**ANNEX C**

**GENERAL TERMS AND CONDITIONS**

Table of Contents

[*ARTICLE I The Note* 7](#_Toc5114770)

[*ARTICLE II Commitment to Guarantee* 7](#_Toc5114771)

[SECTION 2.01. Commitment to Guarantee 7](#_Toc5114772)

[SECTION 2.02. Form of Guarantee 7](#_Toc5114773)

[SECTION 2.03. Conditions to Guarantee and Execution and Delivery of the Guarantee 8](#_Toc5114774)

[SECTION 2.04. Assignment; Termination of the Guarantee 11](#_Toc5114775)

[*ARTICLE III Administrator’s Note* 11](#_Toc5114776)

[SECTION 3.01. Administrator’s Note 11](#_Toc5114777)

[SECTION 3.02. Mandatory Progress Prepayment. 12](#_Toc5114778)

[SECTION 3.03. Elective Prepayments and Refinancings 12](#_Toc5114779)

[SECTION 3.04. Additional Debts of Shipowner to Administrator. 12](#_Toc5114780)

[*ARTICLE IV Security Agreement* 13](#_Toc5114781)

[SECTION 4.01. Granting Clause 13](#_Toc5114782)

[SECTION 4.02. Uniform Commercial Code Filings 14](#_Toc5114783)

[SECTION 4.03. Surrender of Vessel Documents. 15](#_Toc5114784)

[SECTION 4.04. General Powers of the Administrator 15](#_Toc5114785)

[SECTION 4.05. Performance of the Shipowner’s Agreements by the Administrator. 15](#_Toc5114786)

[*ARTICLE V Interest Escrow Fund* 16](#_Toc5114787)

[SECTION 5.01. Establishment of Interest Escrow Fund. 16](#_Toc5114788)

[SECTION 5.02. Disbursements from the Interest Escrow Fund. 16](#_Toc5114789)

[SECTION 5.03. Termination Date of the Interest Escrow Fund. 16](#_Toc5114790)

[*ARTICLE VI Chapter 537 Reserve Fund (including Late Charges Subfund)* 17](#_Toc5114791)

[SECTION 6.01. Establishment of Chapter 537 Reserve Fund. 17](#_Toc5114792)

[SECTION 6.02. Computation of Reserve Fund Net Income. 17](#_Toc5114793)

[SECTION 6.03. Delivery of Statement of Reserve Fund Net Income. 17](#_Toc5114794)

[SECTION 6.04. Annual Reserve Fund Net Income Deposit. 18](#_Toc5114795)

[SECTION 6.05. Exceptions to Annual Reserve Net Income Deposit. 18](#_Toc5114796)

[SECTION 6.06. Shipyard Net Cash Flow Deposit. 18](#_Toc5114797)

[SECTION 6.07. Withdrawals from Chapter 537 Reserve Fund. 18](#_Toc5114798)

[SECTION 6.08. Impermissible Payments. 19](#_Toc5114799)

[SECTION 6.09. Late Charges Reserve Subfund and Deficiency Deposits. 19](#_Toc5114800)

[SECTION 6.10. Capital Construction Fund in Lieu of Chapter 537 Reserve Fund. 19](#_Toc5114801)

[SECTION 6.11. Termination of the Chapter 537 Reserve Fund. 20](#_Toc5114802)

[*ARTICLE VII* *General Provisions Relating to the Deposit Funds and Administrator as Paying Agent* 20](#_Toc5114803)

[SECTION 7.01. Administrator’s Security Interest and Other Rights in Deposit Funds. 20](#_Toc5114804)

[SECTION 7.02. Deposit Funds Not Trust Funds. 20](#_Toc5114805)

[SECTION 7.03. Contents of Deposit Funds. 21](#_Toc5114806)

[SECTION 7.04. Investment and Liquidation of the 21](#_Toc5114807)

[SECTION 7.05. Disbursements Out of Available Cash. 21](#_Toc5114808)

[SECTION 7.06. Interest, Financial Assets and Taxes. 21](#_Toc5114809)

[SECTION 7.07. Improper Disbursements From Deposit Funds. 22](#_Toc5114810)

[SECTION 7.08. Administrator as Paying Agent. 22](#_Toc5114811)

[*ARTICLE VIII Actual Cost and Advance Requests* 22](#_Toc5114812)

[SECTION 8.01. Actual Cost Determinations. 22](#_Toc5114813)

[SECTION 8.02. Advance Requests. 23](#_Toc5114814)

[SECTION 8.03. Conditions Precedent to Approve Advance Requests. 23](#_Toc5114815)

[SECTION 8.04. Mandatory Compliance Prepayment. 24](#_Toc5114816)

[*ARTICLE IX Affiliate Guaranty and Limitation on Subrogation* 24](#_Toc5114817)

[SECTION 9.01. Execution and Delivery of Affiliate Guaranty. 24](#_Toc5114818)

[SECTION 9.02. No Payments to Affiliate Guarantor. 24](#_Toc5114819)

[*ARTICLE X Representations and Warranties* 25](#_Toc5114820)

[SECTION 10.01. Organization and Existence; Power and Authority. 25](#_Toc5114821)

[SECTION 10.02. Qualification. 25](#_Toc5114822)

[SECTION 10.03. Proper Execution. 25](#_Toc5114823)

[SECTION 10.04. Due Execution and Delivery. 25](#_Toc5114824)

[SECTION 10.05. No Conflicts or Contravention. 25](#_Toc5114825)

[SECTION 10.06. Governmental Authorizations; Other Consents or Approvals. 26](#_Toc5114826)

[SECTION 10.07. No Litigation. 26](#_Toc5114827)

[SECTION 10.08 Ownership of Collateral; Liens. 26](#_Toc5114828)

[SECTION 10.09. Valid Pledge. 26](#_Toc5114829)

[SECTION 10.10. No Debarment. 26](#_Toc5114830)

[SECTION 10.11. Accuracy of Representations, Warranties and Information; Disclosure. 26](#_Toc5114831)

[SECTION 10.12. No Defaults. 27](#_Toc5114832)

[SECTION 10.13. Shipowner’s United States Citizenship. 27](#_Toc5114833)

[SECTION 10.14. Vessel Documentation. 27](#_Toc5114834)

[SECTION 10.15. Insurance. 27](#_Toc5114835)

[SECTION 10.16. Taxes. 27](#_Toc5114836)

[SECTION 10.17. Subsidiaries; Equity Interest. 27](#_Toc5114837)

[SECTION 10.18. Compliance with Laws. 28](#_Toc5114838)

[SECTION 10.19. Intellectual Property; Licenses, Etc. 28](#_Toc5114839)

[SECTION 10.20. Solvency. 28](#_Toc5114840)

[SECTION 10.21. Casualty, Etc. 28](#_Toc5114841)

[SECTION 10.22. Labor Matters. 28](#_Toc5114842)

[SECTION 10.23. Sanctioned Persons. 28](#_Toc5114843)

[SECTION 10.24. Foreign Corrupt Practices Act. 28](#_Toc5114844)

[*ARTICLE XI Affirmative Covenants* 28](#_Toc5114845)

[SECTION 11.01. United States Citizenship. 29](#_Toc5114846)

[SECTION 11.02. Dissolution and Re-establishment. 29](#_Toc5114847)

[SECTION 11.03. Transportation of Foreign Manufactured Items. 29](#_Toc5114848)

[SECTION 11.04. Commercial Tort Claims 29](#_Toc5114849)

[SECTION 11.05. Maintenance of Perfected Security Interest; Further Documentation. 29](#_Toc5114850)

[SECTION 11.06. Notice of Mortgage. 30](#_Toc5114851)

[SECTION 11.07. Compliance with 46 U.S.C. Chapter 313. 30](#_Toc5114852)

[SECTION 11.08. Maintenance of Construction Contract. 30](#_Toc5114853)

[SECTION 11.09. Concerning the Performance and Payment Bonds. 30](#_Toc5114854)

[SECTION 11.10. Insurance. 31](#_Toc5114855)

[SECTION 11.11. Surveys and Inspection of the Vessels; Examination of Shipowner's Records. 36](#_Toc5114856)

[SECTION 11.12. Mandatory Loss Prepayment. 37](#_Toc5114857)

[SECTION 11.13. Equity Interest Holders of Shipowner. 38](#_Toc5114858)

[*ARTICLE XII Negative Covenants* 39](#_Toc5114859)

[SECTION 12.01 Primary Covenants. 39](#_Toc5114860)

[(a) Distribution of Earnings 39](#_Toc5114861)

[(b) Service, Management and Operating Agreement. 39](#_Toc5114862)

[(c) Sell, Mortgage, Transfer, Charter of Vessel; Liens. 39](#_Toc5114863)

[(d) Time Charters; Liens. 40](#_Toc5114864)

[(e) Sales; Leasebacks. 40](#_Toc5114865)

[(f) Guarantees. 40](#_Toc5114866)

[(g) New Enterprise; Business Activity. 40](#_Toc5114867)

[(h) Merger, Consolidation, Etc. 40](#_Toc5114868)

[SECTION 12.02. Supplemental Covenants. 41](#_Toc5114869)

[(a) Withdrawals. 41](#_Toc5114870)

[(b) Redemptions and Conversion. 41](#_Toc5114871)

[(c) Dividends. 41](#_Toc5114872)

[(d) Loans and Advances. 41](#_Toc5114873)

[(e) Related Party Investments. 41](#_Toc5114874)

[(f) Prepayment of Indebtedness. 42](#_Toc5114875)

[(g) Compensation. 42](#_Toc5114876)

[(h) Acquisitions of Assets. 42](#_Toc5114877)

[(i) Charters and Leases. 42](#_Toc5114878)

[(j) Payment of Subordinated Indebtedness. 42](#_Toc5114879)

[(k) Indebtedness. 42](#_Toc5114880)

[(l) Investments. 42](#_Toc5114881)

[(m) Liens. 42](#_Toc5114882)

[SECTION 12.03 Other Covenants. 42](#_Toc5114883)

[(a) Changes in Locations, Name, Etc. 42](#_Toc5114884)

[(b) Modification of Organizational Documents. 43](#_Toc5114885)

[(c) Modification of Construction Contract. 43](#_Toc5114886)

[(d) Modification of Note Purchase Documents. 43](#_Toc5114887)

[(e) Material Changes in the Vessels. 43](#_Toc5114888)

[(f) Vessels Operation. 44](#_Toc5114889)

[(g) Insurance. 44](#_Toc5114890)

[(h) Related Party Transactions 44](#_Toc5114891)

[(i) Transfers by Equity Interest Holders 44](#_Toc5114892)

[*ARTICLE XIII Financial and Delivery Covenants* 44](#_Toc5114893)

[SECTION 13.01. Qualifying Financial Covenants of the Shipowner. 44](#_Toc5114894)

[SECTION 13.02. Qualifying Financial Covenants of the Affiliate Guarantor. 45](#_Toc5114895)

[SECTION 13.03. Delivery Date Requirements. 45](#_Toc5114896)

[SECTION 13.04. Annual Audited Financial Statements of Shipowner and Affiliate Guarantor. 46](#_Toc5114897)

[SECTION 13.05. Quarterly Unaudited Financial Statements of Shipowner and Affiliate Guarantor. 46](#_Toc5114898)

[SECTION 13.06. Annual Accountant’s Statement of Reserve Fund Net Income. 46](#_Toc5114899)

[SECTION 13.07. Annual Reserve Fund Net Income Deposit. 46](#_Toc5114900)

[SECTION 13.08. Annual No Default Certificate. 46](#_Toc5114901)

[SECTION 13.09. Annual Vessel Condition and Maintenance Officer’s Certificate. 46](#_Toc5114902)

[SECTION 13.10. Annual Insurance Broker’s Certificate. 46](#_Toc5114903)

[SECTION 13.11. Reclassification Certificates. 47](#_Toc5114904)

[SECTION 13.12. Annual In-Class Vessel Confirmation Survey and Inspections 47](#_Toc5114905)

[SECTION 13.13. Biennial Not Classed Vessel Survey and Inspections 47](#_Toc5114906)

[SECTION 13.14. Biennial Appraisals of Vessels. 47](#_Toc5114907)

[SECTION 13.15. Appraisal; Additional Collateral. 47](#_Toc5114908)

[*ARTICLE XIV Defaults and Remedies* 48](#_Toc5114909)

[SECTION 14.01. What Constitutes "Defaults;" Continuance of Defaults. 48](#_Toc5114910)

[SECTION 14.02. Remedies Upon Default. 49](#_Toc5114911)

[SECTION 14.03. Waivers of Default. 53](#_Toc5114912)

[SECTION 14.04. Application of Proceeds. 53](#_Toc5114913)

[SECTION 14.05. Shipowner’s Rights in Absence of Default. 54](#_Toc5114914)

[SECTION 14.06. Authority of United States. 54](#_Toc5114915)

[*ARTICLE XV Consolidation, Mergers and Sale* 55](#_Toc5114916)

[SECTION 15.01. Consolidation, Merger or Sale; Mandatory Vessel Sale Prepayments. 55](#_Toc5114917)

[*ARTICLE XVI Termination and Discharge* 56](#_Toc5114918)

[SECTION 16.01. Discharge of Agreement. 56](#_Toc5114919)

[SECTION 16.02. Release of Liens. 56](#_Toc5114920)

[*ARTICLE XVII No-Call Prepayment Deposits* 56](#_Toc5114921)

[SECTION 17.01. Mandatory Prepayment Deposits During No-Call Periods. 56](#_Toc5114922)

[SECTION 17.02. Conditions to No-Call Prepayment During No-Call Periods. 56](#_Toc5114923)

[SECTION 17.03. Other No-Call Prepayment Provisions. 58](#_Toc5114924)

[*ARTICLE XVIII Miscellaneous* 58](#_Toc5114925)

[SECTION 18.01. Officer’s Certificates. 58](#_Toc5114926)

[SECTION 18.02. Successors and Assigns. 58](#_Toc5114927)

[SECTION 18.03. Notices. 59](#_Toc5114928)

[SECTION 18.04. Waivers of Notice. 59](#_Toc5114929)

[SECTION 18.05. Execution in Counterparts; Effectiveness. 59](#_Toc5114930)

[SECTION 18.06. Applicable Regulations. 59](#_Toc5114931)

[SECTION 18.07. Table of Contents, Titles and Headings. 59](#_Toc5114932)

[SECTION 18.08. Survival of Representations and Warranties. 59](#_Toc5114933)

[SECTION 18.09. Severability. 59](#_Toc5114934)

[SECTION 18.10. Governing Law; Jurisdiction; Etc. 60](#_Toc5114935)

[SECTION 18.11. Waiver of Jury Trial. 60](#_Toc5114936)

[SECTION 18.12. Electronic Execution of Documents. 61](#_Toc5114937)

[SECTION 18.13. Amendments and Supplements to Transaction Documents. 61](#_Toc5114938)

[SECTION 18.14. Further Assurances. 61](#_Toc5114939)

[SECTION 18.15. Entire Agreement. 61](#_Toc5114940)

# *****ARTICLE I***** *****The Note*****

The Note shall be as provided in the Note Purchase Agreement and in the form of the Note annexed as Exhibit C to the Note Purchase Agreement, the proceeds of which shall be used for the Financing as set forth on Annex A of this Agreement. The Note shall be subject to all of the terms and conditions set forth in the Note Purchase Agreement.

# *****ARTICLE II Commitment to Guarantee*****

SECTION 2.01. Commitment to Guarantee. The United States, represented by the Administrator, HEREBY COMMITS ITSELF TO GUARANTEE the payment of the unpaid interest on, and the unpaid balance of the principal of, the Note, including interest accruing between the date of default under the Note and the payment in full of the Guarantee, and, to effect this Commitment to Guarantee, hereby, subject to the terms and conditions hereof, commits itself to execute and deliver the Administrator’s Guarantee on the Closing Date. The Shipowner hereby accepts this Commitment to Guarantee subject to the terms and conditions hereof.

SECTION 2.02. Form of Guarantee. The form of the Guarantee to be attached to the Note is as follows:

“The United States of America, acting through the Maritime Administrator, Maritime Administration, U.S. Department of Transportation (the “***Administrator***”), hereby guarantees to the Federal Financing Bank, its successors and assigns (“***FFB***”), all payments of principal and interest, when and as due in accordance with the terms of the note dated [Closing Date], issued by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “***Borrower***”) payable to FFB in the maximum principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to which this Administrator’s Guarantee is attached (such note being the “***Note***”), with interest on the principal until paid, irrespective of (i) acceleration of such payments under the terms of the Note, or (ii) receipt by the Administrator of any sums or property from its enforcement of its remedies for the Borrower’s default.

This Administrator’s Guarantee is issued pursuant to Chapter 537 of Title 46 of the United States Code, Section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. § 2285), and the Note Purchase Agreement dated as of [Closing Date], among FFB, the Borrower, and the Administrator.

UNITED STATES OF AMERICA

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”

SECTION 2.03. Conditions to Guarantee and Execution and Delivery of the Guarantee. The obligation of the Administrator to execute and deliver the Guarantee on the Closing Date shall be subject to receipt by the Administrator of the following items on the Closing Date, or such other date specified herein, unless waived by the Administrator:

Transaction Documents

1. the Shipowner shall have executed and delivered to the Administrator this Agreement, the Administrator’s Note, the Mortgage, the Assignment of Construction Contract, the Assignment of Earnings, and the Assignment of Insurance, the Note and the Note Purchase Agreement;
2. the Affiliate Guarantor shall have executed and delivered to the Administrator (1) this Agreement with respect to those Annexes and Sections of this Agreement set forth above the signature of the Affiliate Guarantor that are applicable to the Affiliate Guarantor and (2) the Affiliate Guaranty, which shall be in full force and effect;
3. the Shipowner and the Affiliate Guarantor shall have executed and delivered to the Administrator the declaration required by Section 1352 of Title 31 of the United States Code, as amended, and the Lobbying Disclosure Act of 1995, classified at 2 U.S.C. § 1601;
4. (1) the Shipowner and the Shipyard shall have executed and delivered to the Administrator (A) a copy of the Construction Contract and (B) a certificate indicating that, on behalf of itself and all of its respective contractors, there are no Liens against the Vessel, in form and substance acceptable to the Administrator; and (2) (A) in the event of Mortgage Period Financing, the Shipyard shall have executed and delivered to the Administrator the Consent of Shipyard or (B) in the event of Construction Period Financing, the Shipowner and the Shipyard shall have executed and delivered to the Administrator the Consent and Agreement of Shipowner and Shipyard;
5. the Administrator shall have received a subordination in form and substance satisfactory to the Administrator with respect to all non-Chapter 537 debt of the Shipowner relating to the Vessels, if any, that has not been discharged;
6. FBB shall have executed and delivered the Note Purchase Agreement in form and substance acceptable to the Administrator;
7. the Shipowner and Affiliate Guarantor each shall have delivered to the Administrator an Opinion of Counsel, which shall include, among other things, an opinion to the effect that: (1) by the terms of this Agreement, the Shipowner has granted to the Administrator a fully perfected, first priority security interest in each of the assets which constitutes the Collateral; and (2) all filings, recordings, notices and other actions required to perfect the Administrator's interests in the Collateral and to render such security interests valid and enforceable under the UCC State have been duly effected, together with copies of such filings;
8. the Administrator shall have received from the Shipowner: (1)(i) two executed original counterparts of the Note Purchase Agreement; (ii) two copies of the Note; (iii) two executed originals of the legal opinion issued under Subsection (g) of this Section; (iv) two executed originals of the legal opinion delivered to FFB pursuant to the Note Purchase Agreement; and (v) two executed original counterparts of this Agreement, each of the Annexes hereto and all other documents executed and delivered by the Shipowner, the Affiliate Guarantor or FFB in connection with the closing, and (2) within thirty (30) days after the Closing Date six bound copies of this Agreement, together with the Annexes, and all other documents executed and delivered by the Shipowner, the Affiliate Guarantor or FFB in connection with the closing of the transactions contemplated hereby.

Vessel Documents

1. the Shipowner shall have provided the Administrator with satisfactory evidence of marine insurance as required by Section 11.10 of this Agreement, naming the Administrator as lender loss payee for Vessel hull & machinery coverage and as a co-assured to all liability coverage;
2. if the Shipowner intends to operate any of the Vessels in the U.S. domestic trade, the Shipowner and any bareboat charterers of such Vessels shall have furnished to the Administrator an affidavit complying with the requirements of 46 CFR Part 355, demonstrating U.S. citizenship;
3. if the Vessels have been delivered to the Shipowner, the Shipowner shall have delivered to the Administrator (1) evidence that the Vessels are and shall remain documented by the United States Coast Guard with a coastwise endorsement and (2) the United States Coast Guard certificates and evidence from the Classification Society that each Vessel is in class;

Financial Conditions

1. the Administrator shall have received at least ten (10) Business Days prior to the Closing Date (1) a detailed, pro forma balance sheet for the Shipowner certified by a Responsible Officer, including adequate disclosures in accordance with GAAP and showing, among other things, all non-Chapter 537 debt of Shipowner; and (2) detailed, consolidated and consolidating pro forma balance sheets for the Shipowner and the Affiliate Guarantor, certified by a Responsible Officer of the Shipowner and of the Affiliate Guarantor. Each balance sheet described in this Subsection (l) shall be dated as of the Closing Date, reflect the completion of the Financing under Chapter 537, and demonstrate compliance with the Qualifying Financial Covenants of the Shipowner and the Qualifying Financial Covenants of the Affiliate Guarantor;
2. the Administrator shall have received the most recent annual Audited Financial Statements or quarterly Unaudited Financial Statements of Shipowner and the Affiliate Guarantor prepared in accordance with GAAP, each certified by a Responsible Officer of the Shipowner and the Affiliate Guarantor and showing, among other things, all non-Chapter 537 debt of the Shipowner and of the Affiliate Guarantor;

Closing Certifications

1. the Shipowner and Affiliate Guarantor, to the extent applicable, shall have executed and delivered to the Administrator an Officer’s Certificate representing and warranting the truth of the following statements as of the Closing Date:

(1) each of the representations and warranties set forth at Article X of this Agreement;

(2) the Shipowner is not in violation of any Federal laws having a substantial adverse effect on the interests of the United States and that the consummation of the Commitment complies with Federal law;

(3) there have been no occurrences that would adversely or materially affect the condition of any of the Vessels, their hull or any of their component parts, or, in the event such occurrences exist, a detailed description of such occurrence, in which event the Administrator may take such action as it deems appropriate, including not issuing the Guarantee;

(4) there have not been any materially adverse changes in the financial or legal condition of the Shipowner or the Affiliate Guarantor or in the economic conditions in the intended trade for the Vessels, each as determined in the sole judgment of the Administrator;

(5) there are no Liens on the Vessels or its component parts, except Permitted Liens;

(6) no Default or event after any period of time or any notice, or both, would constitute, a Default has occurred;

(7) the amount of Actual Cost Paid is true and correct;

(8) each item in the amount of Actual Cost Paid is properly included in the Actual Cost of the Vessel;

(9) each of the Shipowner and the Affiliate Guarantor is in compliance with the Qualifying Financial Covenants of Shipowner and the Qualifying Financial Covenants of Affiliate Guarantor, respectively, in accordance with GAAP, as adjusted by 46 CFR § 298.13(d), and detailing such compliance; and

(10) all non-Chapter 537 debt of the Shipowner relating to the Vessels has been discharged or subordinated in a manner satisfactory to the Administrator;

1. the Shipowner’s Accountant shall have provided a certification or other evidence satisfactory to the Administrator as to the amounts paid from Advances with respect to Section 2.03(n) (7) and (8) of this Agreement;

Fees and Deposits

1. the Administrator shall have received the Guarantee Fee payable under 46 U.S.C. §53714(b) and the Investigation Fee due under 46 U.S.C. §53713(a);
2. the Shipowner shall have made the Interest Escrow Fund Deposit, unless waived by the Administrator as indicated in Annex A of this Agreement;
3. the Shipowner shall have made the Late Charges Reserve Subfund Deposit;

Other Conditions

1. the Shipowner shall have complied in all material respects with its agreements under this Agreement and all other requirements of Chapter 537 and the applicable regulations, as determined in the sole judgment of the Administrator;
2. there have not been any occurrences which have or would adversely and materially affect the condition of the Vessels, their hulls or any of their component parts, as determined in the sole judgment of the Administrator;
3. there shall not have occurred a Default or event after any period of time or any notice, or both, which would constitute a Default; and
4. all documentation and legal opinions relating to the transactions contemplated by this Agreement and the Note Purchase Agreement shall be in form and substance satisfactory to the Administrator and all security interests in the Collateral shall be fully perfected and of first priority as of the Closing Date.

SECTION 2.04. Assignment; Termination of the Guarantee. (a) The Guarantee may not be assigned by the Shipowner without the prior written approval of the Administrator and any attempt to do so shall be null and void *ab initio*.

(b) The Guarantee shall terminate only when, one or more of the following events shall occur:

(1) the Note shall have been Paid;

(2) the Holder shall have elected to terminate the Guarantee, and the Administrator has been so notified by the Holder in writing; provided that, such termination shall not prejudice any rights accruing hereunder prior to such termination;

(3) the Guarantee shall have been paid in full in cash by the Administrator; or

(4) each Holder shall have failed to demand payment of the Guarantee as provided in Chapter 537.

### *****ARTICLE III***** *****Administrator’s Note*****

SECTION 3.01. Administrator’s Note. On this date, the Shipowner has duly executed and delivered, and the Administrator has accepted, the Administrator’s Note in an amount equal to the Maximum Principal Amount of the Note. The Administrator’s Note, and any endorsement thereof executed and delivered to the Administrator in accordance with Section 12.01(h) or otherwise shall be secured by this Agreement, the Mortgage and the other Transaction Documents.

SECTION 3.02. Mandatory Progress Prepayment. (a) If at the end of any fiscal year of the Shipowner, the Reserve Fund Net Income of the Shipowner exceeds the Mandatory Progress Prepayment Threshold, then the Shipowner shall on demand from the Administrator immediately prepare and deliver to FFB, the Holder and the Administrator a Mandatory Prepayment Election Notice (indicating the Shipowner’s intent to prepay the Advances or any portion of the Advances in an amount equal to the Mandatory Progress Prepayment Amount on the Intended Payment Date, which shall not be less than five (5) Business Days or more than ten (10) Business Days after receipt of such notice by the Holder), which notice shall not be rescinded, and the Shipowner shall pay the Mandatory Progress Prepayment Amount to the Holder on the Intended Payment Date; provided, however, that if a Mandatory Progress Prepayment is required under this Section, (a) the Shipowner shall only apply such prepayment to those Unrestricted Advances that will not result in the incurrence of a prepayment penalty or premium upon prepayment of such Advance, and (b) if such Mandatory Progress Prepayment Amount exceeds the amount of those Outstanding Unrestricted Advances that will not result in the incurrence of a prepayment penalty or premium upon prepayment of such Advance, then the Mandatory Progress Prepayment Amount shall be reduced to the amount of such Outstanding Unrestricted Advances. The obligations of the Shipowner under this Section shall be in addition to its obligations under Article VI hereof.

(b) Advances are also subject to (1) a Mandatory Compliance Prepayment in accordance with Section 8.04 of this Agreement; (2) a Mandatory Loss Prepayment to comply with Section 11.12 of this Agreement; and (3) a Mandatory Vessel Sale Prepayment to comply with Section 15.01 of this Agreement.

(c) Any mandatory prepayments made in accordance with Clauses (a) or (b) of this Section shall result in a corresponding reduction in the outstanding amount of the Administrator’s Note.

SECTION 3.03. Elective Prepayments and Refinancings of Advances. Advances are subject to elective prepayment and refinancing based upon the Market Value/Prepayment Refinancing Privilege and the Par Prepayment/Refinancing Privilege in accordance with Paragraphs 14 and 15 of the Note and Paragraphs 12.2 and 12.3 of the Note Purchase Agreement. The allowance of any such refinancing of Advances shall be at the sole discretion of the Administrator. Any such elective prepayments or refinancings of Advances shall result in a corresponding reduction and refinancing of the outstanding amount of the Administrator’s Note.

SECTION 3.04. Additional Debts of Shipowner to Administrator. (a) If the Shipowner shall fail to perform any covenant, condition or agreement set forth in the Transaction Documents, the Administrator may, in its discretion, at any time during the continuance of an event which by itself, with the passage of time, or the giving of notice, would constitute a Default, perform all acts and make all necessary expenditures to remedy such failure. Notwithstanding the foregoing, the Administrator shall not be obligated to (and shall not be liable for the failure to) perform such acts and make such expenditures. All funds advanced and expenses and damages incurred by the Administrator relating to such compliance shall constitute a debt due from the Shipowner to the Administrator and shall be secured hereunder and under the Mortgage prior to the Administrator's Note and shall be repaid by the Shipowner upon demand, together with interest at the Expended Funds Rate plus two percent (2%).

(b) (1) All funds advanced and expenses incurred by the Administrator pursuant to Section 4.05 of this Agreement and the Transaction Documents; (2) all other expenses incurred incident to the exercise by the Administrator of any rights and remedies pursuant to Section 4.04(a), Section 4.04(b), Article XIV or any other provisions of this Agreement, the other Transaction Documents and the Note Purchase Documents or in connection with the assumption by the Administrator of the rights and duties of the Shipowner under the Note Purchase Agreement and the Note; and (3) all payments made to the Holder as a result of the default of the Shipowner under Chapter 537 (including, but not limited to, fees paid to the Holder for expenses incident to the assumption of the Note Purchase Agreement by the Administrator), shall constitute a debt due from the Shipowner to the Administrator and shall also be secured hereunder and under the Mortgage and the other Transaction Documents prior to the Administrator's Note and shall be repaid by the Shipowner upon demand together with interest at the Expended Funds Rate plus two percent (2%).

(c) All payments required to be made by the Shipowner or the Affiliate Guarantor under the Transaction Documents shall be made by wire transfer in immediately available funds in accordance with payment instructions provided by the Administrator.

# *****ARTICLE IV***** *****Security Agreement*****

SECTION 4.01. Granting Clause. (a) In order to create a present security interest in the Administrator, the Shipowner does hereby grant, sell, convey, assign, transfer, mortgage, pledge, set over and confirm unto the Administrator a first priority continuing security interest in, Lien on and right of setoff against, all of the right, title and interest of the Shipowner in and to all of the following, whether now owned or existing or hereafter arising or acquired:

(1) each Construction Contract and the Rights Under the Construction Contracts and Related Contracts;

(2) Moneys Due to Shipowner with Respect to the Construction of the Vessels;

(3) each Vessel and all Goods, including, without limitation, Accessions, fuel, Equipment and Inventory, Accounts, including, without limitation, any bareboat charters, time charters, charter hire, voyage or other charters, earnings, affreightments, General Intangibles, including, without limitation, IP Rights of the Shipowner, Chattel Paper, Documents, Instruments, Letters of Credit, Letters of Credit Rights, Investment Property, Commercial Tort Claims described on the Disclosure Schedule or notified to the Administrator pursuant to Section 11.04, and Deposit Accounts, (all terms are defined as set forth in Annex B of this Agreement or in the UCC as applicable) appertaining to or relating to each Vessel or its operation, whether or not on board or ashore and not covered by the Mortgage;

(4) the Late Charges Reserve Subfund and all sums, moneys, securities and proceeds of the Late Charges Reserve Subfund currently on deposit or hereafter deposited in said account;

(5) the Chapter 537 Reserve Fund and all sums, moneys, securities and proceeds of the Chapter 537 Reserve Fund currently on deposit or hereafter deposited in said account;

(6) the Interest Escrow Fund and all sums, moneys, securities and proceeds of the Interest Escrow Fund currently on deposit or hereafter deposited in said account, including, without limitation, Financial Assets;

(7) the No-Call Prepayment Fund and all sums, moneys, securities and proceeds of the No-Call Prepayment Fund hereafter deposited in said fund, including, without limitation, the No-Call Prepayment Collateral;

(8) all policies and contracts of insurance relating to each Vessel, including, without limitation, the Shipowner’s rights under all entries in any protection and indemnity or war risks associations or clubs, which are from time to time taken out by or for the Shipowner in respect of each Vessel, their hull, machinery, freights, disbursements, profits or otherwise, and all the benefits thereof and all other rights of the Shipowner in respect thereof, including, without limitation, all claims of whatsoever nature including without limitation any general average claims or loss of hire claims, as well as return premium;

(9) all cash and non-cash Products and Proceeds of the collateral described in Clauses (1) through (8) of this Section 4.01(a); and

(10) the Mortgage, to be executed and delivered by the Shipowner to the Administrator, as mortgagee covering each Vessel.

(b) The right, title and interest of the Administrator pursuant to Section 4.01(a) of this Agreement are herein, collectively, called the "***Collateral***." The Administrator shall hold the Collateral as collateral security for all of the obligations and liabilities of the Shipowner under this Agreement, the Administrator's Note, the Mortgage and the other Transaction Documents and as collateral security, whether now made or hereafter entered into, for and with respect to the Guarantee.

(c) Notwithstanding Subsections (a) and (b) of this Section 4.01, (1) the Shipowner shall remain liable to perform its obligations under each Construction Contract and the above-mentioned other agreements; (2) the Administrator shall not, by virtue of this Agreement, have any obligations under any of the documents referred to in Clause (1) or be required to make any payment owing by the Shipowner thereunder; and (3) if there is no existing Default, the Shipowner shall (subject to the rights of the Administrator hereunder) be entitled to exercise all of its rights under each of the documents referred to in this Section and shall be entitled to receive all of the benefits accruing to it thereunder as if Subsections (a) and (b) of this Section were not applicable.

SECTION 4.02. Uniform Commercial Code Filings. The Shipowner shall (a) furnish evidence satisfactory to the Administrator that financing statements under the UCC shall have been filed against the Shipowner (or the Shipyard, if applicable) in all offices in which it may be necessary or advisable in the opinion of the Administrator to perfect the Administrator’s security interests, and (b) from time to time execute and deliver such further instruments and take such action as may reasonably be required to more effectively subject the Collateral to the Lien of this Agreement and the Mortgage as contemplated thereby, including, but not limited to, legal opinions from an independent counsel for the Shipowner to the effect that all UCC financing statements and UCC continuation statements have been filed to perfect and continue to perfect the Administrator's interests in the Collateral and are valid and enforceable first priority perfected security interests.

SECTION 4.03. Surrender of Vessel Documents. The Administrator shall consent to the surrender of each Vessel's documents in connection with any re-documentation of such Vessel required on account of alterations to such Vessel which are not prohibited by this Agreement or the Mortgage.

SECTION 4.04. General Powers of the Administrator. (a) In the event that any Vessel shall be arrested or detained by a marshal or other officer of any court of law, equity or admiralty jurisdiction in any country or nation of the world or by any government or other authority, and shall not be released from arrest or detention within fifteen (15) Business Days from the date of arrest or detention, the Shipowner hereby authorizes and empowers the Administrator, in the name of the Shipowner and hereby irrevocably appoints the Administrator and its successors and assigns the true and lawful attorney of the Shipowner, in its name and stead, to apply for and receive possession of and to take possession of such Vessel with all the rights and powers that the Shipowner might have, possess and exercise in any such event. This power of attorney shall be irrevocable and may be exercised not only by the Administrator but also by an appointee or appointees, with full power of substitution, to the same extent as if said appointee or appointees had been named as one of the attorneys above named by express designation.

(b) The Shipowner also authorizes and empowers the Administrator or the Administrator’s appointee or appointees, as the true and lawful attorney of the Shipowner, to appear in the name of the Shipowner, or its successors or assigns, in any court of any country or nation in the world where a suit is pending against any Vessel because or on account of any alleged Lien against the Vessel from which the Vessel has not been released and to take such proceedings as to them or any of them as may seem proper towards the defense of such suit and the discharge of such lien, and all expenditures made or incurred by them or any of them for the purpose of such defense or discharge shall be deemed to be an indebtedness of the Shipowner and shall be secured by this Agreement and the Mortgage and shall be immediately due and payable and, until paid, shall bear interest at the Expended Funds Rate plus two percent (2%).

(c) The Shipowner irrevocably authorizes the Administrator or its appointee (with full power of substitution) to appear in the name of the Shipowner in any court of any country or nation of the world where a suit is pending against the whole or any part of the Collateral because of, or on account of, any alleged Lien or claim against the whole or any part of the Collateral, from which the whole or said part of the Collateral has not been released. The Administrator shall not be obligated to (nor be liable for the failure to) take any action provided for in Subsections (a) and (b) of this Section.

SECTION 4.05. Performance of the Shipowner’s Agreements by the Administrator. If the Shipowner shall fail to perform punctually and fully any of its agreements hereunder, including but not limited to providing the Administrator with any audited or unaudited financial statements, reports, certifications or calculations required hereunder to be provided by the Shipowner to the Administrator, the Administrator may, in its discretion, perform all acts and make all necessary expenditures to remedy such failure. Notwithstanding the foregoing, the Administrator shall not be obligated to (and shall not be liable for the failure to) perform such acts and make such expenditures, including, but not limited to, the hiring of accounting professionals to review the books and records of the Shipowner to the satisfaction of the Administrator, and the Shipowner hereby agrees to disclose all and any pertinent information determined to be necessary for the conduct of such a review by the Administrator or its consultants. All funds advanced and expenses and damages incurred by the Administrator relating to such compliance shall constitute a debt due from the Shipowner to the Administrator and shall be secured hereunder and under the Mortgage prior to the Administrator's Note and shall be repaid by the Shipowner upon demand, together with interest at the Expended Funds Rate plus two percent (2%).

# *****ARTICLE V Interest Escrow Fund*****

SECTION 5.01. Establishment of Interest Escrow Fund. On or prior to the Closing Date, the Administrator shall establish the Interest Escrow Fund with Treasury and the Shipowner shall deposit into the Interest Escrow Fund an amount equal to the Interest Escrow Fund Deposit, which shall be an amount equal to six (6) months’ interest on the Note assuming the Maximum Principal Amount of the Note has been advanced on the Closing Date, unless such requirement is waived by the Administrator as set forth on Annex A of this Agreement.

SECTION 5.02. Disbursements from the Interest Escrow Fund. (a) The Administrator shall at any time and from time to time within a reasonable time after receipt of a Request from the Shipowner or upon its own authority taken without formal prompting or request from any Person, cause Treasury to disburse from the Interest Escrow Fund directly to the Administrator for payment to the Holder, or to the Administrator any unpaid interest which the Shipowner is obligated to pay but has not paid with respect to any interest on the Note or the Administrator’s Note.

(b) If, at any time of determination, the total amount on deposit in the Interest Escrow Fund exceeds the calculation of interest due on the Note for the successive six (6) month period assuming the full advance of the Note on the date of determination at the rate established and as determined by the Administrator, unless there is an existing Default, then, upon receipt of the Shipowner’s Request, the Administrator shall cause Treasury to disburse to the Administrator for disbursement to the Shipowner such excess from the Interest Escrow Fund.

SECTION 5.03. Termination Date of the Interest Escrow Fund. The Interest Escrow Fund will terminate on the latest to occur of (a) ninety (90) days after the Delivery Date of the last Vessel covered by this Agreement, (b) the date that the full amount of the aggregate Actual Cost of the last Vessel covered by this Agreement has been paid, or (c) the date that the final determination of the aggregate Cost of all of the Vessels has been made by the Administrator. Any funds remaining in the Interest Escrow Fund after the termination date of the Interest Escrow Fund shall be paid to the Shipowner except that if a Default exists at such time, the funds remaining in the Interest Escrow Fund will be deposited into the Chapter 537 Reserve Fund and applied in accordance with the terms of Section 14.04 of this Agreement.

# *****ARTICLE VI***** *****Chapter 537 Reserve Fund (including Late Charges Subfund)*****

SECTION 6.01. Establishment of Chapter 537 Reserve Fund. On the Closing Date, the Administrator shall establish the Chapter 537 Reserve Fund. In the event that the Shipowner shall, at any time and from time to time, receive any Moneys Due with Respect to the Construction of the Vessels, the Shipowner shall give notice thereof to the Administrator and shall promptly pay the same over to the Administrator who shall deposit the funds into the Chapter 537 Reserve Fund for application in accordance with Section 14.04 of this Agreement. When and if the Shipowner or other Person is required by Sections 6.04 and 13.07 of this Agreement to make a Reserve Fund Net Income Deposit into the Chapter 537 Reserve Fund, the Shipowner or other Person shall pay those funds to the Administrator who shall deposit the funds into the Chapter 537 Reserve Fund.

SECTION 6.02. Computation of Reserve Fund Net Income. Within one hundred five (105) days after the end of each fiscal year of the Shipowner, the Shipowner shall compute its net income attributable to the operation of the Vessels for such year in accordance with this Section ("***Reserve Fund Net Income***"). This computation requires the multiplication of the Shipowner’s total net income after taxes by a fraction with a numerator composed of the total original capitalized cost of all Vessels and a denominator composed of the total original capitalized cost of all the Shipowner's fixed assets. The total net income after taxes, computed in accordance with GAAP, shall be adjusted as follows:

(a) The depreciation expense applicable to the fiscal year shall be added back; and

(b) There shall be subtracted (1) an amount equal to the principal amount of debt required to be paid or redeemed, and actually paid or redeemed by the Shipowner during the year, excluding payments from the Chapter 537 Reserve Fund; and (2) the principal amount of Advances Paid, in excess of the required prepayments which may be used by the Shipowner as a credit against future required prepayments with respect to Advances including the Late Charges Reserve Subfund and the Interest Escrow Fund.

SECTION 6.03. Delivery of Statement of Reserve Fund Net Income. Within one hundred five (105) days after the end of each fiscal year of the Shipowner, the Shipowner shall deliver to the Administrator, the Computation of Reserve Fund Net Income, Total Deposits or Net Deposits and Accountant’s Statement stating (a) the Reserve Fund Net Income for such fiscal year and total amount of all Reserve Fund Net Income Deposits that are required to be so deposited into the Chapter 537 Reserve Fund for such fiscal year (and showing the pertinent calculations), or (b) that no Reserve Fund Net Income Deposit was required to be made for such fiscal year (and showing the pertinent calculations) and (c) that at the end of such fiscal year no adjustments were required to be made for such fiscal year (and showing the pertinent calculations) pursuant to this Section (and, if such adjustments were required to be made, stating the reasons therefor). The computation of the Reserve Fund Net Income Deposit shall be made on the basis of information available to the Shipowner at the time of each such deposit. Each Reserve Fund Net Income Deposit shall be subject to adjustments from time to time in the event and to the extent that the same would be required or permitted by mistakes or omissions, additional information becoming available to the Shipowner, or judicial or administrative determinations made subsequent to the making of such deposits.

SECTION 6.04. Annual Reserve Fund Net Income Deposit. Within one hundred fifteen (115) days after the end of each fiscal year of the Shipowner, the Shipowner shall transmit to the Administrator for the Administrator’s prompt deposit into the Chapter 537 Reserve Fund an amount equal to (a) (1) the Reserve Fund Net Income for such fiscal year less (2) ten percent (10%) of the Shipowner's Aggregate Original Equity Investment in each Vessel then owned by the Shipowner, as specified in Annex A of this Agreement, deducted annually for each such Vessel (prorated for a period of less than a full fiscal year) multiplied by (b) fifty percent (50%) of the balance of the Reserve Fund Net Income remaining after the above deductions of Clause (a) above (“***Reserve Fund Net Income Deposit***”). The Shipowner shall deliver to the Administrator at the time of each Reserve Fund Net Income Deposit pursuant to this Section and any deposits required under this Agreement, a statement of the Shipowner’s Accountant stating that such deposit has been computed in accordance with Section 6.02 hereof and showing the pertinent calculations.

SECTION 6.05. Exceptions to Annual Reserve Net Income Deposit. Notwithstanding anything to the contrary set forth in this Agreement, the Shipowner shall not be required to make any Reserve Fund Net Income Deposit if (a) the Note and the related Administrator's Note with respect to the Vessels shall have been satisfied and discharged and if the Shipowner shall have paid or caused to be paid all other sums secured under this Agreement or the Mortgage, (b) the Guarantee of the Note shall have been terminated pursuant to this Agreement other than by reason of payment of the Guarantee by the Administrator, (c) the Shipowner was, at the close of its fiscal year, subject to and in compliance with all of the Qualifying Financial Covenants of Shipowner and there is no existing Default or (d) the amount in the Chapter 537 Reserve Fund (including any securities at current market value) is equal to or in excess of fifty percent (50%) of the Outstanding Advances and there is no existing Default.

SECTION 6.06. Shipyard Net Cash Flow Deposit. In the case of a Shipyard Project, (a) within one hundred five (105) days after the end of its fiscal year, the Shipyard shall submit its Audited Financial Statements for such year showing its net cash flow in a manner acceptable to the Administrator, in lieu of any other computation of Reserve Fund Net Income specified in Section 6.02 for Vessels, and (b) except as provided in 46 CFR § 298.35(d), the Shipyard shall make a deposit into the Chapter 537 Reserve Fund of two percent of its net cash flow, as defined by GAAP, and as shown on its most recent Audited Financial Statements in lieu of the Annual Reserve Fund Net Income Deposit specified in Section 6.04.

SECTION 6.07. Withdrawals from Chapter 537 Reserve Fund. From time to time, moneys in the Chapter 537 Reserve Fund may be subject to withdrawal upon receipt by the Administrator from the Shipowner of a Request for payment (specifying the Person or Persons to be paid, the amount of such payment, and the bank account to which the Shipowner requests that the payment be made) executed by the Shipowner, together with an Officer's Certificate of the Shipowner stating the reasons and purpose for the withdrawal. If the Administrator approves the Request, the Administrator shall promptly withdraw the moneys from the Chapter 537 Reserve Fund and make payment in accordance with the terms of the Request. The Administrator shall have the right to disapprove any Request for withdrawal from the Chapter 537 Reserve Fund and, in the event of a Default under this Agreement, the right to apply all or part of the proceeds in the Chapter 537 Reserve Fund to all amounts due and owing the Administrator under this Agreement. In that event, the Administrator may retain and offset any or all of the cash in the Chapter 537 Reserve Fund, and any Income Realized on the Chapter 537 Reserve Fund, as part of the Administrator’s recovery against the Shipowner.

SECTION 6.08. Impermissible Payments. If the Shipowner makes any payment in violation of the Primary Covenants or the Supplemental Covenants, if applicable, and each Equity Interest Holder that has received such a payment fails to repay such amounts within fifteen (15) days of receipt of notice from the Administrator to the Shipowner requesting such repayment (or if the Shipowner shall have failed to make a timely Reserve Fund Net Income Deposit in violation of Section 6.04 of this Agreement), the Shipowner shall, upon Request from the Administrator, pay into the Chapter 537 Reserve Fund, the amount remaining due from such Equity Interest Holders plus interest at the Expended Funds Rate plus two percent (2%) from the date the monies were initially paid (or from the date the Reserve Fund Net Income Deposit should have been made). It is understood and agreed that any payment made by the Shipowner pursuant to this Section 6.08 shall not release or extinguish the obligation of the Equity Interest Holders to repay improperly received funds; provided that such funds repaid by the Equity Interest Holders shall not be paid into the Chapter 537 Reserve Fund to the extent the Shipowner has already made payments into the Chapter 537 Reserve Fund pursuant to this Section 6.08.

SECTION 6.09. Late Charges Reserve Subfund and Deficiency Deposits. On the Closing Date, the Administrator shall establish the Late Charges Reserve Subfund as a subfund of the Chapter 537 Reserve Fund with Treasury and the Shipowner shall deposit the Late Charges Reserve Subfund Deposit with the Administrator who shall deposit such proceeds into the Late Charges Reserve Subfund. The Administrator shall have the sole right to make withdrawals from the Late Charges Reserve Subfund. The Late Charges Reserve Subfund shall be held and disbursed by the Administrator to pay any Late Charges. Provided no Default has occurred, the Administrator shall release to the Holder entitled to receive any Late Charges sufficient funds from the Late Charges Reserve Subfund to cover such Late Charges as and when the same become due and payable. At any time and from time to time that the amount in the Late Charges Reserve Subfund shall be less than the greater of (a) the Late Charges Reserve Subfund Deposit or (b) an amount determined by the Administrator to be sufficient to cover thirty (30) days of hypothetical Late Charges based upon a daily rate selected by the Administrator, then, upon notice of such deficiency by the Administrator to the Shipowner, the Shipowner shall immediately make any additional deposit of cash into the Late Charges Reserve Subfund.

SECTION 6.10. Capital Construction Fund in Lieu of Chapter 537 Reserve Fund. If the Shipowner has established a Capital Construction Fund, at any time when a Reserve Fund Net Income Deposit would otherwise be required to be made into the Chapter 537 Reserve Fund pursuant to this Article VI, and the Shipowner elects to make such deposits to the Capital Construction Fund, the Shipowner must enter into an agreement, satisfactory to the Administrator, providing that all such deposits of assets therein will be security (the “***CCF Security Amount***”) to the United States in lieu of the Chapter 537 Reserve Fund. The Reserve Fund Net Income Deposit requirements of the Chapter 537 Reserve Fund and of this Agreement will be deemed satisfied by deposits of equal amounts in the Capital Construction Fund, and withdrawal of the CCF Security Amount will be subject to the Administrator’s prior consent. If, for any reason, the Capital Construction Fund terminates prior to the payment of the Note, the Administrator's Note and all other amounts due under or secured by this Agreement or the Mortgage, the CCF Security Amount will be deposited or re-deposited in the Chapter 537 Reserve Fund.

SECTION 6.11. Termination of the Chapter 537 Reserve Fund.

1. Upon the occurrence of (1) a Default, and (2) (A) the assumption of the Shipowner’s rights and duties under the Note and the Note Purchase Documents or (B) the payment by the Administrator to the Holder pursuant to a demand under the Guarantee, the Chapter 537 Reserve Fund (including the Late Payment Reserve Subfund) shall be terminated and all amounts in the Chapter 537 Reserve Fund (including Income Realized on the Chapter 537 Reserve Fund which has not yet been paid to the Shipowner), shall be applied in accordance with the terms of Section 14.04 of this Agreement. The Administrator’s rights to draw upon the Chapter 537 Reserve Fund shall not be exclusive of any other rights of the Administrator under the Transaction Documents, and each and every right shall be cumulative and concurrent, and may be enforced separately, successively or together, and may be exercised from time to time as often as the Administrator may deem necessary.

(b) The Chapter 537 Reserve Fund (including the Late Payment Reserve Subfund) shall terminate at such time as the Administrator's Note shall have been satisfied and discharged and the Shipowner shall have paid or caused to be paid all sums secured under this Agreement and the Mortgage. Upon such termination of the Chapter 537 Reserve Fund, the moneys remaining in the Chapter 537 Reserve Fund shall be subject to withdrawal and payment into the general funds of the Shipowner.

# *****ARTICLE VII* *General Provisions Relating to the Deposit Funds and Administrator as Paying Agent*****

SECTION 7.01. Administrator’s Security Interest and Other Rights in Deposit Funds. The Deposit Funds and all Financial Assets held by the Administrator at Treasury in the Deposit Funds, at whatever time, pursuant to the provisions of this Agreement, whether cash or securities, or proceeds thereof or otherwise, shall constitute and be held in the Deposit Funds solely and exclusively for the benefit of the Administrator as security for the payment and performance of any and all of the Administrator’s Notes and the undertakings of the Shipowner and Affiliate Guarantor in this Agreement, the Mortgage and the other Transaction Documents. In addition to the rights set forth in this Agreement, the Administrator shall have all rights and remedies set forth in any of the Transaction Documents or otherwise as permitted by applicable law pertaining to the Deposit Funds.

SECTION 7.02. Deposit Funds Not Trust Funds. The Deposit Funds shall not constitute trust funds. The Deposit Funds shall constitute collateral security for all of the obligations and liabilities of the Shipowner under this Agreement, the Administrator's Note and as collateral security for and with respect to the Guarantee. The obligation of the Shipowner to deliver the Deposit Funds to the Administrator is separate from and in addition to all other obligations to pay or deliver funds (whether principal, interest, fees, expenses, deposits, escrows, reserves or otherwise) to the Administrator under the Transaction Documents. Nothing contained in this Article VII shall in any manner whatsoever alter, impair or affect the obligations of the Shipowner, or relieve the Shipowner of any of its obligations to make payments and perform all of its other obligations required under the Transaction Documents. Any withdrawal from the Deposit Funds pursuant to this Agreement shall not effect a discharge of or diminish any obligations of the Shipowner under this Agreement, the Mortgage or any other agreement as the case may be except to the extent that the amount withdrawn is applied to payments required to be made by the Shipowner under this Agreement, the Mortgage or any other agreement.

SECTION 7.03. Contents of Deposit Funds. The parties hereto hereby agree that only cash may be deposited into a Deposit Fund and that such cash and all other assets in a Deposit Fund shall be treated as a Financial Asset. Any cash held in the Deposit Funds pursuant to any of the provisions of this Agreement (a) shall not be segregated at Treasury, but shall be separately accounted for on the Administrator’s books and records, and (b) shall bear interest and be invested to the extent provided in Section 7.04 below.

SECTION 7.04. Investment and Liquidation of the **Deposit Funds**. Provided that the Shipowner is not in Default, (a) the Administrator may invest and reinvest any cash held in the Deposit Funds in Eligible Investments with such maturities as to ensure that the Deposit Funds will be available as required for the purposes hereof; and (b) the Administrator shall comply with a Shipowner’s Request to sell all or any designated part of the Eligible Investments in the Deposit Funds. The Administrator shall have no liability to the Shipowner for acting in accordance with such Request. If such sale (or any payment at maturity) produces (a) a net sum less than the cost (including accrued interest paid, as such) of the Eligible Investments so sold or paid, the Administrator shall give notice to the Shipowner, and the Shipowner shall promptly pay the deficiency to the Administrator for deposit into the applicable Deposit Fund, or (b) a net sum greater than the cost (including accrued interest paid as such) of the Eligible Investments so sold or paid, the Administrator shall promptly pay the excess to the Shipowner. The Shipowner expressly acknowledges and agrees that cash deposited in the Deposit Funds pursuant to this Agreement may suffer a loss if liquidated prior to the maturity of the Eligible Investment.

SECTION 7.05. Disbursements Out of Available Cash. The Administrator shall not be required to make any disbursement from the Deposit Funds except out of the cash available therein. If sufficient cash is not available to make the requested disbursement, additional cash shall be provided by the maturity or sale of securities in accordance with instructions pursuant to Section 7.04 hereof. If any sale or payment on maturity shall result in a loss in the principal amount of any Deposit Fund invested in securities so sold or matured, the requested disbursement from such Deposit Fund shall be reduced by an amount equal to such loss, and the Shipowner shall, no later than the time for such disbursement, pay to the Holder, the Shipyard, or any other Person entitled thereto, the balance of the requested disbursement from the Shipowner’s funds.

SECTION 7.06. Interest, Financial Assets and Taxes. So long as the Shipowner is not in Default, the Administrator may pay the Shipowner any interest paid on cash or Eligible Investments (less an amount equal to accrued interest paid upon purchase) when credited in the Deposit Fund. Any and all securities or other Financial Assets credited to a Deposit Fund shall be registered in the name of the Administrator, endorsed to the Administrator and in no case will any Financial Asset credited to any Deposit Fund be registered in the name of the Shipowner, be payable to the order of the Shipowner or specially endorsed to the Shipowner. All taxes, if any, applicable to the acquisition or sale of Eligible Investments under this Section shall be paid by the Shipowner from its separate funds.

SECTION 7.07. Improper Disbursements From Deposit Funds. At any time the Administrator shall have determined that there has been, for any reason, a disbursement from any Deposit Fund contrary to this Section, the Administrator shall give notice to the Shipowner of the amount improperly disbursed, the amount to be deposited or re-deposited into such Deposit Fund on account thereof, and the reasons for such determination. The Shipowner shall thereafter promptly deposit or re-deposit, as appropriate, such amount (with interest, if any) required by the Administrator into such Deposit Fund.

SECTION 7.08. Administrator as Paying Agent. So long as FFB is the Holder of the Note, to the extent required by the Note, the following shall apply:

1. Cash received by the Administrator as a payment of amounts due with respect to Advances under the Note shall be timely paid to FFB and all other cash shall be held by the Administrator in Treasury as a special deposit for application in accordance with this Article VII and Section 14.04 of this Agreement. Cash held by the Administrator in Treasury as a payment of amounts due with respect to Advances under the Note (1) need not be segregated; (2) shall not be invested; and (3) shall not bear interest except to the extent the Administrator allows.
2. Any moneys received by the Administrator, for the payment of amounts due with respect to Advances under the Note and remaining unclaimed by any Holder for six (6) years after the Stated Maturity Date shall be paid by Treasury to the Shipowner upon receipt of a Request by the Shipowner, approved by the Administrator and sent to Treasury, unless the Administrator has previously paid the Guarantee, in which case it shall not be paid to the Shipowner. In such event, the Holder shall thereafter be entitled to look only to the Person that received the unclaimed amounts for the payment thereof, and the Administrator shall thereupon be relieved from all responsibility to such Holder. No such Request or payment shall be construed to extend any statutory period of limitations, which would have been applicable in the absence of such Request or payment.

## *****ARTICLE VIII Actual Cost and Advance Requests*****

SECTION 8.01. Actual Cost Determinations. (a) The Actual Cost of each Vessel (and the aggregate Actual Cost of all of the Vessels), determined as of the date of this Agreement, is as set forth in Table A of Annex A of this Agreement.

(b) The Administrator agrees to:

(1) make a final determination of the Actual Cost of each Vessel, limited to amounts paid by or for the account of the Shipowner on account of the items set forth in Table A of Annex A of this Agreement and, to the extent approved by the Administrator, any other items or any increase in the amounts of such items, such determination to be made as of the time of payment by or for the account of the Shipowner of the full amount of said Actual Cost of such Vessel, excluding any amounts which are not to become due and payable, and

(2) promptly give notice to the Shipowner, of the results of said final determination; provided that, the Shipowner shall have requested such determination not less than sixty (60) days in advance and shall have furnished to the Administrator not less than thirty (30) days in advance of such determination along with a Shipowner’s Officer’s Certificate and a statement by an Accountant or, with the Administrator’s prior consent, the Shipowner’s accountant of the total amounts paid or obligated to be paid by or for the account of the Shipowner for the Construction of such Vessel, together with a breakdown of such totals according to the items paid or obligated to be paid.

SECTION 8.02. Advance Requests. Subject to the conditions precedent set forth Section 8.03 hereof and in the Note Purchase Documents, the Administrator shall within a reasonable time after receipt of an Advance Request issue an Advance Request Approval Notice to FFB approving the payment to the Shipyard or any other Person of any amount which the Shipowner is obligated to pay, or to the Shipowner as reimbursement for any amounts it has paid, on account of the items and amounts or any other items set forth in Table A of Annex A of this Agreement or subsequently approved by the Administrator.

SECTION 8.03. Conditions Precedent to Approve Advance Requests. (a) In addition to the conditions precedent set forth in the Note Purchase Documents, the obligation of the Administrator to approve any Advance Request and issue an Advance Request Approval Notice shall be subject to the following conditions precedent:

1. a Responsible Officer of the Shipowner shall deliver an Officer’s Certificate of the Shipowner, in form and substance satisfactory to the Administrator, stating that (A) there is no Default under the Construction Contract nor any of the Transaction Documents; (B) there have been no occurrences which have or would adversely and materially affect the condition of the Vessel, its hull or any of its component parts; (C) the amounts of the Advance Request are in accordance with the Construction Contract including the approved disbursement schedule and each item in these amounts is properly included in the Administrator’s approved estimate of Actual Cost; (D) with respect to the Advance Request, once the Contractor is paid there will be no Liens on the applicable Vessel, its hull or component parts for which the withdrawal is being requested except for those already approved by the Administrator; and (E) if the Vessel has already been delivered, it is in class and is being maintained in the highest and best condition.
2. the Administrator shall receive an Officer’s Certificate of the Shipyard, in form and substance satisfactory to the Administrator, stating that there are no Liens on the applicable Vessel as provided in Section 8.03(a)(1)(D) of this Agreement and attaching the invoices and receipts supporting each proposed withdrawal to the satisfaction of the Administrator, which shall be attached to the Officer’s Certificate referred to in Section 8.03(a)(1) above.
3. no Advance Request shall be made or approved:

(A) to any Person until the total amount paid by or for the account of the Shipowner from sources other than the Advances equals at least 12½% (or 25% as the case may be) of the Actual Cost of the related Vessel;

(B) to the Shipowner which would have the effect of reducing the total amounts paid by the Shipowner pursuant to Clause (A) of this Subsection; or

(C) to any Person on account of items, amounts or increases representing changes and extras or owner furnished equipment, if any, set forth in Table A of Annex A of this Agreement, unless such items, amounts and increases shall have been previously approved by the Administrator;

provided, however, that when the amount guaranteed by the Administrator equals 75% or less of the Actual Cost, then after the initial 12½% of Actual Cost has been paid by or on behalf of the Shipowner for such Vessel and up to 37½% of Actual Cost has been paid by Advances, the Shipowner shall pay the remaining Required Equity Amount before any additional Advances are made for such Vessel.

(b) Notwithstanding any other provision of this Section, the Shipowner shall not seek or receive reimbursement for any amount paid to the Shipyard or any Person by the Administrator.

SECTION 8.04. Mandatory Compliance Prepayment. (a) In the event the principal amount of the Outstanding Advances is in excess of the amount eligible for guarantee by the United States under Section 53709(b) of Chapter 537, the Administrator shall notify the Shipowner of the required Mandatory Compliance Prepayment and the Shipowner shall send a Mandatory Prepayment Election Notice to the Holder (which may not be rescinded) with a copy to the Administrator to prepay the principal amount of the Outstanding Advances in an amount equal to the Mandatory Compliance Prepayment Amount. The Shipowner shall pay the Mandatory Compliance Prepayment Amount on the Intended Payment Date as set forth in such Mandatory Prepayment Election Notice, which payment shall not be made less than five (5) Business Days or more than ten (10) Business Days after receipt of such notice by the Administrator and the Holder.

(b) The Mandatory Compliance Prepayment is not subject to Article XVII hereof.

(c) If a Mandatory Compliance Prepayment is required under this Section, (1) the Shipowner shall first apply such prepayment to Unrestricted Advances, and (2) if such Mandatory Compliance Prepayment exceeds the amount of those Unrestricted Advances in Clause (1) above, then the balance of the Mandatory Compliance Prepayment shall be applied to No-Call Advances. In order to make a payment under Clause (2) in this subsection: (A) the Shipowner shall give the Administrator a No-Call Prepayment Notice specifying (i) the amount of the balance of the Mandatory Compliance Prepayment, (ii) the No-Call Payment Date, and (iii) irrevocable instructions from the Shipowner to the Administrator to pay such amount to the Holder on the No-Call Payment Date; and (B) the Shipowner shall pay the amount specified in the No-Call Prepayment Notice to the Administrator to be held in the No-Call Prepayment Fund until the No-Call Payment Date.

## *****ARTICLE IX***** *****Affiliate Guaranty and Limitation on Subrogation*****

SECTION 9.01. Execution and Delivery of Affiliate Guaranty. The Shipowner and the Affiliate Guarantor acknowledge that (a) the Administrator has required the execution and delivery of the Affiliate Guaranty as an integral part of the consideration offered by or on behalf of the Shipowner as a condition of the Administrator's issuance of the Administrator’s Guarantee, and (b) the Affiliate Guarantor has executed and delivered (1) the Affiliate Guaranty to the Administrator for the purpose of guaranteeing the Shipowner’s obligations to the Administrator under this Agreement and (2) this Agreement for the purpose of covenanting to and agreeing with those Annexes and Sections of this Agreement set forth above the signature of the Affiliate Guarantor. The obligations of the Affiliate Guarantor to the Administrator under the Affiliate Guaranty shall be secured by the collateral, if any, granted to the Administrator by the Affiliate Guarantor as more fully set forth in the Affiliate Guaranty.

SECTION 9.02. No Payments to Affiliate Guarantor. In the event a Default has occurred and is continuing, until all amounts payable to the Administrator pursuant to the Administrator’s Note and the other Transaction Documents have been paid in full, the Shipowner shall not make any payment to the Affiliate Guarantor and the Affiliate Guarantor shall not enforce any right to receive payment and shall not accept any payment from the Shipowner, under any legal or equitable right (including any right of subrogation) the Affiliate Guarantor may have or be entitled to claim against the Shipowner.

# *ARTICLE X* *Representations and Warranties*

The Shipowner and, to the extent applicable, the Affiliate Guarantor, represents and warrants to the Administrator that, except as set forth on the Disclosure Schedule, the following statements are true and correct as of the Closing Date and further represents and warrants that such statements shall remain true and correct thereafter for so long as this Agreement shall not have been discharged:

SECTION 10.01. Organization and Existence; Power and Authority. The Shipowner and each Affiliate Guarantor is duly organized, validly existing and in good standing under the laws of its Jurisdiction of Organization, has full legal right, power and authority to enter into this Agreement and each of the other Transaction Documents to which it is a party, to issue the Note and the Administrator’s Note or the Affiliate Guaranty, as the case may be, and to carry out and consummate all transactions contemplated by this Agreement and each of the other Transaction Documents to which it is a party and has duly authorized the execution, delivery and performance of this Agreement and each of the other Transaction Documents to which it is a party.

SECTION 10.02. Qualification. Neither the Shipowner nor any Affiliate Guarantor has failed to qualify to do business in any jurisdiction in the United States in which its business or properties require such qualification, and the Shipowner and each Affiliate Guarantor had and has full legal right, power and authority to own its own properties and assets and conduct its business as it is presently conducted.

SECTION 10.03. Proper Execution. As of the Closing Date, the officers of the Shipowner and each Affiliate Guarantor executing this Agreement and each of the other Transaction Documents to which it is a party are duly and properly in office and fully authorized to execute the same on behalf of the Shipowner or Affiliate Guarantor, as the case may be.

SECTION 10.04. Due Execution and Delivery. This Agreement and each of the other Transaction Documents to which the Shipowner and each Affiliate Guarantor is a party have been duly authorized, executed and delivered by the Shipowner and the Affiliate Guarantor, are in full force and effect and constitute the legal, valid and binding agreements of the Shipowner and the Affiliate Guarantor enforceable in accordance with their terms.

SECTION 10.05. No Conflicts or Contravention. The execution and delivery of this Agreement and each of the other Transaction Documents, the consummation of the transactions herein and therein described and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) by the Shipowner or any Affiliate Guarantor of any of its Organizational Documents, any applicable law or administrative rule or regulation, or applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Shipowner or any Affiliate Guarantor is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited Lien of any nature whatsoever upon any of the property or assets of the Shipowner or any Affiliate Guarantor.

SECTION 10.06. Governmental Authorizations; Other Consents or Approvals. No consent or approval of any trustee, holder of any indebtedness of the Shipowner, the Affiliate Guarantor or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental entity is necessary in connection with the execution and delivery of this Agreement and each of the Transaction Documents, the consummation of any transaction herein or therein described, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

SECTION 10.07. No Litigation. There is no action, suit, proceeding, inquiry or investigation, before or by any court or Federal, state, municipal or other governmental authority, pending, or to the knowledge of the Shipowner after reasonable inquiry and investigation, threatened against or affecting the Shipowner, the Affiliate Guarantor or the assets, properties or operations of the Shipowner or the Affiliate Guarantor which are likely to be determined to have, or could be reasonably expected to have, a Material Adverse Effect. Neither Shipowner nor the Affiliate Guarantor is in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any Federal, state, municipal or other governmental authority, which default could reasonably be expected to have a Material Adverse Effect.

SECTION 10.08 Ownership of Collateral; Liens. The Shipowner lawfully owns all Collateral, including each Vessel, free from any Lien except for Permitted Liens.

SECTION 10.09. Valid Pledge. This Agreement establishes the valid first priority duly perfected Lien on the Collateral in favor of the Administrator for the benefit and security of the Administrator and any future owners of the Administrator’s Note and the other obligations of the Shipowner under the Transaction Documents; such Lien is in full force and effect and is not subordinate or junior to any other Liens in respect of the Collateral; and the Shipowner is not in breach of any covenants set forth in this Agreement or the other Transaction Documents.

SECTION 10.10. No Debarment. Neither the Shipowner nor the Affiliate Guarantor is debarred or suspended or voluntarily excluded from participation in contracts or procurement matters with the Government or delinquent on a Government debt.

SECTION 10.11. Accuracy of Representations, Warranties and Information; Disclosure. (a) As of the Closing Date, representations, warranties and certifications of the Shipowner and the Affiliate Guarantor set forth in each of the other Transaction Documents to which the Shipowner or the Affiliate Guarantor is a party and all written information provided by the Shipowner and the Affiliate Guarantor to the Administrator in the Application, when taken as a whole and after giving effect to any updates provided to the Administrator in writing, remain true and accurate in all material respects.

(b) Each of the Shipowner and the Affiliate Guarantor has disclosed to the Administrator all agreements, instruments and corporate or other restrictions to which it or the Affiliate Guarantor is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of the Shipowner or the Affiliate Guarantor to the Administrator in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Transaction Document (in each case as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Shipowner represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

SECTION 10.12. No Defaults. No Default (or event which with the passage of time, notice or both would constitute a Default) has occurred and is continuing under this Agreement or any of the other Transaction Documents to which the Shipowner or the Affiliate Guarantor is a party and, to the knowledge of the Shipowner and the Affiliate Guarantor, no other party to any of such agreements is in default thereunder.

SECTION 10.13. Shipowner’s United States Citizenship. The Shipowner is a citizen of the United States within the meaning of 46 USC § 50501, and shall remain such a citizen for operation in the trades in which the Shipowner proposes to operate the Vessels.

SECTION 10.14. Vessel Documentation. Upon the Delivery Date and continuing at all times thereafter, each Vessel is and shall remain documented under the laws of the United States.

SECTION 10.15. Insurance.The properties of the Shipowner and the Affiliate Guarantor are insured with financially sound and reputable insurance companies not a Related Party of the Shipowner or the Affiliate Guarantor, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Shipowner or the Affiliate Guarantor operates and, with respect to the Vessels, as are specified in Section 11.10 hereof.

SECTION 10.16. Taxes. Each of the Shipowner and the Affiliate Guarantor has filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon it or its properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against the Shipowner or the Affiliate Guarantor that would, if made, have a Material Adverse Effect.

SECTION 10.17. Subsidiaries; Equity Interest. As of the Closing Date, (a) the Shipowner has no subsidiaries and has no equity investments in any Person and (b) the Affiliate Guarantor is the sole parent of the Shipowner.

SECTION 10.18. Compliance with Laws. Each of the Shipowner and the Affiliate Guarantor is in compliance in all material respects with the requirements of all laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 10.19. Intellectual Property; Licenses, Etc. The Shipowner and the Affiliate Guarantor own, or possess the IP Rights, without conflict with the rights of any other Person. No slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Shipowner or the Affiliate Guarantor infringes upon any rights held by any other Person, and no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Shipowner, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 10.20. Solvency. Each of the Shipowner and the Affiliate Guarantor is, individually and together with the Affiliate Guarantor on a consolidated basis, Solvent.

SECTION 10.21. Casualty, Etc. Neither the businesses nor the properties of the Shipowner or the Affiliate Guarantor are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 10.22. Labor Matters. As of the Closing Date, neither the Shipowner nor the Affiliate Guarantor has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five (5) years.

SECTION 10.23. Sanctioned Persons. Neither the Shipowner or the Affiliate Guarantor nor, to the knowledge of the Shipowner, any director, officer, agent, employee or Affiliate of any the Shipowner or the Affiliate Guarantor is currently subject to any sanctions administered by OFAC; and neither the Shipowner nor the Affiliate Guarantor will directly or indirectly use the proceeds of the Advances or otherwise make available such proceeds to any person, for the purpose of financing the activities of any person currently subject to any United States sanctions administered by OFAC.

SECTION 10.24. Foreign Corrupt Practices Act. Neither the Shipowner, the Affiliate Guarantor nor any Affiliate has taken any actions in violation of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq.

# *****ARTICLE X**********I Affirmative Covenants*****

So long as the Administrator shall have any obligations under the Guarantee, or any obligations remain outstanding, unpaid or unsatisfied under this Agreement, the Administrator’s Note or any other Transaction Document:

SECTION 11.01. United States Citizenship. In the event the Shipowner shall cease to be a citizen of the United States within the meaning of 46 U.S.C. § 50501, the Shipowner shall notify the Administrator immediately of such fact.

SECTION 11.02. Dissolution and Re-establishment. In the event any action by the Shipowner, any Person with an Equity Interest in the Shipowner or the management of the Shipowner results or would result in dissolution of the Shipowner pursuant to its Organizational Documents or governing law, the Shipowner shall cause each Person with an Equity Interest in the Shipowner to forthwith take all steps necessary to reform and reestablish the Shipowner.

SECTION 11.03. Transportation of Foreign Manufactured Items. With respect to Construction Period Financing, the Shipowner shall cause at least fifty percent (50%) of any equipment, materials or commodities to be used in the Construction of the Vessels which are manufactured outside the United States and are transported to the United States on ocean vessels to be transported on privately owned United States-flag commercial vessels, if available.

SECTION 11.04. Commercial Tort Claims. If the Shipowner shall at any time hold or acquire a Commercial Tort Claim in excess of $100,000, the Shipowner shall promptly notify the Administrator in a writing signed by the Shipowner of the brief details thereof and grant to the Administrator in such writing a security interest therein and in the proceeds thereof pursuant to Article IV hereof, with such writing to be in form and substance satisfactory to the Administrator.

SECTION 11.05. Maintenance of Perfected Security Interest; Further Documentation. The Shipowner shall:

(a) maintain the security interest created by this Agreement as a first perfected security interest and shall defend such security interest against the claims and demands of all Persons whomsoever;

(b) furnish to the Administrator from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Administrator may reasonably request, all in reasonable detail;

(c) take all steps necessary (including the filing of any required UCC continuation statements) from time to time in order to maintain the Administrator’s first priority (subject to Permitted Liens) Lien in the Collateral; and

(d) promptly, at any time and from time to time, and at the sole expense of the Shipowner, duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Administrator may reasonably deem necessary for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the delivery of certificated securities and the filing of any financing or continuation statements under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interests created in this Agreement. Shipowner shall provide to the Administrator timely notice of such execution, delivery, or recordation of such instruments and documents, and copies thereof.

SECTION 11.06. Notice of Mortgage. (a) The Shipowner shall cause a properly certified copy of the Mortgage to be carried on board each self-propelled Vessel with that Vessel's documents and shall be exhibited on demand to any Person having business with such Vessel or to any Administrator’s representative.

(b) The Shipowner shall cause a notice printed in plain type of such size that the paragraph of reading matter covers a space not less than six inches wide by nine inches high, and framed, to be placed and kept prominently exhibited in the chart room and in the master's cabin of a self-propelled Vessel.

(c) The Shipowner shall cause the notice referred to in Subsection (b) of this Section to read as follows:

“NOTICE OF FIRST PREFERRED [FLEET/SHIP] MORTGAGE

This Vessel is owned by [Insert name of Shipowner], a [Insert jurisdiction of Organization] [insert organizational form] (the “***Shipowner***”), and is covered by a First Preferred [Fleet/Ship] Mortgage in favor of the United States of America, under authority of Chapter 313 of Title 46 of the United States Code. Under the terms of said Mortgage neither the Shipowner, any charterer, the master or agent of this Vessel nor any other person has any right, power or authority to create, incur or permit to be placed or imposed upon this Vessel any lien other than statutory liens incident to current operations that are subordinate to the Mortgage.”

SECTION 11.07. Compliance with 46 U.S.C. Chapter 313. The Shipowner shall comply with and satisfy all of the provisions of Chapter 313, in order to establish and thereafter to maintain the Mortgage as a preferred mortgage upon each Vessel.

SECTION 11.08. Maintenance of Construction Contract. The Shipowner shall cause the Construction Contract to be maintained in full force and effect insofar as it relates to the due performance by the Shipowner and the Shipyard of all their respective obligations thereunder.

SECTION 11.09. Concerning the Performance and Payment Bonds. During the Construction, if applicable, the Shipowner shall cause to be maintained Surety Bonds issued by the Surety to be obtained by the Shipyard in the amount of the Construction Contract. In the event that the price for the work to be performed under the Construction Contract is increased, then the Surety Bonds shall be increased simultaneously in a corresponding amount. The Shipowner hereby agrees that the Administrator shall be the sole loss payee under the Surety Bonds and the Surety shall pay such amounts directly to the Administrator for distribution to the co-obligees as their interests may appear. The Shipowner hereby agrees that its interest as a co-obligee under each of the Surety Bonds is and shall be, upon the occurrence of a Default under this Agreement, fully subject and subordinate to the rights and interests of the Administrator therein. In the event of a default under this Agreement, which default results in a payment under any of the Surety Bonds, then the Surety Bonds proceeds shall be distributed by the Administrator in accordance with the provisions of Section 14.04 hereof. The Shipowner hereby irrevocably appoints the Administrator, the true and lawful attorney of the Shipowner, in its name and stead, to execute all consents, approvals, settlements and agreements on behalf of the Shipowner with respect to any rights related to the Surety Bonds.

SECTION 11.10. Insurance. (a) **Builder’s Risk Insurance with War Risk Endorsements.** Prior to the Delivery Date of each Vessel, the Shipowner shall, without cost to the Administrator or, with respect to builder's risk insurance with a war risk endorsement mentioned below, without cost to the Shipyard, cause each Vessel to be insured as provided in the Construction Contract; provided that, the insurance required by this Section shall be approved by the Administrator.

(b) **Insurance Amounts.** Upon the Delivery Date of each Vessel and at all times thereafter, the Shipowner shall, without cost to the Administrator, keep such Vessel insured as indicated below and with such additional insurance as may be specified by the Administrator in an amount in U.S. dollars equal to one hundred ten percent (110%) of the unpaid principal amount of the Proportionate Part of the Administrator's Note, or such greater sum, up to and including the full commercial value of such Vessel as may be required by the Administrator. The Shipowner shall provide to the Administrator: (1) at least sixty (60) days prior notice of all insurance renewals; and (2) premium payment confirmation shall be sent in writing to the Administrator by the Shipowner’s marine insurance broker or the head underwriter within five (5) Business Days.

(1) **Hull & Machinery, and War Risk Insurance*.*** Marine and war risk hull insurance under the latest (at the time of issue of the policies in question) forms of American Institute of Marine Underwriters' policies approved by the Administrator and/or policies issued by or for the Maritime Administration (or under such other forms of policies as the Administrator may approve in writing) insuring such Vessel against the usual risks covered by such forms (including, at the Shipowner’s option, such amounts of increased value and other forms of "total loss only" insurance as are permitted by said hull insurance policies).

(2) **Port Risk Insurance*.*** While any Vessel is laid up, at the Shipowner’s option and in lieu of the above-mentioned marine and war risk hull insurance or marine and war risk hull and increased value insurance, port risk insurance with war risk endorsement under the latest (at the time of issue of the policies in question) forms of American Institute of Marine Underwriters' policies approved by the Administrator and/or policies issued by or for the Maritime Administration (or under such other forms of policies as the Administrator may approve in writing) insuring such Vessel against the usual risks covered by such forms.

(3) **Mortgagee’s Interest Insurance*.*** Mortgagee’s Interest Insurance in relation to each Vessel, providing for the indemnification of the Administrator and the United States for any losses under or in connection with this Agreement which directly or indirectly result from loss of or damage to any Vessel or a liability of any Vessel or of the Shipowner, where the loss or damage is required to be covered by an obligatory insurance policy but of which there is a non-payment (or reduced payment) by the underwriters because of:

(A) any act or omission on the part of the Shipowner, of any operator, charterer, manager or sub-manager of the Vessel owned by it or of any officer, employee or agent of a Shipowner, or of any such person, including any breach of warranty or condition or any non-disclosure relating to such obligatory insurance;

(B) any act or omission, whether deliberate, negligent or accidental, or any knowledge or privity of a Shipowner, any other person referred to in Subsection (i) above, or of any officer, employee or agent of that Shipowner, or of such a person, including either the casting away or damaging of the Vessel or the Vessel being unseaworthy; or

(C) any other matter capable of being insured against under a mortgagee’s interest marine insurance policy whether or not similar to the foregoing.

The underwriters for Mortgagee’s Interest Insurance shall be the same underwriter as the Hull & Machinery and War Risk underwriters, unless otherwise approved in writing by the Administrator.

(4) **Self Insurance*.*** Notwithstanding the foregoing, the Shipowner, with the Administrator’s prior consent, shall have the right to self-insure up to the Maximum Self-Insurance Amount for any loss resulting from any one accident or occurrence (other than an actual or constructive total loss of any Vessel).

(c) **Loss Payee.** All policies of insurance under this Section shall provide, so long as this Agreement is in effect and the Collateral has not been discharged, that payment of all losses shall be made payable to the Administrator for distribution by him to himself, the Shipowner and (in the case of the insurance required by Subsection (a) of this Section) the Shipyard, except that (1) as provided in Subsection (e) of this Section and (2) under the policies required by Subsection (b) of this Section, payment of all losses up to the Maximum Payment Amount of Losses Directly to Shipowner by all insurance underwriters with respect to any one accident, occurrence or event may be made directly to the Shipowner unless there is an existing Default, or if the Administrator shall have assumed the Shipowner’s rights and duties under the Note Purchase Agreement and the Note and made any payments in default under Chapter 537, in which event payment of all losses shall be made payable to the Administrator as aforesaid. Any such insurance recoveries to which the Administrator shall be so entitled shall be applied as follows:

(1) **Non-Constructive Total Loss Insurance Recoveries*.*** In the event that insurance becomes payable under said policies on account of an accident, occurrence or event not resulting in an actual or constructive total loss or an agreed or compromised total loss of any Vessel, the Administrator (A) shall, if there is no existing Default and if none of the events described in Section 11.12 hereof has occurred, in accordance with a Shipowner’s Request, pay, or consent that the underwriters pay, direct for repairs, liabilities, salvage claims or other charges and expenses (including use and labor charges due or paid by the Shipowner) covered by the policies, or (to the extent that, as stated in an Officer's Certificate delivered to the Administrator, accompanied by written confirmation by the underwriter or a surveyor or adjuster, the damage shall have been repaired and the cost thereof paid of such liabilities, salvage claims, or other charges and expenses discharged or paid) reimburse, or consent that the underwriters reimburse, the Shipowner therefor and (after all known damage with respect to the particular loss shall have been repaired, except to the extent the Shipowner, with the Administrator’s consent, deems the said repair inadvisable, and all known costs, liabilities, salvage claims, charges and expenses, covered by the policies, with respect to such loss shall have been discharged or paid, as stated in an Officer's Certificate delivered to the Administrator, accompanied by written confirmation by the underwriters or a surveyor or adjuster) pay, or consent that the underwriters pay, any balance to the Shipowner; or (B) if there is an existing Default, shall direct the underwriters to pay to the Administrator all insurance proceeds due and owing, and the Administrator shall apply such proceeds to the Shipowner’s defaulted debt, or, in the Administrator’s sole discretion, to repairs to the Vessel; or (C) if the Guarantee shall have terminated pursuant to Section 2.04(c) hereof or if the Administrator shall have assumed the Shipowner's rights and duties under the Note Purchase Agreement and the Note and made any payments in default under Chapter 537 and none of the events described in Section 11.12 hereof has occurred, apply the insurance as provided in Section 14.04 hereof; or (D) if the Guarantee shall have terminated pursuant to Section 2.04(b) or (d) hereof, pay the insurance to the Shipowner; and

(2) **Actual Constructive Total Loss Insurance Recoveries*.***In the event of an accident, occurrence or event resulting in an actual or constructive total loss of any Vessel prior to the Delivery Date of such Vessel, the Shipowner shall forthwith deposit with the Administrator any insurance moneys which the Shipowner receives on account thereof under policies of insurance required by Subsection (a) of this Section, and any such insurance moneys shall be held by the Administrator for ten (10) days (or such lesser or further time as the Shipowner and the Administrator may agree upon). Upon the expiration of said period of time, (A) if there is no existing Default and if the Shipowner, the Shipyard and the Administrator shall have elected not to construct such Vessel under the Construction Contract, then said insurance moneys shall be applied, to the extent necessary and required pursuant to Section 11.12 hereof; or (B) if there is no existing Default and if the Shipowner, the Shipyard and the Administrator shall not have made the election contemplated by Clause (A) of this Subsection, then said insurance moneys (together with the Shipowner’s funds to the extent, if any, required by the Administrator for deposit on account of interest under Clause (ii) below) shall be deposited in the Chapter 537 Reserve Fund, in such amount and to the extent available, so that the moneys deposited into the Chapter 537 Reserve Fund with respect to such Loss Event shall be equal to (i) the principal amount of the Proportionate Part of the Advances Outstanding under the Note relating to such Vessel at the time of such deposit and (ii) such interest on said deposit, if any, as may be required by the Administrator (said moneys to be subject to withdrawal in the same manner as moneys originally deposited in said Chapter 537 Reserve Fund); and the balance, if any, of such insurance moneys held by the Administrator with respect to such event shall be paid to the Shipowner.

(d) **Claim for Constructive Total Loss.** In the event of an accident, occurrence or event resulting in a constructive total loss of any Vessel, the Administrator shall have the right (with the prior consent of the Shipowner, unless there is an existing Default, and at any time prior to the Delivery Date of such Vessel also with the prior consent of the Shipyard) to claim for a constructive total loss of such Vessel. If (1) such claim is accepted by all underwriters under all policies then in force as to such Vessel under which payment is due for total loss and (2) payment in full is made in cash under such policies to the Administrator, then the Administrator shall have the right to abandon such Vessel to the underwriters of such policies, free from the Lien of this Agreement and the Mortgage.

(e) **Protection and Indemnity Insurance.** Commencing on the Delivery Date of each Vessel, the Shipowner shall, without cost to the Administrator, keep each such Vessel insured against marine and war risk protection and indemnity risks and liabilities by policies of insurance approved by the Administrator as to form and in the amount of the Insurance Requirements; provided that, (1) the Shipowner shall, as soon as possible before such Delivery Date, present any such policy to the Administrator (who shall promptly approve or disapprove the same), (2) any approval of a policy under this Subsection shall be effective until the end of the policy period or until sixty (60) days after the Administrator shall notify the Shipowner of a desired change in the form and/or amount thereof, whichever shall first occur, and (3) war risk protection and indemnity insurance shall be required unless the Administrator gives notice to the Shipowner stating that such insurance is not required.

Such policies may provide that (1) if the Shipowner shall not have incurred the loss, damage, or expense in question, any loss under such insurance may be paid directly to the Person to whom any liability covered by such policies has been incurred (whether or not a Default then exists), and (2) if the Shipowner shall have incurred the loss, damage or expense in question, any such loss shall be paid to the Shipowner in reimbursement if there is no existing Default of which the underwriter has written notice from the Shipowner or the Administrator, or, if there is such an existing Default, to the Administrator to be held and applied as follows: (A) applied as provided in Section 14.04 hereof in the event the Guarantee shall have terminated pursuant to Section 2.04(c) hereof or if the Administrator shall have assumed the Shipowner's rights and duties under the Note Purchase Agreement and the Note and made any payments in default under Chapter 537, or (B) to the extent not theretofore applied pursuant to Section 14.04 hereof, paid forthwith to the Shipowner upon its Request in the event there is no existing Default or the Guarantee shall have terminated pursuant to Section 2.04(b) or (d) hereof at the date of delivery of such Request; provided that, irrespective of the foregoing, with the Administrator’s prior consent, the Shipowner shall have the right to self-insure in an amount up to the Maximum Self-Insurance Amount hereof with respect to each accident, occurrence or event, except that, with respect to cargo or property carried, the Shipowner, with the Administrator’s prior consent, shall have the right to self-insure in an amount up to the Maximum Self-Insurance Amount set forth on Annex A of this Agreement with respect to each cargo or property carried.

(f) **Insurance Underwriters.** All insurance required under this Section shall be placed and kept with the Government or with United States domiciled and state regulated or United States domiciled mutual assurance association to the maximum extent possible subject to market capacity, (and/or other foreign, if permitted by the Administrator in writing) insurance companies, underwriters' association or underwriting funds approved by the Administrator. All insurance required under this Subsection shall be arranged through United States licensed marine insurance brokers and/or underwriting agents domiciled in the United States (and/or other foreign, if permitted by the Administrator in writing) as chosen by the Shipowner and approved by the Administrator.

(g) **Providing Compromised Total Loss.** The Administrator shall not have the right to enter into an agreement or compromise providing for an agreed or compromised total loss of any Vessel without prior consent of (1) the Shipyard (prior to the Delivery Date of such Vessel) and (2) (unless there is an existing Default) the Shipowner. If (1) the Shipowner shall have given prior consent thereto or (2) there is an existing Default, the Administrator shall have the right in his discretion, and with the prior consent of the Shipyard prior to the Delivery Date of such Vessel, to enter into an agreement or compromise providing for an agreed or compromised total loss of such Vessel; provided that, if the aggregate amount payable to the Shipowner and/or the Administrator under such agreement or compromise, together with funds held by the Administrator and available for the prepayment of the Note, is not sufficient to pay the Proportionate Part of the Outstanding Advances pursuant to Section 11.12 hereof, the Administrator shall not enter into such agreement or compromise without the Shipowner’s prior consent.

(h) **Vessel Requisition.** During the continuance of (1) a taking or requisition of the use of any Vessel by any government or governmental body, or (2) a charter, with the Administrator’s prior consent, of the use of any Vessel by the Government, the provisions of this Section shall be deemed to have been complied with in all respects if such government or governmental body shall have agreed to reimburse, in a manner approved by the Administrator in writing, the Shipowner for loss or damage covered by the insurance required hereunder or resulting from the risks under Subsections (a), (b), and (e) of this Section or if the Shipowner shall be entitled to just compensation therefor. In addition, the provisions of this Section shall be deemed to have been complied with in all respects during any period after (A) title to any Vessel shall have been taken or requisitioned by any government or governmental body or (B) there shall have been an actual or constructive total loss or an agreed or compromised total loss of any Vessel. In the event of any taking, requisition, charter or loss contemplated by this Subsection, the Shipowner shall promptly furnish to the Administrator an Officer's Certificate stating that such taking, requisition, charter or loss has occurred and, if there shall have been a taking, requisition or charter of the use of any Vessel, that the government or governmental body in question has agreed to reimburse the Shipowner, in a manner approved by the Administrator, for loss or damage resulting from the risks under Subsections (a), (b), and (e) of this Section or that the Shipowner is entitled to just compensation therefor.

(i) **Required Assured and No Recourse.** All insurance required under (1) Subsection (a) of this Section shall be taken out in the names of the Shipowner, the United States and the Shipyard as assureds, and (2) Subsections (b) and (c) of this Section shall be taken out in the names of the Shipowner and the United States as assureds. All policies for such insurance so taken out shall, unless otherwise consented to by the Administrator, provide that (1) there shall be no recourse against the United States for the payment of premiums or commissions, (2) if such policies provide for the payment of club calls, assessments or advances, there shall be no recourse against the United States for the payment thereof, and (3) at least thirty (30) days' prior written notice of any cancellation for the nonpayment of premiums, commissions, club calls, assessments or advances shall be given to the Administrator by the lead insurance underwriters.

(j) **Surety Agreement.** In the event that any claim or Lien is asserted against any Vessel for loss, damage or expense which is covered by insurance hereunder and it is necessary for the Shipowner to obtain a bond or supply other security to prevent arrest of such Vessel or to release such Vessel from arrest on account of said claim or Lien, the Administrator, on the Shipowner’s Request, may, at the Administrator’s sole option, assign to any Person executing a surety or guaranty bond or other agreement to save or release such Vessel from such arrest, all right, title and interest of the Administrator in and to said insurance covering such loss, damage or expense as collateral security to indemnify against liability under said bond or other agreement.

(k) **Original Insurance Policy.** Except as the Administrator shall otherwise direct by notice in writing to the Shipowner, the Shipowner shall deliver to the Administrator the original policies evidencing insurance maintained under this Section; provided that, if any such original policy shall have been delivered previously to the Administrator or to a mortgagee by the Shipowner under another ship mortgage of the Shipowner, the Shipowner shall deliver a duplicate or pro forma copy of such policy to the Administrator. The Administrator or any agent thereof (who may also be an agent of the issuer) shall at all times hold the policies delivered as aforesaid; provided that, if one or more of said policies are held by an agent of the Administrator, the Shipowner shall, upon the Administrator’s Request, deliver a duplicate or pro forma copy thereof to the Administrator, and provided further, that if the Shipowner shall deliver to the Administrator a Request (1) stating that delivery of such policy to the insurer is necessary in connection with the collection, enforcement or settlement of any claim thereunder (including claims for return premiums and any other amounts payable by the insurer) and (2) setting forth the name and address of the Person to whom such policy is to be delivered or mailed for such purpose, and if the Administrator approves such Request, the Administrator shall, at the Shipowner’s expense, deliver or mail (by registered or certified mail, postage prepaid) such policy in accordance with such Request, accompanied by a written direction to the recipient to redeliver such policy directly to the Administrator or an agent thereof when it has served the purpose for which so delivered. The Shipowner agrees that, in case it shall at any time so cause the delivery or mailing of any policy to any Person as aforesaid, the Shipowner will cause such policy to be promptly redelivered to the Administrator or an agent thereof as aforesaid. The Administrator shall have no duty to see to the redelivery of such policy, but shall have the duty to request the redelivery thereof at intervals of sixty (60) days thereafter.

(l) **Trade Restrictions.** Unless, requested by the Shipowner in writing and approved the Administrator in writing, the Vessel shall not call, operate, or transit territorial waters of any country who is not a party to (1) a bilateral investment treaty with the United States, (2) a multilateral or regional trade treaty which the United States also is a party to, or (3) the United Nations Convention on Transparency in Treaty-Based Investor-State Arbitration (Convention), done at New York on December 10, 1958, as amended or modified.

(m) **Office of Foreign Asset Control (OFAC).** The Shipowner shall not be members of any P&I Clubs which contribute or obligate to third party liabilities to countries or organizations, or individuals that OFAC designates as prohibited for United States domiciled organizations.

(n) **No Limits to Additional Insurance as Required.** Nothing in this Section shall limit the insurance coverage which the Administrator may require under any contract or agreement to which the Administrator and the Shipowner are parties.

SECTION 11.11. Surveys and Inspection of the Vessels; Examination of Shipowner's Records. The Shipowner shall: (a) afford the Administrator, upon reasonable notice, access to the Vessels, their cargoes, logs and papers for the purpose of inspecting the same; (b) maintain all business and financial records for a period of at least six (6) years following the termination of the Guarantee, including, without limitation, records of all amounts paid or obligated to be paid by or for the account of the Shipowner for each Vessel’s Construction; and (c) at reasonable times permit the Administrator, upon request, to (1) make reasonable, material and pertinent inspection, examination and audit of any books, accounts, records, and papers in the custody and control of the Shipowner or others relating to the Shipowner’s financial or business conditions, including taking information therefrom and making copies thereof and transcripts or extracts therefrom and (2) make inspections and appraisals of any of the Shipowner’s assets.

SECTION 11.12. Mandatory Loss Prepayment. Subject to Article XVII hereof, upon the occurrence of any Loss Event, then all of the following shall apply:

(a) The Shipowner shall promptly give notice thereof to the Administrator.

(b) The Shipowner shall pay all amounts it receives by reason of such Loss Event to the Administrator within three (3) Business Days after receipt by the Shipowner.

(c) Within three (3) Business Days after receipt by the Administrator of the amounts referred to in Subsection (b) above, the Shipowner shall calculate the estimated Mandatory Loss Prepayment Amount which shall be reviewed and verified by the Administrator, and, within three (3) Business Days of such verification by the Administrator, the Shipowner shall deposit with the Administrator an amount equal to (1) the verified Mandatory Loss Prepayment Amount minus (2) the amount received by the Administrator pursuant to Subsection (b) above.

(d) After the Administrator has received sufficient funds to pay the Mandatory Loss Prepayment Amount pursuant to Subsections (b) and (c) above:

(1) if there is no existing Default (A) within five (5) Business Days after receipt by the Administrator of the funds referred to in Subsections (b) and (c) above, the Shipowner shall make a Mandatory Prepayment Election of the prepayment of Advances in an amount equal to the Mandatory Loss Prepayment Amount (which may not be rescinded) and shall send a Mandatory Prepayment Election Notice to the Holder with a copy to the Administrator, which shall specify an Intended Payment Date of not less than five (5) Business Days or more than ten (10) Business Days after the receipt of such notice by the Holder; (B) one (1) Business Day prior to the Intended Payment Date, the Shipowner shall pay to the Administrator for payment to the Holder any additional amounts due to the Holder pursuant to the Note Purchase Documents as a result of such Mandatory Prepayment Election; (C) on the Intended Payment Date, the Administrator shall pay to the Holder the amounts held by it pursuant to Subsections (b) and (c) and Clause (B) above in accordance with terms of the Mandatory Prepayment Election Notice; and (D) the balance, if any, shall be promptly paid by the Administrator to the Shipowner including any interest earned on the proceeds which are in excess of the amount required to prepay such Advances;

(2) if there is an existing Default and the Guarantee shall not have terminated pursuant to Section 2.04 hereof, such amounts shall be held until the same may be applied or paid under Paragraph (1) of this Subsection; provided that, in lieu of Clause (D) of Paragraph (1) of this Subsection (d), the balance, if any, including any interest earned on the proceeds which are in excess of the amount required to prepay the Mandatory Loss Prepayment Amount and any additional amounts due to the Holder pursuant to the Note Purchase Documents as a result of such Mandatory Prepayment Election, shall be held in the Chapter 537 Reserve Fund by the Administrator;

(3) if the Guarantee shall have terminated pursuant to Section 2.04(c) hereof or if the Administrator shall have assumed the Shipowner's rights and duties under the Note Purchase Agreement and the Note and made any payments in default under Chapter 537, such amounts shall be applied as provided in Section 14.04 hereof; or

(4) if the Guarantee shall have terminated pursuant to Section 2.04(a), (b), or (d) hereof, such amounts shall be paid by the Administrator to the Shipowner.

Provided that, notwithstanding the foregoing, the Shipowner shall not be required to pay the Administrator any amount which the Administrator agrees is in excess of the amount needed for prepayment of the Proportionate Part of the Outstanding Advances affected by the Loss Event plus any additional amounts due to the Holder pursuant to the Note Purchase Documents as a result of such Mandatory Prepayment Election.

SECTION 11.13. Equity Interest Holders of Shipowner. The Shipowner shall cause each existing Equity Interest Holder, and all future Equity Interest Holders, to forthwith enter into an Equity Interest Subordination Agreement in favor of the Administrator, whereby each Equity Interest Holder agrees that (a) if there is no existing Default, any amounts owed by the Shipowner to the Equity Interest Holder with respect to its Equity Interest shall be subordinated to the Shipowner’s payment of the Note, the Administrator’s Note and debts under this Agreement, provided that such distributions may be paid to the extent the Shipowner is permitted to pay dividends under Section 12.02(c) of this Agreement; and (b) if there is an existing Default, the Equity Interest Holder shall be subordinated in its rights to receive any distribution or to be paid any sums whatsoever by the Shipowner until the Administrator has made a full recovery of any and all amounts owed under the Note, the Administrator’s Note and the other Transaction Documents. Notwithstanding the foregoing, this Section 11.13 shall not apply to (x) any Equity Interest Holder of a Shipowner that is a public company or (y) any Equity Interest Holder of a Shipowner that is not a public company and that owns an Equity Interest of five percent (5%) or less in the Shipowner. Nonetheless, the Shipowner shall adhere to the subordination provisions of Clauses (a) and (b) above in the absence of an agreement between the Administrator and its Equity Interest Holders.

**SECTION 11.14.** **Authorization to Access Reports, Records, Tax Returns, Etc.** The Shipowner shall, and hereby does, authorize all federal, state, and municipal authorities (a) to furnish reports of examination, records, and other information relating to the conditions and affairs of the Shipowner, any desired information from reports, returns, files, tax returns, and records of such authorities upon request therefor by the Administrator and (b) to permit the Administrator to have full access from time to time, to make copies of and extracts from, any and all reports, returns, files, tax returns, and records by, or with respect to the Shipowner, and all reports of the examiner or other information concerning the Shipowner contained in the files and records of such authorities.

# *ARTICLE X**II Negative Covenants*

SECTION 12.01 Primary Covenants. So long as the Administrator shall have any obligations under this Agreement or the Guarantee, or any obligations remain outstanding, unpaid or unsatisfied under this Agreement, the Administrator’s Note or any other Transaction Document, without the Administrator’s prior consent:

(a) Distribution of Earnings. Except as hereinafter provided, the Shipowner shall not make any distribution of earnings, except as may be permitted by Subsections (1) or (2) below:

(1) From retained earnings in an amount specified in Subsection (3) below, provided that, in the fiscal year in which the distribution of earnings is made there is no operating loss to the date of such payment of such distribution of earnings, and (A) there was no operating loss in the immediately preceding three (3) fiscal years, or (B) there was a one (1) year operating loss during the immediately preceding three (3) fiscal years, but (i) such loss was not in the immediately preceding fiscal year, and (ii) there was positive net income for the three (3) year period.

(2) If distributions of earnings may not be made under Subsection (1) above, a distribution can be made in an amount equal to the total operating net income for the immediately preceding three (3) fiscal year period, provided that, (A) there were no two (2) successive years of operating losses, (B) in the fiscal year in which such distribution is made, there is no operating loss to the date of such distribution, and (C) the distribution or earnings made would not exceed an amount specified in Section 12.01(a)(3) hereof.

(3) Distributions of earnings may be made from earnings of prior years in an aggregate amount equal to (A) 40 percent of the Shipowner's total net income after tax for each of the prior years, less any distributions that were made in such years; or (B) the aggregate of the Shipowner's total net income after tax for such prior years, provided that, after making such distribution, the Shipowner's Long-Term Debt does not exceed its Net Worth. In computing net income for purposes of this Section, extraordinary gains, such as gains from the sale of assets, shall be excluded.

(b) Service, Management and Operating Agreement. The Shipowner shall not enter into any service, management or operating agreement for the operation of the Vessel (excluding husbanding type agreements), or appoint or designate a managing or operating agent for the operation of the Vessel (excluding husbanding agents) unless approved by the Administrator.

(c) Sell, Mortgage, Transfer, Charter of Vessel; Liens. (1) The Shipowner shall not sell, mortgage, transfer or demise charter the Vessel or any assets to any non-Related Party except as permitted in Section 12.01(h) and 14.05 of this Agreement, or (2) sell, mortgage, transfer, or demise charter the Vessel or any assets to a Related Party unless such transaction is (A) at a fair market value as determined by an independent appraiser acceptable to the Administrator, and (B) a total cash transaction or, in the case of a demise charter, the charter payments are cash payments.

(d) Time Charters; Liens. The Shipowner shall not:

(1)(A) Enter into any time charter of the Vessels in excess of six (6) months unless the time charter contains the following provision, “This time charter is subject to each of the rights and remedies of the Maritime Administrator of the Maritime Administration, an agency of the United States of America, and has been assigned to the Administrator under a Consolidated Agreement and a First Preferred [Fleet/Ship] Mortgage, each executed by the Shipowner in favor of the Administrator with respect to the Vessels being chartered.” and (B) shall, within ten (10) calendar days of entering into any time charter in excess of six (6) months, transmit a copy of the time charter to the Administrator; or

(2) Create, incur or permit to be placed or imposed on any Vessel, or permit any charterer, master of any Vessel or other Person to create, incur or permit to be placed or imposed on any Vessel, any Lien except Permitted Liens.

(e) Sales; Leasebacks. The Shipowner shall not enter into any agreement for both sale and leaseback of the same assets so sold unless the proceeds from such sale are at least equal to the fair market value of the property sold.

(f) Guarantees. The Shipowner shall not guarantee, or otherwise become liable for the obligations of any Person, except (1) with respect to any undertakings as to the fees and expenses of the Holder, (2) endorsement for deposit of checks and other negotiable instruments acquired in the ordinary course of business and (3) as otherwise permitted in Section 12.02(l) of this Agreement.

(g) New Enterprise; Business Activity. The Shipowner shall not directly or indirectly embark on any new enterprise or business activity not directly connected with the business of shipping or other activity in which the Shipowner is actively engaged presently.

(h) Merger, Consolidation, Etc. The Shipowner shall not enter into any succession, merger or consolidation or convey, sell, demise charter, or otherwise transfer, or dispose of any portion of its properties or assets (any and all of which acts are encompassed within the words "sale" or "sold" as used herein), provided that if the Administrator gives prior written consent to such transaction, then any successor shall (1) (by instrument amending or supplementing this Agreement, and the Mortgage, as may be necessary), expressly assume the payment of the principal of (and premium, if any) and interest on the Outstanding Note in accordance with the terms of the Note Purchase Agreement, (2) execute and deliver to the Administrator, an endorsement to the Administrator's Note in form and substance satisfactory to the Administrator, and (3) expressly assume the payment of the principal of and interest on the Administrator's Note, and shall expressly assume the payment and performance of the agreements of the Shipowner in the Note Purchase Agreement, this Agreement, the Mortgage and any related document. Upon the assumption of the documents listed above, the Administrator shall consent to the surrender of each Vessel’s documents pursuant to 46 U.S.C. § 12136(b)(2), as amended; provided that, concurrently with such surrender, such Vessel shall be re-documented under the laws of the United States.

Notwithstanding the foregoing Subsections of this Section, the Shipowner shall not be deemed to have sold such properties or assets and the consent of the Administrator shall not be required if: (1) the Net Book Value of the aggregate of all the assets sold by the Shipowner during the prior twelve (12) month period does not exceed ten percent (10%) of the total Net Book Value of all of the Shipowner's assets (the assets which are the basis for the calculation of the ten percent (10%) of the Net Book Value are those indicated on the most recent annual Audited Financial Statement required to be submitted pursuant to Article 13 hereof prior to the date of the sale); (2) the Shipowner retains the proceeds of the sale of assets for use in accordance with the Shipowner's regular business activities; and (3) the sale is not otherwise prohibited by Subsection 12.01(c) above. Notwithstanding any other provision of this Subsection, the Shipowner may not consummate such sale without the Administrator’s prior consent if the Shipowner has not, prior to the time of such sale, submitted to the Administrator its most recent annual Audited Financial Statement referred to above, and any attempt to consummate a sale absent such approval shall be null and void *ab initio*.

SECTION 12.02. Supplemental Covenants. So long as the Administrator shall have any obligations under this Agreement or the Guarantee, or any obligations remain outstanding, unpaid or unsatisfied under the Administrator’s Note or any other Transaction Document and (a) if there is an existing Default or (b) if, after giving effect to any Primary Covenant transaction or transactions occurring during any fiscal year of the Shipowner or the Affiliate Guarantor, (1) the Shipowner does not satisfy the Supplemental Financial Covenants of Shipowner, or (2) the Affiliate Guarantor does not satisfy the Supplemental Financial Covenants of Affiliate Guarantor, neither the Shipowner nor the Affiliate Guarantor shall, without the Administrator’s prior consent:

(a) Withdrawals. Withdraw any capital;

(b) Redemptions and Conversion. Redeem any share capital or convert any of the same into debt;

(c) Dividends. Pay any dividend except that (1) if there is no existing Default and if the Shipowner is a pass-through entity for tax purposes and continues to retain such status, the Shipowner may distribute to its Equity Interest Holders for the purpose of assisting such Equity Interest Holders in their efforts to pay their annual federal income taxes with respect to the immediately preceding tax year, a sum equal to no greater than the amount of taxes the Shipowner would have paid for that tax year if the Shipowner had been a Subchapter C Corporation with the prior consent of the Administrator, and (2) the Shipowner may pay dividends payable in capital stock of the Shipowner;

(d) Loans and Advances. Make any loan or advance (except advances to cover current expenses of the Shipowner), either directly or indirectly, to any Equity Interest Holder, director, officer, or employee of the Shipowner, or to any Related Party;

(e) Related Party Investments. Make any investments in the securities of any Related Party or make any payments whatsoever to a Related Party, except for (1) distributions permitted by Subsection (c) above, (2) salary paid in the ordinary course of business for services rendered, and (3) amounts not in excess of the fair market value of goods and/or services provided;

(f) Prepayment of Indebtedness. Prepay in whole or in part any indebtedness to any Equity Interest Holder, director, officer or employee of the Shipowner, or to any Related Party;

(g) Compensation. Increase any Direct Employee Compensation paid to any employee in excess of $148,835 per annum; nor increase any Direct Employee Compensation which is already in excess of $148,835 per annum; nor initially employ or re-employ any person at a Direct Employee Compensation rate in excess of $148,835 per annum; provided, however, the $148,835 limit may be increased annually based on the previous year’s closing CPI-U (Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics);

(h) Acquisitions of Assets. Acquire any fixed assets other than those required for the maintenance of the Shipowner's existing assets, including the normal maintenance and operation of any vessel or vessels owned or chartered by the Shipowner;

(i) Charters and Leases. Either enter into or become liable (directly or indirectly) under charters and leases (having a term of six (6) months or more) for the payment of charter hire and rent on all such charters and leases which have annual payments aggregating in excess of the Charter Hire and Rent Limitation;

(j) Payment of Subordinated Indebtedness. Pay, in whole or in part, any indebtedness subordinated to the Note or to any other Chapter 537 obligations;

(k) Indebtedness. Create, assume, incur, or in any manner become liable for any indebtedness, except current liabilities, or short-term loans scheduled to be repaid within twelve (12) months, incurred or assumed in the ordinary course of business as such business presently exists;

(l) Investments. Make any investment, whether by acquisition of equity or indebtedness, or by loan, advance, transfer of property, capital contribution, guarantee of indebtedness or otherwise, in any Person, other than obligations of the United States, bank deposits or investments in securities of the character permitted for moneys in the Deposit Funds;

(m) Liens. Create, assume, permit or suffer to exist or continue any Lien upon, or pledge of, or subject to the prior payment of any indebtedness, any of its property or assets, real or personal, tangible or intangible, whether now owned or hereafter acquired, or own or acquire, or agree to acquire, title to any property of any kind subject to or upon a chattel mortgage or conditional sales agreement or other title retention agreement, except Permitted Liens.

SECTION 12.03 Other Covenants. So long as the Administrator shall have any obligations under this Agreement or the Guarantees, or any obligations remain outstanding, unpaid or unsatisfied under the Administrator’s Note or any other Transaction Document, the Shipowner shall not, without the Administrator’s prior consent:

(a) Changes in Locations, Name, Etc. Change (1) its corporate name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties, (2) the location of its chief executive office or principal place of business, (3) its identity or corporate structure or its Organizational Form, (4) its Jurisdiction of Organization or its organizational identification number in such Jurisdiction of Organization or (5) its federal taxpayer identification number, unless, in each case, the Shipowner shall have first (A) notified the Administrator of such change at least thirty (30) days prior to the effective date of such change, and (B) taken all action reasonably requested by the Administrator for the purpose of maintaining the perfection and priority of the Administrator’s security interests under this Agreement and the other Transaction Documents. In any notice furnished pursuant to this Section, the Shipowner will expressly state in a conspicuous manner that the notice is required by this Agreement and contains facts that may require additional filings of financing statements or other notices for the purposes of continuing perfection and maintaining the priority of the Administrator’s security interest in the Collateral and any other collateral granted pursuant to the Transaction Documents. At the Request of the Administrator, on or prior to the occurrence of such event, the Shipowner will provide to the Administrator an opinion of counsel, in form and substance reasonably satisfactory to the Administrator, to the effect that such event will not impair the validity of the security interests hereunder, the perfection and priority thereof, the enforceability of the Note Purchase Documents or the other Transaction Documents, and such other matters as may be reasonably requested by the Administrator;

(b) Modification of Organizational Documents. Amend, modify or voluntarily terminate any of its Organizational Documents;

(c) Modification of Construction Contract. Consent, amend, modify, assign or terminate the Construction Contract or consent to any change in the Construction Contract which releases the Shipyard from its obligations to comply with the provisions of the Construction Contract or any applicable laws, treaties, conventions, rules and regulations; provided that, the Administrator’s prior consent shall not be necessary, but prompt notice to the Administrator shall be given for (1) any mandatory or regulatory change to the Construction Contract as a result of any requirements of any governmental agency, or (2) any non-mandatory changes that Shipyard and Shipowner desire to make which do not exceed, with respect to any item of the Vessel’s Construction, one percent (1%) of the Vessel’s contract price and which do not, in the aggregate, cause the Vessels Contract Price to be increased more than five (5%) percent or the delivery and completion date of the Vessel to be extended more than ten (10) days. Notwithstanding the foregoing, no change shall be made in the general dimensions and/or characteristics of the Vessels which changes the capacity of each of the Vessels to perform as originally intended by the Construction Contract without the Administrator’s prior consent. The Administrator will nonetheless retain its authority to review work done under a change order to ascertain whether the work should be included in Actual Cost and whether the price charged is fair and reasonable. Notwithstanding anything to the contrary contained in the Construction Contract or herein, no changes to the payment milestones and disbursement schedules shall be made without the Administrator’s prior consent, except to the extent reasonably required to reflect the change orders under this Section;

(d) Modification of Note Purchase Documents. Amend, modify, assign or terminate or consent to the amendment, modification, assignment or termination of any of the Note Purchase Documents;

(e) Material Changes in the Vessels. After the Delivery Date of any undelivered Vessel or the Closing Date of any already delivered Vessel, make, or permit to be made, any material change in the structure, means of propulsion, type or speed of such Vessel or in its rig, without the Administrator's prior consent;

(f) Vessels Operation. Except when the Vessel is in Government Use, (1) cause or permit the Vessels to be operated in any manner contrary to law or to any lawful rules or regulations of the United States, (2) remove or attempt to remove the Vessels beyond the limits of the United States without the Administrator’s prior consent except on voyages with the intention of returning to the United States, (3) abandon such Vessels in any foreign port unless there has been an actual or constructive total loss or an agreed or compromised total loss of any of the Vessels, (4) engage in any unlawful trade or violate any law or carry any cargo that will expose any Vessel to penalty, forfeiture, or capture, or (5) do, or suffer or permit to be done, anything which can or may negatively affect the documentation of the Vessel under the laws and regulations of the United States;

(g) Insurance. (1) Do any act, nor voluntarily suffer or permit any act to be done, whereby any insurance required by Section 11.10 hereof shall or may be suspended, impaired or defeated or (2) suffer or permit any Vessel to engage in any voyage or to carry any cargo not permitted under the policies of insurance then in effect without first covering such Vessel with insurance satisfactory in all respects for such voyage or the carriage of such cargo; provided that, this Subsection shall be subject to the requirements of any military authority of the United States and shall not apply in the case of such Vessel if and so long as the title or use of such Vessel shall have been taken, requisitioned or chartered by any government or governmental body as contemplated by Section 11.12 of this Agreement;

(h) Related Party Transactions. Enter into, or be a party to, any transaction with a Related Party of the Shipowner or the Affiliate Guarantor or any of the Equity Interest Holder of the Shipowner or the Affiliate Guarantor except in the ordinary course of business and on terms which are fully disclosed to the Administrator in advance and are no less favorable to Shipowner, the Affiliate Guarantor, such Related Party or any of the Equity Interest Holder of the Shipowner or the Affiliate Guarantor than would be obtained in a comparable arms’-length transaction with an unrelated third party;

(i) Transfers by Equity Interest Holders. Permit any Equity Interest Holder holding more than a ten percent (10%) Equity Interest in the Shipowner to transfer any of its interests in the Shipowner to any Person; unless (1) the Shipowner is a public company; or (2) (A) the Administrator shall have given its prior written consent to the proposed transaction and (B) the transferee shall have assumed in full all of the existing obligations of the transferring Equity Interest Holder under the Shipowner’s Organizational Documents, this Agreement, the Mortgage and the other Transaction Documents.

# *ARTICLE XIII Financial and Delivery Covenants*

So long as the Administrator shall have any obligations under this Agreement or the Guarantee, or any obligations remain outstanding, unpaid or unsatisfied under this Agreement, the Administrator’s Note or any other Transaction Document:

SECTION 13.01. Qualifying Financial Covenants of the Shipowner.Immediately upon the execution and delivery of this Agreement and at all times thereafter, the Shipowner shall satisfy the Qualifying Financial Covenants of Shipowner.

SECTION 13.02. Qualifying Financial Covenants of the Affiliate Guarantor.Immediately upon the execution and delivery of this Agreement and at all times thereafter, the Affiliate Guarantor shall satisfy the Qualifying Financial Covenants of Affiliate Guarantor.

SECTION 13.03. Delivery Date Requirements. At or prior to the Delivery Date, the Shipowner shall:

(a) furnish to the Administrator an interim class certificate issued for each such Vessel by the Classification Society and promptly after the Delivery Date of each Vessel, furnish to the Administrator when available a certificate of class with respect to such Vessel issued by the Classification Society. Notwithstanding the foregoing, if the Vessel is a barge which is not classed, then the Shipowner shall, at all times, at its own cost and expense maintain and preserve each Vessel, so far as may be practicable, in at least as good order and condition, ordinary wear and tear excepted, as at the Delivery Date of such Vessel;

(b) document the Vessel under the laws of the United States with the United States Coast Guard;

(c) execute and deliver to the Administrator the Mortgage or, if appropriate, a mortgage supplement;

(d) record the Mortgage or, if appropriate, a mortgage supplement with the National Vessel Documentation Center of the United States Coast Guard, or its successor;

(e) deliver to the Administrator an Officer’s Certificate from (1) the Shipowner certifying that (a) the Vessel is free of any Lien of any character except Liens granted to the Administrator; (b) there has not occurred and is not then continuing any event which constitutes (or after any period of time or any notice, or both, would constitute) a Default under this Agreement; (c) the marine insurance as required under Sections 2.03(i) and 11.10 hereof will be in full force and effect at the time of Vessel delivery; (d) the Vessel was constructed substantially in accordance with the plans and specifications of the Construction Contract; and (e) there have been no unusual occurrences (or a full description of such occurrences, if any) which would adversely affect the condition of the delivered Vessel, and (2) the Shipyard certifying that (a) the Vessel is free of any Lien of any character except Liens granted to the Administrator; (b) the Vessel was constructed substantially in accordance with the plans and specifications of the Construction Contract; and (c) there have been no unusual occurrences (or a full description of such occurrences, if any) which would adversely affect the condition of the delivered Vessel;

(f) deliver to the Administrator a certificate of insurance complying with Section 11.10 of this Agreement; and

(g) deliver to the Administrator (1) an Opinion of Counsel; and (2) a certificate of delivery and acceptance from the Shipyard and the Shipowner to the Administrator with respect to the delivered Vessel.

SECTION 13.04. Annual Audited Financial Statements of Shipowner and Affiliate Guarantor. The Shipowner shall deliver to the Administrator, in duplicate, within one hundred five (105) days after the end of each fiscal year of the Shipowner commencing with the first fiscal year ending after the date of this Agreement, (a) the Shipowner’s Audited Financial Statements for such fiscal year, along with such other forms requested by the Administrator, (b) the Affiliate Guarantor’s Audited Financial Statements for such fiscal year, (c) the consolidated and consolidating Audited Financial Statements of the Shipowner and the Affiliate Guarantor for such fiscal year, and (d) an Annual Financial Statement Certification as of the end of such fiscal year.

SECTION 13.05. Quarterly Unaudited Financial Statements of Shipowner and Affiliate Guarantor. The Shipowner shall deliver to the Administrator, in duplicate, within forty-five (45) days after the expiration of each fiscal quarter commencing with the first full quarter ending after the date of this Agreement, (a) the Shipowner’s Unaudited Financial Statements for such fiscal quarter, (b) the Affiliate Guarantor’s Unaudited Financial Statements for such fiscal quarter, (c) the consolidated and consolidating Unaudited Financial Statements of the Shipowner and the Affiliate Guarantor for such fiscal quarter, and (d) a Quarterly Financial Statement Certification as of the end of such fiscal quarter.

SECTION 13.06. Annual Accountant’s Statement of Reserve Fund Net Income. Within one hundred five (105) days after the end of each fiscal year of the Shipowner, the Shipowner shall deliver to the Administrator the statement of the Shipowner’s Accountant regarding the Shipowner’s Reserve Fund Net Income for such year pursuant to Section 6.03 of this Agreement.

SECTION 13.07. Annual Reserve Fund Net Income Deposit. Within one hundred fifteen (115) days after the end of each fiscal year of the Shipowner, the Shipowner shall deliver to the Administrator either (a) the Reserve Fund Net Income Deposit, if one is required to be made, together with a statement of the Shipowner’s Accountant, relating to the calculation of the Reserve Fund Net Income Deposit pursuant to Section 6.04 of this Agreement or (b) a statement of the Shipowner’s Accountant that a Reserve Fund Net Income Deposit is not required.

SECTION 13.08. No Default Certificate. (a) Within one hundred five (105) days after the end of each fiscal year of the Shipowner, the Shipowner shall furnish to the Administrator an Annual Financial Statement Certification dated as of the close of such fiscal year stating whether or not the Shipowner and the Affiliate Guarantor are in default in the performance of or in default in the compliance with any covenant, agreement or condition contained in this Agreement, the Mortgage, any other Transaction Document to which it is a party or charter relating to any Vessel, and if so, specifying each such default and stating the nature thereof.

(b) The Shipowner shall deliver to the Administrator, in duplicate, within forty-five (45) days after the expiration of each fiscal quarter commencing with the first full quarter ending after the date of this Agreement, a Quarterly Financial Statement Certification dated as of the end of such fiscal quarter stating whether or not the Shipowner and the Affiliate Guarantor are in default in the performance of or in default in the compliance with any covenant, agreement or condition contained in this Agreement, the Mortgage, any other Transaction Document to which it is a party or charter relating to any Vessel, and if so, specifying each such default and stating the nature thereof.

SECTION 13.09. Annual Vessel Condition and Maintenance Officer’s Certificate. Within one hundred five (105) days after the end of each fiscal year of the Shipowner, the Shipowner shall deliver to the Administrator an Annual Vessel Condition, Maintenance and Class Certification stating the condition and maintenance of each Vessel; provided however, that this Section shall not apply when the Vessel is in Government Use.

SECTION 13.10. Annual Insurance Broker’s Certificate. Within one hundred five (105) days after the end of each fiscal year of the Shipowner, the Shipowner shall deliver to the Administrator a certificate from its insurance broker certifying that all insurance coverage required by Section 11.10 of this Agreement is in full force and effect and that no premiums are in arrears.

SECTION 13.11. Classification Certificates. As and when they are renewed and received, the Shipowner shall deliver to the Administrator copies of all Classification Society classification certificates relating to the Vessels.

SECTION 13.12. Annual In-Class Vessel Confirmation Survey and Inspections. Within one hundred five (105) days after the end of each fiscal year of the Shipowner and at any other time requested by the Administrator, the Shipowner shall furnish to the Administrator an Annual Vessel Condition, Maintenance and Class Certification; provided that, the foregoing shall not apply if the Vessel is in Government Use and the governmental body does not permit classification and rating of the Vessel.

SECTION 13.13. Biennial Not Classed Vessel Survey and Inspections Within one hundred five (105) days after the end of every two (2) fiscal years of the Shipowner commencing the second full fiscal year after the date of this Agreement and at any other time reasonably requested by the Administrator, the Shipowner shall obtain a survey and inspection of each not classed Vessels by an independent marine surveyor approved by the Administrator; provided that, no such surveys will be requested within the last three (3) years prior to the Stated Maturity Date of the Note. The Shipowner shall furnish two copies of such report of such independent marine surveyor to the Administrator within one hundred twenty-five (125) days after the end of every two (2) fiscal years of the Shipowner.

SECTION 13.14. Biennial Appraisals of Vessels. Within one hundred five (105) days after the end of every two (2) fiscal years of the Shipowner commencing the second full fiscal year after the date of this Agreement and at any time reasonably requested by the Administrator, the Shipowner shall obtain, at its own expense, an appraisal of the fair market value, replacement value, orderly liquidation value and forced liquidation value of the Vessels from an appraiser approved by the Administrator and shall furnish two copies of such report and appraisal to the Administrator within one hundred twenty-five (125) days after the end of every two (2) fiscal years of the Shipowner. This requirement may be met by the Shipowner by providing copies of the latest annual class surveys and desktop appraisals of the Vessels to the Administrator to the extent available.

SECTION 13.15. Appraisal; Additional Collateral. If (a) the annual Audited Financial Statements submitted by the Shipowner in accordance with Section 13.04 of this Agreement indicate that (1) the Shipowner is not in compliance with the Supplemental Financial Covenants of Shipowner or (2) the Affiliate Guarantor is not in compliance with the Supplemental Financial Covenants of Affiliate Guarantor or (b) the quarterly Unaudited Financial Statements submitted by the Shipowner in accordance with Section 13.05 of this Agreement indicate that (1) either the Shipowner is not in compliance with the Supplemental Financial Covenants of Shipowner or (2) the Affiliate Guarantor is not in compliance with any of the Supplemental Financial Covenants of Affiliate Guarantor and (c) at the time, the aggregate value of the sum of (1) any funds on deposit in the Chapter 537 Reserve Fund, and (2) the appraised forced liquidation value of the Vessels that have been delivered to the Shipowner, as indicated by the Appraisal, is less than the Outstanding Note, then the Shipowner shall, within ten (10) Business Days after demand from the Administrator, furnish to the Administrator the Additional Collateral. The Administrator shall immediately release the Additional Collateral upon satisfaction by (a) the Shipowner of the Supplemental Financial Covenants of Shipowner and (b) the Affiliate Guarantor of the Supplemental Financial Covenants of Affiliate Guarantor for four consecutive fiscal quarters, as evidenced by the Unaudited Financial Statements submitted by the Shipowner and the Affiliate Guarantor in accordance with Sections 13.04 and 13.05 of this Agreement.

# *ARTICLE XIV* *Defaults and Remedies*

SECTION 14.01. What Constitutes "Defaults;" Continuance of Defaults. Each of the following events shall constitute a "***Default***":

(a) A default in the payment of the whole or any part of the interest on any of the Outstanding Advances when the same shall become due and payable; a default in the payment of the whole or any part of the Late Charges, prepayment amounts, premiums or penalties when the same shall become due and payable; or default in the payment of the whole or any part of the principal of the Outstanding Advances when the same shall become due and payable, whether by reason of mandatory prepayment, maturity, acceleration, or otherwise; a default in any payment in compliance with a final order of a court of competent jurisdiction pursuant to any provision of the Bankruptcy Code or any Federal Law replacing or superseding such Code, or applicable state law or otherwise; and continuation of such default for a period of thirty (30) days shall constitute and is herein called a "***Payment Default***." Any corresponding default with respect to the interest on, or the principal of, premiums or penalties due on, the Note and any default with respect to the mandatory prepayments due under this Agreement is also deemed to be a Payment Default;

(b) The following shall constitute and each is herein called a "***Security Default***":

(1) A default by the Shipowner in the due and punctual observance and performance of any provision in Sections 4.02, 10.09, 10.13, 10.14, 10.18, 11.01, 11.02, 11.03, 11.05, 11.06, 11.07, 11.08, 11.09, 12.01 12.02, 12.03, 13.03, 15.01, 17.01, 17.02 and 17.03 of this Agreement;

(2) A default continuing for five (5) Business Days, unless otherwise stated, after written notice to Shipowner from the Administrator specifying such failure by the Shipowner in the due and punctual observance and performance of any provision in Sections 6.04, 6.06, 6.09, 7.07, 9.02, 10.08, 11.10 (except (g) and (k) thereof), and 11.13 of this Agreement;

(3) A default continuing for thirty (30) days after written notice to the Shipowner from the Administrator by the Shipowner in the due and punctual observance of any other provision, condition or covenant in this Agreement or any provision set forth in the Mortgage, provided that the cure period shall be reduced to ten (10) days in connection with any failure to pay a debt due or make a payment due under Section 4.05 or Section 6.08 hereof;

(4) The Shipowner or any guarantors of the Shipowner’s performance under this Agreement, the Mortgage or any other Transaction Document, becomes insolvent or bankrupt or ceases paying or providing for the payment of its debts generally, or the Shipowner or any guarantor is dissolved or, by a court of competent jurisdiction, is adjudged as bankrupt, or makes a general assignment for the benefit of its creditors, or loses its charter by forfeiture or otherwise; or a petition for reorganization of the Shipowner or any guarantor under the Bankruptcy Code is filed by the Shipowner or any guarantor, or such petition be filed by creditors and the same is approved by such a court of competent jurisdiction; or a reorganization of the Shipowner or any guarantor under the Bankruptcy Code is approved by a court, whether proposed by a creditor, a stockholder or any other Person whomsoever; or a receiver or receivers of any kind whatsoever, whether appointed in admiralty, bankruptcy, common law or equity proceedings, is appointed, by a decree of a court of competent jurisdiction, with respect to any Vessel, or all or substantially all of the Shipowner’s or any guarantor’s property, and such decree shall have continued unstayed, on appeal or otherwise, and in effect for a period of sixty (60) days;

(5) Any default in the due and punctual observance and performance of any provision set forth in any of the Transactions Documents (other than this Agreement and the Mortgage);

(6) Any representation or warranty made in this Agreement, the Mortgage or any other Transaction Document, or in any certificate required to be furnished pursuant thereto, that is proven to be incorrect in any material respect;

(7) Any event constituting a default under any security agreement or preferred mortgage under Chapter 313, relating to any other vessel or vessels owned by the Shipowner or Affiliate Guarantor, or guaranteed by the Affiliate Guarantor and financed under Chapter 537;

(8) Any event constituting a default by the Shipowner or the Affiliate Guarantor under any non-Chapter 537 debt of the Shipowner or the Affiliate Guarantor;

(9) Any Special Security Default; and

(10) Any event constituting a default under any bareboat or time charter or contract of affreightment of the Vessel.

(c) Notwithstanding anything to the contrary set forth in this Agreement, the failure or omission of the Shipowner or the Affiliate Guarantor to satisfy any Supplemental Financial Covenant of Shipowner or any Supplemental Financial Covenant of Affiliate Guarantor, respectively, shall not, by itself, constitute a Default hereunder.

SECTION 14.02. Remedies Upon Default. (a) At any time following the occurrence of a Security Default, the Administrator may give the Holder an Administrator’s Notice, after which the Holder shall have the right to make demand for payment of the Guarantee in accordance with Chapter 537, unless the Administrator shall have assumed the Shipowner’s rights and duties under the Note Purchase Agreement and Note, and made any payments in default under Chapter 537.

(b) Upon the occurrence of a Default, the Administrator shall have the right at its discretion to:

(1) Declare the principal of the Administrator's Note, interest accrued thereon, premiums and all other monetary obligations due under the Administrator’s Note, this Agreement, the Mortgage or any of the other Transaction Documents to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Shipowner, at any time after a Default has occurred and is continuing under the terms of this Agreement or any of the other Transaction Documents and, thereupon, the principal of and interest on the Administrator's Note shall become immediately due and payable, together with interest at the Approved Interest Rate applicable to each Advance under the Administrator’s Note; provided, however, that if any Default specified in Section 14.01(b)(4) hereof shall occur, the principal of, all interest on, premiums and all other monetary obligations due under the Administrator’s Note, this Agreement, the Mortgage or any of the other Transaction Documents shall thereupon become due and payable concurrently therewith, without any further action by the Administrator, and without presentment, demand, protest, notice of default, notice of acceleration, or of intention to accelerate or other notice of any kind, all of which the Shipowner hereby expressly waives;

(2) Take the Vessels without legal process wherever the same may be (and the Shipowner or other Person in possession shall forthwith surrender possession of the Vessels to the Administrator upon demand) and hold, layup, lease, charter, operate, or otherwise use the Vessels for such time and upon such terms as the Administrator may reasonably deem to be in the Administrator’s best interest, accounting only for the net profits, if any, arising from the use of the Vessels, and charging against all receipts from the use of the Vessels, all reasonable charges and expenses relating to such Vessel’s use. IT IS EXPRESSLY UNDERSTOOD AND AGREED TO BY THE SHIPOWNER THAT SURRENDER OF ANY VESSEL UNDER THIS SECTION MUST BE AND WILL BE IMMEDIATE AND IN ACCORDANCE WITH THE DIRECTIONS OF THE ADMINISTRATOR. FAILURE OF THE SHIPOWNER TO IMMEDIATELY COMPLY WITH THE ADMINISTRATOR’S DEMAND FOR SURRENDER OF ANY VESSEL WILL CAUSE THE POSSESSION OF THE VESSEL BY THE SHIPOWNER (INCLUDING, BUT NOT LIMITED TO, POSSESSION AND CONTROL OF THE VESSEL BY A MASTER OR CREW MEMBER ON BOARD THE VESSEL) TO BE UNLAWFUL, THEREBY SUBJECTING THE SHIPOWNER TO ALL FINES, PENALTIES AND ACTIONS WHICH THE ADMINISTRATOR DEEMS APPLICABLE AND APPROPRIATE. SHOULD THE SHIPOWNER CONTINUE TO OPERATE, POSSESS OR CONTROL THE VESSEL CONTRARY TO THE ADMINISTRATOR’S DIRECTIONS AND THE PROVISIONS HEREIN, THEN THE ADMINISTRATOR SHALL, IN ADDITION TO ANY OTHER RIGHTS AND REMEDIES AT LAW AND IN EQUITY, BE ENTITLED TO A TEMPORARY RESTRAINING ORDER AND/OR ORDER FOR INJUNCTIVE RELIEF NECESSARY TO GAIN COMPLIANCE HEREWITH. IN ADDITION TO EXPRESSLY CONSENTING THAT THE INJURY AND DAMAGE RESULTING FROM BREACH HEREOF WOULD BE IMPOSSIBLE TO MEASURE MONETARILY, SHIPOWNER EXPRESSLY WAIVES ANY DEFENSE BASED UPON AN ALLEGED EXISTENCE OF AN ADEQUATE REMEDY AT LAW;

(3) Exercise all the rights and remedies in foreclosure and otherwise given to mortgagees by Chapter 313;

(4) Bring suit at law, in equity or in admiralty to recover judgment for any and all amounts due or to enforce any rights under the Administrator's Note, this Agreement, the Mortgage, and the other Transaction Documents to collect the same out of any and all property of the Shipowner and/or the Affiliate Guarantor, whether or not the same is subject to the Lien of the Mortgage or this Agreement, and in connection therewith, obtain a decree ordering the sale of any Vessel in accordance with Subsection (b)(6) of this Section;

(5) Have a receiver of the Vessels appointed as a matter of right in any suit under this Section (and any such receiver may have the rights of the Administrator under Subsection (b)(6) of this Section) and any receiver so appointed shall have full right and power to use and operate the Vessels;

(6) Sell any Vessel, free from any claim of the Shipowner, in addition to any and all other rights, powers, and remedies elsewhere in this Agreement or by law granted to and conferred upon the Administrator, upon such terms and conditions as it may deem to be for its best advantage, including the right to sell and dispose of any Vessel free from any claim of or by the Shipowner, at public sale, by sealed bids or otherwise, after twice publishing notice of the time and place of such sale prior to the proposed sale in the Authorized Newspaper, and by mailing notice of such sale to the Shipowner at its last known address; such publication and mailing is to be made at least ten (10) Business Days prior to the date fixed for such sale; such sale may be held at such place and at such time as the Administrator in such notice may have specified, or may be adjourned by the Administrator from time to time by announcement at the time and place appointed for such sale or for such adjourned sale, and without further notice of publication and the Administrator may make any such sale at the time and place to which the same shall be so adjourned; and any such sale may be conducted without bringing any Vessel to the place designated for such sale and in such manner as the Administrator may deem to be for its best advantage, and the Administrator may become the purchaser at any such sale, and shall have the right to credit on the purchase price any or all sums of money due to the Administrator under the Administrator’s Note, this Agreement, the Mortgage, the other Transaction Documents or otherwise hereunder. THE SHIPOWNER EXPRESSLY AGREES AND ACKNOWLEDGES THAT SALE OF THE VESSEL PURSUANT TO THIS SECTION WILL NOT IMPAIR OR LIMIT THE ADMINISTRATOR’S LEGAL RIGHT TO COLLECT FROM THE SHIPOWNER ANY DEFICIENCY REMAINING AFTER THE SALE. IF ANY APPLICABLE LEGAL AUTHORITIES MAY BE CONSTRUED TO LIMIT THE ADMINISTRATOR’S RIGHTS TO COLLECTION OF SAID DEFICIENCY FROM THE SHIPOWNER, THEN SHIPOWNER HEREBY EXPRESSLY WAIVES, RELINQUISHES AND FOREVER GIVES UP THE RIGHT TO AVAIL ITSELF OF SUCH LEGAL AUTHORITIES;

(7) Accept a conveyance of title to, and to take without legal process (and the Shipowner or other Person in possession shall forthwith surrender possession to the Administrator), the whole or any part of any Vessel and the Collateral wherever the same may be, and to take possession of and to hold the same;

(8) In the Administrator’s discretion, take any and all action authorized by Sections 53715(c), 53724, and 53725 of Chapter 537 and any and all action provided for, or authorized, or permitted by, or with respect to the Collateral;

(9) Receive, in the event of an actual or constructive total loss, or an agreed or compromised total loss, or a requisition of title to or use of any Vessel, all insurance or other payments therefor to which the Shipowner would otherwise be entitled, such insurance moneys to be applied by the Administrator in accordance with Section 14.04 hereof; and

(10) Pursue to final collection of all the claims arising under this Agreement and to collect such claims from, the Collateral.

(c) The Shipowner hereby irrevocably appoints the Administrator the true and lawful attorney of the Shipowner, in its name and stead, to make all necessary transfers of the whole or any part of the Collateral in connection with a sale, use or other disposition pursuant to Section 14.02(b) hereof, and for that purpose to execute all necessary instruments of assignment and transfer, the Shipowner hereby ratifying and confirming all that its said attorney shall lawfully do by virtue hereof. Nevertheless, the Shipowner shall, if so requested by the Administrator, ratify and confirm such sale by executing and delivering to any purchaser of the whole or any part of the Collateral, such proper bill of sale, conveyance, instrument of transfer, or release as may be designated in such request.

(d) The Shipowner hereby irrevocably appoints the Administrator the true and lawful attorney of the Shipowner so long as a Default shall have occurred and shall not have been waived by the Administrator, in the name of the Shipowner, to demand, collect, receive, compromise and sue for, so far as may be permitted by law, all hires, earnings, issues, revenues, income, and profits of the Vessels and all amounts due from underwriters under any insurance thereon as payment of losses or as return premiums or otherwise, salvage awards and recoveries, recoveries in general average or otherwise, any right of action against the designer, builder, surveyor, or other material party for any fault, negligence or deficiency in design, construction or survey of the Vessels and all other sums, due or to become due, at or after the time of the happening of any Default in respect of the Vessels or in respect of any insurance thereon from any person whomsoever, and to make, give and execute in the name of the Shipowner, acquittances, receipts, releases or other discharges for the same, whether under seal or otherwise, and to endorse and accept in the name of the Shipowner all checks, notes, drafts, warrants, agreements, and all other instruments in writing with respect to the foregoing.

(e) No remedy shall be exclusive of any other remedy, and each and every remedy shall be cumulative and in addition to any other remedy.

(f) No delay or omission to exercise any right or remedy shall impair any such right or remedy or shall be deemed to be a waiver of any Default.

(g) The exercise of any right or remedy shall not constitute an election of remedies by the Administrator.

(h) If the Administrator discontinues any proceeding, the rights and remedies of the Administrator and of the Shipowner shall be as though no such proceeding had been taken.

SECTION 14.03. Waivers of Default. (a) If the Administrator shall not have assumed the Shipowner's rights and duties under the Note Purchase Agreement and the Note and made any payments in default under Chapter 537, and if the Administrator determines that an event which, with the passage of time, would become a Payment Default, has been remedied within thirty (30) days after the occurrence of such event, upon a Request by the Shipowner, the Administrator shall waive the consequences of such event.

(b) If the Administrator shall not have assumed the Shipowner's rights and duties under the Note Purchase Agreement and the Note and made any payments in default under Chapter 537, and if the Administrator shall have determined prior to payment of the Guarantee that a Payment Default has been remedied within thirty (30) days after the occurrence of such event, but prior to the date of demand by the Holder for payment under the Guarantee, upon a Request by the Shipowner, the Administrator shall waive such Default.

(c) If the Administrator shall have determined prior to the expiration of the period required for payment of the Guarantee that a Payment Default had not occurred or has been subsequently remedied by the Shipowner (and if the Administrator shall not have assumed the Shipowner's rights and duties under the Note Purchase Agreement and the Note and made any payments in default under Chapter 537 and prior to any payment of Guarantee), the Administrator shall notify the Holder and the Shipowner of such determination, and, the Administrator shall waive such Default.

(d) The Administrator, in its sole discretion, may waive any Security Default or any event which by itself, or with the passage of time or the giving of notice, or both, would give rise to a Security Default.

(e) The Administrator shall notify the Shipowner in writing of any determinations made under Subsections (a), (b), and (c) of this Section, and the Administrator shall waive the consequences of any such Default, and annul any declaration under Section 14.02 of this Agreement, and the consequences thereof.

(f) No waiver under this Section shall extend to or affect any subsequent or other Default, nor impair any rights or remedies consequent thereon.

(g) No waiver under this Section shall be deemed to have occurred because the Administrator shall have assumed the Shipowner's rights and duties under the Note Purchase Agreement and the Note and made any payments in default under Chapter 537.

SECTION 14.04. Application of Proceeds. (a) The proceeds (from sale or otherwise) of the whole or any part of the Collateral (including the Chapter 537 Reserve Fund and all Income Realized on the Chapter 537 Reserve Fund) and use thereof by the Administrator under any of the foregoing powers, (b) the proceeds of any judgment collected by the Administrator for any Default hereunder, (c) the proceeds of any insurance and of any claim for damages to the whole or any part of the Collateral received by the Administrator while exercising any such power, and (d) all other amounts received by the Administrator, including amounts which are required by Sections 11.10 and 11.12 hereof shall be applied by the Administrator in the following order:

(1) To the payment of all advances and all reasonable charges by the Administrator pursuant to this Agreement, including the expenses of any sale, counsel fees, the expenses of any taking of possession of any Vessel, costs and expenses of collection, and any other expenses or advances made or incurred by the Administrator in the protection and preservation of the Vessels or of its rights or in the pursuance of its remedies hereunder and to the payment of any damages sustained by the Administrator from the Default(s) of the Shipowner; any debt owed by the Shipowner to the Administrator which this Agreement or any other Transaction Document states is entitled to be paid prior to the Administrator’s Note, and any payment due under this Agreement, the Mortgage or any of the other Transaction Documents, and at the option of the Administrator, to provide a fund adequate in the opinion of the Administrator to furnish suitable indemnity against liens claiming priority over the Mortgage;

(2) To the payment of Late Charges payable under Paragraphs 11 and 16 of the Note;

(3) To the payment of premiums payable under Paragraphs 14 and 15 of the Note;

(4) To the payment of the whole amount of interest then due and unpaid upon the Administrator’s Note; provided, however, that such application of funds shall not cure or be deemed to cure a Default;

(5) To the payment of the whole amount of the principal then due and unpaid upon the Administrator’s Note; provided, however, that such application of funds shall not cure or be deemed to cure a Default;

(6) To the Administrator for application to any other debt of the Shipowner due to the Administrator under any other financing guaranteed by the Administrator under Chapter 537; and

(7)Any surplus then remaining shall belong and be paid or returned to the Shipowner or to whomever shall be lawfully entitled to receive the same.

SECTION 14.05. Shipowner’s Rights in Absence of Default. Except during the existence of a Default, the Shipowner (a) shall be permitted to retain actual possession and use of the Vessel, and (b) shall have the right, from time to time, in its discretion and without the consent of or release by the Administrator, after providing not less than thirty (30) days prior notice to the Administrator, to dispose of, free from the Lien granted to the Administrator pursuant to Article IV of this Agreement and of the Mortgage, any and all engines, machinery, masts, boats, anchors, cables, chains, rigging, tackle, apparel, furniture, capstans, outfit, tools, pumps, pumping and other equipment, and all other appurtenances to the Vessels, and also any and all additions, improvements and replacements in or to the Vessels or said appurtenances, after first or simultaneously replacing the same with items of at least substantially equal value.

SECTION 14.06. Authority of United States. Each of the Shipowner and Affiliate Guarantor agrees, acknowledges and consents to take all steps, measures or actions which are within the discretion or authority of the Mortgagee.

# *ARTICLE XV Consolidation, Mergers and Sale*

SECTION 15.01. Consolidation, Merger or Sale; Mandatory Vessel Sale Prepayments.(a) Nothing in this Agreement shall prevent any lawful consolidation or merger of the Shipowner with or into any other Person, or any sale of a Vessel or Vessels by the Shipowner, the Administrator, or a court of law to any other Person lawfully entitled to acquire and operate such Vessel or Vessels, or any sale of all or substantially all of its assets by the Shipowner, the Administrator, or a court of law to any other Person; provided that, the Administrator shall have given its prior written consent to such succession, merger, consolidation or sale.

(b) Any Successor shall (by instrument amending or supplementing this Agreement, and the Mortgage, as may be necessary), (1) expressly assume, in accordance with the terms of the Note, the payment of the principal of (and premium, if any) and interest on the Outstanding Advances, as determined by the Administrator, and the Shipowner’s duties under the Note, (2) execute and deliver to the Administrator, an endorsement to the Administrator's Note in form and substance satisfactory to the Administrator, (3) expressly assume the payment of the principal of and interest on the Administrator's Note, and (4) expressly assume the performance of the agreements of the Shipowner in this Agreement, the Mortgage, the Note Purchase Agreement, and any related document. When a Person so assumes the Note and such Proportionate Part of the Outstanding Advances, the Person and the Administrator shall execute an assumption agreement of the Note Purchase Agreement and the Note and the Shipowner shall be discharged and released from any and all obligations thereunder relating to such Proportionate Part of the Outstanding Advances.

(c) Upon the assumption of the documents listed in Subsection (b) of this Section, the Administrator shall, in connection with the transaction, consent to the surrender of each Vessel’s documents pursuant to 46 U.S.C. § 12136(b)(2), as amended; provided that, concurrently with such surrender, such Vessel shall be re-documented under the laws of the United States.

(d) Subject to Article XVII hereof, in the event of any proposed sale of less than all the Vessels, if the Administrator determines that there will not remain adequate security for the Guarantees after discharge and release of any such Vessel or Vessels from this Agreement and the Mortgage, either:

(1) the Shipowner shall make a Mandatory Prepayment Election (which shall not be rescinded) and shall send a Mandatory Prepayment Election Notice to the Holder with a copy to the Administrator (which may not be rescinded) to prepay the principal amount of the Outstanding Advances in an amount equal to the Mandatory Vessel Sale Prepayment Amount and the Shipowner shall pay the Mandatory Vessel Sale Prepayment Amount on the Intended Payment Date set forth in such Mandatory Prepayment Election Notice (which shall not be less than five (5) or more than ten (10) Business Days after receipt of such notice by the Administrator), in accordance with the provisions of Paragraphs 14 and 15 of the Note and Sections 12.2 and 12.3 of the Note Purchase Agreement; or

(2) the Transferee shall expressly assume (A) in accordance with the terms of the Note, the payment of the principal of (and premium, if any) and interest on the Outstanding Advances, as determined by the Administrator, and the Shipowner’s duties under the Note, (B) the payment of the principal of and interest on the Administrator's Note, and (C) the performance of the agreements of the Shipowner in this Agreement, the Mortgage, the Note Purchase Agreement, and any related document. Upon any such assumption, (1) the Transferee shall succeed to and be substituted for the Shipowner with the same force and effect as if it had been named in the Note Purchase Agreement, the Note, this Agreement and the Mortgage (and such other documents) to the extent the documents relate to such Proportionate Part of the Outstanding Advances and to such Vessel or Vessels and (2) the Proportionate Part of the Outstanding Advances shall be surrendered to the Holder for appropriate notation or for the issuance of new obligations in exchange for such Proportionate Part of the Outstanding Advances in the name of the Transferee, as required by the Administrator.

(e) Shipowner shall not sell any Vessel subject to a No-Call Advance during the No-Call Period unless: (1) such sale is necessary for the purposes of avoiding a Default; and (2) the Administrator has given its prior written consent to such proposed sale.

# *****ARTICLE XVI***** *****Termination and Discharge*****

SECTION 16.01. Discharge of Agreement. Except as set forth in Section 5.03 of this Agreement with respect to a release of Lien on the Interest Escrow Fund, if the Note and the related Administrator's Note shall have been satisfied and discharged, and if the Shipowner shall pay or cause to be paid all other sums that may have become secured under this Agreement and the other Transaction Documents, then this Agreement and the Liens, estate and rights and interests hereby and thereby granted, shall cease, terminate, and become null and void, and the Administrator, on the Shipowner’s Request and at the Shipowner's cost and expense, shall forthwith cause satisfaction and discharge and duly acknowledge such satisfaction and discharge of this Agreement to be entered upon its and other appropriate records, and shall execute and deliver to the Shipowner such instruments as may be necessary, and forthwith the estate, right, title and interest of the Administrator in and to the Collateral, and any other securities, cash, and any other property held by it under this Agreement, shall thereupon cease, determine and become null and void, and the Administrator shall transfer, deliver and pay the same to the Shipowner.

SECTION 16.02. Release of Liens. If the Guarantee on the Outstanding Note shall have been terminated pursuant to Section 2.04(b) hereof, the Administrator shall release the Liens, estate, rights and interests in the Collateral granted to it by the Shipowner pursuant to this Agreement and the Mortgage.

# *****ARTICLE XVII No-Call Prepayment Deposits*****

SECTION 17.01. Mandatory Prepayment Deposits During No-Call Periods. If a Mandatory Prepayment pursuant to Sections 11.12 or 15.01 herein is required to be made by the Shipowner and (a) No-Call Advances are then outstanding under the related note, and (b) the Holder has not accelerated the maturity of the unpaid principal balance of, accrued interest on, and other amounts payable under, the Note, as the case may be, then, the Shipowner shall: (1) with respect to then outstanding No-Call Advances, irrevocably deposit pursuant to Sections 17.02 and 17.03 herein the No-Call Prepayment Amount into the No-Call Prepayment Fund; and (2) with respect to all other related outstanding Unrestricted Advances, if any, pay pursuant to Sections 11.12 or 15.01 hereof, as the case may be, all outstanding principal of such Unrestricted Advances, and interest, premiums and Late Charges, if any, thereon.

SECTION 17.02. Conditions to No-Call Prepayment During No-Call Periods. The deposit of the No-Call Prepayment Amount into the No-Call Prepayment Fund pursuant to Section 17.01 hereof shall be subject to the satisfaction of each of the following conditions:

1. The Shipowner shall give (1) to the Holder and the Administrator the Mandatory Prepayment Election Notice as required pursuant to Sections 11.12 and 15.01 hereof, as the case may be, to the extent of Unrestricted Advances, and (2) with respect to No-Call Advances, to the Administrator a No-Call Prepayment Notice (A) specifying (i) the No-Call Prepayment Closing Date, (ii) the beginning and ending dates of the No-Call Period applicable to each Prepaid No-Call Advance and the No-Call Payment Date of each Prepaid No-Call Advance, (iii) the amount of the Scheduled Debt Payments on each No-Call Advance and the Stated Maturity of each No-Call Advance, (iv), the No-Call Prepayment Amount, and (v) irrevocable instructions from the Shipowner to the Administrator to pay or prepay each Prepaid No-Call Advance on the applicable No-Call Payment Date; and (B) attaching (i) an opinion of an Accountant acceptable to the Administrator calculating and certifying to the accuracy of the No-Call Prepayment Amount, and (ii) either evidence satisfactory to the Administrator that (x) all prepayment notices required by the Note Purchase Documents with respect to the Prepaid No-Call Advances have been given to the Holder and the Administrator, to the extent possible under the Transaction Documents, or (y) an irrevocable power of attorney authorizing the Administrator to give such prepayment notices with respect to the Prepaid No-Call Advances has been granted to the Administrator by the Shipowner.
2. No Default has occurred and is continuing.
3. The Shipowner shall have delivered each of the following documents to the Administrator, in form and substance satisfactory to the Administrator, on or prior to the No-Call Prepayment Closing Date, unless the Administrator has issued a written waiver of its right to receive any such document:

(1) An Officer’s Certificate from the Shipowner certifying the following:

(A) The No-Call Prepayment Amount is in an amount sufficient to provide for the payment of all Scheduled Debt Payments on all Prepaid No-Call Advances specified in the No-Call Notice Prepayment Notice; and

(B) The Administrator is irrevocably authorized to pay the Scheduled Debt Payments to FFB on behalf of the Shipowner from the No-Call Prepayment Fund.

(2) A written certificate from an Accountant acceptable to the Administrator, calculating and certifying to the Administrator that the No-Call Prepayment Amount is sufficient to make all Scheduled Debt Payments as they fall due on the Prepaid No-Call Advances, including the full payment due on the Prepaid No-Call Advances on each No-Call Payment Date.

(3) One or more opinions of counsel for the Shipowner confirming that the Administrator has a valid and perfected first priority security interest in the No-Call Prepayment Collateral and the proceeds of the No-Call Prepayment Collateral.

(4) Any other opinions, certificates, documents or instruments that the Administrator may request.

(d) The Shipowner will pay all reasonable costs and expenses incurred by the Administrator relating to the No-Call Prepayment Fund. Such expenses include all fees, costs and expenses incurred by the Administrator and its agents relating to the No-Call Prepayment Fund (including attorneys’ fees and costs for the review and preparation of all materials described in this Agreement and any related documentation or other costs related to the deposit).

(e) The Administrator reserves the right to require that the Shipowner post a deposit to cover costs which Administrator reasonably anticipates that the Administrator will incur relating to the No-Call Prepayment Fund.

(f) All payments required to be made by the Shipowner to the Administrator pursuant to this Section will be made by wire transfer of immediately available funds to the account(s) designated by the Administrator in its acknowledgement of the No-Call Prepayment Notice.

SECTION 17.03. Other No-Call Prepayment Provisions. (a) If the Shipowner does not pay the No-Call Prepayment Amount to the Administrator for deposit into the No-Call Prepayment Fund on the No-Call Prepayment Closing Date for any reason, the Shipowner agrees to reimburse the Administrator for all third party costs and expenses incurred by the Administrator in reliance on the executed No-Call Prepayment Notice, within five (5) Business Days after the Shipowner receives a written demand for payment, accompanied by a statement, in reasonable detail, of the Administrator’s third party costs and expenses. All amounts due to the Administrator by the Shipowner pursuant to this Subsection shall be obligations of the Shipowner secured by this Agreement.

(b) Unless a Default shall have occurred, any amount remaining in the No-Call Prepayment Fund after the final payment of all Scheduled Debt Payments relating to the No-Call Advances shall be the property of the Shipowner and shall be returned to the Shipowner by the Administrator upon the request of the Shipowner. Upon the occurrence of a Default, the amounts in the No-Call Prepayment Fund shall be retained by the Administrator and applied to the obligations of the Shipowner in the manner set forth in Section 14.04 hereof.

# *****ARTICLE X**********VIII Miscellaneous*****

SECTION 18.01. Officer’s Certificates. To satisfy a covenant or condition provided for in this Agreement, the Responsible Officer of the Person making such Officer’s Certificate shall certify that the officer (a) has read such covenant or condition; (b) has made or caused to be made such examination or investigation as is necessary to enable the Officer to express an informed opinion with respect to such covenant or condition; and (c) believes to the best of the Officer’s knowledge that such condition or covenant has been met. An Officer’s Certificate shall set forth the pertinent supporting information and shall be subject to the Administrator’s review of its adequacy and accuracy.

SECTION 18.02. Successors and Assigns. All the covenants, promises, stipulations and agreements of the Administrator, Shipowner and Affiliate Guarantor, to the extent applicable, in this Agreement shall bind the Administrator, Shipowner, Affiliate Guarantor, to the extent applicable, and their respective successors and assigns. This Agreement is for the sole benefit of the Shipowner, the Affiliate Guarantor, the Administrator, and their respective successors and assigns, and no other Person shall have any right hereunder.

SECTION 18.03. Notices. Except as otherwise provided in this Agreement or by Chapter 537, all notices, requests, demands, directions, consents, waivers, approvals or other communications hereunder must be in writing and may be made or delivered in person or by registered or certified mail, postage prepaid, or by electronic or facsimile transmission with confirmation, addressed to the party at the address of such party set forth on Annex A of this Agreement, or at such other address as such party shall advise each other party by notice in accordance with this Section, and shall be effective upon receipt by the addressee thereof. Each party shall provide a United States address for purposes of this Section.

SECTION 18.04. Waivers of Notice. In any case where notice by publication, mail or otherwise is provided for by this Agreement, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be deemed the equivalent of such notice.

SECTION 18.05. Execution in Counterparts; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when it shall have been executed by the Administrator and when the Administrator shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto.

SECTION 18.06. Applicable Regulations. To the extent federal regulations apply, only the provisions of the regulations issued under Chapter 537, as amended, modified or supplemented from time to time, shall control this Agreement provisions.

SECTION 18.07. Table of Contents, Titles and Headings. The table of contents, and titles of the Articles and the headings of the Sections are not a part of this Agreement and shall not be deemed to affect the meaning or construction of any of its provisions.

SECTION 18.08. Survival of Representations and Warranties.  All representations and warranties made hereunder and in any other Transaction Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof and the issuance of the Guarantee.  Such representations and warranties have been or will be relied upon by the Administrator, regardless of any investigation made by the Administrator or on its behalf and notwithstanding that the Administrator may have had notice or knowledge of any Default, and shall continue in full force and effect as long as the Guarantee or any other obligation of the Shipowner or the Affiliate Guarantor hereunder or under any Transaction Document shall remain outstanding, unpaid or unsatisfied.

SECTION 18.09. Severability.  If any provision of this Agreement or the other Transaction Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Transaction Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions.  The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 18.10. Governing Law; Jurisdiction; Etc.  (a) **GOVERNING LAW.**  This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the United States of America, including federal common law, and absent applicable federal law, the laws of the Governing Law State, notwithstanding its conflict of laws rules.

(b)           **SUBMISSION TO JURISDICTION.**  EACH OF THE SHIPOWNER AND THE AFFILIATE GUARANTOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT OF THE JURISDICTION STATE/CITY, AND ANY APPELLATE COURT THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND SUCH PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREE THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH FEDERAL COURT EXCEPT SUCH MATTERS PROPERLY BROUGHT TO THE U.S. COURT OF FEDERAL CLAIMS.  EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.  NOTHING IN THIS AGREEMENT OR IN ANY OTHER TRANSACTION DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATOR MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT AGAINST THE SHIPOWNER, THE AFFILIATE GUARANTOR OR ANY OTHER TRANSACTION PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c)           **WAIVER OF VENUE.**  THE SHIPOWNER AND THE AFFILIATE GUARANTOR IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT IN ANY COURT REFERRED TO IN SUBSECTION (b) OF THIS SECTION.  THE SHIPOWNER AND THE AFFILIATE GUARANTOR HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d)           **SERVICE OF PROCESS.**  EACH OF THE SHIPOWNER AND THE AFFILIATE GUARANTOR HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 18.03.

SECTION 18.11. Waiver of Jury Trial.  EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).  EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 18.12. Electronic Execution of Documents.  The words “*execution*,” “*signed*,” “*signature*,” and words of like import in this Agreement, the other Transaction Documents or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the Electronic Signatures and Records Act of the Governing Law State, if any, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 18.13. Amendments and Supplements to Transaction Documents.  This Agreement and the other Transaction Documents may not be amended or supplemented orally, but may be amended or supplemented from time to time only by an instrument in writing executed by the Shipowner, the Administrator and the Affiliate Guarantor, to the extent applicable.

SECTION 18.14. Further Assurances. In the event that this Agreement, the Mortgage, the Administrator’s Note or any other Transaction Documents, or any provisions hereof or thereof, including amendments or substitutions with respect to either, shall be deemed invalid in whole or in part by reason of any present or future law of the United States or any decision of any authoritative court, or if the documents at any time held by the Shipowner be deemed by the Administrator for any reason insufficient to carry out the true intent and spirit of this Agreement, the Administrator’s Note, the Mortgage and the other Transaction Documents, then, from time to time the Shipowner will execute on its own behalf such other and further assurances and documents as in the opinion of counsel for the Administrator may be required to carry out the terms, conditions and intent of this Agreement, the Administrator’s Note, the Mortgage and the other Transaction Documents and any other agreement or document executed by the Shipowner in connection therewith. Upon failure of the Shipowner to do so, the Administrator may execute any and all such other and further assurances and documents, for and in the name of the Shipowner, and the Shipowner hereby irrevocably appoints the Administrator the agent attorney-in-fact of the Shipowner to do so. Any expenses of the Administrator in connection with the foregoing shall be a debt due from the Shipowner to the Administrator in payment thereof and shall be secured by the lien of this Agreement and the Mortgage.

SECTION 18.15. Entire Agreement.  THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS REPRESENT THE ENTIRE AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.  THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

(End of Annex C)