a copy of a valid Safety Management Certificate and a valid Document of Compliance in respect of the relevant Vessel, in each case duly certified by an officer of the Borrower;
- (d) promptly notify the Facility Agent of any actual or, upon becoming aware of the same, threatened withdrawal of an applicable Safety Management Certificate or Document of Compliance;
- (e) promptly notify the Facility Agent of the identity of the person ashore designated for the purposes of paragraph 4 of the ISM Code and of any change in the identity of that person; and
- (f) promptly upon becoming aware of the same notify the Facility Agent of the occurrence of any accident or major non-conformity (as defined in the ISM Code) requiring action under the ISM Code.

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**16.31 ISPS Code**

The Borrower shall, and shall procure that the Manager shall, at all times after the Applicable Time:

- (a) comply and be responsible for compliance by itself and by each Secured Vessel with the ISPS Code;
- (b) ensure that:
  - (i) each Secured Vessel has a valid International Ship Security Certificate;
  - (ii) each Secured Vessel's security system and its associated security equipment comply with section 19.1 of Part A of the ISPS Code;
  - (iii) each Secured Vessel's security system and its associated security equipment comply in all respects with the applicable requirements of Chapter XI-2 of SOLAS and Part A of the ISPS Code; and
  - (iv) an approved ship security plan is in place.

**16.32 No amendment to Related Contracts**

The Borrower shall not amend or agree to any material amendment to the Related Contracts without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders).

**16.33 Hedging Strategy**

From the date of this Agreement until the Final Maturity Date, the Borrower shall maintain and implement the Hedging Policy.

**16.34 Dry Docking**

The Borrower shall procure that the Manager shall:

- (a) from time to time have sufficient liquid funds available to ensure that, on the date of the scheduled dry docking of a Secured Vessel, the Manager shall have sufficient available liquid funds to meet all of its obligations under the Management Agreement including, but not limited to, the cost of such scheduled dry docking in relation to that Vessel; and
- (b) provide to the Facility Agent a certificate signed by the chief executive officer of the Manager in the form of Schedule 9 on a semi-annual basis (the first such certificate to be provided six (6) months from the date of this Agreement).



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**16.35 Tonnage**

The Borrower shall procure that, at all times prior to the Final Maturity Date, the tonnage weighted average age of the Secured Vessels (calculated in a manner satisfactory to the Facility Agent but always excluding the Removed Vessels from such calculation), shall not at any time exceed sixteen years.

**16.36 SAFE approval**

In the event that CSCL obtains SAFE approval in relation to any guarantee of a time charter or bareboat charter provided by CSCL, the Borrower shall procure that CSCL obtains SAFE approval and any necessary SAFE registrations in relation to each Charter Guarantee provided by CSCL.

**16.37 Application of FATCA**

The Borrower must not, unless otherwise agreed by all the Finance Parties, become a FATCA FFI or a US Tax Obligor.

**17. FINANCIAL COVENANTS****17.1 Definitions**

In this Clause:

**Cash and Cash Equivalents** means, as at any date of determination:

- (a) cash in hand or on deposit in the Retention Accounts;
- (b) any investment in marketable obligations issued or guaranteed by the government of the United States of America, Canada or the United Kingdom or by an instrumentality or agency of the government of the United States of America, Canada or the United Kingdom, maturing within one (1) year after the relevant date of calculation;
- (c) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company having, a credit rating of either A by S&P or Fitch or A2 by Moody's which time deposits and certificates of deposit mature within one (1) year after the relevant date of calculation;
- (d) repurchase obligations with a term of not more than ninety (90) days for underlying securities of the type referred to in subclause (b) above entered into with any bank meeting the qualifications specified in subclause (c) above;
- (e) open market commercial paper:
  - (i) for which a recognised trading market exists;
  - (ii) issued in the United States of America, Canada or the United Kingdom;
  - (iii) which matures within one (1) year after the relevant date of calculation; and
  - (iv) which has a credit rating of either A-1 by S&P or Fitch or P-1 by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term debt obligations, an equivalent rating;

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- (f) any other instrument, security or investment approved by the Majority Lenders, in each case, to which the Borrower is beneficially entitled at that time, which is unencumbered (other than by any of the Security Documents) and which is capable of being applied against Total Borrowings.

**EBITDA** means the net income of the Borrower for a Measurement Period as adjusted by:

- (a) adding back taxation;
- (b) adding back Interest Expenses;
- (c) taking no account of any extraordinary item;
- (d) excluding any amount attributable to minority interests;
- (e) adding back depreciation and amortisation; and
- (f) taking no account of any revaluation of an asset or any loss or gain over book value arising on the disposal of an asset (otherwise than in the ordinary course of trading) by the Borrower during that Measurement Period.

**Interest and Principal Coverage Ratio** means, as at any date of determination and with respect to any period, the ratio of EBITDA for such period to Interest and Principal Expense for such period.

**Interest and Principal Expense** means all Interest Expense incurred and all payments of principal made by the Borrower during a Measurement Period.

**Interest Expense** means all cash interest and cash commitment fees incurred by the Borrower during a Measurement Period.

**Marketable Securities** means any bonds, stocks, notes or bills payable in a freely convertible and transferable currency and which are listed on a stock exchange acceptable to the Facility Agent (acting on the instructions of the Majority Lenders).

**Net Interest Coverage Ratio** means, as at any date of determination and with respect to any period, the ratio of EBITDA for such period to Net Interest Expense for such period.

**Net Interest Expense** means Interest Expense less all interest and other financing charges received by the Borrower during a Measurement Period.

**Tangible Net Worth** means at any time the amount paid up or credited as paid up on the issued share capital of the Borrower based on the latest published audited balance sheet of the Borrower (the latest balance sheet) but adjusted by:

- (a) adding any amount standing to the credit of the profit and loss account of the Borrower for the period ending on the date of the latest balance sheet;
- (b) deducting any dividend or other distribution declared, recommended or made by the Borrower;
- (c) deducting any amount standing to the debit of the profit and loss account of the Borrower for the period ending on the date of the latest balance sheet;
- (d) deducting any amount attributable to goodwill (other than goodwill attributable to the Vessels) or any other intangible asset;

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- (e) deducting any amount attributable to an upward revaluation of assets after the date of this Agreement;
  - (f) adding the amount referred to in Schedule 10 for the date of the latest balance sheet (as the same may be adjusted from time to time to reflect the sale of any of the vessels referred to in Schedule 10 whether or not they are Vessels or Secured Vessels at the date of their sale, following the date of this Agreement);
  - (g) reflecting any variation in the amount of the issued share capital of the Borrower and the capital and revenue reserves of the Borrower after the date of the latest balance sheet;
  - (h) reflecting any variation in the interest of the Borrower since the date of the latest balance sheet;
  - (i) excluding any amount attributable to deferred taxation; and
  - (j) excluding any amount attributable to minority interests.

**Total Assets** means, at any date, the aggregate of:

- (a) the then current book values of all vessels owned or leased with a purchase option by the Borrower, but adding back, in relation to the Vessels referred to in Schedule 10, the amount referred to in paragraph (f) of the definition of Tangible Net Worth;
- (b) the then current aggregate amount of cash, Marketable Securities (but no other bonds, notes or bills and less any cash or Marketable Securities accounted for in the definition of Total Borrowings below) and receivables due to the Borrower (less provision for bad and doubtful debts) as shown in the latest financial statements; and
- (c) the book values of all other (non-shipping) assets as shown in such latest financial statements.

**Total Borrowings** means, in respect of the Borrower, at any time the aggregate of the following:

- (a) the outstanding principal amount of any moneys borrowed;
- (b) the outstanding principal amount of any acceptance under any acceptance credit;
- (c) the outstanding principal amount of any bond, note, debenture, loan stock or other similar instrument;
- (d) the capitalised element of indebtedness under a finance or capital lease;
- (e) the outstanding principal amount of all moneys owing in connection with the sale or discounting of receivables (otherwise than on a non-recourse basis);
- (f) the outstanding principal amount of any indebtedness arising from any deferred payment agreements arranged primarily as a method of raising finance or financing the acquisition of an asset;
- (g) any fixed or minimum premium payable on the repayment or redemption of any instrument referred to in paragraph (c) above;

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- (h) the outstanding principal amount of any indebtedness arising in connection with any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing; and
  - (i) the outstanding principal amount of any indebtedness of any person of a type referred to in the above paragraphs which is the subject of a guarantee, indemnity or similar assurance against financial loss given by the Borrower.

**17.2 Interpretation**

- (a) Except as provided to the contrary in this Agreement, an accounting term used in this Clause is to be construed in accordance with U.S. GAAP.
- (b) Any amount in a currency other than Dollars is to be taken into account at its Dollar equivalent calculated on the basis of:
  - (i) the Facility Agent's spot rate of exchange for the purchase of the relevant currency in the London foreign exchange market with Dollars at or about 11.00 a.m. on the day the relevant amount falls to be calculated; or
  - (ii) if the amount is to be calculated on the last day of a financial period of the Borrower, the relevant rates of exchange used by the Borrower in, or in connection with, its financial statements for that period.
- (c) No item must be credited or deducted more than once in any calculation under this Clause 17.

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**17.3 Tangible Net Worth**

The Borrower must ensure that Tangible Net Worth always exceeds four hundred and fifty million Dollars (US\$450,000,000).

**17.4 Gearing**

The Borrower must ensure that Total Borrowings are always less than 65% of Total Assets at that time.

**17.5 Minimum Liquidity**

If, at any time, more than 50% of the Vessels (assessed by value) are subject to time charters which have a remaining term of one year or less (excluding any optional extensions not then exercised), the Borrower must ensure that the Cash and Cash Equivalents held by the Borrower at such date of determination are not less than twenty five million Dollars (US\$25,000,000).

**17.6 Net Interest Coverage Ratio**

The Borrower must ensure that the Net Interest Coverage Ratio is always greater than 2.50 to 1.

**17.7 Interest and Principal Coverage Ratio**

The Borrower must ensure that the Interest and Principal Coverage Ratio is always greater than or equal to 1.1 to 1.

**17.8 Testing of Financial Covenants**

- (a) Each of the financial covenants set out in Clauses 17.3 to 17.7 (inclusive) shall be tested by reference to each rolling twelve (12) month Measurement Period, provided always that the Interest and Principal Coverage Ratio referred to in Clause 17.7 shall be tested on the basis of the financial statements of the Borrower for the last fiscal quarter of the Borrower in the event of the occurrence of the circumstances set out in Clause 16.25(d) (Termination of Time Charter).
- (b) The Borrower shall provide a Compliance Certificate each quarter in respect of the financial covenants.

**18. VALUATION****18.1 Valuation**

For the purposes of this Clause 18:

- (a) the valuation of a Secured Vessel shall be the mean average of two valuations each certified in Dollars and carried out by two of the Approved Valuers, reporting to the Facility Agent by way of written reports in form and substance satisfactory to the Facility Agent (acting reasonably) on the basis of a sale for prompt delivery of the Secured Vessel for cash (free of Security Interests), on a without charter basis and at arm's-length on normal commercial terms as between willing seller and buyer; and
- (b) there shall be deducted from any value or valuation produced in accordance with this Clause 18.1 the amount which is owing or might become owing and which is secured on the asset concerned by any prior or equal ranking Security Interest (other than in favour of the Facility Agent to secure the Secured Liabilities).

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**18.2 Delivery of Valuations**

- (a) Prior to 12 May 2007, the Borrower has procured a valuation in relation to each Secured Vessel, on the basis described in Clause 18.1.
- (b) In respect of the Secured Vessels, the Borrower will procure a valuation on the basis described in Clause 18.1 within each consecutive six (6) month period (the first such period having commenced on 12 May 2007) at the time required by the Facility Agent. Such valuations shall be (or have been) prepared in accordance with Clause 18.1 and used as the basis for determining the Borrowing Base Advance Ratio.
- (c) The Borrower will procure in favour of the Facility Agent and the Approved Valuers, all such information, facilities and rights of inspection as they may reasonably (having regard to the use and operation of the Secured Vessel) require in order to effect such valuations.
- (d) All valuations shall be at the expense of the Borrower.
- (e) If an Event of Default has occurred and is continuing, the Borrower shall be liable to pay for such valuations of any Secured Vessel from such of the Approved Valuers under Clause 18.2(a) as the Facility Agent shall require.
- (f) Any valuation under this Clause 18 shall be binding and conclusive (save for manifest error).

**19. DEFAULT****19.1 Events of Default**

Each of the events set out in this Clause 19 is an Event of Default.

**19.2 Non-payment**

The Borrower does not pay on the due date any amount payable by it under the Finance Documents in the manner required under the Finance Documents, unless the non-payment:

- (a) is caused by technical or administrative error; and
- (b) is remedied within three (3) Business Days of the due date.

**19.3 Breach of other obligations**

- (a) The Borrower does not comply with any term of Clause 16 (General Covenants) or Clause 0 (
- (b) Financial Covenants), unless the non compliance:
  - (i) is capable of remedy; and
  - (ii) is remedied within thirty (30) days of the earlier of the Facility Agent giving notice to the Borrower and discovery (and for the purposes of this paragraph **discovery** means actual awareness).

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The Borrower acknowledges that for the purposes of paragraph (i) above, non-compliance with the following shall not be capable of remedy:

- (A) Clause 16.10(a) and 16.10(b) (Security), but in respect of subparagraph (c) only insofar as it relates to the Mortgage, the Bareboat Charter and Earnings Assignment, the Time Charter, Charter Guarantee and Earnings Assignment and the Insurances Assignment;
- (B) Clause 16.12(a) (Registration of the Vessels);
- (C) the Obligatory Insurances being in full force and effect; and
- (D) Clause 0 (
- (E) Financial Covenants),

provided always that, in the case of (A) and (B) above, if the non-compliance is caused by technical or administrative error only, is corrected within three (3) Business Days of the earlier of the Facility Agent giving notice to the Borrower and discovery (discovery having the same meaning as in Clause 19.3(b)(ii)), and, in the case of (C) above, if the non-compliance is caused by technical or administrative error only, is corrected within one (1) Business Day and in each case the Facility Agent (acting on the good faith and reasonable instructions of the Majority Lenders) is satisfied that the Finance Parties have neither suffered nor will, in the future, suffer any material detriment (whether financial, to their security position or otherwise howsoever) as a result of the non-compliance.

- (c) Any Party (other than a Finance Party or the Account Bank) does not comply with any other term of the Finance Documents not already referred to in this Clause which the Facility Agent (acting on the good faith and reasonable instructions of the Majority Lenders) considers to be material, unless the non-compliance:
  - (i) is capable of remedy; and
  - (ii) is remedied within fourteen (14) days of the earlier of the Facility Agent giving notice and discovery by the relevant Party (**discovery** having the same meaning as in Clause 19.3(b)(ii)) of the non-compliance.

#### **19.4 Misrepresentation**

A representation made or repeated by the Borrower (or by any other Party other than a Finance Party or the Account Bank) in any Finance Document or in any document delivered by or on behalf of the Borrower under any Finance Document is incorrect in any respect which the Facility Agent (acting on the good faith and reasonable instructions of the Majority Lenders) considers to be material when made or deemed to be repeated, unless the circumstances giving rise to the misrepresentation:

- (a) are capable of remedy; and
- (b) are remedied within thirty (30) days of the earlier of the Facility Agent giving notice and the relevant Party becoming aware of the misrepresentation.

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**19.5 Cross-default**

Any of the following occurs in respect of the Borrower:

- (a) any of its Financial Indebtedness is not paid when due (after the expiry of any originally applicable grace period);
- (b) any of its Financial Indebtedness:
  - (i) becomes prematurely due and payable; or
  - (ii) is placed on demand; or
  - (iii) is capable of being declared by a creditor to be prematurely due and payable or being placed on demand,
- (c) in each case, as a result of an event of default (howsoever described) and after the expiry of any applicable grace period; or
- (d) any commitment for its Financial Indebtedness is cancelled or suspended as a result of an event of default (howsoever described), unless the aggregate amount of Financial Indebtedness falling within paragraphs (a) to (d) above is less than US\$25,000,000 or its equivalent.

**19.6 Insolvency**

Any of the following occurs in respect of the Borrower:

- (a) it is, or is deemed for the purposes of any Applicable Law to be, unable to pay its debts as they fall due or insolvent;
- (b) it admits its inability to pay its debts as they fall due;
- (c) it suspends making payments on any of its debts or announces an intention to do so;
- (d) by reason of actual or anticipated financial difficulties, it begins negotiations with any creditor for the rescheduling of any of its indebtedness; or
- (e) a moratorium is declared in respect of any of its indebtedness.

If a moratorium occurs in respect of the Borrower, the ending of the moratorium will not remedy any Event of Default caused by the moratorium.

**19.7 Insolvency proceedings**

- (a) Except as provided in paragraph (b) below, any of the following occurs in respect of the Borrower:
  - (i) any step is taken with a view to a moratorium, a composition, assignment or similar arrangement with any of its creditors;
  - (ii) a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution to petition for or to file documents with a court for its winding-up, administration or dissolution or any such resolution is passed;



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- (iii) any person presents a petition, or files documents with a court for its winding-up, administration or dissolution;
  - (iv) an order for its winding-up, administration or dissolution is made;
  - (v) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;
  - (vi) its directors, shareholders or other officers request the appointment of, or give notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer; or
  - (vii) any other analogous step or procedure is taken in any jurisdiction.
- (b) Paragraph (a) above does not apply to a frivolous or vexatious petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and is discharged or struck out within fourteen (14) days.

**19.8 Creditors' process**

Any attachment, sequestration, distress, execution or analogous event affects any asset(s) of the Borrower, having an aggregate value of twenty five million Dollars (US\$25,000,000) or its equivalent and is not discharged within thirty (30) days.

**19.9 Cessation of business**

The Borrower ceases, or threatens to cease, to carry on business except as a result of any disposal not prohibited under this Agreement.

**19.10 Failure to pay final judgment**

The Borrower fails to comply with or pay any sum due from it under any final judgment or any final order made or given by any court of competent jurisdiction.

**19.11 Effectiveness of Finance Documents**

- (a) It is or becomes unlawful for the Borrower or any other Party (other than a Finance Party or the Account Bank) to perform any of its material obligations under the Finance Documents.
- (b) Any material provision of a Finance Document is not effective or is alleged by the Borrower to be ineffective for any reason.
- (c) Any material provision of a Finance Document is not effective or is alleged by any Party (other than a Finance Party, the Borrower or the Account Bank) to be ineffective for any reason.
- (d) The Borrower repudiates any material provision of a Finance Document or evidences an intention to repudiate any material provision of a Finance Document.
- (e) Any Party (other than a Finance Party or the Account Bank) repudiates any material provision of a Finance Document or evidences an intention to repudiate any material provision of a Finance Document.

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**19.12 Invalidity of Security Documents**

Any of the Security Documents ceases to be valid in any material respect or any of those Security Documents creating a Security Interest in favour of the Facility Agent ceases to provide a perfected first priority security interest in favour of the Facility Agent.

**19.13 Acceleration**

If an Event of Default is outstanding, the Facility Agent, if the Majority Lenders so instruct it, shall by notice to the Borrower:

- (a) cancel the undrawn, uncancelled amount of the Maximum Facility Amount; and/or
- (b) declare that all or part of any amounts outstanding under the Finance Documents are:
  - (i) immediately due and payable; and/or
  - (ii) payable on demand by the Facility Agent.

Any notice given under this Subclause will take effect in accordance with its terms.

**20. SECURITY**

**20.1 Facility Agent as trustee**

Unless expressly provided to the contrary herein or in any Finance Document and except as otherwise required by Applicable Law, the Facility Agent holds any security created by a Security Document on trust for the Finance Parties.

**20.2 Responsibility**

The Facility Agent is not liable or responsible to any other Finance Party for:

- (a) any failure in perfecting or protecting the security created by any Security Document; or
- (b) any other action taken or not taken by it in connection with any Security Document, unless directly caused by its gross negligence or wilful misconduct.

**20.3 Title**

The Facility Agent may accept, without enquiry, the title (if any) the Borrower may have to any asset over which security is intended to be created by any Security Document.

**20.4 Possession of documents**

The Facility Agent is not obliged to hold in its own possession any Security Document, title deed or other document in connection with any asset over which security is intended to be created by a Security Document.

**20.5 Investments**

Except as otherwise provided in any Security Document, all moneys received by the Facility Agent under a Security Document will, until utilised, be invested in the name of, or under the control of, the Facility Agent in any investments selected by the Facility Agent (acting on the instructions of the

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Majority Lenders). Additionally, those moneys may be placed on deposit in the name of, or under the control of, the Facility Agent at any bank or institution (including itself) and upon such terms as it may think fit. Any interest or profit earned by the Facility Agent in connection with such investments shall be that of the Borrower and added to the Security Assets.

## **20.6 Approval**

Each Finance Party confirms its approval of each Security Document.

## **20.7 Release of security**

- (a) If a disposal of any Security Asset is made to a third party in the following circumstances:
- (i) the Majority Lenders agree to the disposal;
  - (ii) the disposal is allowed by the terms of the Finance Documents and will not result or could not reasonably be expected to result in any breach of any term of any Finance Document;
  - (iii) the disposal is being made at the request of the Facility Agent in circumstances where any security created by the Security Documents has become enforceable; or
  - (iv) the disposal is being effected by enforcement of a Security Document
- or if a repayment is made pursuant to Clauses 6.4 or 6.5 and, in any such case, the Facility Agent has actually and unconditionally received the required prepayment pursuant to those Clauses following any such disposal and/or prepayment (and release), then the asset being disposed of or to which the prepayment relates will be released from any security over it created by a Security Document. However, the proceeds of any disposal or prepayment (or any amount corresponding to them) must be applied in accordance with the requirements of the Finance Documents (if any).
- (b) Following the Final Maturity Date and provided that all the amounts due and payable under the Finance Documents have been irrevocably and unconditionally paid in full to the satisfaction of the Finance Parties, the Security Documents shall be released.
- (c) If the Facility Agent is satisfied that a release is allowed under this Subclause, the Facility Agent must execute (at the request and expense of the Borrower) any document which is reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Facility Agent to execute any such document.
- (d) The Facility Agent shall ensure that all Security Interests in relation to the Removed Vessels will be irrevocably and unconditionally discharged and released on or as soon as practicable following the Amendment Date or, in the case of a MSC Vessel, on or after the MSC Vessel Sale Date.

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**20.8 Co-security Agent**

- (a) The Facility Agent may appoint a separate security agent or a co-security agent in any jurisdiction outside the United States of America:
  - (i) if the Facility Agent considers that without the appointment the interests of the Lenders under the Finance Documents might be materially and adversely affected;
  - (ii) for the purpose of complying with any law, regulation or other condition in any jurisdiction; or
  - (iii) for the purpose of obtaining or enforcing a judgment or enforcing any Finance Document in any jurisdiction.
- (b) Any appointment under this Subclause will only be effective if the security agent or co security agent confirms to the Facility Agent and the Borrower in form and substance satisfactory to the Facility Agent that it is bound by the terms of this Agreement as if it were the Facility Agent.
- (c) The Facility Agent may remove any security agent or co-security agent appointed by it and may appoint a new security agent or co-security agent in its place.
- (d) The Borrower must pay to the Facility Agent any reasonable remuneration paid by the Facility Agent to any security agent or co-security agent appointed by it, together with any related costs and expenses properly incurred by the security agent or co-security agent.

**20.9 Parallel Debt**

- (a) The Borrower hereby irrevocably and unconditionally undertakes to pay to the Facility Agent amounts equal to any amounts owing by the Borrower (whether owed as borrower of a facility or as joint and several obligor) to the relevant Finance Parties under the Finance Documents as and when the same fall due for payment thereunder, so that the Facility Agent shall be the obligee of such covenant to pay and shall be entitled to claim performance thereof in its own name and not as agent acting on behalf of the relevant Finance Parties. The Borrower and the Facility Agent acknowledge that for this purpose such obligations of the Borrower are several and are separate and independent from, and without prejudice to, the identical obligations which the Borrower has to the Finance Parties under the relevant Finance Documents, provided that this shall not, at the same time, result in the Borrower incurring an aggregate obligation to any such Finance Parties under the Finance Documents. To this end and without prejudice to the foregoing, it is agreed that (a) the amounts due and payable by the Borrower under this Clause 20.9 (the **Parallel Debt**) shall be decreased to the extent that the Borrower paid any amounts to the Finance Parties or any of them in respect of the Secured Liabilities and vice versa and (b) the Parallel Debt shall not exceed the aggregate of the corresponding obligations which the Borrower has to the Finance Parties under the Finance Documents.
- (b) Nothing in this Clause shall in any way negate, affect or increase the obligations of the Borrower to any Finance Parties under the Finance Documents in respect of the Secured Liabilities. For the purpose of this Clause, the Facility Agent acts in its own name and on behalf of itself and not as agent or representative of any other party hereto and any security granted to the Facility Agent to secure the Parallel Debt is granted to the Facility Agent in its capacity as creditor of the Parallel Debt and solely for the purpose referred to above.

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**20.10 Dutch Security**

- (a) The Facility Agent shall obtain any Security Interest provided under or pursuant to a Security Document governed by Dutch law (the **Dutch Security**) in its own name.
- (b) The Facility Agent shall have full and unrestricted entitlement to and authority in respect of the Dutch Security, provided that it shall be under an obligation to exercise such rights (and perform such obligations) in accordance with the contractual undertakings set out in any Finance Document.

**21. THE ADMINISTRATIVE PARTIES****21.1 Appointment and duties of the Facility Agent**

- (a) Save as provided in Clause 20.10 (Dutch Security), each Finance Party (other than the Facility Agent) irrevocably appoints the Facility Agent to act as its agent under the Finance Documents.
- (b) Each Finance Party irrevocably authorises the Facility Agent on its behalf to:
  - (i) perform the duties and to exercise the rights, powers and discretions that are specifically given to it under the Finance Documents, together with any other incidental rights, powers and discretions; and
  - (ii) execute each Finance Document expressed to be executed by the Facility Agent on that Party's behalf.
- (c) The Facility Agent has only those duties which are expressly specified in the Finance Documents. Those duties are solely of a mechanical and administrative nature.

**21.2 Role of the Arrangers**

Except as specifically provided in the Finance Documents, the Arrangers in their capacity as Arrangers have no obligations of any kind to any other Party in connection with any Finance Document.

**21.3 No fiduciary duties**

Except as specifically provided in a Finance Document, nothing in the Finance Documents makes an Administrative Party a trustee or fiduciary for any other Party or any other person. No Administrative Party needs to hold in trust any moneys paid to it for a Party or be liable to account for interest on those moneys.

**21.4 Individual position of an Administrative Party**

- (a) If it is also a Lender, each Administrative Party has the same rights and powers under the Finance Documents as any other Lender and may exercise those rights and powers as though it were not an Administrative Party.
- (b) Each Administrative Party may:
  - (i) carry on any business with the Borrower or its related entities (including acting as an agent or a trustee for any other financing); and
  - (ii) retain any profits or remuneration it receives under the Finance Documents or in relation to any other business it carries on with the Borrower or its related entities.

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**21.5 Reliance**

**21.6 The Facility Agent may:**

- (a) rely on any notice or document believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person;
- (b) rely on any statement made by any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify;
- (c) engage, pay for and rely on professional advisors selected by it; and
- (d) act under the Finance Documents through its personnel and agents.

**21.7 Majority Lenders' instructions**

- (a) The Facility Agent is fully protected if it acts on the instructions of the Majority Lenders in the exercise of any right, power or discretion or any matter not expressly provided for in the Finance Documents. Any such instructions given by the Majority Lenders will be binding on all the Lenders. In the absence of instructions, then unless the Finance Documents expressly provide that the Facility Agent acts on the instructions of the Majority Lenders in exercising the relevant right, power or discretion, the Facility Agent may act as it considers to be in the best interests of all the Lenders.
- (b) Each Lender acknowledges and confirms that it shall act in a reasonable manner when reaching any decision as to the exercise or non-exercise of any right, power or discretion by the Facility Agent.
- (c) The Facility Agent may assume that unless it has received notice to the contrary, any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised.
- (d) The Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings in connection with any Finance Document.
- (e) The Facility Agent may require the receipt of security satisfactory to it, whether by way of payment in advance or otherwise, against any liability or loss which it may incur in complying with the instructions of the Majority Lenders.

**21.8 Responsibility**

- (a) No Administrative Party is responsible to any other Finance Party for the adequacy, accuracy or completeness of:
  - (i) any Finance Document or any other document; or
  - (ii) any statement or information (whether written or oral) made in or supplied in connection with any Finance Document.
- (b) Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms that it:
  - (i) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Finance Documents (including the financial condition and affairs of the Borrower and its related entities and the nature and extent of any recourse against any Party or its assets); and

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- (ii) has not relied exclusively on any information provided to it by any Administrative Party in connection with any Finance Document.

**21.9 Exclusion of liability**

- (a) The Facility Agent is not liable or responsible to any other Finance Party for any action taken or not taken by it in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- (b) No Party (other than the Facility Agent) may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in connection with any Finance Document. Any officer, employee or agent of the Facility Agent may rely on this Subclause and enforce its terms under the Contracts (Rights of Third Parties) Act 1999.

**21.10 Default**

- (a) The Facility Agent is not obliged to monitor or enquire whether a Default has occurred. The Facility Agent is not deemed to have knowledge of the occurrence of a Default.
- (b) If the Facility Agent:
  - (i) receives notice from a Party referring to this Agreement, describing a Default and stating that the event is a Default; or
  - (ii) is aware of the non-payment of any principal or interest or any fee payable to a Lender under this Agreement,

it must promptly notify the Lenders.

**21.11 Information**

- (a) The Facility Agent must promptly forward to the person concerned the original or a copy of any document which is delivered to the Facility Agent by a Party for that person.
- (b) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) Except as provided above, the Facility Agent has no duty:
  - (i) either initially or on a continuing basis to provide any Lender with any credit or other information concerning the risks arising under or in connection with the Finance Documents (including any information relating to the financial condition or affairs of the Borrower or its related entities or the nature or extent of recourse against any Party or its assets) whether coming into its possession before, on or after the date of this Agreement; or
  - (ii) unless specifically requested to do so by a Lender in accordance with a Finance Document, to request any certificate or other document from the Borrower.

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- (d) In acting as the Facility Agent, the agency division of the Facility Agent is treated as a separate entity from its other divisions and departments. Any information acquired by the Facility Agent which, in its opinion, is acquired by it otherwise than in its capacity as the Facility Agent may be treated as confidential by the Facility Agent and will not be treated as information possessed by the Facility Agent in its capacity as such.
  - (e) The Borrower irrevocably authorises the Facility Agent to disclose to the other Finance Parties any information which, is received by it in its capacity as the Facility Agent.

#### **21.12 Indemnities**

- (a) Without limiting the liability of the Borrower under the Finance Documents, each Lender must indemnify the Facility Agent for that Lender's Pro Rata Share of any loss or liability incurred by the Facility Agent in acting as the Facility Agent, except to the extent that the loss or liability is caused by the Facility Agent's gross negligence or wilful misconduct.
- (b) The Facility Agent may deduct from any amount received by it for a Lender any amount due to the Facility Agent from that Lender under a Finance Document but unpaid.

#### **21.13 Compliance**

Each Administrative Party may refrain from doing anything (including disclosing any information) which might, based on the reasonable opinion of its legal counsel, constitute a breach of any law or regulation or be otherwise actionable at the suit of any person, and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.

#### **21.14 Resignation of the Facility Agent**

- (a) The Facility Agent may resign by giving written notice to the Lenders and the Borrower, in which case the Majority Lenders shall appoint a successor facility agent of which the Borrower approves, such approval not to be unreasonably withheld or delayed.
- (b) If no successor Facility Agent has been appointed under paragraph (a) above within thirty (30) days after notice of resignation was given, the Facility Agent may appoint a successor Facility Agent.
- (c) The resignation of the Facility Agent and the appointment of any successor facility agent will both become effective only when the successor facility agent (i) notifies all the Parties that it accepts its appointment and (ii) confirms that it is satisfied that the rights under the Security Documents have been assigned or transferred to it. On giving the notification and confirmation, the successor facility agent will succeed to the position of the Facility Agent and the term **Facility Agent** will mean the successor facility agent.
- (d) The retiring Facility Agent must, at its own cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as the Facility Agent under the Finance Documents.
- (e) Upon its resignation becoming effective, this Clause will continue to benefit the retiring Facility Agent in respect of any action taken or not taken by it in connection with the Finance Documents while it was the Facility Agent, and, subject to paragraph (d) above, it will have no further obligations in its capacity as Facility Agent under any Finance Document.



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- (f) The Majority Lenders may, by notice to the Facility Agent, require it to resign under paragraph (a) above.
- (g) The Facility Agent shall resign in accordance with paragraph (a) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (b) above) if on or after the date which is two months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
- (i) the Facility Agent fails to respond to a request under Clause 10.8 (*FATCA information*) and a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Agent pursuant to Clause 10.8 (*FATCA information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Facility Agent notifies the Borrower and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Facility Agent, requires it to resign.

**21.15 Relationship with Lenders**

- (a) The Facility Agent may treat each Lender as a Lender entitled to payments under this Agreement and as acting through its Facility Office(s) until it has received not less than five (5) Business Days' prior notice from that Lender to the contrary.
- (b) The Facility Agent may at any time, and must if requested to do so by the Majority Lenders, convene a meeting of the Lenders.
- (c) The Facility Agent must keep a register of all the Parties and supply any other Party with a copy of the register on request. The register will include each Lender's Facility Office(s) and contact details for the purposes of this Agreement.
- (d) Each Lender shall supply the Facility Agent with any information required by the Facility Agent in order to calculate the Mandatory Cost in accordance with the provisions of this Agreement.

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**21.16 Notice period**

Where this Agreement specifies a minimum period of notice to be given to the Facility Agent, the Facility Agent may, at its discretion, accept a shorter notice period.

**22. EVIDENCE AND CALCULATIONS**

**22.1 Accounts**

Accounts maintained by the Facility Agent in connection with this Agreement are conclusive (save for manifest error) evidence of the matters to which they relate for the purpose of any litigation or arbitration proceedings.

**22.2 Certificates and determinations**

Any certification or determination by the Facility Agent of a rate or amount under the Finance Documents will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**22.3 Calculations**

Any interest or fee accruing under this Agreement accrues from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or otherwise, depending on what the Facility Agent determines is market practice.

**23. FEES**

**23.1 Commitment fee**

- (a) The Borrower has, prior to the Amendment Date, paid to the Facility Agent for and on behalf of the Lenders a commitment fee calculated at the rate of 37.5% of the Margin from time to time per annum on the undrawn, uncanceled amount of the Maximum Facility Amount. The commitment fee accrued from 12 May 2007.
- (b) Accrued commitment fee was payable quarterly in arrears and on the last day of each Term. Accrued commitment fee is also payable to the Facility Agent for a Lender on the date its Commitment is cancelled in full.

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**23.2 Participation fee**

The Borrower has, prior to the Amendment Date, paid to the Facility Agent for the benefit *pro rata* of the Lenders a participation fee in the manner agreed in the Fee Letter between the Arrangers, the Facility Agent and the Borrower.

**23.3 Underwriting and Arrangement fee**

The Borrower has, prior to the Amendment Date, paid to the Arrangers underwriting and arrangement fees in the manner agreed in the Fee Letter between the Arrangers, the Facility Agent and the Borrower.

**23.4 Structuring and Bookrunning fee**

The Borrower has, prior to the Amendment Date, paid to the Arrangers structuring and bookrunning fees in the manner agreed in the Fee Letter between the Arrangers, the Facility Agent and the Borrower.

**23.5 Facility Agent's fee**

The Borrower has, prior to the Amendment Date, paid to the Facility Agent an agency and security trustee fee in the manner agreed in the Fee Letter between the Arrangers, the Facility Agent and the Borrower.

**23.6 Amendment fees**

The Borrower has, prior to the Amendment Date, paid the Extension Fee (as that term is defined in the Amending and Restating Agreement).

**23.7 Refund of fees**

The fees referred to in this Clause 23 and the Fee Letter shall not be refunded under any circumstances whatsoever once they have been paid.

**24. INDEMNITIES AND BREAK COSTS**

**24.1 Currency indemnity**

(a) The Borrower shall, as an independent obligation and within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability which that Finance Party incurs as a consequence of:

- (i) the Finance Party receiving an amount in respect of the Borrower's liability under the Finance Documents; or
- (ii) that liability being converted into a claim, proof, judgment or order,

in a currency other than the currency in which the amount is expressed to be payable under the relevant Finance Document.

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

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## 24.2 Other indemnities

- (a) The Borrower shall, as an independent obligation and within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability which that Finance Party incurs as a consequence of:
  - (i) the occurrence of any Event of Default;
  - (ii) any failure by the Borrower to pay any amount due under a Finance Document on its due date;
  - (iii) (other than by reason of negligence or default by that Finance Party) the Loan (or part of the Loan) not being made after a Request has been delivered for the Loan; or
  - (iv) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment.

The liability of the Borrower in each case includes any cost, loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document, any amount repaid or prepaid on the Loan.

- (b) The Borrower must indemnify against any cost, loss or liability incurred by any Finance Party as a result of:
  - (i) investigating any event which that Finance Party reasonably believes to be a Default; or
  - (ii) acting or relying on any notice of the Borrower which that Finance Party reasonably believes to be genuine, correct and appropriately authorised.
- (c) The Borrower must indemnify and agree to hold harmless the Finance Parties and in each case, each of its and their Affiliates and each of their respective officers, directors, employees, agents, advisors and representatives (each, an **Indemnified Party**) from and against any and all claims, damages, losses, liabilities, costs, legal expenses and expenses (altogether **Losses**), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any claim, investigation, litigation or proceeding (or the preparation of any defence with respect thereto) commenced or threatened in relation to the Finance Documents or the Related Contracts (or the transactions contemplated hereby or thereby) or any use made or proposed to be made with the proceeds of the Facility. This indemnity shall apply whether or not such claims, investigation, litigation or proceeding is brought by the Borrower, the shareholders of the Borrower or the creditors of the Borrower, an Indemnified Party or any other person, or an Indemnified Party is otherwise a party thereto, except to the extent such Losses are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or wilful misconduct.
- (d) No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Borrower or any shareholders or creditors of the Borrower for or in connection with the transactions referred to in paragraph (c) above, except for direct (as opposed to indirect or consequential) damages or losses to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or wilful misconduct.

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- (e) The Borrower must indemnify and hold each Finance Party harmless on a full indemnity basis, from and against each and every Loss:
- (i) arising directly or indirectly out of or in any way connected with the ownership, possession, performance, transportation, management, sale, import to or export from any jurisdiction, control, use or operation, registration, navigation, certification, classification, management, manning, provisioning, the provision of bunkers and lubricating oils, testing, design, condition, delivery, acceptance, leasing, subleasing, chartering, insurance, maintenance, repair, service, modification, refurbishment, dry docking, survey, conversion, overhaul, replacement, removal, repossession, return, redelivery, storage, sale, disposal, the complete or partial removal, decommissioning, making safe, destruction, abandonment or loss by the Borrower or any other person of any of the Secured Vessels or caused by any of the Secured Vessels becoming a wreck or an obstruction to navigation, whether or not such liability may be attributable to any defect in any of the Secured Vessels or to the design, construction or use thereof or from any maintenance, service, repair, dry docking, overhaul, inspection or for any other reason whatsoever (whether similar to any of the foregoing or not), and regardless of when the same shall arise and whether or not any of the Secured Vessels (or any part thereof) is in possession or control of the Borrower or the Manager or any other person and whether or not the same is in United Kingdom waters or abroad;
  - (ii) arising directly or indirectly out of or in any way connected with any Release of Hazardous Material, any Environmental Claim, or any breach of an Environmental Law or the terms and conditions of an Environmental Approval;
  - (iii) as a consequence of any claim that any design, article or material in any of the Secured Vessels or any part thereof or relating thereto or the operation or use thereof constitutes an infringement of patent, copyright, design or other proprietary right; or
  - (iv) in preventing or attempting to prevent the arrest, seizure, taking in execution, requisition, impounding, forfeiture or detention of any of the Secured Vessels or in securing or attempting to secure the release of any of the Secured Vessels.

### **24.3 Break Costs**

- (a) The Borrower must pay to each Lender or, as the case may be, each Swap Counterparty, its Break Costs in accordance with this Agreement.
- (b) In respect of a Lender, Break Costs are the amount (if any) determined by the relevant Lender by which the interest (excluding the Margin) which that Lender would have received for the period from the date of receipt of payment of the Loan or an overdue amount to the last day of the current Term for the Loan or overdue amount if the principal or overdue amount received had been paid on the last day of that Term exceeds the amount which that Lender would be able to obtain by placing an amount equal to the amount received by it on deposit with a leading bank in the appropriate interbank market for a period starting on the Business Day following receipt and ending on the last day of the applicable Term.
- (c) In respect of a Swap Counterparty, Break Costs are the amount (if any) determined by that Swap Counterparty which would indemnify that Swap Counterparty against any loss or liability that it incurs as a consequence of terminating all or any part of the swap or other hedging arrangements under any Swap Agreement.

- (d) Each Lender, or as the case may be, each Swap Counterparty, must supply to the Borrower details of the amount of any Break Costs claimed by it under this Clause.

**25. EXPENSES**

**25.1 Initial costs**

The Borrower must pay to each Finance Party the amount of all reasonable costs and expenses (including legal fees) incurred by it in connection with (but not limited to) the negotiation, preparation, printing and execution of the Finance Documents.

**25.2 Subsequent costs**

The Borrower must pay to each Finance Party the amount of all reasonable costs and expenses (including legal fees) incurred by it in connection with:

- (a) the negotiation, preparation, printing and execution of any Finance Document (other than a Transfer Certificate) executed after the date of this Agreement; and
- (b) any amendment, waiver or consent requested by or on behalf of the Borrower or specifically allowed by this Agreement.

The Borrower shall not be required to bear the amount of any costs and expenses (including legal fees) incurred by a Lender or a New Lender (as that term is defined in Clause 28.2 (Assignments and transfers by Lenders)) in connection with any voluntary transfer made by a Lender under this Agreement or any of the Security Agreements. In the event that a Lender is required to undertake any such transfers as a result of the provisions of Clause 11.4 (Mitigation) any costs of that Lender or a New Lender arising out of such transfer shall be payable by the Borrower.

**25.3 Enforcement costs**

The Borrower must pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement or attempted enforcement of, or the preservation or attempted preservation of any rights under, any Finance Document.

**26. WAIVER OF CONSEQUENTIAL DAMAGES**

In no event shall any Finance Party be liable on any theory of liability for any special, indirect, consequential or punitive damages and the Borrower hereby waives, releases and agrees (for itself and on behalf of its Subsidiaries) not to sue upon any such claim for any such damages, unless caused by the fraud, wilful default or recklessness of the relevant Finance Party in performance of any of its obligations under this Agreement or any of the Finance Documents.

**27. AMENDMENTS AND WAIVERS**

**27.1 Procedure**

- (a) Except as provided in this Clause 27, no term of the Finance Documents (other than a Swap Agreement) may be amended or waived without the agreement of the Borrower and the Majority Lenders. The Facility Agent may effect, on behalf of any Finance Party, an amendment or waiver allowed under this Clause.

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- (b) The Facility Agent must promptly notify the other Parties of any amendment or waiver effected by it under paragraph (a) above. Any such amendment or waiver is binding on all the Parties.

## 27.2 Exceptions

- (a) An amendment or waiver which relates to:
- (i) the definition of **Majority Lenders** in Clause 1.1 (Definitions);
  - (ii) the definition of any of the **Vessels** in Clause 1.1 (Definitions);
  - (iii) an extension of the date of payment of any amount to a Lender under the Finance Documents;
  - (iv) a reduction in the amount of any payment of principal, interest, fee or other amount payable to a Lender under the Finance Documents;
  - (v) an increase in, or an extension of, a Commitment or the Total Commitments;
  - (vi) an increase in the Borrowing Base Advance Ratio;
  - (vii) a release of the Borrower;
  - (viii) a term of a Finance Document which expressly requires the consent of each Lender;
  - (ix) the right of a Lender to assign or transfer its rights or obligations under the Finance Documents;
  - (x) a reduction in the Margin or the Interest Rate;
  - (xi) the release of security (save as provided in Clause 20.7); or
  - (xii) this Clause,

may only be made with the consent of all the Lenders and the Borrower such consent not to be unreasonably withheld or delayed.

- (b) An amendment or waiver which relates to the rights or obligations of an Administrative Party may only be made with the consent of that Administrative Party, the Majority Lenders and the Borrower.
- (c) An amendment or waiver relating to a Swap Agreement may be made by the Borrower and relevant Swap Counterparty and shall not require the consent of the the Lenders provided that the relevant Swap Agreement remains compliant with the Hedging Policy and does not affect the ranking of payments under Clause 13.7 (Payments). All such amendments or waivers shall be notified by the Borrower to the Facility Agent promptly after they have been made or given, as the case may be.

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**27.3 Change of currency**

If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognised at the same time as the lawful currency of a country), the Finance Documents will be amended to the extent the Facility Agent (acting reasonably and on the instructions of the Majority Lenders and after consultation with the Borrower) determines is necessary to reflect the change.

**27.4 Waivers and remedies cumulative**

The rights of each Finance Party under the Finance Documents:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

**28. CHANGES TO THE PARTIES**

**28.1 Assignments and transfers by Borrower**

The Borrower may not assign or transfer any of its rights and obligations under the Finance Documents without the prior consent of all the Lenders.

**28.2 Assignments and transfers by Lenders**

- (a) A Lender (the **Existing Lender**) may, subject to the following provisions of this Subclause, at any time assign or transfer (including by way of novation) any of its rights and obligations under this Agreement to another bank, financial institution or to a trust, fund or other entity which is regularly engaged or established for the purpose of making, purchasing or otherwise investing in loans, securities or other financial assets (the **New Lender**), provided always that:
  - (i) each assignment or transfer shall be uniform, and not a varying percentage of all rights and obligations under this Agreement;
  - (ii) each assignment or transfer shall not result in increased liability to the Borrower;
  - (iii) the Facility Agent shall provide to the Borrower details of the proposed new lenders at least seven (7) Business Days prior to the proposed transfer date and the Borrower shall approve or object to the identity of any one or more of the proposed new lenders on such list (such approval not to be unreasonably withheld or delayed). The relevant Lender shall be entitled to effect a transfer or assignment to any proposed new lender on such list to which the Borrower has not objected on reasonable grounds within such seven (7) Business Day period.
- (b) An Existing Lender may at any time assign or transfer (including by way of novation) any of its rights and obligations under this Agreement to an Affiliate of the Existing Lender without the consent of the Borrower.
- (c) Unless the Borrower otherwise agrees (acting reasonably), a transfer of part of a Commitment or the rights and obligations under this Agreement by the Existing Lender must be in a minimum amount of twenty five million Dollars (US\$25,000,000) unless the Commitment of the Existing Lender is less than such amount in which case the whole of the Commitment of the Existing Lender will be transferred.



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- (d) A transfer of obligations will be effective only if either:
    - (i) the obligations are novated in accordance with the following provisions of this Clause 28; or
    - (ii) the New Lender confirms to the Facility Agent and the Borrower in form and substance reasonably satisfactory to the Facility Agent and the Borrower that it is bound by the terms of this Agreement,and, in each case, the New Lender enters into the DPP by way of an Accession Agreement (as defined in the DPP).
  - (e) On the transfer becoming effective in this manner, the relevant Lender will be released from its obligations under this Agreement to the extent that they are transferred to the New Lender.
  - (f) Any reference in this Agreement to a Lender includes a New Lender but excludes a Lender if no amount is or may be owed to or by it under this Agreement.
  - (g) The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of USD 2,000. If any New Lender fails to pay such a fee payable by it on the due date for payment, the Facility Agent may at any time deduct an amount equal to such unpaid fee from any monies held by the Facility Agent from time to time for the account of such New Lender.

### **28.3 Procedure for transfer by way of novations**

- (a) In this Subclause:  
**Transfer Date** means, for a Transfer Certificate, the later of:
  - (i) the proposed Transfer Date specified in that Transfer Certificate; and
  - (ii) the date on which the Facility Agent executes that Transfer Certificate.
- (b) A novation is effected if:
  - (i) the Existing Lender and the New Lender deliver to the Facility Agent a duly completed Transfer Certificate; and
  - (ii) the Facility Agent executes it.
- (c) On the Transfer Date:
  - (i) the New Lender will assume the rights and obligations of the Existing Lender expressed to be the subject of the novation in the Transfer Certificate in substitution for the Lender; and
  - (ii) the Existing Lender will be released from those obligations and cease to have those rights.
- (d) Each Party (other than the Existing Lender and the New Lender) irrevocably authorises the Facility Agent to execute any duly completed Transfer Certificate on its behalf.

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**28.4 Limitation of responsibility of Existing Lender**

- (a) Unless expressly agreed to the contrary, an Existing Lender is not responsible to a New Lender for:
  - (i) the legality, validity, effectiveness, completeness, accuracy, adequacy or enforceability of any Finance Document or any other document;
  - (ii) the financial condition of the Borrower;
  - (iii) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or
  - (iv) the accuracy of any statement or information (whether written or oral) made in or supplied in connection with any Finance Document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender that it:
  - (i) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Finance Documents (including the financial condition and affairs of the Borrower and its related entities and the nature and extent of any recourse against any Party or its assets) in connection with its participation in this Agreement; and
  - (ii) has not relied exclusively on any information supplied to it by the Existing Lender in connection with any Finance Document.
- (c) Nothing in any Finance Document requires an Existing Lender to:
  - (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause; or
  - (ii) support any losses incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under any Finance Document or otherwise.

**28.5 Costs resulting from change of Lender or Facility Office**

If:

- (a) a Lender assigns or transfers any of its rights and obligations under the Finance Documents or changes its Facility Office; and
- (b) as a result of circumstances existing at the date of assignment, transfer or change occurs, the Borrower would be obliged to pay a Tax Payment or an Increased Cost,

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then, unless the assignment, transfer or change is made by a Lender to mitigate any circumstances giving rise to a Tax Payment, Increased Cost or a right to be prepaid and/or cancelled by reason of illegality, the Borrower need only pay that Tax Payment or Increased Cost to the same extent that it would have been obliged to if no assignment, transfer or change had occurred.

**28.6 Changes to the Reference Banks**

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Facility Agent must (in consultation with the Borrower) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

**29. DISCLOSURE OF INFORMATION**

Each Finance Party may disclose such information as that Finance Party shall consider appropriate in respect of information supplied to it, by or on behalf of the Borrower, the Seaspam Group, the Charterers or the Finance Documents to:

- (a) in the case of any other Finance Party, any of its Affiliates; or
- (b) any other person who has not been objected to by the Borrower pursuant to Clause 28.2(a)(iii) (Assignments and transfers by Lenders), to (or through) whom an Existing Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement or with (or through) whom a Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or the Borrower; or
- (c) any person to whom, and to the extent that, information is required to be disclosed by any Applicable Law; or
- (d) any other Finance Party; or
- (e) to its and the Borrower's professional advisors,

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PROVIDED ALWAYS that, in relation to paragraph (b) above, the person to whom the information is to be given has entered into a Confidentiality Undertaking. Except as provided in this Clause, a Lender may not disclose any information about the Borrower, the Seaspan Group, the Charterers or the Finance Documents to any person.

**30. SET-OFF**

A Finance Party may set off any matured obligation owed to it by the Borrower under the Finance Documents against any obligation (whether or not matured) owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, that Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

**31. PRO RATA SHARING**

**31.1 Redistribution**

If any amount owing by the Borrower under this Agreement to a Lender (the **recovering Lender**) is discharged by payment, set-off or any other manner other than through the Facility Agent under this Agreement (a **recovery**), then:

- (a) the recovering Lender must, within three (3) Business Days, supply details of the recovery to the Facility Agent;
- (b) the Facility Agent must calculate whether the recovery is in excess of the amount which the recovering Lender would have received if the recovery had been received by the Facility Agent under this Agreement; and
- (c) the recovering Lender must pay to the Facility Agent an amount equal to such excess (the **redistribution**).

**31.2 Effect of redistribution**

- (a) The Facility Agent must treat a redistribution as if it were a payment by the Borrower under this Agreement and distribute it among the Lenders, other than the recovering Lender, accordingly.
- (b) When the Facility Agent makes a distribution under paragraph (a) above, the recovering Lender will be subrogated to the rights of the Finance Parties which have shared in that redistribution.
- (c) If and to the extent that the recovering Lender is not able to rely on any rights of subrogation under paragraph (b) above, the Borrower will owe the recovering Lender a debt which is equal to the redistribution, immediately payable and of the type originally discharged.
- (d) If:
  - (i) a recovering Lender must subsequently return a recovery, or an amount measured by reference to a recovery, to the Borrower; and
  - (ii) the recovering Lender has paid a redistribution in relation to that recovery,

each Finance Party must reimburse the recovering Lender all or the appropriate portion of the redistribution paid to that Finance Party, together with interest for the period while it held the re-distribution. In this event, the subrogation in paragraph (b) above will operate in reverse to the extent of the reimbursement.

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**31.3 Exceptions**

Notwithstanding any other term of this Clause, a recovering Lender need not pay a redistribution to the extent that:

- (a) it would not, after the payment, have a valid claim against the Borrower in the amount of the redistribution; or
- (b) it would be sharing with another Finance Party any amount which the recovering Lender has received or recovered as a result of legal or arbitration proceedings, where:
  - (i) the recovering Lender notified the Facility Agent of those proceedings; and
  - (ii) the other Finance Party had an opportunity to participate in those proceedings but did not do so or did not take separate legal or arbitration proceedings as soon as reasonably practicable after receiving notice of them.

**32. SEVERABILITY**

If a term of a Finance Document is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of the Finance Documents; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of the Finance Documents.

**33. COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts and by facsimile provided that original signed copies are provided within a reasonable period of time thereafter. This has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

**34. NOTICES****34.1 In writing**

- (a) Any communication in connection with a Finance Document must be in writing and, unless otherwise stated, may be given in person, by post, fax, e-mail or by any other electronic communication approved by the Facility Agent.
- (b) For the purpose of the Finance Documents, an electronic communication will be treated as being in writing.
- (c) Unless it is agreed to the contrary, any consent or agreement required under a Finance Document must be given in writing.

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### 34.2 Contact details

(a) Except as provided below, the contact details of each Party for all communications in connection with the Finance Documents are those notified by that Party for this purpose to the Facility Agent on or before the date it becomes a Party.

(b) The contact details of the Borrower for this purpose are:

Address: Unit 2, 7<sup>th</sup> Floor, Bupa Centre, 141 Connaught Road West, Hong Kong, F40000

Fax number: (852) 254 01689

Attention: Kevin Kennedy, Chief Financial Officer

with a copy to Seaspan Ship Management Ltd. of:

Address: 2600-200 Granville Street, Vancouver, B.C., Canada V6C 1S4

Fax number: 604-331-0925

Attention: Gerry Wang, Chief Executive Officer

(c) The contact details of the Facility Agent for this purpose are:

Address: BNP Paribas  
Agency European Group  
ACI: CLA02A1  
1-3 rue Taitbout, 75450 PARIS Cedex 09 (France)

Fax number: 33.1.42.98.43.17

Telephone: 33.1.57.43.38.01 / 33.1.43.16.81.63

E-Mail: [faycal.khechen@bnpparibas.com](mailto:faycal.khechen@bnpparibas.com) / [brigitte.lappai@bnpparibas.com](mailto:brigitte.lappai@bnpparibas.com)

Attention: Mr Fayçal Khechen / Mrs Brigitte Lappai

(d) A Party may change its contact details by giving five (5) Business Days' notice to the Facility Agent or (in the case of the Facility Agent) to the other Parties.

(e) Where a Party nominates a particular department or officer to receive a communication, a communication will not be effective if it fails to specify that department or officer.

### 34.3 Effectiveness

(a) Except as provided below, any communication in connection with a Finance Document will be deemed to be given as follows:

(i) if delivered in person, at the time of delivery;

(ii) if posted, ten (10) days after being deposited in the post, postage prepaid, in a correctly addressed envelope;

(iii) if by fax, when received in legible form; and

(iv) if by e-mail or any other electronic communication, when received in legible form.

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- (b) A communication given under paragraph (a) above but received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.
  - (c) A communication to the Facility Agent will only be effective on actual receipt by it.

**34.4 Borrower**

All communications under the Finance Documents to or from the Borrower must be sent through the Facility Agent or with a copy to the Facility Agent.

**34.5 Entire Agreement**

This Agreement and the other Finance Documents entered into pursuant to this Agreement contain the whole agreement between the parties relating to the transactions contemplated by this Agreement and supersede all previous agreements between the parties relating to such transactions.

**35. LANGUAGE**

- (a) Any notice given in connection with a Finance Document must be in English.
- (b) Any other document provided in connection with a Finance Document must be:
  - (i) in English; or
  - (ii) (unless the Facility Agent otherwise agrees) accompanied by a certified English translation. In this case, the English translation prevails unless the document is a statutory or other official document.

**36. GOVERNING LAW**

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

**37. ENFORCEMENT**

**37.1 Jurisdiction**

- (a) The English courts have jurisdiction to settle any dispute in connection with any Finance Document.
- (b) The English courts are the most appropriate and convenient courts to settle any such dispute.
- (c) This Clause is for the benefit of the Lenders only. To the extent allowed by law, the Lenders may take:
  - (i) proceedings in any other court; and
  - (ii) concurrent proceedings in any number of jurisdictions.

**37.2 Service of process**

- (a) The Borrower irrevocably appoints Clifford Chance Secretaries Limited of 10 Upper Bank Street, London, E14 5JJ as its agent under the Finance Documents for service of process in any proceedings before the English courts.

- 
- (b) If any person appointed as process agent is unable for any reason to act as agent for service of process, the Borrower must immediately appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.
  - (c) The Borrower agrees that failure by a process agent to notify it of any process will not invalidate the relevant proceedings.
  - (d) This Clause does not affect any other method of service allowed by law.

**37.3 Waiver of immunity**

The Borrower irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by a Finance Party against it in relation to a Finance Document and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

THIS AGREEMENT HAS BEEN ENTERED INTO ON THE DATE STATED AT THE BEGINNING OF THIS AGREEMENT.



**SCHEDULE 1**  
**ORIGINAL PARTIES**  
**PART 1**  
**ORIGINAL OWNERS AND THE VESSELS**

**A. CSCL Vessels**

No.	Vessel Name	Size (teu)	IMO Number	Original Owner	Charterer	Charter
1.	CSCL Hamburg	4,250	9224300	CSCL Hamburg Shipping Company Limited	CSCL Asia	Dated 28 July, 2000 between the Original Owner and CSG as novated to the Borrower and CSCL Asia
2.	CSCL Chiwan	4,250	9224312	CSCL Chiwan Shipping Company Limited	CSCL Asia	Dated 28 July, 2000 between the Original Owner and CSG as novated to the Borrower and CSCL Asia
3.	CSCL Ningbo	4,250	9227015	CSCL Ningbo Shipping Company Limited	CSCL Asia	Dated 28 July, 2000 between the Original Owner and CSG as novated to the Borrower and CSCL Asia
4.	CSCL Dalian	4,250	9227027	CSCL Dalian Shipping Company Limited	CSCL Asia	Dated 28 July, 2000 between the Original Owner and CSG as novated to the Borrower and CSCL Asia
5.	CSCL Felixstowe	4,250	9227039	CSCL Felixstowe Shipping Company Limited	CSCL Asia	Dated 28 July, 2000 between the Original Owner and CSG as novated to the Borrower and CSCL Asia
6.	CSCL Vancouver	4,250	9290098	Vancouver Shipping Company Limited	CSCL Asia	Dated 25 December, 2002 between the Original Owner and CSG as novated to the Borrower and CSCL Asia

7.	CSCL Zeebrugge	9,600	9314234	Hemlock Shipping Company Limited	CSCL Asia	Dated 10 April, 2004 between the Original Owner and CSG as novated to the Borrower and CSCL Asia
8.	CSCL Long Beach	9,600	✘	Spruce Shipping Company Limited	CSCL Asia	Dated 10 April, 2004 between the Original Owner and CSG and to be novated to the Borrower and CSCL Asia on the Delivery Date

**B. Hapag-Lloyd Vessels**

No.	Vessel Name	Size (teu)	IMO Number	Original Owner	Charterer	Charter
1.	New Delhi Express	4,250	9301770	Seaspan King Shipping Company Limited	Hapag-Lloyd	Dated 12 August, 2003 between the Borrower and CP Ships USA, LLC, as renamed Hapag-Lloyd USA, LLC
2.	Dubai Express	4,250	9301782	Seaspan Queen Shipping Company Limited	Hapag-Lloyd	Dated 12 August, 2003 between the Borrower and CP Ships USA, LLC, as renamed Hapag-Lloyd USA, LLC
3.	Jakarta Express	4,250	9301794	Seaspan Knight Shipping Company Limited	Hapag-Lloyd	Dated 12 August, 2003 between the Borrower and CP Ships USA, LLC, as renamed Hapag-Lloyd USA, LLC
4.	Saigon Express	4,250	9301809	Seaspan Bishop Shipping Company Limited	Hapag-Lloyd	Dated 12 August, 2003 between the Borrower and CP Ships USA, LLC, as renamed Hapag-Lloyd USA, LLC
5.	Lahore Express	4,250	9301811	Seaspan Castle Shipping Company Limited	Hapag-Lloyd	Dated 12 August, 2003 between the Borrower and CP Ships USA, LLC, as renamed Hapag-Lloyd USA, LLC

6.	Rio Grande Express	4,250	9301823	Seaspan Pawn Shipping Company Limited	Hapag-Lloyd	Dated 12 August, 2003 between the Borrower and CP Ships USA, LLC, as renamed Hapag-Lloyd USA, LLC
7.	Santos Express	4,250	9301835	Seaspan Ace Shipping Company Limited	Hapag-Lloyd	Dated 12 August, 2003 between the Borrower and CP Ships USA, LLC, as renamed Hapag-Lloyd USA, LLC
8.	Rio de Janeiro Express	4,250	9301847	Seaspan Eagle Shipping Company Limited	Hapag-Lloyd	Dated 12 August, 2003 between the Borrower and CP Ships USA, LLC, as renamed Hapag-Lloyd USA, LLC
9.	Manila Express	4,250	✘	Seaspan Birdie Shipping Company Limited	Hapag-Lloyd	Dated 12 August, 2003 between the Borrower and CP Ships USA, LLC, as renamed Hapag-Lloyd USA, LLC

**C. MSC Vessels<sup>1</sup>**

No.	Vessel Name	Size (teu)	IMO Number	Original Owner	Charterer	Charter
10.	MSC Veronique	4,809	8618293	Not applicable	MSC	Dated [✘] between the Borrower and MSC
11.	MSC Manu	4,809	8613322	Not applicable	MSC	Dated [✘] between the Borrower and MSC
12.	MSC Leanne	4,809	8618310	Not applicable	MSC	Dated [✘] between the Borrower and MSC
13.	MSC Carole	4,809	8618308	Not applicable	MSC	Dated [✘] between the Borrower and MSC

<sup>1</sup> MSC Vessels will be removed after the MSC Vessel Sale Date.

**PART 2**  
**ORIGINAL LENDERS**

Name of Original Lender	Facility Office	Outstanding Loan balance prior to Prepayment (US\$)
BNP Paribas	16 Boulevard des Italiens, 75009 Paris, France	87,386,083.24
Bank of Scotland plc	The Mound, Edinburgh, EH1 1YZ, UK	49,253,974.18
Citibank N.A. - London	33 Canada Square, London, E14 5LB	71,497,704.46
Credit Suisse AG	Ship Finance, St Alban-Graben, 1-3 P.O. Box, 4002 Basel, Switzerland	121,546,097.58
DNB Capital LLC (transferred from DNB Bank ASA)	200 Park Avenue, 31st Floor, New York, NY 10166, USA	87,386,083.23
HSH Nordbank AG, New York branch	230 Park Avenue, 31st Floor, New York, NY 10169, USA	71,497,704.46
Landesbank Hessen - Thüringen Girozentrale, New York Branch	420 Fifth Avenue, New York, NY 10018, USA	95,330,272.62
Sumitomo Mitsui Banking Corporation, Brussels Branch	Neo Building, Rue Montoyer 51 Box 6, 1000 Brussels, Belgium	27,804,662.85
*The Governor and Company of the Bank of Ireland	Head Office, 40 Mespil Road, Dublin 4, Ireland	39,720,946.92
*Belfius Bank SA/NV (in succession of Dexia Bank Belgium S.A.)	Boulevard Pachecolaan 44, 1000 Brussels, Belgium	39,720,946.92
*Bremer Landesbank Kreditanstalt Oldenburg—Girozentrale	Domshof 26, 28195 Bremen, Germany	39,720,946.92
*Crédit Agricole Corporate and Investment Bank (formally known as Calyon)	9 quai du Président Paul Doumer, 92920 Paris La Défense Cedex, France	27,804,662.85

*Credit Industriel et Commercial	520 Madison Avenue, 37 <sup>th</sup> Floor, New York, NY 10022, USA	39,720,946.92
*KfW	Palmengartenstr. 5-9, 60325 Frankfurt, Germany	63,553,515.08
*Lloyds Bank plc	150 Fountainbridge, Edinburgh, EH3 9PE, United Kingdom	39,720,946.92
*Santander Asset Finance plc (formerly Alliance & Leicester Commercial Finance plc)	17 Ulster Terrace, Regent's Park, London NW1 4PJ, UK	27,804,662.85
*Swedbank AB (publ)	Brunkebergstorg 8, SE-105 34 Stockholm, Sweden	39,720,946.92
*Unicredit Bank AG (formerly known as Bayerische Hypo-und Verreinsbank AG in succession of HVB Group)	Kardinal-Faulhaber-Str. 1, 80333 Munich, Germany, acting through its office at Neuer Wall 64, 20354 Hamburg, Germany	63,553,515.08
Total:		<b>1,032,744,620.00</b>

The Original Lenders marked with an \* by their name in this Schedule 1, Part 2 are Prepaid Lenders as of the Amendment Date pursuant to Clause 5.3(c) of this Agreement.

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**SCHEDULE 2**  
**INITIAL CONDITION PRECEDENT DOCUMENTS**  
**PART 1**

**BORROWER**

- (a) A certified copy\* of the constitutional documents of the Borrower or, if the Facility Agent already has a copy, a certificate of the Borrower certifying that the copy in the Facility Agent's possession is still correct, complete and in full force and effect as at a date no earlier than the date of the Request together with an up to date Certificate of Goodstanding dated no more than ten (10) Business Days prior to the first Utilisation Date.
- (b) A certified copy\* of a resolution of the board of directors of the Borrower (unless such resolution in relation to the issues below is still in full force and effect):
  - (i) approving the terms of, and the transactions contemplated by, each Finance Document and each Related Contract to which the Borrower is a party and resolving that it executes each such Finance Document and each Related Contract, then to be executed;
  - (ii) authorising a specified person or persons to execute each Finance Document and each Related Contract on its behalf to which it is a party, then to be executed; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with each Finance Document and each Related Contract to which it is a party, then to be executed.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certified copy\* of all other resolutions, consents, licences, exemptions and filings, corporate, official or otherwise which the Lender may reasonably require in connection with this Agreement or any other Finance Document.

**FINANCE DOCUMENTS AND RELATED CONTRACTS**

- (a) A duly executed original of this Agreement (to be provided at the time of the initial Request only).
- (b) A duly executed original of the DPP (to be provided at the time of the initial Request only).
- (c) A duly executed original of the Retention Account Charge (to be provided at the time of the initial Request only).
- (d) A duly executed original of the Second Retention Account Charge (already provided as at the Amendment Date only)
- (e) A duly executed original of the Debt Service Retention Account Charge (to be provided at the Amendment Date).

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- (f) A duly executed original of the Second Debt Service Retention Account Charge (to be provided at the Amendment Date).
  - (g) A duly executed original of the Fee Letter (to be provided at the time of the initial Request only).
  - (h) A certified copy of the Management Agreement, duly executed (to be provided at the time of the initial Request only).
  - (i) A duly executed original of the Management Agreement Assignment (to be provided at the time of the initial Request only).
  - (j) A duly executed original of the relevant Swap Agreement(s).
  - (k) A duly executed original of the Swap Agreement Assignment for each Swap Agreement.
  - (l) Duly executed originals of all notices of assignment required to be served under each Security Document referred to above and faxed copies of the acknowledgments thereof (where it is not possible to provide originals of the same, with originals to follow as soon as practicable), duly executed by each relevant counterparty.

**OTHER DOCUMENTS AND EVIDENCE**

- (a) A copy of any other authorisation or other document, opinion or assurance which the Facility Agent considers to be necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, any Finance Document or any Related Contract or for the validity and enforceability of any Finance Document or any Related Contract.
- (b) A letter from the Borrower to Facility Agent (duly acknowledged by the Facility Agent) detailing Hedging Policy to be implemented (to be provided at the time of the initial Request only).

**OTHER REQUIREMENTS**

- (a) Evidence satisfactory to the Facility Agent (acting on behalf of the Majority Lenders) that the Borrower has successfully completed an IPO.

\* Each certified copy document must be certified by a director, officer or duly authorised attorney of the Borrower as being true and complete as at a date no earlier than the date of the Request for the Loan.

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## PART 2

### FINANCE DOCUMENTS AND RELATED CONTRACTS

- (a) A duly executed original of each Time Charter, Charter Guarantee and Earnings Assignment relating to the Vessel to become a Secured Vessel, or, in the case of a MSC Vessel, each Bareboat Charter and Earnings Assignment.
- (b) A duly executed original of the Mortgage relating to the Vessel to become a Secured Vessel.
- (c) A duly executed original of the Deed of Covenants relating to the Vessel to become a Secured Vessel.
- (d) A duly executed original of the Insurances Assignment relating to the Vessel to become a Secured Vessel.
- (e) A duly executed original of each of the Manager's Undertakings relating to the Vessel to become a Secured Vessel.
- (f) A duly executed original of the Swap Mortgage relating to the Vessel to become a Secured Vessel.
- (g) A duly executed original of the Swap Deed of Covenants relating to the Vessel to become a Secured Vessel.
- (h) A certified copy\* of the Time Charter or Bareboat Charter (as applicable) (including the documentation by which the benefit and burden of such Time Charter (or Bareboat Charter) has been transferred to the Borrower from the Original Owner) relating to the Vessel to become a Secured Vessel, duly executed.
- (i) A certified copy\* of the Charter Guarantee relating to the Vessel to become a Secured Vessel, duly executed.
- (j) A certified copy\* of the documentation pursuant to which the Vessel to become a Secured Vessel has been sold to the Borrower.
- (k) Duly executed originals of all notices of assignment required to be served under each Security Document referred to above and faxed copies of the acknowledgements thereof (where it is not possible to provide originals of the same, with such originals to follow as soon as practicable), duly executed by each relevant counterparty.

### OTHER DOCUMENTS

A copy of any other authorisation or other document, opinion or assurance which the Facility Agent considers to be necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, any Finance Document or any Related Contract or for the validity and enforceability of any Finance Document or any Related Contract.



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## THE SECURED VESSEL DELIVERY DOCUMENTS

- (l) A certified copy\* of:
  - (i) a classification certificate in respect of the Vessel showing the Secured Vessel to be in class without recommendation, condition or qualification or, in the event that this is not available, a faxed copy with a certified copy to follow as soon as practicable;
  - (ii) a valid Interim Safety Management Certificate for the Secured Vessel;
  - (iii) a valid Document of Compliance; and
  - (iv) a valid International Ship Security Certificate for the Secured Vessel.
- (m) Evidence acceptable to the Facility Agent that immediately following the drawdown of the Loan that any Vessel to be included as a Secured Vessel for the purpose of the Borrowing Base Advance Ratio will be delivered to the Borrower (whether under the relevant Shipbuilding Contract or otherwise) and title (as described in paragraph (a)(ii) of Schedule 3) to the Vessel will pass to the Borrower.

## INSURANCE

- (n) A certified copy of all current insurance policies in respect of the Vessel to become a Secured Vessel.
- (o) A duly executed and, where necessary, notarised notice of assignment (and acknowledgement of the same) of the Obligatory Insurances in respect of the Vessel to become a Secured Vessel duly executed by the Borrower substantially in the form provided for in the Insurances Assignment.
- (p) Fax confirmation from each broker and club concerned with the Obligatory Insurances of the Vessel to become a Secured Vessel that:
- (i) the relevant cover is in effect;
  - (ii) they will accept notice of assignment of the Obligatory Insurances in favour of the Facility Agent and execute an acknowledgement of the notice in the form required by the Facility Agent;
  - (iii) they will restrict their lien for unpaid premiums under any fleet policy to unpaid premiums in respect of that Vessel only;
  - (iv) they will issue a letter of undertaking in the current LIBA form (in the case of Lloyds brokers), in the form provided for in the Insurances Assignment (in the case of non Lloyds brokers and insurers other than clubs) or in their current standard form (in the case of clubs);
  - (v) they will accept endorsement of a loss payable clause on the policies in the form provided for in the Insurances Assignment (in the case of brokers and insurers other than clubs) or will note the interest of the Facility Agent in the entry for the Vessel by way of a loss payable clause in their current standard form (in the case of clubs); and
  - (vi) they are not aware of any mortgage, charge, assignment or other encumbrance affecting the Obligatory Insurances with which they are concerned (other than any previously disclosed by the Borrower to the Facility Agent in writing).

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- (q) Confirmation from the Facility Agent of its satisfaction with a final insurance report prepared by Marsh Insurance Brokers.
  - (r) Confirmation from the Facility Agent of its receipt of a Valuation of the Vessel to become a Secured Vessel showing the Market Value of that Vessel.

**LEGAL OPINIONS**

- (s) A legal opinion of Allen & Overy LLP, London office, English legal advisors to the Lenders, addressed to the Facility Agent as agent for and on behalf of itself and the Lenders.
- (t) A legal opinion of Allen & Overy LLP, Hong Kong office, Hong Kong legal advisors to the Facility Agent, addressed to the Facility Agent as agent for and on behalf of itself and the Lenders.
- (u) A legal opinion of Seward & Kissel LLP, Marshall Island legal advisors to the Facility Agent, addressed to the Facility Agent as agent for and on behalf of itself and the Lenders.
- (v) A legal opinion of Allen & Overy LLP, Amsterdam office, Dutch legal advisors to the Lenders, addressed to the Facility Agent as agent for and on behalf of itself and the Lenders in respect of the Retention Accounts Charge (to be provided at the time of the initial Request only).
- (w) A legal opinion of legal advisors (who shall be acceptable to the Majority Lenders, in their sole discretion) practising in the jurisdiction of incorporation of any Charterer, addressed to the Facility Agent as agent for and on behalf of itself and the Lenders in respect of the Charterer (to the extent that the same has not been dealt with in any of the legal opinions referred to above).
- (x) A legal opinion of legal advisors (who shall be acceptable to the Majority Lenders, in their sole discretion) practising in the jurisdiction of incorporation of any Charterer Guarantor, addressed to the Facility Agent as agent for and on behalf of itself and the Lenders in respect of the Charterer Guarantor (to the extent that the same has not been dealt with in any of the legal opinions referred to above).

**OTHER REQUIREMENTS**

- \* Each certified copy document must be certified by a director, officer or duly authorised attorney of the Borrower as being true and complete as at a date no earlier than the date of the Request for the Loan.

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**SCHEDULE 3**  
**CONDITIONS SUBSEQUENT TO LOAN**

The Facility Agent shall require the following documentation and evidence from the Borrower, in respect of a Vessel at the time provided for in Clause 3.1(d).

Evidence that:

- (i) the Mortgage and the Swap Mortgage in respect of the Vessel have been duly recorded in the Hong Kong Shipping Register and in respect of the relevant MSC Vessel, in the Panamanian Ship Registry and constitutes a first priority security interest and a second priority security interest, respectively, and a second priority security interest, respectively, over the Vessel and that all taxes and fees payable to the Hong Kong Shipping Register, and in respect of the relevant MSC Vessel, all taxes and fees payable to the Panamanian Ship Registry in respect of that Vessel have been paid in full;
- (ii) the title to the Vessel is held by the Borrower free of all Security Interests other than Permitted Liens; and
- (iii) the Vessel is provisionally registered in the name of the Borrower, as appropriate, as a Hong Kong flag ship at the port of Hong Kong, and in respect of the relevant MSC Vessel, as a Panama flag ship.

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**SCHEDULE 4**

**PAYMENTS**

**FORM OF REQUEST**

To: BNP Paribas. as Facility Agent

From: Seaspn Corporation

Date: [       ]

**Credit Agreement dated 8 August 2005  
as amended by an amendment and restatement agreement dated [X] 2013 (the Credit Agreement)**

1. We wish to borrow the Loan from you as follows:

(a) Utilisation Date: [       ]

(b) Amount/currency: [       ]

2. Term: [       ]

3. Payment Instructions: [       ]

4. We confirm that each condition specified in Clause 3.2 (Further conditions precedent) of the Credit Agreement is satisfied on the date of this Request.

By:

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**SEASPAN CORPORATION** as borrower

Authorised Signatory

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**SCHEDULE 5**  
SELECTION NOTICE

From: Seaspn Corporation as Borrower  
To: BNP Paribas as Facility Agent

Dated: [✕]

Dear Sirs

**Credit Agreement dated 8 August 2005**  
**as amended by an amendment and restatement agreement dated [✕] 2013 (the Credit Agreement)**

1. We refer to the Credit Agreement. This is a Selection Notice. Terms defined in the Credit Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We request that, subject to paragraph (f) of Clause of the Credit Agreement, the next Term for the Loan should be [✕].
3. This Selection Notice is irrevocable.

Yours faithfully

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For and on behalf of  
**Seaspn Corporation**

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**SCHEDULE 6**  
**FORM OF TRANSFER CERTIFICATE**

To: Seaspan Corporation

From: [THE EXISTING BANK] and [THE NEW BANK]

Date: [       ]

**Credit Agreement dated 8 August 2005**  
**as amended by an amendment and restatement agreement dated [X] 2013 (the Credit Agreement)**

We refer to Clause 28.3 (Procedure for transfer by way of novations) of the Credit Agreement. Terms not defined in this Certificate are as defined in the Credit Agreement..

1. We [       ] (the **Existing Bank**) and [       ] (the **New Bank**) agree to the Existing Bank and the New Bank novating all the Existing Bank's rights and obligations referred to in the Schedule in accordance with Clause 28.3 (Procedure for transfer by way of novations).
2. The specified date for the purposes of Clause 28.3(a) (Procedure for transfer by way of novations) is [date of novation].
3. The Facility Office and address for notices of the New Bank for the purposes of Clause 34.2 (Contact details) are set out in the Schedule attached to this Certificate.
4. This Novation Certificate is governed by English law.

**THE SCHEDULE**

**Rights and obligations to be novated**

[Choose one of the following options (a) to (d):]

- (a) all of the rights and obligations of the Existing Lender in respect of the Facility – principal amount US\$[        ].
- (b) all of the rights and obligations of the Existing Lender in respect of Vessel Loan [        ] [and Vessel Loan [        ]] -principal amount US\$[        ].
- (c) the principal amount of US\$[        ] in respect of each of the Loan and all the rights and obligations attached to the same-total principal amount US\$[        ].
- (d) the principal amount of US\$[        ] in respect of [each of] Vessel Loan [        ] [and Vessel Loan [        ] and [        ]] and all the rights and obligations attached to the same.

**[New Bank]**

[Facility Office Address for notices]

[Existing Bank]

[New Bank]

By:

By:

Date:

Date:

The Transfer Date is confirmed by the Facility Agent as [        ].

**BNP PARIBAS.**

By:

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**SCHEDULE 7  
COMPLIANCE CERTIFICATE**

To: BNP Paribas. as Facility Agent

From: Seaspn Corporation

**Credit Agreement dated 8 August 2005  
as amended by an amendment and restatement agreement dated [X] 2013 (the Credit Agreement)**

1. Terms defined in the Credit Agreement have the same meaning in this Certificate.
2. I/We hereby certify that as of[ ] the status of the financial covenants set out in Clause 0 (
3. Financial Covenants) of the Credit Agreement are as follows:
  - (a) **Tangible Net Worth:** the Tangible Net Worth of the Borrower is [X] Dollars (US\$[X]).
  - (b) **Gearing:** the Total Borrowings are [X] and therefore do not exceed 65% of Total Assets.
  - (c) **Net Interest Coverage Ratio:** the Interest Coverage Ratio is [X].
  - (d) **Interest and Principal Coverage Ratio:** the Interest and Principal Coverage Ratio is [X].

[ ]

Yours faithfully,

[ \_\_\_\_\_ ]

Chief Executive Officer

[or]

\_\_\_\_\_  
Chief Financial Officer



**SCHEDULE 8**  
**ANNUAL COMPLIANCE CERTIFICATE**

To: BNP Paribas. as Facility Agent

From: Seaspans Corporation

**Credit Agreement dated 8 August 2005**  
**as amended by an amendment and restatement agreement dated [X] 2013 (the Credit Agreement)**

1. Terms defined in the Credit Agreement have the same meaning in this Certificate.
2. I/We hereby certify that [no Default has occurred and is continuing or is outstanding] [a Default under Clause [ ] of [specify document] is outstanding and the following steps are being taken to remedy it [ ]].
3. [Except as set out below, the representations set out in Clause 14 (Representations) of the Credit Agreement are deemed to be repeated as at the date hereof.]
4. I/We hereby attach a list of the estimated dates of the intended dry docking of the Vessels actually delivered on or before the date of this Certificate.
5. I/We hereby certify that as of [ ] the status of the financial covenants set out in Clause 17 (
6. Financial Covenants) of the Credit Agreement are as follows:
  - (a) **Tangible Net Worth:** the Tangible Net Worth of the Borrower is not less than four hundred and fifty million Dollars (US\$450,000,000).
  - (b) **Gearing:** the Total Borrowings do not exceed 65% of Total Assets.
  - (c) **Net Interest Coverage Ratio:** the Interest Coverage Ratio is greater than 2.50 to 1.
  - (d) **Interest and Principal Coverage Ratio:** the Interest and Principal Coverage Ratio is not less than 1.1 to 1.

[ ]

Yours faithfully,

[ \_\_\_\_\_ ]

Chief Executive Officer

[or]

\_\_\_\_\_  
Chief Financial Officer

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**SCHEDULE 9**  
**BORROWER'S CERTIFICATE**

To: BNP Paribas. as Facility Agent  
From: Seaspac Corporation

**Credit Agreement dated 8 August 2005**  
**as amended by an amendment and restatement agreement dated May, 2007 (the Credit Agreement)**

7. Terms defined in the Credit Agreement have the same meaning in this Certificate.
8. I/We hereby confirm that on the date of this Certificate the Manager has provided us with the certificate attached hereto.

[            ]

Yours faithfully,

[ \_\_\_\_\_ ]

Chief Executive Officer

**SCHEDULE 10****ESTIMATED ADDBACK RELATING TO CERTAIN SECURED VESSELS DEPRECIATION**

<b>Date</b>	<b>Amount of Add Back (US\$)</b>
30 September 2005	207,588,000
31 December 2005	205,843,000
31 March 2006	204,099,000
30 June 2006	202,354,000
30 September 2006	200,610,000
31 December 2006	198,866,000
31 March 2007	197,121,000
30 June 2007	195,377,000
30 September 2007	193,632,000
31 December 2007	191,888,000
31 March 2008	190,143,000
30 June 2008	188,399,000
30 September 2008	186,655,000
31 December 2008	184,910,000
31 March 2009	183,166,000
30 June 2009	181,420,000
30 September 2009	179,677,000
31 December 2009	177,932,000
31 March 2010	176,188,000
30 June 2010	174,443,000
30 September 2010	172,699,000
31 December 2010	170,955,000
31 March 2011	169,210,000
30 June 2011	167,466,000
30 September 2011	165,721,000
31 December 2011	163,977,000
30 March 2012	162,232,000
29 June 2012	160,488,000
29 September 2012	158,744,000
30 December 2012	156,999,000
31 March 2013	155,255,000
30 June 2013	153,510,000
30 September 2013	151,766,000
31 December 2013	150,021,000
31 March 2014	148,277,000

Date	Amount of Add Back (US\$)
30 June 2014	146,253,000
30 September 2014	144,788,000
31 December 2014	143,044,000
31 March 2015	141,278,000
30 June 2015	139,533,000
30 September 2015	137,788,000
31 December 2015	136,043,000
31 March 2016	134,298,000
30 June 2016	132,553,000
30 September 2016	130,808,000
31 December 2016	129,063,000
31 March 2017	127,318,000
30 June 2017	125,573,000
30 September 2017	123,828,000
31 December 2017	122,083,000
31 March 2018	120,338,000
30 June 2018	118,593,000
30 September 2018	116,848,000
31 December 2018	115,103,000
31 March 2019	113,358,000

**Note: The above table applies to each of the CSCL Vessels which are set out in Schedule 1 (other than the CSCL Zeebrugge and CSCL Long Beach).**

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**SCHEDULE 11**  
**STANDING PAYMENT INSTRUCTIONS**

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**SIGNATORIES**

**Borrower**

**SEASPAN CORPORATION**

By:

**The Arrangers**

**CITIGROUP GLOBAL MARKETS LIMITED**

By:

**BNP PARIBAS.**

By:

**The Facility Agent**

**BNP PARIBAS.**

By:

**The Lenders**

**CITIBANK N.A. - LONDON**

By:

**CREDIT SUISSE AG**

By:

**DNB CAPITAL LLC.**

By:

**BNP PARIBAS**

By:

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**BANK OF SCOTLAND PLC**

By:

**THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND**

By:

**CRÉDIT INDUSTRIEL ET COMMERCIAL**

By:

**LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE, NEW YORK BRANCH**

By:

**HSB NORDBANK AG, NEW YORK BRANCH**

By:

**UNICREDIT BANK AG (FORMERLY KNOWN AS BAYERISCHE HYPO-UND VEREINSBANK AG)**

By:

**KFW IPEX-BANK GMBH DULY AUTHORISED BY KFW**

By:

**BREMER LANDESBANK KREDITANSTALT OLDENBURG-GIROZENTRALE**

By:

**SUMITOMO MITSUI BANKING CORPORATION, BRUSSELS BRANCH**

By:

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**SANTANDER ASSET FINANCE PLC (FORMERLY ALLIANCE & LEICESTER COMMERCIAL FINANCE PLC)**

By:

**CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK (FORMERLY KNOWN AS CALYON)**

By:

**BELFIUS BANK SA/NV**

By:

**LLOYDS BANK PLC**

By:

**SWEDBANK AB (PUBL)**

By:



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**APPENDIX 1**  
**FORM OF INSURANCES ASSIGNMENT**

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**APPENDIX 2**  
**FORM OF MORTGAGE**

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**APPENDIX 3**  
**FORM OF DEED OF COVENANTS**

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**APPENDIX 4**  
**FORM OF MANAGEMENT AGREEMENT ASSIGNMENT**

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**APPENDIX 5**  
**FORM OF SWAP MORTGAGE**

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**APPENDIX 6**  
**FORM OF SWAP DEED OF COVENANTS**

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**APPENDIX 7**  
**FORM OF SWAP AGREEMENT ASSIGNMENT**

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**APPENDIX 8**  
**FORM OF TIME CHARTER, CHARTER GUARANTEE AND EARNINGS ASSIGNMENT**



**SEASPAN CORPORATION  
SUBSIDIARIES**

<b>COMPANY NAME</b>	<b>INCORPORATION JURISDICTION</b>	<b>OWNERSHIP</b>
Seaspan HHI Holding 2638-2640-2642 Ltd.	Marshall Islands	Seaspan Corporation owns 100%
Seaspan HHI 2638 Ltd.	Marshall Islands	Seaspan HHI Holding 2638-2640-2642 owns 100%
Seaspan HHI 2640 Ltd.	Marshall Islands	Seaspan HHI Holding 2638-2640-2642 owns 100%
Seaspan HHI 2642 Ltd.	Marshall Islands	Seaspan HHI Holding 2638-2640-2642 owns 100%
Seaspan YZJ Holding 1006-1008 Ltd.	Marshall Islands	Seaspan Corporation owns 100%
Seaspan YZJ 1006 Ltd.	Marshall Islands	Seaspan YZJ Holding 1006-1008 owns 100%
Seaspan YZJ 1008 Ltd.	Marshall Islands	Seaspan YZJ Holding 1006-1008 owns 100%
Seaspan Finance I Co. Ltd.	Marshall Islands	Seaspan Corporation owns 100%
Seaspan Finance II Co. Ltd.	Marshall Islands	Seaspan Corporation owns 100%
Seaspan Finance III Co. Ltd.	Marshall Islands	Seaspan Corporation owns 100%
Seaspan Investment I Ltd.	Marshall Islands	Seaspan Corporation owns 100%
Seaspan YZJ Holding 983-985-993 Ltd.	Marshall Islands	Seaspan Corporation owns 100%
Seaspan YZJ 983 Ltd.	Marshall Islands	Seaspan Corporation owns 100%
Seaspan YZJ 985 Ltd.	Marshall Islands	Seaspan Corporation owns 100%
Seaspan YZJ 993 Ltd.	Marshall Islands	Seaspan Corporation owns 100%
Seaspan Holding 140 Ltd.	Marshall Islands	Seaspan Corporation owns 100%
Seaspan 140 Ltd.	Marshall Islands	Seaspan Holding 140 Ltd. owns 100%
Seaspan (Asia) Corporation	Marshall Islands	Seaspan Corporation owns 100%
Seaspan Containership 2180 Ltd.	Marshall Islands	Seaspan (Asia) Corporation owns 100%
Seaspan Containership 2177 Ltd.	Marshall Islands	Seaspan (Asia) Corporation owns 100%
Seaspan Containership 2181 Ltd.	Marshall Islands	Seaspan (Asia) Corporation owns 100%
Seaspan Containership S452 Ltd.	Marshall Islands	Seaspan (Asia) Corporation owns 100%
Seaspan Management Services Ltd.	Bermuda	Seaspan Corporation owns 100%
Seaspan Advisory Services Ltd.	Bermuda	Seaspan Management Services Ltd. owns 100%
Seaspan Ship Management Ltd.	British Columbia	Seaspan Management Services Ltd. owns 100%
Seaspan Crew Management Ltd.	Bahamas	Seaspan Ship Management Ltd. owns 100%
Seaspan Crew Management India Private Limited	India	Seaspan Ship Management Ltd. owns 0.01% and Seaspan Crew Management Ltd. owns 99.99%

## CERTIFICATION

I, Gerry Wang, Chief Executive Officer of Seaspan Corporation (the "Company"), certify that:

1. I have reviewed this report on Form 20-F of the Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The Company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the Company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the Company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting; and
5. The Company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company's auditors and the audit committee of the Company's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

Dated: March 11, 2014

By: /s/ Gerry Wang  
Gerry Wang  
Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATION

I, Sai W. Chu, Chief Financial Officer of Seaspan Corporation (the "Company"), certify that:

1. I have reviewed this report on Form 20-F of the Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The Company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the Company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the Company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting; and
5. The Company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company's auditors and the audit committee of the Company's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

Dated: March 11, 2014

By: /s/ Sai W. Chu  
Sai W. Chu  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the annual report of Seaspac Corporation (the “**Company**”) on Form 20-F for the year ended December 31, 2013 as filed with the Securities and Exchange Commission on the date hereof (the “**Form 20-F**”), I, Gerry Wang, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Form 20-F fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Form 20-F fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 11, 2014

By: /s/ Gerry Wang  
Gerry Wang  
Chief Executive Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the annual report of Seaspac Corporation (the “**Company**”) on Form 20-F for the year ended December 31, 2013 as filed with the Securities and Exchange Commission on the date hereof (the “**Form 20-F**”), I, Sai W. Chu, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Form 20-F fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Form 20-F fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 11, 2014

By: /s/ Sai W. Chu

Sai W. Chu

Chief Financial Officer

(Principal Financial and Accounting Officer)



**KPMG LLP**  
**Chartered Accountants**  
PO Box 10426 777 Dunsmuir Street  
Vancouver BC V7Y 1K3  
Canada

Telephone (604) 691-3000  
Fax (604) 691-3031  
Internet [www.kpmg.ca](http://www.kpmg.ca)

The Board of Directors  
Seaspan Corporation

We consent to the incorporation by reference in the Registration Statement (No. 33-151329) on Form F-3D, registration statement (No. 333-168938) on Form F-3, registration statement (No. 333-173207) on Form S-8, registration statement (No. 333-189493) on Form S-8, registration statement (No. 333-180895) on Form F-3ASR and registration statement (No. 333-190718) on Form F-3ASR of Seaspan Corporation of our reports dated March 11, 2014, with respect to the consolidated balance sheets as of December 31, 2013 and 2012, and the related consolidated statements of operations, comprehensive income (loss), shareholders' equity and cash flows for each of the years in the three-year period ended December 31, 2013, and the effectiveness of internal control over financial reporting as of December 31, 2013, which reports appear in the December 31, 2013 annual report on Form 20-F of Seaspan Corporation.

/s/ KPMG LLP  
Chartered Accountants  
March 11, 2014  
Vancouver, Canada

