

**CHAPTER 537 RESERVE FUND  
AND FINANCIAL AGREEMENT**

THIS CHAPTER 537 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 Maritime Administrator of the Maritime Administration (the "Administrator").

**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 Administrator a continuing security interest in all of its right, title and interest in and to (1) the Chapter 537 Reserve Fund, and (2) all sums, moneys, securities, and proceeds thereof currently on deposit, or hereafter deposited in the Chapter 537 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.** Chapter 537 Reserve Fund (a) The Administrator shall establish a Deposit Fund with the U.S. Department of Treasury pursuant to 46 U.S.C. Section 53716 and in accordance with the terms and conditions of the Depository Agreement (herein called the "Chapter 537 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 ("Chapter 537 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 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 Chapter 537 Reserve Fund and the Chapter 537 Escrow Fund.

(2) Promptly after the computation of the Chapter 537 Reserve Fund Net Income by the Company:

(A) If the Vessel is owned by the Company, then from the Chapter 537 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 Administrator in writing, transmit to the Administrator for the Administrator's prompt deposit into the Chapter 537 Reserve Fund an amount equal to 50 percent of the balance of the Chapter 537 Reserve Fund Net Income remaining after the above deductions.

(C) Irrespective of the Company's deposit requirements for the Chapter 537 Reserve Fund set forth above, the Company shall not be required to make any deposits for the Chapter 537 Reserve Fund if (i) the Obligations and the related Administrator'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, (iii) the Company is meeting all of the financial tests specified in Section 8(b) below, or (iv) the amount (including any securities at current market value) in the Chapter 537 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 Administrator at the time of each deposit for the Chapter 537 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) (and the Security Agreement, if applicable) and showing the pertinent calculations.

(E) In addition, the Company shall deliver to the Administrator, 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 Chapter 537 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)(F) were required to be made (and, if such adjustments were required to be made, stating the reasons therefor).

(F) 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 Chapter 537 Reserve Fund.** (a) From time to time, moneys in the Chapter 537 Reserve Fund shall be subject to withdrawal by delivery by the Company to the Administrator 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) If the Administrator approves the Request, the Administrator shall promptly withdraw the moneys from the applicable Deposit Fund and make payment in accordance with the terms of the Request.

**SECTION 4. Termination of the Chapter 537 Reserve Fund.** (a) The Chapter 537 Reserve Fund shall terminate at such time as the Administrator'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 and the Mortgage.

(b) Upon the termination of the Chapter 537 Reserve Fund, pursuant to Section 4(a), the moneys remaining in the Chapter 537 Reserve Fund shall be subject to withdrawal and payment into the general funds of the Company.

(c) Upon payment by the Administrator to the Indenture Trustee of the Guarantees pursuant to the Indenture, the Chapter 537 Reserve Fund shall be terminated and the balance remaining in the Chapter 537 Reserve Fund shall be paid to the Administrator and the Company as determined by the Administrator.

(d) Any withdrawal from the Chapter 537 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 Chapter 537 Reserve Fund shall be invested by the Administrator in direct obligations of the United States or any agency of the United States ("Eligible Investments").

(b) In any case where the Company is required to deposit or redeposit sums into the Chapter 537 Reserve Fund, the Company shall make the required deposit in cash.

(c) Cash held in the Chapter 537 Reserve Fund will be held by the U.S. Department of Treasury pursuant to the terms and conditions of the Depository Agreement.

**SECTION 6.** Reserved.

**SECTION 7.** Reserved.

**SECTION 8. Financial Requirements of the Company.** (a) Primary Covenants. The Company shall not without the Administrator'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 Administrator;

(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 Administrator, 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 8(a)(3) above. Notwithstanding any other provision of this subsection, the Company may not consummate such sale without the Administrator's prior written consent if the Company has not, prior to the time of such sale, submitted to the Administrator 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. If a Default has occurred and is continuing under the Security Agreement or this Agreement or if, after giving effect to such transaction or transactions during any fiscal year of the Company, (i) the Company's Working Capital is not equal to at least one dollar, (ii) the Company's Long-Term Debt is more than two times the Company's Net Worth, or (iii) the Company's Net Worth is less than the amount specified in Attachment A, the Company shall not, without the Administrator'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 (i) dividends permitted by Section 8(c) below, and (ii) 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 or make any payments whatsoever to a Related Party, except for (i) distributions permitted by Section 8(b)(3) above, (ii) salary paid in the ordinary course of business for services rendered, and (iii) amounts not in excess of the fair market value of goods and/or services provided;

(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 46 U.S.C. Chapter 537 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 Chapter 537 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 Chapter 537 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 Administrator under 46 U.S.C. Chapter

537 or related to the construction of a vessel approved pursuant to 46 U.S.C. Chapter 537 by the Administrator and (ii) liens incurred in the ordinary course of business as such business presently exists.

(c) Distributions for the Payment of Taxes. Provided that the Company is not then in Default under the Security Agreement or this Agreement and continues to retain its status as a Subchapter S Corporation, or other pass-through entity for tax purposes, the Company may distribute to its shareholders or members, for the purpose of assisting them in their efforts to pay their annual federal income taxes with respect to the immediately preceding tax year, a sum equal to no greater than the amount of taxes the Company would have paid for that tax year if the Company had been a Subchapter C Corporation. Any other distribution for the payment of taxes requires the Administrator's prior written consent.

**SECTION 9.** (a) Annual Financial Statements. The Company shall furnish to the Administrator, 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 Administrator, and (2) within 45 days after the expiration of each quarter of each fiscal year commencing with the first full quarter ending after the date of the Security Agreement, a completed M.A. Form 172 or such other form approved by the Administrator for such quarter 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 Administrator, 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 following requirements with respect to Working Capital, Net Worth and Long Term Debt:

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**SECTION 11.** Fund in Lieu of Chapter 537 Reserve Fund. In the event the Vessel or Vessels are subject to a capital construction fund established by the Company, as provided in 46 U.S.C. Chapter 535, whether interim or permanent (herein called the "Capital Construction Fund"), at any time when deposits would otherwise be required to be made into the Chapter 537 Reserve Fund, and the Company elects to deposit such funds into the Capital Construction Fund,

then the Company shall enter into an agreement satisfactory in form and substance to the Administrator to the effect that (a) the Capital Construction Fund and all assets so deposited therein shall be and constitute security to the United States in lieu of the Chapter 537 Reserve Fund and the deposit requirements of Section 2 of this Financial Agreement shall be deemed satisfied by deposits of equal amounts in the Capital Construction Fund and (b) the Company and the Administrator may execute such further agreements or documents and take such other actions as may be deemed necessary by the Administrator to perfect the pledge of the security of the Capital Construction Fund.

**SECTION 12. Notices.** Except as otherwise provided in this Agreement, notices, requests, directions, instructions, waivers, approvals or other communication may be made or delivered in person or by registered or certified mail, postage prepaid, addressed to the party as provided below, or to such other address as such party may hereafter specify in a written notice to the other parties named herein, and all notices or other communications shall be in writing so addressed and shall be effective upon receipt by the addressee thereof:

The Administrator as:

Maritime Administrator  
Maritime Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

The Company as:

**SECTION 13. Amendments and Supplements.** No agreement shall be effective to amend, supplement, or discharge in whole or in part this Financial Agreement unless such agreement is in writing signed by the parties hereto. Any amendments, additions, deletions, substitutions or other changes not made in accordance with this provision shall be invalid and of no effect.

**SECTION 14. Counterparts.** This Financial 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 15. 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 District of Columbia.

**SECTION 16. Performance of the Company=s Agreements by the Administrator.** If the Company shall fail to perform punctually and fully any of its agreements hereunder, including but not limited to providing the Administrator with any audited or unaudited financial statements, reports, certifications or calculations required hereunder to be provided by the Company to the Administrator, the Administrator may, in its discretion, perform all acts and make all necessary expenditures to remedy such failure. Notwithstanding the foregoing, the Administrator shall not be obligated to (and shall not be liable for the failure to) perform such acts and make such expenditures, including, but not limited to, the hiring of accounting professionals to review the books and records of the Company to the satisfaction of the Administrator, and the Company hereby agrees to disclose all and any pertinent information determined to be necessary for the conduct of such a review by the Administrator or its consultants. All funds advanced and expenses and damages incurred by the Administrator relating to such compliance shall constitute a debt due from the Company to the Administrator and shall be secured hereunder and under the Mortgage prior to the Administrator's Note and shall be repaid by the Company upon demand, together with interest at the Obligation rate plus 2%.

**SECTION 17. Additional Collateral Requirement.** (a) If the quarterly financial statements submitted by the Company in accordance with this Financial Agreement indicate that (i) either the Company is not in compliance with the financial requirements set forth in Section 8(b) hereof and (ii) at the time, the aggregate value of the sum of (y) any funds on deposit in the Chapter 537 Reserve Fund, and (z) the appraised orderly liquidation value of the Vessels that have been delivered to the Company, as indicated by the Appraisal, as defined below (collectively, the "Security Value"), is less than the aggregate amount of the Outstanding Obligations, the Company shall, upon written demand from the Administrator, promptly furnish to the Administrator the Additional Collateral (as defined below). The Administrator shall immediately release the Additional Collateral upon satisfaction by the Company of the financial requirements set forth in Section 8(b) hereof for four consecutive fiscal quarters, as evidenced by the financial statements submitted by the Company in accordance with this Financial Agreement.

(b) For the purposes of this Section 17, the following terms shall have the meanings set forth below:

(i) "Appraisal" shall mean an appraisal of the Vessels conducted by an appraiser approved by the Administrator, who has followed an appraisal methodology approved by the Administrator, and which appraisal shall not have occurred more than twelve months before the date that the appraisal is delivered to the Administrator.

(ii) "Additional Collateral" shall consist of a letter of credit in form and substance satisfactory to the Administrator from a U.S. bank acceptable to the Administrator in an amount not less than the difference between the Appraisal value of the Vessels and the Outstanding Obligations.

**SECTION 18. Default.** The Company shall be in default of this Agreement upon the failure or omission of the Company to observe any covenant, term or provision herein, provided, however, that a failure to satisfy the financial requirements set forth in Subsection 8(b)(i) through (iii) hereof shall not constitute a default hereunder.

IN WITNESS WHEREOF, this Chapter 537 Reserve Fund and Financial Agreement has been executed by the parties hereto as of the day and year first above written.

Attest:

[THE COMPANY NAME]

\_\_\_\_\_  
[Name]  
[Title]

By: \_\_\_\_\_  
[Name]  
President

UNITED STATES OF AMERICA,

Attest:

BY: MARITIME ADMINISTRATOR

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

By: \_\_\_\_\_  
Secretary  
Maritime Administration

**ATTACHMENT A**  
**CHAPTER 537 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 8(b) is \$ \_\_\_\_\_.