

**COMMITMENT TO GUARANTEE OBLIGATIONS**

**by**

**THE UNITED STATES OF AMERICA**

Accepted by

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Shipowner

(Under Title XI, Merchant Marine Act, 1936,  
as amended, and in effect on the  
date of this Guarantee Commitment)

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Contract No. MA-\_\_\_\_\_

**COMMITMENT TO GUARANTEE OBLIGATIONS**

**by**

**THE UNITED STATES OF AMERICA**

Accepted by

\_\_\_\_\_  
Shipowner

THIS COMMITMENT TO GUARANTEE OBLIGATIONS, dated \_\_\_\_\_ (the "Guarantee Commitment"), made and entered into by the UNITED STATES OF AMERICA (the "United States"), represented by the SECRETARY OF TRANSPORTATION, acting by and through the MARITIME ADMINISTRATOR (the "Secretary"), and accepted on said date by \_\_\_\_\_, a \_\_\_\_\_ (the "Shipowner").

**RECITALS:**

A. The Shipowner is the sole owner of the \_\_\_\_\_ and \_\_\_\_\_, Vessels built pursuant to the Construction Contract with \_\_\_\_\_ (the "Shipyard").

B. To aid in financing the Construction of the Vessels, the Shipowner will borrow an aggregate principal amount equal to, \_\_\_% of the Depreciated Actual Cost or Actual Cost of the Vessels, as the case may be, as of the Closing Date. To accomplish such financing, the Shipowner has accepted this Guarantee Commitment subject to the terms and conditions set forth herein.

C. The Shipowner has entered into the Bond Purchase Agreement providing for the sale and delivery, on the Closing Date, of obligations in the aggregate principal amount of \$\_\_\_\_\_ to be designated "United States Government Guaranteed Ship Financing Obligations, \_\_\_ Series" (the "Obligations") having the maturity date and interest rate set forth herein.

D. As security for the Guarantees and the Secretary's Note, the Shipowner will execute and

deliver the Security Agreement, Contract No. MA-\_\_\_\_, and the following agreements shall be executed and delivered: the Indenture, the Authorization Agreement, Contract No. MA-\_\_\_\_, the Secretary's Note, the Mortgage, Contract No. MA-\_\_\_\_, the Financial Agreement, Contract MA-\_\_\_\_, and the Depository Agreement, Contract No. MA-\_\_\_\_.

### **WITNESSETH:**

That under the provisions of Title XI of the Merchant Marine Act, 1936, as amended and in consideration of (i) the covenants of the Shipowner contained herein and (ii) other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Secretary hereby commits itself as herein provided.

### **ARTICLE I**

#### **Findings and Determinations of Secretary**

Pursuant to Section 1104A(b)(1) of Title XI, the Secretary has approved the Shipowner as responsible and possessing the ability, experience, financial resources and other qualifications necessary to the adequate operation and maintenance of the Vessels.

Pursuant to Section 1104A(b)(2) of Title XI, the Secretary has determined that the aggregate of the Depreciated Actual Cost or Actual Cost of the Vessels, as the case may be, is \_\_\_\_\_. Prior to the Closing Date, the Secretary, in its discretion, may redetermine the Depreciated Actual Cost or Actual Cost of one or more of the Vessels. On the Closing Date, the aggregate principal amount of the Obligations will not exceed \_\_\_% of the Depreciated Actual Cost or the Actual Cost, as the case may be.

Pursuant to Sections 1104A(b)(3), 1104A(b)(4) and 1104A(b)(5) of Title XI, the Secretary has determined that: (1) the maturity date of the Obligations is satisfactory, (2) payments of principal required by the Obligations are satisfactory and (3) the interest rate to be borne by the Obligations to be issued on the Closing Date is reasonable.

Pursuant to Section 1104A(d) of Title XI, the Secretary has found that the Shipowner's proposed use of the Vessels will be economically sound.

### **ARTICLE II**

#### **Commitment to Guarantee Obligations**

The United States, represented by the Secretary, HEREBY COMMITS ITSELF TO GUARANTEE the payment of the unpaid interest on, and the unpaid balance of the principal of, the

Obligations, including interest accruing between the date of default under the Obligations and the payment in full of the Guarantees, and, to effect this Guarantee Commitment, hereby commits itself to execute and deliver the Authorization Agreement, Security Agreement, Mortgage, Financial Agreement, and Depository Agreement on the Closing Date pursuant to the terms of the Guarantee Commitment.

### **ARTICLE III**

#### **The Obligations**

The Obligations shall be as provided in the Indenture and in the form of the Obligations annexed as Exhibit 2 to the Indenture. The Obligations shall be subject to all of the terms and conditions set forth in the Indenture.

### **ARTICLE IV**

#### **Conditions to Execution and Delivery of the Guarantee**

The obligation of the Secretary to execute and deliver the Guarantee on the Closing Date shall be subject to the following conditions unless waived in writing by the Secretary:

- (a) the Closing Date shall occur on or prior to \_\_\_\_\_;
- (b) the Shipowner and the Shipyard shall have executed and delivered to the Secretary a copy of the Construction Contract and the Shipyard shall have executed the Consent of Shipyard;
- (c) the Shipowner shall have executed and delivered the following documents in the form attached hereto: the Security Agreement, Mortgage, Financial Agreement, Trust Indenture, Secretary's Note, Obligations, Bond Purchase Agreement, and Depository Agreement;
- (d) the Indenture Trustee shall have executed, in the form attached hereto, the Authorization Agreement and Trust Indenture, the Depository shall have executed the Depository Agreement; and the Obligees shall have executed the Bond Purchase Agreement;
- (e) the following documents shall have been delivered to the Secretary: (i) one executed counterpart and one copy of the Bond Purchase Agreement and two conformed copies of the Offering Circular; (ii) two executed counterparts of the Indenture, (iii) two specimen copies of the Obligations; (iv) two executed originals of the legal opinion issued under section (k) of this Article; (v) two copies of the legal opinion delivered to the Obligees pursuant to the Bond Purchase Agreement, and (vi) two originals of all other documents delivered by the Shipowner, Indenture Trustee or the Depository in connection with this

Closing;

(f) 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 Secretary on the Closing Date an affidavit complying with the requirements of 46 C.F.R. 355, demonstrating U.S. citizenship;

(g) the Shipowner shall have executed an Officer's Certificate representing and warranting the truth of the following statements as of the Closing Date:

(i) each of the representations and warranties set out at Section 2.01 of the General Provisions of the Security Agreement in Appendix III; and

(ii) the Shipowner is not in violation of any Federal laws having a substantial adverse effect on the interests of the United States of America and that the consummation of the Commitment complies with non-Title XI Federal law.

(h) the Secretary shall have received the Guarantee Fee payable under Section 1104A (e) of Title XI and the Investigation Fee, due under Section 1104A (f) of Title XI;

(i) the Shipowner shall have complied in all material respects with its agreements under this Guarantee Commitment;

(j) there shall not have occurred any event which constitutes (or after any period of time or any notice, or both, would constitute) a "Default" under the Security Agreement;

(k) there shall have been delivered to the Secretary by the Shipowner an opinion of counsel acceptable to the Secretary, in the form annexed hereto as Schedule 1 which shall include, among other things, an opinion to the effect that: (i) by the terms of the Security Agreement, the Shipowner has granted to the Secretary a fully perfected, first priority security interest in each of the assets which constitutes the Security; and (ii) all filings, recordings, notices and other actions required to perfect the Secretary's interests in the Security and to render such security interests valid and enforceable under applicable State law have been duly effected;

(l) the Secretary shall have received a letter agreement from the Shipowner to provide the Secretary within a reasonable time after the Closing Date, with eight conformed copies of the Guarantee Commitment and each of the Appendices and Exhibits thereto executed on or prior to such date;

(m) on the Closing Date, the qualifying requirements set forth in Section 11 of the Financial

Agreement shall have been complied with and certified to as required therein; and

(n) at least ten days prior to the Closing Date, there shall have been delivered to the Secretary, pro forma balance sheets for the Shipowner as of the Closing Date, certified by an officer of the Shipowner showing, among other things, all non-Title XI debt of the Shipowner;

(o) on the Closing Date, the Shipowner shall certify that all non-Title XI loans to the Shipowner relating to the Vessels have been discharged or subordinated satisfactorily to the Secretary; and

(p) at least ten days prior to the Closing Date, the Shipowner shall have provided the Secretary with satisfactory evidence of marine insurance as required by the Security Agreement.

## **ARTICLE V**

### **Variation of Guarantee Commitment**

No variation from the terms and conditions hereof shall be permitted except pursuant to an amendment executed by the Secretary and the Shipowner.

## **ARTICLE VI**

### **Termination or Assignment of Guarantee Commitment**

This Guarantee Commitment may be terminated and the parties hereto shall have no further rights or obligations hereunder, upon written notice by the Secretary of the termination of the obligations of the United States pursuant to the Shipowner's failure to satisfy one or more conditions set forth in Article V hereof or upon the Secretary's determination, at or before the Closing Date, that (i) the Shipowner is in violation of Federal law and such violation would have a substantial, adverse effect on the interests of the United States of America or (ii) the consummation of the Commitment would violate non-Title XI Federal law. The Shipowner's warranties and representations shall survive the termination of this Agreement and the Secretary's issuance of the Guarantees. This Guarantee Commitment may not be assigned by the Shipowner without the prior written approval of the Secretary and any attempt to do so shall be null and void ab initio.

## **ARTICLE VII**

### **Miscellaneous**

(a) The table of contents and the titles of the Articles are inserted as a matter of convenient reference and shall not be construed as a part of this Guarantee Commitment. This Guarantee Commitment may be executed in any number of counterparts, each of which shall be an original, but such counterparts

shall together constitute but one and the same instrument.

(b) For all purposes of this Guarantee Commitment, unless otherwise expressly provided or unless the context shall otherwise require, capitalized terms used herein shall have the meaning given in Schedule X to the Security Agreement.

IN WITNESS WHEREOF, this Commitment to Guarantee Obligations has been executed by the United States and accepted by the Shipowner, all as of the day and year first above written.

UNITED STATES OF AMERICA,  
SECRETARY OF TRANSPORTATION

BY: MARITIME ADMINISTRATION

(SEAL)

BY: \_\_\_\_\_  
Secretary  
Maritime Administration

Attest:

\_\_\_\_\_  
Assistant Secretary  
Maritime Administration

ACCEPTED BY:

\_\_\_\_\_  
as Shipowner

BY: \_\_\_\_\_

(SEAL)

Attest:

BY: \_\_\_\_\_



(Date)

Secretary of Transportation  
Maritime Administration  
U.S. Dept. of Transportation  
400 Seventh Street, S.W.  
Washington, D.C., 20590

Dear Sir:

We have acted as special counsel to \_\_\_\_\_, a \_\_\_\_\_ (the "Shipowner"), in connection with the acceptance by the Shipowner of a Commitment to Guarantee Obligations dated \_\_\_\_ (hereinafter called the "Commitment") made by the United States of America (hereinafter called the "United States") and the issuance and sale on the date hereof an aggregate of \_\_\_\_\_ principal amount of its United States Government Guaranteed Ship Financing Obligations, \_\_\_\_\_ (hereinafter called the "Obligations") pursuant to the Indenture of even date herewith between it and \_\_\_\_\_ (the "Indenture Trustee"), a \_\_\_\_\_, which Obligations are guaranteed by the execution of the Guarantee of the United States on the Obligations pursuant to Title XI of the Merchant Marine Act, 1936, as amended. Terms used herein in capitalized form not otherwise defined herein are used with the same the meanings as in Schedule X to the Security Agreement of even date between the Shipowner and Secretary.

In that connection, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the Commitment, the Authorization Agreement, and the other documents described in paragraph 6 hereof. We have made such independent inquiry into the law and the facts as we have deemed necessary or appropriate for the purposes of this opinion. When in our professional opinion we deemed it appropriate, we have relied upon affidavits and certificates of corporate officers and government officials as to the existence of underlying facts, including, in particular, the Shipowner's affidavit of citizenship dated the date hereof and the certificate of no liens on the Vessel of the Shipowner dated the date hereof.

In expressing this opinion, please note that we are admitted to practice only in the \_\_\_\_\_, and we do not purport to be experts on the law of any jurisdiction other than the corporate law of the \_\_\_\_\_, and the Federal laws of the United States.

This opinion is also limited in the following respects:

(a) Any opinion concerning the legality, validity and binding effect of any agreement or instrument with respect to the Shipowner is based on the assumption that such agreement constitutes or will constitute a legal, valid and binding agreement of the other parties thereto; (b) With respect to any opinion pertaining to the enforceability of an agreement or instrument, no opinion is expressed as to the availability of any specific remedy in an action of an equitable nature that any court, other governmental authority or arbitrator may grant, impose or render; (c) We have assumed the genuineness of all signatures, except that of the

Shipowner, and the authenticity of all instruments submitted to us as originals and the conformity with the originals of all instruments submitted to us as copies; (d) This opinion is limited, as to the enforceability of any agreement or instrument, by applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application relating to or affecting the enforceability of creditors' rights from time to time in effect.

Based upon and subject to the foregoing, we are of the opinion that:

1. The Shipowner is a corporation duly organized, validly existing and in good standing under the laws of the \_\_\_\_\_, and is "a citizen of the United States" within the meaning of Section 2 of the Shipping Act 1916, as amended, for the purpose of operating the \_\_\_\_\_ Official No. \_\_\_\_\_ ("Vessel") in the coastwise trade of the United States;

2. The Shipowner has legal power and authority to own and operate the Vessel in the trade in which it is proposed to be operated;

3. The Shipowner is the sole owner of the whole of the Vessel, free and clear of all claims, liens, charges, rights in rem, mortgages, security interests or other encumbrances except the Mortgage and except for such claims, liens, charges, rights in rem, mortgages, security interests or other encumbrances created or expressly permitted by the Security Agreement. To the extent that this opinion relates to freedom and clearances of claims, liens, mortgages, or other encumbrances of any character on the Vessel, we have reasonably relied on the certificates as to such matters, dated the date hereof, from the Shipowner and the records of the United States Coast Guard;

4. The Security as defined in the Special Provisions of the Security Agreement, to the extent stated in the Security Agreement and the security interests granted by the Financial Agreement have each been duly and validly granted, and assigned by the Shipowner to the Secretary under the Security Agreement and the Financial Agreement;

5. The Vessel has been duly documented in the name of the Shipowner under the laws of the United States of America, and the Mortgage as amended has been duly recorded in the appropriate office of the National Vessel Documentation Center of the United States Coast Guard at Falling Waters, West Virginia (the only office in which such recording is necessary) and the Mortgage constitutes a first "Preferred Ship Mortgage" as to the Vessel under Chapter 313 of Title 46 of the United States Code having the effect and with the priority provided therein and no re-recording is presently required to maintain the preferred status of the Mortgage;

6. The Shipowner has full corporate power and authority and full power and authority under any applicable statute, law or governmental regulation to sell the Obligations issued on the date hereof and to enter into and carry out the terms of the Commitment, Bond Purchase Agreement, Indenture, Obligations, Security Agreement, Secretary's Note, Mortgage, Title XI Reserve Fund and Financial Agreement, and

the Depository Agreement;

7. The execution and delivery by the Shipowner of the agreements referred to in paragraph 6 hereof, consummation by the Shipowner of the transactions contemplated thereby and compliance by it with all the provisions of each of the agreements to which it is a party referred to in paragraph 6 will not conflict with, or result in a breach of any of the terms or provisions of, or constitute a default under, or (except as contemplated thereby) result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Shipowner pursuant to the terms of, any indenture, mortgage, deed or trust, loan agreement or other agreement or instrument known to us to which it is a party or by which it is bound or to which any of its property or assets is subject (except as intended by the agreements executed in connection with the within transaction), nor will such action result in a violation of the provisions of the Certificate of Incorporation or By-laws of the Shipowner or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Shipowner or any of its respective properties;

8. Each and all of the agreements and instruments referred to in paragraph 6 to which the Shipowner is a party have been duly authorized by the Shipowner and said agreements and instruments have been duly executed and delivered and constitute legal, valid and binding obligations of the Shipowner enforceable against the Shipowner according to their terms;

9. The Obligations (including the Guarantees) constitute exempted securities under Section 3(a)(2) of the Securities Act of 1933, as amended, and, accordingly, it is not necessary to register the Obligations (or the Guarantees) under said Act or to qualify the Indenture, under the Trust Indenture Act of 1939, as amended;

10. No consent, approval, authorization, order, registration or qualification of or with, or notice to, any court or any governmental agency or body, of which we have knowledge, is required for the issue and sale of the Obligations or the consummation by the Shipowner of the other transactions contemplated by any of the agreements or instruments referred to in paragraph 6 hereof, except such as have been duly obtained, effected, or given and such as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Obligations;

11. The statements contained in the Offering Circular insofar as such statements constitute a summary of certain provisions of the Act, the Indenture and the Authorization Agreement, respectively, fairly summarize those provisions. The Obligations conform in all material respects to the description thereof in the Offering Circular;

12. No taxes are or will be payable in connection with the issue and sale of the Obligations to the Purchasers thereof, the purchase of the Obligations by the Purchasers or the execution and delivery of the Indenture, the Authorization Agreement;

13. All filings and recordings (including, without being limited to, all filings of financing statements under the Uniform Commercial Code) under the laws of the state of \_\_\_\_\_ (AUCC@) have been duly effected to perfect the collateral security interests granted by the Granting Clauses of the Security Agreement in the Security described in said clauses to make such collateral security interests valid and enforceable under the laws of the state of \_\_\_\_\_ and such security interests constitute first perfected security interests under the \_\_\_\_UCC entitled to the benefits thereunder and having the effect and with the priority provided therein. No periodic re-filing or periodic re-recording is required to protect and preserve such security interests, except that continuation statements must be filed within six (6) months prior to the expiration of the effective periods following the respective dates of filing of the financing statements originally filed in the state of \_\_\_\_\_ and subsequent continuation statements must be filed within six (6) months prior to the expiration of such subsequent effective period;

14. In addition, the Depository Agreement together with the Financial Agreement provides sufficient control to the Depository acting as a securities intermediary, as that term is defined under Section 8-102(a)(14) of the UCC, to perfect the Secretary's security interest in the Securities Accounts and the Financial Assets credited thereto. Upon the delivery of any Financial Assets to the Depository, the Secretary will thereafter have security interests in said Securities Accounts and the Financial Assets credited thereto which will constitute first, perfected security interests under those laws. No filing is required to protect and preserve such security interest.

The opinions expressed in paragraphs 13 and 14 are qualified to the extent that: a) We have reasonably relied on the searches of \_\_\_\_\_ copies of which are attached, as to the fact that there had been no prior filings, except in favor of the Secretary; b) The Secretary's remedies under the Depository Agreement and the Security Agreement are exercised in a commercially reasonable manner; and c) Our opinion that the Secretary's security interests are first is rendered in reliance on the aforesaid searches and on the assumption that all funds or other property deposited by the Shipowner in the Securities Accounts are free of any prior lien or security interest.

15. The Obligations issued on the date hereof have been duly authenticated by the Indenture Trustee and duly issued under the Indenture and constitute legal, valid and binding obligations of the Shipowner enforceable in accordance with their terms and are entitled to the benefit of the Indenture, the Guarantees and the Authorization Agreement.

16. To the best of our knowledge, after due inquiry, there is no action, suit, proceeding or investigation pending or threatened before any court, administrative agency, arbitrator or governmental body against, or which directly relates to, the Shipowner which concerns the documents referred to in paragraph 6 or which, if adversely determined, could adversely effect the compliance by the Shipowner with any of the foregoing documents, agreements and instruments to which it is a party.

Very truly yours,

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

\_\_\_\_\_ [Name of Obligor] \_\_\_\_\_

\$ \_\_\_\_\_

United States Government Guaranteed Ship Financing Bonds, \_\_\_\_ Series  
\_\_\_\_ % Sinking Fund Bonds due \_\_\_\_\_

BOND PURCHASE AGREEMENT

To each of the respective  
Purchasers named in Schedule 1 hereto: \_\_\_\_\_

Dear Sirs:

The undersigned, \_\_\_\_\_ a \_\_\_\_\_ (the “Shipowner”),  
hereby agrees with each of you (each, a “Purchaser”) as follows:

1. The Bonds. The United States Government Guaranteed Ship Financing Bonds, \_\_\_\_\_ Series, due \_\_\_\_\_, referred to above (collectively the “Bonds”) in the aggregate principal amount set forth above are proposed to be issued and sold by the Shipowner upon fulfillment of the terms and conditions set forth herein. The Bonds will be issued and sold to aid in the financing of the construction of \_\_\_\_\_ (the “Vessels”). The Bonds will be in fully registered form only and will bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) from the date of issuance at the rate per annum set forth above, payable semi-annually, on \_\_\_\_\_ and \_\_\_\_\_ of each year until maturity, commencing \_\_\_\_\_.

The Bonds will be issued under a Trust Indenture (the “Indenture”) between the Shipowner and \_\_\_\_\_, as Trustee (the “Indenture Trustee”). Payment of the principal of and interest on the Bonds will be fully and unconditionally guaranteed by the United States of America pursuant to the guarantee imprinted by the Indenture Trustee pursuant to an Authorization Agreement, on each of the Bonds (the “Guarantee”) under Title XI of the Merchant Marine Act, 1936, as amended and in effect on the Closing Date (the “Act”). Since the Bonds are guaranteed with the full faith and credit of the United States of America, it is understood that you will not independently review the financial condition of the Shipowner and will rely completely on the Secretary's determination regarding the financial resources and maritime ability of the Shipowner.

2. Agreement to Purchase. Subject to the conditions hereinafter set forth, and the representations and warranties contained herein, the Shipowner agrees to sell to you and you agree to purchase on the Closing Date the Bonds in the principal amount set forth opposite your name in Schedule 1 hereto (subject to adjustment as set forth in Section 6 hereof) at 100% of such principal amount thereof.

3. Closing. Delivery of the Bonds shall be made at the office of the Maritime Administration, 400 Seventh Street, S.W., Washington, D.C., at a closing commencing at \_\_\_\_\_ .m., Eastern time, on \_\_\_\_\_ (the "Closing Date") or such other place or such later business day (which, without the approval of Purchasers of at least 50% of the aggregate principal amount of Bonds, shall not be later than \_\_\_\_\_ ) as the Shipowner shall designate by at least 3 days' prior written notice to the Indenture Trustee and to you at your address specified in Schedule 1 hereto. Delivery of the Bonds shall be made against payment therefor in funds immediately available to the Shipowner in Washington, D.C. Except as you may otherwise direct three (3) business days before the Closing Date, a single Bond dated the Closing Date, authenticated by the Indenture Trustee, guaranteed by the United States of America, and registered in your name and issued in a denomination equal to the principal amount of Bonds to be purchased by you, will be delivered to you. For the purposes of this Agreement, a "business day" is a day which is not a Saturday, Sunday or bank holiday under the laws of the United States of America or the State of \_\_\_\_\_.

4. Representations and Warranties by the Shipowner. The Shipowner represents and warrants to you that this Agreement, the Indenture, and the Bonds have been duly authorized, executed and delivered by the Shipowner and constitute, each in accordance with their terms, a legal, valid and binding instrument enforceable against the Shipowner, except as limited by bankruptcy, insolvency, or other laws affecting the enforcement of creditors' rights generally. On the Closing Date, the Indenture and the Bonds will have been duly authorized, executed and delivered by the Shipowner and will constitute legal, valid and binding instruments enforceable against the Shipowner, and the Bonds will be entitled to the benefits of the Indenture, the Guarantees and the Authorization Agreement. The Shipowner represents that the Bonds, the Indenture, and the Authorization Agreement conform in all material respects to the descriptions thereof contained in the Offering Circular dated \_\_\_\_\_, unless you consent to a change.

5. Conditions to Purchaser's Obligations. Your obligation under this Agreement to purchase Bonds on the Closing Date is subject to the accuracy of the representations and warranties of the Shipowner contained in Section 4 hereof on and as of the Closing Date and to the following further conditions:

(A) Opinion of Counsel for the Shipowner. On the Closing Date, the Shipowner shall have furnished an opinion of its counsel addressed to you and satisfactory to you and the Indenture Trustee regarding the representations and warranties set out in Item 4 of this Agreement;

(B) Opinion of the Chief Counsel of the Maritime Administration. On the Closing Date, your counsel shall have received a copy of a legal opinion from the Maritime Administration addressed to the

Purchasers and the Indenture Trustee to the effect that the Guarantees and the Authorization Agreement have been duly authorized, executed and delivered by the United States of America, and constitute the legal, valid and binding obligations of the United States of America; and

(C) Opinion of Counsel for the Purchasers. On the Closing Date, you shall have received an opinion from your counsel satisfactory to you as to the sufficiency of this Agreement, the Indenture, the Bonds, the Authorization Agreement and the Guarantee.

If any of the conditions specified in this Section 5 shall not have been fulfilled by the Shipowner when and as required by this Agreement, you may cancel this Agreement and all of your obligations hereunder on, or at any time prior to, the Closing Date. Notice of such cancellation shall be given to the Shipowner in writing.

6. Adjustment of Commitments. In the event that the Secretary determines, pursuant to the Act, that the aggregate principal amount of Bonds eligible for Guarantee under the Act is greater or less than \$ \_\_\_\_\_ on the Closing Date, the Shipowner may increase or decrease the total principal amount of Bonds to be issued by not more than 5 percent. In such event, the principal amount of Bonds to be purchased by you shall equal a percentage of such greater or lesser principal amount determined by dividing the principal amount of Bonds which is stated opposite your name on Schedule 1 hereto by the amount that is in fact to be issued, rounded to the next nearest \_\_\_\_\_, provided the Shipowner shall have given you written notice no later than the third day preceding the Closing Date, specifying the principal amount of the Bonds to be purchased by you. If notice has not been timely given or the amount of the increase or decrease is more than 5 percent, you may cancel this Agreement.

7. Conditions of Shipowner's Obligations. The obligations of the Shipowner to sell and deliver the Bonds under this Agreement on the Closing Date are subject to all of the following conditions: (A) on the Closing Date all the Bonds to be delivered by the Shipowner shall have simultaneously been purchased by the Purchasers; and (B) on or before the Closing Date (i) the Secretary shall have duly authorized the execution and delivery of the Guarantee of the Bonds and shall have duly executed and delivered the Authorization Agreement; and (ii) the Indenture Trustee shall have duly executed and delivered the Indenture and the Authorization Agreement.

8. Entire Agreement Embodied, Changes, etc. This Agreement embodies the entire agreement and understanding among the Shipowner and you relating to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. Neither this Agreement nor any term hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought and with the written consent of the Secretary.

9. Miscellaneous. (A) Except as otherwise expressly provided in this Agreement, (i) whenever notice is required by the provisions hereof to be given to \_\_\_\_\_, such notice shall be in writing addressed to Attention of \_\_\_\_\_, and (ii) whenever notice is required by the provisions of this



Agreement to be given to you, such notice shall be in writing addressed to you at your address set forth in Schedule 1 hereto or any other address specified in a written notice to the Shipowner; (B) This Agreement is made solely for the benefit of and is binding upon and enforceable by you, the Shipowner, and your respective successors and assigns, and no other person shall acquire or have any right under, or by virtue of, this Agreement; (C) If this Agreement shall be canceled or terminated by you because of non-fulfillment of the conditions set forth in Section 6 hereof or because of the Shipowner's failure to comply on or before the Closing Date with the conditions precedent set forth herein, the Shipowner shall have no further obligations or liability hereunder to you except that the Shipowner will reimburse you for out-of-pocket expenses reasonably incurred by you (including reasonable fees and disbursements of your counsel and interest on funds forwarded by you for delivery on the Closing Date to purchase Bonds, such interest to be at the rate borne by the Bonds for the period from the proposed Closing Date to the date on which such funds are returned to you); (D) This Agreement shall be governed and construed in accordance with the laws of the State of \_\_\_\_\_.

Very truly yours,

\_\_\_\_\_

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

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

\_\_\_\_\_

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

SCHEDULE 1

Purchaser

\_\_\_\_\_

Aggregate Principal  
Amount of Bonds To  
Be Purchased:

\$ \_\_\_\_\_

All payments on account of the Bonds held by such purchaser shall be made by wire transfer of immediately available funds not later than 12:00 noon on the date payment is due for credit to:

Account No. \_\_\_\_\_

ABA No. \_\_\_\_\_

Each such wire transfer shall set forth the name of the Shipowner and the coupon rate of the Bonds.

Addresses for all communications and notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TRUST INDENTURE**

**SPECIAL PROVISIONS**

THIS TRUST INDENTURE, dated \_\_\_\_\_ (the "Indenture" or the "Agreement"), between (i) \_\_\_\_\_, a \_\_\_\_\_ (the "Shipowner"), and (ii) \_\_\_\_\_, a \_\_\_\_\_ (the "Indenture Trustee").

**RECITALS:**

WHEREAS, pursuant to the understandings set forth in the Security Agreement, the Shipowner has authorized the issuance of certain Obligations pursuant to this Indenture in an aggregate principal amount not to exceed \$\_\_\_\_\_ to finance the cost of construction of the Vessels; and

WHEREAS, The Secretary, on behalf of the United States, has agreed to Guarantee the payment of the unpaid interest to the date of such payment on, and the unpaid balance of the principal of, such Obligations under the provisions of Title XI of the Act, and has authorized the Indenture Trustee to cause the Guarantees to be imprinted on the Obligations pursuant to the Authorization Agreement.

NOW THEREFORE, in consideration of the premises, of the mutual covenants herein contained, of the purchase of the Obligations by the Holders thereof, and of other good and valuable consideration, the receipt and adequacy of which the parties hereby acknowledge, and for the equal and proportionate benefit of all the present and future Holders of the Obligations, the parties hereto agree as follows:

1. Incorporation of General Provisions. This Indenture shall consist of two parts: the Special Provisions and the General Provisions attached hereto as Exhibit 1, and they shall be treated as one instrument. In the event of a conflict, the terms of the Special Provisions shall prevail.

2. The Obligations. (a) The initial series of Obligations issued hereunder shall be designated "United States Government Guaranteed Ship Financing Obligations, \_\_\_\_ Series," and shall be in the form of Exhibit 2 to this Indenture. The aggregate principal amount of Obligations which may be issued under this Indenture shall not exceed \_\_\_\_\_.

(b) The denominations of the Obligations shall be in integral multiples of \$\_\_\_\_\_.

(c) The Shipowner shall at all times cause to be maintained in the City of \_\_\_\_\_, State of \_\_\_\_\_ an office or agency for the purposes specified in Section 5.03 of this Indenture.

(d) The Indenture Trustee shall at all times have its Corporate Trust Office in the City of \_\_\_\_\_, State of \_\_\_\_\_.

(e) Pursuant to Section 3.03 of this Indenture, no optional redemption of the Obligations at premium may be made prior to \_\_\_\_\_. [In the event that a “make whole” provision is used in this indenture instead of the traditional premium structure, it should be inserted here, obviating the need for the preceding sentence among other things.]

3. Miscellaneous.

(a) Concerning Notices. Subject to the provisions of Section 13.01 of Exhibit 1 to this Indenture, any notice, request, demand, direction, consent, waiver, approval or other communication to be given to a party hereto or the Secretary, shall be deemed to have been sufficiently given or made when addressed to:

The Indenture Trustee as:

The Shipowner as:

The Secretary as:

SECRETARY OF TRANSPORTATION  
c/o Maritime Administrator  
U.S. Department of Transportation  
400 Seventh Street, SW  
Washington, D.C. 20590

(b) Concerning Applicable Law. This Indenture and each Obligation shall be governed by the federal laws of the United State of America, but to the extent that they are inapplicable by the laws of the State of \_\_\_\_\_.

(c) Execution of Counterparts. This Indenture may be executed in any number of counterparts. All such counterparts shall be deemed to be originals, and shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this Trust Indenture has been duly executed by the parties hereto as of the day and year first above written.

(SEAL)

\_\_\_\_\_  
Shipowner

ATTEST:

\_\_\_\_\_

By:

\_\_\_\_\_

\_\_\_\_\_  
Indenture Trustee

ATTEST:

\_\_\_\_\_

By:

\_\_\_\_\_

**Schedule of Definitions**

“**Act**” means the Merchant Marine Act, 1936, as amended and in effect on the Closing Date.

“**Act of Obligees**” means any request, demand, authorization, direction, notice, consent, waiver or other action to be given or taken by the Obligees and embodied in one or more documents as required by the Indenture.

“**Authorization Agreement**” means the Authorization Agreement, Contract No. MA-\_\_\_\_\_, between the Secretary and the Indenture Trustee, whereby the Secretary authorizes the Guarantee of the United States to be endorsed on each of the Obligations, as the same is originally executed, or as modified, amended or supplemented therein.

“**Authorized Newspaper**” means The Wall Street Journal or if it ceases to exist, then in such other newspaper as the Secretary may designate.

“**Bond Purchase Agreement**” means the agreement for the purchase of the Obligations, executed by the Shipowner and the purchaser named therein, as originally executed, modified or supplemented.

“**Business Day**” means a day which is not a Saturday, Sunday or a bank holiday under the laws of the United States or the State of \_\_\_\_\_.

“**Corporate Trust Office**” means the principal office of the Indenture Trustee at which, at any time, its corporate trust business is administered, which office is currently located at \_\_\_\_\_.

“**Guarantee**” means each, and the “**Guarantees**” means every, guarantee of an Obligation by the United States pursuant to Title XI of the Act, as provided in the Authorization Agreement.

“**Holder**” means each, and “**Holders**” means every, registered holder of an Obligation.

“**Indenture**” means the Trust Indenture dated as of the Closing Date between the Shipowner and the Indenture Trustee, as originally executed, or as modified, amended or supplemented.

“**Indenture Default**” has the meaning specified in Article VI of the Indenture.

“**Indenture Trustee**” means \_\_\_\_\_, a \_\_\_\_\_, and any successor trustee under the Indenture.

“**Interest Payment Date**” means with respect to any Obligation, the date when any installment of interest on such Obligation is due and payable.

**"Maturity"** when used with respect to any Obligation, means the date on which the principal of such Obligation becomes due and payable as therein provided, whether at the Stated Maturity or by redemption or declaration of acceleration or otherwise.

**"Mortgage"** means the first preferred fleet mortgage on the Vessels, Contract No. MA-\_\_\_\_, by the Shipowner to the Secretary, as originally executed, modified, amended or supplemented.

**"Obligation"** means each, and **"Obligations"** means every, obligation of the Shipowner bearing a Guarantee that is authenticated and delivered under the Authorization Agreement and Indenture.

**"Obligation Register"** has the meaning specified in Section 2.07 of the Indenture.

**"Obligee"** means each, and **"Obligees"** means every, Holder of an Obligation.

**"Officer's Certificate"** means a certificate conforming to Section 1.02 of the Indenture.

**"Original Issue Date"** means a date on which an Obligation was initially authenticated by the Indenture Trustee even if the Obligation is subsequently given a later date by reason of transfer, exchange or substitution.

**"Outstanding"** when used with reference to the Obligations, shall mean all Obligations theretofore issued under the Indenture, except: (1) Obligations Retired or Paid; and (2) Obligations in lieu of which other Obligations have been issued under the Indenture. Obligations which are not Outstanding shall not be entitled to any rights or benefits provided in the Indenture. For the purposes of Articles VI and X of the Indenture, and also in determining whether the Holders of a stated percentage of the principal amount of Outstanding Obligations have made an Act of Obligees required or permitted by the Indenture, Obligations owned by the Shipowner or by any Affiliate of the Shipowner shall be disregarded and deemed not to be Outstanding; provided that, for the purpose of determining whether the Indenture Trustee shall be protected in relying on any such Act of Obligees, only Obligations which the Indenture Trustee has actual knowledge are so owned shall be so disregarded and deemed not to be Outstanding.

**"Paying Agent"** means any bank or trust company meeting the qualifications in Sections 7.02(a) of the Indenture and appointed by the Shipowner under Section 4.02 of the Indenture to pay the principal of (and premium if any) or interest on the Obligations on behalf of the Shipowner.

**"Payment Default"** has the meaning specified in Section 6.01 of the Indenture.

**"Person"** or **"Persons"** means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, unincorporated organization, government, or any agency or political subdivision thereof.

**"Proportionate Part"** means with respect to the item in question, the portion of the item in question, as of the date of any calculation, which bears the same proportion to the entire amount of the item in question as: (x) the Depreciated Actual Cost of the Vessel as of the date of such calculation as it bears to (y) the Depreciated Actual Cost of all the Vessels as of such date (excluding the Depreciated Actual Cost of any Vessel upon which its Obligations have been redeemed pursuant to Section 3.06 of the Indenture), all as determined by the Secretary.

**"Redemption Date"** means a date fixed for the redemption of an Obligation by the Indenture.

**"Redemption Price"** means the price at which an Obligation is redeemed under the Indenture.

**"Request"** means a written request to a Person for the action therein specified, signed by a Responsible Officer of the Person making such request.

**"Responsible Officer"** means (1) in the case of any business entity, the chairman of the board of directors, the president, any executive or senior vice president, the secretary, the treasurer, member or partner, (2) in the case of any commercial bank, the chairman or vice-chairman of the executive committee of the board of directors or trustees, the president, any executive or senior vice president, the secretary, the treasurer, any trust officer, and (3) with respect to the signing or authentication of Obligations and Guarantees by the Indenture Trustee, any person specifically authorized by the Indenture Trustee to sign or authenticate Obligations.

**"Retired or Paid,"** as applied to Obligations and the indebtedness evidenced thereby, means that such Obligations shall be deemed to have been so retired or paid and shall no longer be entitled to any rights or benefits provided in the Indenture if: (1) such Obligations shall have been paid in full; (2) such Obligations shall have been canceled by the Indenture Trustee and shall have been delivered to the Indenture Trustee for cancellation; or (3) such Obligations shall have become due and payable at Maturity and funds sufficient for the payment of such Obligations (including interest to the date of Maturity, or in the case of a payment after Maturity, to the date of payment, together with any premium thereon) and available for such payment (whether as a result of payment pursuant to the Guarantees or otherwise) shall be held by the Indenture Trustee or any Paying Agent in trust for the purpose, or with irrevocable directions, to apply the same; provided that, the foregoing definition is subject to Section 6.08 of the Indenture.

**"Secretary"** means the Secretary of Transportation.

**"Secretary's Notice"** means a notice from the Secretary to the Indenture Trustee that a Default, within the meaning of Section 6.01(b) of the Security Agreement has occurred.



**"Secretary's Supplemental Indenture "** means a Supplemental Indenture, pursuant to Section 6.09 of the Indenture, evidencing the succession of the Secretary to the Shipowner, and the Secretary's assumption of the Shipowner's obligations under the Indenture.

**"Security Agreement"** means the security agreement, Contract No. MA-\_\_\_\_\_, dated as of the Closing Date, consisting of the special provisions, the general provisions and Schedule X thereto, executed by the Shipowner as security for the Secretary, as originally executed or as modified, amended or supplemented.

**"Shipowner"** means \_\_\_\_\_ a \_\_\_\_\_ corporation, and shall include its successors and assigns.

**"Stated Maturity"** means the date determinable as set forth in any Obligation as the final date on which the principal of such Obligation is due and payable.

**"Title XI"** means Title XI of the Act.

**"Vessel"** means each vessel and **"Vessels "** means the vessels, with respect to the (Vessel name), Official Number \_\_\_\_\_, and (\_\_\_\_), Official Number \_\_\_\_\_, financed with the Obligations.

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**DEFINITIONS; OFFICER'S CERTIFICATES**  
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**SECTION 1.01.** Definitions. For the purposes of this Indenture, capitalized terms shall have the meanings specified in Schedule A to the Indenture unless otherwise expressly provided.

**SECTION 1.02.** Officers Certificate and Opinions of Counsel. The Responsible Officer of the Person executing an Officers Certificate with respect to a covenant or condition provided for in this Indenture shall certify that the officer (a) has read such covenant or condition; (b) has made or caused to be made such independent examination or investigation as is necessary to enable him to express an informed opinion with respect to such covenant or condition; and (c) believes to the best of his knowledge that such condition or covenant has been met. A lawyer issuing an Opinion of Counsel shall include the same representations, except that insofar as it relates to factual matters, if it is in the lawyers professional opinion that reliance upon a certificate or an Opinion of Counsel is appropriate, the lawyer may so rely upon such certificate or opinion. Each Officers Certificate and Opinion of Counsel shall set forth the pertinent supporting information and shall be subject to the Secretary's review of its adequacy and accuracy.

**ARTICLE II**  
**THE OBLIGATIONS**

**SECTION 2.01.** Issuance of Obligations of Initial Series. (a) At any time and from time to time after the execution and delivery of this Indenture, the Shipowner may deliver to the Indenture Trustee Obligations of the initial series issuable under this Indenture duly executed by the Shipowner, accompanied by a Request of the Shipowner, and thereupon the Indenture Trustee shall authenticate such Obligations, after endorsing thereon and authenticating the Guarantees of the United States in accordance with the Authorization Agreement, and shall deliver such Obligations and Guarantees in accordance with such Request. Each such Request shall specify the principal amounts, interest rates and Stated Maturities of the Obligations to be authenticated and the names and addresses of the Persons in whose name the Obligations are to be registered.

(b) The initial series of Obligations shall set forth their respective principal amounts (in the denominations provided in the Special Provisions), interest rates per annum, and Stated Maturities, and shall be payable as to principal and interest and premium, if any, in any legal coin or currency of the United States and shall be subject to redemption as provided in Article III.

(c) The principal and interest and any premium due on the Obligations shall be paid by (i) the Corporate Trust Office or (ii) a Paying Agent by (x) certified or official bank check mailed by first class postage prepaid to the addresses of the Obligees appearing on the Obligation Register or (y) at the request of an Obligee, received by the Indenture Trustee at least three Business Days prior to the date of payment, by wire transfer to a commercial bank in the United States or by credit to an account maintained by the Obligee with the Indenture Trustee without presentment of the Obligation. Prior to any sale, assignment or

transfer of such Obligation, the Holder is required to present the Obligation to the Indenture Trustee so that a proper notation of all principal payments under subparagraph (y) above are made on the Obligation.

(d) The Indenture Trustee agrees that within 30 days from the date of any payment of principal or interest when the same shall become due and payable by reason of Maturity or redemption, a Responsible Officer in the Corporate Trust Office of the Indenture Trustee shall ascertain to his satisfaction that checks in payment of such amounts have been mailed to the addresses of the Obligees as provided above, if payment is to be made by check, or if payment is to be made by wire transfer, or by credit to an account maintained by the Obligee with the Indenture Trustee, that such funds have been wired or credited, or if payment is to be made at the Corporate Trust Office, that funds were held by the Indenture Trustee for such payment on the date the payment was due. The Indenture Trustee shall have no obligation to determine whether such checks or payments were received by the Obligees.

(e) If the Maturity of any Obligation or an Interest Payment Date for any Obligation shall be a day other than a Business Day, then such payment may be made on the next succeeding Business Day, with the same force and effect as if made on the nominal date for such payment, and no interest shall accrue thereon for the period after said nominal date.

**SECTION 2.02. Additional Obligations; Obligations of Additional Series.** At any time, the Shipowner may, with the approval of the Secretary, issue additional Obligations of any series and Stated Maturity theretofor issued or of one or more additional series, which shall be for the purpose of aiding in financing or refinancing the construction, reconstruction or reconditioning of one or more of the Vessels and shall be (i) in such principal amount, and mature on such dates, bear interest at such rate or rates, be in such form or forms and have such other terms and provisions, as shall be set forth in a Supplemental Indenture providing for the issue thereof, and (ii) guaranteed by the United States under the Act pursuant to a supplement to the Authorization Agreement.

**SECTION 2.03. Legends on Obligations.** Any Obligation may have imprinted or stamped thereon any legend, consistent herewith, which is prescribed by the Shipowner and approved by the Indenture Trustee, and approved by the Secretary.

**SECTION 2.04. Dates of Obligations.** Each Obligation of any series shall be dated the date of its authentication by the Indenture Trustee.

**SECTION 2.05. Execution of Obligations.** The Obligations shall from time to time be executed on behalf of the Shipowner by a Responsible Officer thereof (whose signature may be a facsimile), and its corporate seal (which may be a facsimile), if any, shall be imprinted thereon and attested by its secretary, assistant secretary or assistant trust officer (whose signature may be a facsimile). If a Shipowner's officer, whose signature appears on any Obligation, shall cease to be such an officer before such Obligation shall have been authenticated by the Indenture Trustee, the

Obligation nevertheless may be delivered with the same force and effect as though the person had not ceased to be a Shipowner's officer.

**SECTION 2.06. Authentication of Obligations and Guarantees.** No Obligation or the Guarantee of the United States thereon shall be valid unless such Obligation shall bear thereon an authentication certificate, executed by the Indenture Trustee in accordance with the terms and conditions of the Authorization Agreement. A duly executed authentication certificate shall be conclusive evidence, and the only competent evidence, that such Obligation and such Guarantee have been duly executed, authenticated and delivered hereunder.

**SECTION 2.07. Registration, Transfer and Exchange.** (a) The Indenture Trustee shall keep an Obligation Register at the Corporate Trust Office for the registration of ownership, transfers and exchanges of Obligations.

(b) A registered Obligee may transfer an Obligation, at the Corporate Trust Office, by surrender of such Obligation for cancellation, accompanied by an instrument of transfer in form satisfactory to the Shipowner and the Indenture Trustee, duly executed by the Obligee or its duly authorized attorney, and thereupon the Shipowner shall execute, and the Indenture Trustee shall authenticate and deliver in the name of the transferee, a new Obligation, and the Guarantee of the United States thereon, in authorized denominations of like series, tenor, interest accrual date and Stated Maturity and for the same aggregate principal amount.

(c) The Indenture Trustee shall not be required to register transfers or make exchanges of (1) Obligations for a period of 15 days immediately prior to (A) an Interest Payment Date or (B) any selection of Obligations to be redeemed, (2) Obligations after demand for payment of the Guarantees and prior to the payment thereof or rescission of such demand pursuant to Section 6.02(a), or (3) any Obligation which has been selected for redemption in whole or in part. If any Obligation surrendered for transfer or exchange has been selected for redemption in whole or in part, there may be endorsed on any Obligation issued therefor an appropriate notation of such fact.

(d) Any Obligation may be exchanged for a like principal amount of Obligations of the same series, tenor, interest accrual date and Stated Maturity but of different authorized denominations. Obligations to be exchanged shall be surrendered at the Corporate Trust Office, and the Shipowner shall execute, and the Indenture Trustee shall authenticate and deliver in exchange therefor, the Obligation or Obligations, and the Guarantee or Guarantees of the United States thereon, requested by the Obligee in accordance with this paragraph.

(e) As a condition precedent to any transfer or exchange of Obligations, the Shipowner may require the payment of a sum sufficient to reimburse it for any taxes or other governmental charges that may be imposed with respect thereto and a sum not exceeding \$2.00 for each Obligation delivered upon any such transfer or exchange.



**SECTION 2.08. Who Treated as Owners.** The Shipowner, the Indenture Trustee, the Secretary, and any Paying Agent for the payment of principal of (and premium, if any) or interest on the Obligations may deem the Person in whose name any Obligation is registered in the Obligation Register as the absolute owner of such Obligation for all purposes, and neither the Shipowner, the Indenture Trustee, the Secretary, nor any such Paying Agent shall be affected by any notice to the contrary, whether such Obligation shall be past due or not. All payments of or on account of principal (and premium, if any) or interest, or pursuant to the Guarantee, to such registered Obligee shall be valid and effectual to satisfy and discharge the liability of the Shipowner and the Secretary to the extent of the sum or sums so paid, except as otherwise provided in Section 6.08.

**SECTION 2.09. Lost, Stolen, Destroyed or Mutilated Obligations.** Upon receipt by the Shipowner and the Indenture Trustee of evidence satisfactory to them of the loss, theft, destruction or mutilation of any Outstanding Obligation (“Lost Obligation”), the Shipowner may execute, and upon request of the Shipowner, the Indenture Trustee shall authenticate and deliver, a new replacement Obligation, with the Guarantee of the United States thereon, of like series, tenor, interest accrual date, principal amount and Stated Maturity (which may bear such notation as may be required by the Indenture Trustee and which shall bear a serial number different from that of the Lost Obligation) and in the event such Lost Obligation has or is about to become due and payable, the Indenture Trustee may deem the applicant with respect thereto to be the owner of said Obligation for the purpose of receiving any payments due on account thereof; provided that (1) the Shipowner, the Indenture Trustee and the Secretary shall receive an indemnity satisfactory to the Shipowner, the Indenture Trustee and the Secretary, (2) the Shipowner shall be reimbursed for all reasonable expenses (including any fees or expenses of the Indenture Trustee) incident thereto, and (3) a mutilated Obligation shall be surrendered. Once the Shipowner has issued and the Indenture Trustee has authenticated a replacement Obligation, the Lost Obligation shall not be enforceable. The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of Lost Obligations.

**SECTION 2.10. Reacquired Obligations; Cancellation and Disposition of Obligations.** In the event the Shipowner shall reacquire any Obligations (whether by purchase or otherwise), such Obligations shall forthwith be delivered to the Indenture Trustee for cancellation. Except as provided in Section 3.10(b), all Obligations surrendered for the purpose of payment, redemption, transfer, exchange, or substitution, or in discharge in whole or in part of any sinking fund payment shall, if surrendered to the Shipowner or any Paying Agent, be delivered to the Indenture Trustee and shall be cancelled by it. No Obligation shall be authenticated in lieu of or in exchange for any Obligation cancelled as provided in this Section, except as may be expressly permitted by this Indenture. Obligations cancelled by the Indenture Trustee shall be delivered or disposed of as directed by a Request of the Shipowner.

## **ARTICLE III REDEMPTION OF OBLIGATIONS**

**SECTION 3.01. Redemptions Suspended During Default.** Notwithstanding the following provisions of this Article III, neither the Shipowner nor the Indenture Trustee shall redeem any Obligations, except pursuant to Sections 3.04 or 3.05, during the continuance of any Indenture Default, except that, where the mailing of notice of redemption of any Obligations shall have theretofore been made, the Indenture Trustee shall redeem or cause to be redeemed such Obligations if it shall have received a sum sufficient for such redemption. Except as aforesaid, any moneys received by the Indenture Trustee for the redemption of Obligations which may not be applied to the redemption thereof shall be held in trust by the Indenture Trustee and applied in the following manner: (1) in case such Indenture Default or such event shall no longer be continuing, such moneys shall thereafter be applied to the redemption of Obligations in accordance with the applicable provisions of the Obligations and of this Article III, (2) in the event the Secretary shall have assumed the Obligations pursuant to Section 6.09 or shall have paid the amounts due under the Guarantees, such moneys shall be paid over by the Indenture Trustee to the Secretary, or (3) if no Obligation shall be Outstanding, and the Secretary shall not have been required to pay the Guarantees, such moneys shall be paid to the Shipowner.

**SECTION 3.02. Redemptions Without Premium.** (a) Mandatory Sinking Fund Redemptions. The Obligations are subject to redemption at a Redemption Price equal to 100% of the principal amount thereof, together with interest accrued thereon to the Redemption Date, through the operation of a mandatory sinking fund providing for semi-annual redemption commencing and continuing on the dates and in the principal amounts specified in the Obligations, plus interest accrued thereon to the applicable sinking fund Redemption Date; provided, however, that in the event of any special redemption pursuant to Sections 3.04, 3.05 or 3.06 below, the principal amount of Obligations to be redeemed on each subsequent mandatory sinking fund Redemption Date shall be reduced by an amount equal to the principal amount of the Obligations retired by reason of such special redemption divided by the number of mandatory sinking fund Redemption Dates (including the Stated Maturity of the Obligations) scheduled thereafter.

(b) Credit Against Mandatory Sinking Fund Redemptions. In lieu of making all or any part of any such mandatory sinking fund redemption of the Obligations, the Shipowner may, at its option, receive 100% credit for Obligations that have been (1) redeemed by the Shipowner pursuant to the optional redemption provision provided in subsection (c) below, or (2) purchased or acquired by the Shipowner (other than by redemption) and delivered to the Indenture Trustee for cancellation pursuant to Section 2.10 above. These Obligations shall be credited by the Indenture Trustee only under the following conditions: at least 40 days but not more than 60 days prior to the due date for such mandatory sinking fund redemption, the Shipowner delivers a Request to the Indenture Trustee, (i) specifying the principal amount of Obligations to be credited, (ii) certifying that none of the Obligations have previously been made the basis of any credit and that the Shipowner is not restricted by contract from seeking the requested credit, and (iii) presenting the uncanceled Obligations to be credited.

(c) Optional Sinking Fund Redemptions. At its option, the Shipowner may redeem on any

mandatory sinking fund Redemption Date, at a redemption price equal to 100% of the principal amount thereof, an additional principal amount of Obligations up to the principal amount of the Obligations required to be redeemed under subsection (a) above on such date, and before any reduction pursuant to the proviso of that subsection. The right to make any such optional sinking fund redemption shall not be cumulative. If the Shipowner shall elect to make any such optional sinking fund redemption, the Shipowner shall, at least 40 days but not more than 60 days prior to such mandatory sinking fund Redemption Date, deliver to the Indenture Trustee a Request stating that the Shipowner intends to exercise its right as set forth in this subsection to make such optional sinking fund redemption and specifying the additional principal amount of Obligations which the Shipowner intends to redeem on such mandatory sinking fund Redemption Date.

(d) Mandatory Redemptions Without Premium. The Obligations of each series shall be subject to redemption without premium when redemption is required by the conditions specified in Sections 3.02, 3.04, 3.05 and 3.06.

(e) Adjustments of Redemption Payments. If there is an adjustment in mandatory redemption payments as a result of redemptions under this Section or any other provision of the Indenture, the Shipowner shall recompute the remaining mandatory redemption payments pursuant to such provisions, and shall, at least 60 days prior to the next Interest Payment Date, submit to the Secretary for his review such recomputation to ascertain compliance with the provisions of this Indenture, and a table of revised mandatory redemption payments on the Obligations of such series reflecting the adjustments made pursuant to such provisions as a result of such redemption. Upon advice by the Secretary that he finds such recomputation to comply with such provisions, the Shipowner shall submit said table to the Indenture Trustee and the Indenture Trustee shall promptly submit a copy thereof to each Holder of an Obligation of such series.

**SECTION 3.03.** Optional Redemptions of Obligations at Premium. At its option, the Shipowner may redeem the Obligations, in whole or in part, at any time, at the redemption prices specified in the Obligations, together with the interest accrued thereon; provided that, no such redemption shall be made prior to the date specified in the Special Provisions, directly or indirectly with the proceeds of, or in anticipation of, borrowing by or for the account of the Shipowner if such borrowing has an effective interest cost (calculated in accordance with generally accepted financial practice) of less than the rate of interest borne by the Obligations. The Shipowner may redeem such Obligations on a date at least 40 days but not more than 60 days from the Indenture Trustees receipt of the Request to make such an optional redemption and specifying the Redemption Date and the principal amount of Obligations which the Shipowner intends to redeem. If this Request proposes a redemption prior to the date specified in the Special Provisions, the Shipowner shall include with the Request an Officer's Certificate stating that the redemption complies with the proviso relating to early redemptions.

**SECTION 3.04.** Redemptions to Comply with Section 1104A(b)(2) of the Act. The Shipowner and the Secretary may Request a Redemption Date, at least 40 days but not more than 60 days from the Indenture Trustees receipt of the Request, for the redemption of certain Obligations because the principal amount of the Outstanding Obligations are in excess of the amount eligible for guarantee by the United States under Section 1104A(b)(2) of the Act. Upon receipt, the Indenture Trustee shall promptly give notice to the Holders of the Redemption Date as provided in Section 3.08 and on that date shall redeem the principal amount of Obligations specified in the instruction together with the interest accrued thereon.

**SECTION 3.05.** Redemption after Total Loss, Requisition of Title, Seizure or Forfeiture of a Vessel or Termination of Certain Contracts. The Shipowner and the Secretary may Request a Redemption Date, at least 40 days but not more than 60 days from the Indenture Trustee's receipt of the Request, for the redemption of certain Obligations because of (1) an actual, constructive, agreed or compromised total loss of a Vessel, (2) requisition of title to, or seizure or forfeiture of a Vessel or (3) termination of a primary Construction Contract. Upon receipt, the Indenture Trustee shall promptly give notice to the Holders of the Redemption Date as provided in Section 3.08 and on that date shall redeem such principal amount of Obligations together with the interest accrued thereon.

**SECTION 3.06.** Redemption After Assumption by the Secretary. At any time after the Secretary has assumed the Obligations under Section 6.09 of the Indenture, the Secretary may Request a Redemption Date, at least 40 days but not more than 60 days from the Indenture Trustees receipt of the Request, for the redemption of all or part of the Obligations. Upon receipt, the Indenture Trustee shall promptly give notice to the Holders of the Redemption Date as provided in Section 3.08 and on that date shall redeem such principal amount of Obligations together with the interest accrued thereon.

**SECTION 3.07.** Determination of Obligations to be Redeemed. If less than all the Obligations are to be redeemed pursuant to Sections 3.03, 3.04 or 3.05, the Indenture Trustee shall select the particular Obligations to be redeemed by multiplying the total principal amount to be redeemed by a fraction, the numerator of which is the amount each Holder of an Outstanding Obligation is owed and the denominator is the total principal amount of the Outstanding Obligations, making adjustment so that the principal amount of any Obligation to be redeemed shall be \$1,000 or an integral multiple thereof.

**SECTION 3.08.** Notices of Redemption. (a) In case of any redemption of Obligations, whether mandatory or optional, the Indenture Trustee shall send a notice of redemption indicating (1) the Redemption Date, (2) the Redemption Price, (3) if only a part of such Obligations is to be redeemed, the numbers or other identification of the Obligations and the principal amount thereof to be redeemed, (4) the place of payment upon redemption and (5) that interest shall cease to accrue after the Redemption Date if the Indenture Trustee or any Paying Agent shall have in fact received the required moneys. A copy of the notice shall be mailed by first class mail, postage prepaid, at least 30 days prior to the Redemption Date, to each Holder of an Outstanding Obligation that is to be redeemed in whole or in part, at the last address appearing upon the Obligation Register.

**SECTION 3.09.** Deposit of Redemption Moneys. Prior to the opening of business on any

Redemption Date, the Shipowner shall cause to be deposited with the Indenture Trustee or with any Paying Agent an amount sufficient for such redemption with irrevocable directions to it to so apply the same. Failure to so deposit the amounts with the Indenture Trustee or the Paying Agent shall render any notice to redeem of no effect.

**SECTION 3.10. Payment of Redemption Price.** (a) If notice of redemption shall have been given as provided above, the Obligations or portions thereof specified in such notice shall become due and payable on the Redemption Date and at the place of payment and the Redemption Price stated in such notice, and on and after said Redemption Date (unless the Shipowner shall default in payment of the Redemption price or shall decide to cancel the notice of optional redemption) interest on the Obligations or portions thereof so called for redemption shall cease to accrue. Upon presentation and surrender of such Obligations in accordance with such notice, such Obligations or the specified portions thereof shall be paid and redeemed at the applicable Redemption Price.

(b) Upon presentation of any Obligation redeemed in part only, the Shipowner shall execute and the Indenture Trustee shall authenticate and deliver to the order of the Holder thereof, at the expense of the Shipowner, a new Obligation or Obligations of like series and Stated Maturity, of authorized denominations, having endorsed thereon a Guarantee executed by the Secretary, in principal amount equal to the unredeemed portion of the Obligation so presented, or, at the option of such Holder, there may be noted thereon by the Indenture Trustee or, at its direction, by any Paying Agent the payment of the portion of the principal amount of such Obligation so called for redemption.

#### **ARTICLE IV**

#### **CASH HELD BY INDENTURE TRUSTEE OR PAYING AGENTS**

**SECTION 4.01. Generally.** (a) To the extent required by the Obligations, cash received by the Indenture Trustee or a Paying Agent shall be promptly paid to the Holders of the Outstanding Obligations and all other cash shall be held by the Indenture Trustee or a Paying Agent as a special deposit in trust for application in accordance with this Indenture.

(b) Cash held by the Indenture Trustee or any Paying Agent (other than the Shipowner) under this Indenture: (1) need not be segregated; (2) shall not be invested; and (3) shall not bear interest except to the extent the Shipowner and the Indenture Trustee or Paying Agent may agree.

**SECTION 4.02. Paying Agents.** (a) A Paying Agent appointed in writing by the Shipowner shall enter into a contract with the Indenture Trustee, agreeing that the Paying Agent will:

(1) hold in trust all sums held by it for the payment of the principal of (and premium, if any) or interest on Obligations for the benefit of the Holders of such Obligations, and for the benefit of the Indenture Trustee;

(2) forthwith give written notice to a Responsible Officer in the Corporate Trust Office

signed by a Responsible Officer of the Paying Agent of (A) any payment by the Shipowner of the principal of (and premium, if any) or interest on Obligations, specifying the amount paid, segregated as to principal (premium, if any) and interest, and identifying each Obligation on which any payment was made by number, date, series, Stated Maturity and the name of the Obligees, and (B) any failure of the Shipowner to make any such payment when the same shall be due and payable; and

(3) promptly, and in no event later than ten days after any payment made by it hereunder, give written notice to a Responsible Officer in the Corporate Trust Office of all payments of Obligations made by it, including and identifying all endorsements of payment made on Obligations by it, signed and containing the specified information as provided in subparagraph (2) above, and deliver for cancellation to the Indenture Trustee all Obligations surrendered to the Paying Agent.

(b) The Shipowner may at any time cause to be paid to the Indenture Trustee all sums held in trust by any Paying Agent pursuant to this Section, such sums to be held by the Indenture Trustee upon the same trusts.

**SECTION 4.03. Unclaimed Amounts.** Subject to applicable law, including State escheat laws, any moneys received by the Indenture Trustee or a Paying Agent, for the payment of Obligations or Guarantees and remaining unclaimed by the Holders thereof for 6 years after the date of the Maturity of said Obligations shall be paid to the Shipowner upon its delivery of a Request to the Indenture Trustee, unless the Secretary has previously paid the Guarantees, in which case it shall be paid only upon a request of the Secretary. In such event, such Holders shall thereafter be entitled to look only to the Person that received the unclaimed amounts for the payment thereof, and the Indenture Trustee or such Paying Agent, as the case may be, shall thereupon be relieved from all responsibility to such Holders. 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.

**SECTION 4.04. Application of Funds.** If at any time the Indenture Trustee shall hold funds under Section 4.03, the application, distribution or payment of which is not governed by a Request of the Shipowner or the Secretary delivered pursuant to any provision of the Indenture, the Indenture Trustee shall give written notice thereof, in the absence of an Indenture Default, to the Shipowner and to the Secretary, or, if the an Indenture Default exists or the Secretary has paid the Guarantees, to the Secretary. The Shipowner or the Secretary, as applicable, shall promptly thereafter deliver to the Indenture Trustee a Request.

## **ARTICLE V**

### **SHIPOWNERS REPRESENTATIONS AND AGREEMENTS**

The Shipowner hereby represents and agrees, so long as Obligations are Outstanding, as follows:

**SECTION 5.01. Authorization, Execution and Delivery of Indenture.** The Shipowner has duly authorized the execution and delivery of this Indenture.

**SECTION 5.02. Payment.** The Shipowner will duly and punctually pay the principal of (and premium, if any) and interest on the Obligations according to the terms thereof and of this Indenture.

**SECTION 5.03. Offices or Agencies of Shipowner.** The Shipowner shall at all times maintain an office in the location within the United States specified in Section 2 of the Special Provisions. Obligations and demands to or upon the Shipowner may be presented for payment, registration of transfer and exchange at this office. The Corporate Trust Office and a Paying Agent shall also be deemed offices for such purpose.

## **ARTICLE VI INDENTURE DEFAULTS AND REMEDIES**

**SECTION 6.01. What Constitutes "Indenture Defaults."** (a) Each of the following events shall constitute an "Indenture Default": (1) default in the payment of the whole or any part of the principal or interest on any of the Outstanding Obligations when the same shall become due and payable, whether by reason of Maturity, redemption, acceleration or otherwise, or any default referred to in Section 6.08, and continuation of any such default for a period of 30 days (herein called a "Payment Default"); and (2) the giving of a Secretary's Notice to the Indenture Trustee.

(b) The Indenture Trustee shall give to the Obligees, the Secretary and the Shipowner prompt notice in writing of any Indenture Default (unless such default shall have been remedied prior to the giving of such notice); provided that, the Indenture Trustee shall have no duty to give any such notice until a Responsible Officer of the Corporate Trust Office, has actual knowledge of such Indenture Default. The notice of an Indenture Default to the Obligees shall (1) specify the nature of such Indenture Default, (2) state that, by reason thereof, the Indenture Trustee is entitled under the Indenture to demand payment by the Secretary of the Guarantees, (3) set forth the provisions of Section 6.04(b)(3) and (5), and (4) advise the Obligees of the provisions of Section 6.02.

**SECTION 6.02. Demand for Payment of Guarantees.** (a) If an Indenture Default shall have occurred and be continuing, the Indenture Trustee shall, no later than 60 days from the date of such Indenture Default, demand payment by the Secretary of the unpaid interest to the date of such payment on, and the unpaid balance of the principal of, all Outstanding Obligations, whereupon the entire unpaid principal amount of the Outstanding Obligations and all unpaid interest thereon shall become due and payable no later than 30 days from the date of such demand; provided that, in the case of a demand made as a result of a Payment Default, if, prior to the expiration of 30 days from the date of such demand and prior to any payment of the Guarantees by the Secretary, the Secretary shall find, and give written notice to the Shipowner and the Indenture Trustee to the effect that, there was no Payment Default or that such Payment Default was remedied prior to such demand, such demand and the Indenture Default shall be of no legal effect or consequence. In each such case, the Guarantees shall remain in full force and effect. The Indenture Trustee shall give to each Obligee and to the Shipowner prompt written notice of any demand made by the Indenture Trustee pursuant to this paragraph (a), any such notice to Obligees to be given as provided in Section 13.01.

(b) If the Indenture Trustee shall not have made the demand referred to in paragraph (a) of this Section on or before the 30th day following an Indenture Default which shall have occurred and be continuing and if the Holders of all Outstanding Obligations shall not have theretofore elected to terminate the Guarantees as provided in Section 6.04(a)(2), any Holder of an Outstanding Obligation, by an Act of Obligees delivered to the Secretary (with copies thereof to the Indenture Trustee and the Shipowner), may, in place of the Indenture Trustee and on behalf of all Holders of Outstanding Obligations, make such demand, subject to all the provisions of, and with the effect provided in, paragraph (a) of this Section.

**SECTION 6.03.** Appointment of Indenture Trustee and Holders of Outstanding Obligations as Attorneys-in-Fact. Each Holder of an Outstanding Obligation by the purchase and acceptance of its Obligation, irrevocably appoints the Indenture Trustee and each other Holder of an Outstanding Obligation its agent and attorney-in-fact for the purpose of making the demand provided for in Section 6.02 and (in the case of the Indenture Trustee) of receiving and distributing any payment or payments by the Secretary made pursuant to any such demand.

**SECTION 6.04.** Termination and Payment of the Guarantees. (a) Except as otherwise provided in Section 6.08, the Guarantee with respect to any Obligation shall only terminate in case of the occurrence of one or more of the following events:

- (1) Such Obligation shall have been Retired or Paid;
- (2) The Holders of all Outstanding Obligations shall have elected, by Act of Obligees delivered to the Secretary, to terminate the Guarantees;
- (3) Such Guarantee shall have been paid in full in cash by the Secretary; or
- (4) The Indenture Trustee and each Obligee shall have failed to demand payment of such Guarantee as provided herein or in such Guarantee or in the Act.

(b) Subject to the provisions of Section 6.08, when the Secretary shall pay the Guarantees in full in cash to the Indenture Trustee:

- (1) The Indenture Trustee shall hold the entire amount thereof in trust for the sole purpose of providing for the payments specified in subparagraph (5) below;
- (2) No Obligation or Obligations shall thereafter be issued;



(3) The Obligations (A) shall represent only the right to receive the payments from the Indenture Trustee specified in subparagraph (5) below, (B) shall otherwise no longer constitute or represent an obligation of the Shipowner, and (C) shall not be entitled to any other rights or benefits under this Indenture;

(4) The Indenture Trustee shall forthwith give written notice to the Shipowner and to each of the Obligees, stating that it has received payment of the Guarantees in full in cash from the Secretary and that the same is available for distribution to the Obligees in the manner specified in subparagraph (5) below (and the Indenture Trustee shall give like notice to the Holders of the Obligations at least annually thereafter for a period of 6 years or until all Obligations shall have been cancelled, whichever is earlier); and

(5) Upon the surrender for cancellation of any Obligation, the Indenture Trustee shall forthwith pay to the Holder of such Obligation in cash an amount (less the amount, if any, required to be withheld in respect of transfer or other taxes on payment to such Holder) equal to the unpaid principal amount of such Obligation and the unpaid interest accrued thereon to the date on which the Secretary shall have paid the Guarantees in full in cash to the Indenture Trustee.

(c) If the Secretary shall not have paid the Guarantees in full in cash to the Indenture Trustee within 30 days after any demand therefor pursuant to Section 6.02 (whether or not because the Secretary makes any of the findings or takes the action referred to in the proviso of Section 6.02(a)), the Indenture Trustee shall give prompt written notice of such nonpayment to each Obligee and the Shipowner. If the Indenture Trustee shall have received notice of any of these findings or actions, such notice to each Obligee shall so state.

**SECTION 6.05. Rights of Indenture Trustee After Indenture Default.** Unless the Guarantees have terminated as provided herein, the Indenture Trustee's sole right shall be to demand and receive payment of the Guarantees from the Secretary and to take all action, on behalf of itself and each Holder, to enforce its rights against the Secretary under the Guarantees, including but not limited to the institution and prosecution of all judicial and other proceedings. If the Guarantees have terminated under Section 6.04(a)(4) without payment by the Secretary, the Indenture Trustee shall have the right on behalf of itself and each Holder to take all action to enforce its rights directly against the Shipowner (but not the Secretary), including but not limited to the institution and prosecution of all judicial and other proceedings.

**SECTION 6.06. Obligees' Right to Direct Indenture Trustee After Indenture Default.** (a) During the continuance of any Indenture Default, the Holders of a majority in principal amount of the Outstanding Obligations shall have the right, by an Act of Obligees, to direct the Indenture Trustee: (1) to exercise or to refrain from exercising any right or to enforce any remedy granted to it by this Indenture; and (2) to direct the time, method and place of the exercise of any such right or the enforcement of any such remedy; provided that, subject to Section 7.03, the Indenture Trustee shall have the right not to take any such action if it shall determine in good faith that the action would involve it in personal liability, would subject it to expenses against which it has not been offered adequate security and indemnity, or would be unjustly prejudicial to the Obligees not parties to such direction; and provided further that, notwithstanding any other

provision of this Indenture to the contrary, the Indenture Trustee shall be obligated to demand payment of the Guarantees as provided in Section 6.02(a) unless the Holders of all the Outstanding Obligations shall have directed him not to make demand.

(b) Nothing in paragraph (a) shall affect the right of any Obligee to institute any judicial or other proceeding, if the Indenture Trustee declines to do so, against the Secretary while the Guarantees are in effect or against the Shipowner or the Indenture Trustee if the guarantees have terminated under Section 6.04(a)(4); provided, however, that such action does not seek to obtain priority or preference over any other Obligees or to enforce any right under this Indenture, except for the equal and ratable benefit of all the Obligees.

**SECTION 6.07. Attorneys Fees and Costs.** In any proceeding for the enforcement of any right or remedy under this Indenture, or in any proceeding against the Indenture Trustee for any action taken or omitted by it as Indenture Trustee, the court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant, having due regard to the merits and good faith of the claims or defense made by such party litigant. The provisions of this Section shall not apply to any proceeding instituted by the Indenture Trustee or any proceeding instituted by any Obligee against the Secretary or the Shipowner for the payment of the principal of (and premium, if any) and interest on the Obligations.

**SECTION 6.08. Rescission of Payments.** Notwithstanding any other provision of this Indenture, or of the Obligations, in the event that any payment to or on behalf of an Obligee of the principal of or interest due under any Obligation, or any portion of any such payment, shall at any time be repaid by such Obligee 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, and regardless of whether there has been any previous Indenture Default and any payment pursuant thereto, or whether such Obligation shall theretofore have been acquired by the Shipowner or cancelled, or whether an instrument satisfying and discharging this Indenture shall have been executed and delivered, (1) such Obligation shall not be deemed to have been Retired or Paid and shall be deemed to be Outstanding, (2) the return of such payment in whole or in part in compliance with the order of such court shall constitute a default in payment of such Obligation within the meaning of Section 6.01(a), which default shall be deemed to have occurred on the date of such repayment and which default, if continued for 30 days, will constitute a Payment Default, (3) the Guarantee of such Obligation and (to the extent necessary to enforce such Obligation and Guarantee) this Indenture shall be in full force and effect, and (4) the Person required to return such payment or portion thereof shall be deemed for all purposes to be a Holder of such Obligation and entitled to enforce such Obligation and Guarantee to the extent of such repayment and, if there shall not be any Indenture Trustee hereunder then in office, such Person shall also be entitled to exercise on his own behalf all the rights of the Indenture Trustee hereunder necessary for such enforcement; provided that, in the event the Guarantee of any Obligation shall have terminated for reasons set forth in Section 6.04(a)(2) or (4) of this Indenture prior to the aforesaid date of repayment the provisions of this Section shall not apply to such Obligation.

**SECTION 6.09. Assumption of Obligations by Secretary.** (a) Notwithstanding anything to the contrary contained herein, in the absence of a demand under Section 6.02 hereof and upon the occurrence of a default in the payment of any principal or interest due under the Obligations which has continued for 25 days or more or upon the Secretary's giving a Secretary's notice under this Indenture, the Secretary may, in its sole discretion, prior to receipt by the Secretary of demand for payment of the Guarantees in accordance with this Indenture, assume the rights and obligations of the Shipowner under this Indenture and the Obligations by (i) giving to the Shipowner and Indenture Trustee a signed notice stating that it has assumed the Obligations and the Indenture and (ii) making any payment of principal or interest which is due under the Obligations.

(b) The Indenture Trustee and the Shipowner hereby agree that, upon the Indenture Trustee's receipt of the notice and payments referred to in paragraph (a)(i) and (ii) of this section, the Secretary's assumption shall, as of the date of the Secretary's execution of the notice, be effective and binding upon the Indenture Trustee and the Shipowner and their respective successors or assigns without further act or deed. Upon an assumption by the Secretary, the Secretary shall succeed to and be substituted for and may exercise every right and power of the Shipowner under this Indenture and the Obligation with the same force and effect as if the Secretary has been named as the Shipowner herein and therein. The Secretary may exercise its rights under this section as often as it deems appropriate in its sole discretion.

## **ARTICLE VII THE INDENTURE TRUSTEE**

**SECTION 7.01. Acceptance of Trusts.** The Indenture Trustee hereby accepts the trusts of this Indenture.

**SECTION 7.02. Eligibility of Indenture Trustee.** (a) The Indenture Trustee shall at all times be a bank with corporate trust powers or trust company which (1) is organized and doing business under the laws of the United States, any state or territory thereof, (2) has a combined capital and surplus (as set forth in its most recent published report of condition) of at least \$25,000,000, and (3) shall not have become incapable of acting or have been adjudged a bankrupt or an insolvent nor have had a receiver appointed for itself or for any of its property, nor have had a public officer take charge or control of it or its property or affairs for the purpose of rehabilitation, conservation or liquidation.

(b) Should the Indenture Trustee at any time cease to be eligible, pursuant to this Section, to act as trustee, it shall promptly notify the Obligees, the Shipowner and the Secretary of such fact; and should the Shipowner obtain knowledge of such ineligibility, it shall promptly advise the Indenture Trustee, the Secretary, and the Obligees of all the relevant facts.

**SECTION 7.03. Rights and Duties of Indenture Trustee.** (a) The Indenture Trustee shall not be responsible for the correctness of the Recitals in the Special Provisions hereof or in the Obligations (except the Indenture Trustee's authentication certificate thereon), all of which Recitals are statements made solely by the Shipowner.

(b) The Indenture Trustee shall not be responsible for the validity, execution by other parties thereto, or sufficiency of this Indenture, the Authorization Agreement, the Obligations or the Guarantees.

(c) The Indenture Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(d) Except during the continuance of any Indenture Default, the Indenture Trustee shall perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Indenture Trustee.

(e) No provision of this Indenture shall relieve the Indenture Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct; provided that:

(1) Except during the continuance of an Indenture Default, in the absence of bad faith on the part of the Indenture Trustee, the Indenture Trustee may conclusively rely upon certificates or opinions conforming to the requirements of this Indenture as to the truth of the statements and the correctness of the opinions expressed therein; and

(2) The Indenture Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with an Act of Obligees relating to the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee.

(f) Subject to paragraph (i) of this Section, the Indenture Trustee shall be under a duty to examine certificates and opinions required by this Indenture to be furnished to it to determine whether or not they conform to the requirements hereof.

(g) Subject to paragraph (c) of this Section, the Indenture Trustee may rely and shall be protected in acting upon any resolution, certificate, opinion, notice, request, consent, order, appraisal, report, bond, or other paper or document believed by it to be genuine, to have been signed by the proper party or parties and to be in conformity with the provisions of this Indenture.

(h) Subject to paragraph (c) of this Section, in all cases where this Indenture does not make express provision as to the evidence on which the Indenture Trustee may act or refrain from acting, the Indenture Trustee shall be protected in acting or refraining from acting hereunder in reliance upon an Officer's Certificate as to the existence or nonexistence of any fact.

(i) Subject to paragraph (c) of this Section, the Indenture Trustee may consult with counsel satisfactory to the Indenture Trustee, and an Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such Opinion of Counsel.



(j) Whenever it is provided that the Indenture Trustee shall take any action, including the giving of any notice or the making of any demand, or refrain from taking any action upon the happening or continuation of a specified event (including an Indenture Default) or upon the fulfillment of any condition or upon the Request of the Shipowner or of Obligees or upon receipt of any notice, including a Secretary's Notice, the Indenture Trustee shall, subject to paragraph (c) of this Section, have no liability for failure to take such action or for failure to refrain from taking such action until a Responsible Officer in the Corporate Trust Office, has actual knowledge of such event or continuation thereof or the fulfillment of such conditions or shall have received such Request.

(k) Subject to paragraph (c) of this Section, the Indenture Trustee shall not be under any obligation to exercise any of the trusts or powers hereof at the request, order or direction of any Obligees or the Secretary, unless such Obligees or the Secretary shall have offered to the Indenture Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities to be incurred thereby.

(l) The Indenture Trustee, in its individual or any other capacity, may become the owner or pledgee of Obligations with the same rights it would have if it were not Indenture Trustee.

(m) Notwithstanding any other provision of this Indenture, the Indenture Trustee shall not take any action contrary to the terms of the Authorization Agreement, and any such purported action or any attempt to take such action shall be void and of no effect.

(n) No provision of this Indenture shall require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(o) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Indenture Trustee shall be subject to the provisions of this Section.

(p) Upon the execution and delivery of an instrument satisfying and discharging this Indenture as provided in Section 12.01 hereof, all duties and obligations of the Indenture Trustee hereunder (except with respect to the application of funds for the payment of Obligations then held by the Indenture Trustee) shall cease and shall not thereafter be revived, whether or not the Indenture shall thereafter be in full force and effect as provided in Section 6.08.

(q) Notwithstanding any other provision of this Indenture or the Authorization Agreement, the Indenture Trustee shall have no duty to exercise any of its rights or powers hereunder with respect to a Payment Default by reason of a repayment referred to in Section 6.08 unless and until it shall have received notice of such default and information concerning (1) the date thereof, (2) the Obligation to which such repayment relates, (3) the Person making such repayment, (4) the amounts of such repayment attributable to principal, premium and interest on such Obligation, and (5) the Interest Payment Date or other date on

which the Obligee received the moneys to which the court order mentioned in Section 6.08 relates.

**SECTION 7.04.** Compensation, Expenses and Indemnification of Indenture Trustee. The Shipowner shall (1) pay reasonable compensation to the Indenture Trustee and reimburse it for its reasonable expenses and disbursements (including counsel fees and expenses) and (2) indemnify the Indenture Trustee for, and hold it harmless against, any loss, liability or expense which it may incur or suffer without negligence or bad faith in acting under this Indenture or the Authorization

Agreement. The compensation of the Indenture Trustee shall not be limited to the compensation provided by law for a trustee acting under an express trust.

**SECTION 7.05.** Resignation and Removal of Indenture Trustee. (a) The Indenture Trustee may resign at any time by giving written notice to the Shipowner. Within 10 days thereafter, the resigning Indenture Trustee shall give notice of such resignation to the Obligees in the manner provided in Section 13.01. If the resigning Indenture Trustee fails to do so within such 10-day period, within the next succeeding 10 days the Shipowner shall give such notice in the same manner.

(b) The Indenture Trustee may at any time be removed by (1) written notice to the Indenture Trustee and the Shipowner by the Holders of a majority in principal amount of the Outstanding Obligations; or (2) written notice to the Indenture Trustee by the Shipowner or the Secretary that the Indenture Trustee has ceased to be eligible under Section 7.02(a).

(c) Any resignation or removal of the Indenture Trustee shall be effective only upon appointment of a successor Indenture Trustee approved by the Secretary

**SECTION 7.06.** Appointment of Successor Indenture Trustee. (a) If any notice of resignation or of removal shall have been given pursuant to Section 7.05, then a successor Indenture Trustee may be appointed by the Shipowner; provided that, if such successor Indenture Trustee is not so appointed (or has not accepted such appointment) within 15 calendar days after the giving of any such notice, such appointment may be made (1) by the Secretary or (2) by a court of competent jurisdiction upon the application of the Secretary, the Shipowner, the retiring Indenture Trustee or any Person who then is, and has been, the Holder of an Outstanding Obligation for at least 6 months.

(b) No successor Indenture Trustee shall be appointed without the prior written consent of the Secretary and until such successor Indenture Trustee shall enter into an amendment to the Authorization Agreement as provided therein.

(c) If a successor Indenture Trustee is appointed, approved by the Secretary and accepts such appointment, the Shipowner shall give notice to the Obligees of such appointment in the manner provided in Section 13.01. The failure of the Shipowner to give such notice shall not affect the validity of any such appointment.

**SECTION 7.07.** Effect of Appointment of Successor Indenture Trustee. Each successor Indenture Trustee shall forthwith, without further act or deed, succeed to all the rights and duties of its predecessor in trust under this Indenture and the Authorization Agreement. Upon the written request of the successor Indenture Trustee or the Shipowner and upon payment by the Shipowner of all amounts due to such predecessor under this Indenture, such predecessor shall promptly deliver to such successor Indenture Trustee all sums held hereunder, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Indenture Trustee under this Indenture and shall transfer, assign and confirm to the successor Indenture Trustee all its rights under this Indenture in such manner as deemed by such successor Indenture Trustee or the Shipowner to be necessary or appropriate in connection therewith.

**SECTION 7.08.** Merger, Consolidation or Sale of Indenture Trustee. In the event of any merger (including for the purposes of this Section, the conversion of a state bank into a national banking association or vice versa) or consolidation of the Indenture Trustee into any other Person or in the event of the sale of all or substantially all the Indenture Trustee's corporate trust business, the Person resulting from such merger or consolidation, or the transferee in the case of any such sale, shall forthwith notify the Shipowner and, subject to Section 7.02(a) and 7.06(b), shall be the Indenture Trustee under this Indenture and the Authorization Agreement without further act or deed.

## **ARTICLE VIII**

### **CONSOLIDATION OR MERGER OF SHIPOWNER OR SALE OF VESSEL**

**SECTION 8.01.** Consolidation or Merger of Shipowner or Sale of Vessel. (a) Nothing in this Indenture shall prevent any lawful consolidation or merger of the Shipowner with or into any other Person, or any sale of a Vessel by the Shipowner, the Secretary or a court of law to any other Person lawfully entitled to acquire and operate such Vessel or any sale by the Shipowner, the Secretary, or a court of law of all or substantially all of its assets to any other Person; provided that, except where the Shipowner shall be the Person surviving a merger or consolidation, either (1) the Person formed by or surviving such consolidation or merger, or the Person to which the sale of such Vessel shall be made, shall expressly assume, by Supplemental Indenture, the payment of the principal of and interest (and premium, if any) on the Proportionate Part of the Outstanding Obligations, as determined by the Secretary, relating to such Vessel and expressly assume the Shipowner's duties under the Indenture, or (2) to the extent that the Secretary determines that the Outstanding Obligations and the duties under the Indenture are not so assumed, the Shipowner shall redeem the principal amount of those unassumed Obligations in accordance with the terms of the Obligations and of the Indenture.

(b) When a Person so assumes this Indenture and such Proportionate Part of the Outstanding Obligations, the Supplemental Indenture shall discharge and release the Shipowner from any and all obligations thereunder relating to such Proportionate Part of the Outstanding Obligations. In the event of such an assumption by a Person to whom a Vessel has been sold (1) such Person shall succeed to, and be substituted for, and may exercise every right and power of the original Shipowner with the same effect as if such successor Shipowner had been named as the Shipowner herein and (2) such Proportionate Part of



the Outstanding Obligations shall be surrendered to the Indenture Trustee for appropriate notation or for the issuance of new Obligations in exchange for such Proportionate Part of the Outstanding Obligations in the name of the successor Shipowner, as required by the Secretary. The principal amount of the Proportionate Part of the Outstanding Obligations shall be determined by the Secretary.

## **ARTICLE IX ACTS OF OBLIGEES**

**SECTION 9.01.** Acts of Obligees. (a) Except as herein otherwise expressly provided, an Act of Obligees shall become effective when it is delivered to the Indenture Trustee and, where it is expressly required, to the Shipowner and the Secretary. Proof of execution of any instrument appointing an agent or attorney to execute an Act of Obligees made in the manner of subsection (b) below shall be sufficient for any purpose of this Indenture.

(b) The fact and date of the execution by any Person of any instrument referred to in paragraph (a) of this Section may be proved by the affidavit of a witness of such execution or by the certificate or acknowledgment of any notary public, stating that the individual signing such instrument acknowledged to him the execution thereof. The fact and date of the execution of any such instrument, or the authority of the Person executing the same, may also be proved in any other manner which the Indenture Trustee (or, if such instrument is addressed to the Secretary, the Secretary) deems sufficient.

(c) Any Act of Obligees taken by the Holder of any Obligation shall bind every future Holder of any of the Obligations in respect of anything done or suffered to be done by the Indenture Trustee, any Paying Agent or the Shipowner in reliance thereon, whether or not notation of such action is made upon such Obligation.

## **ARTICLE X SUPPLEMENTAL INDENTURES**

**SECTION 10.01.** Permissible Without Action by Obligees. The Shipowner, the Indenture Trustee, or, where applicable, the Secretary, may at any time, without the consent of or notice to any of the Obligees, subject to Sections 10.02 and 10.05, enter into an indenture or other instrument supplemental hereto and which thereafter shall form a part hereof, for any one or more of the following purposes:

- (1) to add to the covenants of the Shipowner;
- (2) to evidence, pursuant to Article VIII, the succession of another corporation or entity to the Shipowner or any assumption of all or part of the Obligations;
- (3) to eliminate any right reserved to or conferred upon the Shipowner;

(4) to make such provisions for the purpose of curing any ambiguity or correcting or supplementing any provisions in this Indenture as the Shipowner or the Secretary may deem necessary or desirable, provided such provisions are not inconsistent with this Indenture and shall not adversely affect the interests of the Obligees;

(5) to provide for the issuance of additional Obligations of any series and Stated Maturity theretofore issued under this Indenture or to set forth the terms and provisions of any one or more additional series of Obligations in accordance with Section 2.04; or

(6) to evidence the assumption pursuant to Section 6.09 by the Secretary of the Shipowner's obligations under this Indenture and the Outstanding Obligations.

**SECTION 10.02. Protection of Indenture Trustee.** Upon receipt of a Request of the Shipowner that the Indenture Trustee execute any Supplemental Indenture and upon receipt of any Act of Obligees required pursuant to Section 10.04 and the consent of the Secretary required pursuant to Section 10.05, the Indenture Trustee shall enter into such Supplemental Indenture; provided that, the Indenture Trustee shall not be obligated to enter into any Supplemental Indenture which the Indenture Trustee believes adversely affects the Indenture Trustee's own rights, duties or immunities under this Indenture.

**SECTION 10.03. Reference in Obligations to Supplemental Indentures.** Obligations authenticated and delivered after the execution and delivery of any Supplemental Indenture may, with the consent and approval of the Shipowner and the Indenture Trustee, contain a text modified to conform to such Supplemental Indenture or have imprinted or stamped thereon a legend with respect to such Supplemental Indenture, but no such modification or legend shall be necessary to make such Supplemental Indenture effective.

**SECTION 10.04. Waivers and Supplemental Indentures with Consent of Obligees.** With the consent of the Holders of not less than 60% in principal amount of the Outstanding Obligations of each series affected thereby, by Act of Obligees delivered to the Shipowner and the Indenture Trustee, (x) compliance by the Shipowner with any of the terms of the Indenture may be waived or (y) the Shipowner and the Indenture Trustee may enter into any Supplemental Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of the Obligations issued under this Indenture; provided that, no such waiver or Supplemental Indenture shall:

(a) Without the consent of all Obligees affected thereby (1) change the Stated Maturity or reduce the principal of any Obligation, (2) extend the time of payment of, or reduce the rate of, interest thereon, (3) change the due date of or reduce the amount of any mandatory sinking fund payment, (4) reduce any premium payable upon the redemption of any Obligation, or (5) change the coin or currency in which any Obligation or the interest thereon is payable; or

(b) Without the consent of all Obligees (1) terminate or modify any of the Guarantees or the

obligations of the Secretary thereunder, (2) reduce the amount of any of the Guarantees, (3) eliminate, modify or condition the duties of the Indenture Trustee to demand payment of the Guarantees or otherwise to comply with the provisions of Sections 6.02 and 6.04, (4) eliminate or reduce any of the eligibility requirements for the Indenture Trustee stated in Section 7.02, or (5) reduce the percentage in principal amount of the Outstanding Obligations of any series, the consent of whose Holders is required for any such Supplemental Indenture, or required for any waiver provided herein or to modify any of the provisions of this Section.

It shall not be necessary for any Act of Obligees under this Section to approve the particular form of any proposed Supplemental Indenture, but it shall be sufficient if such Act shall approve the substance thereof. Promptly after the execution of any Supplemental Indenture pursuant to this Section, the Shipowner shall give notice thereof to the Obligees in the manner provided in Section 13.01. Any failure of the Shipowner to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Indenture.

**SECTION 10.05. Consent of Secretary.** Subject to the provisions of Section 11.01, no waiver pursuant to Section 10.04 shall be effective, and neither the Shipowner nor the Indenture Trustee shall enter into any Supplemental Indenture, without the prior written consent of the Secretary, and any purported action or attempt to take such action forbidden to be taken by this Section shall be null and void ab initio and of no legal effect.

**SECTION 10.06. Continued Validity of the Guarantees.** Notwithstanding anything herein to the contrary, this Indenture, the Guarantees and the Authorization Agreement shall each remain in full force and effect notwithstanding the assumption by the Secretary of the Obligations pursuant to Section 6.09, and pursuant to Section 1103(e) of the Act, the validity of the Guarantee of any Obligation shall be unaffected.

## **ARTICLE XI PERFORMANCE OF OBLIGATIONS TO SECRETARY**

**SECTION 11.01. Performance of Obligations to Secretary.** Notwithstanding any provisions of this Indenture to the contrary, upon termination of the Guarantees pursuant to Section 6.04(a), each of the provisions of the Indenture which refers to the rights and duties of the Secretary shall not be effective and the Sections containing such provisions shall be read as though there were no such rights or duties.

## **ARTICLE XII SATISFACTION AND DISCHARGE OF INDENTURE**

**SECTION 12.01. Satisfaction and Discharge of Indenture.** Whenever all Outstanding Obligations authenticated and delivered hereunder shall have been Retired or Paid the Indenture Trustee shall forthwith deliver to the Shipowner and the Secretary a duly executed instrument, in form submitted to it by the Shipowner and reasonably satisfactory to the Secretary, satisfying and discharging this Indenture and, at the time such form of instrument is submitted to the Indenture Trustee the Shipowner shall deliver to the

Indenture Trustee an Officer's Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided relating to the satisfaction and discharge of this Indenture have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the Obligations of the Shipowner to the Indenture Trustee under Section 7.04 shall survive.

### **ARTICLE XIII MISCELLANEOUS**

**SECTION 13.01. Notices and Demands.** Any communication to, the Indenture Trustee, the Shipowner or the Secretary shall be deemed to have been sufficiently given or made by being mailed, registered or certified mail, postage prepaid, addressed to the Indenture Trustee, the Shipowner or the Secretary at their respective addresses appearing in the Special Provisions of this Indenture or at such other address as any of them may advise the others in writing from time to time. Any communication to, the Obligees shall be deemed to have been sufficiently given or made by being mailed, in the same manner, to the address of each Obligee last appearing on the Obligation Register.

**SECTION 13.02. Waivers of Notice.** In any case where notice by mail or otherwise is provided herein, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event. Waivers of notice shall be filed with the Indenture Trustee, but such filing shall not be a condition precedent to the validity of any action taken thereon in reliance upon any such waiver.

**SECTION 13.03. Benefit of Indenture.** This Indenture is for the sole benefit of the Shipowner, the Indenture Trustee, the Holders and (until the obligations to the Secretary shall have terminated as provided in Article XI) the Secretary.

**SECTION 13.04. Execution of Counterparts.** This Indenture may be executed in any number of counterparts. All such counterparts shall be deemed to be original and shall together constitute but one and the same instrument.

**SECTION 13.05. Table of Contents; Titles and Headings.** Any table of contents, the titles of the Articles and the headings of the Sections are not a part of this Indenture and shall not be deemed to affect the meaning or construction of any of its provisions.

**SECTION 13.06. Immunity of Incorporators, Stockholders, Limited Partners, Members, Officers and Directors.** No recourse shall be had for any payment regarding any Obligation, or upon any provision of this Indenture, against any past, present or future incorporator, stockholder, limited partner, member, officer or director of the Shipowner or of any successor company, either directly or indirectly. It is expressly agreed that this Indenture and the Obligations are solely the obligations of the Shipowner.

SPECIMEN OBLIGATION

No. \_\_\_\_\_

\$ \_\_\_\_\_

**U.S. GOVERNMENT GUARANTEED SHIP FINANCING OBLIGATION**

\_\_\_ Sinking Fund Obligation Due \_\_\_

Issued by

\_\_\_\_\_

\_\_\_\_\_, a \_\_\_\_\_ (herein called the "Shipowner"), FOR VALUE RECEIVED, promises to pay to \_\_\_\_\_ or registered assigns, the principal sum of \_\_\_\_\_ AND NO/100 DOLLARS (\$\_\_\_\_\_.00) on \_\_\_\_\_, and to pay interest semiannually on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_, on the unpaid principal amount of this Obligation at the rate of \_\_\_% per annum (calculated on the basis of a 360-day year of twelve 30-day months) from the interest payment date referred to above next preceding the date of this Obligation to which interest on the Obligations has been paid (unless the date hereof is the date to which interest on the Obligations has been paid, in which case from the date of this Obligation), or if no interest has been paid on the Obligations since the Original Issue Date (as defined in the Indenture hereinafter mentioned) of this Obligation, from the Original Issue Date, until payment of said principal sum has been made or duly provided for, and at the same rate per annum on any overdue principal.

The principal of and the interest on this Obligation, as well as any premium hereon in case of certain redemptions hereof prior to maturity, are payable to the registered owner hereof at the Corporate Trust Office of the Indenture Trustee, \_\_\_\_\_, a \_\_\_\_\_ (the "Indenture Trustee") or at a Paying Agent maintained for such purposes in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts therein; provided that, payments may be made by check mailed to the address of the registered owner hereof as such address shall appear on the Obligation Register of said Indenture Trustee, and by such other methods of payment as permitted by the Indenture.

This Obligation is one of an issue of Obligations of the Shipowner of \_\_\_\_\_ aggregate principal amount of sinking fund obligation, designated as its "United States Government Guaranteed Ship Financing Obligations, \_\_\_ Series," all issued under a Trust Indenture dated as of \_\_\_\_\_ (the "Indenture"), between the Shipowner and the Indenture Trustee to aid in financing the cost of the construction by the Shipowner of the Vessels. Reference is hereby made to the Indenture for a definition of the capitalized terms used but not defined herein and a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Shipowner and the Indenture Trustee, the Obligees of the Obligations, and the Secretary.

In accordance with the terms of an Authorization Agreement dated as of \_\_\_\_\_, between the United States of America, represented by the Secretary of Transportation, acting by and through the Maritime Administrator (the "Secretary") and the Indenture Trustee, and by endorsement of the guarantee of the United States of America (the "Guarantees") on each of the Obligations and the authentication and delivery of the Guarantees by the Indenture Trustee, all pursuant to the Act, the Obligations are guaranteed by the United States of America as provided in the Authorization Agreement and in the Guarantees endorsed thereon. Reference is hereby made to the Authorization Agreement for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Secretary, the Indenture Trustee, and the Obligees of the Obligations.

Furthermore, it is hereby noted that Section 1103(d) of Title XI of the Act provides that:

"The full faith and credit of the United States is pledged to the payment of all guarantees made under this title with respect to both principal and interest, including interest, as may be provided for in the guarantee, accruing between the date of default under a guaranteed obligation and the payment in full of the guarantee."

If an Indenture Default shall have occurred and be continuing, the Indenture Trustee, as provided in the Indenture shall, not later than 60 days from the date of such Indenture Default, demand payment by the Secretary of the Guarantees, whereupon the entire unpaid principal amount of the Outstanding Obligations and all unpaid interest thereon shall become due and payable on the first to occur of the date which is 30 days from the date of such demand or the date on which the Secretary pays the Guarantees. If no demand for payment of the Guarantees shall have been made by the Indenture Trustee on or before the 30th day following an Indenture Default, the Obligee of any Outstanding Obligation may, in the manner provided in the Indenture, make such demand in place of the Indenture Trustee. In the event of an Indenture Default of which the Secretary has actual knowledge, the Secretary, as provided in the Authorization Agreement, will publish notice in the Authorized Newspaper, which shall be The Wall Street Journal, of the occurrence of such Indenture Default within 30 days from the date of such Indenture Default, unless demand for payment under the Guarantees shall previously have been made by the Indenture Trustee, but any failure to publish such notice or any defect therein shall not affect in any way any rights of the Indenture Trustee, the Secretary or any Obligee of a Obligation.

Within 30 days from the date of any demand for payment of the Guarantees, the Secretary shall pay to the Indenture Trustee all the unpaid interest to the date of such payment on, and the unpaid balance of the principal of such Obligations in full, in cash; provided that, in the case of a demand made as a result of an Indenture Default, the Secretary shall not be required to make any such payment if (i) within such 30-day period (and prior to any payment of the Guarantees by the Secretary), the Secretary finds either that there was no Payment Default, or that such Payment Default was remedied prior to the demand for payment of the Guarantees, or (ii) the Secretary assumes the Obligations and makes all payments then in default in the manner provided in Section 6.09 of the Indenture. In each such event the Guarantees shall continue in full force and effect.

The Obligee of this Obligation, by the purchase and acceptance hereof, hereby irrevocably appoints

the Indenture Trustee and each other Obligee of any Outstanding Obligation as agent and attorney-in-fact for the purpose of making any demand for payment of the Guarantees, and (in the case of the Indenture Trustee) of receiving and distributing such payment; provided that, no action or failure to act by the Indenture Trustee shall affect the right of the Obligee of this Obligation to take any action whatsoever permitted by law and not in violation of the terms of this Obligation or of the Indenture.

Any amount payable by the Secretary under the Guarantees shall not be subject to any claim or defense of the United States of America, the Secretary, or others, whether by way of counter-claim, set-off, reduction or otherwise. Further, the Obligee of this Obligation shall have no right, title or interest in any collateral or security given by the Shipowner to the Secretary.

After payment of the Guarantees by the Secretary to the Indenture Trustee, this Obligation (1) if it has not then been surrendered for cancellation or canceled, shall represent only the right to receive payment in cash of an amount (less the amount, if any, required to be withheld with respect to transfer or other taxes on payments to the Obligee of this Obligation) equal to the unpaid principal amount hereof and the unpaid interest accrued hereon to the date on which the Secretary shall have paid the Guarantees in full in cash to the Indenture Trustee, (2) shall otherwise no longer constitute or represent an obligation of the Shipowner, and (3) shall not be entitled to any other rights or benefits provided in the Indenture, subject to Section 6.08 of the Indenture.

The Obligations (including this Obligation) may be redeemed upon the terms and conditions provided in the Indenture, in whole or in part, at the option of the Shipowner, at any time or from time to time upon at least 40 and not more than 60 days prior notice given as provided in the Indenture, at a redemption price equal to \_\_\_% of the principal amount hereof, if redeemed on or prior to \_\_\_\_\_, and thereafter at the following redemption prices (expressed in percentages of the principal amount), together with the interest accrued thereon to the date fixed for redemption:

If Redeemed During the 12-Months Period Ending on or Prior to: _____	Percentage
--	------------

and thereafter to maturity at 100%, provided that, no such redemption shall be made prior to \_\_\_\_\_, directly or indirectly, with the proceeds of, or in anticipation of, borrowing by or for the account of the Shipowner if such borrowing has an effective interest cost (calculated in accordance with generally accepted financial practice) of less than the rate borne by the Obligations.

The Obligations (including this Obligation) are also subject to redemption, upon the terms and

conditions provided in the Indenture and upon like notice, through the operation of a mandatory sinking fund providing for the redemption on \_\_\_\_\_, and on each \_\_\_\_\_ and \_\_\_\_\_ thereafter to and including \_\_\_\_\_, at 100% of the principal amount thereof plus interest accrued thereon to such date, of a principal amount of such Obligations equal to \_\_\_\_\_ and on \_\_\_\_\_, the entire unpaid principal amount of the Outstanding Obligations shall be paid in full, together with all interest accrued thereon to such date (a "Mandatory Sinking Fund Redemption").

On the date of any Mandatory Sinking Fund Redemption, the Shipowner may redeem an additional amount of principal (also without premium) equal in an amount of the Mandatory Sinking Fund Redemption payment (an "Optional Sinking Fund Redemption"), provided that, the right to make an optional redemption may not be cumulative.

The Obligations (including this Obligation) are also subject to mandatory redemption without premium, upon the terms and conditions provided in the Indenture, in whole or in part, at 100% of the principal amount thereof, plus interest accrued thereon to the date of redemption, upon at least 40 and not more than 60 days prior notice (a) in the event that Obligations must be redeemed so that the principal amount of all Obligations Outstanding after such redemption will not exceed \_\_\_% of the Depreciated Actual Cost or Actual Cost, as determined by the Secretary, of the Vessels, (b) in the event of an actual, constructive, agreed or compromised total loss of, or requisition of title to, or seizure or forfeiture of, a Vessel, or (c) in the event of termination of a contract relating to the construction of a Vessel. If the principal amount of Outstanding Obligations is reduced by reason of any redemption described in this paragraph, the principal amount of Obligations subject to Mandatory Sinking Fund Redemptions in the future shall be reduced as provided in the Indenture.

In lieu of making all or any part of any such mandatory sinking fund redemption, the Shipowner may, at its option, receive credit for Obligations (not previously credited against a mandatory sinking fund payment) (i) redeemed pursuant to the Optional Sinking Fund Redemption, (ii) redeemed by the Shipowner pursuant to the optional redemption at a premium referred to 4 paragraphs above, or (iii) purchased or acquired by the Shipowner other than by redemption. Such Obligations shall be credited by the Indenture Trustee at 100% of the principal amount thereof.

The Obligations (including this Obligation) may also be redeemed without premium upon the terms and conditions provided in the Indenture, in whole or in part, at the option of the Secretary, at any time following an assumption of the Obligations and the Indenture by the Secretary, upon at least 40 and not more than 60 days prior notice given as provided in the Indenture, at a Redemption Price equal to 100% of the principal amount to be redeemed, plus interest accrued to the date fixed for redemption.

Any optional redemption shall be subject to the receipt of the redemption moneys by the Indenture



Trustee or any Paying Agent. Obligations called for redemption shall (unless the Shipowner shall cancel the proposed optional redemption) cease to bear interest on and after the date fixed for redemption.

As provided in the Indenture and to the extent permitted thereby, compliance by the Shipowner with any of the terms of the Indenture may be waived, and the Indenture and the rights and obligations of the Shipowner, and the rights of the Obligees of the Obligations (including this Obligation) thereunder may be modified, at any time with the prior consent of the Secretary, and except as otherwise expressly provided in the Indenture, the consent of the Obligees of at least 60% in principal amount of the Outstanding Obligations affected thereby in the manner and subject to the limitations set forth in the Indenture; provided that, no such waiver or modification shall (1) without the consent of the Obligee of each Obligation affected thereby: (a) change the Stated Maturity or reduce the principal amount of any Obligation, (b) extend the time of payment of, or reduce the rate of, interest thereon, (c) change the due date of or reduce the amount of any sinking fund payment, (d) reduce any premium payable upon the redemption thereof, or (e) change the coin or currency in which any Obligation or the interest thereon is payable; or (2) without the consent of all Obligees of Obligations: (a) terminate or modify any of the Guarantees or the obligations of the United States of America thereunder, (b) reduce the amount of any of the Guarantees, (c) eliminate, modify or condition the duties of the Indenture Trustee to demand payment of the Guarantees, (d) eliminate or reduce the eligibility requirements of the Indenture Trustee, or (e) reduce the percentage of principal amount of Obligations the consent of whose Obligees is required for any such modification or waiver.

The Indenture provides that the Obligations (including this Obligation) shall no longer be entitled to any benefit provided therein if the Obligations shall have become due and payable at Maturity (whether by redemption or otherwise) and funds sufficient for the payment thereof (including interest to the date fixed for such payment, together with any premium thereon) and available for such payment (1) shall be held by the Indenture Trustee or any Paying Agent, or (2) shall have been so held and shall thereafter have been paid to the Shipowner after having been unclaimed for 6 years after the date of maturity thereof (whether by redemption or otherwise) or the date of payment of the Guarantees, except for the right (if any), of the Obligee to receive payment from the Shipowner of any amounts paid to the Shipowner as provided in (2) above with respect to this Obligation, all subject to the provisions of Section 6.08 of the Indenture.

This Obligation is transferable by the registered Obligee or by his duly authorized attorney, at the Corporate Trust Office of the Indenture Trustee, upon surrender or cancellation of this Obligation, accompanied by an instrument of transfer in form satisfactory to the Shipowner and the Indenture Trustee, duly executed by the registered Obligee hereof or his attorney duly authorized in writing, and thereupon a new, fully registered Obligation or Obligations of like series and maturity for the same aggregate principal amount will be issued to the transferee in exchange therefor, each in the principal amount \_\_\_\_\_ or any integral multiple thereof, subject to the provisions of the Indenture. The Indenture provides that the Shipowner shall not be required to make transfers or exchanges of (1) Obligations for a period of 15 days immediately prior to an interest payment date, (2) Obligations after demand for payment of the Guarantees and prior to payment thereof or rescission of such demand as provided in Section 6.02(a) of the Indenture,

or (3) Obligations which have been selected for redemption in whole or in part.

The Shipowner, the Secretary, the Indenture Trustee and any Paying Agent for the payment of Obligations will treat the person in whose name this Obligation is registered as the absolute owner thereof for all purposes, and this rule may not be altered by any notice to the contrary to any of these entities, whether this Obligation shall be past due or not.

No recourse shall be had for the payment of principal of, or the interest or premium (if any) on, this Obligation, or for any claim based hereon or on the Indenture, against any incorporator or any past, present or future subscriber to the capital stock, stockholder, limited partner, member, officer or director of the Shipowner or of any successor company, either directly or indirectly, and all such liability being expressly waived and released by the acceptance of this Obligation and by the terms of the Indenture. So long as the Guarantee is in effect, there shall be no recourse against the Shipowner.

Neither this Obligation nor the Guarantee endorsed hereon shall be valid or become obligatory for any purpose until the Indenture Trustee shall have fully signed the authentication certificate endorsed hereon.

IN WITNESS WHEREOF, the Shipowner has caused this Obligation to be duly executed by the manual or facsimile signatures of its duly authorized officers under its corporate seal or facsimile thereof.

Dated as of \_\_\_\_\_.

BY: \_\_\_\_\_

(SEAL)

Attest:

\_\_\_\_\_

**PAYMENTS ON ACCOUNT OF PRINCIPAL**

<u>Payment Date</u>	<u>Amount of Principal Paid</u>	<u>Balance of Principal Unpaid</u>	<u>Authorized Signature</u>
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**GUARANTEE OF THE UNITED STATES OF AMERICA**

The United States of America, represented by the Secretary of Transportation, acting by and through the Maritime Administrator, pursuant to Title XI of the Merchant Marine Act, 1936, as amended, hereby guarantees to the holder of the Obligation annexed hereto, upon demand of the holder or his agent, payment of the unpaid interest on, and the unpaid balance of the principal of, such Obligation, including interest accruing between the date of default under such Obligation, and the payment in full of the Obligation under this Guarantee. The full faith and credit of the United States of America is pledged to the payment of this Guarantee. The validity of this Guarantee is incontestable in the hands of any holder of such Obligation. Payment of this Guarantee will be made in accordance with the provisions of such Obligation.

UNITED STATES OF AMERICA  
SECRETARY OF TRANSPORTATION

(SEAL OF THE DEPARTMENT  
OF TRANSPORTATION)

BY: \_\_\_\_\_  
Maritime Administrator

**TRUSTEE'S AUTHENTICATION CERTIFICATE**

This is one of the Obligations described in the Indenture and the foregoing Guarantee is one of the Guarantees described in the Authorization Agreement.

\_\_\_\_\_  
Indenture Trustee

BY: \_\_\_\_\_

**AUTHORIZATION AGREEMENT**

BETWEEN

THE UNITED STATES OF AMERICA

AND

\_\_\_\_\_, Indenture Trustee

This Authorization Agreement, dated as of \_\_\_\_\_, is entered into between (i) the United States of America, represented by the Secretary of Transportation, acting by and through the Maritime Administrator (the "Secretary"), and (ii) \_\_\_\_\_, a \_\_\_\_\_, as the Indenture Trustee under the Trust Indenture dated as of the date hereof between the Indenture Trustee and \_\_\_\_\_, a \_\_\_\_\_ (the "Shipowner").

**RECITALS:**

A. Under the provisions of Title XI of the Merchant Marine Act, 1936, as amended (the "Act"), the Secretary has determined that the requirements of the Act with respect to the Guarantees and the Obligations proposed to be issued under the Indenture have been met; and

B. The Secretary and the Indenture Trustee have entered into this Authorization Agreement in order (1) to authorize the Indenture Trustee to endorse and execute by means of a facsimile signature of the Secretary and a facsimile seal of the U.S. Department of Transportation and to authenticate on each of the Obligations the Guarantee of the United States pursuant to the terms of the Indenture, (2) to agree upon the procedures whereby the Indenture Trustee or any Holder of any Outstanding Obligation, as agent and attorney-in-fact for the Holders of all Outstanding Obligations, as provided in the Indenture, will make demand upon the Secretary for payment of the Guarantees, and (3) to provide for the payment of the Guarantees by the Secretary to the Indenture Trustee.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I**  
**EXECUTION, AUTHENTICATION AND DELIVERY OF THE GUARANTEES**

**SECTION 1.01.** Authorization to Imprint, Authenticate and Deliver. (a) The Secretary hereby authorizes and directs the Indenture Trustee to cause the Guarantees, the facsimile signature of the Maritime Administrator or the Acting Maritime Administrator, and facsimile seal of the U.S. Department of Transportation to be imprinted upon Obligations issued in accordance with Article II and Article III of the Indenture. The form of the Guarantee to be imprinted on the Obligation is as follows:

"The United States of America, represented by the Secretary of Transportation, acting by and through the Maritime Administrator, pursuant to Title XI of the Merchant Marine Act, 1936, as amended, hereby guarantees to the holder of the Obligation annexed hereto, upon demand of the holder or his agent, payment of the unpaid interest on, and the unpaid balance of the principal of, such Obligation, including interest accruing between the date of default under such Obligation and the payment in full of the Obligation under this Guarantee. The full faith and credit of the United States of America is pledged to the payment of this Guarantee. The validity of this Guarantee is incontestable in the hands of any holder of such Obligation. Payment of this Guarantee will be made in accordance with the provisions of such Obligation.

UNITED STATES OF AMERICA  
SECRETARY OF TRANSPORTATION,

(SEAL)

BY: \_\_\_\_\_  
Maritime Administrator"

(b) The Secretary hereby authorizes and directs the Indenture Trustee to authenticate the Obligations and Guarantees thereon, and to deliver such Obligations and Guarantees in accordance with the Indenture and herewith.

(c) Once an Obligation has been imprinted with the Guarantees, the requisite facsimile signatures and seals, authenticated by the Trustee and delivered to the Holders, then that Obligation shall bind the United States regardless of the fact that the individual signing as such Maritime Administrator or Acting Maritime Administrator ceased to hold such office prior to the authentication and delivery of the Obligation bearing such Guarantee, or did not hold such office on the date of such Obligation.

**SECTION 1.02.** Issuance of Obligations. The Indenture Trustee is authorized to execute, authenticate and deliver the Guarantees in the manner set forth in Section 1.01 above, only in accordance with the Obligations issued under Sections 2.01, 2.02, 2.07, 2.09 and 3.10 (b) of the Indenture.

**ARTICLE II**  
**DEMAND FOR PAYMENT OF GUARANTEES**

**SECTION 2.01.** Default under the Indenture. (a) In the event of any Indenture Default, the Indenture Trustee or any Holder of an Outstanding Obligation may demand, in accordance with the provisions of Section 6.02 of the Indenture, on behalf of the Holders of all the Obligations then Outstanding, payment by the Secretary of the unpaid principal and interest to the date of payment on all Outstanding Obligations.

(b) Within 30 days from the date of any demand for payment made pursuant to paragraph (a) of this Section, the Secretary shall pay to the Indenture Trustee as agent and attorney-in-fact for the Holders of the Outstanding Obligations, all the unpaid interest to the date of such payment on, and the unpaid balance of the principal of, all Outstanding Obligations as aforesaid in full, in cash; provided that, in the case of a demand made as a result of a Payment Default, the Secretary shall not be required to make such payment if (1) the Secretary shall have assumed the Obligations pursuant to Section 6.09 of the Indenture or (2) such 30-day period subsequent to such demand and prior to any payment of the Guarantees by the Secretary, he shall find there was no Payment Default or that such Payment Default had been remedied prior to such demand, and in any such case the Guarantees shall remain in full force and effect. The Secretary shall give prompt written notice to the Shipowner and the Indenture Trustee of each such finding.

**SECTION 2.02.** Payment of the Guarantees. The Secretary and the Indenture Trustee confirm that, in accordance with the provisions of the Obligations and the Indenture, the payment of the Guarantees as provided in Section 2.01 by the Secretary to the Indenture Trustee, as agent and attorney-in-fact for the Holders of all Outstanding Obligations, shall be made by the Secretary to, and accepted by, the Indenture Trustee, solely for the benefit of the Holders of Outstanding Obligations, as payment in full of the Outstanding Obligations, and that such Obligations will thereupon cease to be obligations of the Shipowner.

**ARTICLE III**  
**REPRESENTATIONS AND COVENANTS OF THE INDENTURE TRUSTEE**

**SECTION 3.01.** Consent of the Secretary. The Indenture Trustee covenants that it will not, without the written consent of the Secretary, and then only upon such conditions, if any, as may be specified in such consent, (a) take or participate in the taking of any action which, by the terms of the Indenture, may require the consent of the Secretary, or (b) enter into any amendment or supplement to the Indenture, or waive any condition of the Indenture, except in the case of any such waiver as the Indenture may expressly permit.

**SECTION 3.02. Authorization, Execution and Delivery.** The Indenture Trustee represents and warrants that it has satisfied all requirements of law for the due execution and delivery of this Authorization Agreement and upon execution and delivery hereof, this Authorization Agreement will constitute a valid and legally binding obligation of the Indenture Trustee, enforceable in accordance with its terms.

**SECTION 3.03. Agreements of Indenture Trustee.** The Indenture Trustee agrees that it shall:

(a) Furnish to the Secretary a written statement of the principal amount, interest rate, Stated Maturity and date of delivery of any (1) Obligations that are authenticated and delivered in accordance with Sections 2.01 and 2.02 of the Indenture on the date hereof and on each subsequent date of delivery; (2) Obligations that are authenticated and delivered by the Indenture Trustee under Section 1.02 and 1.03 hereof within 15 Business Days after each such delivery, and (3) Obligations that are redeemed or Retired or Paid within 30 days of the event.

(b) Permit the Secretary, at all reasonable times upon request, to make such reasonable, material and pertinent examinations and audits of its records and books of account and take such information as the Secretary deems reasonable pertaining to the Indenture, the Obligations, the Guarantees and this Authorization Agreement, and all matters related thereto; and

(c) Furnish to the Secretary, promptly upon request, such reasonable, material and pertinent reports, evidence, proof or information, in addition to that furnished under other provisions hereof, bearing on matters pertaining to the Indenture, the Obligations, and the Guarantees, and acts performed by the Indenture Trustee with respect thereto, as the Secretary may reasonably deem necessary or appropriate.

## **ARTICLE IV GENERAL PROVISIONS**

**SECTION 4.01. Definitions.** For all purposes of this Authorization Agreement, unless otherwise expressly provided or unless the context otherwise requires, capitalized terms not specifically defined herein shall have the respective meanings given in Schedule A to the Indenture.

**SECTION 4.02. Secretary's Agreements.** The Secretary agrees that:

(a) This Authorization Agreement and the Guarantees of the Obligations are made and entered into pursuant to Title XI of the Act, and conclusively evidence the eligibility of the Obligations for the Guarantees, and the validity of the Guarantees shall be incontestable;

(b) The obligations of the United States to pay the Guarantees shall be subject to no conditions whatsoever, express or implied, except that demand shall have been made therefor by the Indenture Trustee or any Holder of an Outstanding Obligation not later than 60 days from the date of an Indenture Default that shall have occurred and be continuing, it being the intent of the United States that the Guarantees will be paid under any and all circumstances upon demand duly made therefor; and

(c) In the event of an Indenture Default of which the Secretary has actual knowledge, the Secretary will publish notice in the Authorized Newspaper of the occurrence of such Indenture Default within 30 days from the date of such Indenture Default, unless demand for payment under the Guarantees shall previously have been made by the Indenture Trustee, but any failure to publish such notice or any defect therein shall not affect in any way any rights of the Indenture Trustee or any Holder of an Obligation with respect to such Indenture Default, or in any way affect the rights of the Secretary.

**SECTION 4.03. Benefits to Holders of Obligations.** All authorizations and directions to authenticate and deliver Obligations and Guarantees, and all other agreements of the Secretary herein are made with the Indenture Trustee for, and shall inure to, the benefit of all Holders of the Obligations. The agreements of the Indenture Trustee herein are made with the Secretary for, and shall inure to, the benefit of all Holders of the Obligations.

**SECTION 4.04. Successor Indenture Trustee; Amendments and Supplements.** The authority and direction granted to the Indenture Trustee hereby, and all rights of the Indenture Trustee hereunder, are granted to and shall accrue to the benefit of any Person who from time to time acts as successor Indenture Trustee, pursuant to the terms of Article VII of the Indenture; provided that, such successor Indenture Trustee and the Secretary shall have entered into an amendment hereto whereby such successor Indenture Trustee agrees to fulfill the obligations of the Indenture Trustee hereunder. Except as provided in the preceding sentence, this Authorization Agreement may not be amended or supplemented in any regard whatever, nor may the rights or obligations of the Indenture Trustee hereunder be assigned to any other Person, except by a writing duly executed by the Indenture Trustee and the Secretary.

**SECTION 4.05. Effective Period.** This Authorization Agreement and the authorization and direction to authenticate and deliver Guarantees granted to the Indenture Trustee (or any successor Indenture Trustee) shall have effect from the date hereof until termination upon, and only upon, the occurrence of one or both of the following events:

(a) When the Indenture shall have been satisfied and discharged in accordance with Section 12.01 thereto; or



(b) When the Guarantees of all the Outstanding Obligations shall have been terminated in accordance with Section 6.04(a) of the Indenture.

**SECTION 4.06. Payments, Notices or Other Communications.** Except as otherwise provided herein, all payments, notices or other communications provided for herein may be made or delivered in person, or by registered or certified mail, postage prepaid, addressed to the party at the address of such party specified below, or at such other address as such party shall advise the other party by written notice, and shall be effective upon mailing or delivery in person.

The addresses of the Secretary and the Indenture Trustee are as follows:

SECRETARY OF TRANSPORTATION  
c/o Maritime Administrator  
Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 4.07. Execution of Counterparts.** This Authorization Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to be originals, and shall together constitute but one and the same instrument.

**SECTION 4.08. Titles and Headings.** The titles of the Articles and the headings of the Sections are not a part of this Authorization Agreement, and shall not be deemed to affect the meaning or construction of any of its provisions.

**SECTION 4.09. Conformity with Regulations.** The Secretary hereby affirms that, with respect to the rights of the Indenture Trustee and the Holders, this Authorization Agreement conforms to its existing regulations governing the issuance of commitments to guarantee and guarantees under Title XI of the Act.

**IN WITNESS WHEREOF**, this Authorization Agreement has been duly executed by the parties hereto as of the day and year first above written.

(SEAL)

Attest:

\_\_\_\_\_  
Assistant Secretary  
Maritime Administration

(SEAL)

Attest:

\_\_\_\_\_

UNITED STATES OF AMERICA,  
SECRETARY OF TRANSPORTATION,

MARITIME ADMINISTRATOR

BY \_\_\_\_\_

\_\_\_\_\_  
INDENTURE TRUSTEE

BY \_\_\_\_\_

**SECURITY AGREEMENT  
SPECIAL PROVISIONS**

THIS SECURITY AGREEMENT, dated \_\_\_\_\_ (the "Security Agreement"), between \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Shipowner") and THE UNITED STATES OF AMERICA (the "United States"), represented by the Secretary of Transportation, acting by and through the Maritime Administrator (the "Secretary"), pursuant to Title XI of the Act.

**RECITALS**

A. The Shipowner has entered into the Construction Contract with \_\_\_\_\_, the Shipyard for the Construction of the vessels (when used collectively, the "Vessels"; when used singularly, the "Vessel").

B. On the date hereof, the Secretary entered into, and the Shipowner accepted a Commitment to Guarantee Obligations, Contract No. MA-\_\_\_\_\_, whereby the United States has committed itself to guarantee the payment in full of all the unpaid interest on, and the unpaid principal balance of, Obligations (as defined herein) in the aggregate principal amount equal to \_\_\_% of the Depreciated Actual Cost or the Actual Cost of the Vessels, as the case may be, on the Closing Date, which amounts are set out in Table A.

C. The Shipowner has entered into the Bond Purchase Agreement providing for the sale and delivery, on the Closing Date, of obligations in the aggregate principal amount of \$\_\_\_\_\_ to be designated "United States Government Guaranteed Ship Financing Obligations, \_\_\_\_\_ Series" (the "Obligations") having the maturity date and interest rate set forth in the Bond Purchase Agreement, the Indenture and the Obligations.

D. On the date hereof, the Shipowner and \_\_\_\_\_, a \_\_\_\_\_ as Indenture Trustee, executed and delivered the Trust Indenture (the "Indenture") pursuant to which the Shipowner will issue the Obligations.

E. On the date hereof, the Secretary and the Indenture Trustee executed the Authorization Agreement, Contract No. MA-\_\_\_\_\_, which authorizes the Indenture Trustee to endorse, execute, and authenticate the Secretary's Guarantee on each of the Obligations.

F. As security for the due and timely payment of the Secretary's Note, issued this day by the Shipowner, and for the Secretary's issuance of the Guarantees, the Shipowner has executed and delivered the Security Agreement, Contract No. MA-\_\_\_\_\_, the Mortgage, Contract No. MA-\_\_\_\_\_, and the Financial Agreement, Contract No. MA-\_\_\_\_\_, granting the Secretary a security interest in, among other things, the Construction Contract, the Vessels and certain other property, tangible and intangible, which the

Shipowner now has or hereafter will acquire, and all of the proceeds thereof.

G. As further security to the Secretary and in consideration of the Secretary's agreeing to issue the Guarantees, the Shipyard has granted the Secretary a security interest in the Vessel, its hull, component parts, machinery, and equipment during the construction period and has executed on this date the Consent of Shipyard to the assignment of the Construction Contract to the Secretary.

H. In order to implement certain aspects of the transactions contemplated by the Security Agreement and the Financial Agreement, the Secretary, the Shipowner and \_\_\_\_\_, a \_\_\_\_\_ (the "Depository") have entered into the Depository Agreement, Contract No. MA-\_\_\_\_\_, on the date hereof.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to provide security to the Secretary for the Secretary's Note provided for herein, the parties hereto hereby agree as follows:

1. Concerning these Special and General Provisions. This Security Agreement shall consist of two parts: the Special Provisions and the General Provisions attached hereto as Exhibit 1 of the Security Agreement and incorporated herein by reference. In the event of any conflict, or inconsistency between the Special Provisions of this Security Agreement and Exhibit 1, the Special Provisions shall control.

2. The following additions, deletions and amendments are hereby made to the Security Agreement:

(a) Concerning Section 2.05. (1) In connection with Sections 2.05(b)(3) and the last paragraph of Section 2.05(e) the maximum amount of self-insurance permitted to the Shipowner under the last paragraph thereof shall be \$\_\_\_\_\_ on an annual aggregate basis after application of the \$\_\_\_\_\_ per accident deductible; and (2) In connection with clause (ii) of the initial paragraph of Section 2.05(c), the Secretary shall permit payment of losses up to the amount of \$\_\_\_\_\_ to be made directly to the Shipowner under the circumstances specified therein.

(b) Concerning Section 9.01. Subject to Section 9.01 of the Security Agreement, any notice, request, demand, direction, consent, waiver, approval or other communication, when given to a party hereto, shall be addressed to:

Secretary as: SECRETARY OF TRANSPORTATION  
c/o Maritime Administrator  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Shipowner as: \_\_\_\_\_  
\_\_\_\_\_

Indenture Trustee as: \_\_\_\_\_  
\_\_\_\_\_

(c) Governing Law. This Security Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with U.S. maritime laws, to the extent applicable, and otherwise in accordance with the laws of the State of \_\_\_\_\_.

IN WITNESS WHEREOF, this Security Agreement has been executed by the parties as of the day and year first written.

(SEAL)

\_\_\_\_\_  
SHIPOWNER

Attest:

BY: \_\_\_\_\_

\_\_\_\_\_

(SEAL)

UNITED STATES OF AMERICA  
SECRETARY OF TRANSPORTATION  
MARITIME ADMINISTRATOR

Attest:

BY: \_\_\_\_\_

\_\_\_\_\_  
Assistant Secretary  
Maritime Administration

### **EXHIBITS TO THE SECURITY AGREEMENT**

Exhibit 1--General Provisions Incorporated into the Security Agreement by Reference

Schedule X - Schedule of Definitions

Exhibit 2 -- Form of Secretary's Note

Exhibit 3 -- Form of First Preferred Fleet Mortgage

Exhibit 4 -- Form of Financial Agreement

Exhibit 5 -- Form of Consent of Shipyard

Exhibit 6 -- Form of Construction Contract

Exhibit 7 -- Form of Depository Agreement

**TABLE A**

The aggregate Actual Cost of the Vessels as of the date hereof as determined by the Secretary, namely, (i) the amounts paid by or for the account of the Shipowner as of the date hereof for the Construction of the Vessels, plus (ii) the amount which the Shipowner was on said date obligated under the Construction Contract or otherwise to pay from time to time thereafter for the Construction of the Vessels less the Depreciation of the Vessels as of the date hereof as determined by the Secretary is \$ \_\_\_\_\_, both calculated and itemized for each Vessel as follows:

	<u>Amount Paid</u>	<u>Amount Obligated To be Paid</u>	<u>Total</u>
Contract Price			
Changes and Extras			
Owner Furnished Items			
Engineering & Inspection			
Net Interest During Construction			
Estimated Escalation			
Estimated Guarantee Fee			
Total Actual Cost			
Depreciation from Vessel Delivery date to _____:			
Total Depreciated Actual Cost			

**Schedule of Definitions**

“**Act**” means the Merchant Marine Act, 1936, as amended and in effect on the Closing Date.

“**Actual Cost**” means the actual cost of a Vessel, as set forth in Table A of the Security Agreement or as subsequently redetermined by the Secretary pursuant to the Security Agreement and the Act.

“**Audited Financial Statements**” mean the annual audit of the Shipowner’s accounts in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of a state or other political subdivision of the United States, who may be the Shipowner’s regular auditors.

“**Authorization Agreement**” means the Authorization Agreement, Contract No. MA-\_\_\_\_\_, between the Secretary and the Indenture Trustee, whereby the Secretary authorizes the Guarantee of the United States to be endorsed on the Obligations, as the same is originally executed, or as modified, amended or supplemented therein.

“**Authorized Newspaper**” means The Wall Street Journal or if it ceases to exist, then in such other newspaper as the Secretary may designate.

“**Bond Purchase Agreement**” means the agreement for the purchase of the Obligations, executed by the Shipowner and the purchaser named therein, as originally executed, modified or supplemented.

“**Business Day**” means a day which is not a Saturday, Sunday or a bank holiday under the laws of the United States or the State of \_\_\_\_\_.

“**Chapter 313**” means the provisions of 46 United States Code Chapter 313, as amended.

“**Classification Society**” means the American Bureau of Shipping or as specified in the Special Provisions of the Security Agreement, either a member of the International Association of Classification Societies (“IACS”) that has been ISO 9000 series registered or an IACS member that meets the requirements of the International Maritime Organization, is qualified under a Quality Systems Certificate Scheme and recognized by the United States Coast Guard and the Secretary as meeting acceptable standards.

“**Closing Date**” or “**Closing**” means the date when the Security Agreement is executed and delivered by the Shipowner.

“**Commitment to Guarantee Obligations**” has the same meaning as the term Guarantee Commitment.

“**Consent of Shipyard**” means each, and "Consents of Shipyards" means every, document evidencing such

Shipyard's consent to the assignment of a Construction Contract to the Secretary under the Security Agreement as originally executed, modified, amended or supplemented.

**“Construction”** means construction of the Vessels, including designing, inspecting, outfitting and equipping thereof.

**"Construction Contract"** means each, and **"Construction Contracts"** means every, contract relating to the Construction of the Vessels between the Shipowner and the Shipyard, as originally executed or as modified or supplemented pursuant to the applicable provisions thereof.

**“Construction Fund”** has the meaning specified in Article IV of the Security Agreement.

**"Default"** when used in the Security Agreement has the meaning attributed to it in Article VI thereof.

**"Delivery Date"** means the date on which a Vessel is delivered to and accepted by the Shipowner.

**"Depository"** shall mean the institution designated in the Depository Agreement or any successor.

**"Depository Agreement"** shall mean the Depository Agreement, Contract No. MA-\_\_\_\_\_ among the Shipowner, the Secretary and the Depository, as originally executed or as modified or supplemented in accordance with the applicable provisions thereof.

**"Depreciated Actual Cost"** means the depreciated actual cost of a Vessel, as set forth in Table A of the Security Agreement or as subsequently redetermined by the Secretary pursuant to the Security Agreement and the Act.

**“Eligible Investment”** has the meaning given by Section 5 of the Financial Agreement.

**“Escrow Fund”** means the account held by the Secretary, established under Section 1108 of the Act and administered pursuant to Article V of the Security Agreement.

**"Financial Agreement"** means the Title XI Reserve Fund and Financial Agreement, Contract No. MA-\_\_\_\_\_, executed by the Shipowner and the Secretary, as originally executed or as modified, amended or supplemented.

**“Financial Asset”** has the meaning given by Article 8-102(a)(9) of the UCC.

**“Government Use”** means the use of a Vessel or requisition of its title required by a government or governmental body of the United States of America.



**"Guarantee"** means each, and the **"Guarantees"** means every, guarantee of an Obligation by the United States pursuant to Title XI of the Act, as provided in the Authorization Agreement.

**"Guarantee Commitment"** means the Commitment to Guarantee Obligations, Contract No. MA-\_\_\_\_\_, dated as of \_\_\_\_\_, executed by the Secretary and accepted by the Shipowner relating to the Guarantees, as originally executed or as modified, amended or supplemented.

**"Increased Security"** means the Secretary's Note, the Security Agreement, the Vessels, the Security, the Escrow Fund, the Title XI Reserve Fund, the Construction Fund, and any other security agreement between the Secretary and the Shipowner relating to any vessels financed under the Act, and the Policies of Insurance, and the proceeds of the foregoing.

**"Indenture"** means the Trust Indenture dated as of the Closing Date between the Shipowner and the Indenture Trustee, as originally executed, or as modified, amended or supplemented.

**"Indenture Default"** has the meaning specified in Article VI of the Indenture.

**"Indenture Trustee"** means \_\_\_\_\_, a \_\_\_\_\_, and any successor trustee under the Indenture.

**"Interest Payment Date"** means with respect to any Obligation, the date when any installment of interest on such Obligation is due and payable.

**"Long Term Debt"** means, as of any date, the total notes, bonds, debentures, equipment obligations and other evidence of indebtedness that would be included in long term debt in accordance with generally accepted accounting principles. There shall also be included any guarantee or other liability for the debt of any other Person, not otherwise included on the balance sheet.

**"Maturity"** when used with respect to any Obligation, means the date on which the principal of such Obligation becomes due and payable as therein provided, whether at the Stated Maturity or by redemption, declaration of acceleration or otherwise.

**"Moneys Due with Respect to Construction of the Vessels"** has the meaning specified in Section 1.03 of the Security Agreement.

**"Mortgage"** means the first preferred fleet mortgage on the Vessels (or first preferred ship mortgage on the Vessel, as the case may be), Contract No. MA-\_\_\_\_\_, by the Shipowner to the Secretary, as originally executed, modified, amended or supplemented.

"**Mortgagee**" means the Secretary, as mortgagee under the Mortgage.

"**Mortgagor**" means the Shipowner, as mortgagor under the Mortgage.

"**Net Worth**" means, as of any date, the total of paid-in capital stock, paid-in surplus, earned surplus and appropriated surplus, and all other amounts that would be included in net worth in accordance with generally accepted accounting principles, but exclusive of (1) any receivables from any stockholder, director, Officer or employee of the Company or from any Related Party (other than current receivables arising out of the ordinary course of business and not outstanding for more than 60 days) and (2) any increment resulting from the reappraisal of assets.

"**Obligation**" means each, and "**Obligations**" means every, obligation of the Shipowner bearing a Guarantee that is authenticated and delivered under the Authorization Agreement and Indenture.

"**Obligee**" means each, and "**Obligees**" means every, holder of an Obligation.

"**Offering Circular**" means the offering circular relating to the issuance and sale of each Obligation.

"**Officer's Certificate**" means a certificate conforming to Section 1.02 of the Security Agreement or the Indenture as the context may require.

"**Outstanding**" when used with reference to the Obligations, shall mean all Obligations theretofore issued under the Indenture, except: (1) Obligations Retired or Paid; and (2) Obligations in lieu of which other Obligations have been issued under the Indenture.

"**Paying Agent**" means any bank or trust company meeting the qualifications in Section 7.02(a) of the Indenture and appointed by the Shipowner under Section 4.02 of the Indenture to pay the principal of (and premium, if any) or interest on the Obligations on behalf of the Shipowner.

"**Payment Default**" has the meaning specified in Section 6.01 of the Security Agreement.

"**Person**" or "**Persons**" means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, unincorporated organization, government, or any agency or political subdivision thereof.

"**Policies of Insurance**" and "**policies**" means all cover notes, binders, policies of insurance and certificates of entry in a protection and indemnity association, club or syndicate with respect to the Vessel, (including all endorsements and riders thereto), including but not limited to all insurance required under Section 2.05

of the Security Agreement.

**"Proportionate Part"** means with respect to the item in question, the portion of the item in question, as of the date of any calculation, which bears the same proportion to the entire amount of the item in question as: (x) the Depreciated Actual Cost of the Vessel as of the date of such calculation bears to (y) the Depreciated Actual Cost of all the Vessels as of such date (excluding the Depreciated Actual Cost of any Vessel upon which its Obligations have been redeemed pursuant to Section 3.06 of the Indenture), all as determined by the Secretary.

**"Redemption Date"** means a date fixed for the redemption of an Obligation by the Indenture.

**"Related Party"** means one that can exercise control or significant influence over the management and/or operating policies of another Person, to the extent that one of the Persons may be prevented from fully pursuing its own separate interests. Related parties consist of all affiliates of an enterprise, including (1) its management and their immediate families, (2) its principal owners and their immediate families, (3) its investments accounted for by the equity method, (4) beneficial employee trusts that are managed by the management of the enterprise, and (5) any Person that may, or does, deal with the enterprise and has ownership of, control over, or can significantly influence the management or operating policies of another Person to the extent that an arms-length transaction may not be achieved.

**"Request"** means a written request to a Person for the action therein specified, signed by a Responsible Officer of the Person making such request.

**"Responsible Officer"** means (1) in the case of any business entity, the chairman of the board of directors, the president, any executive or senior vice president, the secretary, the treasurer, member or partner, (2) in the case of any commercial bank, the chairman or vice-chairman of the executive committee of the board of directors or trustees, the president, any executive or senior vice president, the secretary, the treasurer, any trust officer, and (3) with respect to the signing or authentication of Obligations and Guarantees by the Indenture Trustee, any person specifically authorized by the Indenture Trustee to sign or authenticate Obligations.

**"Retired or Paid,"** as applied to Obligations and the indebtedness evidenced thereby, means that such Obligations shall be deemed to have been so retired or paid and shall no longer be entitled to any rights or benefits provided in the Indenture if: (1) such Obligations shall have been paid in full; (2) such Obligations shall have been canceled by the Indenture Trustee; or (3) such Obligations shall have become due and payable at Maturity and funds sufficient for the payment of such Obligations (including interest to the date of Maturity, or in the case of a payment after Maturity, to the date of payment, together with any premium thereon) and available for such payment and are held by the Indenture Trustee or any Paying Agent with irrevocable directions, to pay such Obligations; provided that, the foregoing definition is subject to Section

6.08 of the Indenture.

**"Rights Under the Construction Contracts and Related Contracts"** shall have the meaning specified in Section 1.03 of the Security Agreement.

**"Secretary"** means the Secretary of Transportation or any officials duly authorized to perform the functions of the Secretary of Transportation under Title XI of the Act.

**"Secretary's Note"** means a promissory note or promissory notes issued and delivered by the Shipowner to the Secretary substantially in the form of Exhibit 2 of the Security Agreement, including any promissory note issued in substitution for, or any endorsement or supplement thereof.

**"Secretary's Notice"** means a notice from the Secretary to the Indenture Trustee that a Default, within the meaning of Section 6.01(b) of the Security Agreement has occurred.

**"Security"** has the meaning specified in Section 1.03 of the Security Agreement.

**"Securities Account"** has the meaning given by Article 8-501 of the UCC.

**"Securities Intermediary"** has the meaning given by Article 8-102(a)(14) of the UCC and also means the Depository.

**"Security Agreement"** means the security agreement, Contract No. MA-\_\_\_\_\_, dated as of the Closing Date, consisting of the special provisions, the general provisions and this schedule X, executed by the Shipowner as security for the Secretary, as originally executed or as modified, amended or supplemented.

**"Security Default"** has the meaning specified in Section 6.01 of the Security Agreement.

**"Shipowner"** means \_\_\_\_\_ a \_\_\_\_\_ corporation, and shall include its successors and assigns.

**"Shipyard"** means each, and **"Shipyards"** means every, Shipyard identified in Recital A to the Guarantee Commitment.

**"Stated Maturity"** means the date determinable as set forth in any Obligation as the final date on which the principal of such Obligation is due and payable.

"**Successor**" means a Person formed by or surviving a consolidation or merger with the Shipowner or to which the Vessels have been sold.

"**Title XI**" means Title XI of the Act.

"**Title XI Reserve Fund**" has the meaning specified in the Financial Agreement.

"**Title XI Reserve Fund and Financial Agreement**" means the Financial Agreement.

"**UCC**" means the Uniform Commercial Code as enacted in the State of \_\_\_\_\_.

"**Vessel**" means each vessel and "**Vessels**" means the vessels, with respect to the (Vessel name), Official Number \_\_\_\_\_, and (\_\_\_\_), Official Number \_\_\_\_\_, financed with the Obligations.

"**Working Capital**" shall mean the excess of current assets over current liabilities, both determined in accordance with generally accepted accounting principles and adjusted as follows:

(1) In determining current assets, there shall also be deducted: (A) Any securities, obligations or evidence of indebtedness of a Related Party or of any stockholder, director, officer or employee (or any member of his family) of the Company or of such Related Party, except advances to agents required for the normal current operation of the Company's vessels and current receivables arising out of the ordinary course of business and not outstanding for more than 60 days; and (B) An amount equal to any excess of unterminated voyage revenue over unterminated voyage expenses;

(2) In determining current liabilities, there shall be deducted any excess of unterminated voyage expenses over unterminated voyage revenue; and

(3) In determining current liabilities, there shall be added one half of all annual charter hire and other lease obligations (having a term of more than six months) due and payable within the succeeding fiscal year, other than charter hire and such other lease obligations already included and reported as a current liability on the Company's balance sheet.

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**ARTICLE I**  
**DEFINITIONS; OFFICER'S CERTIFICATES; GRANTING CLAUSE**

**SECTION 1.01. Definitions.** All capitalized terms used but, not defined herein, shall have the meaning ascribed in Schedule X.

**SECTION 1.02. Officers Certificates.** To satisfy a covenant or condition provided for in this Security Agreement, the Responsible Officer of the Person making such Officers 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 Officers knowledge that such condition or covenant has been met. An Officers Certificate shall set forth the pertinent supporting information and shall be subject to the Secretary's review of its adequacy and accuracy.

**SECTION 1.03. Granting Clause.** (a) In order to create a present security interest in the Secretary, the Shipowner's does hereby grant, sell, convey, assign, transfer, mortgage, pledge, set over and confirm unto the Secretary continuing security interests in all of the right, title and interest of the Shipowner's in and to all of the following, whether now owned or existing or hereafter arising or acquired:

(1) Each Construction Contract (insofar as it relates to the Construction of a Vessel under its related Construction Contract), together with all other contracts, whether now in existence or hereafter entered into, relating to the Construction of each Vessel. Said right, title and interest in and to the Construction Contracts, and the other contracts conveyed to the Secretary by this subsection are hereinafter referred to collectively as the "Rights Under the Construction and Related Contracts."

(2) The Shipowner's rights to receive all moneys which from time to time may become due to the Shipowner's with respect to the Construction of each Vessel regardless of the legal theory by which moneys are recovered. Said right, title and interest in and to the moneys, cash, bonds, claims, and securities conveyed by this subsection are herein referred to collectively as the "Moneys Due with Respect to the Construction of the Vessels." The Secretary acknowledges and agrees that the Moneys Due with Respect to the Construction of the Vessels will be paid directly to the Depository for application in accordance with this Security Agreement and the Indenture.

(3) All goods, whether equipment or inventory appertaining to or relating to each Vessel, whether or not on board or ashore and not covered by the Mortgage, and any charter hire relating to each Vessel.

(4) The Title XI Reserve Fund and all moneys, instruments, negotiable documents, chattel paper, and proceeds thereof currently on deposit or hereafter deposited in the Title XI Reserve Fund.

(5) The Construction Fund and all moneys, instruments, negotiable documents, chattel

paper and proceeds thereof currently on deposit or hereafter deposited in said Fund.

(6) All moneys, instruments, negotiable documents, chattel paper and proceeds thereof held by the Depository under the Depository Agreement.

(7) Proceeds of Policies of Insurance relating to each Vessel and, whether or not insured, any general average claims or loss of hire claims Shipowner's may have with respect to each Vessel.

(8) All proceeds of the collateral described in paragraphs (1) through (7) of this Section.

The Secretary shall have, upon execution and delivery thereof, as further security, certain right, title and interest in and to the following:

(9) The Mortgage, to be executed and delivered by the Shipowner's to the Secretary, as mortgagee, on the date hereof, covering each Vessel.

(b) The right, title and interest of the Secretary pursuant to Section 1.03(a) is herein, collectively, called the "Security." The Secretary shall hold the Security as collateral security for all of the obligations and liabilities of the Shipowner's under the Secretary's Note and as collateral security for and with respect to the Guarantees whether now made or hereafter entered into.

(c) Notwithstanding paragraphs (a) and (b) of this Section, (1) the Shipowner's shall remain liable to perform its obligations under each Construction Contract and the above-mentioned other contracts; (2) the Secretary shall not, by virtue of this Security 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's thereunder; and (3) if there is no existing Default, the Shipowner's shall (subject to the rights of the Secretary 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 paragraphs (a) and (b) of this Section were not applicable.

(d) The Shipowner's hereby agrees with the Secretary that the Security is to be held by the Secretary subject to the further agreements and conditions set forth herein.

## **ARTICLE II**

### **SHIPOWNERS REPRESENTATIONS AND AGREEMENTS**

The Shipowner's hereby represents and agrees, so long as this Security Agreement shall not have been discharged, as follows:

**SECTION 2.01. Shipowner's Representations, Agreements, Organization and Existence.** (a) General Representations. The Shipowner's hereby represents and warrants that the following are true statements as of the date hereof and further warrants that they shall remain true thereafter:

(1) The Shipowner's is duly organized, validly existing and in good standing under the laws of the jurisdiction designated in the initial paragraph of the Special Provisions hereof and shall maintain such existence. The Shipowner's has not failed to qualify to do business in any jurisdiction in the United States in which its business or properties require such qualification, and 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;

(2) the Shipowner's had and has legal power and authority to enter into and carry out the terms of the Guarantee Commitment, the Construction Contract, Bond Purchase Agreement, Obligations, Indenture, Security Agreement, Secretary's Note, Mortgage, Financial Agreement, and Depository Agreement (the "Documents");

(3) each of the Documents has been duly authorized, executed and delivered by the Shipowner's and constitutes, in accordance with its respective terms, legal, valid and binding instruments enforceable against the Shipowner's, except to the extent limited by applicable bankruptcy, reorganization, insolvency, moratorium or similar laws of general application relating to or affecting the enforcement of creditors rights as from time to time in effect;

(4) the consummation of the transactions contemplated by and compliance by the Shipowner's of all the terms and provisions of the Documents will not violate any provisions of the formation documents of the Shipowner's and will not result in a breach of the terms and provisions of, or constitute a default under any other agreement or undertaking by the Shipowner or by which the Shipowner's is bound or any order of any court or administrative agency entered into in any proceedings to which the Shipowner's is or has been a party; and

(5) there is no litigation, proceeding or investigation pending or, to the best of the Shipowner's knowledge, threatened, involving the Shipowner's or any of its property which could prevent or jeopardize the performance by the Shipowner's of its obligations under the Documents;

(b) Shipowner's United States Citizenship. The Shipowner's is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916, as amended, and shall remain such a citizen for operation in the trades in which the Shipowner's proposes to operate the Vessels and in the event the Shipowner's shall cease to be such a citizen, the Shipowner's shall notify the Secretary immediately of such fact.

(c) Taxes. The Shipowner's has paid or caused to be paid all taxes assessed against it, unless the same are being contested in good faith or an authorized extension of time has been granted.

**SECTION 2.02. Covenants Concerning the Vessels.** (a) Title to and Possession of the Vessels.

On the date of this Security Agreement, the Shipowner's represents and warrants that it lawfully owns each Vessel free from any liens, encumbrances, security interests, charges, or rights in rem (subject only to (1) the equity of the Shipyard under the Construction Contract, if any, (2) liens on any undelivered Vessel which the Shipyard is obligated to discharge under the Construction Contract, (3) any security interest subordinated to the Secretary's security interest permitted under the Special Provisions hereof, (4) the Secretary's rights hereunder and (5) the liens permitted by paragraph (d)(3) of this Section). The Shipowner's shall, for the Secretary's benefit, warrant and defend the title to, and possession of, each Vessel and every part thereof against the claims and demands of all Persons whomsoever.

(b) Sale, Mortgage, Transfer or Charter of the Vessels. (1) The Shipowner's shall not, without the Secretary's prior written consent, sell, mortgage, demise charter or transfer any Vessel to any Person (or charter the Vessel to a Related Party under any form of charter).

(2) The Shipowner's hereby covenants that: (A) it will not enter into any time charter of the Vessels in excess of six months unless the time charter contains the following provision, "This time charter is subject to each of the rights and remedies of the Secretary of Transportation and has been assigned to the Secretary under a Security Agreement and Mortgage, each executed by the Shipowner's in favor of the Secretary with respect to the Vessels being chartered." and (B) it shall, within 10 calendar days of entering into any time charter in excess of six months, transmit a copy of the time charter to the Secretary.

(c) Taxes and Governmental Charges. The Shipowner's shall pay and discharge, or cause to be paid and discharged, on or before the same shall become delinquent, all taxes, assessments, government charges, fines and penalties lawfully imposed upon each Vessel, unless the same are being contested in good faith.

(d) Liens. (1) As a condition precedent to each payment by the Shipowner's under the Construction Contract, the Shipowner's shall require an Officer's Certificate from the Shipyard stating that once the Shipyard receives said payment, there will be no liens or rights in rem against the respective Vessel. At the Delivery Date of each Vessel, the Shipowner's and the Shipyard shall provide an Officers Certificate stating that there are no liens or rights in rem against the respective Vessel except for the Mortgage.

(2) After the Delivery Date of each Vessel, the Shipowner's shall satisfy, or cause to be satisfied, within 30 days of its knowledge thereof, any lien or encumbrance or right in rem which shall be filed against such Vessel unless the same is being contested in good faith; and

(3) Neither the Shipowner's, any charterer, the master of any Vessel, nor any other Person has or shall have any right, power or authority, without the Secretary's prior written consent, to create, incur or permit to be placed or imposed on any Vessel any lien, encumbrance, security

interest, charge, or rights in rem, and statutory liens incident to current operations unless such statutory liens are subordinate to the Mortgage.

(e) Compliance with Applicable Laws. The Shipowner's shall at all times be in compliance with all applicable U.S. laws. In addition, each Vessel (1) shall be designed to meet, and on the Delivery Date thereof and at all times thereafter shall meet all requirements of applicable laws, treaties and conventions, and of applicable rules and regulations thereunder, and (2) shall have on board valid certificates showing compliance therewith; provided that the foregoing shall not apply if (A) the Vessel is in Government Use; (B) there has been an actual or constructive total loss or an agreed or compromised total loss of such Vessel; or (C) there has been any other loss with respect to such Vessel and the Shipowner shall not have had a reasonable time to repair the same.

(f) Vessels Operation. Except when the Vessel is in Government Use, the Shipowner shall not (1) cause or permit the Vessels to be operated in any manner contrary to law or to any lawful rules or regulations of the Maritime Administration, (2) remove or attempt to remove the Vessels beyond the limits of the United States without the Secretary's prior written consent except on voyages with the intention of returning to the United States, or (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.

(g) Vessels Condition and Maintenance. (1) Each Vessel shall be constructed, maintained and operated so as to meet, at all times, the highest classification, certification, rating and inspection standards for Vessels of the same age and type as may be imposed by the Classification Society; provided that, the foregoing shall not apply if the Vessel has been (i) under Government Use, (ii) an actual or constructive total loss or an agreed or compromised total loss of such Vessel, or (iii) any other loss with respect to such Vessel and the Shipowner's shall not have had a reasonable time to repair the same;

(2) On the Delivery Date of each Vessel, the Shipowner's shall furnish to the Secretary 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 Secretary a Certificate of Class with respect to such Vessel issued by the Classification Society. Subsequently, the Shipowner's shall annually (A) furnish to the Secretary a Certificate of Confirmation of Class issued by the Classification Society showing that the above-mentioned classification and rating have been retained for each Vessel and (B) furnish to the Secretary copies of all Classification Society reports, including periodic and damage surveys for each Vessel; 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.

(3) Notwithstanding Section 2.02(g)(2), if the Vessel is a barge which is not classed, then the Shipowner's 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, and shall perform or cause to be performed at least once every five years and at any other time reasonably required by the Secretary, a survey and inspection of the Vessels by an independent marine surveyor approved by the Secretary; and provided that, no such surveys will be required within the last three years prior to the final Stated Maturity of the Obligations. The Shipowner's shall furnish two copies of the report of such independent marine surveyor to the Secretary within 15 days



of such survey and inspection. The Shipowner's shall deliver to the Secretary annually an Officer's Certificate stating the condition and maintenance of each Vessel; provided further, that none of this Section shall apply when the Vessel is in Government Use.

(h) Material Changes in the Vessels. After the Delivery Date of any undelivered Vessel or the Closing Date of any already delivered Vessel, the Shipowner's shall not 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 Secretary's prior written consent.

(i) Documentation of the Vessels. Upon the Delivery Date and thereafter, each Vessel shall be and shall remain documented under the laws of the United States of America.

**SECTION 2.03. Maintenance of Construction Contract**. (a) The Construction Contract shall be maintained in full force and effect insofar as it relates to the due performance by the Shipowner's and the Shipyard of all their respective obligations thereunder and the Shipowner's shall not, without the Secretary's prior written 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 Secretary's prior written consent shall not be necessary, but prompt written notice to the Secretary 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's desire to make which do not exceed, with respect to any item of the Vessel's construction, one (1%) percent of the Vessels 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 the Vessels to perform as originally intended by the Construction Contract without the Secretary's prior written consent. The Secretary 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. No withdrawals may be made from the Escrow Fund for work that is not determined to be includable in Actual Cost.

(b) 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 Secretary's prior written consent, except to the extent reasonably required to reflect the change orders under paragraph (a) of this Section.

**SECTION 2.04. Delivery Requirements**. At or prior to the Delivery Date, the Shipowner's shall have:

(a) documented the Vessel under the laws of the United States with the United States Coast Guard;

(b) executed and delivered to the Secretary the Mortgage (or mortgage supplement) substantially in the form of Exhibit 3 annexed hereto;

(c) recorded the Mortgage (or, if appropriate, a mortgage supplement) in the National Vessel Documentation Center of the United States Coast Guard, or its successor;

(d) delivered to the Secretary an Officer's Certificate (1) from the Shipowner and the Shipyard certifying that the Vessel is free of any claim, lien, charge, mortgage, or other encumbrance of any character except as permitted under Section 2.02(d); (2) certifying that 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 the Security Agreement; (3) that the marine insurance as required under Section 2.05 will be in full force and effect at the time of Vessel delivery; (4) certifying that the Vessel was constructed substantially in accordance with the plans and specifications of the Construction Contract; (5) certifying that 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.

(e) delivered to the Secretary (1) an opinion of counsel substantially in the form of Exhibit A to the form of Mortgage; and (2) a certificate of delivery and acceptance from the Shipowner's and the Shipyard to the Secretary with respect to the delivered Vessel;

**SECTION 2.05. Insurance.** (a) Prior to the Delivery Date of each Vessel, the Shipowner's shall, without cost to the Secretary or, with respect to war risk builder's risk insurance mentioned below, without cost to the Shipyard, cause each Vessel to be insured as provided in the Construction Contract and as contemplated by the Consent of Shipyard; provided that, the insurance required by this Section shall be approved by the Secretary.

(b) Upon the Delivery Date of each Vessel and at all times thereafter, the Shipowner's shall, without cost to the Secretary, keep such Vessel insured as indicated below and with such additional insurance as may be specified by the Secretary in an amount in U.S. dollars equal to 110% of the unpaid principal amount of the Proportionate Part of the Secretary's Note, or such greater sum, up to and including the full commercial value of such Vessel as may be required by the Secretary. The Shipowner shall provide 30 days prior written notice to the Secretary of all insurance renewals.

(1) 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 Secretary and/or policies issued by or for the Maritime Administration (or under such other forms of policies as the Secretary 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); and

(2) 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 under the latest (at the time of issue of the policies in question) forms of American Institute of Marine Underwriters' policies approved by the Secretary and/or policies issued by or for the Maritime Administration (or under such other forms of policies as the Secretary may approve in writing) insuring such Vessel against the usual risks covered by such forms.

(3) Notwithstanding the foregoing, the Shipowner's, with the Secretary's prior written consent, shall have the right to self-insure up to the amount specified in the Special Provisions hereof for any loss resulting from any one accident or occurrence (other than an actual or constructive total loss of any Vessel).

(c) All policies of insurance under this Section shall provide, so long as this Security Agreement has not been discharged, that payment of all losses shall be made payable to the Secretary for distribution by him to himself, the Shipowner's and (in the case of the insurance required by paragraph (a) of this Section) the Shipyard, except that (i) as provided in paragraph (e) of this Section and (ii) under the policies required by paragraph (b) of this Section, payment of all losses up to the amount specified in the Special Provisions hereof by all insurance underwriters with respect to any one accident, occurrence or event may be made directly to the Shipowner's unless there is an existing Default, or if the Secretary shall have assumed the Shipowner's rights and duties under the Indenture and the Obligations and made any payments in default under the terms of Section 6.09 of the Indenture, in which event payment of all losses shall be made payable to the Secretary as aforesaid.

Any such insurance recoveries to which the Secretary shall be so entitled shall be applied as follows:

(1) 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 Secretary shall (A) if there is no existing Default and if none of the events described in Section 2.07 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 sue and labor charges due or paid by the Shipowner's) covered by the policies, or (to the extent that, as stated in an Officer's Certificate delivered to the Secretary, 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's therefor and (after all known damage with respect to the particular loss shall have been repaired, except to the extent the Shipowner's, with the Secretary's written 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 Secretary, accompanied by written confirmation by the underwriters or a surveyor or adjuster) pay, or consent that the underwriters pay, any balance to the

Shipowner's; or (B) if there is an existing Default, in accordance with a Request of Shipowner's, pay, or consent that the underwriters pay, direct for the Shipowner's proportion of such repairs, liabilities, salvage claims or other charges and expenses (including sue and labor charges due or paid by the Shipowner's) covered by the policies and hold any balance until the same may be paid or applied under clauses (A), (C) or (D) of this subsection, whichever is applicable; or (C) if the Guarantees shall have terminated pursuant to Section 3.02(c) or if the Secretary shall have assumed the Shipowner's rights and duties under the Indenture and the Obligations and made any payments in default under the terms of Section 6.09 of the Indenture and none of the events described in Section 2.07 has occurred, apply the insurance as provided in Section 6.05; or (D) if the Guarantees shall have terminated pursuant to Section 3.02(b) or (d), pay the insurance to the Shipowner's;

(2) 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's shall forthwith deposit with the Secretary any insurance moneys which the Shipowner's receives on account thereof under policies of insurance required by paragraph (a) of this Section, and any such insurance moneys shall be held by the Secretary for 10 days (or such lesser or further time as the Shipowner's and the Secretary may agree upon). Upon the expiration of said period of time, (A) if there is no existing Default and if the Shipowner's, the Shipyard and the Secretary 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 2.07; or (B) if there is no existing Default and if the Shipowner's, the Shipyard and the Secretary 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 Secretary for deposit on account of interest under clause (ii) below) shall be deposited in the Escrow Fund, in such amount and to the extent available, so that the moneys in the Escrow Fund after such deposit shall be equal to (i) the principal amount of the Proportionate Part of the Outstanding Obligations 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 Secretary (said moneys to be subject to withdrawal in the same manner as moneys originally deposited in said Escrow Fund); and the balance, if any, of such insurance moneys held by the Secretary shall be paid to the Shipowner's; and

(3) In the event of an accident, occurrence or event resulting in an actual or constructive total loss or an agreed or compromised total loss of any Vessel, whether prior to or after the Delivery Date of such Vessel, and the insurance moneys have not been applied as provided in paragraph (c)(2) of this Section, the Shipowner's shall forthwith deposit with the Secretary any insurance moneys which the Shipowner's receives on account thereof under policies of insurance required by this Section, and any such insurance moneys received by the Secretary, whether from the Shipowner's or otherwise, or held by the Secretary pursuant to paragraph (c)(2) of this Section, shall (A) if there is no existing Default, be applied, to the extent necessary, pursuant to Section 2.07; (B) if there is an existing Security Default, be held until the same may be applied under clauses (A), (C), or (D) of this subsection, whichever is applicable; (C) if the guarantees shall have terminated pursuant to Section 3.02(c) or if the Secretary shall have assumed the Shipowner's rights and duties under the Indenture and the Obligations and made any payments in default under the terms of Section 6.09 of the Indenture, be applied as provided in Section 6.05; provided that,

notwithstanding the foregoing clauses (A), (B) and (C) of this subsection, the Shipowner's shall not be required to so deposit with the Secretary insurance moneys in an amount which, together with funds otherwise available for the redemption of Obligations is in excess of that required for the redemption of the Proportionate Part of the Outstanding Obligations pursuant to Section 3.05 of the Indenture and for the payment to the Secretary of a Proportionate Part of all other sums that may be secured by this Security Agreement and the Mortgage; or (D) if the Guarantees shall have terminated pursuant to Section 3.02(b) or 3.02(d), be paid to the Shipowner's.

(d) In the event of an accident, occurrence or event resulting in a constructive total loss of any Vessel, the Secretary shall have the right (with the prior written consent of the Shipowner's, unless there is an existing Default, and at any time prior to the Delivery Date of such Vessel also with the prior written 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 Secretary, then the Secretary shall have the right to abandon such Vessel to the underwriters of such policies, free from lien of this Security Agreement and the Mortgage.

(e) Commencing on the Delivery Date of each Vessel, the Shipowner's shall, without cost to the Secretary, keep each such Vessel insured against marine and war risk protection and indemnity risks and liabilities by policies of insurance approved by the Secretary as to form and amount; provided that, (1) the Shipowner's shall, as soon as possible before such Delivery Date, present any such policy to the Secretary (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 60 days after the Secretary shall notify the Shipowner's of a desired change in the form and/or amount thereof, whichever shall first occur, and (3) war protection and indemnity insurance shall be required unless the Secretary gives written notice to the Shipowner's stating that such insurance is not required.

Such policies may provide that (1) if the Shipowner's 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's shall have incurred the loss, damage or expense in question, any such loss shall be paid to the Shipowner's in reimbursement if there is no existing Default of which the underwriter has written notice from the Shipowner's or the Secretary, or, if there is such an existing Default, to the Secretary to be held and applied as follows: (A) applied as provided in Section 6.05 in the event the Guarantees shall have terminated pursuant to Section 3.02(c) or if the Secretary shall have assumed the Shipowner's rights and duties under the Indenture and the Obligations and made any payments in default under the terms of Section 6.09 of the Indenture, or (B) to the extent not theretofore applied pursuant to Section 6.05, paid forthwith to the Shipowner's upon its Request in the event there is no existing Default or the Guarantees shall have terminated pursuant to Section 3.02(b) or (d) at the date of delivery of such Request; provided that, irrespective of the foregoing, with the Secretary's prior written consent, the Shipowner's shall have the right to self-insure in an amount up to the limit specified in the Special Provisions hereof with respect to each

accident, occurrence or event, except that, with respect to cargo or property carried, the Shipowner's, with the Secretary's prior written consent, shall have the right to self-insure in an amount up to the limit specified in the Special Provisions hereof with respect to each cargo or property carried.

(f) All insurance required under this Section shall be placed and kept with the United States Government or with American and/or British (and/or other foreign, if permitted by the Secretary in writing) insurance companies, underwriters' association or underwriting funds approved by the Secretary. All insurance required under this subsection shall be arranged through marine insurance brokers and/or underwriting agents as chosen by the Shipowner's and approved by the Secretary.

(g) The Secretary 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 written consent of (i) the Shipyard (prior to the Delivery Date of such Vessel) and (ii) (unless there is an existing Default) the Shipowner's. If (1) the Shipowner's shall have given prior consent thereto or (2) there is an existing Default, the Secretary shall have the right in his discretion, and with the prior written 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's and/or the Secretary under such agreement or compromise, together with funds held by the Secretary and available for the redemption of Obligations, is not sufficient to redeem or pay the Proportionate Part of the Outstanding Obligations pursuant to Section 2.07, the Secretary shall not enter into such agreement or compromise without the Shipowner's prior written consent.

(h) 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 Secretary's prior written consent, of the use of any Vessel by the United States Government or by any governmental body of the United States, or by any other government or governmental body, 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 Secretary in writing, the Shipowner's for loss or damage covered by the insurance required hereunder or resulting from the risks under paragraphs (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 paragraph, the Shipowner shall promptly furnish to the Secretary 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 Secretary, for loss or damage resulting from the risks under paragraphs (a), (b), and (e) of this Section or that the Shipowner is entitled to just compensation therefor.

(i) All insurance required (A) under paragraph (a) of this Section shall be taken out in the names

of the Shipowner, the United States and the Shipyard as assureds, and (B) under paragraphs (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 Secretary, 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 10 days' prior written notice of any cancellation for the nonpayment of premiums, commissions, club calls, assessments or advances shall be given to the Secretary by the insurance underwriters.

(j) The Shipowner shall not, without the Secretary's prior written consent, (1) do any act, nor voluntarily suffer or permit any act to be done, whereby any insurance required by this Section 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 paragraph 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 2.07.

(k) 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 Secretary, on the Shipowner's Request, may, at the Secretary'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 Secretary in and to said insurance covering such loss, damage or expense as collateral security to indemnify against liability under said bond or other agreement.

(l) Except as the Secretary shall otherwise direct by notice in writing to the Shipowner, the Shipowner shall deliver to the Secretary the original policies evidencing insurance maintained under this Section; provided that, if any such original policy shall have been delivered previously to the Secretary 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 Secretary. The Secretary 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 Secretary, the Shipowner shall, upon the Secretary's request, deliver a duplicate or pro forma copy thereof to the Secretary, and provided further, that if the Shipowner shall deliver to the Secretary 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 Secretary approves such Request, the Secretary 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 Secretary 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 Secretary or an



agent thereof as aforesaid. The Secretary 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 60 days thereafter.

(m) Nothing in this Section shall limit the insurance coverage which the Secretary may require under any contract or agreement to which the Secretary and the Shipowner are parties.

The requirements of this Section are expressly subject to the Special Provisions of this Security Agreement.

**SECTION 2.06.** Inspection of the Vessels; Examination of Shipowner's Records. The Shipowner will: (a) afford the Secretary, upon reasonable notice, access to the Vessels, their cargoes and papers for the purpose of inspecting the same; (b) maintain 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 Secretary, upon request, to make reasonable, material and pertinent examination and audit of books, records and accounts maintained by the Shipowner, and to take information therefrom and make transcripts or copies thereof.

**SECTION 2.07.** Requisition of Title, Termination of Construction Contract or Total Loss of a Vessel. In the event of requisition of title to or seizure or forfeiture of such Vessel, termination of the Construction Contract relating to such Vessel, or the occurrence of the circumstances referred to in Section 2.05(c)(3), then all of the following shall apply:

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

(b) The Shipowner shall promptly pay all amounts it receives by reason of such requisition, seizure, forfeiture, termination or total loss ("Loss Event") to the Secretary.

(c) After the Secretary has received sufficient funds to retire a Proportionate Part of the Outstanding Obligations affected by the Loss Event:

(1) if there is no existing Default, (A) the Secretary and the Shipowner shall give notice to the Indenture Trustee of a redemption of Proportionate Part of the Outstanding Obligations pursuant to Section 3.05 of the Indenture, (B) such amount, if any, held by the Secretary, shall be paid by the Secretary to the Indenture Trustee not earlier than 10 days prior to, nor later than the opening of business on, the Redemption Date required by Section 3.05 of the Indenture, (C) the remainder shall next be applied by the Secretary for the payment of a Proportionate Part of all other sums that may be secured hereby, and (D) the balance shall be paid to the Shipowner including any interest earned on the proceeds which are in excess of the amount required to redeem the Obligations;

(2) if there is an existing Default and the Guarantees shall not have terminated pursuant to Section 3.02, such amounts shall be held until the same may be applied or paid under paragraphs (1), (3),

or (4) of this subsection, whichever is applicable;

(3) if the Guarantees shall have terminated pursuant to Section 3.02(c) or if the Secretary shall have assumed the Shipowner's rights and duties under the Indenture and the Obligations and made any payments in default under the terms of Section 6.09 of the Indenture, such amounts shall be applied as provided in Section 6.05; or

(4) if the Guarantees shall have terminated pursuant to Section 3.02(b) or 3.02(d) such amounts shall be paid by the Secretary to the Shipowner.

Provided that, notwithstanding the foregoing, the Shipowner shall not be required to pay the Secretary any amount which the Secretary agrees is in excess of the amount needed for redemption of the Proportionate Part of the Outstanding Obligations affected by the Loss Event.

**SECTION 2.08. Notice of Mortgage.** (a) A properly certified copy of the Mortgage shall 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 Secretary's representative.

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

(c) The notice referred to in paragraph (b) of this Section shall read as follows:

"NOTICE OF FLEET MORTGAGE

This Vessel is owned by (Insert name of Shipowner), a (Insert jurisdiction) corporation ("Shipowner"), and is covered by a First Preferred Ship Mortgage in favor of the United States of America, under authority of Chapter 313, 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 2.09. 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 2.10. Performance of Shipowner's Agreements by the Secretary.** If the Shipowner shall fail to perform any of its agreements hereunder or under the Mortgage, the Secretary 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 Secretary 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 Secretary relating to such compliance shall constitute a debt due from the Shipowner to the Secretary and shall be secured hereunder and under the Mortgage prior to the Secretary's Note and shall be repaid by the Shipowner upon demand, together with interest at the rate that would have been paid by the Department of Treasury on the expended funds plus 1%.

**SECTION 2.11. Uniform Commercial Code Filings; Further Assurances.** The Shipowner shall (a) furnish evidence satisfactory to the Secretary that financing statements under the UCC shall have been filed against the Shipowner and/or the Shipyard in all offices in which it may be necessary or advisable in the opinion of the Secretary to perfect the Secretary'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 Security to the lien of this Security 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 have been filed to perfect the Secretary's interests in the Security as valid and enforceable first priority perfected security interests.

**SECTION 2.12. Modification of Formation Agreements.** (a) If the Shipowner is organized as a general partnership, limited partnership, limited liability company or joint venture, then for so long as there is Outstanding any indebtedness to the United States of America pursuant to the Act, the partnership agreement, operating agreement, limited liability agreement, joint venture agreement (or any agreement constituting such an entity) shall not be amended, modified or voluntarily terminated without the Secretary's prior written consent.

(b) In the event where any action by the Shipowner, any member of the Shipowner or the management of the Shipowner results or would result in dissolution of the Shipowner pursuant to its limited liability company agreement or governing law, each member of the Shipowner shall forthwith take all steps necessary to reform and reestablish the Shipowner.

**SECTION 2.13. Members of Limited Liability Companies.** All existing and future members of a Shipowner which is a limited liability company (each being a "Member"), upon becoming a Member, shall forthwith enter into an agreement with the Secretary, in form and substance satisfactory to the Secretary, whereby each Member agrees: (1) that any amounts owed by the Shipowner to a Member with respect to its interest (as that or the equivalent term is used in the Shipowner's limited liability company agreement) (the "Distributions") shall be subordinated to the Shipowner's payment of the Secretary's Note and debts under the Security Agreement, provided that such Distributions may be paid to the extent the Shipowner is permitted to pay dividends under the Financial Agreement; (2) that in the event of default by the Shipowner under the Security Agreement, the Member shall be subordinated in its rights to receive any Distribution or to be paid any sums whatsoever by the Shipowner until the Secretary has made a full recovery of any and all amounts owed under the Secretary's Note and the Security Agreement.

**SECTION 2.14. Concerning the Performance and Payment Bonds.** During the Construction, the Shipowner shall cause to be maintained Performance Bonds and Payment Bonds naming the Shipowner and the Secretary as co-obligees (the "Surety Bonds") in form and substance satisfactory to the Secretary, to be obtained by the Shipyard in the amount of the Construction Contract, issued by such surety company or companies as shall be satisfactory to the Secretary (the "Surety"). 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 Secretary shall be the sole loss payee under the Surety Bonds and the Surety shall pay such amounts directly to the Secretary 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 the Security Agreement, fully subject and subordinate to the rights and interests of the Secretary therein. In the event of a default under the Security Agreement, which default results in a payment under any of the Surety Bonds, then the Surety Bonds proceeds shall be distributed by the Secretary in accordance with the provisions of Section 6.05 hereof. The Shipowner hereby irrevocably appoints the Secretary, 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.

### **ARTICLE III THE SECRETARY'S NOTE**

**SECTION 3.01. Secretary's Note.** On this date, the Shipowner has duly executed and delivered and the Secretary has accepted the Secretary's Note payable in an amount equal to the principal amount of the Obligations.

**SECTION 3.02. Termination of the Guarantees.** Except as provided in Section 6.08 of the Indenture, the Guarantee with respect to a particular Obligation, shall terminate only when, one or more of the following events shall occur:

- (a) Such Obligation shall have been Retired or Paid;
- (b) The Obligees of all the Obligations then Outstanding shall have elected to terminate the Guarantees, and the Secretary has been so notified by the Indenture Trustee or all Obligees in writing; provided that, such termination shall not prejudice any rights accruing hereunder prior to such termination;
- (c) Such Guarantee shall have been paid in full in cash by the Secretary; or
- (d) The Indenture Trustee and each Obligee shall have failed to demand payment of such Guarantee as provided in the Indenture, Guarantee, or the Act.

**SECTION 3.03. Execution of Additional Secretary's Note.** (a) In the event and when each new

issue of Obligations is executed, authenticated and delivered on a date or dates subsequent to the date hereof, as contemplated by, and pursuant to the Indenture, the Shipowner shall, at the time of the issuance of such Obligations, execute and deliver to the Secretary an additional Secretary's Note or, at the Secretary's discretion, an endorsement to the Secretary's Note in an amount equal to the principal amount of, and at the interest rate borne by, such issue of Obligations, on the terms stated in the Secretary's Note.

(b) Each Secretary's Note or endorsement executed and delivered in accordance with Section 3.03 shall together with the Secretary's Note be secured by this Security Agreement and the Mortgage.

#### **ARTICLE IV CONSTRUCTION FUND; MONEYS DUE WITH RESPECT TO CONSTRUCTION OF THE VESSELS**

**SECTION 4.01. Construction Fund.** (a) The Shipowner has deposited in the Construction Fund with the Depository the amount, if any, indicated in the Depository Agreement from the proceeds of the Obligation to be held by the Depository in a Securities Account in accordance with the terms of the Depository Agreement. This Securities Account together with any future deposits and the proceeds from the investment of the amounts on deposit shall be called the "Construction Fund."

(b) The Shipowner may withdraw money from the Construction Fund under the same procedures and conditions as the Shipowner may withdraw money from the Escrow Fund under Section 5.03, except that the Shipowner's Request for withdrawal will not be subject to Section 5.03(a)(2)(A) or 5.03(h). The administration of the Construction Fund shall also be subject to the terms and conditions of Sections 5.04 and 5.05.

**SECTION 4.02. Moneys Due with Respect to Construction of the Vessels.** (a) In the event that the Shipowner shall receive any moneys from any Person in connection with the Construction of any Vessel, the Shipowner shall give written notice thereof to the Secretary and shall promptly pay the same over to the Depository to be held in the Title XI Reserve Fund.

(b) Upon and after a final determination of Actual Cost in accordance with Section 5.01, in the absence of a Default, any moneys held by the Depository which are not to be applied for the redemption of Obligations under Section 3.04 of the Indenture shall be paid to the Shipowner.

(c) In the event there is an existing Default, the money shall be held by the Depository in accordance with the provisions of the Depository Agreement.

(d) In the event the Secretary assumes the Shipowner's rights and duties under Section 6.09 of the Indenture or pays the Guarantees, the Depository shall promptly pay all moneys including all Moneys Due with Respect to Construction of the Vessels to the Secretary, who will apply it in accordance with Section 6.05.

**ARTICLE V**  
**ACTUAL COST; THE ESCROW FUND**

**SECTION 5.01. 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 Security Agreement, is as set forth in Table A hereof.

(b) The Secretary 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 hereof and, to the extent approved by the Secretary, 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 written notice to the Shipowner, of the results of said final determination; provided that, the Shipowner shall have requested such determination not less than 60 days in advance and shall have furnished to the Secretary not less than 30 days in advance of such determination along with a Shipowner's Officer's Certificate and a statement by an independent certified (or, with the Secretary's prior written consent, an independent) public accountant or firm of accountants 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 for which paid or obligated to be paid.

**SECTION 5.02. Escrow Fund Deposits.** At the time of the sale of the Obligations, the Shipowner shall deposit with the Secretary in the Escrow Fund all of the proceeds of that sale unless the Shipowner is entitled to withdraw funds under Section 5.03. If the Obligations are issued before the delivery of all of the Vessels, then the Shipowner shall also deposit into the Escrow Fund on the Closing Date an amount equal to six months interest at the rate borne by the Obligations.

**SECTION 5.03. Escrow Fund Withdrawals.** (a) The Secretary shall within a reasonable time after written Request from the Shipowner, disburse from the Escrow Fund directly to the Indenture Trustee, any Paying Agent for such Obligations, the Shipyard, or any other Person entitled thereto, any amount which the Shipowner is obligated to pay, or to the Shipowner for any amounts it has paid, on account of the items and amounts or any other items set forth in Table A annexed hereto or subsequently approved by the Secretary, provided that, the Secretary is satisfied with the accuracy and completeness of the information contained in the following submissions:

(1) A Responsible Officer of the Shipowner shall deliver an Officer's Certificate, in form and substance satisfactory to the Secretary, stating that (A) there is neither a Default under the Construction Contract nor the Security Agreement; (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 Request are in accordance with the Construction Contract including the approved disbursement schedule and each item in these amounts is properly included in the Secretary's approved estimate of Actual Cost; (D) with respect to the Request, once the Contractor is paid there will be no liens or encumbrances

on the applicable Vessel, its hull or component parts for which the withdrawal is being requested except for those already approved by the Secretary; and (E) if the Vessel has already been delivered, it is in class and is being maintained in the highest and best condition. The Shipowner shall also attach an Officer's Certificate of the Shipyard, in form and substance satisfactory to the Secretary, stating that there are no liens or encumbrances as provided in clause (D) of this subsection and attaching the invoices and receipts supporting each proposed withdrawal to the satisfaction of the Secretary.

(2) No payment or reimbursement under this Section shall be made (A) to any Person until the Construction Fund, if any, has been exhausted, (B) to any Person until the total amount paid by or for the account of the Shipowner from sources other than the proceeds of such Obligations equals at least 12-1/2% of the Actual Cost of the related Vessel is made; (C) to the Shipowner which would have the effect of reducing the total amounts paid by the Shipowner pursuant to clause (B) of this subsection; or (D) 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 annexed hereto, unless such items, amounts and increases shall have been previously approved by the Secretary; provided, however, that when the amount guaranteed by the Secretary equals 75% or less of the Actual Cost, then after the initial 12 1/2% of Actual Cost has been paid by or on behalf of the Shipowner for such Vessel and up to 37 1/2% of Actual Cost has been withdrawn from the Escrow Fund for such Vessel, the Shipowner shall pay the remaining Shipowner's equity of at least 12 1/2% (as determined by the Secretary) before additional monies can be withdrawn from the Escrow Fund relating to such Vessel.

(b) The excess, as determined by the Secretary, of any amount on deposit in the Escrow Fund which represents interest on the principal amount deposited, over and above the amount of interest due on the next Interest Payment Date on the principal amount, as determined by the Secretary, remaining on deposit on such Interest Payment Date, may, unless there is an existing Default, be disbursed by the Secretary upon the Shipowner's Request made not more than 10 Business Days prior to such Interest Payment Date or made within at least 60 days after such Interest Payment Date.

(c) The Secretary shall not be required to make any disbursement pursuant to this Section except out of the cash available in the Escrow Fund. 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 5.04. If any sale or payment on maturity shall result in a loss in the principal amount of the Escrow Fund invested in securities so sold or matured, the requested disbursement from the Escrow 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 Indenture Trustee, any Paying Agent, the Shipyard, or any other Person entitled thereto, the balance of the requested disbursement from the Shipowner's funds other than the proceeds of such Obligations.

(d) If the Secretary assumes the Shipowner's rights and duties under the Indenture and the Obligations, and makes any payments in default under the Indenture, or the Secretary pays the Guarantees, all amounts in the Escrow Fund (including realized income which has not yet been paid to the Shipowner),

shall be paid to the Secretary and be credited against any amounts due or to become due to the Secretary under the Security Agreement and the Secretary's Note. To the extent payment of the Escrow Fund to the Secretary is not required, said amounts or any balance thereof, shall be paid to the Shipowner.

(e) At any time the Secretary shall have determined that there has been, for any reason, a disbursement from the Escrow Fund contrary to this Section, the Secretary shall give written notice to the Shipowner of the amount improperly disbursed, the amount to be deposited or redeposited into the Escrow Fund on account thereof, and the reasons for such determination. The Shipowner shall thereafter promptly deposit or redeposit, as appropriate, such amount (with interest, if any) required by the Secretary into the Escrow Fund.

(f) 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 Secretary.

(g) In the event that one of the events described in Section 2.07 has occurred with respect to one or more of the Vessels or the Secretary shall have paid the Guarantees or shall have assumed the Shipowner's rights and duties under Section 6.09 of the Indenture, the Secretary may direct that moneys remaining on deposit in the Escrow Fund may be withdrawn in whole or in part for one of the following purposes: (1) application as provided in Section 3.05 of the Indenture (but in no event shall any such disbursement for such purpose be in an amount greater than the related Proportionate Part of the Outstanding Obligations); (2) payment to the Shipowner, or its order, in the event all Outstanding Obligations are Retired or Paid, other than by payment of the Guarantees; or (3) application as provided in Section 6.05, if the Secretary shall have paid the Guarantees or shall have assumed the Shipowner's rights and duties under the Indenture and the Obligations.

(h) Any amounts remaining in the Escrow Fund on the Termination Date of the Escrow Fund which are in excess of 87 1/2% or 75% of Actual Cost, as the case may be, shall be applied pursuant to Section 3.04 of the Indenture to retire a Proportionate Part of the Outstanding Obligations.

**SECTION 5.04. Investment and Liquidation of the Escrow Fund.** The Secretary may invest the Escrow Fund in obligations of the United States with such maturities that the Escrow Fund will be available as required for the purposes hereof. The Secretary shall deposit the Escrow Fund into an account with the Treasury Department and upon agreement with the Shipowner, shall deliver to the Treasury Department instructions for the investment, reinvestment and liquidation of the Escrow Fund. The Secretary shall have no liability to the Shipowner for acting in accordance with such instructions.

**SECTION 5.05. Income on the Escrow Fund.** Except as provided in Section 5.03, any income realized on the Escrow Fund shall, unless there is an existing Default, be paid to the Shipowner upon receipt by the Secretary of such income. For the purpose of this Section, the term "income realized on the Escrow Fund," shall mean with respect to the Escrow Fund (1) the excess of the cash received from the sale of securities over their cost (less any losses from sale not already paid pursuant to Section 5.03(c)) and (2)



cash received from the payment of principal and interest on securities.

**SECTION 5.06. Termination Date of the Escrow Fund.** The Escrow Fund will terminate 90 days after the Delivery Date of the last Vessel covered by this Security Agreement (herein called the "Termination Date of the Escrow Fund"). In the event that on such date the payment by or for the account of the Shipowner of the full amount of the aggregate Actual Cost of all of the Vessels set forth in Table A hereof has not been made or the amounts with respect to such Actual Cost are not then due and payable, then the Shipowner and the Secretary by written agreement shall extend the Termination Date of the Escrow Fund for such period as shall be determined by the Shipowner and the Secretary as sufficient to allow for such contingencies. If the Secretary shall have earlier made a final determination of the aggregate Actual Cost of all of the Vessels in accordance with Section 5.01, the Termination Date of the Escrow Fund shall be deemed to be the date of such final determination; provided that, if as a result of such final determination, a redemption of Obligations is required pursuant to Section 3.04 of the Indenture, the Termination Date shall be the date specified as the Redemption Date in the notice of redemption given pursuant to Section 3.08 of the Indenture.

## **ARTICLE VI DEFAULTS AND REMEDIES**

**SECTION 6.01. What Constitutes "Defaults;" Continuance of Defaults.** Each of the following events shall constitute a "Default" within the meaning of Section 6.01:

(a) A default in the payment of the whole or any part of the interest on any of the Outstanding Obligations when the same shall become due and payable; or default in the payment of the whole or any part of the principal of any of the Outstanding Obligations when the same shall become due and payable, whether by reason of Maturity, redemption, acceleration, or otherwise, or any default referred to in Section 6.08 of the Indenture; and continuation of such default for a period of 30 days shall constitute and is herein called a "Payment Default." Any corresponding default with respect to the interest on, or the principal of, the Secretary's Note is also deemed to be a Payment Default;

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

(1) Default by the Shipowner in the due and punctual observance and performance of any provision in Sections 2.01(b), 2.02(b) and (i), 2.03, 2.04, 2.09, 2.11, 2.12, 2.14, 8.01 and 8.02;

(2) Default by the Shipowner continued after written notice specifying such failure by certified or registered mail to the Shipowner from the Secretary in the due and punctual observance and performance of any provision in Sections 2.02(a), (d), (e), (f), and (g), 2.05 (except (g) and (k) thereof), 2.07, and 2.13.

(3) Default by the Shipowner continued for 30 days after written notice by certified or

registered mail to the Shipowner from the Secretary in the due and punctual observance of any other agreement in this Security Agreement or in the Mortgage;

(4) The Shipowner shall become insolvent or bankrupt or shall cease paying or providing for the payment of its debts generally, or the Shipowner shall be dissolved or shall, by a court of competent jurisdiction, be adjudged a bankrupt, or shall make a general assignment for the benefit of its creditors, or shall lose its charter by forfeiture or otherwise; or a petition for reorganization of the Shipowner under the Bankruptcy Code shall be filed by the Shipowner, or such petition be filed by creditors and the same shall be approved by such a court of competent jurisdiction; or a reorganization of the Shipowner under said Code shall be 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, shall be appointed, by a decree of a court of competent jurisdiction, with respect to any Vessel, or all or substantially all of the Shipowner's property, and such decree shall have continued unstayed, on appeal or otherwise, and in effect for a period of 60 days;

(5) Any default in the due and punctual observance and performance of any provision in the Financial Agreement or the Construction Contract;

(6) Any representation or warranty made relating to the execution and delivery of this Security Agreement, the Mortgage, the Guarantee Commitment or the Financial Agreement, or in any certificate required to be furnished pursuant thereto, shall prove 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 and financed under the Act;

(8) Any additional Security Default prescribed in the Special Provisions hereof; and

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

At any time following the occurrence of a Security Default, the Secretary may give the Indenture Trustee a Secretary's Notice with respect to such Security Default, after which the Indenture Trustee and the Obligees shall have the right to make demand for payment of the Guarantees in accordance with the Indenture and the Authorization Agreement, unless the Secretary shall have assumed the Shipowner's rights and duties under the Indenture and the Obligations, and made any payments in default under Section 6.09 of the Indenture.

**SECTION 6.02. Acceleration of Maturity of the Secretary's Note.** The Secretary may, by giving written notice to the Shipowner, declare the principal of the Secretary's Note and interest accrued thereon to be immediately due and payable, at any time after (a) the Secretary shall have been obligated to pay the

Guarantees pursuant to the terms of the Indenture and the Authorization Agreement, or (b) the Secretary shall have assumed the Shipowner's rights and duties under the Indenture and the Obligations, and made any payments in default under the terms of Section 6.09 of the Indenture. Thereupon, the principal of and interest on the Secretary's Note shall become immediately due and payable, together with interest at the same rates specified in the Secretary's Note.

**SECTION 6.03. Waivers of Default.** (a) If the Secretary shall not have assumed the Shipowner's rights and duties under the Indenture and the Obligations, and made any payments in default under the terms of Section 6.09 of the Indenture, and if the Secretary determines that an event which, with the passage of time, would become a Payment Default, has been remedied within 30 days after the occurrence of such event, upon a Request by the Shipowner, the Secretary shall waive the consequences of such event.

(b) If the Secretary shall not have assumed the Shipowner's rights and duties under the Indenture and the Obligations, and made any payments in default under the terms of Section 6.09 of the Indenture, and if the Secretary shall have determined prior to payment of the Guarantees that a Payment Default has been remedied after the expiration of the aforesaid 30-day period, but prior to the date of demand by the Indenture Trustee or an Obligee for payment under the Guarantees, upon a Request by the Shipowner, the Secretary shall waive such Default.

(c) If the Secretary shall have determined prior to the expiration of the period required for payment of the Guarantees that a Payment Default had not occurred or has been subsequently remedied by the Shipowner (and if the Secretary shall not have assumed the Shipowner's rights and duties under the Indenture and the Obligations, and made any payments in default under the terms of Section 6.09 of the Indenture and prior to any payment of Guarantees), the Secretary shall notify the Indenture Trustee and the Shipowner of such determination, and, the Secretary shall waive such Default.

(d) The Secretary, 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; provided that, such Default is waived prior to the Secretary giving to the Indenture Trustee the Secretary's Notice.

(e) The Secretary shall notify the Shipowner and the Indenture Trustee in writing of any determinations made under paragraphs (a), (b), and (c) of this Section, and the Secretary shall waive the consequences of any such Default, and annul any declaration under Section 6.02, 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 Secretary shall have assumed the Shipowner's rights and duties under the Indenture and the Obligations, and made any payments in default under the terms of Section 6.09 of the Indenture.

**SECTION 6.04. Remedies After Default.** (a) In the event of a Default, and before and after the payment of the Guarantees or the assumption by the Secretary of the Shipowner's rights and duties under the Indenture and the Obligations, and the making of any payments in default under the terms of Section 6.09 of the Indenture, the Secretary shall have the right to 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 Secretary upon demand) and hold, lay up, lease, charter, operate, or otherwise use the Vessels for such time and upon such terms as the Secretary may reasonably deem to be in the Secretary'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.

(b) Upon either (i) payment of the Guarantees or (ii) the Secretary's assumption of the Shipowner's rights and duties under the Indenture and the Obligations, and the making of any payments in default under Section 6.09 of the Indenture, the Secretary shall have the right to:

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

(2) Bring suit at law, in equity or in admiralty to recover judgment for any and all amounts due under the Secretary's Note, this Security Agreement and the Mortgage, collect the same out of any and all of Shipowner's property, whether or not the same is subject to the lien of the Mortgage, and in connection therewith, obtain a decree ordering the sale of any Vessel in accordance with paragraph (b)(4) of this Section;

(3) 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 Secretary under paragraph (b)(4) of this Section);

(4) Sell any Vessel, free from any claim of the Shipowner, by a public extrajudicial sale, held at such time and place and in such manner as the Secretary may reasonably deem advisable, after twice publishing notice of the time and place of such sale prior to the proposed sale in the Authorized Newspaper to the Shipowner. Such publication and mailing is to be made at least 10 Business Days prior to the date fixed for such sale; provided that, such sale may be adjourned from time to time without further publication or notice (other than announcement at the time and place appointed to such sale or adjourned sale). It shall not be necessary to bring any such Vessel to the place appointed for such sale or adjourned sale;

(5) 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 Secretary), the whole or any part of any Vessel and the Security wherever the same may be, and to take possession of and to hold the same;

(6) In the Secretary's discretion, take any and all action authorized by Sections 1105(c), 1105(e) and 1108(b) of the Act and any and all action provided for, or authorized, or permitted by, or with respect to the Increased Security;

(7) 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 Secretary in accordance with Section 6.05; and

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

(c) The Shipowner hereby irrevocably appoints the Secretary 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 Increased Security in connection with a sale, use or other disposition pursuant to Section 6.04(a) or 6.04(b), and for that purpose to execute all necessary instruments of assignment and transfer. Nevertheless, the Shipowner shall, if so requested by the Secretary in writing, ratify and confirm such sale by executing and delivering to any purchaser of the whole or any part of the Increased Security, such proper bill of sale, conveyance, instrument of transfer, or release as may be designated in such request.

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

(e) 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.

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

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

**SECTION 6.05. Application of Proceeds.** (a) The proceeds (from sale or otherwise) of the whole or any part of the Increased Security and use thereof by the Secretary under any of the foregoing powers, (b) the proceeds of any judgment collected by the Secretary for any default hereunder, (c) the proceeds of any insurance and of any claim for damages to the whole or any part of the Increased Security received by the Secretary while exercising any such power, and (d) all other amounts received by the Secretary, including amounts which are required by Sections 2.05 and 2.07 shall be applied by the Secretary as follows:

(1) to the payment of all advances and all reasonable charges by the Secretary pursuant to this Security Agreement;

(2) to the payment of the whole amount of the interest then due and unpaid upon the Secretary's Note;

(3) to the payment of the whole amount of the principal then due and unpaid upon the Secretary's Note;

(4) to the Secretary for application to any other debt of the Shipowner due to the Secretary under any other financing insured or guaranteed by the Secretary under to the Act;

(5) to the Indenture Trustee for its reasonable fees and expenses; and

(6) any balance thereof remaining shall be paid to the Shipowner.

**SECTION 6.06. General Powers of the Secretary.** (a) In the event 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 15 days from the date of arrest or detention, the Shipowner hereby authorizes the Secretary, in the name of the Shipowner, 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 authorization is irrevocable.

(b) The Shipowner irrevocably authorizes the Secretary 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 Increased Security because of or on account of any alleged lien or claim against the whole or any part of the Increased Security, from which the whole or said part of the Increased Security has not been released.

(c) The following shall constitute a debt due from the Shipowner to the Secretary, and shall be repaid by the Shipowner upon demand: all reasonable expenses incurred pursuant to paragraphs (a) or (b) of this Section and all reasonable expenses incurred incident to the exercise by the Secretary of any remedies pursuant to Section 6.04(b) or the assumption by the Secretary of the rights and duties of the Shipowner under the Indenture and the Obligations, and the making of any payments in default under the terms of Section 6.09 of the Indenture (including, but not limited to, fees paid to the Indenture Trustee for expenses incident to said assumption of the Indenture by the Secretary), together with interest at the rate that would have been paid by the Department of Treasury on the expended funds plus 1%. The Secretary shall not be obligated to (nor be liable for the failure to) take any action provided for in paragraphs (a) and (b) of this Section.

## **ARTICLE VII AMENDMENTS AND SUPPLEMENTS TO THE SECURITY AGREEMENT, MORTGAGE AND INDENTURE**

**SECTION 7.01. Amendments and Supplements to the Security Agreement and the Mortgage.** This Security Agreement and the Mortgage 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 and the Secretary.

**SECTION 7.02.** Amendments and Supplements to the Indenture. Notwithstanding any provisions in the Indenture, the Shipowner agrees that no amendments or supplements will be made



to the Indenture without the Secretary's prior written consent, and any purported action contrary to this Section shall be null and void ab initio and of no force and effect.

## **ARTICLE VIII CONSOLIDATION, MERGER OR SALE**

**SECTION 8.01. Consolidation, Merger or Sale.** (a) Nothing in this Security Agreement or the Mortgage shall prevent any lawful consolidation or merger of the Shipowner with or into any other Person, or any sale of a Vessel or Vessels to any other Person lawfully entitled to acquire and operate such Vessel or Vessels, or any sale by the Shipowner of all or substantially all of its assets to any other Person; provided that, the Secretary shall have given its prior written consent to such succession, merger, consolidation or sale.

(b) Any Successor shall (by indenture supplemental to the Indenture, and by instrument amending or supplementing this Security 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 Obligations in accordance with the terms of the Obligations, shall execute and deliver to the Secretary, an endorsement to the Secretary's Note in form satisfactory to the Secretary, shall expressly assume the payment of the principal of and interest on the Secretary's Note, and shall expressly assume the performance of the agreements of the Shipowner in the Indenture, this Security Agreement, the Mortgage and any related document.

(c) Upon the assumption of the documents listed in paragraph (b) of this Section, the Secretary shall consent to the surrender of each Vessel's documents pursuant to 46 U.S.C. 12111(c)(3), as amended; provided that, concurrently with such surrender, such Vessel shall be redocumented under the laws of the United States.

(d) In the event of any sale of less than all the Vessels, the Secretary shall determine if there will remain adequate security for the Guarantees after discharge of any such Vessel or Vessels from the Security Agreement and Mortgage, and (1) the Shipowner shall redeem, together with any premium and/or accrued interest thereof, the Proportionate Part of the Outstanding Obligations relating to such Vessel or Vessels in accordance with the provisions of Article Third of the Indenture, or (2) the Person to which such sale shall have been made (the "Transferee"), shall assume the documents listed in paragraph (b) of this Section. Upon any such assumption, 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 Indenture, the Obligations, this Security Agreement and the Mortgage (and such other documents) to the extent the same relate to such Proportionate Part of the Outstanding Obligations and to such Vessel or Vessels.

**SECTION 8.02. Transfer of a General Partner's or a Joint Venturer's Interest.** (a) If the Shipowner is organized as a partnership or a joint venture, a general partner or a joint venturer may lawfully transfer its respective interests under the terms of the partnership or joint venture agreement to any Person and may be released from all of their obligations thereunder and under this Security Agreement or the

Mortgage; provided that, (i) the Secretary shall have given its prior written consent to the proposed transaction and (ii) the transferee shall assume in full all of the existing obligations which the transferring general partner or joint venturer has under the applicable partnership or joint venture agreement, this Security Agreement, the Mortgage and any related document.

## **ARTICLE IX NOTICES**

**SECTION 9.01.** Notices. Except as otherwise provided in this Security Agreement or by the Act, all notices, requests, demands, directions, consents, waivers, approvals or other communications may be made or delivered in person or by registered or certified mail, postage prepaid, addressed to the party at the address of such party specified in the Special Provisions hereof, or at such other address as such party shall advise each other party by written notice, and shall be effective upon receipt by the addressee thereof.

**SECTION 9.02.** Waivers of Notice. In any case where notice by publication, mail or otherwise is provided for by this Security 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 9.03.** Shipowner's Name or Address Change. The Shipowner shall not change its name or its address without first providing written notice to the Secretary of the new name and/or the change in address.

## **ARTICLE X DISCHARGE OF SECURITY AGREEMENT AND THE MORTGAGE**

**SECTION 10.01.** Discharge of Security Agreement and the Mortgage. (a) If the Obligations and the related Secretary'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 Security Agreement and the Mortgage, then this Security Agreement, the Mortgage and the liens, estate and rights and interests hereby and thereby granted, shall cease, determine, and become null and void, and the Secretary, 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 Security Agreement and the Mortgage 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 Secretary in and to the Security, the Increased Security, and any other securities, cash, and any other property held by it under this Security Agreement and the Mortgage, shall thereupon cease, determine and become null and void, and the Secretary shall transfer, deliver and pay the same to the Shipowner.

(b) If all of the Guarantees on the Outstanding Obligations shall have been terminated pursuant to

Sections 3.02(b) or 3.02(d), the Secretary shall assign to the Shipowner this Security Agreement, the Mortgage and the liens, estate, rights and interests hereby and thereby granted.

## **ARTICLE XI MISCELLANEOUS**

**SECTION 11.01.** Successors and Assigns. All the covenants, promises, stipulations and agreements of the Secretary and Shipowner in this Security Agreement shall bind the Secretary and Shipowner and its respective successors and assigns. This Security Agreement is for the sole benefit of the Shipowner, the Secretary, and their respective successors and assigns, and no other Person shall have any right hereunder.

**SECTION 11.02.** Execution in Counterparts. This Security Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to be originals and shall together constitute but one and the same instrument.

**SECTION 11.03.** Shipowner's Rights in Absence of Default. Except during the existence of a Default, the Shipowner (1) shall be permitted to retain actual possession and use of the Vessel, and (2) shall have the right, from time to time, in its discretion and without the consent of or release by the Secretary, to dispose of, free from the lien hereof 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 11.04.** Surrender of Vessels' Documents. The Secretary shall consent to the surrender of each Vessel's documents in connection with any redocumentation of such Vessel required on account of alterations to such Vessel which are not prohibited by this Security Agreement and by the Mortgage.

**SECTION 11.05.** Applicable Regulations. Only the provisions of the regulations issued under Title XI of the Act as in effect on the date hereof (46 C.F.R. 298) shall control the Security Agreement provisions.

**SECTION 11.06.** 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 Security Agreement and shall not be deemed to affect the meaning or construction of any of its provisions.

**PROMISSORY NOTE TO UNITED STATES OF AMERICA**

\_\_\_\_\_ (the "Shipowner"), for value received, promises to pay **THE UNITED STATES OF AMERICA** (the "United States"), represented by the Secretary of Transportation, acting by and through the Maritime Administrator (the "Secretary"), at the office of the Maritime Administration, U.S. Department of Transportation, Washington, D.C., in lawful money of the United States of America, the aggregate principal amount of \_\_\_\_\_ on or before \_\_\_\_\_, together with interest thereon from the date hereof at the rate of \_\_\_% per annum (calculated on the basis of a 360-day year of twelve 30-day months) to be paid semi-annually on \_\_\_\_\_ and \_\_\_\_\_ of each year commencing on \_\_\_\_\_ until such principal sum has been paid. This Secretary's Note ("secretary's Note") is subject to mandatory prepayment on the same terms and conditions as the Obligations.

This Secretary's Note is given (1) in consideration of the Secretary's issuance, pursuant to the provisions of Title XI of the Merchant Marine Act, 1936, as amended, of Guarantees of payment of the unpaid interest on and the unpaid balance of the principal amount of the Shipowner's United States Government Guaranteed Ship Financing Obligations (the "Obligations") issued by the Shipowner on the date hereof in order to finance a portion of the cost of construction of the Vessels, and (2) to evidence the Shipowner's obligation to pay the Secretary any amount that the Secretary may be required to pay to the Holders of the Obligations under said Guarantees.

This Secretary's Note is issued pursuant to the provisions of the Security Agreement, Contract No. MA-\_\_\_\_\_, dated \_\_\_\_\_, between the Shipowner and the Secretary. The Security Agreement contemplates that on the date hereof, a first preferred fleet mortgage on the Vessels will be executed and delivered by the Shipowner, as mortgagor, to the Secretary, as mortgagee, covering the Shipowner's interest in such Vessels. The definitions used in, and the provisions of, the Security Agreement and the Mortgage are incorporated herein by reference.

This Secretary's Note has been negotiated and received by the Secretary, is secured by the Security Agreement and the Mortgage, and is subject to all the terms of the Security Agreement and the Mortgage, to the same extent as if said documents were set out herein in full.

To the extent that any of the Obligations are Outstanding and until the Guarantees on each of the Obligations have been terminated pursuant to the provisions of Section 3.02(a), (b) or (d) of the Security Agreement, the principal of and the interest on this Secretary's Note shall remain outstanding and unpaid. Payments on the Outstanding Obligations shall be deemed a payment of principal and interest on this Secretary's Note when paid in the following manner:

- (1) by payment of interest on such Obligations in accordance with the provisions thereof and of

the Indenture;

(2) by any redemption of such Obligations in accordance with the provisions thereof and of the Indenture;

(3) when such Obligations have been Retired or Paid, other than by payment of the Guarantees;

If such payment is made with moneys advanced or loaned to the Shipowner by the Secretary, such payment on the Obligations shall not, as to such amount, constitute payment of principal or interest on this Secretary's Note and the same shall not in any way be discharged as to such amount. In the event that the Secretary assumes the Shipowner's rights and duties under the Indenture and the Obligations and makes any payments, such payments shall not, as to such amounts, constitute payment of principal and interest on this Secretary's Note and the same shall not in any way discharge such amounts until such time as this Secretary's Note is paid in full or otherwise discharged in an appropriate proceeding in a court of competent jurisdiction as established by the final order of a court of last resort or the final order of an inferior court which is not appealed.

The unpaid balance of the principal of this Secretary's Note and the interest hereon may be declared or may become immediately due and payable by declaration of the Secretary at any time after the Secretary (i) is required to pay the Guarantees pursuant to the terms of the Indenture and the Authorization Agreement or (ii) assumes pursuant to the terms of the Indenture, the Shipowner's rights and duties under the Indenture and the Obligations. Thereupon, the unpaid balance of the principal of and the interest on this Secretary's Note shall become due and payable, together with interest thereon at the Obligation rate plus one percent.

**IN WITNESS THEREOF**, the Shipowner has caused this Secretary's Note to be signed on this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
as Shipowner

**(SEAL)**

**BY:** \_\_\_\_\_

Attest:

**BY:** \_\_\_\_\_  
Assistant Secretary

**FIRST PREFERRED FLEET MORTGAGE**

THIS FIRST PREFERRED FLEET MORTGAGE, dated \_\_\_\_\_ by \_\_\_\_\_, a \_\_\_\_\_  
\_\_\_\_ (the "Shipowner" and "Mortgagor") located at \_\_\_\_\_, to the UNITED STATES OF  
AMERICA (the "United States"), represented by the Secretary of Transportation, acting by and through  
the Maritime Administrator (the "Secretary" and "Mortgagee") located at the U.S. Department of  
Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

**WHEREAS**, pursuant to understandings set forth in the Recitals to the Security Agreement  
executed this date, the Shipowner has authorized the issuance of Obligations designated "United States  
Government Guaranteed Ship Financing Obligations \_\_\_\_\_ Series" in an aggregate principal amount not  
to exceed \$ \_\_\_\_\_ to finance the construction of the following Vessels: \_\_\_\_\_ Official Number \_\_\_\_\_  
\_\_\_\_; \_\_\_\_\_ Official Number \_\_\_\_\_; \_\_\_\_\_ Official Number \_\_\_\_\_, and \_\_\_\_\_ Official  
Number \_\_\_\_\_;

**WHEREAS**, the Shipowner is the sole owner of the whole of each of said Vessel(s);

**NOW, THEREFORE, THIS MORTGAGE WITNESSETH:**

That, in consideration of the premises and of the additional covenants herein contained and other  
good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as  
security for the Guarantees and in order to secure the payment of the above-mentioned interest on and  
principal of the Secretary's Note and all other sums that may be secured by the Mortgage and the Security  
Agreement, and to secure the due performance and observance of all the agreements and covenants in the  
Secretary's Note and herein contained, the Shipowner has granted, conveyed, mortgaged, pledged,  
confirmed, assigned, transferred and set over, and by these presents does grant, convey, mortgage, pledge,  
confirm, assign, transfer and set over unto the Mortgagee a hundred percent interest in the whole of the each  
of said Vessels which are more fully described in their respective certificates of documentation, together  
with all of their boilers, engines, machinery, masts, spares, rigging, boats, anchors, cables, chains, tackle,  
tools, pumps and pumping equipment, apparel, furniture, fittings and equipment, spare parts and all other  
appurtenances to said Vessels appertaining or belonging, whether now owned or hereafter acquired  
whether on board or not and all additions, improvements, renewals and replacements hereafter made in or  
to said Vessels or said appurtenances; provided that, the term "Vessel," whenever used, shall apply with  
equal force to each of the Vessels.

**TO HAVE AND TO HOLD**, all and singular, the above mortgaged and described property unto  
the Mortgagee, to its own use, benefit and behoof forever;

**PROVIDED, HOWEVER,** and these presents are upon the condition that, if the above-mentioned principal of and interest on the Secretary's Note are paid or satisfied in accordance with the terms thereof, the Security Agreement and this Mortgage, and all other obligations and liabilities that may be secured by the Security Agreement and this Mortgage are paid in accordance with their terms, then this Mortgage and the estate and rights hereunder shall cease, determine and be void, otherwise to remain in full force and effect.

The Shipowner hereby agrees with the Mortgagee that the Vessels now or at any time subject to the lien of this mortgage are to be held by the Mortgagee subject to the further agreements and conditions hereinafter set forth.

## **ARTICLE FIRST**

**SECTION 1.** All of the Shipowner's covenants and agreements including, without limitation, those relating to: maintenance of United States citizenship; organization and existence of the Shipowner; title to and possession of each Vessel; sale, transfer or charter of each Vessel; taxes; liens; documentation of each Vessel; material changes in each Vessel; compliance with applicable laws; maintenance of marine insurance; requisition of title; and compliance with Chapter 313 of Title 46 of the United States Code, set forth in, and all of the Secretary's rights, immunities, powers and remedies provided for in the Security Agreement, except for the Granting Clause thereof, together with all other provisions of the Security Agreement, are incorporated herein by reference with the same force and effect as though set forth at length in this Mortgage, and true copies of the form of the Security Agreement are annexed hereto.

**SECTION 2.** A Default pursuant to the provisions of the Security Agreement shall constitute a default hereunder, and shall give the Mortgagee the rights and remedies established by Chapter 313 of Title 46 of the United States Code, and as provided in the Security Agreement.

## **ARTICLE SECOND**

**SECTION 1.** This Mortgage may be executed in any number of counterparts and all such counterparts executed and delivered each as an original shall constitute but one and the same instruments.

**SECTION 2.** All of the Shipowner's covenants, promises, stipulations and agreements in this Mortgage shall bind the Shipowner and its successors and assigns, and shall inure to the benefit of the Mortgagee and its successors and assigns, and all of the Mortgagee's covenants, promises, stipulations and agreements in this Mortgage, shall bind the Mortgagee and its successors and assigns, and shall inure to the benefit of the Shipowner and its successors and assigns, whether so expressed or not.

**SECTION 3.** All capitalized terms used herein shall have the meaning specified in Schedule X to the Security Agreement, unless the context otherwise requires.

**SECTION 4.** No provision of this Mortgage or of the Security Agreement shall be deemed to constitute a waiver by the Mortgagee of the preferred status of the Mortgage given by 46 U.S.C. '31305, and any provision of this Mortgage or of the Security Agreement which would otherwise constitute such a waiver, shall to such extent be of no force and effect.

**SECTION 5.** Once the Mortgage shall have become null and void, the Secretary, on request of the Shipowner and at the Shipowner's cost and expense, shall forthwith cause satisfaction and discharge of this Mortgage to be entered upon its and other appropriate records, and shall execute and deliver to the Shipowner such instruments as may be necessary, duly acknowledging the satisfaction and discharge of this Mortgage.

**ARTICLE THIRD**

The total principal amount of the obligations that is secured by this First Preferred Fleet Mortgage is \_\_\_\_\_ AND NO/100's (\$ \_\_\_\_\_) excluding interest, expenses, and fees. The date of discharge for each of the Vessels is as follows: \_\_\_\_\_.

**IN WITNESS WHEREOF**, this instrument has been executed on the date below indicated, and effective as of the day and year first above written.

(SEAL)

\_\_\_\_\_  
SHIPOWNER

Attest:

BY: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

\_\_\_\_\_

CONSENTED TO:

UNITED STATES OF AMERICA  
SECRETARY OF TRANSPORTATION  
acting by and through the  
MARITIME ADMINISTRATOR

BY: \_\_\_\_\_  
Secretary  
Maritime Administration



**ACKNOWLEDGMENT**

DISTRICT OF COLUMBIA )  
 ) ss:  
CITY OF WASHINGTON )

On this \_\_\_ day of \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for the District of Columbia, personally appeared \_\_\_\_\_ duly known to me to be \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, the entity described in and that executed the instrument hereto annexed and acknowledged to me that the seal affixed to said instrument is such corporation's seal, that it was so affixed by authority set forth in the documents constituting and governing such entity, and that he/she signed his/her name thereto by like authority.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

(NOTARIAL SEAL)

**ACKNOWLEDGMENT**

DISTRICT OF COLUMBIA )  
 ) ss:  
CITY OF WASHINGTON )

I, the undersigned, a Notary Public in and for the District of Columbia, do hereby certify that \_\_\_\_\_, Secretary of the Maritime Administration, personally appeared before me in said District, the aforesaid officer being personally well known to me as the person who executed the Mortgage hereto annexed, and acknowledged the same to be his/her act and deed as said officer.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

(NOTARIAL STAMP AND SEAL)

### CONSENT OF SHIPYARD

This Consent of Shipyard dated \_\_\_\_\_, is made by \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Shipyard"), to \_\_\_\_\_ a \_\_\_\_\_ corporation (the "Shipowner") and the United States of America (the "United States") represented by the Secretary of Transportation, acting by and through the Maritime Administrator (the "Secretary") pursuant to the provisions of Title XI of the Merchant Marine Act, 1936, as amended, the purpose of which is to allow and acknowledge the assignment of all of the right, title and interest of the Shipowner in and to those certain construction contracts dated as of \_\_\_\_\_, between the Shipyard and the Shipowner (the "Construction Contracts"), in so far as they relate to the Vessels, together with all of the Shipowner's right, title and interest in and to the Vessels including their component parts and equipment, from the Shipowner to the Secretary under a security agreement (the "Security Agreement"). The Shipyard acknowledges that it has received a true copy of the form of the Security Agreement.

Now, therefore, in consideration of the premises and mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. The Shipyard hereby acknowledges receipt of notice of and hereby consents and agrees to the aforesaid assignment of, and grant of a security interest in the Construction Contracts and the Vessels including their component parts and equipment in favor of the Secretary pursuant to the Security Agreement;

2. The Shipyard hereby acknowledges, understands and agrees that:

(a) the Secretary shall, by virtue of the Security Agreement, have no obligation or duty under the Construction Contracts and shall not be required to make any payment due and owing by the Shipowner under the Construction Contracts;

(b) the Shipyard shall pay any amount coming due to the Shipowner under the Construction Contracts promptly to the Depository for application pursuant to the Security Agreement so long as it shall not have received written notice of the Secretary that the Guarantees shall have been terminated pursuant to Section 3.02(a), (b) or (d) of the Security Agreement and that the Security Agreement is no longer in effect; upon receipt of such notice, the Shipyard shall promptly pay any such moneys to the Shipowner;

(c) except during any period after the Shipyard shall have received written notice from the Secretary indicating the existence of a Default under the Security Agreement and until the Secretary shall have notified the Shipyard in writing that such Default has been cured or waived, the Shipowner shall be entitled to exercise all of its rights under the Construction Contracts with respect to the Vessels and to receive all of the benefits thereunder, subject to paragraph 2(b) hereof, to the same extent as if the Construction Contracts and the Vessels had not in any way been subjected to the liens of or security interests under the Security Agreement.

3. For all purposes of this Consent of Shipyard, unless otherwise expressly provided, all capitalized terms used but not defined herein shall have the meaning ascribed in Schedule X to the Security Agreement.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed as of the day and year first above written.

(SEAL)

\_\_\_\_\_  
BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

**TITLE XI RESERVE FUND  
AND FINANCIAL AGREEMENT**

THIS TITLE XI RESERVE FUND AND FINANCIAL AGREEMENT (the "Financial Agreement"), dated \_\_\_\_\_ between \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Company"), and THE UNITED STATES OF AMERICA (the "United States"), represented by the Secretary of Transportation, acting by and through the Maritime Administrator (the "Secretary").

**RECITALS:**

Pursuant to the conditions and understandings set forth in the Recitals to the Security Agreement executed on this date, the Company has authorized the issuance of obligations designated "United States Government Guaranteed Ship Financing Obligations, \_\_\_\_ Series" in an aggregate principal amount not to exceed \$\_\_\_\_\_ to finance the cost of construction of \_\_\_\_\_: \_\_\_\_\_, Official Number \_\_\_\_\_; \_\_\_\_\_, Official Number \_\_\_\_\_; \_\_\_\_\_, Official Number \_\_\_\_\_; and \_\_\_\_\_, Official Number \_\_\_\_\_ (the "Vessels");

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

**SECTION 1.** (a) Granting Clause. The Company hereby sells, grants, conveys, mortgages, assigns, transfers, pledges, confirms and sets over to the Secretary a continuing security interest in all of its right, title and interest in and to (1) the Title XI Reserve Fund, and (2) all sums, instruments, moneys, negotiable documents, chattel paper and proceeds thereof currently on deposit, or hereafter deposited in the Title XI Reserve Fund.

(b) Definitions. For all purposes of this Financial Agreement, unless otherwise expressly provided or unless the context otherwise requires, the capitalized terms used herein shall have the meaning specified in Schedule X to the Security Agreement entered into on this date.

**SECTION 2.** Title XI Reserve Fund Deposits. (a) Pursuant to the Depository Agreement, the Company shall establish with the Depository a depository account (herein called the "Title XI Reserve Fund").

(b)(1) Within 105 days after the end of each fiscal year of the Company, the Company shall compute its net income attributable to the operation of the Vessels ("Title XI Reserve Fund Net Income"). This computation requires the multiplication of the Company's total net income after taxes by a fraction with a numerator composed of the total original capitalized cost of all Company vessels (whether leased or owned) and a denominator composed of the total original capitalized cost of all the Company's fixed assets. The net income after taxes, computed in accordance with generally accepted accounting principles, shall be adjusted as follows:

(A) The depreciation expense applicable to the accounting year shall be added back.

(B) There shall be subtracted an amount equal to the principal amount of debt required to be paid or redeemed, and actually paid or redeemed by the Company during the year; and the principal amount of Obligations Retired or Paid, prepaid or redeemed, in excess of the required Redemptions or payments which may be used by the Company as a credit against future required Redemptions or other required payments with respect to the Obligations, but excluding payments from the Title XI Reserve Fund and the Title XI Escrow Fund.

(2) Promptly after the computation of the Title XI Reserve Fund Net Income by the Company:

(A) If the Vessel is owned by the Company, then from the Title XI Reserve Fund Net Income for the Vessel there shall be deducted, annually, an amount (pro rated for a period of less than a full fiscal year) which is 10% of the Company's aggregate original equity investment in said Vessel, as specified in Attachment A.

(B) The Company shall, unless otherwise approved by the Secretary in writing, deposit into the Title XI Reserve Fund an amount equal to 50 percent of the balance of the Title XI Reserve Fund Net income remaining after the above deductions.

(C) Irrespective of the Company's deposit requirements into the Title XI Reserve Fund, the Company shall not be required to make any deposits into the Title XI Reserve Fund if (i) the Obligations and the related Secretary's Note with respect to the Vessel shall have been satisfied and discharged and if the Company shall have paid or caused to be paid all other sums secured under the Security Agreement or the Mortgage, (ii) all of the Guarantees on the Outstanding Obligations shall have been terminated pursuant to the Security Agreement, or (iii) the amount (including any securities at current market value) in the Title XI Reserve Fund is equal to, or in excess of 50% of the principal amount of the Outstanding Obligations;

(D) The Company shall deliver to the Secretary (with a copy to the Depository) at the time

of each deposit into the Title XI Reserve Fund pursuant to Section 2(b)(2)(B), and any deposits required under the Security Agreement, a statement of an independent certified public accountant (who may be the regular auditors for the Company) stating that such deposit has been computed in accordance with Section 2(b)(2)(B), (and the Security Agreement, if applicable) and showing the pertinent calculations.

(F) In addition, the Company shall deliver to the Secretary (with a copy to the Depository), within 105 days after the end of each fiscal year of the Company, a statement by such certified public accountant stating (i) the total amount of all deposits which were required to be so deposited into the Title XI Reserve Fund for such fiscal year (and showing the pertinent calculations), or (ii) that no such deposit was required to be made for such fiscal year (and showing the pertinent calculations) and that at the end of such fiscal year no adjustments pursuant to Section 2(b)(2)(G) were required to be made (and, if such adjustments were required to be made, stating the reasons therefor).

(G) The computation of all deposits required by this Section 2 shall be made on the basis of information available to the Company at the time of each such deposit. Each such 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 Company, or judicial or administrative determinations made subsequent to the making of such deposits.

**SECTION 3. Withdrawals from the Title XI Reserve Fund.** (a) From time to time, moneys in the Title XI Reserve Fund shall be subject to withdrawal by delivery by the Company to the Secretary of a Request for Payment (specifying the Person or Persons to be paid and the amount of such payment) executed by the Company, together with an Officer's Certificate of the Company stating the reasons and purpose for the withdrawal.

(b) Upon approval by the Secretary of the Request for Payment evidenced by the countersignature thereon of the Secretary, the Secretary shall cause the Request for Payment to be delivered to the Depository, which shall promptly make payment to such Person or Persons in accordance with the terms of such Request for Payment.

**SECTION 4. Termination of the Title XI Reserve Fund.** (a) The Title XI Reserve Fund shall terminate at such time as the Secretary's Note shall have been satisfied and discharged and the Company shall have paid or caused to be paid all sums secured under the Security Agreement or the Mortgage.

(b) Upon the termination of the Title XI Reserve Fund, pursuant to Section 4(a), the moneys remaining in the Title XI Reserve Fund shall be subject to withdrawal and payment into the general funds of the Company.

(c) Upon payment by the Secretary to the Indenture Trustee of the Guarantees pursuant to the

Indenture, the Title XI Reserve Fund shall, upon written instructions of the Secretary, be terminated

and the balance remaining in the Title XI Reserve Fund shall be paid to the Secretary and the Company as determined by the Secretary.

(d) Any withdrawal from the Title XI Reserve Fund pursuant to this Section 4 shall not effect a discharge of or diminish any obligations of the Company under the Security Agreement, 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 Company under the Security Agreement, Mortgage or any other agreement.

**SECTION 5. Eligible Investments; Form of Deposits.** (a) Moneys in the Title XI Reserve Fund shall, if so directed by a Request of the Company delivered to the Depository (with a copy to the Secretary), be invested by the Depository in the following Eligible Investments:

(1) time deposits, negotiable certificates of deposit, or similar instruments of deposit with a bank or trust company organized as a corporation under the laws of the United States or any State thereof, or of the District of Columbia, subject to supervision or examination by Federal or State authority or authority of the District of Columbia, and having a combined capital and surplus of at least \$3,000,000; provided that, the aggregate of all such time deposits and certificates of deposit with any one bank or trust company shall not exceed 10% of the combined capital and surplus of such bank or trust company;

(2) short term commercial paper having either of the two highest ratings for short term commercial paper assigned by any two nationally recognized organizations regularly engaged in rating the investment quality of such commercial paper; and

(3) securities (designated by the Company in such Request) which at the date of such investment are:

(A) direct obligations of, or obligations (other than the Obligations or Obligations related to the Company) fully guaranteed or insured by, the United States or any agency of the United States or with the Secretary's prior written consent and subject to such conditions imposed by him, obligations or securities fully insured by an instrumentality of the United States;

(B) bonds, not in default as to principal or interest of any county, municipality or state of the United States and having either of the two highest ratings for bonds assigned by any two nationally recognized organizations regularly engaged in rating the investment quality of such bonds;

(C) bonds, not in default as to principal or interest, of corporations organized and existing under the laws of the United States or of the District of Columbia or of any state of the United States and having one of the three highest ratings for bonds assigned by any two nationally recognized organizations regularly engaged in rating the investment quality of such bonds; provided



that, no investment under this subsection 5(a)(3)(C) shall be made in any obligations of the Company or a Related Party;

(D) capital stock, but limited at the time of acquisition to any amounts in the Title XI Reserve Fund in excess of the principal amount of Obligations to be redeemed pursuant to the mandatory sinking fund provisions of the Indenture, during the next succeeding 12 months of (i) corporations organized and existing under the laws of the United States or the District of Columbia or of any state of the United States if such stock is currently fully listed and registered upon an exchange registered with the Securities and Exchange Commission as a national securities exchange and permitted for investment by a savings bank under the laws of the State of New York without regard to the provisions therein limiting such investments to a percentage of the assets or surplus of such savings bank, (ii) banks either regulated by the Comptroller of the Currency of the United States or subject to the Banking Law of the State of New York, or (iii) insurance companies licensed to do business in such state; provided that, no investment under this subsection shall be made in stock of the Company or a Related Party; provided further that, any request under this subsection shall be accompanied by an opinion of counsel satisfactory to the Secretary as to the qualification of such securities under this clause and provided further, that the Company shall cause to be sold, within 60 days, or at any time if the Secretary so directs the Company in writing, any securities which cease to qualify under this subsection.

(b) In any case where the Company is required to deposit or redeposit sums into the Title XI Reserve Fund, the Company shall make the required deposit in cash or, in lieu thereof, with the Secretary's prior written approval, may deposit into the Title XI Reserve Fund, negotiable certificates of deposit, short term commercial paper or securities which are (1) Eligible Investments (2) owned by the Company and (3) of an equivalent current market value (based upon the last sales price thereof on the Business Day immediately preceding such deposit or, if there shall have been no sale thereof on such day, the average of the last known bid and asked prices). With the Secretary's prior written approval, the Company may exchange Eligible Investments in the Title XI Reserve Fund at current market value (determined as above provided) for an equivalent amount of cash.

(c) Cash held in the Title XI Reserve Fund will be held by the Depository pursuant to the Depository Agreement.

**SECTION 6. Company's Rights with Respect to Securities Held in the Title XI Reserve Fund.** Unless there is an existing Default under the Security Agreement, the Company shall have:

(a) the right to vote securities held in the Title XI Reserve Fund as to (1) the sale of all or any part of the assets of the issuer or obligor thereof, (2) the increase or reduction of the capital of such issuer or obligor, (3) the liquidation, dissolution, merger or consolidation of such issuer or obligor, or (4) any purpose which would not then impair the lien of, or the security interest granted to the Secretary; and

(b) the right to exercise any and all rights of ownership of such securities, including the right to consent or object to the extension, modification or renewal of any thereof, the right to consent or object to any plan of reorganization, or readjustment, and the right to exercise any right, privilege or option pertaining thereto.

**SECTION 7. Annual Statement of Company with Respect to the Title XI Reserve Fund.** Within 105 days after the close of each fiscal year of the Company at the end of which there are funds in the Title XI Reserve Fund (and at such other times as the Secretary may request in writing), the Company shall submit to the Secretary (with a copy to the Depository) (a) an opinion of counsel satisfactory to the Secretary as to the qualification, under the Section 5(a)(3)(D), of securities acquired pursuant to that subparagraph and then held in the Title XI Reserve Fund and (b) a list of the Eligible Investments held in the Title XI Reserve Fund at the close of said fiscal year (or at the time of the Secretary's request as aforesaid).

**SECTION 8. Financial Requirements of the Company.** (a) Primary Covenants. The Company shall not without the Secretary's prior written consent:

(1) Except as hereinafter provided, make any distribution of earnings, except as may be permitted by (A) or (B) below:

(A) From retained earnings in an amount specified in subsection (C) 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 (i) there was no operating loss in the immediately preceding three fiscal years, or (ii) there was a one-year operating loss during the immediately preceding three fiscal years, but (a) such loss was not in the immediately preceding fiscal year, and (b) there was positive net income for the three year period;

(B) If distributions of earnings may not be made under (A) above, a distribution can be made in an amount equal to the total operating net income for the immediately preceding three fiscal year period, provided that, (i) there were no two successive years of operating losses, (ii) in the fiscal year in which such distribution is made, there is no operating loss to the date of such distribution, and (iii) the distribution or earnings made would not exceed an amount specified in Section 8(a)(1)(C) below;

(C) Distributions of earnings may be made from earnings of prior years in an aggregate amount equal to (i) 40 percent of the Company's total net income after tax for each of the prior years, less any distributions that were made in such years; or (ii) the aggregate of the Company's total net income after tax for such prior years, provided that, after making such distribution, the Company'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;

(2) 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 Secretary;

(3) (A) Sell, mortgage, transfer, or demise charter the Vessel or any assets to any non-Related Party except as permitted in subsection 8(a)(7) below, or (B) sell, mortgage, transfer, or demise charter the Vessel or any assets to a Related Party, unless such transaction is (i) at a fair market value as determined by an independent appraiser acceptable to the Secretary, and (ii) a total cash transaction or, in the case of demise charter, the charter payments are cash payments;

(4) Enter into any agreement for both (A) sale and (B) 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;

(5) Guarantee, or otherwise become liable for the obligations of any Person, except in respect of any undertakings as to the fees and expenses of the Indenture Trustee, except endorsement for deposit of checks and other negotiable instruments acquired in the ordinary course of business and except as otherwise permitted in Section 8(b);

(6) 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 Company is actively engaged;

(7) Enter into any 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, the Company shall not be deemed to have sold such properties or assets if (A) the Net Book Value (defined as the original book value of an asset less depreciation calculated on a straight line basis over its useful life) of the aggregate of all the assets sold by the Company during any period of 12 consecutive calendar months does not exceed 10 % of the total Net Book Value of all of the Company's assets (the assets which are the basis for the calculation of the 10% of the Net Book Value are those indicated on the most recent audited annual financial statement required to be submitted pursuant to Section 9 hereof prior to the date of the sale); (B) the Company retains the proceeds of the sale of assets for use in accordance with the Company's regular business activities; and (C) the sale is not otherwise prohibited by subsection 9(a)(3) above. Notwithstanding any other provision of this subsection, the Company may not consummate such sale without the Secretary's prior written consent if the Company has not, prior to the time of such sale, submitted to the Secretary the financial statement in clause (A) of this subsection, and any attempt to consummate a sale absent such approval shall be null and void ab initio.

(b) Supplemental Covenants. Unless, after giving effect to such transaction or transactions, during any fiscal year of the Company, (i) the Company's Working Capital is equal to at least one dollar, (ii) the Company's Long-Term Debt does not exceed two times the Company's Net Worth and (iii) the Company's Net Worth is at least the amount specified in Attachment A hereto, the Company shall not, without the Secretary's prior written consent:

(1) Withdraw any capital;

(2) Redeem any share capital or convert any of the same into debt;

(3) Pay any dividend (except dividends payable in capital stock of the Company);

(4) Make any loan or advance (except advances to cover current expenses of the Company), either directly or indirectly, to any stockholder, director, officer, or employee of the Company, or to any Related Party;

(5) Make any investments in the securities of any Related Party;

(6) Prepay in whole or in part any indebtedness to any stockholder, director, officer or employee of the Company, or to any Related Party;

(7) Increase any direct employee compensation (as hereinafter defined) paid to any employee in excess of \$100,000 per annum; nor increase any direct employee compensation which is already in excess of \$100,000 per annum; nor initially employ or re-employ any person at a direct employee compensation rate in excess of \$100,000 per annum; provided, however, that beginning with January 1, 2000, the \$100,000 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). For the purpose of this section the term "direct employee compensation" is the total amount of any wage, salary, bonus, commission, or other form of direct payment to any employee from all companies with guarantees under Title XI of the Act as reported to the Internal Revenue Service for any fiscal year;

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

(9) Either enter into or become liable (directly or indirectly) under charters and leases (having a term of six 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 \$\_\_\_\_\_;

(10) Pay any indebtedness subordinated to the Obligations or to any other Title XI obligations;

(11) Create, assume, incur, or in any manner become liable for any indebtedness, except current liabilities, or short term loans, incurred or assumed in the ordinary course of business as such business presently exists;

(12) Make any investment, whether by acquisition of stock 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 Title XI Reserve Fund;

(13) Create, assume, permit or suffer to exist or continue any mortgage, lien, charge or encumbrance 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 (i) loans, mortgages and indebtedness guaranteed by the Secretary under Title XI of the Act or related to the construction of a vessel approved for Title XI by the Secretary and (ii) liens incurred in the ordinary course of business as such business presently exists.

**SECTION 9.** (a) Annual Financial Statements. The Company shall furnish to the Secretary, in duplicate, (1) within 105 days after the end of the Shipowner's fiscal year commencing with the first fiscal year ending after the date of the Security Agreement, the Company's Audited Financial Statements including balance sheet and income statement for such fiscal year along with a completed M.A. Form 172 or such other form approved by the Secretary, and (2) within 90 days after the expiration of each semi-annual period of each fiscal year commencing with the first such semi-annual period ending after the date of the Security Agreement, a completed M.A. Form 172 or such other form approved by the Secretary for such semi-annual period along with an Officer's Certificate certifying its accuracy.

(b) Annual No Default Certificates. Within 105 days after the end of the Company's fiscal year, the Company shall furnish to the Secretary, an Officer's Certificate dated as of the close of such fiscal year stating whether or not, the Company is in default in the performance of or in default in the compliance with any covenant, agreement or condition contained herein or in the Mortgage, Security Agreement or charter relating to any Vessel listed in Attachment A hereto, and if so, specifying each such default and stating the nature thereof.

**SECTION 10.** Qualifying Financial Requirements of the Company. Immediately upon the execution and delivery of this Agreement, the Company shall meet the requirements with respect to



counterparts. All such counterparts shall be deemed to be originals, and shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, this Title XI Reserve Fund and Financial Agreement has been executed by the parties hereto as of the day and year first above written.

(SEAL)

\_\_\_\_\_

BY: \_\_\_\_\_

UNITED STATES OF AMERICA  
SECRETARY OF TRANSPORTATION

MARITIME ADMINISTRATOR

Attest:

BY: \_\_\_\_\_

\_\_\_\_\_  
Assistant Secretary  
Maritime Administration



**ATTACHMENT A**  
**TITLE XI RESERVE FUND AND FINANCIAL AGREEMENT**  
(Contract No. MA - \_\_\_\_\_)

1. This Financial Agreement shall apply to the following Vessels: \_\_\_\_\_, Official Number \_\_\_\_  
\_\_ and \_\_\_\_\_, Official Number \_\_\_\_\_.
2. The Company's aggregate original equity investment for use in Section 2 for Vessel \_\_\_\_\_ is \$  
\_\_\_\_\_, and for Vessel \_\_\_\_\_ Is \$\_\_\_\_\_.
3. The Company's Net Worth for use in Section 9(b) is \$\_\_\_\_\_.

## DEPOSITORY AGREEMENT

**THIS DEPOSITORY AGREEMENT** (the "Agreement") dated as of \_\_\_\_\_, among (i) \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Shipowner"), (ii) the UNITED STATES OF AMERICA represented by the Secretary of Transportation, acting by and through the Maritime Administrator (the "Secretary"), and (iii) \_\_\_\_\_, a \_\_\_\_\_ (the "Depository" and also the "Securities Intermediary").

### RECITALS

**WHEREAS**, Pursuant to the understandings set forth in the Recitals to the Security Agreement executed on this date, the Shipowner has issued certain Obligations designated "United States Government Guaranteed Ship Financing Obligations, \_\_\_\_ Series" in an aggregate principal amount not to exceed \$\_\_\_\_\_ to finance the construction of the Vessels;

**WHEREAS**, As further security for the issuance of the Secretary's Guarantee, the Shipowner has granted a security interest in (i) all of its right, title and interest in and to the Title XI Reserve Fund and the Construction Fund (also known as the Securities Accounts) and (ii) all the Financial Assets now on deposit or hereafter placed in deposit in the Securities Accounts to be held and invested in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, It is the intention of the parties hereto that these security interests be perfected by (i) the execution and delivery of this Agreement and by the Depository's possession on behalf of the Secretary of said Financial Assets and (ii) by the filing of appropriate financing statements to record the Secretary's security interests.

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is hereby agreed:

**SECTION 1. Separate Accounts.** (a) Title XI Reserve Fund. The Depository agrees when and if required by the Financial Agreement or the Security Agreement to open a separate Securities Account to hold the Title XI Reserve Fund for the benefit of the Secretary in the name of "\_\_\_\_\_", entirely as collateral for the United States of America, represented by the Secretary of Transportation, acting by and through the Maritime Administrator (the "Secretary") and held by the Securities Intermediary solely and exclusively for the benefit of the Secretary."

(b) Construction Fund. The Depository acknowledges the receipt of a deposit in the Construction

Fund in an amount of \$\_\_\_\_\_ from the proceeds of the Obligations and agrees to hold this amount and any future deposits in a separate Securities Account for the benefit of the Secretary in the name of "\_\_\_\_\_", entirely as collateral for the United States of America, represented by the Secretary of Transportation, acting by and through the Maritime Administrator (the "Secretary") and held by the Securities Intermediary solely and exclusively for the benefit of the Secretary."

(c) The Depository shall send the Secretary and the Shipowner a notice of each account when established (including the account number) and it may not change the name or the account number of either account without the Secretary's prior written consent.

(d) Moneys from time to time remaining on deposit in the Securities Accounts shall be subject to withdrawal upon receipt by the Depository of a Request for payment (specifying the Person to be paid and the amounts of such payments) executed by the Shipowner and approved by the Secretary. The Depository shall promptly make payment in accordance with the terms of a Request approved by the Secretary. In no event, however, may the Depository make a payment to the Shipowner or any other Person without the Secretary's prior written approval.

(e) In the event that the Secretary delivers a written notice stating that the Secretary is exercising exclusive control over a Securities Account ("Notice of Exclusive Control"), the Depository shall cease complying with any of the Shipowner's Requests (including an approved Request for payment or a Request to invest or reinvest) or any other instruction from the Shipowner or any other party that would constitute an "entitlement order" as defined by Section 8.102(a)(8) of the UCC.

(f) Coincident with the issuance of a Notice of Exclusive Control, or at any time thereafter, the Secretary may request in writing that the Depository pay all or part of the proceeds of a Securities Account to the Secretary, and the Depository shall promptly disburse to the Secretary the amount requested from the Securities Account in accordance with the Secretary's request.

**SECTION 2. Contents and Investment of Accounts.** (a) The Depository hereby agrees that each item of property (whether investment property, financial asset, security, instrument or cash) credited to any of the Securities Accounts shall be treated as a Financial Asset. Any cash held by the Depository pursuant to any of the provisions of this Agreement (1) shall be segregated, (2) shall not be invested or reinvested except as provided in the following paragraph (b), and (3) shall not bear interest, except as the Shipowner and the Depository may agree.

(b) Unless the Depository shall have received a Notice of Exclusive Control from the Secretary, the Depository shall comply with a Shipowner's Request to invest or reinvest any cash held by the Depository in Eligible Investments; provided, however, that such investments or reinvestments of the Construction Fund shall be limited to negotiable certificates of deposit and direct obligations of the United States and its agencies as permitted by Sections 5(a)(1) and 5(a)(3)(A) of the Financial Agreement and shall mature not later than three months from the date of the purchase of the certificate of deposit or the

investment or reinvestment.

(c) Unless the Depository shall have received a Notice of Exclusive Control from the Secretary, the Depository shall comply with a Shipowner's Request (or the Secretary's request upon delivery of a Notice of Exclusive Control) to sell all or any designated part of such Eligible Investments. If such sale (or any payment at maturity) produces (1) a net sum less than the cost (including accrued interest paid, as such) of the Eligible Investments so sold or paid, the Depository shall give written notice to the Shipowner and the Secretary, and the Shipowner shall promptly pay the deficiency to the Depository, or (2) a net sum greater than the cost (including accrued interest paid as such) of the Eligible Investments so sold or paid, the Depository shall promptly pay the excess to the Shipowner, unless the Depository shall have received a Notice of Exclusive Control from the Secretary.

(d) Unless the Depository shall have received a Notice of Exclusive Control from the Secretary and subject to the provisions of subsection 2(c), the Depository shall pay the Shipowner any interest or dividends paid on cash or Eligible Investments (less an amount equal to accrued interest paid upon purchase) when received by the Depository.

(e) Any and all securities or other Financial Assets credited to each of the Securities Accounts shall be registered in the name of the Depository or any nominee of the Depository, indorsed to the Depository or such nominee or in blank and in no case will any Financial Asset credited to any Securities Account be registered in the name of the Shipowner, be payable to the order of the Shipowner or specially indorsed to the Shipowner, except to the extent the foregoing have been specially indorsed to the Depository.

(f) If any money held by the Depository is invested in "certificated securities" as defined in Section 8-102(4) of the UCC, then the Depository (1) shall take delivery of such certificated securities in bearer form or registered form issued to the Depository or indorsed to the Depository, or in blank; (2) shall maintain continuous possession of such certificated securities; (3) shall identify, by book entry or otherwise, that such certificated securities belong to the Shipowner subject to a security interest in favor of the Secretary, and (4) shall send to the Shipowner and the Secretary a confirmation reflecting the purchase of such certificated securities and the security interest therein in favor of the Secretary.

(g) If any money held by the Depository is invested in direct obligations of the United States Treasury which constitute "book-entry Treasury Securities" as defined in 31 C.F.R. Section 306.115(d) (the "Treasury Securities"), the Depository (1) shall determine that such Treasury Securities are issued in the form of entries on the records of the Federal Reserve Bank of (city) (the "FRB\_"), and shall provide the Shipowner and the Secretary with written notice thereof; (2) shall hold such Treasury Securities in (city) \_\_\_ directly through a member of the FRB\_; (3) shall identify such Treasury Securities, by book entry or otherwise, as being registered in the name of the Depository, for the benefit of the Shipowner, subject to the Secretary's security interest therein; and (iv) shall send to the Shipowner and the Secretary a confirmation reflecting the purchase of such Treasury Securities and the security interest therein in favor of the Secretary.

(h) All commissions, brokerage, taxes, and expenses, if any, applicable to the acquisition or sale of Eligible Investments under this Section and payable to the Depository shall be paid by the Shipowner from its separate funds.

**SECTION 3. Secretary's Security Interest in Funds.** (a) All Financial Assets held by the Depository, at whatever time, pursuant to the provisions of this Agreement, whether cash, moneys, securities, Eligible Investments, instruments, negotiable documents, chattel paper, proceeds thereof or otherwise, shall constitute and be held by the Depository solely and exclusively for the benefit of the Secretary as security for the payment and performance of any and all of the Secretary's Notes. By its signature below, the Shipowner and the Depository hereby acknowledges the Secretary's security interest under this Agreement.

(b) The Depository confirms that it has no security interest in any of the Financial Assets in any of the Securities Accounts or any security entitlement credited thereto, and that the Financial Assets will not be subject to deduction, set-off, or banker's lien and that the Depository will take no action to encumber, set-off, recoup, or in any manner apply or retain said property for its own use or benefit or for any Person other than the Secretary.

(c) Except for the interests of the Secretary and the Shipowner in the Securities Accounts, the Depository does not know of any claim to, or interest in, and has not entered into any other agreements with respect to the Securities Accounts or in any Financial Asset credited thereto. If any Person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against any Securities Account or in any Financial Asset carried therein, the Depository will promptly notify the Secretary and the Shipowner.

(d) The Depository shall promptly send all statements and confirmations with respect to the Securities Accounts to the Secretary and the Shipowner.

**SECTION 4. Depository's Responsibilities.** (a) The duties of the Depository are only such as are herein specifically provided, being purely ministerial in nature, and the Depository shall incur no liability whatsoever, except for willful misconduct or gross negligence.

(b) The Depository shall be under no responsibility for the Recitals in this Agreement, the genuineness or validity of any document deposited with it, the correctness of any statement or calculation submitted to it, or any losses due to the Shipowner's investment decisions and shall be fully protected in acting in accordance with any written instructions or approval of the Secretary or Request of the Shipowner given it hereunder, and believed by it to have been signed by the proper parties.

(c) The Depository may consult with counsel and shall be fully protected in any action taken in accordance with the advice of such counsel. The Depository shall be fully indemnified by the Shipowner

to its satisfaction against any loss, liability or expense which it may incur other than arising from its gross negligence or willful misconduct in acting under the Agreement, including, but not limited to, the cost and expense of defending any legal proceedings which may be instituted against it with respect to the subject matter of this Agreement. The Depository shall not be required to institute legal proceedings of any kind.

**SECTION 5. Depository's Fees.** The Shipowner agrees to pay or cause to be paid from its accounts or funds separate from the Securities Accounts, the reasonable expenses (including counsel and investigatory fees) and disbursements of the Depository incurred in connection with the performance of its duties hereunder and the Depository agrees that only the Shipowner is liable for such payment.

**SECTION 6. Notices.** All notices or other communications may be made or delivered in person, or by nationally recognized courier service, or by fax with hard copy to follow, or by certified or registered mail, postage prepaid, addressed to the particular parties as provided below, or to such other address as such parties may hereafter specify in a written notice to the other parties hereto, and all notices or other communications shall be in writing so addressed, and shall be effective upon receipt by the addressee thereof:

Depository: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Shipowner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Secretary: SECRETARY OF TRANSPORTATION  
c/o Maritime Administrator  
Maritime Administration  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590  
FAX: 202-366-7901

**SECTION 7. Amendments and Supplements.** No Agreement shall be effective to change or modify, supplement, amend or discharge in whole or in part this Agreement, unless such agreement is in writing, signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, but the Depository shall not have the right to assign this Agreement or its rights hereunder without the prior written consent of the Shipowner and the Secretary and any attempt to do so shall be null and void ab initio.

**SECTION 8. Resignation, Removal and Succession of Depository.** (a) The Depository may

resign at any time by giving written notice to the Shipowner and the Secretary. The Depository may at any time be removed by the Shipowner with the prior written consent of the Secretary, or by the Secretary by written notice delivered to the Depository with a copy to the Shipowner.

(b) If any notice of resignation or of removal shall have been given pursuant to Section 8(a), then a successor Depository shall promptly be appointed by (1) the Shipowner with the prior written consent of the Secretary, or (2) the Secretary if the Shipowner fails to appoint an acceptable Depository within thirty (30) days of such resignation or removal.

(c) Any resignation or removal of the Depository shall be effective only upon the appointment by the Shipowner, with the written consent of the Secretary, of a successor Depository and acceptance by the successor Depository.

(d) Upon appointment and acceptance as Depository, each successor Depository shall forthwith, without further act or deed, succeed to all the rights and duties of its predecessor under this Depository Agreement. Such predecessor shall promptly deliver to such successor Depository all Financial Assets held in any Securities Account pursuant hereto, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Depository hereunder. Upon the written request of the successor Depository, the Secretary or the Shipowner, such predecessor shall transfer, assign, and confirm to the successor Depository all of its rights under this Agreement by executing and delivering from time to time to the successor Depository such further instruments, and by taking such other action as may reasonably be deemed by such successor Depository, the Secretary, or the Shipowner to be appropriate in connection therewith.

**SECTION 9. Definitions.** For all purposes of this Agreement, unless otherwise expressly provided or unless the context otherwise requires, all capitalized terms shall have the meaning given by Schedule X to the Security Agreement.

**SECTION 10. Governing Law.** This Agreement and the rights and obligations of the parties hereto, shall be governed by and construed in accordance with the federal laws of the United States of America, but if they are inapplicable then in accordance with the laws of the State of \_\_\_\_\_.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed by their respective officers thereunto, duly authorized as of the day and year first above written.

\_\_\_\_\_  
Attest:

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

\_\_\_\_\_  
Attest

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

UNITED STATES OF AMERICA  
SECRETARY OF TRANSPORTATION  
Maritime Administrator

Secured Party

\_\_\_\_\_  
Attest

BY: \_\_\_\_\_  
Title: Secretary  
Maritime Administration



GUARANTY AGREEMENT IN FAVOR OF THE UNITED STATES  
(DOMESTIC FORM)

This Guaranty Agreement (the "Guaranty Agreement") dated this \_\_\_th day of \_\_\_\_\_, 199\_ by \_\_\_\_\_ (the "Guarantor"), to the United States of America, represented by the Secretary of Transportation, acting by and through the Maritime Administrator (the "Secretary").

RECITALS:

A. WHEREAS, the Guarantor is the \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Shipowner");  
and

B. WHEREAS, the Shipowner, in connection with the financing of the cost of construction of the \_\_\_\_\_, Official No. \_\_\_\_\_, \_\_\_\_\_, Official No. \_\_\_\_\_, Official No. \_\_\_\_\_ and Official No. \_\_\_\_\_, wholly owned by the Shipowner (collectively, the "Vessels"), on the date hereof, borrowed certain funds and created and authorized the issuance of obligations designated "United States Government Guaranteed Ship Financing Bonds, 199\_ Series" (the "Bonds"), consisting on the date hereof of \$ \_\_\_\_\_ aggregate principal amount of the Bonds, bearing interest at the rate specified therein and issued under a trust indenture (the "Indenture") between the Shipowner and \_\_\_\_\_, a \_\_\_\_\_ banking corporation (the "Indenture Trustee") as trustee, dated as of the date hereof, said Bonds constituting the legal, valid and binding obligations of the Shipowner;  
and

C. WHEREAS, the Shipowner, on the date hereof, accepted the Secretary's Commitment to Guarantee Obligations (the "Commitment") pursuant to Title XI of the Merchant Marine Act, 1936, as amended (the "Act"), whereby the Secretary authorized a guarantee to be endorsed upon each of the Bonds (the "Guarantees"); and

D. WHEREAS, the Shipowner has, in consideration of the issuance of the Guarantees by the Secretary of the payment of the unpaid interest on, and the unpaid balance of the principal of the Bonds issued by the Shipowner in the aggregate principal amount of \$ \_\_\_\_\_, pursuant to the terms and provisions of the Security Agreement dated the date hereof, between the Shipowner and the Secretary (the "Security Agreement"), issued and delivered to the Secretary a promissory note in the principal amount of \$ \_\_\_\_\_, (said promissory note, as originally executed and as the same may hereafter be amended, modified, supplemented or endorsed, herein called the "Secretary's Note").

E. WHEREAS, the Secretary has required this Guaranty Agreement from the Guarantor as an integral part of the consideration offered by or on behalf of the Shipowner as a condition of the Secretary's decision to enter into the Commitment to issue the Guarantees, and the Guarantor has agreed

to enter into this Guaranty Agreement for the purpose of guaranteeing the Shipowner's obligations to the Secretary under the Secretary's Note.

NOW THEREFORE, in consideration of the premises, and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Guarantors hereby agree as follows:

1. Definitions. Unless otherwise specifically defined herein, the capitalized terms used herein which are defined in Schedule X to the Security Agreement, dated the date hereof and any reference therein to other instruments shall have the respective meanings stated in Schedule X of the Security Agreement or such other instruments.

2. Guarantee.

a) The Guarantor hereby absolutely, irrevocably and unconditionally guarantee the due and punctual payment of the principal of and the interest on the Secretary's Note. The Guarantor shall be required to make said payments under this Guaranty Agreement upon receipt of a written notice from the Secretary which states that the Shipowner has not promptly, completely or effectively made said payments. The failure of Guarantor to receive such a written notice or the failure of the Secretary to send said notice shall not relieve the Guarantor of its obligations under this Guaranty Agreement. The Guarantor shall immediately pay to the Secretary or its designee in immediately available funds such payments guaranteed herein.

b) The Guarantor hereby consents and agrees that its obligations under this Guaranty Agreement will not be discharged by any act or omission to act of any kind by the Secretary or any other person or any other circumstances whatsoever (including, but not limited to, any extension, rearrangement or renewal with respect to any indebtedness or other obligation of the Shipowner with or without notice to the Guarantor, any waiver of any right of the Secretary under the terms of the Secretary's Note, the Security Agreement, the Mortgage or this Guaranty Agreement, any release of security, any transfer or assignment of rights or obligations accruing to the Secretary under the Secretary's Note, the Security Agreement, the Mortgage or this Guaranty Agreement, any corporate reorganization, dissolution, merger, acquisition of or by or other alteration of the corporate existence or structure of the Shipowner or the Guarantor, discharge of the Shipowner in bankruptcy, the invalidity, illegality or unenforceability of the Secretary's Note, the Security Agreement, the Mortgage or this Guaranty Agreement or the absence of any action to enforce the obligations of the Shipowner) which might constitute a legal or equitable discharge of the Guarantor; it being the intention of the Guarantor that this Guaranty Agreement be absolute, continuing and unconditional and the guarantee hereunder shall only be discharged by the payment in full of all sums so guaranteed hereunder.

c) The Guarantor hereby irrevocably and unconditionally waives: (i) notice of any of the matters referred to in this Guaranty Agreement and any action by the Secretary in reliance thereon; (ii)

all notices which may be required by statute, rule of law or otherwise to preserve any rights against the Guarantor hereunder, including without limitations, any demand, protest, proof of notice of non-payment of all sums payable under the Secretary's Note or any notice of any failure on the part of the Shipowner to perform or comply with any covenant, term or obligations of any agreement to which it is a party; (iii) any requirement for the enforcement, assertion or exercise of any right, remedy, power or privilege under or with respect to the Mortgage, the Security Agreement or the Secretary's Note; (iv) any requirement of diligence; (v) any requirement that the Shipowner be joined as a party to any proceedings for the enforcement of any provision of this Guaranty Agreement or that the Secretary proceed against any other guarantor executing this Guaranty Agreement or any other guaranty agreement; (vi) any and all defenses to payment hereunder, except the defense of payment already made, and agree to confess without contesting liability hereunder for any judgment entered hereon; (vii) presentment, demand, protest, notice of protest and dishonor, notice of intent to accelerate and notice of acceptance; or (viii) the right to require the Secretary to pursue any remedy in the Secretary's power whatsoever.

d) The Guarantor hereby agrees that this Guaranty Agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time payment of any sum hereby guaranteed is rescinded or must be otherwise restored or returned by the Secretary, upon the insolvency, bankruptcy or reorganization of the Shipowner, or otherwise, all as though such payment had not been made. The Guarantor further agrees that if the maturity of any obligations guaranteed herein be accelerated by bankruptcy or otherwise, such maturity shall also be deemed accelerated for the purpose of this Guaranty Agreement without demand or notice to the Guarantor.

e) Any amount payable hereunder shall not be subject to any reduction by reason of any counterclaim, set-off, deduction, abatement or otherwise.

f) The Guarantor shall pay all reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) incurred in connection with the enforcement of the obligations of the Guarantor under this Guaranty Agreement.

g) The Secretary's Note may be amended, modified or endorsed without the consent of the Guarantor.

h) The Secretary may enforce the Guarantors obligations hereunder without in any way first pursuing or exhausting any other rights or remedies which the Secretary may have against the Shipowner or any other person, firm or corporation or against any security the Secretary may hold.

i) Until all amounts payable to the Secretary pursuant to the Secretary's Note have been paid in full, the Guarantor may not enforce any right to receive payment and may not accept any payment from the Shipowner under any legal or equitable right (including any right of subrogation) the Guarantor may have or be entitled to claim against the Shipowner.

3. Secretary's Rights. The Guarantor authorizes the Secretary, without notice or demand and without affecting the Guarantor's liability hereunder, to take and hold security for the payment of this Guaranty Agreement and/or any of the obligations guaranteed herein and exchange, enforce, waive and release any such security; and to apply such security and direct the order or manner of sale thereof as the Secretary in his discretion may determine; and to obtain a guarantee of any of the obligations guaranteed herein from any one or more persons, corporations or entities whomsoever and at any time or times to enforce, waive, rearrange, modify, limit or release such other persons, corporations or entities from their obligations under such guarantees.

4. Primary Liability. It is expressly agreed that the liability of the Guarantor for the payment of the obligations guaranteed herein shall be primary and not secondary. [For use with multiple Guarantors only: The liability of the Guarantors for the payment of sums guaranteed hereunder shall be joint and several.]

5. Representations and Warranties. The Guarantor represents and warrants as follows:

a) The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_ and has full power and authority (corporate, legal and other) to execute, deliver and carry out the terms of this Guaranty Agreement;

b) This Guaranty Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms;

c) The execution, delivery and performance the Guarantor of this Guaranty Agreement does not require the approval or consent of its shareholders or of any governmental authority and does not contravene either of the Guarantors' Certificate of Incorporation or any mortgage, indenture or other agreement binding upon it, or any law, regulation, order, judgment or decree applicable to the Guarantor; and

d) The Guarantor's guarantee pursuant to this Guaranty Agreement may be expected to benefit, directly or indirectly, the Guarantor.

e) The Guarantor has fully adequate financial resources, funds, and assets to satisfy their obligations under this Guaranty Agreement, and the Guarantor will in the future retain financial resources, funds, and assets to fully satisfy its obligations under this Guaranty Agreement.

6. Continuing Guarantee. This Guaranty Agreement is a continuing guarantee of payment and collectibility and shall:

a) Remain in full force and effect so long as any obligation of the Shipowner to the Secretary referred to herein exists;

b) Be binding upon the Guarantor, its successors and assigns; and

c) Be executed and issued for the sole and exclusive benefit of the United States, and no other party shall be permitted to claim any benefit, direct or indirect, therefrom. This Guaranty Agreement is nonassignable, any assignment thereof shall be null and void and have no legal effect whatsoever.

d) Inure to the benefit of, and be enforceable by the Secretary, his successors and assigns.

7. Default. A default under the terms of this Guaranty Agreement shall be deemed to occur if the Guarantor fails to make any payments guaranteed hereunder.

8. Notices. All communications may be made or delivered in person or by certified or registered mail, postage prepaid, addressed to the Guarantor or the Secretary as provided below or to such other address as the Guarantor or the Secretary may hereafter specify in a written notice to the other and all notices or other communications shall be in writing so addressed and shall be effective upon receipt by the addressee thereof:

Guarantor:

Secretary:

SECRETARY OF TRANSPORTATION  
c/o Maritime Administrator  
Maritime Administration  
U.S. Department of Transportation  
400 Seventh Street, SW  
Washington, DC 20590  
Attention: Chief, Division of Ship Financing Contracts

9. Amendments and Supplements. No agreement shall be effective to change or modify, supplement, amend or discharge in whole or in part this Guaranty Agreement unless such agreement is in writing, signed by the Guarantor and the Secretary.

10. Governing Law. This Guaranty Agreement shall be governed by the federal law of the United States of America or in the absence of applicable federal law by the laws of the State of \_\_\_\_\_  
\_\_\_\_\_ .

11. Counterparts. This Guaranty Agreement may be executed in one or more counterparts. All such counterparts shall be deemed to be originals and shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, this Guaranty Agreement has been executed on the day and year first above written.

(Seal)

By: \_\_\_\_\_  
Name:  
Title:

Attest:

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

(Seal)

By: \_\_\_\_\_  
Name:  
Title:

Attest:

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

ACKNOWLEDGED BY:

UNITED STATES OF AMERICA  
SECRETARY OF TRANSPORTATION

By: MARITIME ADMINISTRATOR

(Seal)

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

Secretary

Maritime Administration

ATTEST:

\_\_\_\_\_  
Assistant Secretary  
Maritime Administration